

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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441	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 3 of 18 (Filed Under Seal)	12/24/21	115 116	28,485–28,643 28,644–28,742
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452	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 14 of 18 (Filed Under Seal)	12/24/21	123 124	30,517–30,643 30,644–30,677
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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 A Depending on what context. I can explain that.

2 Q No. 250 percent of something sounds like a lot, right?

3 A Depends on the situation.

4 Q When it comes to you getting paid on these percentages, you
5 use the reduction off the bill charge, the 80 percent reduction, right?

6 A When you say -- me personally or the company?

7 Q United, right?

8 A It depends on the program.

9 Q OCM.

10 A In some programs we don't get paid a fee at all.

11 Q I'm going to get to that. OCM -- when it comes to OCM,
12 we're looking at the bill charge and how much of a reduction it is, right?

13 A If we retained the discount, yes.

14 Q When -- so when you get paid, you use a percentage of the
15 reduction of bill charges on OCM?

16 A Depending on the client arrangement.

17 Q When it comes to us getting paid, we're going to use a
18 percentage of Medicare because that sounds simple?

19 MR. BLALACK: Objection. Foundation. He hasn't
20 established what program.

21 THE COURT: Overruled.

22 BY MR. ZAVITSANOS:

23 Q Right, sir?

24 A No. I don't agree with your mischaracterization of it.

25 Q Well, didn't United have an initiative internally that you were

1 going to start changing the language, and instead of talking about -- did
2 United have an internal program initiative in connection with this media
3 outreach that going forward, we're not going to talk about how much of
4 a reduction there is off of billed charges, we're going to convert it and
5 talk about percentages of Medicare because the general public will think
6 250 percent or 500 percent of Medicare is egregious? Did United have
7 that initiative?

8 A That's incorrect.

9 Q Okay. 92, sir. And so they'll put it up on the screen.

10 MR. ZAVITSANOS: Your Honor, my apologies for the delay.

11 THE COURT: No problem.

12 MR. BLALACK: And to expedite things, Your Honor, we do
13 have a foundation objection to this one.

14 THE COURT: Thank you.

15 MR. ZAVITSANOS: Yeah. I understood that. So I'll move on.

16 BY MR. ZAVITSANOS:

17 Q Okay. So Mr. Haben, if you wouldn't mind, sir -- and you're
18 welcome to look at as much of this document as you'd like, sir. I am -- I
19 am going to ask about pages 10 -- yeah, page 10.

20 A I need a little bit of time. I'm not --

21 Q Sure.

22 A -- familiar with this document.

23 Q Take your time. Just let me know when.

24 A Okay.

25 Q Okay. Does this document deal with out of network

1 enhancements and data regarding out of network charges?

2 A I am not familiar with this document. So I don't know.

3 Q Sir, my question is does the page we're looking at deal with
4 out of network payments of which you were in charge of?

5 A The page has our programs referenced to them on the right-
6 hand side.

7 Q And does this appear to be a United document?

8 A Yes. I believe it is.

9 Q Were you part of United leadership when it came to out of
10 network spending?

11 A Yes.

12 Q Does this document talk about a leadership meeting that took
13 place in May 2017? First page.

14 A It's a business operations meeting. I don't know if I was part
15 of that meeting.

16 Q My question is does this document talk about a leadership
17 meeting that took place in May of 2017?

18 A There's different leadership meetings. This looks like a
19 business operations meeting. I don't believe I was part of that group.

20 Q I'm going to ask --

21 MR. ZAVITSANOS: Objection. Nonresponsive. I'll withdraw.
22 Let me ask it again.

23 THE COURT: Well, the --

24 MR. BLALACK: My position is it was responsive, Your Honor.

25 MR. ZAVITSANOS: Let me ask it again.

1 THE COURT: I thought it was responsive.

2 MR. ZAVITSANOS: Okay.

3 BY MR. ZAVITSANOS:

4 Q Sir, does this talk about a leadership meeting regarding
5 emergency departments and the out of network spend in 2017?

6 A I'm trying to be clear to you. There are different leadership
7 groups. This appears to be the clinical and operations team. I was not
8 part of that group.

9 Q And does this deal with the out of network spend of which
10 were the ultimate manager -- the owner of?

11 A It has reference to our spend -- or our programs on page 10.

12 MR. ZAVITSANOS: Your Honor, I move for the admission of
13 Plaintiffs' 19.

14 MR. BLALACK: Object, Your Honor. The witness hasn't been
15 provided it. He hasn't seen it. He wasn't involved in the meeting.
16 There's no connection between him and this document other than some
17 of the projects he worked on.

18 MR. ZAVITSANOS: And Your Honor, I believe --

19 THE COURT: You have not established a sufficient ground
20 for admission. Insufficient foundation. He said it was clinical operations
21 even though it had out of network spending involved.

22 BY MR. ZAVITSANOS:

23 Q Would you look at the second page, sir? Do you see the
24 reference to out of network opportunity?

25 A I do not. Are we looking at the same page?

1 Q Excuse me, page 4. My apologies. Page 4. Does that
2 identify out of network coverage, too?

3 A Can you point to it for me?

4 Q Right under 70 percent.

5 A It refers to unit costs. And that's a healthcare economics
6 component. Not mine.

7 Q Does it talk about comparing par versus non-par, sir?

8 A It shows healthcare economics comparison of par rates to
9 non-par rates.

10 Q And the non-par rates, are those figures that you kept in your
11 organizations?

12 A No. These look like healthcare economics.

13 Q Sir, is the non-par spend, is that data that you kept in your
14 organization? That's my question.

15 A It's in the healthcare economics organization.

16 Q I understand it may be there, as well. My question is does
17 your organization keep track of the non-par spend? I thought we covered
18 that earlier. That's how you were measured, on how much non-par
19 spend you all had. Remember we covered that this morning?

20 A I do. This is referring to unit costs. I don't know how to
21 calculate a unit cost. I depend on healthcare economics.

22 Q Okay, sir. All right. And let me do this, sir. Please turn to
23 page 10. Just read it to yourself. I'm going to see if I can refresh your
24 recollection. And read to yourself, not out loud, in the top right-hand
25 corner where it says EDTI Solutions. Read that to yourself, sir. Let me

1 know when you're done.

2 A Okay.

3 Q Does that refresh your recollection that during the relevant
4 time period, reviewing this meeting plan, United's initiative was to start
5 speaking in terms of percentages of Medicare instead of how much the
6 bill charge would be discounted?

7 A No. That's not the purpose.

8 Q That's not my question. I'm not asking you the purpose of
9 anything. I'm asking, having read that, does that refresh your
10 recollection that payments would be adjusted based on a percentage of
11 Medicare instead of a percentage of bill charge?

12 A No. That's a mischaracterization. I can explain it.

13 Q No, sir. I'm asking you if your memory is refreshed that
14 there was an initiative to adjust payment from percent of billed charges
15 to a multiple of Medicare?

16 A There was no initiative to do that.

17 MR. BLALACK: Your Honor, may we approach for one
18 second?

19 THE COURT: You may. Let's step out in the hall. We'll be
20 right back, guys.

21 [Sidebar at 1:57 p.m., ending at 2:00 p.m., not transcribed]

22 THE COURT: Go ahead, please.

23 BY MR. ZAVITSANOS:

24 Q Is it your testimony, sir, that the document you just looked at,
25 are you swearing under oath that your department did not provide

1 information for the preparation of this document, Emergency
2 Department Transformation Initiative?

3 A I don't know.

4 Q Do you have any reason to doubt the authenticity of this
5 document that was produced by UnitedHealthcare in this case?

6 A I have no doubt.

7 Q Does your department give information to operations and to
8 the clinical department within UnitedHealthcare?

9 A What kind of information?

10 Q Out of network non-par spend data.

11 A The clinical team has their own data analytics group.

12 Q That's not my question.

13 A I do not -- I do not give them data.

14 Q You do not give them data?

15 A I don't believe so.

16 Q Okay. Fine. We'll move on.

17 MR. ZAVITSANOS: Okay. Michelle, let's go back, please, to
18 Exhibit -- I think it was Exhibit 12, please.

19 THE WITNESS: I have to get the other binder.

20 MR. ZAVITSANOS: And let's go please, Michelle, to page 4.

21 BY MR. ZAVITSANOS:

22 Q What is -- these are the talking points, again. The initiative to
23 the media. What is the count?

24 MR. ZAVITSANOS: Pull that up, Michelle.

25 BY MR. ZAVITSANOS:

1 Q Now, in fairness, this appears to be a draft, right, because we
2 see stuff in brackets internally, right?

3 A I would assume so. Yeah.

4 MR. BLALACK: Objection. Compounded. I'm fine with both
5 questions. I just want one of them.

6 THE COURT: All right. So just rephrase.

7 BY MR. ZAVITSANOS:

8 Q This appears to be a draft?

9 A I believe so.

10 Q Okay. So what is the cap, the cap being the most that you
11 will pay for an out of network claim, right, sir?

12 A No. That's mischaracterization.

13 Q UnitedHealthcare is reviewing all out of network physicians
14 and other healthcare providers. However, we'll only engage with ones
15 that exceed a certain percentage of Medicare rates or fair health. You
16 see that?

17 A I do.

18 Q In the subsequent media talking points --

19 MR. ZAVITSANOS: Michelle, will you highlight, "or fair
20 health?"

21 BY MR. ZAVITSANOS:

22 Q That part got dropped, right, sir? Going forward, after 2014,
23 when it came to discussing reimbursement for out of network
24 emergency room doctors, the narrative was always using a percentage
25 of Medicare, a multiplier, as opposed to how much of a reduction of bill

1 charges, right?

2 A I don't know off the top of my head.

3 Q Are you aware of any talking points memo that evaluates
4 based on a percentage of fair health in terms of what you were telling
5 the public?

6 A Ask that again, please.

7 Q Yeah. Were you aware of any talking points, memo,
8 initiative, anything like that that talked about evaluating out of network
9 reimbursements for emergency room doctors using fair health as
10 opposed to a percentage of Medicare?

11 A I don't remember.

12 Q Okay. Thank you, sir. All right. Now let's go to 63, overview.
13 Now, this is another media messaging in 2016, two years later, right?
14 That's the one we started at, and I said I'm going to go back and start at
15 the beginning, right, sir?

16 A I don't remember. But --

17 Q Out of network costs are increasing, putting a financial strain
18 on both plan sponsors and insurers. You see that? Putting a financial
19 strain on insurers.

20 A I do see that.

21 Q And that's in 2016, right?

22 A Yes.

23 Q That's the year that you all made about 800 million dollars in
24 revenue from the shared savings program, right?

25 A I don't know specifically.

1 Q Well, it was almost a billion dollars, right, 2016?

2 A I don't remember. But --

3 Q Was it over --

4 A -- I'd have --

5 Q -- 500 million?

6 A I'd have to see the numbers.

7 Q You don't remember?

8 A Not off the top of my head.

9 Q During this five-year initiative, is it true that every year after
10 2015, you all made at least 500 million dollars from the shared savings
11 percentage charge in addition to the PMPM fee?

12 A I honestly don't remember off the top of my head. If you
13 want to show me a document, I can tell you if I think that's right.

14 Q All right. We'll get there. We'll get there. In any event, this
15 statement about putting a financial strain on insurers, I mean, that's not
16 really true, would you agree? That's not accurate to UnitedHealthcare?

17 A I disagree with you. It's a strain on both the ASO clients and
18 insurance premiums.

19 Q I didn't ask about ASO clients. We're going to look at that.
20 I'm talking about the UnitedHealthcare.

21 A Oh, I thought you read plan sponsors there, too.

22 Q Did it put a financial strain on UnitedHealthcare in 2016, the
23 out of network emergency room charges that began dropping in 2016?
24 Did that put a strain on you all?

25 A The charges were dropping?

1 Q Remember we looked at the email this morning that said '16,
2 '17, '18 bill charges were dropping?

3 A That was not ER only.

4 Q It was out of network.

5 A Because we brought providers into the network.

6 Q Sir, my question is your memo said bill charges were
7 dropping, right?

8 A I could explain why that is.

9 Q No, sir. My -- back to my question, Mr. Haben. Are you
10 telling the jury there was a financial strain on UnitedHealthcare in 2016,
11 as a result of out of network emergency room charges?

12 A There was a strain on the medical costs and the premiums
13 because of those charges. Yes.

14 MR. ZAVITSANOS: Now, Michelle, close that out. And let's
15 go to the next paragraph, please. Second paragraph.

16 BY MR. ZAVITSANOS:

17 Q Now, this is -- this is 2016. And it said, "In early 2014,
18 UnitedHealthcare enhanced its efforts to address this issue targeting the
19 small group of care providers across the country who were billing
20 excessively high out of network rates for their services." You see that?

21 A I do.

22 Q And one of the groups you targeted was TeamHealth, during
23 this relevant time period, right?

24 A I don't know. If they are an excessive biller, then yes.

25 Q No, no, no. Not excessive. Egregious. This initiative initially

1 known as the egregious billing program is now referred to as the outlier
2 cost management. You see that?

3 A Can you point to -- oh, I'm sorry.

4 Q Yeah. Right there, what it was on. You see that, Mr. Haben?

5 A Yep.

6 Q Okay. So could you please look at -- to yourself, please,
7 Exhibit 23.

8 MR. ZAVITSANOS: And let me ask counsel first if he has no
9 objection to that.

10 MR. BLALACK: One moment, please. No objection, Your
11 Honor.

12 THE COURT: Exhibit 23 will be admitted.

13 [Plaintiffs' Exhibit 23 admitted into evidence]

14 THE WITNESS: Can I take a minute?

15 MR. ZAVITSANOS: Sure.

16 THE WITNESS: Thank you.

17 MR. ZAVITSANOS: Michelle, will you put up the first page
18 while he's doing that?

19 [Witness reviews document]

20 MR. ZAVITSANOS: And let's pull up just everything in the
21 box, including the date, please. Okay.

22 THE WITNESS: I'm ready.

23 BY MR. ZAVITSANOS:

24 Q It's May, 2018, right, Mr. Haben?

25 A Yep. I believe I'm ready.

1 Q Oh. Now, we talked about how United wears two hats,
2 depending on who we're talking about. Either as a third party
3 administrator or as the insurer for the fully insured side of the business,
4 right?

5 A Correct.

6 Q And these reimbursement cuts that we've been talking about,
7 they were occurring on both sides, both on your fully insured business
8 and on the business involving employers as a third party administrator,
9 right?

10 A Not at the same time.

11 Q Well, you had initiatives going with both, right?

12 A We have out-of-network programs for both fully insured and
13 ASO.

14 Q Right. And on the fully insured side -- I mean, this is a basic
15 proposition, but the less you spend on out-of-network reimbursements,
16 the more you make, right?

17 A Not 100 percent true. There is a medical loss ratio cap. In
18 other words, we have to pay -- just make up a number -- 85 percent of
19 the premium out. We can't pay 70 percent of the premium and keep the
20 15 percent.

21 Q Well, it's 80 percent, right?

22 A I don't know the numbers off the top of my head.

23 Q Okay. So then let's not talk about it. We're going to talk to
24 someone else about the medical loss ratio, okay? And do you all know if
25 you all -- you all satisfied the medical loss ratio off the top of your head

1 in Nevada?

2 A I don't know off --

3 Q Don't know --

4 A -- the top -- I don't know in Nevada.

5 Q Okay. We're going to talk to someone else about that. Now
6 let's get back to my question.

7 A Okay.

8 Q As a -- just a commonsense proposition, the less you spend
9 on out-of-network claims, the more you can keep, right?

10 A And the premiums go down, too.

11 Q We'll talk about that, where the premiums went down. Did
12 premiums go down?

13 A You're asking in general? The less you spend, the premiums
14 are impacted by that.

15 Q No. No. Did your premiums go down or did they go up
16 while you're cutting costs?

17 A I don't know.

18 Q All right. We're going to look. Let's look at this first. Fully
19 insured egregious balance billing summary, May, 2016, right?

20 A Yes.

21 Q Okay. Now, let's go to page 2. Is that you, the John that's
22 talked about there? You're John Haben. Is that -- is this John you?

23 A I believe so. I think this is a training document for employer
24 groups.

25 Q Use this slide to ground the audience on the importance of

1 this initiative. Who's the audience?

2 A I believe it's the sales organization. I'm not 100 percent sure.

3 Q Okay. And what you're telling the sale organization or
4 whoever -- this is internal to United, though, right?

5 A Yeah. I believe --

6 Q Okay.

7 A -- even though it's not marked the way I think it -- because it
8 says training and development, T and D, that's on the bottom right-hand
9 side. Bottom right-hand.

10 Q Overpaying providers causes higher number costs and
11 higher premiums for our customers. You see that?

12 A I do.

13 Q Before you came here to testify, did you look and see as you
14 were cutting reimbursements by 80 percent, whether your premiums
15 went up or down?

16 A I think you're misrepresenting the effort. We weren't cutting
17 payments by 80 percent.

18 Q I'm not -- well, actually, it was 85 percent. One of the
19 programs, E-N-R-P, talks about a target of an 85 percent reduction, right?

20 A That's not a target. That's an outcome.

21 Q Okay. That's an outcome. 85 percent reduction. My
22 question, though, is a little different. Before you came here to talk to the
23 jury and to answer my questions, be in this courtroom, did you look at
24 any data on whether these premiums went down as a result of these cuts
25 that you all began in 2014, sir?

1 A No, I did not look at any data.

2 Q Would it surprise you that premiums were going up while
3 reimbursements were going down?

4 A It doesn't surprise me that we have a medical cost problem,
5 no.

6 THE COURT: Is it a good time for afternoon recess?

7 MR. ZAVITSANOS: Yes, Your Honor.

8 THE COURT: Okay. It's 2:15. Let's take a recess until 2:30.

9 During the recess, do not talk with each other or anyone else on any
10 subject or issue connected with the trial. Don't read, watch or listen to
11 any report of or commentary on the trial. Don't discuss this case with
12 anyone connected to it by any medium information, including without
13 limitation, newspapers, television, radio, internet, cell phones or texting.

14 Do not conduct any research on your own relating to the
15 case. Don't consult dictionaries, use the internet or use reference
16 materials. Don't talk, text, tweet, Google or conduct any other type of
17 book or computer research. Do not post on social media with regard to
18 any issue, party, witness or attorney involved in the case.

19 Most importantly, do not form or express any opinion on any
20 subject connected with the trial until the jury deliberates. Thank you
21 again for that first hour after lunch. It's always the hardest. So see you
22 at 2:30.

23 THE MARSHAL: All rise for the jury.

24 [Jury out at 2:16 p.m.]

25 [Outside the presence of the jury]

1 THE COURT: Sir, you may step down.

2 THE WITNESS: Thank you.

3 THE COURT: And as soon as Mr. Haben leaves the room, I'll
4 ask the Plaintiff to make a record.

5 THE COURT: You --

6 [Counsel confer]

7 MR. ZAVITSANOS: Yes, Your Honor. Just very briefly.

8 THE COURT: Uh-huh.

9 MR. ZAVITSANOS: Exhibit 92 is a document that talks about
10 the initiative to start speaking in terms of percentage of Medicare versus
11 percent of billed charges. In the out-of-network context, this gentleman
12 is the vice president. In the meeting out in the hall, counsel represented
13 that United's CEO would be the best person to answer this question.
14 And we have taken his deposition. I do not believe this document was
15 produced until after the deposition. And this -- and the CEO is not under
16 subpoena, because he is one of the few people where they listed the
17 correct address, rather than care of their local counsel. So as a result,
18 we do not have another person through whom to get this. This is the --
19 and I'll be brief.

20 This is the concern we had expressed that if -- even though it
21 relates to an area of a particular witness, by them saying they don't
22 know, they effectively would prevent admission of the document. I do
23 believe it's admissible, because it did deal with his area. And the other
24 thing, Your Honor, is I'm not sure about this, so I'm saying this with a
25 little degree of hesitation. I believe it is the only document on our exhibit

1 list where that statement is included and this issue about a percent of
2 Medicare versus a percent of billed charges is -- that's all that the
3 Defendant talked about during the opening for the very purpose that this
4 memo says, which is make it sound like a significant amount.

5 I had agreed with counsel to ease up on the Court's limine
6 regarding Medicare, which I think initially we didn't say anything about
7 Medicare. And as a courtesy to opposing counsel, I agreed to kind of
8 ease up, so that he could present their position that a percentage of
9 Medicare, a certain percentage of Medicare is a fair rate that the jury
10 should evaluate. This is my response to that. And with this witness
11 saying he doesn't know, I'm kind of left, you know, out on a rock here
12 so -- and I -- and the other thing I will say about Mr. Haben -- and this is
13 not directed at counsel.

14 They are top notch. I do believe Mr. Haben -- the difference
15 between yesterday and today is pretty evident that if his name is not on
16 something, there's a certain degree of hesitation or unfamiliarity, even
17 though he was the top guy. This is not a rank and file person. He was
18 the -- what we are trying in this court are his initiatives. So that's it.

19 THE COURT: Thank you. Any response?

20 MR. BLALACK: Your Honor, may I respond?

21 THE COURT: Uh-huh.

22 MR. BLALACK: There's a whole lot there, so let me take it in
23 steps and deal with the foundation of this exhibit. To establish the
24 foundation for introducing it, the witness -- it has to be established that
25 the witness has some connection to the document, some basis for

1 speaking to the context of the document, otherwise the foundation
2 [indiscernible]. In this case, the testimony [indiscernible] by challenging
3 because he did not draft it, he had not seen it, he wasn't involved in its
4 preparation and that the group that did prepare it, as far as he could tell,
5 was a different group with which he had no involvement. And he even
6 went so far as to say that that data that that group would normally use to
7 prepare that kind of information, to his knowledge did not come from
8 his --

9 THE COURT: Right. I think he said it was from the clinical
10 side.

11 MR. BLALACK: Right. So from our perspective, Your Honor,
12 let's just take the foundation question. Now, that it's well-established
13 that they haven't laid a foundation for the admission of the document.

14 Next. On the question of Mr. Rosenthal, Mr. Rosenthal was
15 deposed. He was deposed after we produced thousands and thousands
16 of documents from Mr. Rosenthal. I don't have the exact date of this
17 document, but it is not the case that -- and I'll try to get clarification on
18 the specific document. Right now, we just have the speculation it wasn't
19 produced before the deposition. I don't know that to be true.

20 Secondly, if there was some document that we produced
21 afterwards, after that deposition, Your Honor may remember that in
22 ordering him to proceed, the Court had been clear that if there was a
23 later produced document [indiscernible], we would have to reproduce
24 him, or they could come back and ask to take his testimony again. They
25 never dietary that. So that then gets us to the question of a subpoena.

1 Now, they never served a subpoena from Mr. Rosenthal, but I believe in
2 the -- one of their disclosures, they listed that there was a subpoena. He
3 had been subpoenaed.

4 I don't know why he was accepted from the other 12 that
5 they subpoenaed, but they didn't subpoena him, so you know, whatever
6 their concerns are, they've had every opportunity to question the key
7 witness they think knows everything about this initiative and test his
8 memory. He's given them testimony. If there's other people on their
9 witness list they want to explore this with, they're free to do it.

10 Finally issue -- final issue is Medicare. Just so we're clear
11 here -- and I appreciate opposing counsel's offer here to allow us to
12 address certain basic things about Medicare, but that's not an act of
13 generosity. They can't put on their case without talking about Medicare,
14 because it's on every single case that was communicated between the
15 parties over and over again and the witnesses speak in the language of
16 Medicare. So the act of generosity of letting us speak to Medicare is
17 merely a function of they didn't have any other way to present their case.

18 So we obviously think Medicare should come in in all
19 respects and there's going to be places where we disagree about that.
20 The Court will rule, and we'll make a record, if it's not admissible. But I
21 don't think that issues is the basis for changing the outcome of the
22 foundation here.

23 THE COURT: Thank you both. Have a good break.

24 MR. ZAVITSANOS: Thank you, Your Honor.

25 [Recess taken from 2:24 p.m. to 2:32 p.m.]

1 [Outside the presence of the jury]

2 THE COURT: Everyone, please remain seated. Are we ready
3 to bring in the jury?

4 MR. ZAVITSANOS: Your Honor, can I make a three minute
5 request and if I could have Mr. Fineberg address the Court?

6 THE COURT: You may.

7 THE WITNESS: Can I be -- should I be here?

8 MR. ZAVITSANOS: Yes, Your Honor. We would request the
9 witness --

10 THE COURT: Yes, please step out.

11 THE WITNESS: Do you want me to step out?

12 MR. ZAVITSANOS: Yes.

13 THE COURT: Please.

14 THE WITNESS: Oh, I thought -- okay.

15 MR. ZAVITSANOS: And, Your Honor, the only reason I'm
16 asking Mr. Fineberg to address the Court is because he was involved in
17 what he's about to talk about.

18 THE COURT: Very good. Go ahead, please.

19 MR. FINEBERG: Thank you, Your Honor. So I wanted to
20 address one of the points that was raised by [indiscernible] which was
21 the deposition and opportunity to ask the witness about this document.
22 So I deposed Mr. Rosenthal; I did it on March 23rd. This document was
23 produced April 15. It was three weeks after his deposition. So I was
24 frankly surprised to hear that they said the foundation should have been
25 laid with Mr. Rosenthal. We didn't have that opportunity, number one.

1 Number two, when you look at the document itself, it has Mr. Haben's
2 writing all over it. The strategy about out-of-network is all ENRP or SSP
3 is all Mr. --

4 THE COURT: When you say handwriting, do you mean
5 literally?

6 MR. FINEBERG: No, but I mean like --

7 THE COURT: No.

8 MR. FINEBERG: -- figuratively

9 THE COURT: Figuratively.

10 MR. FINEBERG: Right. Shared savings enhanced was all Mr.
11 Haben. The addition of egregious billing was all Mr. Haben. The ED
12 physician contracting was Mr. Haben.

13 THE COURT: You could lay a further foundation to see if you
14 can -- you didn't have to give up just because I didn't admit it with
15 foundation given.

16 MR. FINEBERG: Okay. And there's one last request that we
17 have. Based on what happened with my inability to ask Mr. Rosenthal
18 about this document in real time. If that's their position that we have to
19 lay the foundation with him, that he be presented for a 30-minute
20 deposition to allow us to lay that foundation and present it to Your
21 Honor.

22 THE COURT: If you could -- you guys would think about
23 something overnight and have a proposal on Monday? I didn't realize it
24 would be 15 minutes.

25 MR. ZAVITSANOS: In fact, Your Honor, in the spirit of let's

1 make a deal, we'll cut 15 minutes.

2 THE COURT: Well, let's --

3 MR. ZAVITSANOS: Let me try -- let me try laying --

4 THE COURT: I don't want to put him on the spot. But what
5 we can do is take up something on Monday after you guys have had a
6 chance to talk.

7 MR. ZAVITSANOS: Let me try laying a little bit of foundation.

8 MR. FINEBERG: Okay.

9 THE COURT: I think I cut you off. Did you feel cut off?

10 MR. FINEBERG: I did not, Your Honor.

11 THE COURT: Okay.

12 MR. FINEBERG: I think you've got all my points. I very much
13 appreciate the opportunity. Thank you.

14 THE COURT: Thank you. Okay, let's bring in the jury.

15 THE CLERK: Counsel, can I get your name?

16 MR. FINEBERG: Justin Fineberg, F-I-N-E-B-E-R-G.

17 THE COURT: So I was going to ask you guys. It looks to me
18 as though the camera went away over the noon hour.

19 MR. BLALACK: Well, and I was going to ask about that, Your
20 Honor.

21 MR. ZAVITSANOS: I'm sorry. The what, Your Honor?

22 THE COURT: The filming.

23 MR. ZAVITSANOS: I'm sorry. I didn't hear you.

24 THE COURT: The camera, I think, did not come back after
25 lunch.

1 MR. ZAVITSANOS: I don't know, Your Honor. I didn't notice.

2 UNIDENTIFIED SPEAKER: Neither did I.

3 MR. BLALACK: Well, never mind, Your Honor. I just had
4 one -- I think -- well, never mind. I'll withdraw my comment.

5 THE COURT: Bring in the jury.

6 THE MARSHAL: Your Honor, can the witness go back
7 [indiscernible]?

8 MR. ZAVITSANOS: Yes.

9 THE COURT: Yeah, he can come right back in.

10 [Pause]

11 THE MARSHAL: All rise for the jury.

12 [Jury in at 2:37 p.m.]

13 THE COURT: Thank you. Please be seated.

14 Mr. Zavitsanos, go ahead, please.

15 MR. ZAVITSANOS: Thank you, Your Honor.

16 BY MR. ZAVITSANOS:

17 Q Okay. Okay, Mr. Haben. Would you please pull out Exhibit
18 92 again, please? And go to page 10. This is the document we were
19 talking about earlier, okay? So I'm going to ask you just a couple of
20 bullet questions about the far right column, okay?

21 A Okay.

22 Q Were you in charge of the initiative for ENRP over SSP for
23 ENI and fully insured during this time period?

24 A I -- yeah, I believe so.

25 Q Were you in charge of the Shared Savings Enhanced

1 Program and the initiative egregious billing to the Shared Savings
2 product during the relevant time frame?

3 A Yes, I was.

4 Q Were you in charge of, at least on ad hoc basis, ED physician
5 contracting at this time or had responsibilities around that?

6 A What do you mean by ad hoc?

7 Q Did you have responsibilities around ED physician
8 contracting?

9 A I don't believe I did.

10 Q You never had responsibilities around ED physician
11 contracting?

12 A I was asked to get involved with team health at a certain
13 point. I don't remember exactly the date.

14 Q Fair enough. Okay. And those programs Shared Savings,
15 ENRP, SSP; these were your programs, right?

16 A Correct.

17 Q Okay. And the company often consolidated different
18 departments and issued reports from that information, right?

19 MR. BLALACK: Objection. Vague, Your Honor.

20 THE WITNESS: Yeah.

21 THE COURT: Can you be more specific?

22 MR. ZAVITSANOS: Yes.

23 BY MR. ZAVITSANOS:

24 Q You often provided data and information and deadlines for
25 these various programs to your colleagues at United that would be

1 included in internal company reports?

2 A Correct.

3 Q Okay. And this one we're looking at appears to be an
4 internal company report?

5 A Yes.

6 Q Involving the programs we just talked about, right?

7 A Not just our programs, but yes.

8 Q Other things as well. And this -- what we just read includes
9 some targets of when these programs would go into effect, that you
10 managed and evaluated; correct, sir?

11 A Or when they went to -- in effect, yes.

12 MR. ZAVITSANOS: Your Honor, we move for the admission
13 of Plaintiffs' 92.

14 MR. BLALACK: Same position, Your Honor. None of that
15 changes what we already heard.

16 THE COURT: But the additional foundation, it is admissible.
17 92 will be admitted.

18 [Plaintiffs' Exhibit 92 admitted into evidence]

19 BY MR. ZAVITSANOS:

20 Q Okay, Mr. Haben.

21 MR. ZAVITSANOS: Michelle, will you please put up page 1?

22 BY MR. ZAVITSANOS:

23 Q And Mr. Haben -- so listen, I know you [indiscernible], okay?
24 There's a lot of stuff here. And we're putting together a giant jigsaw
25 puzzle and both sides are going to be doing it, so please bear with me,

1 okay?

2 A That's fine. I'm -- that's why I'm here.

3 Q Okay. So yeah. I mean, I still got quite a bit to cover with
4 you, and we're going to kind of go through this, okay?

5 A I understand that.

6 Q We will try not to be repetitive. We're covering a document,
7 moving onto another one. Okay?

8 A I understand that.

9 Q All right. Thank you, sir. Okay. So now, we're talking about
10 May of 2017. That would be kind of in the middle of the five-year plan,
11 right?

12 A Yeah.

13 Q And this is -- Mr. Haben, this is Exhibit 92. And there's a lot
14 of information that doesn't really relate to us here, but the one that does
15 is on page 10. So let's go there.

16 MR. ZAVITSANOS: Okay. Page 10 of this document,
17 Michelle. Got it? Thank you, Michelle. All right. Michelle, will you
18 please -- here's what I want you to do. Oh, wait a minute. No? Hold on.
19 I think I messed up here. Are you on page 10? Of 92. Yeah, that's it.
20 Okay, hold on, Michelle. Here's what I need. I just need this section
21 here. All right. Okay. Michelle, will you highlight the stuff that is in
22 italics, please?

23 BY MR. ZAVITSANOS:

24 Q If you'll remember right before the break, Mr. Haben, I asked
25 you whether there was a strategy as part of this national messaging that

1 you were doing so that it would sound like we were getting a bonus
2 rather than we were getting cut by what kind of language you were
3 going to use. Do you remember we talked about that before the lunch
4 break?

5 A Yes.

6 Q Was it United's strategy as part of this messaging to adjust
7 payments, the way you're going to talk about them, from a percentage of
8 bill charges to a multiple of Medicare; was that the strategy of how you
9 were going to message this?

10 A That is not a strategy of messaging. That is a strategy of
11 methodology.

12 Q Let me try it in a less loaded way. Was United's strategy as
13 part of the Emergency Department Transformation Initiative -- oh, here's
14 another acronym we missed, the EDTI. Okay. Was part of the strategy to
15 adjust payment from percent of bill charges to a multiple of Medicare?

16 A The strategy was to engage with employer groups to see if
17 they would move from a high reimbursement of percentage of billed to a
18 Medicare methodology.

19 MR. ZAVITSANOS: Objection. Non-responsive.

20 THE COURT: I thought it was responsive.

21 BY MR. ZAVITSANOS:

22 Q Okay. Now, during the opening statement would it surprise
23 you that when United's able counsel addressed the jury, he spoke in
24 terms of a multiple Medicare, exclusively? Does that surprise you?

25 A Under what -- under what context?

1 Q In terms of how high these charges were.

2 A No, that does not surprise me.

3 Q That's certainly consistent with the messaging, right?

4 A Bill charges are getting high.

5 Q No. Using a percentage of Medicare rather than a reduction
6 of bill charges. That is consistent with the messaging, right, Mr. Haben?

7 A It reflects the initiatives in the programs that we were putting
8 out in place.

9 Q Okay. Thank you, sir. Now, let's move on.

10 MR. ZAVITSANOS: Take that down, Michelle. Okay. I don't
11 -- counsel, do you have an objection? Oh. I'm sorry, Your Honor. May I
12 address Counsel for a second? Do you have an objection to 10?

13 MR. BLALACK: Your Honor, I don't think we have an
14 objection for relevance, but it's one of the exhibits we discussed this
15 morning with AEO material.

16 MR. ZAVITSANOS: With what?

17 MR. BLALACK: With A-E-O information that we had
18 redacted.

19 MR. ZAVITSANOS: Your Honor, I will represent to the Court
20 this is 2013. And I believe -- and counsel will correct me if I'm wrong,
21 this has been amended. And so I don't believe -- I want to use it for a
22 point other than what Counsel is concerned about.

23 THE COURT: Why don't you just approach really quick?

24 MR. BLALACK: Pardon me, Your Honor?

25 THE COURT: Just approach really quick.

1 [Sidebar at 2:47 p.m., ending at 2:50 p.m., not transcribed]

2 THE COURT: Thanks, everyone, for your courtesy.

3 MR. ZAVITSANOS: May I proceed, Your Honor?

4 THE COURT: Yes.

5 MR. ZAVITSANOS: Thank you. Oh. Your Honor, we move
6 for the admission of Exhibit 10.

7 MR. BLALACK: No objection, subject to the comments at the
8 bar, Your Honor.

9 THE COURT: Subject to the ruling. So Exhibit 10, then, will
10 be admitted for use today.

11 [Plaintiffs' Exhibit 10 admitted into evidence]

12 MR. ZAVITSANOS: Michelle, will you please pull up page 2?
13 And pull out the top paragraph and the headings, please.

14 BY MR. ZAVITSANOS:

15 Q Okay. Mr. Haben, just as a refresher. Yesterday, we said
16 with these ASO clients, there's usually an administrative service
17 agreement, there's a certificate of coverage, and there's a summary plan
18 description. Do you remember we covered that?

19 A Yes.

20 Q You always have three documents when you have these ASO
21 arrangements, right?

22 A I believe so.

23 Q This Exhibit 10 is administrative service agreement which
24 talks about how United is going to charge for basically administering the
25 Walmart plan, right?

1 A I believe so.

2 Q Okay. And this is --

3 MR. ZAVITSANOS: Michelle, can you highlight "Walmart
4 Stores"?

5 BY MR. ZAVITSANOS:

6 Q Now, Walmart has a -- that's a very large employer, agree?

7 A Yes, I do.

8 Q Okay. So all right. So here's -- just so the jury gets a flavor
9 for how y'all charge. Okay. Is if we go to -- by the way, I moved to Texas
10 about 30 years ago, That's a fantastic word. There's no substitute for
11 "y'all". Okay. Because you can say you guys or youse or anything like
12 that. Okay, so. Anyway --

13 MR. BLALACK: Is that a question, Your Honor? Or is that --

14 THE COURT: Yeah, that's not a question. Ignore the last
15 comment.

16 MR. ZAVITSANOS: Thank you, Your Honor. May I proceed?

17 THE COURT: Yes.

18 BY MR. ZAVITSANOS:

19 Q Okay. All right. So we're going to go to -- okay. Now, this is
20 a really long document, and I'm not going to go through these pages.
21 But it's -- and from my calculations, hold on, it's 123 pages.

22 A Okay.

23 Q Okay. I mean, these are big things, right? All right. Here's
24 what I want to do. I want to go to page 59. And here's what I'm going to
25 ask you to do, Mr. Haben. If you would extend me the courtesy -- and

1 more importantly, extend your counsel the courtesy -- of not ready out
2 loud what's on this page? I'm just going to show it, okay?

3 MR. ZAVITSANOS: Now, here's what we're going to do,
4 Michelle. Oh -- no, I'm wrong. You had it right. 59. Okay. Michelle,
5 we're going to pull out the standard right here. Thank you.

6 MR. BLALACK: It's up, Your Honor. The information is on
7 the screen that was just --

8 MR. ZAVITSANOS: Yeah. And I'm not going to -- I'm not
9 going to mention the numbers, like I said. Okay.

10 BY MR. ZAVITSANOS:

11 Q Okay. Now, what we are seeing here on the screen --

12 MR. ZAVITSANOS: Michelle, will you -- look at me right
13 here, Michelle. This and this.

14 BY MR. ZAVITSANOS:

15 Q Now, yesterday, Mr. Haben, we talked about PMPM, per
16 member per month, right?

17 A Yes.

18 Q And what we are looking at on the screen is an example of a
19 PMPM for this client, right?

20 A Incorrect.

21 Q What is that?

22 A It's a per employee per month.

23 Q I thought that's what PMPM is?

24 A It is not.

25 Q What is the difference between PMPM and per employee per

1 month?

2 A You have employees, and employees have family members.
3 So a member -- a member could be family members under an employee.

4 Q Okay. Fair enough, fair enough. All right. So we are looking
5 at an example of what United is charging every month, every employee
6 under the Walmart plan, right?

7 A I believe so. Yes.

8 Q And what -- and here -- and I'm not going to mention the
9 number. But for that fee, you are administering the Walmart health plan,
10 right?

11 A I don't know this part of the ASA. I'm assuming that that's
12 the case, but I don't know off the --

13 Q Yeah, that include -- I'm sorry. I didn't mean to cut you off. I
14 apologize for it.

15 A I don't know.

16 Q Okay. That will include processing claims, providing
17 member booklets, manning the member line, looking out for the
18 member, right, the employees?

19 A I don't know what it includes.

20 Q You don't?

21 A I do not.

22 Q Okay. So if the jury goes through this, they could see the 100
23 or so pages of what that includes. They could do that on their time,
24 right, if they want to?

25 MR. ZAVITSANOS: Okay. Michelle, let's go to the next page.

1 Now, Michelle, pull out this section here where it says shared savings
2 program. Thank you. Now, Michelle, will you highlight this? And in
3 fact, Michelle, let's also highlight the definition of savings obtained.
4 Keep going, keep going, keep going. It's alongside this -- okay. Good.
5 Hold on.

6 BY MR. ZAVITSANOS:

7 Q Okay. Now, I'm not going to mention the number, but does
8 that reflect a percentage -- does that reflect a percentage that United
9 would earn under this?

10 A It's a percentage that they would earn for the shared savings
11 program.

12 Q Okay. Now, here's what we're going to do, I don't believe
13 this is AEO.

14 MR. ZAVITSANOS: Let me just check with counsel. May I
15 ask counsel if -- counsel, with that, are you going to take the position that
16 this is AEO, the stuff in yellow, below the number?

17 MR. BLALACK: Not the number. Any -- everything but the
18 numbers here.

19 BY MR. ZAVITSANOS:

20 Q Okay. So let me read it out loud so we're all on the same
21 page.

22 THE COURT: Scroll up so that the number is not visible to
23 the jury. Can you scroll up so that the number is not visible to the jury?

24 MR. BLALACK: Thank you, Your Honor.

25 MR. ZAVITSANOS: Michelle, close that out. Perfect. Thank

1 you.

2 BY MR. ZAVITSANOS:

3 Q Okay. Savings obtained -- so you get the percentage we
4 looked at on the savings obtained, right?

5 A Yes.

6 Q Savings obtained means the amount, and here's the part I
7 want to ask you about, that would have been payable to a healthcare
8 provider, including amounts payable by both the member and the plan if
9 no discount were available, minus the amount that is payable to the
10 healthcare provider. Identically, amounts payable by both the member
11 and the plan after this account was paid; do you see that?

12 A I do.

13 Q Okay. So in other words, the billed charge would have been
14 owed, but if you use one of these wrap agreements, where you're able to
15 negotiate the providers down, the difference between the billed charge
16 and what the plan actually paid, you take that percentage, right?

17 A Can you -- that's a very long question. I think you have --

18 Q You didn't understand that question?

19 A No.

20 Q You don't? Okay.

21 A You said owed. That's not what you owe to the provider.

22 Q What you paid to the provider, sir.

23 A So can you -- I -- it was a long question. Can you say it again,
24 please?

25 Q Let me try. The difference between the bill charge and what

1 is reimbursed to the provider, the doctor, using either a wrap net worth
2 or just asking the doctor to pay less, whatever that difference is, you get
3 the percentage we look at in addition to the per [indiscernible]?

4 A Yes.

5 Q Okay. And if you use a wrap agreement through MultiPlan,
6 like you said yesterday, they get a percentage of that as well, right?

7 A Yes.

8 Q Okay. And no doubt about it, that is the amount that would
9 have been payable to the doctor, right?

10 A I disagree.

11 Q That's not what it says? Savings obtained means the amount
12 that would have been payable?

13 A That is what that says.

14 Q Okay.

15 MR. ZAVITSANOS: Take that down, Michelle. Michelle, put
16 that back up, the exact portion you had, Exhibit 10, page 60, just the
17 definition of savings obtained, please.

18 BY MR. ZAVITSANOS:

19 Q Right?

20 A What's the question?

21 Q The amount that would have been payable to a healthcare
22 provider is the usual, customary, reasonable rate?

23 A I disagree.

24 Q What does that mean?

25 A What does --

1 Q The amount? Or it wouldn't have been payable to a
2 healthcare provider on the definition of savings obtained? What does
3 that mean?

4 A The amount of -- what it means in terms of the amount of the
5 payable is what the provider can harass or go after the member for, or
6 the employer here.

7 Q Let's not put our thumb on it. What does it mean objectively,
8 when you're taking this percentage fee, putting that in your pocket, and
9 we reached an agreement with Walmart, what is the starting point before
10 you get to the ending point? This would have been payable, what is
11 this? Is that the bill charge?

12 MR. BLALACK: Object to the form of the question. It's
13 compound. Multiple compound.

14 MR. ZAVITSANOS: Let me rephrase, Your Honor.

15 BY MR. ZAVITSANOS:

16 Q Is the amount that would have been payable the bill charge?

17 A In the definition of calculating savings?

18 Q Yes.

19 A The easiest way to show clients is to start with bill charges.

20 Q Well, I don't know about that answer, sir. Let me -- I need a
21 simple answer here for purposes of calculating.

22 A That's why it's written that way. It's a very easy to
23 understand.

24 Q No, sir, I -- there's no question. I don't think you're
25 answering my question.

1 A Oh, I thought you asked me a question.

2 Q When you are taking a percentage, do you start with the bill
3 charge, look at what was reimbursed, and then take that percentage off
4 of the difference?

5 A Let me clarify.

6 Q No, sir. That's yes or no.

7 A Well, no, because you said what is reimbursed.

8 Q What? I'm sorry, I didn't hear you.

9 A You said what is reimbursed, which is paid. That's a
10 different definition. I'm not trying to be cute. I'm trying to be accurate.

11 Q You're not?

12 A I'm trying to be accurate.

13 Q You're not trying to be cute.

14 A No, I'm trying to be accurate.

15 Q Let me try this again. The percentage that you're going to
16 put in your pocket from Walmart is based on the difference between the
17 billed charge, the amount that would have been paid, and the amount
18 that was paid or reimbursed, right?

19 A When you say paid or reimbursed, you mean copay and
20 coinsurance are out?

21 Q Yes.

22 A You're talking about allowed amount, not paid amount.

23 Q Yes. Yes.

24 A I'm trying to help you out.

25 Q Yes.

1 A So if you're asking, again, between billed and allowed, that is
2 the math on how you calculate it.

3 Q Okay. Thank you, sir.

4 A You're welcome.

5 Q So -- okay.

6 MR. ZAVITSANOS: You can take that down, Michelle.

7 BY MR. ZAVITSANOS:

8 Q Now, let's go to Exhibit -- can you please look at Exhibit 94?

9 THE COURT: Which I show is admitted.

10 MR. ZAVITSANOS: Thank you, Your Honor. Michelle, will
11 you please pull up the face of the document?

12 BY MR. ZAVITSANOS:

13 Q I'll let you catch up, but I'll just represent to you that this is
14 May of 2017, and if we go back to our calendar endzone, that would be in
15 the middle of the five-year plan. Let me know when you're there.

16 A Okay. May I take a second here, please?

17 Q I'm sorry?

18 A Can I take a look at it?

19 Q Sure.

20 A Okay.

21 Q So what is the term benchmark mean to you?

22 A Sorry. In this context, it means --

23 Q No. No. No. Not in this context, I'm just asking for a general
24 definition of what benchmark means to you? Not in healthcare, just in
25 general.

1 A If something meets a benchmark, it's good, and if it doesn't,
2 it's not good enough.

3 Q Well, let's see if we can put a little more precision on it, right?
4 So you know, all these business shows on TV, they talk about the fed;
5 have you heard of the fed?

6 A You're going to have to --

7 Q The Federal Reserve Board?

8 A Okay.

9 Q That's the -- that's the part of the government that sets
10 interest rates at which banks borrow money to lend to people, okay?

11 A Okay.

12 Q And have you heard of the federal benchmark interest rate?

13 A Honestly, I don't watch those shows.

14 Q Okay. Well, a benchmark, would you agree with me, is
15 something that is objective, independent, and something against which
16 things are measured? You agree with that?

17 A I don't know.

18 Q Well, during this five-year period, all unilaterally selected a
19 multiplier of Medicare, and you began calling it a benchmark so that it
20 would sound official; is that true?

21 A I disagree with how you characterized that.

22 Q Well, you're not aware of any United documents where this
23 benchmark of how it was calculated; are you, sir?

24 MR. BLALACK: Objection. Vague.

25 THE WITNESS: I can't -- I don't understand what you're

1 asking.

2 BY MR. ZAVITSANOS:

3 Q The benchmark that you put into effect, where you put a
4 ceiling above which you will never pay, there is no internal document we
5 can look at about how you arrived at that when you were in charge of
6 that, right, sir?

7 A Benchmark is not a ceiling. It's just a measurement against a
8 market rate.

9 Q There is no documentation how you came up with that
10 benchmark that we could see?

11 A I don't know if you have that in the material or not.

12 Q Well, remember we took your deposition?

13 A Yep.

14 Q And remember in the deposition, you told us you're not
15 aware of any documents establishing either the ceiling or this
16 benchmark?

17 A I don't --

18 Q How it's calculated?

19 A I don't recall.

20 Q All right. We'll look at it a little bit.

21 A Right.

22 Q Now, let's look at this document first, 94, and let's go to page
23 2. Now, in opening, we heard about a problem with out-of-network
24 billing, but how does United identify what's going on out-of-network?

25 MR. ZAVITSANOS: Michelle, will you please pull out this

1 section here? No, just this, please.

2 BY MR. ZAVITSANOS:

3 Q How does United identify that?

4 A Can you ask your question again?

5 Q Yeah. These runaway healthcare costs, out-of-network, how
6 does United identify them as a problem, or as an opportunity?

7 A It's a problem.

8 Q Okay. It's a problem, not an opportunity, right?

9 A It was an industry problem, yes.

10 Q Okay. Are your eyes open?

11 A Yeah, my eyes are tired though.

12 Q All right. Let's close it out.

13 MR. ZAVITSANOS: Michelle, let's look at below. Okay.

14 Nope, flip that up. Was that on?

15 BY MR. ZAVITSANOS:

16 Q Now, you know, when you call things like benchmarking, that
17 sounds a lot more justifiable. Which of these sounds more questionable,
18 arbitrary decision, just because we want to, or benchmark; which one of
19 those sounds more digestible?

20 A You --

21 MR. BLALACK: Objection to foundation, Your Honor. He'd
22 have to --

23 THE COURT: No, I think you -- I think it's confusing.

24 MR. ZAVITSANOS: Let me rephrase.

25 BY MR. ZAVITSANOS:

1 Q You all came up with this term, benchmarking, during this
2 five-year migration, right?

3 A Yes.

4 Q Okay. And --

5 MR. ZAVITSANOS: Let's go to the next page, Michelle.

6 BY MR. ZAVITSANOS:

7 Q And here, in the middle of this five-year migration, pull out
8 the current -- all the way across -- all the way across. There we go.
9 Perfect. And this is the current reimbursement method, which is SSP.
10 That's that shared saving's program, right? This one, right?

11 A Yes.

12 Q And that's what was currently going on. Wrap networks
13 claims specific negotiation, right?

14 A That's what SSP is, yes.

15 Q And it looks like by 2017, we have gone from a five to ten
16 percent reduction down to a 35 to 37 percent reduction off of the billed
17 charge; do you see that?

18 A Where do you see five percent?

19 Q I thought we said in a wrap network agreements, that the
20 provider usually takes a discount, a nominal discount of five to ten
21 percent?

22 A That was UCR. A different program.

23 Q Fair enough, sir. In any event, do you know what the wrap
24 agreement that Team Hope has, do you know how much of a discount
25 that is?

1 A I do not.

2 Q Do you know whether it's ten percent?

3 A Off a build?

4 Q Yeah.

5 A I do not.

6 Q Okay. Well, let's somebody -- now let's go back to this. So
7 this is out-of-network, wrap networks, or just asking the provider to take
8 less, provides --

9 MR. ZAVITSANOS: Follow me, Michelle.

10 BY MR. ZAVITSANOS:

11 Q Provides significant revenue. And in 2016, off of these wrap
12 agreements and these negotiations that MultiPlan was doing for you,
13 what is United's revenue?

14 A I -- right here it says one billion.

15 Q And I know I asked you this yesterday, but we didn't have
16 this document up. You literally did nothing for that, right?

17 A That's incorrect.

18 Q MultiPlan signed them up, right? These out-of-network
19 doctors and [indiscernible], right?

20 A Yeah. Yeah, they did the contract, yeah.

21 Q And the negotiation was done by MultiPlan, right?

22 A The claims have to go to MultiPlan to get priced, so they
23 have to be sent electronically. You have security, HIPPA requirements,
24 you have infrastructure.

25 Q That's not my question.

1 A You asked if we did nothing.

2 Q I'm just --

3 A I'm telling you -- I'm explaining to you what we have to do.

4 Q Okay. I pushed the button.

5 A It's not a yeah, yeah, yeah. HIPPA security is concerning.

6 Q Yeah, of course. Now, listen --

7 A Okay.

8 Q -- to my question, this card here, the claim specific
9 negotiation, that is done by MultiPlan, right?

10 A That is correct.

11 Q Okay. So this is done by MultiPlan throughout networks, and
12 this is done by MultiPlan, that claims specific negotiation. But United
13 gets this, one billion dollars? You get at Bellagio Hotel, right?

14 MR. BLALACK: Objection. Argumentative.

15 MR. ZAVITSANOS: Let me rephrase, Your Honor.

16 THE COURT: Disregard the last sentence, please.

17 BY MR. ZAVITSANOS:

18 Q MultiPlan does -- negotiates for wrap networks. MultiPlan
19 does the claim specific negotiation, and you all got a billion dollars,
20 right?

21 A That doesn't characterize the entire process, and I can
22 explain it if you want me to.

23 Q No, sir. My question is -- I'm just going by what you all
24 wrote on this document.

25 A If I wrote everything that is done in the process, that would

1 not be one document.

2 Q Mr. Haben, this is your document, right?

3 A And it's very shorthand.

4 Q Okay. You put down the important aspects of this program,
5 wrap networks claim specific negotiation. Can we agree those two
6 things that United selected to put there are both done by MultiPlan?

7 A That is correct.

8 Q And as a result of these two things, the wrap networks and
9 the claim specific negotiation, in 2016, with an average reduction of 35 to
10 37 percent, United made a billion dollars?

11 A That's a mischaracterization. We wouldn't get the discount if
12 we weren't able to get the claims to MultiPlan.

13 Q Listen to my question, Mr. Haben. In 2016, did you all make
14 a billion dollars as a result of the SSP program involving these two
15 things that MultiPlan does?

16 A Yes.

17 Q Okay. Now -- okay.

18 MR. ZAVITSANOS: Now, Michelle, let's go to the next one.

19 BY MR. ZAVITSANOS:

20 Q Okay. Pull out the SSP enhanced.

21 A What page, please?

22 Q Same one, sir. SSP enhanced. Okay. So this is another
23 program, right?

24 A Yes.

25 Q And SSP enhanced is basically the wrap network, the

1 claimed specific negotiations, just like SSP, but now we're adding this
2 new term you all came up with called outlier plus management, right?

3 A Correct.

4 Q And that is Data iSight, right?

5 A Incorrect.

6 Q Is Data iSight part of OCM?

7 A Data iSight is one component in the OCM program.

8 Q Okay. We'll talk about Data iSight in a little bit. But here
9 now, we are down to a 60 percent reduction, right, off of the billed
10 charge?

11 A Correct.

12 Q Okay. So far, we have seen, Mr. Haben, that when it comes
13 to United getting paid, the language you used is the billed charge and
14 how much of a percent reduction we have. That's what we are looking at
15 here, right?

16 A Yes.

17 Q Okay. Thank you, sir. Okay. Close that out. And this
18 program, SSP enhanced, this was launched sometime, like, in 2017,
19 right, or thereabouts?

20 A I don't remember the specific date. I think so.

21 Q Okay. Fair enough. Now, let's pull up the next one.

22 MR. ZAVITSANOS: The bottom one, Michelle, all the way
23 across. Thank you.

24 BY MR. ZAVITSANOS:

25 Q Okay. This one is going to drop the reductions down to 65

1 percent, right?

2 A Correct.

3 Q So -- hmm-hmm. And what you are saying now, is that the
4 maximum -- now, let me see here. Okay.

5 So when it comes to what we get paid, the max you are going to
6 pay is 500 percent of Medicare, right?

7 A That is incorrect.

8 Q Claim-specific negotiations max 500 percent of CMS; do you
9 see that?

10 A That's a guideline to inform MultiPlan of what we want them
11 to follow.

12 Q Right. And you were telling MultiPlan, this neutral party, the
13 umpire, you're not going to pay -- you don't want to pay more than 500
14 percent of Medicare, right?

15 A No.

16 Q That was the benchmark?

17 A That was the initial guideline so they can resolve the claims
18 quickly.

19 Q And then as time went on, this started dropping, this 500
20 percent, right?

21 A Yes, because provider billed charges were going up.

22 Q I didn't ask you why. It started dropping, right, sir?

23 A I can explain if you want me to.

24 Q No, sir. It started dropping, right, sir?

25 A Yes, we did reduce it.

1 Q Okay. And as -- now, so the left side is what the provider
2 gets paid or the allowed amount, right? The left side?

3 A The left side is the guidance --

4 Q Yes?

5 A -- on the initial payment.

6 Q The right side that talks in terms of what United makes is off
7 of the billed charge?

8 A And if the billed charges go up, the more we make.

9 Q Right. The higher the billed charges go, the more money
10 United makes, right?

11 A And if it's a reasonable billed charge, the less we make.

12 Q Listen to my question. The higher the billed charge goes, the
13 more United makes, right?

14 A It goes both ways, yes.

15 Q And so --

16 [Plaintiffs confer]

17 BY MR. ZAVITSANOS:

18 Q Okay. Let's look at a document that was previously admitted.

19 MR. BLALACK: What is the exhibit?

20 MR. ZAVITSANOS: Hold on, please. Let me -- let me find it.

21 Michael, have you got it?

22 [Counsel confer]

23 MR. ZAVITSANOS: Okay. He is going to find that. Let me --
24 let me continue while he -- while he's looking for that. Okay?

25 THE WITNESS: Are we back on the same document?

1 MR. ZAVITSANOS: Yeah, we're here. Okay. So all right.
2 Take that down, Michelle?

3 BY MR. ZAVITSANOS:

4 Q And let's go to the same document, Exhibit 94, page 4.
5 Benchmark pricing at a glance. And I thought I had asked you this
6 earlier.

7 MR. ZAVITSANOS: Michelle, can you pull out this first
8 arrow?

9 BY MR. ZAVITSANOS:

10 Q And this is your -- you are working hand in hand with
11 MultiPlan on this stuff, right?

12 A Which part?

13 Q This benchmark pricing. This is a MultiPlan document, right?

14 A No, it is not. It --

15 Q Do you see up at the top, there's a MultiPlan logo?

16 A Part of it's theirs, part of it's ours.

17 Q Sure. This part is a MultiPlan document, right?

18 A Which part, please?

19 Q The one we are looking at.

20 A I --

21 Q On the screen, do you see the MultiPlan logo up at the top?

22 A Yes, I do see that part.

23 Q Okay. So MultiPlan, the independent service, is saying they
24 are going to work with you to establish a Medicare base ceiling below
25 which all services in the out-of-network cost management hierarchy

1 must price in order for the savings to be acceptable, right?

2 A That is incorrect.

3 Q That is not what it says?

4 A It does not say MultiPlan will work with us.

5 Q I'll try again. Benchmark pricing -- I mean, not even add that
6 in. A framework for driving noncontracted claims to the service that
7 maximizes savings while protecting against egregious billing. There is
8 that word again, do you see that?

9 A I do.

10 Q Establishes a Medicare base ceiling below which all services
11 in the out-of-network cost management hierarchy must price in order for
12 the savings to be acceptable, right, sir?

13 A I see that.

14 Q And this stuff sounds real official, but what that is really
15 saying is we're just not going to pay anything above a certain rate?

16 A It does not.

17 Q That is not what that says?

18 A That doesn't characterize the programs, and I can explain it.

19 Q No, sir. Let's go on. And finally, page 6.

20 MR. ZAVITSANOS: That same document, Michelle. Client
21 impacts, please, that section.

22 BY MR. ZAVITSANOS:

23 Q Do you see this 1:3?

24 A I do.

25 Q That means you get \$1 for every \$3 that's cut from the

1 reimbursement, right?

2 A That is a reflection of the 30 percent, yes.

3 Q Page 13. By the way, if the concern was the member and the
4 client, since you were already burning a per-employee fee in significant
5 amounts and you were already processing the claims, and healthcare
6 costs are out of control, why didn't you do this per person?

7 A They were willing to pay us to do it.

8 MR. ZAVITSANOS: Okay. Pull up the top part here, Michelle.

9 BY MR. ZAVITSANOS:

10 Q Let's lead with the values of integrity and compassion, right?
11 That's the mantra to United Healthcare. Leading with integrity,
12 relationships, and compassion?

13 A Correct.

14 Q And what we have been looking at is a demonstration of the
15 type of integrity, relationship, and compassion that United Healthcare, as
16 the leader, brought to healthcare?

17 A That's what our employer groups and members want, yes.

18 Q So you keep saying that, sir. Where is the document that
19 that's the way you want it, from them? Can I see it?

20 A I don't have it in my pocket. I talk with clients, and I talk with
21 members.

22 Q No. I don't want to know what they told you. I want to see it
23 in life.

24 MR. BLALACK: Your Honor, objection. He's not a lawyer.

25 He doesn't know what exhibits we are going to offer into evidence.

1 MR. ZAVITSANOS: Your Honor --

2 THE COURT: I think it's argumentative, so --

3 MR. ZAVITSANOS: Yeah.

4 THE COURT: -- I am going to sustain the objection.

5 MR. ZAVITSANOS: Okay. I'll move on.

6 [Counsel confer]

7 MR. ZAVITSANOS: Okay. Would you please -- that's okay.

8 May I ask Counsel first, Your Honor? Counsel, do you have an objection
9 to 154?

10 MR. BLALACK: One moment.

11 MR. ZAVITSANOS: And Mr. Haben, would you --

12 THE COURT: I show it's conditionally admitted.

13 MR. ZAVITSANOS: Yes, Your Honor. Mr. Haben, you can
14 take it out then.

15 THE COURT: 154.

16 THE WITNESS: I can't read sideways.

17 MR. ZAVITSANOS: No, no. That's all right. That's all right.

18 BY MR. ZAVITSANOS:

19 Q Mr. Haben, would you please go to 154 and start reading
20 that?

21 MR. ZAVITSANOS: Michelle, you can take that down.

22 THE WITNESS: I've got to get a different binder.

23 MR. BLALACK: No objection, Your Honor.

24 THE COURT: I believe that this was already admitted, but
25 thank you. 154 is admitted.

1 [Plaintiffs' Exhibit 154 admitted into evidence]

2 MR. ZAVITSANOS: Thank you.

3 [Counsel confer]

4 MR. ZAVITSANOS: Oh, I'm sorry, Your Honor. Was it
5 admitted?

6 THE COURT: It was.

7 MR. ZAVITSANOS: Thank you.

8 BY MR. ZAVITSANOS:

9 Q I am going to ask you a slightly different question to the one I
10 asked earlier. Did you keep a log of any client who initiated the request
11 for these programs?

12 A Me personally?

13 Q Yes, sir, or your department?

14 A They go through the sales department.

15 Q Do you know whether -- actually, let me stick with you.

16 Did you have, while you were at United Healthcare, did you keep
17 any documents with a log that allegedly said that these ASO clients
18 contacted you to change up the way out-of-network was going to
19 operate?

20 A No, I didn't keep a log.

21 Q Okay. So now, we're on Exhibit 154. During the relevant
22 time period, February 2018 and --

23 A May I take a quick look at it?

24 Q Yes, sir. Yes, sir.

25 A Thank you.

1 [Witness reviews document]

2 A Okay.

3 BY MR. ZAVITSANOS:

4 Q Let's go to page 14. Now, during this five-year migration, it's
5 fair to say a lot of ideas were exchanged about how these programs
6 were going to work, right? There was a lot of discussion about how you
7 were going to structure this, right?

8 A There were a lot of discussions about the programs.

9 Q Yeah. I mean, the programs were emerging. And as they
10 were emerging, internally, you all were discussing about how do we
11 make it better?

12 A Yeah. We --

13 Q Okay.

14 A -- definitely tried to improve them.

15 Q So let's look here at one of these documents. And it looks
16 like, now, the top part says facility. I am not going to ask you about that.
17 Facility means hospital, right, or?

18 A Not always.

19 Q Okay. But it's not the -- it's not the emergency room doctor.
20 That would be under professional, right?

21 A An emergency room doctor is a professional.

22 Q Okay. So let's focus on that. So here we are in 2018.
23 Internal discussions. Professional physician R&C, that's reasonable and
24 customary, right?

25 A Yes.

1 Q And it says here, United Health purchases FAIR Health, now,
2 we've talked a lot about that, data to price physician claims. Do you see
3 that?

4 A Correct.

5 Q That's what you were doing even in 2018, right?

6 A Correct.

7 Q Claims based on FAIR Health R&C database, reasonable and
8 customary, right?

9 A Correct.

10 Q And so if there was a suggestion in opening statement that
11 claims were not based on comparable charges, that would be an
12 innocent mistake compared to what was going on in real time, right?

13 A I did not listen to what was presented.

14 Q Fair enough.

15 A I know that ER physician claims are not part of the R&C
16 program.

17 Q No client fee, we talked about that. You are not making any
18 money off of this, right? Right?

19 A No, we are not charging our clients for it.

20 Q Close it, and let's go to the right-hand side, all the way down.
21 All the -- okay. Now, it looks like as you are moving away from the
22 reasonable and customary, the way things were, the reasonable and
23 customary charge, now, members can be balance billed the amount over
24 reasonable and customary.

25 MR. ZAVITSANOS: No, down here, Michelle, at the very

1 bottom.

2 BY MR. ZAVITSANOS:

3 Q There is no advocacy, members are liable, right, sir?

4 A You said moving away, I don't --

5 Q Let me rephrase.

6 A It's not moving away.

7 Q Does the document say, when we are talking about this
8 migration out-of-network programs, members can be balance billed the
9 amount over reasonable and customary. There is no advocacy,
10 members are liable. Is that what it says?

11 A For physician and facility R&C, they can be balance billed,
12 yes.

13 Q That would include emergency room doctors, right?

14 A That is incorrect. They're not part of the R&C program.

15 Q Are physicians part of the professional reimbursement
16 claims at United, sir?

17 A ER physicians are not subjected to the physician R&C
18 program.

19 Q Mr. Haben, did some of the programs you initiated subject
20 members to balance billing as you were cutting the reimbursements for
21 emergency room -- for emergency physician charges?

22 A Can you ask that again, please?

23 Q Yes, sir. As you were implementing these programs and as
24 they affected out-of-network doctors, the more aggressive programs, is it
25 correct that members would now be subject to balance billing?

1 A The doctors could balance bill the member if there is not an
2 agreed upon rate with the doctor.

3 Q Okay. And so you're paying the doctor now, we've seen, up
4 to 65 percent less. That's where we left off, right?

5 MR. BLALACK: Objection. Foundation.

6 MR. ZAVITSANOS: Your Honor, we --

7 THE COURT: He's -- that's an attempt to lay a foundation.
8 Overruled.

9 BY MR. ZAVITSANOS:

10 Q We're paying the doctors 65 percent less, right?

11 A Less than their billed charges, yes.

12 Q You used to pay them, pursuant to the wrap agreement,
13 right?

14 A It depends on the employee benefit plan.

15 Q We saw a document that said we are trying to move away
16 from that, right?

17 A We were talking to clients about migrating, yes.

18 Q And as a result, the doctors used to get a certain amount,
19 and now they're getting 65 percent less?

20 A That's not a correct characterization. I can explain it.

21 Q I am not going to beat a dead horse. Let's move on.

22 THE COURT: Actually, this is a good time for -- everybody
23 okay with just a ten-minute recess? Thank you. Let's take a ten-minute
24 recess. It is 3:39. We'll be back at 3:50.

25 Don't talk with each other or anyone else on any subject

1 related to the trial during this recess. Don't read, watch, or listen to any
2 reports or commentary on the trial. Don't discuss this case with anyone
3 connected to it by any medium of information, including without
4 limitation, newspapers, television, radio, internet, cell phones, or texting.

5 Don't conduct any research on your own relating to the case.
6 Don't consult dictionaries, use the internet, or use reference materials.
7 Don't talk, text, tweet, use social media, Google, or conduct any other
8 type of book or computer research with regard to any issue, party,
9 witness, or attorney involved in the case.

10 Most importantly, do not form or express any opinion on any
11 subject connected with the trial until the jury deliberates. Thanks for the
12 home stretch of this week. You may step down during the recess.

13 THE WITNESS: Thank you.

14 THE MARSHAL: All rise for the jury.

15 THE COURT: And you guys have the calendar for next week?

16 PLAINTIFFS: Yes.

17 THE COURT: Great.

18 [Jury out at 3:40 p.m.]

19 [Outside the presence of the jury]

20 THE WITNESS: May I go?

21 THE COURT: Yes, of course.

22 THE WITNESS: Thank you.

23 THE COURT: Okay. Does any -- do you have anything for the
24 record?

25 MR. BLALACK: Not from the Defendants, Your Honor.

1 THE COURT: Thank you. Plaintiff, anything for the record?

2 MR. ZAVITSANOS: No, Your Honor.

3 THE COURT: Have a good break. See you in ten minutes.

4 MR. ZAVITSANOS: Thank you, Your Honor.

5 [Recess from 3:40 p.m. to 3:52 p.m.]

6 THE COURT: Please remain seated.

7 MR. BLALACK: Thank you, Your Honor.

8 THE COURT: Are we ready to bring the jury?

9 MR. ZAVITSANOS: Yes, Your Honor. I'm sorry, yes.

10 THE COURT: Ready?

11 MR. BLALACK: We are, Your Honor.

12 THE COURT: Thank you.

13 THE MARSHAL: All rise for the jury.

14 [Jury in at 3:53 p.m.]

15 THE COURT: Thank you, everyone. Please be seated. Mr.
16 Zavitsanos, go ahead, please.

17 MR. ZAVITSANOS: Yes, Your Honor. May it please the
18 Court, opposing counsel.

19 Your Honor, may I ask counsel. I think there's only an
20 authentication objection to this. Plaintiffs' Exhibit 66. We'll see if he has
21 an objection there.

22 MR. BLALACK: One moment, Your Honor.

23 THE COURT: Let's give him a minute.

24 MR. ZAVITSANOS: Yes, Your Honor.

25 MS. FARJOOD: Did you say 66?

1 MR. BLALACK: 66?

2 MR. ZAVITSANOS: Yes, 6-6.

3 MR. BLALACK: I think we're looking at a different document
4 here. Is the Bates stamp --

5 MR. ZAVITSANOS: It ends in 60.

6 MR. BLALACK: Because we have a different 66 than you do.
7 Okay. Now we're on this. Now we're good. Yeah, we have no
8 objection, Your Honor.

9 THE COURT: All right. 66 will be admitted.

10 [Plaintiffs' Exhibit 66 admitted into evidence]

11 MR. ZAVITSANOS: Thank you.

12 BY MR. ZAVITSANOS:

13 Q Okay. Mr. Haben, one follow up question before we get to
14 this document.

15 MR. ZAVITSANOS: You can take that down Michelle.

16 BY MR. ZAVITSANOS:

17 Q Did I understand you to say that although you don't have any
18 documents of which ASO clients requested to talk to you about these
19 escalating out of network reimbursement costs, did you say that the
20 sales department does have such a list?

21 A That was not your question.

22 Q Does the sales department have a list or memos of which
23 clients requested these programs?

24 A I don't know if they do or not.

25 Q Thank you, sir. Now 66. So this is something called a

1 strategic summary 2017, during that five year period we're talking about,
2 right?

3 A Can I take a look at it for a quick second?

4 Q Yes.

5 A Okay.

6 Q Now as the vice president in charge of managing the out of
7 network spend at United, you were part of the commercial group, not the
8 Medicare or Medicaid group, right?

9 A I was part of United Health Networks, which is separate from
10 all three.

11 Q Yes, sir. Which is the commercial group?

12 A No, it is not.

13 Q It's not the commercial group?

14 A It is not.

15 Q What is the commercial group?

16 A E and I. I'm not part of E and I. I was not.

17 Q Isn't the out of network spend part of the benefits afford in E
18 and I?

19 A E and I looked towards United Health Networks to help
20 manage that.

21 Q Okay, fair enough. So you worked with E and I when it came
22 to out of network benefits, right?

23 A You can generalize it that way, yes.

24 Q Okay. And E and I is part of the commercial group?

25 A Correct.

1 Q Okay. So let's look at the second page. Executive summary.
2 And it says repositioning at time of struggle, right?

3 A Yes, I see that.

4 Q Okay.

5 MR. ZAVITSANOS: Now Michelle can you blow up the top
6 three paragraphs? Is it correct that the commercial group --

7 MR. ZAVITSANOS: Michelle follow me.

8 BY MR. ZAVITSANOS:

9 Q Is driven by two simple strategies, growing a member base
10 and expanding margins? That's the objective.

11 A That's a question. I'm not part of that group so I don't know
12 what their strategy was.

13 Q That's what it says, right.

14 A That's --

15 Q Any reason to dispute it?

16 A No.

17 Q And here it says that the gain that you make, a margin for
18 your ASO clients is the highest in the industry at \$5.00, right?

19 A Can you highlight that so I can see it?

20 Q Sure. We will continue this group by advancing our already
21 industry-leading gross margins by \$5.00 PMPM.

22 MR. ZAVITSANOS: That's it, Michelle.

23 BY MR. ZAVITSANOS:

24 Q United through these ASO plans, on the basic fee, was
25 already making more than anybody else in the industry, right?

1 A I don't know if that's true or not.

2 Q That's what that says.

3 A I can't prove that or not.

4 Q Mr. Haben, is it correct that by 2019, clients started
5 complaining so much about the fees -- additional fees on top of the PMP
6 that you were making off of these shared savings programs, all the
7 programs, that what y'all did was you got rid of the percentage, and you
8 just baked in a higher number on PMPM, so that your margin went from
9 an industry leading \$5.00 in 2017 to \$30.00 of gain by 2019. Is that true?

10 A I don't believe that's correct.

11 Q Well, we know \$5.00 was the highest in the industry, just for
12 the base fee. That's before the shared savings, right? Right?

13 A I don't know.

14 Q And remember we looked at that document this afternoon,
15 that talked about the constraint or the challenges to insurers because of
16 these escalating bill charges?

17 A Yes.

18 Q Remember that?

19 A Yes.

20 Q Looks like United was exempt from that because you all were
21 crushing it in 2017, right?

22 A I don't know if that's true or not.

23 Q Well let's go to --

24 MR. ZAVITSANOS: Your Honor, I believe Exhibit 370 has
25 been admitted.

1 THE COURT: It has, thank you.

2 BY MR. ZAVITSANOS:

3 Q Okay. Now --

4 A Can I go get that? I got to -- this is at the end of the binder,
5 so I've got flip the whole binder.

6 Q Was Dan Rosenthal the -- give me one second. Was Dan
7 Rosenthal the president of one of the United Companies in 2019?

8 A In 2019, I don't know what Dan's specific role was.

9 Q Well, okay, now we talked about this document. Let me --

10 A Can I get to the document?

11 Q Sure.

12 A I'm not --

13 Q Sure.

14 A I'm not there yet.

15 MR. ZAVITSANOS: And just to remind the jury I'm not going
16 to go over this again. I just want to orient us with where we are because
17 we talked about part of this document earlier and now I want to talk
18 about the rest of it.

19 Michelle, if you will go to the second page. The top email.
20 Pull that out. This is the email we looked at earlier talking about how --
21 will you highlight Mr. Haben's name Michelle. Okay. And Michelle, will
22 you -- will you just highlight where it says we are experiencing a
23 continued reduction, and go to 2016.

24 BY MR. ZAVITSANOS:

25 Q Now I'm not going to ask you about that, because we've

1 already talking about it. Remember we talked about this, Mr. Haben?
2 Remember when we talked about this earlier?

3 A Which part?

4 Q The part I've highlighted. Of whether billed charges were
5 coming down for three straight years. Remember we talked about that.

6 A Yeah, the volume of it, yes.

7 Q Okay. I want to go over the rest of this email. Okay.

8 A Okay.

9 MR. ZAVITSANOS: So let's go Michelle, please -- so emails --
10 BY MR. ZAVITSANOS:

11 Q I think we all know this, but emails begin in the back. Those
12 are the earliest ones. And the most current ones are at the front. Right?

13 A Yes. Typically, yes.

14 Q Okay. So let's go to the start of this email trail and let's go to
15 page 8, the bottom 8. Now I like movies. Okay. Have you ever seen the
16 movie called The Blob?

17 A A long, long time ago.

18 Q Okay. So let's see if we can agree about what The Blob is
19 about. The Blob is about this little gelatinous monster and as it starts
20 eating animals and people, it just gets bigger and bigger and bigger.
21 And the more it eats, the more it has to eat. Are you with me?

22 A I don't remember the movie.

23 Q Okay. It was the highest grossing movie of 1958, by the way.
24 Okay.

25 A I wasn't around then but thank you.

1 Q Neither was I. I look old enough, but I was not. So is it
2 correct that by 2019, y'all were making so much money that this
3 opportunity you just needed more and more and more. And you wanted
4 bill charges to go up, so that you could make more; is that true?

5 A That is entirely incorrect.

6 Q Okay. Let's take a look and see if that's incorrect. Now this is
7 2019. That's you, John Haben. And it looks like as you are all aware,
8 SSP, now that's a shared savings program, right?

9 A Yep.

10 Q Okay. And let's be clear about one thing. Sometimes in
11 these emails when we see SSP, it's referring to all of the programs, not
12 just the SSP program, right?

13 A I'd have to see the email you're talking about.

14 Q Right here. I mean sometimes y'all would refer to all of these
15 programs as SSP.

16 A I don't.

17 Q Fair enough. Anyway, let's keep going. As you all are aware,
18 SSP is not coming in as forecasted in '19, so we are trying to determine
19 what is driving it and how we will forecast remainder of the year in 2020.
20 Do you see that?

21 A I do.

22 Q Okay. So it looks like y'all were projecting a certain amount
23 of income off of these percentages, and you were going to miss your
24 mark, right?

25 A Not us all. Just finance was doing that.

1 Q And your president became anxious about that.

2 A Oh, that's totally false.

3 Q Okay. Close it. Let's go to the preceding email. And same
4 group. Thanks for everyone's time last week to discuss SSP. Right here.
5 And it looks like there's a bunch of -- somebody's putting together a
6 report in response to the last email about why you all are not going to
7 come in budget for these percentage revenues, right? And that's what's
8 going on here. I'm not going to read the whole thing. The jury can read
9 it, right?

10 A I don't know exactly what finance is doing. I think they were
11 trying to figure it out.

12 Q Well, I understand. And you're on this email, right?

13 A Yeah.

14 Q Okay. And I'm not going to bother reading it, but it looks like
15 here are the following -- let's -- what is UPS. Or let me get my glasses
16 on.

17 A It's follow-ups. Like you're going to follow up on something.

18 Q Duh. I'm so programmed to acronyms I thought you were
19 talking about somebody delivering a package. Okay, all right. So here
20 are the follow ups we are looking for. Now this is in response to the
21 email we just looked at saying we're trying to determine what is driving
22 our missing the forecast, right?

23 A Correct.

24 Q Okay. Now let's go to the next email. Let's look at -- who's
25 Dan Schumacher?

1 A He was part of the E and I Leadership team.

2 Q He's the -- in this case he is the highest ranking person. He's
3 the CEO. Is he the highest ranking person that you know of that has
4 been involved in this case?

5 MR. BLALACK: Objection. Foundation.

6 THE COURT: Overruled.

7 THE WITNESS: I don't know.

8 BY MR. ZAVITSANOS:

9 Q Dan Schumacher is above Mr. Rosenthal?

10 A Yes.

11 Q He's above you?

12 A Oh, yes.

13 Q And there are earnings calls. Do you know what an earning
14 call is?

15 A Yes.

16 Q That's when these Wall Street analysts, when you talk to
17 them about your earnings and about your stock price and all this stuff.
18 Right?

19 A Yes.

20 Q And Mr. Schumacher participates in these earning calls?

21 A I believe he does.

22 Q With analysts?

23 A I believe he does.

24 Q Dan, that's Schumacher, right? Right?

25 A I don't know for sure.

1 Q You don't know if that's Dan Schumacher?

2 A There's two Dans. Dan Rosenthal, Dan Schumacher.

3 Q Fair enough. "Dan told me today he needs an answer on this
4 ASAP, and he is anxious. Very," right?

5 A That's what that says.

6 Q The blob needs to feed. And there's nobody in sight because
7 bill charges are coming down and you're not making as much as you did
8 before; is that right, sir? So now --

9 MR. BLALACK: Two objections.

10 MR. ZAVITSANOS: Let me finish my --

11 MR. BLALACK: Two --

12 MR. ZAVITSANOS: Can I finish my question?

13 MR. BLALACK: I'm sorry.

14 THE COURT: Finish your question.

15 MR. BLALACK: I thought you were done. My apologies.

16 BY MR. ZAVITSANOS:

17 Q And now what you've got to do is in order to get rid of this
18 anxiety, you've got to cut some more?

19 THE COURT: All right. Objection?

20 MR. BLALACK: I think I do, Your Honor. Compound and
21 argumentative.

22 THE COURT: Break it down.

23 BY MR. ZAVITSANOS:

24 Q You said yesterday that this percentage income that you
25 earn, it goes up if one of three things happens. One, if bill charges go

1 up, right?

2 A Yes.

3 Q And this email says bill charges were coming down, right?

4 A In total. Yes.

5 Q Two, if you cut reimbursements more, you make more, right?

6 A Depending on if the client has adopted those programs.

7 Q Right?

8 A Yeah. Some programs are free.

9 Q Or C, both, right? Charges go up, reimbursements go down,
10 right?

11 A Same dynamic. Depending on the client's adoptions.

12 Q And this email, Exhibit 370, says, charges were going down,
13 Dan was anxious, very. And the only way you can meet earnings for
14 these analysts is to cut some more, right?

15 A That's incorrect.

16 Q If I'm not asking you questions, it means I'm skipping
17 questions. So we're actually saving time, okay?

18 A I'm still here.

19 MR. ZAVITSANOS: Okay. Okay. Your Honor, can I ask
20 counsel if he has an objection to 246, please?

21 MR. BLALACK: Court's indulgence. One moment.

22 MR. ZAVITSANOS: I'm sorry?

23 MR. BLALACK: I just asked for the Court's indulgence.

24 THE COURT: I thought that it was conditionally admitted.

25 MR. ZAVITSANOS: Yes, Your Honor.

1 MR. BLALACK: Yeah. No objection.

2 THE COURT: Thank you.

3 MR. ZAVITSANOS: Yes, sir?

4 THE COURT: 246.

5 MR. ZAVITSANOS: Michelle, will you put that up while Mr.
6 Haben is getting that?

7 BY MR. ZAVITSANOS:

8 Q And Mr. Haben, before you get to that, let me just ask a quick
9 question. We've looked at a bunch of documents that seem similar,
10 right?

11 MR. BLALACK: Objection. Vague.

12 BY MR. ZAVITSANOS:

13 Q Addressing similar issues, right?

14 MR. BLALACK: I objected on vagueness grounds.

15 THE COURT: Overruled. It's foundational.

16 MR. ZAVITSANOS: Yeah.

17 BY MR. ZAVITSANOS:

18 Q Mr. Haben, we -- during the examination of you, we've
19 looked at a bunch of documents that are talking about these various
20 programs and what the objectives are, right?

21 A They are documents talking about my programs. Yes.

22 Q Yeah. And the reason there are so many of these is because
23 you had a big group. This is an emerging set of programs. So you all
24 had a lot of meetings trying to come up with the best possible way to do
25 this, right?

1 A Incorrect. We -- the programs are complex. Clients want a
2 variety of options. Things are called many things different. Programs,
3 different combinations. That's why there's a lot of information.

4 Q They are complex?

5 A If --

6 Q Programs are complex?

7 A If a client wants --

8 Q Just setting a benchmark, that's complex?

9 A Very. Clients want a variety of things. It's not a cookie
10 cutter.

11 Q Yeah. And these are the same clients that you don't have
12 any notes for about what they wanted? Same clients?

13 A I've seen the system setup of what clients have. It's very
14 complex.

15 Q These are the same clients that you told me you don't have
16 any notes for?

17 A I don't have logs of the clients.

18 Q Okay. So let's talk about what you know about this
19 document here. Take a minute -- take a minute to look at it.

20 A Okay.

21 Q Okay. Now, MultiPlan assisted United Healthcare in getting
22 these programs off the ground, right?

23 A Which programs?

24 Q SSP, use of Data iSight, OCM. Right?

25 A Right. Not MNRP or ENRP.

1 Q I'm going to get to that. We haven't talked about them yet.
2 And the shared savings program, the rap agreements, negotiating with
3 the doctors, using this Data iSight, which we haven't talked about yet,
4 MultiPlan was an invaluable part of that process, right?

5 A Yeah. They weren't the only vendor. We had First Health
6 Group, TRPN, Concentra, other vendors.

7 Q And so what you decided to do, United Health Plan, was in
8 2018, you decided to turn on MultiPlan and go after them. Get rid of
9 them, and setup a competing company so that the 300 million that they
10 were making would now go to you, right?

11 A We created another option for clients at a lower amount.
12 They could still adopt MultiPlan if they wanted it.

13 Q But the motive for that was the 300 million dollars you were
14 paying a year to MultiPlan so that instead of it going into MultiPlan's
15 pocket, now that you've got the momentum going, it would go into your
16 all's pocket, right?

17 A We wouldn't have to pay a fee for it.

18 Q Yes, sir. So let's go to the second page. And the first thing
19 you did, you couldn't just get rid of them right away, so you started
20 squeezing them on what you were going to pay them, right?

21 A That's incorrect.

22 Q Well, let's take a look.

23 MR. ZAVITSANOS: Michelle, pull up the current state.

24 BY MR. ZAVITSANOS:

25 Q Okay. So there's the revenue, 1.1 billion, right? You see that,

1 1.1 billion?

2 A Yes, I do.

3 Q But 7.25 percent of that had to go to -- had to go to MultiPlan,
4 right?

5 A Yes. That's what that says.

6 Q Yes, sir. Now, let's go on the right hand side of this. Status
7 of key initiatives.

8 MR. ZAVITSANOS: And Michelle, will you please -- up at the
9 top, from here to here.

10 BY MR. ZAVITSANOS:

11 Q So we started with 350 percent of Medicare for out of
12 network emergency room physicians. And now you're cutting it to 250
13 percent, right?

14 A For OCM?

15 Q Yeah.

16 A Yes.

17 Q Okay. And the goal is to get it down to just above Medicare,
18 just a small percentage above Medicare, like your lawyer said to the jury
19 in opening statements?

20 A That's incorrect. Just to get it down to the market rate or par
21 medium.

22 Q No, sir. Listen to my question. Your goal is to get it -- are
23 you telling the jury -- are you representing to the jury that United will not
24 cut this rate for -- from 250 percent going forward?

25 A I don't work there anymore, so I don't know.

1 Q When you left -- at the time you left last August, are you
2 swearing under oath that there were no plans, even discussions, of
3 further cuts beyond 250 percent?

4 A I don't recall if there were discussions to drop it down or not.

5 Q You don't remember one way or another?

6 A I don't think so. I think 250 is a pretty competitive
7 reimbursement.

8 Q Do you know whether there are documents that the jury will
9 look at saying the goal is 140?

10 MR. BLALACK: Objection. Foundation, Your Honor.

11 MR. ZAVITSANOS: I'm asking if he knows.

12 THE COURT: He can ask. Overruled.

13 THE WITNESS: I don't know.

14 BY MR. ZAVITSANOS:

15 Q Well, here's what we know. We started out with this rap
16 agreement at reasonable and customary, a slight discount off the bill
17 charges. And now we're down to 80 percent discount off of bill charges,
18 right?

19 A I would categorically disagree with that. It all depends on
20 what the provider bills.

21 Q Let's take a look.

22 MR. ZAVITSANOS: Let's -- first of all, let's go to the bottom
23 bullets on this page, Michelle. Right here.

24 BY MR. ZAVITSANOS:

25 Q First thing you had to do is you had to get MultiPlan out of

1 the way so you can get those fees too. You used the fee from 7.25 to 6.5,
2 right?

3 A That was a renegotiation ask.

4 Q Who's the decision maker on the premiums? Is that United?

5 A On what premiums?

6 Q Premiums you charge for members under your fully insured
7 plan.

8 A I don't know. They're usually regulated. Each -- if you're
9 taking fully insured, they're regulated by the states.

10 Q Really?

11 A I --

12 Q The government tells you how much you can charge, really?

13 A I believe each state has requirements on fully insured
14 premiums.

15 Q Do you know, sir?

16 A I know roughly.

17 Q Are you telling the jury that the State of Nevada dictates how
18 much you're going to charge for premiums?

19 A I don't know about the State of Nevada.

20 Q Okay.

21 A I know some states have requirements for MLR.

22 Q Okay. So let's not step into an area that you don't -- you
23 don't know, right?

24 A Yeah. So then -- yeah, I can't answer your question then.

25 Q Thank you, sir. Now, this says, MultiPlan, the folks that did

1 all the rowing to get you there under the original program, you're going
2 to cut them, too, right?

3 A It doesn't say that. It says, we're going to ask for a reduction.

4 Q Yeah.

5 A But we can't unilaterally cut anything.

6 Q Well, you -- and you ultimately got rid of them?

7 A No, we did not. That's a false statement.

8 Q You didn't terminate -- you didn't terminate your shard
9 savings relationship with them?

10 A Not that I'm aware of. Not when I left.

11 Q Who is Naviguard?

12 A They are the new co.

13 Q Naviguard is the new MultiPlan --

14 A That's incorrect.

15 Q -- that is owned by United?

16 A That is entirely incorrect.

17 Q Remember we looked at the language that new co, the new
18 company was going to replace the revenue that you were paying to
19 vendors? Remember we looked at that?

20 A Yes, I did.

21 Q That's Naviguard.

22 A No, it is not.

23 Q It's not Naviguard? Okay.

24 A No, it is not.

25 Q We're going to get to that tomorrow.

1 A I can explain it if you --

2 Q No, sir. We're going to get there tomorrow. We're going to
3 look at the documents and see --

4 A I don't think I'm here tomorrow.

5 Q Monday. Excuse me.

6 A Thank you.

7 Q I've lost all sense of time, sir.

8 A You and me both.

9 Q My wife says I can't pick her out of a lineup right now. So
10 anyway, all right. So -- okay. So let's look at -- oh, by the way, before
11 we leave this page, if United's counsel told the jury that the reasonable
12 value for the services for the corporate physicians, UnitedHealth, and the
13 other defendants in this case, is the Medicare rate plus a small margin.
14 Any reason to dispute that that's where United is headed?

15 A Can you ask the first part because are you talking about ER
16 physicians or non-ER physicians?

17 Q If United's counsel stood up for the jury -- and I've got the
18 transcript -- and told the jury that the reasonable value for all these
19 services is the Medicare rate plus a small margin, any reason to dispute
20 that that is what United's position currently is about where they're
21 going?

22 A About where they're going?

23 Q Yeah.

24 A I don't know. I'm not there anymore.

25 MR. ZAVITSANOS: Do we have -- is 239 in? I'm sorry. Your

1 Honor, my apologies. Is 239 in?

2 THE COURT: I don't see it.

3 MR. ZAVITSANOS: Okay. Let me ask counsel if he has an
4 objection. I think it is, Your Honor.

5 MR. BLALACK: That's already in, I believe.

6 THE COURT: Oh, you both have it in? I don't have it as in.

7 MR. ZAVITSANOS: I --

8 THE COURT: Oh, wait. No, I do. Yes. It came in today.
9 Yeah. Sorry.

10 MR. BLALACK: My colleagues are telling me it's in, Your
11 Honor.

12 THE COURT: You're -- you all are correct. It is in.

13 BY MR. ZAVITSANOS:

14 Q Now, Mr. Haben, the document --

15 THE COURT: Let's give him a minute to look at that.

16 MR. ZAVITSANOS: Michelle, what document did we just
17 have up? What exhibit? Put up 246, page 1.

18 BY MR. ZAVITSANOS:

19 Q Let's just look at the date real quick. 46, page 1. I just want
20 to get the page. So -- and Mr. Haben, we're going to go to 239. Okay.
21 246 is the one we just looked at taking about 350 to 250, right? Are you
22 with me?

23 A I don't think it said 350 to 250.

24 Q Page 2. Right here. It said, reduce emergency room
25 physician reimbursement amounts to 250 percent of CMS, right?

1 A Yes. It does say that.

2 Q Before that, it was 350 percent of CMS, right?

3 A I don't remember exactly.

4 Q You don't remember if 350 was the benchmark under your
5 leadership?

6 A It could have been.

7 Q Okay.

8 A I'm retired. I haven't thought about work for a while.

9 Q Okay. Well, you're retired, but you're still getting paid.
10 You're getting your salary, right?

11 A Yeah. But I'm not looking at work.

12 Q Let's go to 239. Okay. Mr. Haben, we had a
13 misunderstanding, so we're going to move on. We're going to get to
14 further reductions in just a minute.

15 MR. ZAVITSANOS: But let's go back, Michelle, to the one we
16 had up before, which was 240 -- 246.

17 BY MR. ZAVITSANOS:

18 Q All right. So --

19 A Let me get to that.

20 Q Sure.

21 MR. ZAVITSANOS: And Michelle, will you go to the second
22 page so we can just leave off -- or go to where we left off? Let's now go
23 to page 3. Okay. Now, here's what I want to do, Michelle, pull both from
24 here to here.

25 BY MR. ZAVITSANOS:

1 Q Okay. Now, let me get a couple of things out of the way, and
2 this is kind of a busy chart. Let's first talk about this U-N-E-T, UNet. Do
3 you see that, UNet?

4 A Oh, yeah, I see it. Thank you.

5 Q Okay. Just so the jury is aware, UNet is the platform on
6 which United Healthcare's operations are under, right?

7 A The commercial business is on UNet.

8 Q Okay. It's like --

9 A Part of it.

10 Q -- for analogy, it's like Windows versus OS, right?

11 A I wish it was that simple, but it's not.

12 Q Well, I'm just trying to draw an analogy. There are other --

13 A It's --

14 Q There are other platforms within United, right?

15 A Yes.

16 Q The stuff we're talking about here, and we've been talking
17 about, is all on the UNet platform, right?

18 A I believe so.

19 Q Okay. Now -- all right. So this is a United document, right?

20 A Correct.

21 Q Okay. And we see on the far right side, it's talking about SSP
22 wrap network, right?

23 A Correct.

24 Q And we are -- and it says member protection, right?

25 A Yes.

1 Q Now, member protection is the issue that was in the two
2 press releases we just talked about, where you were telling the world
3 that members under the old system were not protected, and that there
4 were being balance billed and there was a chronic problem nationally,
5 right?

6 A Say that again, please.

7 Q Yes. In 2014, when you began this education of the public,
8 you were telling people, and I want to go back to the document, but you
9 were telling the world there was a chronic problem, that members were
10 not protected, and that balance billing was a run-away problem?

11 A For ER physicians, yes.

12 Q But internally, when the SSP wrap network existed, there
13 was member protection? I mean, that's the truth, right?

14 A If that's what the employer group adopted, that's what is
15 available.

16 Q Okay. And finally, when we get to these more aggressive
17 programs, ENRP, another acronym that does not involve MultiPlan,
18 right?

19 A Correct.

20 Q They're out. They're not making any money. We now have
21 almost an 80 percent discount, right?

22 A On a very small volume of claims, yes.

23 Q Sir, it says 70 to 79 percent discount, right?

24 A Yeah, on one percent of the claims, yes.

25 Q Well, we're going to talk about that. And that's your goal is

1 to get everybody from here to here?

2 A Yes, and that -- those programs are free to clients.

3 Q Well, they're free because what you've done is you've jacked
4 up the PMPM fee eight-fold?

5 A That's incorrect.

6 Q You haven't increased -- you haven't gone to a different type
7 of billing based on total cost of care to replace the revenue, and you're
8 making more money than you've ever made?

9 A That's incorrect. If clients adopt MNRP or ENRP, it is a free
10 program for them.

11 Q Mr. Haben, my question is, the ASO clients, have you set up
12 a new way to bill based on total cost of care, and your revenues are
13 higher than they've ever been?

14 A At this point, when this is drafted?

15 Q Today.

16 A I have not --

17 Q Or at the time you left? At the time you left?

18 A I am not aware that they are billing a client for ENRP or
19 MNRP.

20 Q That's not my question. Please don't ruin my question.

21 A I thought that's what your question was.

22 Q No, my question is, is United making more money from the
23 ASO business because they've changed the way they bill their clients?

24 A That's incorrect.

25 Q Okay. We're going to look at some documents and see if

1 that -- what you're telling us is correct or not. Regardless, sir, trying to
2 go from SSP wrap network, where there was member protection, the
3 goal is now a 79 percent reduction, no member protection.

4 A And no fee, yes.

5 Q Sir, my question is no member protection, right?

6 A Yeah, and that's why we're not charging a fee for it.

7 Q Well, let's take a look. Where is the latest PMPM results?

8 Let's take a look and see if your revenues went up or not, sir, because
9 you're going to change the way we bill these clients, right?

10 A I'm telling you, revenues are not tied to MNRP or ENRP. It's
11 a free --

12 Q That's not my question, sir. Please don't change my
13 question.

14 A Okay. I'm sorry. I heard it that way.

15 Q My question is, internally within United, you don't come up
16 with a little scheme, but because you were getting these complaints, you
17 were going to change the way you bill clients so that they couldn't tell
18 what you were billing them for, and you were coming up with this thing
19 called total cost of care that resulted in a margin on your PMPM fees of
20 over \$30 a member?

21 A Not for -- not for my out of network programs, no.

22 Q Let's take a look. Just going to get this, but let me get back
23 to my question here. We're going to pull it up in just a second.

24 A Okay.

25 Q Okay. So the ENRP, which has a -- almost an 80 percent

1 discount, there was no member protection, right?

2 A Yes, because there's no fee.

3 Q I didn't ask why, sir. There's no member protection for this?

4 A Yeah. And I can -- I'm saying I can explain it if you want me
5 to explain.

6 Q I don't want you to explain. There's no member protection,
7 right?

8 A That's correct.

9 Q Okay.

10 A I'm sorry, can I caveat that?

11 Q No, sir.

12 A Well, it says unless there's a state regulation, so I don't want
13 to misrepresent it.

14 Q Of course.

15 A If the state requires us to do that, we will do it for free.

16 Q Now --

17 MR. ZAVITSANOS: Give me one second, sir.

18 [Pause]

19 BY MR. ZAVITSANOS:

20 Q All right, let's pull up 266. Let's pull up 266. Now,
21 remember, we looked at page 4. Remember we looked at the discussion
22 that the margin was \$5, and PMPM was the highest in the industry?

23 A I believe that was the discussion.

24 Q Pull out the -- this right here. Let's look what was going on
25 on the fully insured side, right here. If you were implementing these

1 programs. The average margin of the competitor is four percent, right?

2 A I'm sorry, where?

3 Q Far left side.

4 MR. ZAVITSANOS: Michelle, will you highlight that, please?

5 THE WITNESS: Okay. I see that.

6 BY MR. ZAVITSANOS:

7 Q And you, on the UHG are more than doubled?

8 A I'm not a finance person, but --

9 Q 8.1 is more than double of four percent, right?

10 A Yes.

11 Q And, sir, if we go --

12 MR. ZAVITSANOS: Can I ask, Your Honor, counsel has, and
13 I'm going to finish, I'm just going to -- 462. There's an objection?

14 MR. BLALACK: One second, Your Honor. Yes, foundation,
15 Your Honor.

16 THE COURT: Lay the foundation.

17 BY MR. ZAVITSANOS:

18 Q Do you have 462, please? Is 462 --

19 MR. ZAVITSANOS: Don't pull it up here, Michelle.

20 BY MR. ZAVITSANOS:

21 Q Does United Healthcare break up its -- does it have regions?

22 A Commercial business, it does.

23 Q And does the west region include the State of Nevada?

24 A Yes, it does.

25 Q And does the out of network programs that you participated

1 in, did those get rolled into the numbers we've been talking about here,
2 correct?

3 A I don't believe it does.

4 Q You don't believe that the out of network revenue is part of
5 the reports, the financial reports of the company, sir?

6 A I am not a finance person, so I don't know.

7 Q You don't know if the financial numbers from your group, the
8 one that your president was anxious about, if those numbers were -- that
9 he's going to discuss with the analyst, if those are part of your financial
10 report?

11 A I don't know what he was anxious about, if that included the
12 health plan in Nevada or not, I don't know.

13 Q Mr. Haben, are you seriously telling the jury you don't even
14 know if you were financial performance, that your value -- those
15 numbers are not including --

16 MR. BLALACK: Your Honor, may we approach?

17 THE COURT: You may.

18 [Sidebar at 4:44 p.m., ending at 4:44 p.m., not transcribed]

19 THE COURT: All right. So we are going to take our recess
20 for the -- for the long weekend. Please, the admonishments are
21 especially important because we won't see you until Monday morning.

22 During the recess, do not talk with each other or anyone else
23 on any subject connected with the trial. Don't read, watch, or listen to
24 any report of or commentary on the trial. Don't discuss it with anyone
25 connected to the case by any medium of information, including without

1 limitation, newspapers, television, radio, internet, cell phone or texting.

2 Don't conduct any research on your own relating to the case.

3 So you can't consult dictionaries, use the internet, or use reference

4 materials. Don't use social media. Don't talk, text, Tweet, Google, or

5 conduct any other type of research with regard to any issue, party,

6 witness, or attorney involved in the case. Do not form or express any

7 opinion on any subject connected with the trial until the matter is

8 submitted to you.

9 You've been great. We're in our second week. Let's see you

10 Monday morning at 9:30.

11 THE MARSHAL: All rise for the jury.

12 [Jury out at 4:45 p.m.]

13 [Outside the presence of the jury]

14 THE COURT: All right. So let's just bring the issue for the

15 record briefly.

16 MR. ZAVITSANOS: So Your Honor, the document that I was

17 about to question him on is about the west region, and it says Nevada

18 and California are the principal -- that Nevada and California are the

19 principal reason for this spectacular performance in terms of the finances

20 of United Healthcare.

21 So this -- I mean, and I've taken a long time to get here, but

22 this is the -- kind of the end of the yellow brick road in terms of how this

23 relates to this state.

24 THE COURT: Yeah.

25 MR. ZAVITSANOS: Okay. And so --

1 THE COURT: Because we're going to take this up Monday
2 morning in more detail. We're only framing the issue so that we all
3 understand the same for Monday.

4 MR. ZAVITSANOS: Yes, Your Honor. That's exactly right.

5 THE COURT: All right.

6 MR. BLALACK: May I respond to that?

7 THE COURT: Any response?

8 MR. BLALACK: The thing I think prompted me to approach
9 the bench had nothing to do with asking about how Nevada fits into the
10 overall structure of United. That's fair game. What prompted my
11 objection to approach the bench was he was asking questions about the
12 way in which these efforts fill into Mr. Haben's performance and how he
13 was evaluated.

14 And the parties entered a stipulated stipulation in the order
15 to avoid a motion in limine regarding evidence of employed
16 performance and efforts or evaluations in which they specifically
17 stipulated that there wouldn't be any evidence or argument related to
18 that subject. That was number 28, Your Honor. So that's my only
19 concern. If he stays away from that, we've got no issue.

20 THE COURT: Good enough. All right, thanks, guys. Have a
21 great weekend, everybody. Thank you for understanding that we paid a
22 lot of money for a trip this weekend --

23 /////

24 /////

25 /////

1 MR. ZAVITSANOS: Thank you, Your Honor.

2 THE COURT: -- like a year ago.

3 MR. ZAVITSANOS: Thank you for all your work. Thank you.

4 [Proceedings adjourned at 4:48 p.m.]

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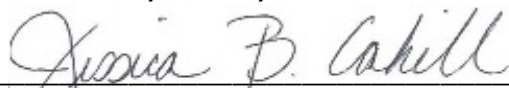
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
23 best of my ability.

24 

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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.

Case No.: A-19-792978-B
Dept. No.: 27

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' MOTION
IN LIMINE NO. 17**



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.

YOU WILL PLEASE TAKE NOTICE that an Order Granting Defendants' Motion In
Limine No. 17 was filed November 2, 2021, in the above-captioned matter. A copy is attached
hereto.

Dated this 4th day of November, 2021.

/s/ Brittany M. Llewellyn

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION IN LIMINE NO. 17** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

28 Plaintiffs,

Case No.: A-19-792978-B
Dept. No.: 27

**ORDER GRANTING DEFENDANTS'
MOTION IN LIMINE NO. 17**

1 vs.

2 UNITED HEALTHCARE INSURANCE
3 COMPANY, a Connecticut corporation; UNITED
4 HEALTH CARE SERVICES INC., dba
5 UNITEDHEALTHCARE, a Minnesota
6 corporation; UMR, INC., dba UNITED
7 MEDICAL RESOURCES, a Delaware
8 corporation; SIERRA HEALTH AND LIFE
9 INSURANCE COMPANY, INC., a Nevada
10 corporation; HEALTH PLAN OF NEVADA,
11 INC., a Nevada corporation,

12 Defendants.

13 Defendants UnitedHealthcare Insurance Company; United HealthCare Services, Inc.;
14 UMR, Inc.; Sierra Health and Life Insurance Company, Inc.; and Health Plan of Nevada, Inc.
15 (collectively "Defendants") Motion in Limine to exclude references to Defendants' size and
16 wealth, including any non-party affiliates of Defendants, (the "Motion") came before the Court
17 on October 22, 2021. K. Lee Blalack, II and Dimitri D. Portnoi of O'Melveny & Myers LLP,
18 Colby L. Balkenbush of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, and Daniel F.
19 Polsenberg of Lewis Roca Rothgerber Christie LLP appeared on behalf of Defendants. Pat
20 Lundvall, Kristen T. Gallagher and Amanda M. Perach of McDonald Carano LLP and P. Kevin
21 Leyendecker, John Zavitsanos, Jason S. McManis, and Joseph Y. Ahmad of Ahmad, Zavitsanos,
22 Anaipakos, Alavi & Mensing, P.C. appeared on behalf of Plaintiffs Fremont Emergency Services
23 (Mandavia), Ltd.; Team Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); Crum,
24 Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine ("Ruby Crest") (collectively the
25 "Plaintiffs").

26 The Court, having considered Defendants' Motion, the Plaintiffs' Response, and the
27 argument of counsel at the hearing on this matter, and good cause appearing, finds and orders as
28 follows:

1. The size and wealth of Defendants and/or the size and wealth of the family of companies that Defendants are affiliated with are irrelevant to this case.
2. The size and wealth of Plaintiffs are irrelevant to this case.

Accordingly,



ORDER

IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED** for the reasons stated on the record.

IT IS SO ORDERED.

November 2, 2021

Dated this 2nd day of November, 2021

Nancy L. Alf
Hon. Nancy L. Alf TW

Submitted by:

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

ABB 4A2 DCCA 9714

Nancy Alf as to form/content:
District Court Judge

AHMAD, ZAVITSANOS,
ANAIPAKOS, ALAVI & MENSING,
P.C

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Attorneys for Defendants

Bowman, Cindy S.

From: Jason McManis <jmcmanis@AZALAW.COM>
Sent: Tuesday, November 02, 2021 5:35 AM
To: Legendy, Philip E.; Blalack II, K. Lee; Portnoi, Dimitri D.
Cc: Balkenbush, Colby; Michael Killingsworth; TMH010; Pat Lundvall; Amanda Perach; Kristen T. Gallagher
Subject: Re: Pretrial Orders

This Message originated outside your organization.

You can sign my name to these.

From: Legendy, Philip E. <plegendy@omm.com>
Date: Monday, November 1, 2021 at 11:33 PM
To: Jason McManis <jmcmanis@AZALAW.COM>, Blalack II, K. Lee <lblalack@omm.com>, Portnoi, Dimitri D. <dportnoi@omm.com>
Cc: Balkenbush, Colby <CBalkenbush@wwhgd.com>, Michael Killingsworth <mkillingsworth@AZALAW.COM>, TMH010 <TMH010@azalaw.com>, Pat Lundvall <plundvall@mcdonaldcarano.com>, Amanda Perach <aperach@mcdonaldcarano.com>, Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>
Subject: RE: Pretrial Orders

Thanks Jason, this is fine. I am re-attaching the versions of Defendants' MILs 9, 17, 21, 22, 25, and 37 as to which we have reached agreement in our correspondence over the last few days. May we apply your signature to these orders?

As to MIL 26, it sounds like we will not have agreement.

From: Jason McManis <jmcmanis@AZALAW.COM>
Sent: Tuesday, November 2, 2021 1:53 AM
To: Legendy, Philip E. <plegendy@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Portnoi, Dimitri D. <dportnoi@omm.com>
Cc: Balkenbush, Colby <CBalkenbush@wwhgd.com>; Michael Killingsworth <mkillingsworth@AZALAW.COM>; TMH010 <TMH010@azalaw.com>; Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>
Subject: Re: Pretrial Orders

[EXTERNAL MESSAGE]

Phil,

I think we're on the same page here. Wasn't my intent to carve out anything identified in your concerns below. I made a slight edit that I don't think will cause any heartburn. If you're good with this, you can sign my name.

Jason

From: Legendy, Philip E. <plegendy@omm.com>
Date: Monday, November 1, 2021 at 7:35 PM

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
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

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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.

Case No.: A-19-792978-B
Dept. No.: 27

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' MOTION
IN LIMINE NO. 25**



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.

YOU WILL PLEASE TAKE NOTICE that an Order Granting Defendants' Motion In
Limine No. 25 was filed November 2, 2021, in the above-captioned matter. A copy is attached
hereto.

Dated this 4th day of November, 2021.

/s/ Brittany M. Llewellyn

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION IN LIMINE NO. 25** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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8 *Attorneys for Plaintiffs*

9 /s/ Cynthia S. Bowman

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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,

Case No.: A-19-792978-B
Dept. No.: 27

**ORDER GRANTING DEFENDANTS'
MOTION IN LIMINE NO. 25**

1 vs.

2 UNITED HEALTHCARE INSURANCE
3 COMPANY, a Connecticut corporation; UNITED
4 HEALTH CARE SERVICES INC., dba
5 UNITEDHEALTHCARE, a Minnesota
6 corporation; UMR, INC., dba UNITED
7 MEDICAL RESOURCES, a Delaware
8 corporation; SIERRA HEALTH AND LIFE
9 INSURANCE COMPANY, INC., a Nevada
10 corporation; HEALTH PLAN OF NEVADA,
11 INC., a Nevada corporation,

12 Defendants.

13 Defendants UnitedHealthcare Insurance Company; United HealthCare Services, Inc.;
14 UMR, Inc.; Sierra Health and Life Insurance Company, Inc.; and Health Plan of Nevada, Inc.
15 (collectively "Defendants") Motion in Limine to preclude evidence and argument related to the
16 October 1, 2017 Las Vegas mass shooting (the "Motion") came before the Court on October 22,
17 2021. K. Lee Blalack, II and Dimitri D. Portnoi of O'Melveny & Myers LLP, Colby L.
18 Balkenbush of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, and Daniel F. Polsenberg of
19 Lewis Roca Rothgerber Christie LLP appeared on behalf of Defendants. Pat Lundvall, Kristen T.
20 Gallagher and Amanda M. Perach of McDonald Carano LLP and P. Kevin Leyendecker, John
21 Zavitsanos, Jason S. McManis, and Joseph Y. Ahmad of Ahmad, Zavitsanos, Anaipakos, Alavi &
22 Mensing, P.C. appeared on behalf of Plaintiffs Fremont Emergency Services (Mandavia), Ltd.;
23 Team Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); Crum, Stefanko and Jones,
24 Ltd. dba Ruby Crest Emergency Medicine ("Ruby Crest") (collectively the "Plaintiffs").

25 The Court, having considered Defendants' Motion, the Plaintiffs' Response, and the
26 argument of counsel at the hearing on this matter, and good cause appearing, finds and orders as
27 follows:

- 28 1. The Plaintiffs may not offer evidence, argument or elicit testimony related to or
referencing the October 1, 2017 mass shooting that took place in Las Vegas.
2. Plaintiffs may introduce evidence of emergency medicine services rendered to victims of
other shootings if they relate to a benefit claim at issue in this case that is not a benefit
claim pertaining to a victim of the October 1 mass shooting.



1 Accordingly,

2 **ORDER**

3 IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED** for the reasons
4 stated on the record.

5 **IT IS SO ORDERED.**

Dated this 2nd day of November, 2021

6 November 2, 2021

Nancy L. Alf
Hon. Nancy L. Alf TW

8 Submitted by:

959 3CC 211D A76A

Nancy Alf
Approved as to form/content:
District Court Judge

9 WEINBERG, WHEELER, HUDGINS,
10 GUNN & DIAL, LLC

AHMAD, ZAVITSANOS,
ANAIPAKOS, ALAVI & MENSING,
P.C

11 /s/ Colby L. Balkenbush

/s/ Jason S. McManis

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Attorneys for Defendants



Bowman, Cindy S.

From: Jason McManis <jmcmanis@AZALAW.COM>
Sent: Tuesday, November 02, 2021 5:35 AM
To: Legendy, Philip E.; Blalack II, K. Lee; Portnoi, Dimitri D.
Cc: Balkenbush, Colby; Michael Killingsworth; TMH010; Pat Lundvall; Amanda Perach;
 Kristen T. Gallagher
Subject: Re: Pretrial Orders

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You can sign my name to these.

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Date: Monday, November 1, 2021 at 11:33 PM
To: Jason McManis <jmcmanis@AZALAW.COM>, Blalack II, K. Lee <lblalack@omm.com>, Portnoi, Dimitri D. <dportnoi@omm.com>
Cc: Balkenbush, Colby <CBalkenbush@wwhgd.com>, Michael Killingsworth <mkillingsworth@AZALAW.COM>, TMH010 <TMH010@azalaw.com>, Pat Lundvall <plundvall@mcdonaldcarano.com>, Amanda Perach <aperach@mcdonaldcarano.com>, Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>
Subject: RE: Pretrial Orders

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Subject: Re: Pretrial Orders

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Date: Monday, November 1, 2021 at 7:35 PM

1 **CSERV**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Fremont Emergency Services
(Mandavia) Ltd, Plaintiff(s)

CASE NO: A-19-792978-B

7 vs.

DEPT. NO. Department 27

8
9 United Healthcare Insurance
Company, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

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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.

Case No.: A-19-792978-B
Dept. No.: 27

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' MOTION
IN LIMINE NO. 37**



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.

YOU WILL PLEASE TAKE NOTICE that an Order Granting Defendants' Motion In
Limine No. 37 was filed November 2, 2021, in the above-captioned matter. A copy is attached
hereto.

Dated this 4th day of November, 2021.

/s/ Brittany M. Llewellyn

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Brittany M. Llewellyn, Esq.
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Marjan Hajimirzaee, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION IN LIMINE NO. 37** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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Judge David Wall, Special Master
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8 *Attorneys for Plaintiffs*

9 /s/ Cynthia S. Bowman

10 An employee of WEINBERG, WHEELER, HUDGINS
11 GUNN & DIAL, LLC

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DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD., a Nevada professional
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NEVADA-MANDAVIA, P.C., a Nevada
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AND JONES, LTD. dba RUBY CREST
EMERGENCY MEDICINE, a Nevada
professional corporation,

Plaintiffs,

Case No.: A-19-792978-B
Dept. No.: 27

**ORDER GRANTING DEFENDANTS'
MOTION IN LIMINE 37**

1 vs.

2 UNITED HEALTHCARE INSURANCE
3 COMPANY, a Connecticut corporation; UNITED
4 HEALTH CARE SERVICES INC., dba
5 UNITEDHEALTHCARE, a Minnesota
6 corporation; UMR, INC., dba UNITED
7 MEDICAL RESOURCES, a Delaware
8 corporation; SIERRA HEALTH AND LIFE
9 INSURANCE COMPANY, INC., a Nevada
10 corporation; HEALTH PLAN OF NEVADA,
11 INC., a Nevada corporation,

12 Defendants.

13 Defendants UnitedHealthcare Insurance Company; United HealthCare Services, Inc.;
14 UMR, Inc.; Sierra Health and Life Insurance Company, Inc.; and Health Plan of Nevada, Inc.
15 (collectively "Defendants") Motion in Limine to preclude evidence and argument related to the
16 COVID-19 pandemic (the "Motion") came before the Court on October 22, 2021. K. Lee
17 Blalack, II and Dimitri D. Portnoi of O'Melveny & Myers LLP, Colby L. Balkenbush of
18 Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, and Daniel F. Polsenberg of Lewis Roca
19 Rothgerber Christie LLP appeared on behalf of Defendants. Pat Lundvall, Kristen T. Gallagher
20 and Amanda M. Perach of McDonald Carano LLP and P. Kevin Leyendecker, John Zavitsanos,
21 Jason S. McManis, and Joseph Y. Ahmad of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing,
22 P.C. appeared on behalf of Plaintiffs Fremont Emergency Services (Mandavia), Ltd.; Team
23 Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); Crum, Stefanko and Jones, Ltd. dba
24 Ruby Crest Emergency Medicine ("Ruby Crest") (collectively the "Plaintiffs").

25 The Court, having considered Defendants' Motion, the Plaintiffs' Response, and the
26 argument of counsel at the hearing on this matter, and good cause appearing, finds and orders as
27 follows:

28 ///

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///



IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED** for the reasons stated on the record.

IT IS SO ORDERED.

November 2, 2021

Dated this 2nd day of November, 2021

Nancy L. Alf
Hon. Nancy L. Alf

TW

A2A 4AB 736E 5685

Nancy Alf
District Court Judge

Submitted by:

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

AHMAD, ZAVITSANOS,
ANAIPAKOS, ALAVI & MENSING,
P.C

/s/ Colby L. Balkenbush

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/s/ Jason S. McManis

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Attorneys for Defendants



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3 CLARK COUNTY, NEVADA

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

CASE NO: A-19-792978-B

7 vs.

DEPT. NO. Department 27

8
9 United Healthcare Insurance
Company, Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

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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.

Case No.: A-19-792978-B
Dept. No.: 27

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND DENYING
IN PART DEFENDANTS' MOTION IN
LIMINE NO. 9**



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.

YOU WILL PLEASE TAKE NOTICE that an Order Granting In Part And Denying In
Part Defendants' Motion In Limine No. 9 was filed November 2, 2021, in the above-captioned
matter. A copy is attached hereto.

Dated this 4th day of November, 2021.

/s/ Brittany M. Llewellyn

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION IN LIMINE NO. 9** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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7 /s/ Cynthia S. Bowman

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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,

Case No.: A-19-792978-B
Dept. No.: 27

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION IN LIMINE NO. 9**

1 vs.

2 UNITED HEALTHCARE INSURANCE
3 COMPANY, a Connecticut corporation; UNITED
4 HEALTH CARE SERVICES INC., dba
5 UNITEDHEALTHCARE, a Minnesota
6 corporation; UMR, INC., dba UNITED
7 MEDICAL RESOURCES, a Delaware
8 corporation; SIERRA HEALTH AND LIFE
9 INSURANCE COMPANY, INC., a Nevada
10 corporation; HEALTH PLAN OF NEVADA,
11 INC., a Nevada corporation,

12 Defendants.

13 Defendants UnitedHealthcare Insurance Company; United HealthCare Services, Inc.;
14 UMR, Inc.; Sierra Health and Life Insurance Company, Inc.; and Health Plan of Nevada, Inc.
15 (collectively "Defendants") Motion in Limine to authorize Defendants to offer evidence
16 regarding the Plaintiffs' organizational, management, and ownership structure, including flow of
17 funds between related entities (the "Motion") came before the Court on October 22, 2021. K.
18 Lee Blalack, II and Dimitri D. Portnoi of O'Melveny & Myers LLP, Colby L. Balkenbush of
19 Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, and Daniel F. Polsenberg of Lewis Roca
20 Rothgerber Christie LLP appeared on behalf of Defendants. Pat Lundvall, Kristen T. Gallagher
21 and Amanda M. Perach of McDonald Carano LLP and P. Kevin Leyendecker, John Zavitsanos,
22 Jason S. McManis, and Joseph Y. Ahmad of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing,
23 P.C. appeared on behalf of Plaintiffs Fremont Emergency Services (Mandavia), Ltd.; Team
24 Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); Crum, Stefanko and Jones, Ltd. dba
25 Ruby Crest Emergency Medicine ("Ruby Crest") (collectively the "Plaintiffs").

26 The Court, having considered Defendants' Motion, the Plaintiffs' Response, and the
27 argument of counsel at the hearing on this matter, including the hearing on Plaintiffs' Motion in
28 Limine No. 3, and good cause appearing, finds and orders as follows:

1. The Court finds that the following aspects of Plaintiffs' organizational, management, and ownership structure are admissible: Specifically, the relationships between (1) the Plaintiffs to TeamHealth, Inc. ("TeamHealth"); and (2) the basic relationship of TeamHealth to Blackstone Inc. (formerly known as The Blackstone Group, Inc.).



2. The Court finds that the flow of funds within the Plaintiffs' or TeamHealth's corporate structure is irrelevant and inadmissible.

Accordingly,

ORDER

IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED IN PART AND DENIED IN PART** for the reasons stated on the record. If the Defendants believe evidence, argument, or testimony subject to the ruling on this Motion is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury.

IT IS SO ORDERED.

Dated this 2nd day of November, 2021

November 2, 2021

Nancy L. Allf
Hon. Nancy L. Allf TW

BEB EFE EA63 3532

Nancy Allf
District Court Judge

Submitted by:

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

AHMAD, ZAVITSANOS,
ANAIPAKOS, ALAVI & MENSING,
P.C

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From: Jason McManis <jmcmanis@AZALAW.COM>
Sent: Tuesday, November 02, 2021 5:35 AM
To: Legendy, Philip E.; Blalack II, K. Lee; Portnoi, Dimitri D.
Cc: Balkenbush, Colby; Michael Killingsworth; TMH010; Pat Lundvall; Amanda Perach; Kristen T. Gallagher
Subject: Re: Pretrial Orders

This Message originated outside your organization.

You can sign my name to these.

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Date: Monday, November 1, 2021 at 11:33 PM
To: Jason McManis <jmcmanis@AZALAW.COM>, Blalack II, K. Lee <lblalack@omm.com>, Portnoi, Dimitri D. <dportnoi@omm.com>
Cc: Balkenbush, Colby <CBalkenbush@wwhgd.com>, Michael Killingsworth <mkillingsworth@AZALAW.COM>, TMH010 <TMH010@azalaw.com>, Pat Lundvall <plundvall@mcdonaldcarano.com>, Amanda Perach <aperach@mcdonaldcarano.com>, Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>
Subject: RE: Pretrial Orders

Thanks Jason, this is fine. I am re-attaching the versions of Defendants' MILs 9, 17, 21, 22, 25, and 37 as to which we have reached agreement in our correspondence over the last few days. May we apply your signature to these orders?

As to MIL 26, it sounds like we will not have agreement.

From: Jason McManis <jmcmanis@AZALAW.COM>
Sent: Tuesday, November 2, 2021 1:53 AM
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Subject: Re: Pretrial Orders

[EXTERNAL MESSAGE]

Phil,

I think we're on the same page here. Wasn't my intent to carve out anything identified in your concerns below. I made a slight edit that I don't think will cause any heartburn. If you're good with this, you can sign my name.

Jason

From: Legendy, Philip E. <plegendy@omm.com>
Date: Monday, November 1, 2021 at 7:35 PM

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**

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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.

Case No.: A-19-792978-B
Dept. No.: 27

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND DENYING
IN PART DEFENDANTS' MOTION IN
LIMINE NO. 21**



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.

YOU WILL PLEASE TAKE NOTICE that an Order Granting In Part And Denying In
Part Defendants' Motion In Limine No. 21 was filed November 2, 2021, in the above-captioned
matter. A copy is attached hereto.

Dated this 4th day of November, 2021.

/s/ Brittany M. Llewellyn

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION IN LIMINE NO. 21** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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7 /s/ Cynthia S. Bowman

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Heather S. Linn

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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,

Case No.: A-19-792978-B
Dept. No.: 27

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION IN LIMINE 21**



1 vs.

2 UNITED HEALTHCARE INSURANCE
3 COMPANY, a Connecticut corporation; UNITED
4 HEALTH CARE SERVICES INC., dba
5 UNITEDHEALTHCARE, a Minnesota
6 corporation; UMR, INC., dba UNITED
7 MEDICAL RESOURCES, a Delaware
8 corporation; SIERRA HEALTH AND LIFE
9 INSURANCE COMPANY, INC., a Nevada
10 corporation; HEALTH PLAN OF NEVADA,
11 INC., a Nevada corporation,

12 Defendants.

13 Defendants UnitedHealthcare Insurance Company; United HealthCare Services, Inc.;
14 UMR, Inc.; Sierra Health and Life Insurance Company, Inc.; and Health Plan of Nevada, Inc.
15 (collectively "Defendants") Motion in Limine to exclude the use of Defendants' corporate filings
16 from trial (the "Motion") came before the Court on October 22, 2021. K. Lee Blalack, II and
17 Dimitri D. Portnoi of O'Melveny & Myers LLP, Colby L. Balkenbush of Weinberg, Wheeler,
18 Hudgins, Gunn & Dial, LLC, and Daniel F. Polsenberg of Lewis Roca Rothgerber Christie LLP
19 appeared on behalf of Defendants. Pat Lundvall, Kristen T. Gallagher and Amanda M. Perach of
20 McDonald Carano LLP and P. Kevin Leyendecker, John Zavitsanos, Jason S. McManis, and
21 Joseph Y. Ahmad of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C. appeared on behalf
22 of Plaintiffs Fremont Emergency Services (Mandavia), Ltd.; Team Physicians of Nevada-
23 Mandavia, P.C. ("Team Physicians"); Crum, Stefanko and Jones, Ltd. dba Ruby Crest
24 Emergency Medicine ("Ruby Crest") (collectively the "Plaintiffs").

25 The Court, having considered Defendants' Motion, the Plaintiffs' Response, and the
26 argument of counsel at the hearing on this matter, and good cause appearing, finds and orders as
27 follows:

- 28 1. Plaintiffs represented that they have no intention of using Defendants' corporate filings to
circumvent the Court's order granting Defendants' Motion in Limine No. 17 to Exclude
References to Defendants Size and Wealth.
2. Defendants' corporate filings and the corporate filings of Defendants' publicly traded,
non-party corporate affiliate are irrelevant and/or unduly prejudicial or would mislead the



jury, except to the extent stated on the record, and are therefore inadmissible except to the extent stated on the record.

ORDER

IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED IN PART AND DENIED IN PART** for the reasons stated on the record.

IT IS FURTHER ORDERED that if any portion of a corporate filing is admitted into evidence, then Plaintiffs must prevent the jury from seeing or hearing about all other portions of the filing through redaction or otherwise.

IT IS SO ORDERED.

Dated this 2nd day of November, 2021

November 2, 2021

Nancy L. Alf
Hon. Nancy L. Alf TW

Submitted by:

959 699 4A0A 0ED0
Nancy Alf
District Court Judge

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

AHMAD, ZAVITSANOS,
ANAIPAKOS, ALAVI & MENSING,
P.C

/s/ Colby L. Balkenbush

/s/ Jason S. McManis

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Bowman, Cindy S.

From: Jason McManis <jmcmanis@AZALAW.COM>
Sent: Tuesday, November 02, 2021 5:35 AM
To: Legendy, Philip E.; Blalack II, K. Lee; Portnoi, Dimitri D.
Cc: Balkenbush, Colby; Michael Killingsworth; TMH010; Pat Lundvall; Amanda Perach; Kristen T. Gallagher
Subject: Re: Pretrial Orders

This Message originated outside your organization.

You can sign my name to these.

From: Legendy, Philip E. <plegendy@omm.com>
Date: Monday, November 1, 2021 at 11:33 PM
To: Jason McManis <jmcmanis@AZALAW.COM>, Blalack II, K. Lee <lblalack@omm.com>, Portnoi, Dimitri D. <dportnoi@omm.com>
Cc: Balkenbush, Colby <CBalkenbush@wwhgd.com>, Michael Killingsworth <mkillingsworth@AZALAW.COM>, TMH010 <TMH010@azalaw.com>, Pat Lundvall <plundvall@mcdonaldcarano.com>, Amanda Perach <aperach@mcdonaldcarano.com>, Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>
Subject: RE: Pretrial Orders

Thanks Jason, this is fine. I am re-attaching the versions of Defendants' MILs 9, 17, 21, 22, 25, and 37 as to which we have reached agreement in our correspondence over the last few days. May we apply your signature to these orders?

As to MIL 26, it sounds like we will not have agreement.

From: Jason McManis <jmcmanis@AZALAW.COM>
Sent: Tuesday, November 2, 2021 1:53 AM
To: Legendy, Philip E. <plegendy@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Portnoi, Dimitri D. <dportnoi@omm.com>
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Subject: Re: Pretrial Orders

[EXTERNAL MESSAGE]

Phil,

I think we're on the same page here. Wasn't my intent to carve out anything identified in your concerns below. I made a slight edit that I don't think will cause any heartburn. If you're good with this, you can sign my name.

Jason

From: Legendy, Philip E. <plegendy@omm.com>
Date: Monday, November 1, 2021 at 7:35 PM

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
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

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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.

Case No.: A-19-792978-B
Dept. No.: 27

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND DENYING
IN PART DEFENDANTS' MOTION IN
LIMINE NO. 22**



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.

YOU WILL PLEASE TAKE NOTICE that an Order Granting In Part And Denying In
Part Defendants' Motion In Limine No. 22 was filed November 2, 2021, in the above-captioned
matter. A copy is attached hereto.

Dated this 4th day of November, 2021.

/s/ Brittany M. Llewellyn

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION IN LIMINE NO. 22** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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7 /s/ Cynthia S. Bowman

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Heather S. Linn

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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,

Case No.: A-19-792978-B
Dept. No.: 27

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION IN LIMINE 22**



1 vs.

2 UNITED HEALTHCARE INSURANCE
3 COMPANY, a Connecticut corporation; UNITED
4 HEALTH CARE SERVICES INC., dba
5 UNITEDHEALTHCARE, a Minnesota
6 corporation; UMR, INC., dba UNITED
7 MEDICAL RESOURCES, a Delaware
8 corporation; SIERRA HEALTH AND LIFE
9 INSURANCE COMPANY, INC., a Nevada
10 corporation; HEALTH PLAN OF NEVADA,
11 INC., a Nevada corporation,

12 Defendants.

13 Defendants UnitedHealthcare Insurance Company; United HealthCare Services, Inc.;
14 UMR, Inc.; Sierra Health and Life Insurance Company, Inc.; and Health Plan of Nevada, Inc.
15 (collectively "Defendants") Motion in Limine to exclude evidence or argument regarding
16 Defendants' corporate profits (the "Motion") came before the Court on October 22, 2021. K. Lee
17 Blalack, II and Dimitri D. Portnoi of O'Melveny & Myers LLP, Colby L. Balkenbush of
18 Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, and Daniel F. Polsenberg of Lewis Roca
19 Rothgerber Christie LLP appeared on behalf of Defendants. Pat Lundvall, Kristen T. Gallagher
20 and Amanda M. Perach of McDonald Carano LLP and P. Kevin Leyendecker, John Zavitsanos,
21 Jason S. McManis, and Joseph Y. Ahmad of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing,
22 P.C. appeared on behalf of Plaintiffs Fremont Emergency Services (Mandavia), Ltd.; Team
23 Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); Crum, Stefanko and Jones, Ltd. dba
24 Ruby Crest Emergency Medicine ("Ruby Crest") (collectively the "Plaintiffs").

25 The Court, having considered Defendants' Motion, the Plaintiffs' Response, and the
26 argument of counsel at the hearing on this matter, and good cause appearing, finds and orders as
27 follows:

- 28 1. Plaintiffs may not enter evidence or make arguments regarding Defendants' corporate
profits, except to the extent that profits are tied to one of the out-of-network programs that
is at-issue in this case.

Accordingly,



ORDER

IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED IN PART AND DENIED IN PART** for the reasons stated on the record.

IT IS SO ORDERED.

November 2, 2021

Dated this 2nd day of November, 2021

Nancy L. Alf
Hon. Nancy L. Alf TW

Submitted by:

A5B 70F 3234 9B9FNancy Alf
District Court JudgeWEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLCAHMAD, ZAVITSANOS,
ANAIPAKOS, ALAVI & MENSING,
P.C/s/ Colby L. BalkenbushD. Lee Roberts, Jr., Esq.
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Bowman, Cindy S.

From: Jason McManis <jmcmanis@AZALAW.COM>
Sent: Tuesday, November 02, 2021 5:35 AM
To: Legendy, Philip E.; Blalack II, K. Lee; Portnoi, Dimitri D.
Cc: Balkenbush, Colby; Michael Killingsworth; TMH010; Pat Lundvall; Amanda Perach; Kristen T. Gallagher
Subject: Re: Pretrial Orders

This Message originated outside your organization.

You can sign my name to these.

From: Legendy, Philip E. <plegendy@omm.com>
Date: Monday, November 1, 2021 at 11:33 PM
To: Jason McManis <jmcmanis@AZALAW.COM>, Blalack II, K. Lee <lblalack@omm.com>, Portnoi, Dimitri D. <dportnoi@omm.com>
Cc: Balkenbush, Colby <CBalkenbush@wwhgd.com>, Michael Killingsworth <mkillingsworth@AZALAW.COM>, TMH010 <TMH010@azalaw.com>, Pat Lundvall <plundvall@mcdonaldcarano.com>, Amanda Perach <aperach@mcdonaldcarano.com>, Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>
Subject: RE: Pretrial Orders

Thanks Jason, this is fine. I am re-attaching the versions of Defendants' MILs 9, 17, 21, 22, 25, and 37 as to which we have reached agreement in our correspondence over the last few days. May we apply your signature to these orders?

As to MIL 26, it sounds like we will not have agreement.

From: Jason McManis <jmcmanis@AZALAW.COM>
Sent: Tuesday, November 2, 2021 1:53 AM
To: Legendy, Philip E. <plegendy@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Portnoi, Dimitri D. <dportnoi@omm.com>
Cc: Balkenbush, Colby <CBalkenbush@wwhgd.com>; Michael Killingsworth <mkillingsworth@AZALAW.COM>; TMH010 <TMH010@azalaw.com>; Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>
Subject: Re: Pretrial Orders

[EXTERNAL MESSAGE]

Phil,

I think we're on the same page here. Wasn't my intent to carve out anything identified in your concerns below. I made a slight edit that I don't think will cause any heartburn. If you're good with this, you can sign my name.

Jason

From: Legendy, Philip E. <plegendy@omm.com>
Date: Monday, November 1, 2021 at 7:35 PM

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
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

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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.

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

**PLAINTIFFS' NOTICE OF
DEPOSITION
DESIGNATIONS**

UNITEDHEALTH GROUP, INC., a Delaware corporation; 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; OXFORD HEALTH PLANS, INC., a Delaware corporation; SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC., a Nevada corporation; SIERRA HEALTH-CARE OPTIONS, INC., a Nevada corporation; HEALTH PLAN OF NEVADA, INC., a Nevada corporation; DOES 1-10; ROE ENTITIES 11-20,

Defendants.

Plaintiffs Fremont Emergency Services (Mandavia), Ltd; Team Physicians of Nevada-Mandavia, P.C.; Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine (“the Health Care Providers”) hereby disclose the following deposition designations for witnesses who may be called by deposition. These designations are made subject to the Health Care Providers’ motions in limine and responses to Defendants’ motions in limine, and are not a waiver of any argument made therein. The Health Care Providers reserve the right to amend these designations pursuant to the Court’s rulings on any pretrial motions and in the course of trial:

Michael Bandomer – June 28, 2021 Deposition

BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER-COUNTERS
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12:13	13:4		178:8-15		
20:2	22:18		181:12		
23:7	24:4		182:19-183:19		
24:25	28:3	Vague and Ambiguous; Relevance	184:10-21		184:22-185:1
31:21	32:4	Hearsay; Prejudice Outweighs Probative Value	185:3-19		

BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
32:11	32:19	Vague and Ambiguous; Relevance; Foundation	185:21-185:11		185:21-187:18
32:22	32:23		190:13-20		190:21-191:8
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33:14	33:15		239:13-16		
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35:4	35:16	Relevance (MIL No. 29); Foundation; Hearsay; Compound	239:21-25		
35:24	36:2	Relevance (MIL No. 29); Foundation; Hearsay; Vague and Ambiguous	240:4		
36:9	36:9	Relevance (MIL No. 29); Foundation; Hearsay; Vague and Ambiguous	241:11-15	50.025	
36:11	36:12		241:20-25	50.025	
36:14	36:15		242:3-16		
37:5	37:5		243:2-5		
37:20	37:21		243:10-11		
38:1	39:21		243:13-19		
40:14	40:25	Vague and Ambiguous	243:21		
41:4	42:1	Vague and Ambiguous; Foundation; Calls for a legal conclusion	243:12-244:1		
42:24	43:1	Vague and Ambiguous; Foundation; Calls for a legal conclusion	244:3-9	MIL; Balance Billing	
48:8	50:9	Foundation; Relevance;	244:13	MIL; Balance Billing	

BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
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63:19	64:20	Vague and Ambiguous; Hearsay	244:22-245:8	MIL; Balance Billing	
65:1	75:17	Foundation; Hearsay; Attorney Colloquy	245:10-14	50.025	
78:14	80:25	Vague and Ambiguous; Foundation; Relevance (MIL No. 32)	245:16-22	50.025	
88:17	89:17	Foundation; Compound; Relevance (MIL No. 14)	245:24-246:5	50.025	
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129:14	129:16	Vague and Ambiguous; Calls for Speculation; Calls for legal conclusion			
129:20	129:21	Vague and Ambiguous; Calls for Speculation; Calls for legal conclusion			
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Jolene Bradley – May 7, 2021 Deposition

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63:18 (... "who is..")	64:2
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Jolene Bradley – June 30, 2021 Deposition

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24:16	24:21		209:5		
24:23	32:13	Lacks foundation	209:7-9	50.025	
34:20	44:19	Lacks foundation, Vague and ambiguous	209:14-22	50.025	

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53:22	56:10	Incomplete designation, Lacks foundation	213:7	Exceeds scope of direct	
65:16	69:25	Incomplete designation, Attorney colloquy	213:9-10	Exceeds scope of direct; Objection on the Record; Calls for Speculation, 50.25	
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158:17	161:6	MIL 30, Relevance, Lacks foundation	213:22-23	Exceeds scope of direct; Calls for Speculation, 50.25	
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			219:24-220:1	Exceeds scope of direct; Objection on the Record; Calls for Speculation, 50.25; Inadmissible	

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			225:19-226:20	Exceeds scope of direct; Objection on the Record; Inadmissible Lay Opinion, 50.265	
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Lisa Dealy - May 6, 2021 Deposition

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Greg Dosedel - May 26, 2021 Deposition

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48:21	49:23	irrelevant; Ps MIL 3	35:3-20		
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Mark Edwards, June 15, 2021 Deposition

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43:18	43:23	Relevance, Lacks foundation, Prejudice outweighs probative	282:24-25		
44:7	44:15	Relevance, Lacks foundation, Prejudice outweighs probative	285:25-286:2		
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53:25	53:25	Relevance	346:18-20		
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58:18	59:17	Relevance	364:23-25	L (50.115) Mischaracter izes testimony; Leading	
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60:5	60:5	Lacks foundation	366:21-24	50.025 Calls for Speculation; Lack of Foundation	
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67:2	68:2	Incomplete designation, Relevance	370:1-11	50.025 Calls for Speculation; Lack of Foundation	
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78:7	78:11	Lacks foundation, Calls for a legal conclusion	379:14-21		
78:23	79:6	Relevance, Asked and answered	379:25-380:6		
79:9	79:9	Relevance, Asked and answered	380:8-11		
81:7	81:25		380:21-381:3	50.025 Calls for Speculation; Lack of Foundation; I/O - Incomplete hypothetical, Leading	
82:8	82:16	Lacks foundation, Relevance, Prejudice outweighs probative	381:10-17	50.025 Calls for Speculation; Lack of Foundation; I/O - Incomplete hypothetical, Leading	
82:19	82:19	Lacks foundation, Relevance, Prejudice	381:21-382:1	50.025 Calls for Speculation;	

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82:21	83:11	Relevance, Prejudice outweighs probative	382:4-5	50.025 Calls for Speculation; Lack of Foundation	
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157:14	158:14
158:19	158:20 (“be explained.”)
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159:23	160:4
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160:18	160:23
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177:17	178:6
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178:19 (“Let’s look...”)	179:16
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184:4	184:7
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188:12	188:14 (“calculate it.”)
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36:1	36:3
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96:24	97:1
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204:11 beginnin g at "And"	205:16		Foundation; Calls for speculation	
208:1	208:14		Foundation; Calls for speculation	
208:18	209:5		Foundation; Calls for speculation	
209:10	209:13		Foundation; Calls for speculation	
209:15	209:21		Foundation; Calls for speculation	
211:4	211:6			
211:10	212:2			
213:12	213:12			
213:17	214:15		Vague and Ambiguous; Relevance (MIL No. 14)	
214:19	215:4		Asked and Answered; Relevance (MIL No. 14)	
215:9	216:12		Relevance (MIL No. 14)	
216:15	216:15			
216:20	217:2			
217:12	217:12			
217:23	218:1			
219:1	219:4			
219:12	219:17			
219:25	220:9	220:10-220:24	Relevance (MIL No. 14)	
222:4	222:17	221:2-221:5	Relevance (MIL No. 14)	
223:7	223:11		Relevance (MIL No. 14); Vague and Ambiguous	