

Case Nos. 85525 & 85656

In the Supreme Court of Nevada

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

Appellants,

vs.

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

Respondents.

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Case No. 85525

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

Petitioners,

vs.

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

Respondents,

vs.

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

Real Parties in Interest.

Case No. 85656

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CERTIFICATE OF SERVICE

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

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/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

1 of bill charge?

2 A That seems generally correct.

3 Q And for the claims in dispute submitted by Ruby Crest, did
4 you find that the Data iSight claims were allowed at about 43.1 percent
5 of bill charge?

6 A That -- that seems correct.

7 Q And for the claims in dispute submitted Team Physicians, did
8 you find that the Data iSight claims were allowed at about 40.2 percent
9 of bill charge?

10 A That also seems generally correct.

11 Q So if my math is right, on average, the claims that were
12 reimbursed using the Data iSight tool were allowed at about 40.5
13 percent. Does that number ring a bell to you based on your analysis of
14 the claims?

15 A I was about to say 38 percent, so 40 is not too far off of that.

16 Q Now, do you recall then that the -- you did a similar analysis,
17 as you noted, for claims that were reimbursed using something other
18 than Data iSight?

19 A Yes.

20 Q And do you remember determining that on average, for the
21 claims that were reimbursed using some basis other than Data iSight,
22 that the percentage allowed was about 29 percent?

23 A I'm hesitating because are we looking at what I concluded in
24 my first report or what that number would be here?

25 Q Well, sir, I'm looking at the findings that you provided to

1 counsel that were provided to me on Sunday night, which is entitled
2 "Leathers Report, Exhibit 4 for trial". Does that ring a bell?

3 A It does. And what does not ring a bell is the remainder. I
4 thought that the -- my recollection was the remainder had been resolved
5 at a discount closer to 22 percent.

6 Q Okay. I think that was the number you had in your first
7 report before all those claims were removed. Is it still -- do you think it
8 was 22 percent even after all those claims were removed?

9 A Yes. I don't -- I don't recall that that amount went up as a
10 result of those claims being removed.

11 Q Okay. But I guess the key takeaway from the analysis, sir, is
12 that for a claim that was reimbursed using the Data iSight tool as
13 compared to a claim that was reimbursed not using the Data iSight tool,
14 your analysis found that the Data iSight claim reimbursed had almost
15 twice, according to you, the allowed amount of the non-Data iSight?

16 A Yes, that's correct.

17 Q So Data iSight paid significantly more in reimbursement than
18 non-Data?

19 A On average, it was approximately twice. But it is fairly
20 inconsistent, as we noticed. For example, some of the examples we
21 looked at yesterday, we had two Data iSight claims for the same facility
22 on the same date, the same service, and the numbers were slightly
23 different.

24 Q Now, let's talk about MultiPlan real quick. And sir, I think you
25 recall, based on your analysis, that you said you've -- you said that you

1 had familiarity with the industry. Do you recall that you know that
2 MultiPlan is a large company with offices across the country with about
3 700 clients?

4 A Yes.

5 Q And you understand that those 700 clients are not all
6 affiliated with United or one of the defendants in this case, right?

7 A Correct.

8 Q And you understand that MultiPlan provides services to
9 health insurers and self-funded health plans other than my client?

10 A Yes.

11 Q In preparing your affirmative report in this case, you
12 reviewed deposition testimony from MultiPlan witnesses, correct?

13 A Yes.

14 Q And do you recall that those witnesses said MultiPlan
15 provides the same services to my client's competitors as they do to my
16 clients?

17 A Yes.

18 Q And you know that the Data iSight tool, which we've just
19 been talking about, is it a broadly known and used tool in the healthcare
20 community?

21 A That's what MultiPlan claims.

22 Q And in fact, based on your review, that's what you told me in
23 your deposition in this case.

24 A Yeah. I was just acknowledging that. That's correct.

25 Q And you understand, sir, that not just the health insurers

1 utilize the Data iSight tool. Self-insured or self-funded health plans, the
2 actual health plans themselves, the sponsors also use the Data iSight?

3 A Yes, that's what MultiPlan claims.

4 Q Okay. All right, let's go back to talking to you -- what I asked
5 you about earlier. When I asked you about determining the rate at which
6 other health insurers, not my clients, reimbursed out-of-network claims
7 submitted by the TeamHealth Plaintiffs. I believe you said earlier today
8 that you reviewed that data and had some general sense of what the rate
9 was, or number was, but you hadn't written it down or put it in your
10 report. Do you remember that testimony?

11 A Yes.

12 Q Okay. Now, I notice in the materials you just recently
13 prepared in last week or so were sent to me on Sunday. I have
14 something I want to show you. Tell me if I'm looking at this correctly.

15 MR. BLALACK: Let me ask. Shane, can I have Defendant's
16 Exhibit 5412? Do not publish it, just bring it up, please. That's Exhibit
17 5412.

18 MR. GODFREY: What do you mean don't publish it?

19 MR. BLALACK: Oh, I don't want it shown to the jury yet
20 because it's not in evidence.

21 MR. GODFREY: [Indiscernible]

22 BY MR. BLALACK:

23 Q Okay, so. Now, Mr. Leathers, I'm going to ask you this.
24 Would you take a look at Defendant's Exhibit 5412, and tell me if you
25 recognize it?

1 MR. GODFREY: [Indiscernible]

2 MR. BLALACK: Oh, I'm sorry. My apologies. I thought he
3 was looking at it electronically.

4 BY MR. BLALACK:

5 Q So could you bring Defendant's Exhibit 5412 out? It should
6 be in the exhibit binder you have. Yes, sir. My apologies.

7 A No, no. No problem at all. No problem at all, sir.

8 MR. BLALACK: You weren't looking at it; I'm over there
9 staring at the wall.

10 MR. LEYENDECKER: Mr. Blalack, is this the Mizenko resume?

11 MR. BLALACK: No, sir. This is one of the things you sent
12 me.

13 MR. LEYENDECKER: Oh, okay. You swapped 5412, then?
14 No, that's 5312.

15 MR. BLALACK: Because it's a file?

16 MR. GODFREY: Right.

17 MR. BLALACK: Okay.

18 BY MR. BLALACK:

19 Q Sir, do you have -- do you remember preparing work papers
20 in preparing to give testimony today?

21 A Yes.

22 Q Okay. Do you remember preparing a spreadsheet titled,
23 "Summary of Other Payer Bill Allowed Paid" prior to the file, FESM 01548
24 UMC Nevada EV Market 2012?

25 A No.

1 Q That file doesn't ring a bell to you?

2 A No. I know that after I produced my first report, and I believe
3 prior to my deposition, I produced just my entire work file that included a
4 number of miscellaneous files. So I just don't remember what that
5 particular one is compared to others.

6 Q Okay. Okay. All right. Well, let me try to describe it and see
7 if it rings a bell.

8 A Okay.

9 Q And if it doesn't, we'll do it the long way. So sir, this is an
10 analysis of data that was produced to us by Mr. Leyendecker, but I
11 understand it came from you, that shows your analysis of claims data
12 regarding the loss paid to the TeamHealth Plaintiffs for other health
13 insurers beside the Defendant. So let me start with that question. Do
14 you remember preparing an analysis in a spreadsheet like that?

15 A No. That's why I just testified earlier I did not recall putting a
16 pen to paper to that.

17 Q Okay. Let's do this.

18 MR. BLALACK: Shane, press copy of the face of this page so
19 I can show him and just see if -- my apologies, Your Honor. Can I
20 approach, Your Honor?

21 THE COURT: You may.

22 BY MR. BLALACK:

23 Q Sir, just take a look. This is the first page of a file produced
24 to us by the TeamHealth plaintiff's counsel. Could you tell me if you
25 recognize that?

1 A This appears to be a -- yeah, this is a -- I believe this is the
2 market file or what I've kind of described as the market file that
3 represents the sum of charges and allowed amounts for other United
4 providers.

5 Q Do you see the name of the file that's referenced there?

6 A Yes.

7 Q What's the Bates number of the first?

8 A FESM 001548.

9 Q Sir, I'll represent to you that that is the Bates number for a
10 document or data file produced by the Plaintiffs in this case; not the
11 Defendant. So do you have some reason to think that that is a file from
12 the Defendant?

13 A Yes.

14 Q All right. Well, we'll take that up. Okay. No, we see that
15 there's a reference -- no, strike that. Do you see there is a reference to
16 bill charges on that file of \$225,395,776?

17 MR. LEYENDECKER: Can we approach, Your Honor?

18 THE COURT: You may.

19 [Sidebar at 2:32 p.m., ending at 2:33 p.m., not transcribed]

20 BY MR. BLALACK:

21 Q Sir, I'm going to hand this back to you. And I'm just to tab
22 this off with [indiscernible]. So I just -- I understand for you, that this
23 page of Defendants' Exhibit 5412, you believe is not --

24 MR. BLALACK: Strike that.

25 BY MR. BLALACK:

1 Q You do not believe this is an analysis of the allowed amounts
2 relative to charges paid by health insurers other than the Defendants to
3 the TeamHealth Fund? You do not believe it is [indiscernible]?

4 A I'm sorry. Can you repeat the question one more time?

5 Q Sure. And if counsel will let me try again. You do not
6 believe that the information described in that exhibit, which is Defense
7 Exhibit 5412, is representing an analysis of the allowed amount paid by
8 health insurance, other than my client, to the TeamHealth Plaintiffs, as an
9 out-of-network provider?

10 A Correct.

11 Q Okay. But just until we have the numbers logged down, the
12 amount of billed charges reflected on that exhibit, is \$225,395,776.

13 A Okay.

14 Q Is that right?

15 A Well, I mean -- I mean, that's the number that's on this piece
16 of paper.

17 Q Just to be clear, sir, I didn't write that piece of paper, I got it
18 from you all. I believe it got it from you. Now you're telling me
19 something other than I'm describing, I'm taking it as gospel. I'm just
20 trying to understand the numbers which came from your file. So my
21 question is, did your analysis on that document tabulate billed charges,
22 as \$225,395.776?

23 A That -- that's the sum that we created, yes.

24 Q For the Team -- all of the TeamHealth Plaintiffs, all three of
25 them?

1 A Yes. I'm just not -- I'm trying to -- I'm trying to recall if this is
2 a summary schedule, or if this is just a snippet of a larger document that
3 was printed out?

4 Q That is the summary, what --

5 A This represents --

6 Q -- I recall --

7 A -- one tab in the file.

8 Q Which you call a pivot table for a file?

9 A Okay. Well, this wouldn't be a pivot table, but this is -- I think
10 -- I think what you're trying to tell me is this is just one tab in an Excel
11 file?

12 A Correct.

13 Q Okay. Which I've never seen until I got it from you on
14 Sunday --

15 A Okay.

16 Q -- and it came from an email from you.

17 A Okay.

18 Q Does this ring a bell?

19 A No. I certainly remember sending all the -- my supporting
20 documentation, after my report, so I think you've cleared that up for me
21 now.

22 Q Okay. Now from being reminded that you sent it, and
23 looking at it, do you recognize it's something you created, right?

24 A Yes. Or somebody at my direction.

25 Q And by "somebody" you mean somebody working in

1 [indiscernible]?

2 A Yes, sir.

3 Q Okay. So just to summarize, before we put this up, one more
4 try. The full bill charges is reflected on that document, the three
5 TeamHealth plan has \$225,395,766?

6 A That's correct.

7 Q And the allowed amount for those same charges, for the
8 three TeamHealth Claimant, is \$88,270,204; is that right?

9 A Yes.

10 Q And just so my math again is correct, that would be the
11 allowed amount you'd have on that page would reflect 39.16 percent of
12 those charges would be the allowed amount; is that right?

13 A The math seems correct. It's less than 50 percent.

14 [Counsel confer]

15 MR. BLALACK: One more, Your Honor, then I think I'm
16 finished.

17 [Pause]

18 BY MR. BLALACK:

19 Q Okay. The last few questions, sir now, and then I'm going to
20 give you to Mr. Leyendecker. So when you reviewed Mr. Mizenko, you
21 reviewed his report; is that right?

22 A Yes, sir, I did.

23 Q Did you review his deposition as well?

24 A No.

25 Q Do you remember seeing in his report a statement where he

1 said, quote: "FAIR Health has not determined, developed or established
2 an appropriate fee, or reimbursement level for any procedure or service,
3 while FAIR Health's license is based on FAIR'S data that some insurers
4 may use to help inform their decision on out-of-network reimbursement.
5 FAIR Health has set UCR, or out-of-network reimbursement rates for
6 insurers. These decisions are made solely by insurers and health claims.

7 Do you remember seeing a statement from Mr. Mizenko to
8 that effect?

9 A Yes.

10 Q And prior to reading that was that your understanding, as
11 well?

12 A I don't know that I have an understanding one way or
13 another, before I look at Mr. Mizenko's report, because that's where we
14 got the FAIR Health information from. I read that statement as a fairly
15 standard statement that would be made by a survey company, to the
16 readers and the users of its information.

17 Q Okay. But you understand that FAIR Health does not
18 determine appropriate reimbursement levels for out-of-network
19 emergency services?

20 A That's what they state, yes.

21 Q And you understand that FAIR Health doesn't report is
22 benchmark, or its website, or his report of Alexander Mizenko to
23 establish the usual customary or reasonable charge, correct?

24 A I don't think it affirmatively says what it is. It clearly said --
25 you know, I read that as clearly recognizing that users of the data may

1 utilize that for purposes of determining usual and customary charges?

2 Q Right. In other words, users can license the data and decided
3 to use it however they wish, right?

4 A Correct.

5 Q But FAIR Health does not hold itself out as establishing a
6 market that hadn't be a UCR definition array, correct?

7 A That's correct, that's what they say.

8 Q And you understand that Mr. Mizenko noted in his report that
9 FAIR Health has not determined the reasonable value of out-of-network
10 services?

11 A That's what he stated, yes.

12 Q And you have no reason, based on your investigation to
13 contest or dispute FAIR Health's statement on that form, correct?

14 A Correct.

15 MR. BLALACK: Okay. I think I'll pass the witness, Your
16 Honor. Thank you, Mr. Leathers, I appreciate it.

17 THE WITNESS: Thank you, sir. I appreciate your courtesy.

18 THE COURT: Redirect, please.

19 MR. LEYENDECKER: Thank you, Your Honor.

20 [Counsel confer]

21 REDIRECT EXAMINATION

22 BY MR. LEYENDECKER:

23 Q Well, Mr. Leathers, I've got news for you, I got me another
24 itch, okay? And I'd like to see if you can help me stretch it. We were
25 talking -- you were talking --

1 MR. LEYENDECKER: Mr. Blalack, where's the thick black
2 binder? Is the black binder around?

3 BY MR. LEYENDECKER:

4 Q You were commenting on the -- we're just talking about out-
5 of-network here, right, sir?

6 A Yes.

7 Q You were commenting on what you called a before period,
8 right? And then we had the claim period, right?

9 A Correct.

10 Q All right. Do you remember, and I know it's not really a
11 memory test here, but do you remember, you know, the big picture,
12 what the claim period is, brass tacks?

13 A Yes.

14 Q Go ahead and tell us?

15 A It is generally July 2017 through January 2020.

16 Q Okay. So the before period would be sometime before the
17 summer of 2017?

18 A That's correct.

19 Q Okay. Now you, I thought were making some commentary
20 about documents you saw, relating to what gave you the point of view
21 how things are being reimbursed?

22 A That's correct.

23 Q Tell us -- tell us just a bit more about that?

24 A Well, so there were really two types of documents, they were
25 documents that were back 2016, and then there were also documents

1 that were after, call it the summer of 2016, that talked about what
2 happened in 2016.

3 Q Okay.

4 A And so the -- and those two documents corroborated one
5 another, in terms of how out-of-network charges were processed, prior
6 to the claims at issue in this case.

7 Q Okay. And based on that investigation how were out-of-
8 network claims processed in the before period?

9 A They were processed and paid based on billed charges.

10 Q Okay. Billed charges, FAIR Health, UCR, what year?

11 A Well, there were billed charges, and when they were
12 processed using UCR the documents state that they would utilize FAIR
13 Health, when the language included UCR they would use FAIR Health.

14 MR. LEYENDECKER: Michelle, could I get Exhibit Number 25,
15 please? Plaintiff's Exhibit Number 25, and I'd like you to go to page 2.
16 First of all let me take you back to page 1, Michelle.

17 BY MR. LEYENDECKER:

18 Q Mr. Leathers, is this United Healthcare 2016, out-of-network
19 programs, one of the kinds of documents you described to Mr. Blalack,
20 about things were paid in the before period?

21 A Yes, sir.

22 MR. LEYENDECKER: All right. Michelle, can I get over to
23 page 2, please, and I would like you to highlight, "usual and customary"
24 this whole enchilada right here, okay?

25 BY MR. LEYENDECKER:

1 Q Usual and customary receivable, UCR, historically known
2 R&C, reasonable, customary, percentile values provided by FAIR Health.
3 Is that what you're talking about, Mr. Leathers?

4 A Yes, sir.

5 MR. LEYENDECKER: And over here in the far right-hand
6 column, can I get this highlighted in yellow, Michelle.

7 BY MR. LEYENDECKER:

8 Q ASO, it's an available option clients, instead of MNRP,
9 majority of ASO clients still use this reimbursement, this out-of-network
10 reimbursement methodology. What does that say to you when you ran
11 across documents like this, and others like it?

12 A Well, that both ASO and fully insured clients use the usual
13 and customary methodology.

14 Q And he before period?

15 A Yes, sir.

16 Q Okay. Now was this the only document you saw that has this
17 concept in the before period?

18 A No, sir. I mean, there were -- there were a bunch of
19 documents.

20 Q And now you said something about documents in the claims'
21 period, and you understand the claims' period is the period in which my
22 clients are alleging wrongful, unlawful behavior took place to drive the
23 prices down?

24 A Yes.

25 Q Okay. Now what documents did you see --

1 MR. LEYENDECKER: You can take that down, Michelle.

2 BY MR. LEYENDECKER:

3 Q What documents did you see in the claims' period, that you
4 represented a few minutes ago, by commenting on, or speaking to the
5 prior before period?

6 A So these would be documents --

7 Q Just in general description?

8 A In general they would be documents that would say, we want
9 to process these claims using this shared savings program, or this
10 program, for these claims that we used to reimburse at full-billed
11 charges.

12 MR. LEYENDECKER: Okay. Michelle, I'd like you to bring up
13 for us, Exhibit Number 368, that's in, over to page 7. And I would like
14 you to highlight -- here I'm under, "existing ASO clients." I'm looking for,
15 let me get my bearings. Oh, right here. "At a minimum, meet with
16 clients that have not adopted the program and/or remain on R&C."

17 BY MR. LEYENDECKER:

18 Q And, Mr. Leathers, what's R&C?

19 A Reasonable and customary.

20 Q Okay. Class is not obligated to change, but the goal is to get
21 class off R&C for health. Is this the other document you were talking
22 about, Mr. Leathers, that you saw in your investigation that in a claims
23 period where we're saying unlawful stuff happened, the firm said the
24 prior period was bill charges, UCR or FAIR Health?

25 A Yes, sir.

1 Q Okay. Now remember you answered some questions about -
2 -

3 MR. LEYENDECKER: Before I go there, Your Honor, may we
4 approach real quick?

5 THE COURT: You may.

6 [Sidebar at 2:49:01 p.m., ending at 2:50:58 p.m., not transcribed]

7 MR. LEYENDECKER: May I please have the Elmo, Your
8 Honor?

9 THE COURT: You can ask Brynn directly.

10 MR. LEYENDECKER: May I please have the Elmo, ma'am?

11 THE COURT RECORDER: Yes.

12 MR. LEYENDECKER: Thank you.

13 BY MR. LEYENDECKER:

14 Q Okay. I think I can figure this out. I'm showing you, Mister --
15 let me get us reoriented. I want to touch on this before period you and I
16 are talking about, and I want to follow along on Mr. Blalack's questions
17 about his examination of Mr. Bristow, as a representative, a corporate
18 representative for two of the parties in the case.

19 A Okay.

20 Q Do you remember there were questions about, well, do you
21 recall reading that they only got -- in the before period they were only
22 getting bill charges about six percent of the time, that's the discussion I
23 want to talk to you about, okay?

24 A Okay. I do recall that.

25 Q Okay. So this is Defendant's Exhibit 5177, and I'm just going

1 to show you one page, but I'm going to zoom in. I'll tell you, these are
2 Mr. Bristow's notes, right here; 5177, pages 3. "United Defendant's
3 payments in the pre-dispute period. Do you see that 1115 through June
4 of '17, that's definitely in the before period; right Mr. Leathers?

5 A Yes, sir, it is.

6 Q Okay. What's the very first bullet say?

7 A "97 percent of claims for United pay at 90 to 100 percent of
8 bill charges.

9 Q Okay. Now you remember Mr. Blalack asked you about the 6
10 percent, 7 percent?

11 A Yes.

12 Q Okay. If we look a little closer, here's a UAC." Do you
13 understand that's one of the Defendants?

14 A Yes.

15 Q It says one of the Defendant's 938 claims, 62 claims at 100
16 percent, okay? So what's a ballpark, what's 62 of 9 and 38, is that about
17 6, 7 percent?

18 A It is.

19 Q Okay. But were 97 percent of the claims for United paid it,
20 and a before period --

21 A Well, 9 --

22 Q -- out-of-network?

23 A 99 percent of those were paid between 90 and a 100 percent
24 of billed charges.

25 Q 97? No, okay, that's to the 938, right? Big picture, 97 percent

1 of paid at 9 to 100, fine. So you're saying 99 -- let's just call it 97 to 99
2 percent; 97 to 99 --

3 MR. LEYENDECKER: Can you take that down, Gregg?

4 BY MR. LEYENDECKER:

5 Q 97 to 99 percent of the claims in the before period, the out-of-
6 network claims, looking at two or three claims, were paid between 90
7 and 100 percent of billed charges. What does that say to you about what
8 -- that's consistent, or inconsistent with the way the Defendants pay
9 before the clients are saying they started engaging in improper conduct?

10 A In alliance with what they were doing before in the
11 documents, and statements with regards to paying billed charges.

12 Q Okay.

13 A Or paying a 100 percent, or close to 100 percent of billed
14 charges.

15 Q Mr. Blalack asked you a question, he spent a few minutes
16 probing your memory, on well, how do you know that United defendants
17 knew this or knew that, you didn't have an obligation to do what we
18 understand they were doing. Now to be fair, it doesn't say 100 percent
19 of a billed charges; does it, sir?

20 A No, sir.

21 Q But 97 to 99 percent of the time the Defendant pays 90 to 100
22 percent of billed charge, right?

23 A Yes.

24 Q Okay. So on the question, what the defendants know or
25 don't know, let ask Michelle to pull up Exhibit 147, at 24, that's in

1 evidence.

2 MR. LEYENDECKER: And, Michelle, I want to be careful what
3 we highlight here. I just want you to highlight this piece right here,
4 okay? Keep the top piece out of view, if you would, please. Right there.
5 And then what I'd like you to highlight in yellow, "savings obtained
6 means the amount that would have been payable to a Healthcare
7 provider."

8 BY MR. LEYENDECKER:

9 Q Right? Including amounts payable by both the participant
10 and the plan, and you understand that's allowed, right sir?

11 A Yes, sir.

12 Q If, right here, if no discount were available. Now, what do
13 you take that to mean, Mr. Leathers.

14 A Billed charges.

15 Q Whose document is this?

16 A This is a United document.

17 Q Okay. So they're taking their fee off the billed charge, but
18 they're coming in here and telling the ladies and gentlemen of the jury,
19 that the Plaintiffs can't ask for the billed charged, but they can certainly
20 make a big enough billed charge. Is that how you read this?

21 A Yes, sir.

22 Q When they the amount that would have been payable to a
23 healthcare provider, you take that again, to mean well?

24 A Billed charges.

25 Q Were you here, I forget the witness, I think it's Ms. Paradise,

1 maybe it was Mr. Haben. Mr. Haben, do you recall when he said -- I
2 don't know what he said. Do you recall his testimony I asked for?

3 A You know, I didn't listen to all of what Mr. Haben has said,
4 although I marked the same response in his deposition.

5 Q Is this the only ASO pack agreement that you saw, that had
6 this language in?

7 A No, sir.

8 Q Okay. Do you see the same language about the amount that
9 would have been payable if no discount were available? How many
10 times do you think that you saw that in the documents?

11 A I saw probably -- I don't know 3 or 4, actual agreements
12 between companies. And then there were probably another -- I mean,
13 it's hard to count, you know, number of documents, 10, 20 documents
14 that had the same sort of language summarizing this amount that would
15 have been paid if no discount were available. Most of those documents
16 would say bill charges. So it allows me to kind of confirm what the
17 interpretation of this document is.

18 Q Okay.

19 MR. LEYENDECKER: Michelle, you can take that down,
20 please.

21 BY MR. LEYENDECKER:

22 Q So I understand you're not a PhD economist?

23 A No, sir.

24 Q Did I hear you say he's got clients that look to you for kind of
25 economist style advice?

1 A Sure. People call me an economist. It's just a real
2 economist, a Ph.D. economist gets very upset when somebody that
3 doesn't have their Ph.D. call themselves an economist.

4 Q Understood. From an economic standpoint as an expert in
5 your 20, 30 years of experience, if you were trying to figure out what is
6 the correct measure of damages and you got allegations where there's a
7 period before there's a certain payment made, and then a period when
8 there's an allegation of unlawful activity going on, which of those two
9 periods do you think is the one that should be looked at from an
10 economic standpoint to assess what the damages should look like?

11 A You would look at the before period. And specifically, from
12 an economic perspective, if you were to look at articles and treatises
13 around economic so calculated damages, there's actually a -- an
14 accepted approach called the before and after approach, which is what
15 you were describing.

16 Q So for example, if in this time period they're paying the
17 Plaintiffs 246 dollars versus the 528 they paid all the other doctors
18 treating their insurance, as between the 528 and this 246, which they're
19 paying, and what we're calling the bad behavior period, and the 90 to
20 100 percent in charges, which were paid 97 to 99 percent of the time,
21 which do you think as an economist is the appropriate measure of
22 damages?

23 A Well, again, from an economic perspective, you look at what
24 was done before the bad acts, which would have been in the period prior
25 to July of 2017.

1 Q This 90 to 100 percent billed charge?

2 A Yes, sir.

3 Q Okay. So we have the same 246 and this 528. Now, that's in
4 the period where the alleged unlawful activity's going on, right, sir?

5 A Yes.

6 Q Do you recall what Mr. Murphy testified to and asked about
7 why or what happens when the various groups affiliated with
8 TeamHealth get paid a discount on the billed charge? Do you remember
9 that testimony?

10 A I do.

11 Q Okay. He says something like -- and I -- and this just -- I
12 didn't write them down, but I had -- it struck me. He said something like,
13 well, we'll take a discount, right? We believe we're owed the full bill
14 charge, but if you're going to pay me a reasonable discount and it's not
15 that many claims, it's just not economical to pursue it. Do you
16 remember that comment?

17 A Yes.

18 Q What do you think about that concept?

19 A Well, I think that's a logical concept. And I think that it is --
20 there's also other consideration of, you know, if you're going to accept
21 something that's a little bit below 100 percent, you may get assuredness
22 of payments or things to that nature.

23 Q How about the cost of coming down here when you've been
24 treated to 246 when all your competitors pay more than two times that?
25 What about the cost to do that? Should that be factored in from an

1 economic standpoint?

2 A Well, it's called --

3 Q I'm not talking damages. I'm just talking economic
4 standpoint here.

5 A From an economic standpoint, it's called --

6 MR. BLALACK: Objection. Foundation. I have no problem
7 with damages but nothing beyond that.

8 THE COURT: Let's lay a better foundation.

9 BY MR. LEYENDECKER:

10 Q Well, you know, what? I'm going to move on. We want to
11 get you off the stand. Let me ask you a certain question. Do you think
12 it's fair that the Defendants paid us 246 in claims when they paid
13 everybody else in Clark County and around the state more than two
14 times that over this two and a half, three-year claim period? Does that
15 seem fair to you?

16 MR. BLALACK: Objection to the form of the question. He's
17 an expert here to offer an opinion on reasonable value.

18 THE COURT: Overruled.

19 THE WITNESS: From an economic standpoint, there is no
20 evidence to support the difference between those two numbers and to
21 support a reasonable -- a fair basis for that lower amount.

22 BY MR. LEYENDECKER:

23 Q Does it at a minimum put a question in your mind about
24 what the Defendant's had as a motive and what they were doing with my
25 clients during this period?

1 MR. BLALACK: Objection to the form of the opinion. And
2 also, beyond the scope of his expert report and disclosure.

3 THE COURT: Overruled.

4 THE WITNESS: For the answer from a personal perspective,
5 from an economic perspective it suggests particular when you compare
6 to other savings programs that there is something else going on that
7 results in that 246 number.

8 BY MR. LEYENDECKER:

9 Q Do you remember reading documents and testimony about
10 the whole Yale study and the behind the names. Go ahead and name
11 them. You remember all that?

12 A I have a recollection of that.

13 Q So that changed the public narrative in 1923.

14 MR. BLALACK: Objection. Beyond the scope of his expert
15 report.

16 THE COURT: Overruled.

17 THE WITNESS: Is background information that aligned to the
18 actual actions for the -- essentially, they -- a narrative to say we need to
19 change what's happening in the marketplace, and then we'll reduce the
20 amounts that's being paid. And that aligns to what you actually saw
21 during the claims period of we need to get these off of UCR. We need to
22 lower the amount. For those items that were previously paid, they'll
23 charge us.

24 BY MR. LEYENDECKER:

25 Q Do you remember which of the two physician services group

1 she is talking about? Do you know who is working with this Yale
2 professor to specifically identify that study in the New York Times? Do
3 you remember one of those two?

4 A No, sir. I do not.

5 Q If I told you it was TeamHealth, would that surprise you?
6 Would that be consistent with any of this what's going on here?

7 A It would be. Yes, sir.

8 Q Okay.

9 MR. LEYENDECKER: Michelle, I would like you to bring up
10 Defendants 54.24 at 81.

11 [Pause]

12 BY MR. LEYENDECKER:

13 Q Now, are you on there?

14 A Yeah.

15 Q Okay. Now, what we're looking at here, Mr. Leathers, is one
16 of those histograms that Mr. Mizenko, the FAIR Health gentleman, put
17 together for the Defense. Do you recognize that?

18 A I do.

19 Q Okay. And did you study that? Did you tell Mr. Bristow you
20 studied that before? I'm sorry, Mr. Blalack?

21 A Yes.

22 Q All right. And am I right that FAIR Health puts out their data
23 once in May and once in November each year?

24 A Correct.

25 Q And did Mr. Mizenko evaluate the Freemont charges, the

1 Ruby charges, and the Team Physician charges relative to FAIR Health in
2 those May and November periods in that time period?

3 A Yes, he did.

4 Q Okay. Now, did he look at all 11,653 claims like you did?

5 A No.

6 Q Okay. Let me have -- hold that thought. Let's make sure we
7 have our bearings. So this is one of the scattergrams for 99282. This is
8 for Team Physicians from 893 in May of 2018. You see that?

9 A Yes.

10 Q And what he's saying over here if I look down here in the
11 key -- you remember looking at these keys?

12 A I do.

13 Q 80 percentile, Freemont, 11 dollars, provider charge 323.

14 Now, if you would tell us what you remember about whether Mr.
15 Mizenko said this is an indication of the Plaintiffs' being egregious billers
16 and going over that 80th percentile.

17 A Well, I mean, he was -- he was illustrating through this
18 analysis that the provider's charges were greater than the 80th
19 percentile.

20 Q Okay. So we've got May of 2018, 99282, Team Physicians.
21 Let's go ahead and get the gentleman's name up here. Okay. Do you
22 know off hand -- just let me back up. I'm, you know, scratching my itch
23 here. He looked at -- was it 108? 36 each times three groups is 108?

24 A Yes.

25 Q 108. And did not count --

1 A He just didn't --

2 MR. LEYENDECKER: Michelle, and I want to look at Exhibit
3 5422, Michelle.

4 BY MR. LEYENDECKER:

5 Q I'll tell you, if you don't recognize this, this is Mr. Mizenko's
6 summary. And I want to highlight right up in here. Okay. You see here
7 he's talking about billed charges in relation to 80th percentile FAIR
8 Health? And for Team Physicians, he says, 1736 fell below, 1936 are at
9 or above, right?

10 A Right.

11 Q So he looked at 36 for Team, 36 for Ruby, and 36 for
12 Freemont?

13 A Sure.

14 Q 108 in total?

15 A Correct.

16 Q And how many did you look at? How many claims did you
17 look at to see whether we were over the Fair Health pay?

18 A Well, I looked at 11,500 -- well, actually, no. I looked at just
19 the Core CPT ones, which would be approximately 8,600 claims.

20 Q Okay. And when you look at it on a claim-by-claim basis
21 under Core CPTs for these 8,000-plus claims, about what percent did you
22 find were -- of those charges were over FAIR Health?

23 A Less than five percent.

24 Q Okay. Mr. Mizenko on Team Physicians looked at 36. One
25 period says 53 percent or above, you see that?

1 A Yes.

2 Q And overall, down here at the bottom under number four
3 says 35 of 108 are at or above, you see that?

4 A Yes.

5 Q So he's saying 32 percent of our charges are above
6 TeamHealth. Is that how you read this?

7 A Yes.

8 Q You found five on a claim-by-claim basis?

9 A Correct.

10 MR. LEYENDECKER: Okay. Can I get Exhibit 473, the
11 electronic version, please? Before we do that, can I go back to the Elmo
12 one time real quick, so everybody knows what we're talking about?

13 BY MR. LEYENDECKER:

14 Q TeamHealth, May of '18, 99282, this is one of the ones Mr.
15 Mizenko was saying we're over because our charges are 323 versus 311,
16 right?

17 A Right.

18 Q Okay. Did you study those, Mr. Leathers?

19 MR. LEYENDECKER: I'm sorry, I want to look at 542481. I
20 gave you the wrong number. Do you have that? I want to look at the
21 281s. I misread my note.

22 BY MR. LEYENDECKER:

23 Q Okay. This is 542480, CPT. This is also Team Physicians.
24 8197, provider charge 239. Now, since Mr. Mizenko is a purported
25 expert, do you think he might bother to check our file to see whether we

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1 actually have any 99 -- whether Team Physicians actually had any 99281s
2 before putting this report at the Defendant's request and saying we're
3 overbilling? Do you think that'd be a reasonable thing to do for an
4 expert?

5 A I would.

6 Q Okay. This is May 18. It's a 99281 over FAIR Health.

7 MR. LEYENDECKER: We're now going to go back to the
8 document camera because I want to look at the claim file.

9 BY MR. LEYENDECKER:

10 Q Mr. Leathers, did you do a little homework to see whether
11 Mr. Mizenko's theory held water?

12 A Yes.

13 Q What'd you find?

14 A It did not.

15 Q Did he include claims that he said were over in his sample of
16 36 for TeamHealth when there was no such claim in that period, not one
17 at all?

18 A That's my recollection. Yes.

19 MR. LEYENDECKER: Okay. Let's do this. Filter here for me
20 on Team Physicians and then go to the CPT column. Just open that for
21 me real quick and leave it where it is. Okay. Leave that right there
22 where it is.

23 BY MR. LEYENDECKER:

24 Q Mr. Leathers, you're pretty good at Excel, aren't you, sir?

25 A Yes.

1 Q What happens -- so what I've done here is I've filtered on all
2 the claims for Team Physicians, right, sir?

3 A Yes.

4 Q Okay. The entire period, Team Physicians. Tell the jury what
5 happens. When you click on that filter, what shows up, the filter or the
6 CPT? What would you see if you filtered all that?

7 A Well, you would expect to see a 99281 in that filter.

8 Q Can we assume that the computer program has correctly
9 identified all the available CPTs for Team Physicians through the entire
10 claim period when we click on that filter?

11 A Yes.

12 MR. LEYENDECKER: Jason, scroll down there and see if
13 we've got us a 99281.

14 BY MR. LEYENDECKER:

15 Q And now we're getting bigger, right, Mr. Leathers?

16 A Yes, sir.

17 Q No 99281, is there?

18 A No.

19 Q Do you know what junk science is?

20 A It's a --

21 Q Mr. Leathers, do you know what junk science is?

22 A It's a -- I guess an urban word for weak scientific study.

23 Q You're being polite, sir.

24 MR. LEYENDECKER: Let's see. Can I have -- can I get the
25 camera, please?

1 BY MR. LEYENDECKER:

2 Q Now, mind you, he counted -- he totaled -- of the 36 he
3 surveyed, he counted the one from May of 2018 as over, right?

4 A Right.

5 Q Let's see what he did for November. 99281, number 18, here
6 we go. All right. FAIR Health 80197, provider charge 239. What does it
7 say to you, Mr. Leathers, that the Defendants would engage FAIR Health
8 to come in here and put this kind of junk science before this jury to
9 suggest that we are cheating on our charges?

10 MR. BLALACK: I'll object to the form of that question as
11 argumentative. And it's also compound.

12 THE COURT: It's argumentative. Rephrase.

13 MR. LEYENDECKER: Thank you, Judge.

14 BY MR. LEYENDECKER:

15 Q What does it say to you, Mr. Leathers, about the reliability,
16 legitimacy, however you want to describe it? What does this say to you
17 about the Mizenko analysis?

18 A Well, to me, from a financial perspective, it illustrates a lack
19 of rigor because when you do the work, you can clearly see that the
20 numbers don't match up.

21 Q You're a whole lot more polite than I am. One last question.
22 Do you know whether their other expert, Mr. Deal, is relying on this
23 same analysis that Mr. Mizenko put together?

24 A Yes. He has a reference to it in his report.

25 MR. LEYENDECKER: Those are all the questions I have, Your

1 Honor.

2 THE COURT: Okay. Is there any recross?

3 MR. BLALACK: Yes, Your Honor.

4 THE COURT: Everybody good without a break? If anyone
5 needs a break, let me know and we'll take one.

6 MR. BLALACK: I think this will be short, Your Honor.

7 FURTHER RECROSS EXAMINATION

8 BY MR. BLALACK:

9 Q I just want to make sure I understand your -- I just want to
10 make sure I understand your statement, Mr. Leathers. All right. So I
11 want to make sure I understand your criticism of the Mizenko report. Are
12 you suggesting that you believe 108 histograms are in that report, was
13 an effort by Mr. Mizenko to chart every disputed claim in the kit? Is that
14 what you understand he was doing?

15 A No.

16 Q Okay. You know that that was not the scope of work he
17 described in his report and that he wasn't attempting to do that, right?

18 A Well, he did not endeavor to charge every claim, that's
19 correct.

20 Q Let's see if you actually know what he did. What did he say
21 in his report he was attempting to do? Leave aside whether he did it well
22 or not, whether it's junk science or what it is Mr. Leyendecker said. What
23 do you understand from reading his report that you read and relied on,
24 what is it you think he said he was trying to do?

25 A He was trying to test the reasonableness of the provider's

1 billed charged compared to FAIR Health.

2 Q Did he say he was trying to test the reasonableness of their
3 charge?

4 A I don't recall the specific language, but that's the general gist
5 of what he described.

6 Q All right. Why don't we -- let's make sure you know exactly
7 what he said he was going do. Let's look at Defendant's Exhibit 5186.
8 Do you recognize this, sir, as the Mizenko report that you reviewed for
9 your -- as part of your second report?

10 A Yes, sir.

11 MR. LEYENDECKER: Your Honor, I have an objection on a
12 hearsay grounds, out-of-state -- out-of-court statement by him.

13 MR. BLALACK: I'm not going to offer it into evidence.

14 THE COURT: All right.

15 MR. LEYENDECKER: Well, he's publishing it to the jury.

16 MR. BLALACK: You can take it up. Take it down.

17 THE COURT: Take it down.

18 MR. BLALACK: Thank you.

19 BY MR. BLALACK:

20 Q So sir, pull it up in the hard copy in your binder there, 5186.
21 You don't need to go to it, we just make sure you know what you're
22 talking about. Do you have that, sir?

23 A I'm getting to it right here.

24 Q And just 55186, go to the Mizenko report; do you see that?

25 A Okay. I see it.

1 Q All right. So if you would and catch up with you. All right.
2 Looking at the Mizenko report, go to the section at the back where he
3 describes the data analysis that he conducted. Do you see that, starting
4 on Roman Numeral eight and then Roman Numeral nine?

5 A Yes.

6 Q Would you read that to yourself very quickly, please?

7 A Roman Numeral eight?

8 Q Roman Numeral eight.

9 A Okay.

10 Q And then Roman Numeral nine.

11 A Okay.

12 Q And you don't have to read it all, just --

13 A Yeah.

14 Q -- only to yourself enough to answer some questions about
15 it.

16 A Okay. I've orientated myself to it.

17 Q Okay. Just briefly describe to the jury, sir, what you
18 understand Mr. Mizenko was attempting to do when comparing these
19 108 histograms?

20 A Well, under section eight and nine, he simply plots the bill
21 charges for six CPT codes, compared to the FAIR Health data, and
22 reports on the amount that they were above or below the 80th percentile.

23 Q And some other metrics, as well, right?

24 A Yes, I mean, he plots them based on the mean as well as the
25 median charge.

1 Q Okay. So do you understand from looking at the report that
2 Mr. Mizenko wasn't attempting to or reporting to do an analysis of the --
3 all of the codes associated with, and all of the claims on the two claims
4 filed? That's not anything he says he was engaged in, correct?

5 A He does not specifically say that, no.

6 Q All right. So what he was doing, as you can see in section
7 eight there, he was taking the claims and the codes for the claims in
8 dispute, meaning CPT codes?

9 A Right.

10 Q For each plaintiff, in each region, or geo code, and simply
11 plotting how that charge for that code corresponded to the charges of
12 other providers in that area in that time; is that right?

13 A Yes.

14 Q Okay. And the reason there are 108 because there were --
15 that was the combination of codes, providers, and regions here, right?

16 A Yes.

17 Q Okay. So you now understand that there was not an
18 accurate way for Mr. Mizenko to do an analysis of the disputed claims in
19 this case, right? He didn't even look at the disputed claims, right?

20 A Except for the fact in his exhibits he put the provider's
21 amount there which is from the disputed claims.

22 Q Well, that's actually from the charge master, sir, which you
23 did not look at, correct? You didn't look at the charge master?

24 A I did not look at the charge master, no.

25 Q So my point is he did not review and rely on disputed claims,

1 right? He did an analysis.

2 A But they -- with your clarification, it does not appear that he
3 did.

4 Q So you now understand Mr. Mizenko was simply trying to
5 measure the providers billed charges, the Team appointed for matters,
6 billed charges, compared the charges of other ER provides in the
7 relevant regions during the relevant time, correct?

8 A Well, that's still unclear because if he's using the charge
9 master instead of the claim files, then that comparison is not -- I mean,
10 it's just not even relevant.

11 Q The charge master's not relevant to their charges?

12 A Well, I think what's important is the -- is the actual -- because
13 you've got multiple claims that are n there, and those charges may differ,
14 particularly when you look at Ruby Crest and TeamHealth, how he has
15 combined those together, you could get very widely different numbers.

16 Q Do you think he combined in the histograms Ruby Crest and
17 Team Physician?

18 A For the geo code, he did, yes.

19 Q He used the geo code because that's how FAIR Health does
20 it.

21 A That's right.

22 Q He did a separate analysis for each plan, right?

23 A Yes.

24 Q He did not combine an analysis for Ruby Crest and Team
25 Physicians, right?

1 A That's correct. That's correct.

2 Q All right. All right. Now with respect to this notion of junk
3 science, I just want to make sure I understand what you're saying.

4 You're -- you and Mr. Leyendecker are being critical of Mr. Mizenko and
5 FAIR Health's methodology and analysis; is that right?

6 A Yes.

7 Q From the same guys who've done this, in the last two and a
8 half months; is that right? That's you, right? You and the Plaintiffs?

9 A What's that?

10 Q Well, the list, that we have 19,000 disputed claims, and then a
11 month later you allege we have 12,000, then 12,081, 11,500, right?

12 Which is it?

13 A It's 11,563.

14 Q You sure?

15 A Yes.

16 Q It's not going to change tomorrow?

17 A Not to my knowledge.

18 Q Okay.

19 MR. BLALACK: I have nothing else.

20 THE COURT: Any redirect, please?

21 MR. LEYENDECKER: Nothing, Your Honor.

22 THE COURT: All right. Does the jury have any questions for
23 Mr. Leathers? All right. We have a taker. Thank you, Ms. Ross.

24 JUROR NO. 6: Oh, I'm sorry. I was just writing.

25 THE COURT: And the other?

1 JUROR NO. 6: My bad, my bad.

2 THE COURT: All right. If there's anyone else writing, give
3 me a high sign. Come on up, guys.

4 [Sidebar at 3:28 p.m., ending at 3:29 p.m., not transcribed]

5 THE COURT: All right, everybody. Let's get back to work.
6 So Mr. Leathers, I get to ask the question. So first one is: Sounds like
7 the Plaintiffs and the Defendants each have claim data files. Did your
8 company -- whoa, these files before doing your analysis to ensure you
9 had accurate data or the same data?

10 THE WITNESS: Yes, thank you for the question. Both parties
11 produced claim files, and the very -- one of the very first things that we
12 did was to look at the claim files, or the number of claims and the
13 amounts, and to do a cross reference between those and those that were
14 produced by the United Defendants. There were a few exceptions to
15 that, but generally, they matched up which then gave me the comfort
16 level to utilize those that were from the Plaintiffs.

17 THE COURT: Okay. Second question is: In your analysis,
18 why did you use the allowed charges, paren, that includes coinsurance
19 and deductibles paid by the members, end paren, instead of using the
20 amounts paid to the providers, question mark. Seems like you are
21 double-dipping.

22 THE WITNESS: Would it be possible for you to repeat that
23 question? I'm sorry. I just want to make sure I get it right for them.

24 THE COURT: Got it. In your analysis, why did you use the
25 allowed charges, paren, that includes coinsurance and deductibles paid

1 by the members, end paren, instead of using the amount paid to the
2 providers? Sounds like you are double-dipping.

3 THE WITNESS: No, your -- it's really just an apportionment
4 issue. The allowed charge is the amount that the -- that is being
5 reimbursed on the claim and the amount that's being paid to the
6 provider. The net amount that's paid is after the deductible amount.

7 THE COURT: Okay. Does anybody on the jury have further
8 questions after those?

9 UNIDENTIFIED JUROR: That didn't really answer my
10 question. I thought -- well, you even had a line up there that showed bill
11 charge, allowed charge, and some of it was paid by the coinsurance on a
12 member, so then there's a different amount paid to the provider, so why
13 are you, you know, asking for, like, the difference between the allowed
14 and the billed when you already received maybe a couple hundred bucks
15 from the member.

16 THE COURT: Mr. Leathers?

17 UNIDENTIFIED JUROR: Does that member not pay you?

18 THE COURT: Before you answer? All right. This is a little bit
19 unusual. We usually make you write them, but counsel, please
20 approach?

21 MR. LEYENDECKER: Your Honor, I have a follow-up
22 question, too.

23 THE COURT: Well --

24 UNIDENTIFIED JUROR: See if I can repeat that.

25 [Sidebar at 3:32 p.m., ending at 3:32 p.m., not transcribed]

1 THE COURT: All right.

2 UNIDENTIFIED JUROR: All right, though.

3 THE COURT: So Ms. Ross -- you may answer the question,
4 Mr. Leathers.

5 THE WITNESS: Okay. So the claim is, is the difference
6 between the amount that is owed to the provider. And so if you're
7 paying billed charges, based on billed charges, that allowed amount is
8 the same, but who pays that is spread, could be spread depending on
9 the particular claim.

10 UNIDENTIFIED JUROR: All right.

11 THE WITNESS: Okay. And so if you have a lower amount
12 allowed, that could be spread based on that particular claim. So there's
13 no double-dipping. You're essentially taking the different between that,
14 and that difference may be a apportioned between the insurance
15 company, a coinsurance, or a deductible.

16 THE COURT: And I'm going to give the lawyers a chance to
17 ask more follow-up questions. I can ask again if anyone on the jury
18 needs another question after they finish. Plaintiff, it's your witness.

19 MR. LEYENDECKER: Thank you, Your Honor. I do have a
20 couple on this very subject. Running out of paper but let me try it over
21 here. So I'm thinking an example might help here.

22 FUTHER REDIRECT EXAMINATION

23 BY MR. LEYENDECKER:

24 Q So if the charge; what was our average charge? Like eleven-
25 forty-five?

1 A Yes.

2 Q All right. And the average allowed was 246; right, Mr.
3 Leathers?

4 A Yes.

5 Q Okay. And of the 246, am I right that the insurance company
6 paid the lion's share of the 246?

7 A That's correct.

8 Q And did I hear you say that a typical coinsurance was about 6
9 percent on the patient member's side?

10 A Yes.

11 Q Okay. So if that was the -- let's use a simpler number. Let's
12 say the coinsurance was 10 percent so the math is easy. Then that
13 would mean the member would have paid about \$24.60, right?

14 A Yes.

15 Q Okay. In this case, are the Plaintiffs seeking the difference
16 between eleven-forty-five and the 246 solely from the Defendants?

17 A Yes.

18 Q Okay. So whatever was paid or however much the 246 got
19 paid, it has been paid, and that's in arrears, right?

20 A Correct.

21 Q Okay. Do you have any reason to believe that the
22 Defendants would go back and collect additional money from the
23 insurance?

24 A No.

25 Q Thank you.

1 MR. LEYENDECKER: That's all I have.

2 THE COURT: Defense, do you have any questions for Mr.
3 Leathers based upon these?

4 MR. BLALACK: I do, Your Honor, just to clarify one point that
5 was made up there.

6 FURTHER RECROSS EXAMINATION

7 BY MR. BLALACK:

8 Q So Mr. Leathers, I want to ask you about the first question
9 that one of the jurors asked related to the exercise to check the data in
10 the disputed claim sheets, okay?

11 A Okay.

12 MR. BLALACK: So Shane, would you bring up the electronic
13 version of E473, please?

14 BY MR. BLALACK:

15 Q I just want to make sure the jury's clear on what you did and
16 what you did not do. All right. This is the claims, disputed claims file
17 again, all right, that we talked about or --

18 A Yes.

19 Q And you testified this was a list prepared by the Plaintiffs, not
20 the Defendants, right?

21 A Yes.

22 Q Okay. Now the data sources you were asked about, did the
23 Plaintiffs have some data and did the Defendants have data? Do you
24 remember that?

25 A Yes.

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1 Q In response to one of the juror's questions. And you
2 indicated that you went through an exercise to try to match the data in
3 the underlying data files to confirm if you had the same, you were
4 speaking about the same claim; do you remember that?

5 A Yes.

6 Q Okay. And, in fact, you believe that you matched the claims
7 in the Defendants data with the Plaintiffs data for most of the claims?

8 A Yes.

9 Q Okay. And, in fact, but just to be clear, you are including in
10 your damages calculation about 270 claims that do not show up
11 anywhere that you could find in the claims of the Defendant? Correct?

12 A Approximately, that's right.

13 Q Right. Now, so that, that hopefully explains kind of what was
14 done to see if you're talking about the same body of claims, right?

15 A Correct.

16 Q You with me?

17 A Yes.

18 Q I have a separate issue, though. That's different from saying
19 that you went through and validated each and every field of data in the
20 underlying data source on the disputed claim sheet, correct?

21 A Oh, no, it's the same thing. It's a -- we used a function called
22 a V look-up to compare the claim number to the amount.

23 Q Okay. So you're representing that for every matched claim
24 on this list which should be over 11,000, every single field of data on
25 Plaintiff's Exhibit 473 will be found in the underlying claims data of the

1 Defendant for that claim?

2 A No.

3 Q That's what I thought. So what you -- and I think you said
4 this earlier in your examination, maybe even this morning, I think you
5 said something like you took it, you took it on faith that the data was an
6 accurate representation of those claims, to something to that effect?

7 A Yes. To the supporting information, the actual claim file tied
8 into the claim.

9 Q So once you found that there was a claim that seemed to
10 correspond with something on that claim in the Defendants data, there
11 wasn't an additional audit that every value in the disputed claim sheet
12 was accurate relative to the underlying data in the Defendants data?

13 A Correct.

14 Q Okay.

15 MR. BLALACK: Okay. Hopefully, that explains it then. Thank
16 you, sir.

17 THE COURT: Okay. Thank you both.

18 MR. LEYENDECKER: Very -- just one question, Your Honor?

19 THE COURT: Go ahead.

20 FURTHER REDIRECT EXAMINATION

21 BY MR. LEYENDECKER:

22 Q Mr. Leathers, I may have misunderstood the question that
23 was asked. When the allowed amount was 246, you understand the bulk
24 was paid by the insurance company?

25 A Correct.

1 Q And in my hypothetical here, the 24.60 would have been paid
2 by the member?

3 A That's right.

4 Q Did we get the 246 plus the 24.60 already? Or just a
5 maximum of the 246?

6 A The maximum of the 246.

7 Q So it's not like we got 246 from the insurance company, 26
8 over 24 over here, and another 24 over here?

9 A Yeah, that's exactly right.

10 Q Well, I'm not sure what was behind the question, but if this --
11 we didn't get the 246 plus the 24.60, right, sir?

12 A No, sir.

13 MR. LEYENDECKER: That's all I have, Judge.

14 THE COURT: All right. Any other questions of the jury?

15 Okay. May we excuse Mr. Leathers?

16 MR. LEYENDECKER: Yes, Your Honor.

17 THE COURT: Very good. Sir, you may step down and you're
18 excused. Please, Plaintiff, please call your next witness.

19 MR. LEYENDECKER: The Plaintiffs call Dr. Robert France.

20 THE COURT: Okay. Let's take a recess before he takes the
21 stand.

22 MR. LEYENDECKER: Recess, Your Honor?

23 THE COURT: Yeah. I should have called the recess first. So
24 during the recess, don't talk with each other or anyone else on any
25 subject connected with the trial. Don't read, watch, or listen to any

1 report of or commentary on the trial. Don't discuss this case with
2 anyone connected to it, by any medium of information, including without
3 limitation newspaper, television, radio, internet, cellphone, or texting.

4 Don't conduct any research on your own relating to the case.
5 Don't consult dictionaries, use the internet, or use reference materials.
6 During the recess, don't post on social media, don't talk, text, Tweet,
7 Google, or conduct any other type of research with regard to any issue,
8 party, witness, or attorney involved in this case. Do not form or express
9 any opinion on any subject connected with the trial until the matter is
10 considered by the jury.

11 It's 3:40, please be back at 4:05, and we'll work today 'till 5
12 p.m.

13 THE MARSHAL: All rise for the jury.

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

15 [Outside the presence of the jury]

16 THE COURT: Okay. The room is clear. Does Plaintiff have
17 anything for the record?

18 MR. LEYENDECKER: I don't believe so, Your Honor.

19 THE COURT: Defendant, do you have anything for the
20 record?

21 MR. BLALACK: Your Honor, I think we were going to do the
22 offer of proof after we get done with this time limit.

23 THE COURT: Do you want to do that at, see --

24 MR. BLALACK: Five?

25 THE COURT: Yeah, let's do it at 5:00.

1 MR. BLALACK: Yeah, that's what I was going to say.

2 THE COURT: Okay. So --

3 MR. BLALACK: I think we can do it in 15 or 20 minutes.

4 THE COURT: I let them out a little bit longer than I intended
5 to.

6 MR. BLALACK: That's fine.

7 THE COURT: So I'll -- Mr. Polsenberg, did you have
8 something for the record?

9 MR. POLSENBERG: Yeah, Your Honor, I'm just wondering --
10 the back of the room's starting to fill up. Do you know when you want to
11 do jury selection, or jury instructions?

12 THE COURT: After we release the jury, and keep in mind, the
13 fire department says only 41 people can be in this room, so I'll ask you to
14 respect that.

15 MR. POLSENBERG: Thank you, Your Honor.

16 MR. ZAVITSANOS: So on that point, Your Honor, we have
17 gotten a lot of inquiries about closing arguments, and I'm going to make
18 a gentle ask, if there's any way we can arrange to have the larger
19 courtroom, of course, subject to Your Honor's preferences and
20 availability, and I don't want to create any waves here, but we have
21 gotten a lot of inquiries.

22 THE COURT: That cost me a six pack of Lagunitas to get that
23 other big courtroom for your jury selection, so I can ask.

24 MR. BLALACK: So we're fine, we're fine anywhere you want
25 to do it, Your Honor, we don't --

1 MR. ZAVITSANOS: We are too, Your Honor, I'm just saying I
2 just -- there's just a lot of folks that want to attend.

3 THE COURT: I know. All right. I will make an inquiry. How
4 about that?

5 MR. ROBERTS: That's fine.

6 THE COURT: And did you have something else to add?

7 MR. PORTNOL: No, Your Honor. Thank you.

8 THE COURT: Good enough. Then have a good break, and if
9 you guys think of something just let me know and come back at four.

10 MR. LEYENDECKER: Okay. Thank you, Your Honor.

11 MR. BLALACK: Thank you, Your Honor.

12 [Recess taken from 3:42 p.m. to 4:01 p.m.]

13 [Outside the presence of the jury]

14 THE COURT: Thanks, everyone. Please remain seated.
15 Okay. We've got a few minutes before we bring the jury back. Anything
16 we need to take up?

17 MR. BLALACK: Not on our side. I think our plan, Your
18 Honor, is to finish -- just for housekeeping. They're going to finish Dr.
19 Frantz -- or do Dr. Frantz, which we hope will be finished today and
20 expect to be finished today. And then I believe you guys are resting; is
21 that right?

22 MR. ZAVITSANOS: Yes. Yes.

23 MR. BLALACK: That was a momentary pause that worried
24 me just a tad, but I think we're back on track. And assuming that
25 happens, then we -- our motion for judgment will be on file and I -- Mr.

1 Portnoi. And you can either discuss it with him, we could reserve; do
2 whatever you want.

3 And then, we would propose to knock out the Mr. Leathers
4 voir dire issue. And then if the Court would like to hear argument on the
5 instructions or anything like that, Mr. Portnoi is here.

6 THE COURT: Fine.

7 MR. BLALACK: That's our view of the --

8 THE COURT: You guys estimated half an hour each with
9 Frantz, Dr. Frantz?

10 MR. BLALACK: I think that's right.

11 MR. LEYENDECKER: Yes, Your Honor.

12 THE COURT: Okay. And let's make sure he's ready to come
13 in as soon as we bring the jury in.

14 MR. LEYENDECKER: He's -- he is, Your Honor.

15 THE COURT: Very good. Okay. So Andrew, why don't you
16 round up the jury?

17 MR. ZAVITSANOS: Your Honor?

18 THE COURT: Yes?

19 MR. ZAVITSANOS: I have a question. So I understand
20 they're going to make a directed verdict motion. I assume the Court
21 does not want to take that up today or?

22 THE COURT: I don't know how I can.

23 MR. ZAVITSANOS: Yeah.

24 THE COURT: Especially if we're going to finish the proof at
25 five o'clock.

1 MR. ZAVITSANOS: Yeah.

2 THE COURT: And then further arguments.

3 MR. ZAVITSANOS: I'm just asking because whether Ms.
4 Robinson needs to be here or not. So we can just take it up.

5 MR. BLALACK: Yeah. Our assumption, Your Honor, is that
6 we filed, and the Court would want to reserve and have an opportunity
7 to raise it in opposition.

8 THE COURT: Good enough.

9 MR. BLALACK: We can argue it whenever you'd like.

10 MR. ZAVITSANOS: Okay.

11 THE COURT: Thank you.

12 MR. ZAVITSANOS: Makes it easy.

13 MS. LUNDVALL: And Your Honor is not compelling written
14 briefs or written responses to the Rule 50 motion, are you? I mean, if we
15 wanted -- if we choose to do an oral presentation in opposition to
16 whatever that they present, will you listen to that, as well?

17 THE COURT: I would ask you guys how you want to
18 respond. Do you want a chance to respond in writing? Are you willing
19 to do it orally? Because if you're willing to do it orally and they waive
20 the reply, we could take it in the morning.

21 MS. LUNDVALL: Thank you, Your Honor.

22 MR. BLALACK: That's fine with us, Your Honor.

23 THE COURT: Yeah. Talk to each other and let me know at
24 the end of the day.

25 MR. ZAVITSANOS: Your Honor, I think that's on record.

1 THE COURT: Good enough.

2 MR. ZAVITSANOS: I think you have enough paper.

3 THE COURT: Well, I have a law clerk matching up all of your
4 briefs and how they match up to the jury instructions, because keep in
5 mind, I've been in the courtroom with you almost every, you know, the
6 whole time. I don't have as big a team as you all have.

7 MR. GORDON: And you're fourth and fourth, Your Honor.

8 THE COURT: Let's bring them in. And I see there are some
9 more Plaintiff's jury instructions now.

10 THE MARSHAL: All rise for the jury.

11 [Jury in at 4:05 p.m.]

12 MR. LEYENDECKER: Yes, Your Honor.

13 THE COURT: Thank you, everyone. Please be seated.

14 Recalling the case of Freemont Emergency v. UnitedHealthcare, done in
15 the presence of counsel and their representatives and the members of
16 the jury. And you've called Mr. Frantz?

17 MR. LEYENDECKER: Yes, Your Honor.

18 THE COURT: Next witness.

19 ROBERT FRANTZ, PLAINTIFFS' WITNESS, SWORN

20 THE CLERK: Please have a seat and state and spell your
21 name for the record.

22 THE WITNESS: My name is Robert Frantz, and the last name
23 is F-R-A-N-T-Z.

24 THE CLERK: Thank you.

25 THE WITNESS: Common spelling of the first name.

1 THE COURT: Please proceed.

2 MR. LEYENDECKER: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. LEYENDECKER:

5 Q Dr. Frantz, would you please introduce yourself to the jury?

6 A Yes. I'm Robbie Frantz, ER physician, and I'm here to testify
7 today.

8 Q Where do you work, Dr. Frantz?

9 A I live and work in Norman, Oklahoma.

10 Q And who do you work for?

11 A I work for TeamHealth in Norman, Oklahoma.

12 Q And you might speak up just a hair. I'm having a smidgen
13 time. Could be my shoes there at hearing.

14 A No problem.

15 Q So you live in Norman, Oklahoma?

16 A Yes, sir. That's right.

17 Q And you said you work with TeamHealth?

18 A That's correct.

19 Q And can you tell us what do you do for TeamHealth?

20 A I'm an ER physician, and I'm the group president for the West
21 Group of TeamHealth.

22 Q And the West Group means what? Give us a little more
23 meaning on that, please.

24 A The West Group is geographically just the western half of the
25 United States. So essentially, the -- everything west of the Mississippi,

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1 I'm responsible for emergency medicine and hospital medicine in that
2 geography.

3 Q Okay. How long have you been an emergency room doctor?

4 A I graduated from residency in 2000. So 21 years.

5 Q And did you have a professional life before you were an ER
6 doctor?

7 A Yes. I was a -- what they would consider to be a
8 non-traditional student. So I had worked quite a bit before I ever went to
9 medical school. And before I ever went to medical school, I was a
10 paramedic and a police officer. And I did that job as a police medic for
11 seven years. And then I was a paramedic, just outside of a police firm,
12 for another three years additional to that.

13 Q So what prompted you to leave the paramedic and law
14 enforcement world and go to medical school?

15 A Well, my whole family was sort of in public safety. My father
16 was a cop. He was a police lieutenant in Oklahoma City and my sister
17 was a cop. And my dad -- ultimately -- they both retired from the police
18 department there. And ultimately, you know, they said this is probably
19 not a job you want to retire at. And they were -- they were probably
20 correct.

21 The police department that I worked at was in Norman, which is
22 the -- where the University of Oklahoma is, and they had a really strong
23 tuition program there. And so a lot of the medics and a lot of the cops
24 ended up going on and becoming something else. They got degrees and
25 encouraged us to go to school. And so I worked through school for the

1 seven years I was there and then ultimately applied to one medical
2 school one time and got in.

3 Q So you started medical school at what age?

4 A I think I was 29.

5 Q Twenty-nine. And you made some comment about
6 non-traditional college path or something like that.

7 A Right.

8 Q What did you mean by that?

9 A Well, it's a -- it's a traditional path for -- the way they defined
10 it there was somebody who came directly out of high school and went to
11 four years of college and then got into medical school. And that was
12 really not my path, obviously, so.

13 Q Your path was a little delayed, something along those lines?

14 A Right. Because I was working.

15 Q We've heard from a few witnesses the phrase board-certified
16 residency. Are you a board-certified emergency room doctor?

17 A Yes, sir, I am.

18 Q And can you give us a little background on what do you got
19 to do to get that status?

20 A It's a little confusing for emergency medicine because
21 historically, it's a fairly young specialty compared to a lot of others. And
22 emergency departments used to be staffed by just whoever they could
23 get to cover them. And so that's not the way it is really now. The
24 training for emergency physicians is three or four years long. There are
25 two different residencies, an academic type and a more clinical focused,

1 but they're all very clinical-based. And then after that, you sit for an oral
2 board. And so you go up before bunch of examiners who ask you
3 questions and put you through tests, and then a written test. And
4 assuming you pass all that, then you can call yourself a board-certified
5 emergency physician.

6 Q So if you started medical school when you were about 28, at
7 what point in time in your life did you achieve that steps?

8 A About 35.

9 Q Okay. So about eight years of college and residency and all
10 the other things you just described.

11 A Right. Four years of medical school and four years of
12 residency after college.

13 Q Okay. After college.

14 A Right.

15 Q So college, four years of residency, four years of --

16 A Medical school.

17 Q Medical school and then the residency.

18 A That's right.

19 Q Okay. Now, before, we talked a little bit about your work at
20 TeamHealth. Have you always worked for a TeamHealth entity?

21 A No.

22 Q Can you give us a little bit of background? Not a ton. A little
23 bit of background about what you did before you were involved with the
24 TeamHealth folks.

25 A So after I graduated residency, I moved back to Oklahoma

1 and joined a democratic group in Oklahoma City that was primarily an
2 osteopathic group of other board-certified emergency physicians. And
3 we worked in Oklahoma City and staffed about four hospitals there. And
4 over 10 years, we grew to 8 hospitals, 12 hospitals, 16 hospitals. And the
5 name of that group was Morningstar Emergency Physicians.

6 Q You used a term there. Did I hear you say it was a
7 democratic group?

8 A Yes, sir.

9 Q Is that a political thing?

10 A No. It's --

11 Q What did you mean by that?

12 A Well, what I meant by it, it can mean a lot of different things,
13 so that's a good question. Every physician that worked there had a vote.
14 They were -- they were all owners of the company and helped to run the
15 company, if you will.

16 Q And so about how long were you with Morningstar?

17 A Ten years.

18 Q Ten years. And you said -- I know -- here it is -- four hospitals
19 or four contracts? Give me a little more detail on that.

20 A So we provided emergency physicians to cover about four
21 different hospitals whenever I initially joined them. But over --

22 Q Okay.

23 A -- over time, we added more and more and grew into more
24 facilities where we -- where we worked.

25 Q So sort of 10 years later, what, you said you went from

1 covering 4 hospitals to about 16 hospitals?

2 A Yes, sir. That's right.

3 Q And these are all in the Oklahoma City area?

4 A Well, it was Oklahoma City, rural Oklahoma, and also in
5 Kansas, as well.

6 Q How did you all -- and so about how many doctors in total
7 were in that group by the time it reached its, you know, peak size?

8 A About a hundred.

9 Q And without getting into too much of a teeth-gnashing, how
10 did you all communicate, coordinate, you know, change ideas?
11 Whatever you -- however you might describe that, how did that work
12 with that group?

13 A Well, we would typically meet on a monthly basis, and we'd
14 spend most of our time actually talking about the management of stuff.
15 We, you know, we would try to develop best practices, but it was difficult
16 to sort of share them. But ultimately, you know, we had one physician
17 who was a founder. And over time, I ended up moving into a chief
18 operating officer role with that company for the last two years that I was
19 with them. And together, he and I tried to manage the, you know, that
20 company until we merged with TeamHealth.

21 Q You used the word best practices. Whenever I hear a word
22 that I'm not sure, I like to slow down. And so tell us what you meant by
23 best practices.

24 A Well, when we had 16 hospitals, it was not uncommon for
25 one medical director to come up with a good idea on how to do

1 something. You know, for instance, how to maybe get patients admitted
2 to the hospital in a more timely fashion or to maybe get them discharged
3 with their lab quicker, or to get tests done faster. And those are best
4 practices. But the problem was that we couldn't ever really exchange
5 those practices because we had to uncover them, first of all, which was
6 difficult to do because everyone sort of thought they had a best practice,
7 but we didn't really have the perspective to determine that, really. And
8 then you have to train and teach, and then you have to get buy-in from
9 the hospitals to actually enact these practices, to get them -- to get them
10 happening.

11 Q Well, let me ask you, were all the doctors in that group, like
12 you, board-certified emergency room doctors?

13 A Yes. They're either board-certified or board-eligible,
14 meaning they were waiting to take their boards.

15 Q And here's what I'm thinking, if they're board-certified
16 doctors, I assume they're doing good doctoring. I mean, that's -- you
17 follow what I'm saying?

18 MR. ROBERTS: Objection. Leading.

19 THE COURT: Objection sustained.

20 BY MR. LEYENDECKER:

21 Q Okay. How would you describe the quality of the care that
22 those doctors were giving?

23 A Well, I'd like to think we were giving really good care. When
24 I moved in my chief operating officer role, though, I found out that it
25 was -- it was really inconsistent. I would -- I would put it that way. So

1 we all felt like we were practicing the care individually at the patient level
2 about the same, because we were all similarly trained. But all the rest of
3 the things, you know, the management of the department, the training
4 of the medical directors, those sorts of things, that was -- that was really
5 fairly inconsistent in --

6 Q Okay. So trying to coordinate the best practices, and even
7 though doctors are doing -- providing good care, was that a smooth and
8 successful process? How would you describe that?

9 A I'd describe it as significantly challenging. It was -- it was
10 challenging to do because again, without perspective, without proper
11 perspective, everyone sort of thinks that they're doing the best. And
12 everyone was doing good medicine. But there were -- there were lots of
13 opportunities for improvement. And something may come up at a -- at a
14 site, for instance, like an observation unit. And we had one hospital that
15 had an observation unit. But when a second hospital wanted to develop
16 an observation unit, we -- it was like trying to reinvent the wheel every
17 single time we would, you know, do something like that.

18 Q Did the Morningstar Group have a physician services
19 company like TeamHealth that it was affiliated with to handle the
20 non-doctoring kind of activities?

21 A No. No. We would outsource, for instance, you know, the --
22 you know, our accounting services and payroll and those kinds of things.
23 But the rest of it was really just us managing it ourselves.

24 Q Did you all -- we heard a little bit of information from Dr.
25 Scherr earlier in the case about -- metrics may have been the word he

1 used, like door to doctor or clock question time, something like that. Are
2 you familiar with that concept?

3 A Yes, sir.

4 Q And did the Morningstar Group, even though it didn't have a
5 physician services company that it was affiliated with, did they make an
6 effort to identify, keep track of some of those kind of metrics?

7 A Yeah. We would manage to, maybe three or four of these
8 metrics. So think length of stay in the emergency department or how
9 long it takes for you to see your doctor, door to doctor time, or patient
10 satisfaction scores, those sorts of things. But it was very, very few of
11 these and they were very, again, just inconsistent. And we didn't -- it
12 was all in data provided by the hospitals.

13 Q How would you -- let me switch gears a little bit here. How
14 would you characterize the best practices, the metric analysis, et cetera,
15 back in the Morningstar days as compared to today when you're
16 affiliated with TeamHealth. Give us a little bit of an idea there.

17 A Well, you know, if it -- like I said, we would maybe monitor
18 four or five of these things. And you know, it's not uncommon for a, you
19 know, a physician management group, you know, like TeamHealth to
20 monitor 20, 30, 35 of these metrics and manage to them. And it can be
21 anything from, you know, compliance with, you know, treatment for
22 sepsis, if you have a severe infection, or compliance with clot-buster
23 drugs for stroke or for heart attack or how we treat those sorts of things.

24 So we never were able to kind of manage to those sorts of things.
25 And then, you know, any time a best practice gets identified, it's easily,

1 you know, sort of scaled and the training is then brought out for the
2 people. We certainly didn't do that.

3 Q Do you have a point of view about whether having a
4 physician services company like TeamHealth, as a, you know, affiliated
5 with, a relationship, do you have a point of view about whether that
6 facilitates the rendition of care, hinders it, helps it? What's
7 your -- because it sounds like you've been in both worlds.

8 A I have. I've --

9 MR. ROBERTS: Objection, Your Honor. Calls for expert
10 testimony.

11 THE COURT: Overruled. It's based upon his own
12 impressions. You can answer.

13 THE WITNESS: Thank you, ma'am. Yeah. I've worked in
14 over 20 different emergency departments as a clinician and, you know,
15 and had that practice, and then now this. And yeah, I would say that it
16 takes a lot of burden off the individual medical directors and the leaders
17 of those facilities to be affiliated with a physician services group, as
18 you've described, because the -- a lot of that information is aggregated
19 and brought to them. And they have that -- that perspective that they
20 otherwise might not have.

21 So the best practice could be, you know, we're just
22 functioning in Oklahoma, but a best practice could certainly crop up here
23 in a -- in a place like Las Vegas. And we would have no way of really
24 identifying or knowing how to do anything about it.

25 BY MR. LEYENDECKER:

1 Q In the old Morningstar models --

2 A In the old days.

3 Q -- so to speak.

4 A Right.

5 Q Give a little bit of more detail about what you do today. You
6 said you were the president of the West Group. Give us an idea about
7 your responsibilities in that role.

8 A It's fairly broad, but ultimately, I see myself as an advocate
9 for the doctors and the mid-levels, the APCs, you know, the nurse
10 practitioners and the -- and the PAs that are working clinically. I think of,
11 you know, what they're doing at two in the morning. I want them to -- I
12 want to advocate for them so that that -- that goes smoothly, whatever is
13 happening at the patient bedside goes smoothly. So that's first and
14 foremost.

15 But I also maintain recruiting and retention best practices for
16 doctors and APCs. I do relationship with our client hospitals and client
17 facilities. And then finally, I'm the chief physician responsible for
18 wellness within the company right now, so that means burnout, PTSD,
19 impairment, counseling, you know, those sorts of things. And so I'm the
20 chief executive for that right now, too.

21 Q And for what -- for just emergency room doctors in the
22 western group or for more than that?

23 A So for the -- for the wellness part of this things, it's all
24 specialties across the entire company.

25 Q Now, are you still practicing? You said you're an ER doctor.

1 Are you still practicing the ER medicine today?

2 A No, I'm not.

3 Q And when did you stop?

4 A About two years ago.

5 Q And why did you stop?

6 A Well, it's -- it got to be increasingly difficult. And I felt like I
7 could be more productive, have more impact, doing this job. This -- this
8 seemed -- this was transitioning to be my purpose. You know, I took
9 care of patients for 30-something years in 20 different emergency rooms
10 and in the back of ambulances and I felt like that little boy on the
11 star -- on the beach whenever the starfish wash up after the storm, you
12 know? You're throwing the one starfish in over and over again, and
13 someone says to him, well, you know, you're never going to make a
14 difference.

15 And I always said, well, I am to that one. You know? And that
16 made me feel better. But I think in the job that I have now, the purpose I
17 have, I can make more of a difference. I can make that -- I can make that
18 much more impactful. So I feel like I'm -- I'm doing my purpose now and
19 it was -- it was time to transition to this job.

20 Q Do you miss it at all?

21 A Sure. But my daughter is an ER nurse now, and so I get to
22 talk to her quite a bit. And especially over the last couple of years, the
23 challenges of it, it's been very significant. So I always miss that
24 interaction with patients. But I feel that void has been filled by this -- by
25 everything else that I do. You know, especially the wellness work I do.

1 Q Let me ask you something. There's been something
2 discussion with some of the Defendant's witnesses and some of the
3 witnesses on our side of the case about what ER doctors do. And I don't
4 want to rehash all that. But I want to be fair and not gild the lily. And
5 sometimes, I have said, you know, well, you save lives, you save lives,
6 you save lives. And am I being a little, you know, too friendly in -- I
7 mean, is that all we do? Do we always save lives?

8 MR. ROBERTS: Objection, Your Honor. This is beyond
9 foundation. This is readying to paint a case.

10 THE COURT: It does. Objection sustained.

11 BY MR. LEYENDECKER:

12 Q Okay. What I'm trying to ask you about, Dr. Frantz, is do you
13 ever have situations where you treat a patient, and you lose a patient?

14 MR. ROBERTS: Same objection, Your Honor.

15 THE COURT: Sustained.

16 MR. LEYENDECKER: Kind of the basis of the other questions,
17 Your Honor.

18 THE COURT: For the reasons stated in the objection --

19 MR. ROBERTS: Irrelevant, Your Honor. Also ready to paint
20 the case.

21 MR. LEYENDECKER: I'll move on.

22 BY MR. LEYENDECKER:

23 Q Okay. How about TeamHealth doctors? Are they like the
24 Morningstar doctors? Do they -- does TeamHealth hire board-certified
25 doctors, too?

1 A Yes. Largely, they do board-certified in emergency medicine
2 and residency-trained in emergency medicine. But not everywhere, no.

3 Q How about here in Nevada?

4 A Yes. In Nevada, 100 percent of the physicians are
5 board-certified and residency-trained in emergency medicine, I believe.

6 Q Now, why are you here, Dr. Frantz? Do you have any
7 connection to the three Plaintiffs in this case? The three healthcare
8 provider groups?

9 A Yes, sir. They're within my group, obviously, my geographic
10 group and my area of responsibility. But I'm the vice president of the --
11 of the entities that are in dispute with the various companies within
12 United over out-of-network reimbursement.

13 Q So you have a job for TeamHealth and you're also vice
14 president of the Freemont group, the Ruby Crest group, and the Team
15 Physicians group?

16 A Yes, sir. That's right. And you know, as I said, my job is to
17 advocate for the physicians, so.

18 Q Did you provide any care in the case?

19 A No. No, I did not.

20 Q Do you have an idea at 30,000 feet what the dispute is about?

21 A Yes. As I said, it's about the, you know, the question of
22 fairness of reimbursement for out-of-network claims seen by our staff in
23 these -- in these contracts.

24 Q Let me ask you on the claim question, have you heard of, are
25 you familiar with the concept of a clean claim?

1 A Yes.

2 Q And tell the jury what a clean claim is.

3 A My understanding is -- of a clean claim is that it's a claim
4 where the -- the charge is accurate and that all the information is
5 necessary to bill the charge appropriately as present in the chart. And so
6 that is a clean claim. So an accurate chart with all the elements
7 necessary to accurately build the chart.

8 Q Did you have an understanding whether insurance
9 companies like the Defendants in this case, based on your time at
10 Morning Star here at TeamHealth, whether insurance companies like
11 those here, require that doctors submit claims, submit a clean claim?

12 A Well, yes, otherwise they won't pay anything on it. And
13 these claims, they paid something, at least, on every single one of them,
14 so we know these are clean claims that we're talking about.

15 Q Let me just ask you, here in Nevada, are you familiar with a
16 group called Sound Physicians?

17 A Oh, yes.

18 Q Okay. And what is Sound Physicians?

19 A Sound Physicians is a group, not unlike TeamHealth. So it's
20 a physician services group that is owned by Optum, which is a company
21 that's owned by United Healthcare. And they do similar work that we do.
22 They started out as a hospital medicine company, but they also do
23 emergency medicine. I think they may also do anesthesia, but that's
24 who they are.

25 Q You said similar in size to you all here in Nevada?

1 A No, I think they're in the top three, so I think the top three in
2 size in Nevada probably TeamHealth and Vituity and Sound.

3 Q Okay. Let me get back to this -- the core issue in the case.
4 Do you think you have an expertise on what the rate and payment
5 should be?

6 MR. ROBERTS: Objection, Your Honor. He was not
7 designated an expert.

8 THE COURT: Your response?

9 MR. LEYENDECKER: I asked him whether he thinks he -- I
10 think you all were to hear the answer.

11 THE COURT: Okay.

12 MR. ROBERTS: It's irrelevant since he's not designated as an
13 expert.

14 THE COURT: Yeah, I'm going to overrule that because it's
15 within his personal knowledge.

16 You can testify with regard to what you know.

17 BY MR. LEYENDECKER:

18 Q The question is do you feel like you have any expertise to
19 share with this jury about whether the greater payment should be for a
20 99282 or a 99285?

21 A No, I don't, no.

22 Q Okay. Let me ask you, do you know about CPT codes?

23 A Yes, I do.

24 Q Yesterday I asked a hypothetical question to Mr. Leathers
25 where I described CPT code 99282 as presenting problems that are a low

1 to minor severity; is that consistent with what you understand as 282?

2 A Yes, sir, that's right.

3 Q And then I -- when I asked him about the 285s, I described it
4 as presenting problems that are high severity and pose an immediate
5 significant threat to life or cycle, physiological function; is that consistent
6 with your understanding?

7 A It is.

8 Q Okay. Now, even though you don't think you have any
9 expertise about what 282 should be compensated as, et cetera, do you
10 have a point of view about reimbursement with a larger company?

11 MR. ROBERTS: Objection. Calls for a narrative. For
12 relevance.

13 THE COURT: Overruled.

14 THE WITNESS: Well, sure. I mean, if reimbursement is not
15 adequate, then we're going to have difficulty, you know, for sure
16 recruiting and retain -- retaining physicians to work in these facilities,
17 and it can undermine the care and the community for the safety net of
18 emergency medicine.

19 BY MR. LEYENDECKER:

20 Q You know, when I first started working on the case, I realized
21 that the ER doctors didn't -- if they -- like, you didn't really have a sense
22 of what the rate of payment should be and what I was used to is lawsuits
23 where a doctor would come in and say I treated a patient and my
24 charges were this, and they're reasonable and they're customary. And
25 so those doctors have a good idea of what those rates should be, and the

1 -- and so I -- why do you suppose that is about ER doctors, in the sense
2 that they don't -- they don't really have a sense of what the rates should
3 be?

4 MR. ROBERTS: Objection. Calls for speculation.

5 THE COURT: You can answer if you know.

6 THE WITNESS: Yeah.

7 THE COURT: Overruled.

8 THE WITNESS: I do know. ER physicians are generally,
9 blissfully ignorant about these things, and the reason, I think, is because,
10 you know, unlike any other specialty out there, we have a federal
11 mandate, which is unfunded in the mid-80s calls EMTALA, whereby
12 emergency physicians have to take care of stabilize and take care of,
13 evaluate all patients that present to the emergency department, whether
14 they can pay or not. So emergency physicians, unlike a lot of other
15 physicians out there, don't have financial discussions with the patients.

16 You know, when I went to go see my eye doctor, before I
17 could even get behind the slit lamp or have anybody take a look at my
18 eyes or see an eye chart, they'd run my credit card and had already, you
19 know, told me how much -- how much this is going to cost. So that's
20 not -- that's completely not for emergency medicine. So that's part of
21 the major drive of why they don't really have an idea.

22 BY MR. LEYENDECKER:

23 Q Are you aware of any other doctors that are like emergency
24 room doctors in the sense that there's a law that requires them to treat
25 every patient that wants to get treated by them?

1 A It's really unique to emergency medicine.

2 MR. ROBERTS: Objection.

3 THE COURT: Overruled.

4 MR. LEYENDECKER: Several witnesses on --

5 THE COURT: Go ahead. Overruled.

6 BY MR. LEYENDECKER:

7 Q So if emergency room doctors don't really have an idea like
8 the -- what I was used to before I got involved in this case, then how are
9 they typically thinking about compensation?

10 A So the way it works for emergency physicians is that all the
11 payers that present to the emergency department, whether they can pay
12 anything at all or not, which is a big chunk that can't afford to pay
13 anything, that goes into the same bucket as the government payers,
14 which are, you know, I think Medicaid, who pay very little. And then
15 private insurance, and that's all aggregated into one big bucket, and then
16 that's how they're -- how they're paid is out of -- out of the aggregated
17 amount of reimbursement.

18 Q Okay. You mentioned in the ER world, you get patients that
19 are uninsured. Any sense about, is that a few? It's a lot? Percentagewise,
20 where do you think that falls in your experience?

21 A Well, it varies from place to place, but it's almost pretty
22 consistently between 20, 25 percent of the patients come to the
23 emergency room.

24 Q Okay. And those are folks that didn't pay a little? Pay
25 nothing at all? What's your experience there?

1 A Well, in general, they try to pay some, but most of the time,
2 these people don't have the ability to pay anything for their care. And so
3 it's very little, if anything.

4 Q So let me ask you about something, and I feel like it's right
5 here in the room that maybe hadn't bubbled to the surface just yet, and
6 then it is up -- I find myself asking, or thinking some folks might say,
7 well, why is it fair for insurance companies like the Defendants to have to
8 pay something different than those folks that can't afford, or like the
9 Medicaid program? I mean, does that seem fair that -- to you that the
10 insurance companies often do something different or have to pay more?
11 What's your thought on that?

12 A Well, yeah, I think it is fair. It is fair because at the end of the
13 day, the insurance companies make the decision about where they're
14 going to sell their insurance. You know, what states they're going to sell
15 their insurance in. This is -- this is the social situation that we have. Like
16 it or not, this is -- this is the safety net for the healthcare system is
17 emergency medicine. And you know, they can make a financial decision
18 based upon -- on what they're going to be seeing a particular area to sell
19 the insurance in a state, and if they do, they have to pay reasonably,
20 emergency medicine. They have to cover emergency medicine.

21 Q You mention something about what I asked, you got a point
22 of view -- I know you're not an expert on any particular way, you said
23 you had a point of view and said something about, well, according to the
24 doctor, but also according to the community; did I hear that right?

25 A Yes, sir.

1 Q Can you give me a little more meat on the bones, so to
2 speak, what you meant by the, obviously I understand the doctor part,
3 but the community part?

4 MR. ROBERTS: Objection, Your Honor.

5 THE COURT: The objection is sustained.

6 BY MR. LEYENDECKER:

7 Q Okay. I've just got a few more questions, and what I'd like to
8 do is show you some testimony from -- that the jury heard from Mr.
9 Haben who is a retired senior executive title from one of the United
10 entities.

11 MR. LEYENDECKER: And, Michelle, if I could get the
12 November 2nd transcript at 130, lines 20 through 131, line 8.

13 MR. ROBERTS: What page?

14 MR. LEYENDECKER: 130, line 20 through 131, line 8.

15 MR. ROBERTS: Your Honor, I object. This violates the
16 exclusionary rule. He can't show this witness the testimony of another
17 witness. He's a lay witness, subject to the rule.

18 THE COURT: Your response?

19 MR. LEYENDECKER: We've been doing that throughout the
20 case, Your Honor.

21 THE COURT: This is the first time there's been an objection.
22 Given the history of the case, I'll overrule that.

23 BY MR. LEYENDECKER:

24 Q So let me just set up the situation, Doctor Frantz. In the first
25 ten minutes of this lawsuit being heard by the jury, Mr. Haben was

1 shown by my colleague, Mr. Zavitsanos, these two numbers, and he
2 represented to Mr. Haben that the 1428 was an example of a level 5 case;
3 I think it was either a heart attack or gunshot, I can't remember. Right.
4 And the 254 was one of the claims they disputed in the case. And the
5 254 was the amount that the United Defendants reimbursed for this
6 claim. So that's the context, okay?

7 A Okay.

8 Q And over here, line 20, Mr. Zavitsanos was being a little,
9 some would say aggressive. I want to be respectful, yes or no, for
10 99285, the most severe code in the emergency room is \$254 egregious.
11 And obviously, a little more background here, Mr. Zavitsanos was asking
12 about egregious because the gentleman had written some memos
13 calling charges egregious. Okay. So that's a little more background.

14 A Okay.

15 Q And what he goes onto say, basically is there's a little bit of
16 back and forth. Question, and if you want to say I can't answer that,
17 that's fine, too, and there at line 1 he says, "I can't answer that." Do you
18 see that?

19 A Yes, sir.

20 Q Recognizing that you're not an expert on rates, Dr. Frantz, do
21 you have a point of view about what the \$254 is egregious?

22 MR. ROBERTS: Objection, Your Honor. This witness has
23 previously testified he has no knowledge what a reasonable rate is, and
24 therefore, no foundation to answer this question.

25 THE COURT: I'm going to overrule the objection. You have

1 the right to cross-examine.

2 BY MR. LEYENDECKER:

3 Q I didn't ask, to be clear, Dr. Frantz, the senior executive at
4 United said we couldn't answer. I'm simply asking, and I know you're
5 not an expert, do you think \$254 -- do you have any point of view about
6 whether \$254 for a level 5 heart attack, gunshot kind of situation, do you
7 have any point of view of whether that's egregious?

8 A Yeah, I think it is. I mean, I had two plumbers out to my
9 house a week ago and they charged almost double that just to come to
10 my house. So yeah, I do perceive those as being egregious.

11 Q Let me just go back to the -- make sure we'll all square here.

12 MR. LEYENDECKER: Michelle, come up a little bit. I want to
13 see -- come up to line number 7 here at 131, line 7. Hold on. Stay there,
14 please. Stay right there.

15 BY MR. LEYENDECKER:

16 Q A little more discussion. I can't answer that. He goes onto
17 say, line here, 8, I'm not a commission. I cannot answer that. Even
18 though you're not an expert on what the rate should be, you are
19 commission, right, sir?

20 A Yes, sir. Yes.

21 Q Do you think 254 for a level 5 service is fair?

22 MR. ROBERTS: Same objection. No foundation, Your Honor.

23 THE COURT: No. Overruled.

24 MR. LEYENDECKER: No, it's not fair.

25 BY MR. LEYENDECKER:

1 Q You got any life experiences that might put that \$254 in
2 perspective?

3 A Well, just as I --

4 MR. ROBERTS: Same objection, Your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: Just as I said, you know, I -- I literally had
7 two plumbers out to my house this week and it was \$150 for just the
8 service call and then it was another \$275 to run a snake, so I mean, I -- I
9 don't want to disrespect the work he did because I -- I can't do it, but
10 putting it in perspective, yeah, I think it's egregious.

11 BY MR. LEYENDECKER:

12 Q Did you say you had plumbers out to your house to snake
13 the drain and it ended up being in the \$500 range?

14 A Pretty near, yeah.

15 Q If I would --

16 MR. LEYENDECKER: I'm not going to go there.

17 BY MR. LEYENDECKER:

18 Q Okay. Let's look at what Mr. Haben said about the charge,
19 the 1428.

20 MR. LEYENDECKER: Can I go to 128 at 9 through 16,
21 Michelle?

22 BY MR. LEYENDECKER:

23 Q Line 9, "Question: I think we established for 99285, the most
24 serious 1428 is reasonable, right?"

25 MR. LEYENDECKER: Highlight right there on line number 11,

1 Michelle, please.

2 BY MR. LEYENDECKER:

3 Q Dr. Frantz, what did the former senior executive of United tell
4 this jury about whether \$1,428 was a reasonable price, reasonable
5 charge for a level 5 kind of service?

6 MR. ROBERTS: Objection. Mischaracterizes the answer.

7 THE COURT: Overruled.

8 THE WITNESS: Well, he says here, "Yes, for saving
9 somebody's life, yes."

10 BY MR. LEYENDECKER:

11 Q Do you think \$1,428 is a reasonable charge? Do you agree
12 with Mr. Haben?

13 A Well, I do agree with him, yes.

14 MR. LEYENDECKER: Thank you for your time. Those are all
15 the questions I have, Your Honor. I pass the witness.

16 THE COURT: Cross-examination.

17 MR. ROBERTS: May I approach, Your Honor?

18 THE COURT: You may.

19 [Sidebar at 4:41, ending at 4:47 p.m., not transcribed]

20 THE MARSHAL: Court resumes.

21 THE COURT: Thank you to the members of the jury for your
22 professional courtesy. And cross-examination, please.

23 MR. ROBERTS: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. ROBERTS:

1 Q Good afternoon, Doctor.

2 A Sir.

3 Q Your testimony was that when you first were a physician of
4 Morningstar, it was democratic, all the physicians owned the company.
5 That's no longer true, correct?

6 A There's no longer a Morning Star Emergency Physicians as
7 a -- as an organization.

8 Q When there was a Morningstar, did the doctors do the
9 coding? Did they determine whether it was a 285 or 284 or 283?

10 A No, sir. They didn't.

11 Q They did not?

12 A No, they didn't.

13 Q Did the doctors see what was on the bills before they went
14 out?

15 A No, sir.

16 Q Well, you said that you did your own billing. How did the
17 doctors do their own billing without seeing the bills or knowing the
18 codes?

19 A I don't believe I said we did our own billing. I said I think we
20 did our own management. We outsourced payroll and some -- and
21 some things like that. And so we did -- for a period of time, we
22 outsourced through a billing company to do that work for us. And then
23 ultimately, some of the members teamed together and formed a billing
24 company. But it was a standalone entity that was kind of on its side in
25 parallel to that.

1 Q So the physicians formed a billing company, and the
2 physicians that owned the billing company then charged a fee to the
3 other physicians to send the bills?

4 THE COURT: Hang on. There's an objection.

5 MR. LEYENDECKER: Your Honor, this is far field of the
6 direct, and its relevance.

7 THE COURT: Where are you going with this?

8 MR. LEYENDECKER: And a limine issue, Your Honor.

9 MR. ROBERTS: I'll move on, Your Honor. Not important.

10 THE COURT: Thank you.

11 MR. ROBERTS: Trying to get through.

12 BY MR. ROBERTS:

13 Q So just to confirm to the jury. You gave a lot of faithful
14 testimony about the good things that TeamHealth does for physician
15 groups, right? But you are an employee of TeamHealth, correct?

16 A Yes, sir.

17 Q And you are the president of TeamHealth West Group,
18 correct?

19 A That's correct.

20 Q And you are the vice president of these three entities that are
21 the plaintiffs in this case, right?

22 A Yes.

23 Q And just to sort of put it in perspective in the chain of
24 command at TeamHealth. Dr. Scherr, who they heard from, is the
25 president of the local groups. You're the president of the regional

1 groups. And then --

2 MR. LEYENDECKER: Your Honor, we're getting into limine
3 on corporate structure here.

4 MR. ROBERTS: Let me rephrase, Your Honor.

5 THE COURT: Yeah, rephrase.

6 BY MR. ROBERTS:

7 Q You are Dr. Scherr's boss, correct?

8 A Yes.

9 Q And Leif Murphy is your boss?

10 A Yes.

11 Q And you report to Mr. Murphy?

12 A No. Not directly, no.

13 Q So you're the regional president. Isn't it true that you did not
14 become aware of this litigation until after the case was filed either in
15 your role as regional president or in your role as vice president of the
16 three Plaintiff entities?

17 A Yes, but I was hardly surprised. But yes, that is true.

18 Q So you did not review or approve anything in the complaint,
19 any allegation before it was filed, correct?

20 A No, I did not.

21 Q And do you recall being deposed May 27th of this year?

22 A Yes, I believe that's the date.

23 Q At the time of that deposition on May 27th, you had not even
24 reviewed the complaint; is that correct?

25 A I believe that's true.

1 Q And at the date of that deposition, you had personal
2 knowledge of a single allegation of the Plaintiffs' complaint; is that
3 correct?

4 A No, nothing specific. Right.

5 Q And on the date of that deposition, you told us that you had
6 absolutely no personal knowledge regarding how TeamHealth goes
7 about determining what a particular emergency service will be charged
8 at, correct?

9 A I'm not sure if that's the exact question, but that's driving to
10 the issue.

11 Q Let me put it in a different then. Try to get a little closer. You
12 have no personal knowledge what a reasonable charge for a level-five
13 service should be in the Nevada market, correct?

14 A That's right. As I said earlier, yes.

15 Q And despite the positions you hold within the TeamHealth
16 organization in the west region, at the time of your deposition. You
17 didn't have any idea of how TeamHealth sets its charges in its charge
18 masters, correct?

19 A That's not my area of expertise. And I didn't -- I don't have
20 any specific understanding of how they -- how they do that now.

21 Q Do you at least have general knowledge that those bill
22 charges have increased over time?

23 A I believe they have.

24 Q Do you know whether a doctor or a non-doctor is responsible
25 for setting the charges?

1 MR. LEYENDECKER: Foundation, Your Honor. He's testified
2 that's not his area of operations.

3 THE COURT: Overruled. You can answer, if you know.

4 THE WITNESS: I'm not aware. No, I don't know.

5 BY MR. ROBERTS:

6 Q At the time of your deposition, did you have any personal
7 knowledge about any of the rates of reimbursement that the United
8 Defendants paid to the Plaintiffs in this lawsuit?

9 A Can you repeat your question, please?

10 Q Yes. At the time of your deposition in May of this year, did
11 you have any personal knowledge about any of the rates of
12 reimbursement that the United Defendants paid to the Plaintiffs in this
13 lawsuit?

14 A I don't believe I knew anything specifically, no, that I could
15 have relayed there in that deposition. No.

16 Q Did you indicate that you had any personal knowledge in the
17 rates that should have been paid for an out-of-network reimbursement in
18 the Nevada market at the time of your deposition?

19 A I don't believe I offered an opinion on that, no.

20 Q And you didn't offer an opinion because you said you had no
21 knowledge of what it should be, correct?

22 A That may be true. Yes.

23 MR. ROBERTS: Court's indulgence. I'm going to try to skip a
24 few and see if --

25 THE COURT: You may.

1 MR. ROBERTS: -- anything is critical before 5:00

2 [indiscernible].

3 BY MR. ROBERTS:

4 Q Sir, do you have any knowledge as to how many patients an
5 ER doctor in the Nevada market can see per hour under the current
6 organizational structure and efficiencies that TeamHealth has
7 implemented?

8 A Yes.

9 Q How many?

10 A Well, it varies from place to place. And it can be -- the
11 anchors is around 2 patients an hour, but there are some places that
12 have very high efficiency and are able to see -- more like 2.5 patients an
13 hour, 2.6 patients an hour. And then in some of our more rural sides, we
14 may see significantly less than 2 patients an hour depending on the time
15 of arrival and, you know, how many patients come and so forth.

16 Q But when the crowded market like Las Vegas and a room full
17 of people in the waiting room, those volumes can be fairly high, correct?

18 A Yes, sir.

19 Q And can it be 10 patients an hour? You ever heard of that?

20 A We certainly hope not, but I've worked when it's -- when
21 that's happened. You know, anything can occur.

22 MR. LEYENDECKER: Your Honor, we're getting pretty close
23 to opening the door.

24 MR. ROBERTS: Let me ask just one last question, Your
25 Honor.

1 BY MR. ROBERTS:

2 Q How many people per hour does your plumber see?

3 A I'm sorry?

4 Q How many people per hour does your plumber see?

5 A Well, I think just one.

6 Q Thank you, sir.

7 MR. ROBERTS: No further questions, Your Honor.

8 THE COURT: Redirect?

9 MR. LEYENDECKER: None, Your Honor.

10 THE COURT: Does the jury have any questions for Dr.

11 Frantz? If so, this is your chance. I don't see anybody giving me the high
12 sign. Okay. Good enough. May we excuse Dr. Frantz?

13 MR. LEYENDECKER: Yes, you may, Your Honor.

14 MR. ROBERTS: Yes, you may, Your Honor. Thank you.

15 THE COURT: Dr. Frantz, you may step down, and you're
16 excused.

17 THE WITNESS: Thank you.

18 THE COURT: So let's take our afternoon recess for today.

19 During the recess, you're instructed not to talk with each
20 other or anyone else on any subject connected with the trial. Don't read,
21 watch or listen to any report of or commentary on the trial. Don't
22 discuss this case with anyone connected to it by any medium of
23 information, including without limitation; newspapers, radio, internet,
24 cell phones, texting -- or cell phones.

25 Do not conduct any research on your own relating to the

1 case. Don't consult dictionaries, use the internet or use reference
2 materials. Don't talk, use social media, text, tweet, Google or conduct
3 any other type of research with regard to any issue, party, witness or
4 attorney involved in the case.

5 Most importantly, do not form or express any opinion on any
6 subject connected with the trial until the case is finally submitted to you.
7 Thanks for another great day. It is 4:57. I'm bringing the lawyers in at
8 8:30. You can start tomorrow at 9. Okay.

9 [Jury out at 4:57 p.m.]

10 [Outside the presence of the jury]

11 THE COURT: So is there anything that the Plaintiff wants to
12 put on the record before we take our recess?

13 MR. ZAVITSANOS: No, Your Honor.

14 MR. BLALACK: Not -- are we going to do the voir dire on Mr.
15 Leathers or not?

16 THE COURT: He went out in the hall just now. There's
17 something I need to talk to the chief judge about. I should be gone about
18 10 minutes.

19 MR. BLALACK: Okay.

20 THE COURT: If I can reach her right away. I'll come back as
21 soon as I can.

22 MR. BLALACK: Okay.

23 THE COURT: Thank you for your professional courtesy.

24 MR. ROBERTS: Thank you, Your Honor. And as you know, I
25 didn't want to put what was in the hall on the record, but I agree to do it

1 after your conference with the chief judge.

2 THE COURT: I understand. Thank you.

3 MR. ROBERTS: Thank you, Your Honor.

4 [Recess taken from 4:58 p.m. to 5:12 p.m.]

5 [Outside the presence of the jury]

6 THE COURT: Mr. Roberts, when you're ready.

7 MR. ROBERTS: Thank you, Your Honor.

8 To confirm the objection that I made in the hallway, during
9 the break, Your Honor --

10 THE COURT: Now Mr. Leathers is in the room, is that an
11 issue for anybody?

12 MR. LEYENDECKER: Your Honor, did you ask me -- Mr.
13 Leathers to leave?

14 MR. ROBERTS: Are we still going to do an offer of proof with
15 him?

16 MR. BLALACK: We're going to do a voir dire of him --

17 MR. ROBERTS: Right.

18 MR. BLALACK: -- related to another motion.

19 THE COURT: All right. I just didn't know how you wanted to
20 start, whether it was with argument, or with the proof?

21 MR. ROBERTS: Well, I don't think there's anything to --

22 MR. BLALACK: I don't think any of this pertains to --

23 MR. ROBERTS: He's an expert, he's not excluded, I don't
24 think the things he's testified about.

25 MR. BLALACK: I agree.

1 MR. ROBERTS: I have no objection if he remained in the
2 courtroom.

3 So the specific testimony I raised out in the hallway was a
4 question that I objected to, and the answer to the question is, "If rates are
5 not high enough you will have trouble playing the physicians. Now I
6 may not have gotten that exactly right, but that's pretty close to what he
7 said.

8 We objected to the statement in opening, that this case was
9 about the quality of care in Las Vegas, going forward. And that, to us,
10 that was very objectionable, it violated *Lioce*, it encourages the jury to
11 decide the case on a basis other than whether or not the reimbursement
12 rates we paid were reasonable.

13 Because what it does is, imagine now going in the back, well,
14 this case is about the quality of care. That counsel -- you know, that's
15 what they said, "Who here is against better quality care in Las Vegas,
16 raise your hand?" The jury can't be encouraged to do that, that's
17 nullification. But now we've taken it to a different level with this
18 question, because the jury has no evidence from which they can decide if
19 the rates United paid on the claims at issue were high enough to prevent
20 TeamHealth and these plaintiffs from hiring and paying physicians.

21 In order to answer that question the jury would have known,
22 well, how much does it cost to pay the physician per account, and we
23 know from the offer of proof on Mr. Murphy, that the average is \$150 per
24 account, and we know that the rate they said was egregious is not
25 enough to pay physicians, was 254 an hour, where they're making a

1 profit.

2 So what the jury is left to speculate, is if we don't give them
3 enough money they won't be able to pay physicians, and the quality of
4 care in our community will suffer, but they have no information from
5 which they can make that decision, so they're just left to speculate, and
6 probably award more money, just because they don't know the answer
7 to that, and they don't want to hurt quality of care in Las Vegas.

8 And that's why this went too far, because now it's not just if
9 it's not high enough, it's quality of care, it's if it's not high enough we
10 can't pay physicians. Now we know from Mr. Murphy what their cost,
11 their all-in cost of clinical care is, for physicians per visit, and the jury
12 ought to know that now too, and we ought to be able to play the offer of
13 proof that we may on the record here in the courtroom with Mr. Murphy,
14 and I should have been able to inquire, but I think that can be fixed if we
15 now play the offer of proof.

16 Alternatively, if the Court still disagrees, as she did in the
17 hallway, the jury needs to be instructed that this case is not about
18 whether or not the rates are high enough to pay physicians. They need
19 to be told in an instruction that you have no evidence before you on the
20 cost of care, and I have held that it's irrelevant to your decision. You
21 should not consider whether the rates or high enough to hire and
22 maintain the employment of quality physicians, in Las Vegas, in making
23 your decision.

24 They need to know that. They either have to have the
25 evidence, or they need to be told not speculate, now that these improper

1 issues have been interjected into these proceedings. Thank you, Your
2 Honor.

3 THE COURT: Thank you. And the response, please?

4 MR. ZAVITSANOS: Yes, Your Honor. People, number one,
5 as we discussed out in the hallway, Mr. Leyendecker was saying just
6 general, foundational, healthcare industry kind of realities. We did not
7 get into pay, we did not get into costs, we did not get into profit margins.
8 These are the exact same arguments that we made during opening. It's
9 the exact same argument that the other side made, when we opened the
10 door multiple times during the trial, there's nothing new here; he did not
11 step over the line.

12 Second, if we're going to include a list of what's not relevant,
13 that list is going to be a mile long, in terms of what the Court should
14 instruct, that they have \$1300 an hour lawyers here, represented, that
15 they shouldn't consider that. They've got an army of a hundred lawyers
16 reviewing documents, they shouldn't look at that. I mean, that's kind of
17 silly.

18 The Court's charge is going to contain the evidence they
19 should consider, the instructions they should consider, it is not difficult
20 to instruct what they should not consider, and frankly, there are, I
21 believe, in the general instructions at the beginning, do not let -- and
22 then there's a whole slew of things like, you know, motion the --

23 THE COURT: Public opinion --

24 MR. ZAVITSANOS: Yeah. Public opinion and things like that,
25 and these are -- these have been -- and I know, Your Honor, Nevada is

1 obviously like every other States, these are very carefully thought out.
2 Jurors take it very seriously, and I just don't think it's warranted at all. I
3 don't believe we've done anything to open the door, and I keep making a
4 run at this, and it's the same -- these are the same issues that have come
5 up time and time again.

6 MR. LEYENDECKER: And, Your Honor, very briefly, as far as
7 on this point, because Mr. Roberts, he wheels in the *Lioce v. Cohen*
8 decision, like it's some type of a sword. As we argued *Lioce* they came
9 up with the same issues the first time, in response to my argument
10 during opening statement, that *Lioce* was during an alternation issue. At
11 no point in time did we ask the jury to disregard the law, or the jury
12 instructions that you're going to give.

13 So to the extent that it is not an applicable standard, and this
14 goes all the way to I think one of the first decisions to be made on our
15 discovery orders, about not talking about a factor in this case. So
16 therefore, we augment the record then, with those two points.

17 THE COURT: Thank you. And the reply, please?

18 MR. BLALACK: Just briefly, Your Honor, there's not going to
19 be any instruction on the quality of care in Las Vegas. There's not going
20 to be any place they can put that on their form. If you should ask the jury
21 to make their decision based on the quality of care in Las Vegas, you are
22 asking for jury nullification. Thank you.

23 THE COURT: All right. And I had overruled the objection. I
24 just never have seen the issue of cost of care as being relevant here, or
25 the profitability of the Plaintiff. I'm going to deny the request to play the

1 Murphy offer of proof and deny the request for an instruction.

2 Now what's our next issue?

3 MR. BLALACK: I think we're going, if Mr. Leathers is
4 available, hopefully in about 10 or 15 minutes, to resolve the record of
5 the question of his report, and then we can briefly argue the question of
6 the --

7 MR. LEYENDECKER: May I just --

8 MR. BLALACK: -- the admissibility --

9 MR. LEYENDECKER: May I just raise one thing? You know, I
10 was remembering, Your Honor, in my mind, questions on this topic,
11 whether he had made disclosure, I cited something to Your Honor in the
12 original award and the deposition, and last night I finally tracked down
13 what I was remembering. And here on page 131, he gives an answer:

14 "A You can certainly see, in my exhibits."

15 And he's talking about the original report, "the full amount of
16 damage that the Plaintiffs are claiming between the billed charge and the
17 amount allowed.

18 "Q Right. And you're treating all of that delta as damage,
19 correct?

20 "A Yes. "

21 And then he goes on to say so forth and so on. So the
22 numbers went in the report, he's asked about it in the deposition, but
23 there's no prejudice here, for obvious reasons. We admitted the
24 summary of 473, that has the charges, and the allowed amounts, by
25 Plaintiff, by Defendant, that heard from the witness that they can --

1 MR. BLALACK: Can I interrupt? If we're going to argue this
2 I'd like Mr. Leathers to leave. I thought we were going to do the offer of
3 proof. If we're going to argue, I'm going to ask that he step out.

4 THE COURT: Mr. Leathers, please step out.

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: And let me just frame the issue for the record.
7 Plaintiff updated the expert report, Sunday, says it's a calculation update,
8 and the Defendant claims that they believe there's new methodology.

9 MR. BLALACK: New methodology that results in a
10 completely different way to get to the outcome, that's the issue I'm
11 having. You hear his testimony, and you disagree with him, then it
12 moots the point entirely. If you hear it, and you think there's been a
13 change, then we have some have something to decide.

14 MR. LEYENDECKER: The only thing I'd add, Your Honor, so
15 the evidence couldn't have been more clear, he's testified the bill charge
16 allowed amount, and that's the damage, yes. All right. Today we saw
17 extensive cross-examination about, oh, claim this number, claim that
18 number, drop it here, drop it there.

19 I just think there's no prejudice, it was fairly disclosed, it was
20 fairly asked about in the first deposition. The idea that there's a new
21 methodology which was -- I mean, exactly asked for and described on
22 page 131; it simply doesn't exist in the record.

23 THE COURT: What's your response?

24 MR. BLALACK: Your Honor, the only thing I can do is, is I
25 think I've explained I think there was. You may ultimately disagree with

1 me, but I think the best way to resolve it is to hear from the witness, look
2 at his paper, and see if you agree or disagree.

3 THE COURT: Good enough. So, Marshal, lets bring in Mr.
4 Leathers. Bring in Mr. Leathers. Mr. Leathers, the witness.

5 THE MARSHAL: I'll get him.

6 THE COURT: Can you guys introduce me to the new team
7 members who have joined us?

8 MR. BLALACK: Oh, this is our expert, Mr. Deal and his
9 colleague. They're going to be joining us tomorrow, and my colleague,
10 Stacey [phonetic] who works with me.

11 THE COURT: Okay.

12 MR. ROBERTS: And, Your Honor, I may have neglected to
13 put it on the record, although I believe your Court recognized him earlier
14 at counsel table with me, was Mr. Colby Balkenbush.

15 THE COURT: I did, out in the hall.

16 MR. ROBERTS: Thank you.

17 THE COURT: Okay.

18 MR. ROBERTS: Yes, he was in the hall.

19 THE COURT: Okay. And this is Ms. Lewellyn? No.

20 MR. BLALACK: That's his assistant.

21 MR. ROBERTS: That's Bonnie, my assistant, she's my
22 paralegal --

23 THE COURT: Got it.

24 MR. ROBERTS: The one I introduced during voir dire, who
25 was sitting over in the corner.

1 THE COURT: Thank you, both.

2 MR. ROBERTS: Behind -- I think she was behind the column
3 Your Honor.

4 THE COURT: The courtroom is 3D, that's all I can say.

5 UNIDENTIFIED SPEAKER: I've been in many trials with
6 Audra, and sometimes Lee helps too.

7 THE COURT: Please proceed.

8 MR. BLALACK: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. BLALACK:

11 Q Mr. Leathers, welcome back. We're outside the presence of
12 the jury because I'd like to help explain real briefly to the Court what --
13 how you went about forming your opinions, in your various reports, as
14 they changed over time. So let me just take you through them real
15 quick, and I think we can hopefully establish what we need to
16 [indiscernible].

17 MR. BLALACK: So first I'm going to ask my colleague,
18 Shane, to bring up on the screen, Defendant's Exhibit 5083.

19 BY MR. BLALACK:

20 Q Sir, do you recognize Defense Exhibit 5083, is your original
21 reported dated July 30th, 2021?

22 A Yes.

23 MR. BLALACK: Shane, could you go to the first page,
24 paragraph 1, under Solomon.

25 BY MR. BLALACK:

1 Q And Mr. Leathers, you can just read that to yourself. Well,
2 obviously not in front of a jury, but am I correct that your -- the original
3 scope of work for your first report was to measure and calculate alleged
4 actual damages --

5 MR. BLALACK: Strike that.

6 BY MR. BLALACK:

7 Q Measure and calculate the actual damages from an alleged
8 violation of the Nevada Racketeering defense?

9 A Yes.

10 Q Now will you would go to paragraph 40 -- well, as you look at
11 paragraph 40, which is on page 11, you will see an amount resulting
12 from alleged fraud. Do you see that?

13 A It's kind of hard to see, okay.

14 Q There you go. Can you just skim that to yourself, and when
15 you're ready we'll go over to the next page and continue reading?

16 [Witness reviews document]

17 THE WITNESS: Okay.

18 BY MR. BLALACK:

19 Q All right. Go to the top of page 12, the end of paragraph 40,
20 and then paragraph 41, along with the charge?

21 [Witness reviews document]

22 THE WITNESS: I see that.

23 BY MR. BLALACK:

24 Q Okay. Now, sir, look at that chart, do you agree with me
25 what you were doing in your efforts to measure the damages for -- the

1 actual damages for the alleged RICO violation, you were focusing on the
2 discount, at least in this portion of your analysis, associated with use of
3 the Data iSight tool?

4 A Yes.

5 Q And you came up with something you called the iSight
6 savings percentage; do you see that?

7 A Yes.

8 Q And that's in the far right-hand column?

9 Q Yes.

10 A And that was measured, as you said there, column B is equal
11 to column C, divided by A, correct?

12 A Yes.

13 Q So what you had done there was figure out which claims
14 were reimbursing the Data iSight tool, correct?

15 A Yes.

16 Q And at that time it was 797, correct?

17 A Yes.

18 Q And then you had measured the billed charge versus the
19 allowed for each of those claims TeamHealth Plaintiffs, correct?

20 A Correct.

21 Q And then you would come up with a percentage of the billed
22 charges that were reimbursed in the allowed amount with connection to
23 Data iSight?

24 A Yes.

25 Q Okay. And those are the numbers in that column B, that are

1 highlighted there, correct?

2 A Yes.

3 Q All right. Now if you go down to the next paragraph, under
4 C, healthcare providers' actual damages, and just read that to yourself,
5 please.

6 [Witness reviews document]

7 THE WITNESS: Okay. I've read it.

8 BY MR. BLALACK:

9 Q Okay. Thank you. You got an impression in your mind kind
10 of what the math was that you did?

11 A Uh-huh.

12 Q All right. So now if you go to the next page you'll see a
13 chart.

14 MR. BLALACK: Blow that up, Shane.

15 BY MR. BLALACK:

16 Q So sir, could you just describe briefly for the Court, what
17 you -- how you went about calculating the damages as reflected in the
18 chart?

19 A Sure. So at the time the total claims were 1,200 -- 12,558.
20 The total bill charge at the time were \$14 million. The actual allowed
21 was \$3.1 million. And then what I did is based on the amount -- the
22 allowed charges per Data iSight I essentially apportioned the difference
23 between the 14 and the 3, attributed to that amount, that resulted from
24 the SSP plan.

25 So that you can see in the top section I have 354339. I apply that

1 same percentage to the rest of the claims to get that -- the -- essentially
2 the portion that is allowed per SSP.

3 Q Just to be clear, that's how the allowed percent of charges
4 up at the top for Fremont, Ruby Crest and Team Physicians. Those are
5 for Data iSight only claims, correct?

6 A Yes, that's correct.

7 Q And that's the percent allowed that's the inverse of that Data
8 iSight savings percentage you showed on the prior page.

9 A Correct.

10 Q And then once you determined those percentages, you
11 multiplied those same percentages for the remaining claims that were
12 not Data iSight claims, correct?

13 A That's correct.

14 Q And that's how you calculated the damages figure for the
15 non-Data iSight claims that added up to roughly 8 or \$9 million?

16 A Yes, that's right. So you're essentially taking the 14 minus 3
17 is the 11. Minus the 5, or -- minus the 3 gets you to the 9.

18 Q Okay. So using this methodology that you described here,
19 you ended up calculating for 12,558 claims. Total actual damages for all
20 of those claims, Data iSight and non-Data iSight \$9.3 million. Actually
21 \$9,335,981.

22 A That's correct.

23 Q Okay. So let's -- we've got that established. Now let's look at
24 what you did for your supplemental report. Sir, if you could, I'm going
25 to ask you to look at Defense Exhibit 5188. You recognize Defense

1 Exhibit 5188 as your supplemental report dated September 9th?

2 A Yes.

3 Q Sir if you'd go to page 1. Assignment, Paragraph 1.

4 MR. BLALACK: Bring that up, Shane.

5 BY MR. BLALACK:

6 Q It says I've been asked to supplement my expert report dated
7 July 30th, 2021, to evaluate the damages suffered, if any, by the
8 healthcare providers based on the amount allowed/paid by UHC for
9 other out-of-network or non-participating providers, non-emergency
10 medicine services. This report incorporates the defined terms from the
11 letter report. Do you see that?

12 A Yes.

13 Q Okay. Am I correct, sir, based -- I think we discussed this in
14 your deposition, that this analysis that's reflected in your supplemental
15 report was not an effort to calculate any damages associated with the
16 RICO claim?

17 A Correct.

18 Q And in fact, this was an effort to calculate damages for
19 whatever underpayment allegations the TeamHealth Plaintiffs made in
20 this case, using a methodology where you were measuring -- using a
21 benchmark which was the allowed amount by the United Defendants to
22 other out-of-network ER providers?

23 A Yes. And as we discussed in my deposition, to essentially
24 broaden the scope of the calculations that I was doing.

25 Q Okay. Now go to page 2, under paragraph 5, supplemental

1 opinions. See the paragraph. I'll read real quick. "Based upon the
2 information reviewed, the analysis performed with United's out-of-
3 network allowed/paid amounts to other providers, I have calculated the
4 healthcare providers' actual damages in UHC's alleged wrongful conduct
5 to be approximately \$3.5 million. This amount is based on average
6 amounts paid by UAC, based on CPT codes to other out-of-network
7 providers of emergency medicine services." Did I say that right, sir?

8 A Yes.

9 Q Okay. And am I correct, sir, that there was no analysis or
10 methodology of this type that was included in your original report in
11 July?

12 A Correct. The -- that's correct.

13 Q Okay. Now if you'd look at the chart. Go to Exhibit 1 which
14 is the next page. If you blow that up, you'll see a calculation of damages
15 on this chart. Is that right?

16 A Yes.

17 Q This summarizes your computation of damages under this
18 different methodology in your supplemental report?

19 A Well, first of all, it's not a different methodology. The
20 methodology is the same. Essentially what we've done is taken the
21 difference between the bill charge and the allowed charge, which we
22 started in the first report. We apportion that based on iSight. Data
23 iSight. Now we've supplemented that report to say, let's now look at
24 what the difference is based on just the allowed amount, instead of the
25 billed amount.

1 Q All right. Well, let's try to -- let's see if we can agree on
2 something here, sir. Look in the upper right hand corner up there, under
3 damages.

4 A Yes.

5 Q Okay. See under damages there's a formula?

6 A Yes.

7 Q The formula is $K=J-I$?

8 A Yes.

9 Q Do you agree with me, that J here, sir, is the market allowed
10 for United Healthcare?

11 A Yes.

12 Q And the market allowed there means the amount that United
13 allowed to out-of-network providers of E.R. services other than the
14 TeamHealth plans?

15 A Correct.

16 Q It is not the TeamHealth plans total bill of charges, correct?

17 A That is correct.

18 Q Okay. The total allowed is what? What is that total allowed
19 in I?

20 A Well, the total allowed looks at the percentage or the amount
21 of -- the percentage amount that the -- that was -- that United paid to
22 other providers. And says let's assume that the Plaintiff should have
23 received that amount of money, instead of their bill charges. What
24 would the damages be.

25 Q Okay. So you measured in I the total allowed that United

1 allowed to out-of-network ER providers, not including the TeamHealth
2 plan? That's in I?

3 A Can you repeat that?

4 Q Is I measuring the total allowed that United allowed for out-
5 of-network E.R. providers, other than the TeamHealth plan?

6 A No.

7 Q What does it measure?

8 A It's measuring the amount allowed to the TeamHealth
9 Plaintiffs.

10 Q Okay. And you're talking about as reflected in G and H in
11 the prior column, right?

12 A Yes.

13 Q Okay. And then that's' being compared to a benchmark that
14 you're using, which is, you said a moment ago, is the market allowed
15 average for reimbursement of the same services for out-of-network ER
16 providers, other than TeamHealth?

17 A Correct.

18 Q And measuring those two produces the K=J-I and that's how
19 you get the damages.

20 A That's correct.

21 Q Okay. But in this analysis, no part of the damage calculation
22 involves comparing the total allowed to TeamHealth Plaintiffs claims to
23 their total bill charges?

24 A That's correct.

25 Q Now -- and you agree with me, sir, that with respect to the

1 first report that you did, because you were calculating the amount
2 allowed versus a benchmark based on the Data iSight shared savings
3 percentage. That also did not involve taking the TeamHealth Plaintiff's
4 full bill charges and subtracting that amount?

5 A Sure, it did.

6 Q Pardon me?

7 A Yes, it did. Sure it did.

8 Q Okay. Well, let's go back to your first report. Look at page
9 13. Go back to your chart. Now there, sir, what were the total bill
10 charges for the disputed claim?

11 A 14.6 million.

12 Q And did the -- how did the 14 -- strike that. So 14.6 million
13 was the total bill charge. What was the total allowed on this one?

14 A 3.1 million.

15 Q Okay. And now so that's columns A and B; is that right?

16 A Yes.

17 Q So if one wanted to measure damages by comparing the
18 total bill, minus the total allowed, what would be the formula?

19 A It would be the difference between the 14 million and the 3
20 million.

21 Q Which would be roughly --

22 A \$11 million.

23 Q 11.5 million?

24 A Yes.

25 Q Okay. That would be the measure if you were doing it total

1 bill minus total allowed?

2 A Correct.

3 Q Okay. What you did was take $E=A-D$, right?

4 A Yes.

5 Q Okay. And E -- again A-D, A was bill charges minus D, which
6 is the allowed for SSP, correct?

7 A Correct.

8 Q Which is a different figure. That's 5.31 million, correct?

9 A Correct.

10 Q That's D. So you subtracted 5.31 million from 14.6, correct?

11 A Yes.

12 Q That's how you got your 9?

13 A Yes.

14 Q Okay. So when you did this analysis, you didn't get to 9 by
15 subtracting 13.1 million from allowed from 14 million in bill, correct?

16 A Well, the math is correct. I mean I think what we're missing
17 here is that this process here is to say of the \$11 million in total damage,
18 how is that apportioned between that that resulted from the alleged
19 fraud and that that resulted from other factors.

20 Q Okay. Well, when you calculated -- I'm just trying to
21 understand what you did in these reports. You just told me for your
22 second report, your supplemental report, you were measuring the
23 allowed versus the average amount that the 90 Defendants allowed for
24 out-of-network services to ER providers other than TeamHealth?

25 A Yes.

1 Q And that was not a calculation based on their total bill
2 charges minus total allowed, correct? For your supplemental report?

3 A Well, the math didn't include bill charges. But again just kind
4 of looking at your example. It's billed allowed. Okay, of that difference
5 what may have resulted from the fraud. Okay. Well, let's now apportion
6 if to say okay, of that difference, what would have been associated with,
7 if you assumed the allowed amount.

8 Q Correct. Which is why when you wrote your opinion, you
9 said my alternative measure of damages was three point some million
10 dollars, right?

11 A Yes, that's part of it.

12 Q Okay. In this report, you also didn't take the total bill minus
13 the total allowed. Instead, you took the allowed for SSP and subtracted
14 that from billed charges, correct?

15 A To get the amount associated with the -- that was attributed
16 to the fraud claim.

17 Q Now let's look at the docket you provided on Sunday. And I
18 understand, let's see, I think that's Defense Exhibit 5183, which I think is
19 just an Excel spreadsheet. This is the one I tried to show you earlier, sir.
20 And you can take a look at this on the screen and tell me if you recognize
21 it.

22 MR. GODFREY: 5183 is his report.

23 MR. BLALACK: Oh, I'm sorry.

24 MR. GODFREY: 5516?

25 MR. BLALACK: My apologies. 5516. My apologies, Shane.

1 MR. GODFREY: No worries.

2 BY MR. BLALACK:

3 Q Okay, sir, is -- do you recognize 5516?

4 A Yes.

5 Q Is this one of the spreadsheets you prepared and sent to us
6 this weekend on Sunday?

7 A Yes. It's a revised Exhibit 4 to my initial report.

8 Q Okay. Now in this revised Exhibit 4, when you are
9 calculating damages.

10 MR. BLALACK: Shane, could you highlight the damages
11 computation in the upper left?

12 BY MR. BLALACK:

13 Q What is the formula this time?

14 A The formula is bill charges minus allowed charges.

15 Q So you're taking damages is E and A here is bill charges.
16 And the total allowed is the B, correct?

17 A Correct.

18 Q And so subtracting B from A, that's how you get the total
19 damages?

20 A Correct.

21 Q And now you get \$10.399 million?

22 A Correct.

23 Q Okay. And that's on 11,563 claims, which are fewer claims
24 than what you were analyzing here in your first report, when there were
25 like 12,500 claims?

1 A Yes.

2 Q So 1,000 fewer claims, but total damages is higher by not
3 quite a million?

4 A That's correct, because you're removing as you can see the
5 column related to the bill charges -- I mean related to the Data iSight.

6 Q Right. So just to refresh, the first report that we just went
7 over, 12,500 claims, you took bill charges, and you subtracted the
8 shared, what you call the SSP savings percentage. And that produced a
9 damages figure of nine point some odd million dollars?

10 A That's right. Related to the RICO claim.

11 Q Then you did a supplemental report, which analyzed a
12 comparison between the allowed amount from the disputed claims to
13 the average allowed amount for out-of-network claims paid to ER
14 providers, other than to TeamHealth claims?

15 A Correct.

16 Q And then in this analysis, which was provided to us on
17 Sunday night, you simply took bill charges for those 11,563 claims and
18 subtracted the total allowed, 2.8, to get to a damages figure of 10.3?

19 A Yes. Again, this is Exhibit 4 from my initial report, where I
20 just simply removed the Data iSight piece.

21 Q Right.

22 A So the damage flows through.

23 Q And by removed -- and by removed, you mean didn't rely on
24 it.

25 A That's right. I mean my understanding is, is that that claim

1 is, and there's other charts that I sent you Sunday, you know, is out of
2 this case. And so when I was producing my work paper, I needed to, you
3 know, hide everything that was damage related to that.

4 Q Right, understood. And I appreciate that gesture. But my
5 point is at no point in the time you've been offering an expert opinion in
6 this case for any claim, your first one on RICO, your supplemental report
7 on other underpayments, until Sunday night have you ever had a
8 calculation of damage and your opinion on what the damages were, that
9 used a formula of damages equals bill charges minus total allowed.

10 A Incorrect. We talked in my deposition about \$11 million and
11 that I would come to trial, that either you may ask me on cross
12 examination or Mr. Leyendecker would ask me. And I answered that
13 question to say yes, I may come to trial and present damages equal to
14 \$11 million.

15 Q Can you show me anywhere in your report before Sunday of
16 this --this month, where you had a measure of damages calculated as bill
17 charges minus allowed.

18 A I don't have the \$11 million number. We can look at Exhibit 4
19 in my initial report and you'll see the two numbers to calculate that. And
20 then what you can also do is you can look in the -- I can direct you to it --
21 the paragraphs in the report, where it discusses that the Plaintiffs'
22 claimed damages are bill charges of approximately \$14 million. And
23 then it then describes the amount allowed -- the actual amount allowed
24 of \$3 million.

25 Q Right. And let's go back to that real quick, page 13 --

1 A Which is why we clarified it in my deposition.

2 Q -- of Exhibit 5183, because, sir, there's no dispute in this case
3 that everybody does know what the bill charges were, and the allowed
4 amount was. The question is not whether we knew the number. The
5 question is whether you ever issued an expert report that used the bill
6 charge and said that's my opinion about what the damages are in this
7 case. So my question is did you ever in writing any time before Sunday
8 night, say that your opinion of what the damages in this case were for
9 any claim was measured by taking billed charges minus total owed?

10 A Excluding my deposition, no.

11 MR. BLALACK: Thank you. That's all I have for him, Your
12 Honor.

13 THE COURT: Mr. Leyendecker, do you wish to question this
14 witness?

15 MR. LEYENDECKER: Just briefly, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. LEYENDECKER:

18 Q I've lost the shell. I can't put it up. But in your original
19 report, paragraph 34, did you say the evidence includes the following
20 basic facts. You had [indiscernible] documents to find bill charges as the
21 amount owed to out-of-network providers. Another bullet, you actually
22 knew it owed the healthcare providers their billed charges because blah,
23 blah, blah. For the claims at issue, the healthcare provider's billed
24 charges were 14 million and change of which you -- HC paid the
25 healthcare providers 3.1 million. Paragraph 35, did you say, based on

1 the above, it's my opinion that --

2 A Slow down.

3 Q -- it's my opinion that the actual damages attributable to the
4 alleged -- I want to stop there because during your discussion with Mr.
5 Blalack, you were given a description of measured damages described in
6 the report and a portion. Can you elaborate on that?

7 A Well, again, the measure of damages between the billed
8 charges, which has been all in my opinion all along, and then in this first
9 report was to take -- to apportion that amount out to that amount that's
10 attributed to the RICO claim. That's discussed at length in my
11 deposition, that apportionment aspect. With the RICO amount removed,
12 there's no apportionment between those two numbers.

13 Q So in any number of places throughout the original report do
14 you identify the billed charges and the allowed amount on the claims at
15 issue?

16 A Yes.

17 Q And in your deposition did you tell them on page 131, "You
18 can certainly see in my exhibits" -- and is that a reference to your original
19 report?

20 A Yes.

21 Q "The full amount of damage that the Plaintiffs are claiming
22 between the bill charge and the amount owed. Right."

23 "Q. And you're treating all of that delta as damage, correct?" And
24 you answered yes. And then you went on to describe apportionment.

25 So in your view, is it your position that your original report and the

1 schedules disclosed, that you were assessing the damages, the
2 methodology between the billed charge and the amount allowed even
3 though you technically didn't do the A minus B calculation in that report?

4 A That's correct, sir.

5 MR. LEYENDECKER: That's all I have, Your Honor.

6 THE COURT: Okay. Anything further?

7 MR. BLALACK: Nothing further.

8 THE COURT: We'll excuse you again.

9 THE WITNESS: Thank you.

10 THE COURT: Okay. Room's clear. Mr. Blalack?

11 MR. BLALACK: Your Honor, I think the record is clear. He
12 has admitted that he used a damages calculation. You have three
13 different outcomes. You have billed charges minus the shared savings
14 program allowed percentage for his first opinion. That produced
15 damages of about \$9 million out of 12,500 claims. Then he has a second
16 opinion, which was again billed minus allowed. It was allowed
17 compared to the average allowed amount for United payments to other
18 out-of-network emergency room providers. And that produced about a
19 \$3.5 million alleged damage.

20 And that was exactly what we had to go on coming into this
21 process. We had a motion to strike his testimony and supplemental
22 report, if you recall, on the grounds that it was untimely. And there was
23 a motion to leave -- motion for leave. It was in response to that motion
24 that Mr. Leyendecker said, Your Honor, we've got two experts here,
25 we're going to pick one. They were going to make that decision.

1 So on that basis, we went forward, Your Honor, and I did not
2 depose him as a result. I consciously did not because I had both the
3 reports. I knew what his methodologies were. I could do the math of A
4 minus B times C and all those things. And I didn't depose him on those
5 two reports. I didn't depose him on the first one and the second one in
6 his deposition.

7 And then on Sunday night -- and I knew that the most
8 damages he had ever articulated in any report was \$9.5 million in his
9 first report. His alleged other one was 30. So then we got a submission
10 on Sunday night on an Excel spreadsheet. And for the first time, had
11 him saying that the damages in the case were billed charges minus
12 allowed. And in the course of that, caused the damages number to go
13 up almost by \$1 million.

14 So one, Your Honor, it is clearly a new method. He just
15 admitted it. Two, it has prejudice to us because now my client's got
16 exposure for a damages' opinion from their expert that's higher than it
17 was before the new information was provided. There's no doubt that
18 there was a number out there that could have been an expert opinion.
19 He could have calculated it this way. He could've put it in either his first
20 report or second report. In fact, he could've even put it in one of his
21 work papers he served on the night before the deposition, which I
22 complained about. He didn't do any of those. I got it on Sunday night
23 before he was going to take the stand.

24 So I submit that the record shows he did use a different
25 method. The record shows the damages went up by almost \$1 million

1 as a result. And I think that's highly prejudicial and unfair, Your Honor.
2 So on that, I'll stand down and let Mr. Leyendecker --

3 MR. LEYENDECKER: Just briefly.

4 THE COURT: We're running out of time. Do you want to
5 finish this in the morning, or can you be brief?

6 MR. LEYENDECKER: I can finish in less than 60 seconds.

7 THE COURT: Well, take five minutes.

8 MR. LEYENDECKER: Oh, I don't need five minutes, Your
9 Honor.

10 THE COURT: Got it.

11 MR. LEYENDECKER: I'll be brief here. Mr. Blalack just told
12 you he didn't depose Mr. Leathers when his motion got denied to strike
13 him because he knew what he had. And that's exactly right. In the
14 deposition, Mr. Leathers told him that he was calculating the total
15 damages as the difference between the billed charge and the allowed
16 amount. That's why he didn't take his deposition again.

17 Number two, the idea that they've suffered some prejudice
18 because there's now a new theory or new numbers out there is a little
19 rich because our other expert under his view of the world, had a very
20 clear calculation where he had billed charge and allowed amount, and he
21 also simply showed the difference between those two. So the idea that
22 somehow, we've expanded damages is simply not correct.

23 I disagree with the characterization. I think Mr. Leathers
24 made it very clear that the methodology is the same. It may not have
25 been as precisely laid out as Mr. Blalack would like, but he clearly was

1 the one that was in the report. And more importantly, finally, Judge, we
2 got conditionally admitted today, and I expect it to come in tomorrow,
3 the summary of the claim file which has these same numbers. And
4 there's no question the jury understands the allegation is the difference
5 between those two. It's not -- I don't want to be insulting towards Mr.
6 Leathers, but when you get down to the point where you've got it
7 captured, it's not really -- we're not talking rocket science here. It's A
8 minus B, Judge.

9 THE COURT: And the reply, please?

10 MR. BLALACK: Nothing, Your Honor.

11 THE COURT: All right. I'm going to overrule the objection.
12 You did have notice of the charges less allowed in Exhibit 4 to the
13 original report. You got a chance to export at a deposition. I was
14 concerned about the unfair surprise, but it doesn't seem to me that there
15 was any prejudice to the Defendant. So your objection's overruled.

16 MR. BLALACK: Thank you, Your Honor.

17 THE COURT: And I'll see you guys at 8:30.

18 MR. BLALACK: Thank you, Your Honor.

19 MR. LEYENDECKER: Thank you, Your Honor.

20 THE COURT: Have a good night, everybody.

21 MS. ROBINSON: I was wondering when you would like to
22 discuss jury -- the jury charge, just so I can know when to --

23 THE COURT: Well --

24 MS. ROBINSON: -- change my -- our plane tickets.

25 THE COURT: -- I've been preparing for it every day. I am

1 hopeful that we can get to that tomorrow. I have some ideas on the form
2 of verdict for you tomorrow. I'm just reviewing one last memo from my
3 law clerk.

4 MS. ROBINSON: So I guess --

5 THE COURT: So I'm sorry.

6 MS. ROBINSON: No. And you don't have to. I'm so grateful
7 for all the overtime and how hard everybody's been working. I guess my
8 specific question to you is do you anticipate that we will be working
9 Friday evening?

10 THE COURT: I do.

11 MS. ROBINSON: Yes. Okay. And then what about Sunday
12 evening?

13 THE COURT: Let's see where we get.

14 MS. ROBINSON: Okay.

15 THE COURT: I'm sorry to be so --

16 MS. ROBINSON: It's okay.

17 MR. PORTNOI: Judge, and if I can join in Jane's request
18 because I've got a --

19 THE COURT: I am more than happy to work on Sunday
20 afternoon.

21 MR. PORTNOI: I would be, too.

22 THE COURT: But you're going to have to make an
23 arrangement because these guys wouldn't be there. It would be me.
24 You'd have to have a court reporter.

25 MR. PORTNOI: Which we're fine to do.

1 THE COURT: You'd have to --

2 MR. PORTNOI: And I've done it that way more than once.

3 THE COURT: I am more than happy. That's why I asked Mr.
4 Blalack when he got in Sunday. His flight arrives around 2, late
5 afternoon. I can give you a few hours. I'm more than happy to do that.

6 MR. BLALACK: And that is fine, Your Honor. But these folks
7 have my proxy. So if it works better, I could be come toast anyway by
8 the time I roll in. So I think you should schedule it when you -- when it
9 works for everybody.

10 Before you go, Your Honor, another request.

11 THE COURT: Yeah?

12 MR. BLALACK: We've got some offers to make in writing.
13 Our plan was just to roll it all into one as opposed to doing it for each
14 witness. Is there any objection to that?

15 THE COURT: I'll ask the Plaintiff.

16 MR. BLALACK: Just to be efficient.

17 MR. LEYENDECKER: We have no objection if they want to
18 roll it into an omnibus.

19 THE COURT: Good enough.

20 MR. BLALACK: Thank you, Your Honor.

21 THE COURT: All right. So we're going to argue the motion
22 for directed verdict at 8:30. I am going to make sure that we start at 9
23 tomorrow.

24 /////

25 /////

1 MR. LEYENDECKER: Okay. Thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. BLALACK: Thank you very much, Your Honor.

4 [Proceedings adjourned at 5:55 p.m.]

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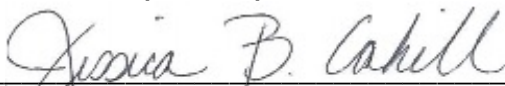
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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

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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

**ERRATA TO SOURCE ON DEFENSE
CONTESTED JURY INSTRUCTIONS**



1 UNITED HEALTHCARE INSURANCE
 2 COMPANY, a Connecticut corporation; UNITED
 3 HEALTH CARE SERVICES INC., dba
 4 UNITEDHEALTHCARE, a Minnesota
 5 corporation; UMR, INC., dba UNITED
 6 MEDICAL RESOURCES, a Delaware
 7 corporation; SIERRA HEALTH AND LIFE
 8 INSURANCE COMPANY, INC., a Nevada
 9 corporation; HEALTH PLAN OF NEVADA,
 10 INC., a Nevada corporation,

11 Defendants.

12 Defendants UnitedHealthcare Insurance Company (“UHIC”), United HealthCare
 13 Services, Inc. (“UHS”), UMR, Inc. (“UMR”), Sierra Health and Life Insurance Co., Inc. (“SHL”),
 14 and Health Plan of Nevada, Inc. (“HPN”) (collectively “Defendants”), by and through their
 15 attorneys, hereby file this Errata to correct a source on Jury Instruction within Defense Contested
 16 set of Jury Instructions filed on November 16, 2021, titled “Burden of Proof”. A copy of the
 17 correct Jury Instruction is attached hereto and should be removed / replaced within the Defense
 18 Contested Jury Instructions.

19 Dated this 18th day of November, 2021.

20 /s/ Colby L. Balkenbush

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of November, 2021, a true and correct copy of the foregoing **ERRATA TO SOURCE ON DEFENSE CONTESTED JURY INSTRUCTIONS** 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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EXHIBIT 1

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JURY INSTRUCTION NO. D____

BURDEN OF PROOF

Throughout the following instructions, I instruct that a party must prove certain claims or allegations by either a preponderance of the evidence or by clear and convincing evidence. The meaning of these terms is as follows.

“Preponderance of the evidence” means such evidence as, when considered and weighed against that opposed to it, has more convincing force and produces in your mind a belief that what is sought to be proved is more probably true than not true.

“Clear and convincing evidence” means such evidence that will produce in your mind a firm belief or conviction as to the allegations sought to be established. It is an intermediate degree of proof, being more than a mere preponderance but not to the extent of such certainty as is required to prove an issue beyond a reasonable doubt. Proof by clear and convincing evidence is proof which persuades you that the truth of the contentions is highly likely.

In determining whether a party has met either burden, you must consider all the evidence, whether introduced by the plaintiffs or defendants.

SOURCE/AUTHORITY:

NEV. J.I. 2.1 (2018) (modified) and NEV. J.I. 2.2 (2018) (modified).

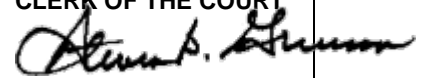
ERRATA:

The as-filed Source/Authority contains NEV. J.I. 2.1 (2018) (modified) and NEV. J.I. 2.2 (2018) (modified). Defendants revise the Source/Authority to add NEV J.I. 10.8 (2018) (modified). Note that the language from NEV J.I. 10.8 (2018) is also cited in the authority for NEV. J.I. 2.2 (2018) and is a correct statement of the law.



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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

Defendants.

CASE#: A-19-792978-B
DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
THURSDAY, NOVEMBER 18, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 15

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RECORDED BY: BRYNN WHITE, COURT RECORDER

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FOR THE PLAINTIFFS

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1 Las Vegas, Nevada, Thursday, November 18, 2021

2
3 [Case called at 8:34 a.m.]

4 [Outside the presence of the jury]

5 THE MARSHAL: Court is now in session. The Honorable
6 Judge Allf residing.

7 THE COURT: Thanks, everyone. Please be seated. Let's take
8 appearances really quickly, starting first with the Plaintiffs.

9 MS. LUNDVALL: Good morning, Your Honor. Pat Lundvall
10 from McDonald Carano, here on behalf of the healthcare providers.

11 MS. ROBINSON: Good morning, Your Honor, Jane Robinson
12 from Ahmad, Zavitsanos, here on behalf of the healthcare providers.

13 MR. ZAVITSANOS: John Zavitsanos for the healthcare
14 providers.

15 MR. LEYENDECKER: Kevin Leyendecker for the healthcare
16 providers, Your Honor.

17 MR. MCMANIS: Good morning, Your Honor, Jason McManis
18 for the healthcare providers.

19 MR. ZAVITSANOS: And Mr. Ahmad is here, floating around
20 in the hall somewhere, so --

21 THE COURT: Thank you. Is Jonathan going to make his
22 appearance?

23 MR. ZAVITSANOS: Excuse me?

24 THE COURT: Jonathan, is it?

25 MR. ZAVITSANOS: Oh, Michael. Michael Killingsworth.

1 MR. KILLINGSWORTH: Michael Killingsworth for the
2 healthcare provider.

3 THE COURT: Thank you. For the Defense, please.

4 MR. BLALACK: Yes, Your Honor. I'm over here by Mr.
5 Zavitsanos, but I'm actually representing United Health.

6 MR. ZAVITSANOS: We've done such a good job that he's
7 coming over here.

8 MR. BLALACK: Certainly, Your Honor. Lee Blalack on behalf
9 of the Defendants.

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

12 MR. PORTNOI: Good morning, Your Honor, Dimitri Portnoi
13 on behalf of Defendants.

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

16 MR. POLSENBERG: And Dan Polsenberg. Good morning,
17 Your Honor.

18 THE COURT: Good morning. All right. So Defendant, when
19 you're ready. When you're ready. All right. So you have a motion to
20 make, 10, 10, 5, so we can start at 9:00.

21 MR. PORTNOI: Okay. Your Honor, thank you and -- thank
22 you for making the time this morning. I know what we have a tight
23 schedule. So I -- as Your Honor probably saw last night, we filed our
24 motion and most of our -- most of our work is there. Obviously, 10, 10,
25 5, if Your Honor has questions or if there are any particular places, you'd

1 like me to focus and start, I'm happy to organize myself there.
2 Otherwise, we're obviously not going to get every point in the larger
3 motion.

4 THE COURT: You need to align the argument for me.

5 MR. PORTNOI: Absolutely.

6 THE COURT: I did read it.

7 MR. PORTNOI: So outlining the argument as a whole,
8 overall, starting -- we believe that there are -- that the Plaintiffs have not
9 yet -- has not put on a case that entitles them to relief under the Unfair
10 Claims Practices Act with respect to punitive damages, with the respect
11 to the implied in fact contract claim, and with respect to the Prompt
12 Payment Act.

13 We also believe, Your Honor, that there has not been a case
14 in any claim that's been put on against Sierra Health and Life, Health
15 Plan of Nevada, and UMR. We do believe our motion does not touch
16 unjust enrichment with respect to the other two defendants, UHIC and
17 UHC. But with respect to the -- with respect to Sierra Health and Life,
18 HPN and UMR, we don't believe that there's been a case put on with
19 respect to any claim.

20 So starting there, Your Honor, with respect to those three
21 Defendants, what we saw -- and we obviously understand Mr. Haben,
22 Ms. Paradise, they have been the bulk of United with cases that we've
23 seen so far. They both indicated that they weren't speaking on behalf of
24 those three Defendants. We saw Mr. Ziemer and Ms. Hare, but really
25 what we got from them is some background on out-of-network

1 programs, or really, the absence thereof at times.

2 We have no -- when thinking about -- you know, we had
3 no testimony about the intent to contract, the terms of a contract, the
4 promises, the offer, the acceptance. Nothing really there. Nothing about
5 many of the elements of unjust enrichment, which is what is the benefit
6 that Sierra Health at that SHL, which again, UMR retained. You know,
7 when you think about unfair claims practices, remember the Unfair
8 Claims Practices Act claim that is at issue here is whether there was, you
9 know, prompt settlement after a time when light -- it became reasonably
10 clear that subsection F in NRS 686(A).310. 310, we didn't see anything
11 from those -- for those defendants when it comes to, you know, what --
12 was there a prompt settlement? Was there prompt responses to
13 negotiations or appeals or anything of that sort?

14 And honestly, there was really nothing about timing when it
15 comes to prompt -- the Prompt Payment Act that something was
16 submitted, 30 days later, something was supposed to happen, 30 days
17 after that, something is supposed to happen, it didn't happen. We didn't
18 see that with respect here.

19 Going to all Defendants and thinking about the Unfair Claims
20 Practices Act, the most important piece here, and under -- understanding
21 that some of this, not all of this, and I really want to be clear, some of
22 this did come up earlier in this case, but we've actually seen the
23 evidence come in now. We're not accepting every allegation is true at
24 this point. We're really looking at the evidence that came in.

25 But what we do have here is that, you know, the fact that

1 what 686(A).310 says is an insurer is liable to its insured. So it's not an
2 insurer is liable to any claimant. It is not an insurer is liable to any
3 insured. It is an insurer is liable to its insured. As we cited in the case --
4 in our brief, there is, you know, a seminal case, *Tweet v. Webster*. This
5 is a District of Nevada case, but it's been cited by the Nevada Supreme
6 Court.

7 And what we see there is Chief Judge Reed gives kind of a
8 masterful discussion of the history of the Act, the structure of the Act, the
9 text of the Act. And says, look, when we look at this, this is a -- this is
10 something where certain -- you know, where really this is about the
11 parties to the underlying insurance contract.

12 Here, we don't have parties and insurance contract. We
13 don't -- it's someone -- some of the Defendants are insured, but the other
14 insureds are not here. So with respect to that, I wouldn't say that all of
15 the claims, whether it be unfair terms -- Unfair Claims Practices Act,
16 there just is no -- there is no standing for that on behalf of a service
17 provider.

18 And significant there is actually quite interesting is that the
19 insurance commissioner has adopted regulations in 686(A).310, and that
20 -- those regulations which are cited in our brief, literally say a service
21 provider is not a claim. Very clearly it's not just -- you know, a negative
22 in-patient directly excluding service providers from the definition.

23 Subsequently, we also point out that for two -- our two
24 defendants, UHS and UMR, they're not insurers, they are administrators.
25 They're third-party administrators. There's a Nevada Supreme Court

1 case here, *Albert H. Wohlers v Bartgis*. This is also cited in our briefs,
2 where we -- where there's already a holding, the third-party
3 administrators cannot be -- cannot be defendants under the Act. And so
4 that would take those two defendants out of this particular claim. Also,
5 with respect to UHIC, there are 119 at issue claims where they were
6 acting as TPAs, as third-party administrators.

7 In addition, again, what we're talking about here is
8 NRS 686. -- 686(A).310, subsection E. I might have said F before. And
9 just to remind the Court, that reads that the underlying claim is failing to
10 effectuate the prompt, fair, and equitable settlements of claims, which
11 has become reasonably clear.

12 And the fact that liability has become reasonably clear, that is
13 interpreted as an element that we just have to prove that there was a
14 time when liability has become reasonably clear. And what the Court's
15 generally show is that the liability on the underlying claims is jury triable.
16 It's not reasonably clear. So the question is, Your Honor, right now,
17 sitting here, is it absolutely clear what Defendant's liability is? And the
18 answer is, obviously, no, because expert's disputing this. And we've had
19 the claims batch in protocol going, you know, we figured out what the
20 underlying, even what the claims were last week, or the last two weeks.

21 The next point is that under NRS 686.270, liability can only
22 attach if an officer, director, or department head of the insurer knowingly
23 permitted the underlying act or had prior knowledge thereof. And the
24 courts that have interpreted this, and again, this is in our brief, have said
25 that we -- that this requires the director of officer, or department head, to

1 have -- to actually have authorized or had prior knowledge of how the
2 claims -- the underlying -- the at issues claims, how they were being
3 handled at that time.

4 With respect to Sierra Health and Life and HPN, no officer,
5 director, or department head has testified to this case. Ms. Hare, in fact
6 testified she's not a department head. Mr. Ziemer gave no testimony
7 whatsoever about his contemporaneous knowledge, his knowledge
8 about the at-issue claims at the time they were coming in, and neither
9 did Mr. Haben or Ms. Paradise.

10 So with respect to -- so there really is no -- there's no
11 underlying knowledge. And then finally, one point that's very important
12 is that is to really understand that -- what the caselaw shows is that the
13 Unfair Claims Practices Act, the damages for this are not the damages
14 for the underlying harm. What the -- what the Court has said is that the
15 damages for this have to be something separate for the underlying injury
16 of not being on the insurance -- on the insurance contract. What might
17 that be?

18 In a normal case, what we might be seeing, for instance, is
19 after an auto -- an auto accident, someone was not able to get a medical
20 procedure done. It's going to suffer the consequential damages. It's not
21 the underlying, oh, you didn't pay my claim. And we haven't seen any
22 evidence about those claims handling damages. We haven't seen
23 anything other than the delta between what one side thinks that we
24 should pay and what the other side actually paid so far.

25 Going to punitive damages, there's something here. So one

1 point I want to bring up first with respect to punitive damages is under
2 the joint pre-trial memorandum, Plaintiffs are only asking punitive
3 damages under the Nevada Unfair Insurance Claims Practices Act.
4 There's been a trial brief that's been filed that says they could have
5 pleaded for unjust enrichment. But the fact is, that's not what's in the
6 joint pre-trial memorandum.

7 Rule 2367(B)(2) does require that and does require Plaintiffs
8 to match all kind of damages they're seeking for what kind of claim.
9 And we very specifically had that conversation. I had that conversation
10 with Mr. McManis when we were doing the pretrial memorandum to
11 make sure that's there. And that does supersede the pleadings and it
12 does control the case. And all we have is unfair -- is punitive damages
13 for that one act.

14 And so the first one I would say is if any -- if any defendant
15 dropped out for the Unfair Claims Practices Act, obviously, they drop out
16 for punitive because that's the only underlying claim. That, for instance,
17 is UHS and UMR are not insurers. If they drop out, there can't be
18 punitive.

19 The other point I'd say is -- and we're going to talk about this
20 with respect to Implied-in-Fact Contract. There's an issue here, which
21 Your Honor may remember. It's been a year-and-a-half since the motion
22 to dismiss. But in the motion to dismiss, an argument was made that --
23 by Plaintiffs that they could be the Claims Practices Act, specifically
24 because it was based on contract, that there would be a contract to be
25 proven.

1 But -- so therefore, what was -- what happened then, is this
2 was the motion to dismiss, May 29, 2020, and then Your Honor's order
3 June 24th, 2020, paragraph 68, that the Claims Practices Act is basic
4 contract. You can't have punitive damages in a claim that is based in
5 contract, that's just in text of 42.005, the punitive damages statute, in
6 countless decisions of the Nevada Supreme Court.

7 So the issue is, is that if the Nevada Unfair -- if the Nevada
8 Unfair Claims Practice Act is allowed to survive because someone's in
9 contract, then that means that -- since someone's in contract, the
10 punitive damages can apply to that, and that's the only claim for which
11 punitive damages are available in the pre-trial memorandum.

12 Thinking about fraud, oppression, malice, really thinking
13 back to all of the witnesses and try to understand, and we really canvas
14 the record on this, in terms of fairness fraud, we haven't even seen a
15 statement made by the Defendants to the Plaintiffs, much less a
16 statement that it's been proven, such the majority can find by clear and
17 convincing evidence that that statement was false. That we knew -- that
18 we intend -- that we knew to be false, that we made it with the intent to
19 harm the Plaintiffs. That -- and that that those actual reliant on that
20 statement. We didn't see that. There was a lot of statements that were --
21 that, you know, came up, even in the summary judgment briefing that
22 haven't come into the case.

23 Similarly, the oppression and malice, you may remember
24 that the -- in the summary judgment briefing, Plaintiff said that they
25 expected -- that there would be evidence of coming to the case that

1 showed that what Defendants had done had caused hospitals to close.
2 Where do we see the evidence that hospitals have closed?

3 We had evidence that said this is -- there will be evidence
4 that will show that physician pay had in fact dropped. But as you know,
5 there have been objections many times, physician pay has come up, and
6 there's been no evidence that physician pay has actually dropped. And
7 the evidence has come in, we would have had to have evidence about
8 why physician pay has dropped. And obviously, we're not going there
9 because of the in limine motions.

10 So there really hasn't been anything there. But it's really
11 important to think about, we have a -- there's a -- there's an important
12 quote in our brief, which is in terms of punitive damages, we paid the --
13 we paid claims, there's a dispute as to the amount. That's not the kind of
14 harm. That's not the kind of evil intent. It's not the kind of despicable
15 conduct that you expect when you're talking about punitive damages.

16 There's a case *Pioneer Chlor Alkali*, 863 F2d. 1237 where the
17 court says it had difficulty instructing a factual situation where an insurer
18 who violated NRS 686(A).310 could have done so with an oppressive
19 conduct or malicious intent, yet not denied or refused to pay the claim.

20 What we have here is that was -- in that case, they had a -- a
21 dispute as to whether or not the -- whether -- you know, whether -- how
22 much of the claim is to be paid, and that just implies to be malicious or
23 oppressive conduct as necessary for punitive.

24 Finally, there's some things I'm not going to talk about for
25 the brief, but I do want to make sure we understand when we're talking

1 about the contract, that under *Certified Fire*, very clearly, an implied in-
2 fact contract claim is just a contract. And in order to have a contract, you
3 have to have intent of the parties to enter into a contract, and there's
4 been no evidence of intent of the parties to enter a new contract.

5 It has to be -- the intent would be manifested by comment.
6 So an offer and acceptance, those are also elements under *Certified Fire*,
7 and under countless cases before *Certified Fire*, and countless cases
8 after *Certified Fire*, under the Restatement, Williston on Contracts, Corbin
9 on Contracts. Everyone's in agreement you have to have an offer and an
10 acceptance manifested by conduct. But where was even evidence of an
11 offer of a contract and an acceptance of a contract?

12 We have to have a meeting of the minds on material terms,
13 and in *Certified Fire*, the key term that prevented the contract from being
14 created was that they did not come to a meeting of the minds on price,
15 and the question is do we have evidence that there was a meeting of the
16 minds at some point, that all parties met by conduct agreed on a price
17 term. And we just don't have that. Really, there's not a single element,
18 formation of a contract that has -- for which we've seen any evidence
19 whatsoever.

20 So Your Honor, with that, I would pass it on. I probably took
21 up too much time. I have a lot of issues -- there are other issues in the
22 brief that I don't want to waive on, but I'll step down.

23 THE COURT: Thank you. Opposition, please.

24 MS. ROBINSON: Thank you, Your Honor. I -- you know, with
25 the Court's permission, I would like to begin just going through all of our

1 elements, and then Ms. Lundvall is going to focus in on some key areas
2 after I -- if that's all right. Thank you. Because of the time, I'm just going
3 to go through these. It may not be beautiful, but I'm going to cover the
4 issues. On the Unfair --

5 THE COURT: I allowed Mr. Portnoi to take longer, so --

6 MS. ROBINSON: I appreciate it, Your Honor. Thank you. On
7 the Unfair Insurance Practices Act, that I'm going to -- many of these
8 issues have been briefed. I will just incorporate into my argument all of
9 them -- brief, we've already filed on this, but I will touch on those issues.
10 I just wanted to make sure that that was all covered.

11 The issue of standing, this Court -- not only has this Court
12 already ruled on the issue of standing, but the Nevada Supreme Court
13 also ruled on it when it declined to take the UnitedHealthcare's
14 mandamus petition.

15 In addition, the Nevada Supreme Court has recognized the
16 possibility that a third-party could have standing. And the case -- the
17 *Gunny* and *Holbrook* [phonetic] cases made clear that the most
18 important issue with respect to standing isn't that there's an insurer-
19 insured relationship, but that there's redressible harm suffered by the
20 plaintiff. And we have established here that all of the Plaintiffs have
21 suffered redressible harm.

22 As far as the requirement of implied contract, that just isn't in
23 the Nevada Supreme Court authority. The issue is the redressible harm.
24 As far as whether or not they are insurers, we've -- again, we've briefed
25 this, but what the statute says is it talks about the business of insurance

1 and that persons shall not engage in the prohibited activities. And TPAs
2 undoubtedly engage in the business of insurance. So all of these
3 Defendants, whether they be TPAs or self that are fully insured, are
4 engaged in the business of insurance and are covered by the statute.

5 As far as liability being reasonably clear, there has certainly
6 been ample evidence that the reimbursements rights in this case have
7 not been motivated by anything except for the desire to lower payments.
8 It hasn't -- there has not been an analysis. We believe we -- or certainly
9 we can say we have introduced ample evidence to survive this motion to
10 show that they -- that the Defendants were aware that they should have
11 paid more but chose not to do so.

12 And throughout all of this, what's important to remember is
13 that we are in a unique position that is not typically recognized by cases
14 because I don't know any other situation in any marketplace whatsoever
15 where the service provider is required by law to provide the service and
16 then they have to seek whatever reimbursement they can get, which is
17 frequently no reimbursement at all, but at least whatever they can get.
18 That is a totally unique situation.

19 As far as the prompt, fair, and equitable, the issue again is
20 not promptness in this case. The statute specifically says -- well, sorry --
21 we've had plenty of evidence that it was not fair and equitable. As far as
22 department heads, we have a department head, somebody in charge for
23 setting reimbursements for every Defendant. Haben was in charge out
24 of -- Mr. Haben was in charge of out-of-network payments for both of the
25 United, UnitedHealthcare -- and I'm going to -- they're going to cross-

1 examine me, just like our expert, and make sure that I don't have any -- I
2 get legal name of every Defendant right. But UnitedHealthcare
3 Insurance Company, UnitedHealthcare Services, he was in charge of
4 those. UMR, Ziemer was the Vice President of customer solution. He
5 was in charge of setting reimbursement strategies. And the same with
6 Sierra and HPN. I understand that Ms. Hare might have said she didn't
7 consider herself a department head, but the fact is that she testified she
8 was in charge of claims reimbursement.

9 Now, as far as whether or not you need to be, you know --
10 and I don't want to mix up my TPA and unfair insurance practices, but,
11 you know, the critical issue here for a department head is that they need
12 to know the reimbursement strategies. There is not a requirement that
13 they actually oversee every individual claim because the reality is, of
14 course, as United has made abundantly clear, they have, you know,
15 millions of claims. You don't have somebody in charge of policy
16 handling claims. Computers largely handle their claims. The issue is
17 you have somebody testify who sets the policy. And we've had that for
18 every single Defendant.

19 As far as damages from the claims process, the claims
20 process -- I mean largely they were relied on inapplicable law, such as,
21 you know, there's the amount of insurance, the full coverage amount
22 was already paid or, you know, the dispute was really just about whether
23 or not they were entitled to coverage. What we're talking about here --
24 and it's a good faith dispute. That's not what we have here. What we
25 have here is a process that doesn't take into consideration our evidence

1 is a fair reimbursement rate. The process is simply how much can they
2 get away with? And so that is definitely a harm, and we're suffering
3 from that unfair process.

4 And as far as timing, well again, I think I have my note here
5 for prompt payment. So I'll switch to -- I'll get to that later.

6 On the punitive damages, we have evidence that both of the
7 -- I'll just call them the United entities before I slip up on their names --
8 and UMR specifically targeted our Plaintiffs. In particular because they
9 had a [indiscernible] with TeamHealth and the fact that they felt
10 TeamHealth -- we believe, and we've put on evidence that TeamHealth
11 was one of the only entities that could possibly resist them because most
12 emergency departments are just staffed by small, independent physician
13 groups who don't really have the ability to really put up a fight.

14 As far as Sierra and HPN, we have shown that their
15 reimbursement rates were even lower, like substantially lower than even
16 the low-paying United entities, the ones that begin with a U, you know.
17 And so that was like remarkable because United entities were already
18 incredibly low. And we also showed that SH -- that Sierra and HPN did
19 not even follow their own internal processes.

20 And so we believe that that shows oppressive conduct. We
21 also believe that there was some fraud there because all of the
22 Defendants put themselves out and interacted with us and with their
23 clients and with the patients suggesting that they had fair processes, but
24 they had objective processes. And what we have shown is that they
25 misled everybody and that -- and that those processes were not fair, and

1 they were deliberately unfair.

2 As far as -- I just want to make sure I don't miss anything
3 here. As far as the Unfair Claims Practices Act go and the punitive
4 damages regarding contracts, we've already covered health -- it doesn't
5 require a contract, but redressible harm and that a quasi-contract is
6 something different. I'm just going to check my notes here.

7 THE COURT: Okay.

8 MS. ROBINSON: I'm sorry. I thought I heard something.

9 THE COURT: I just wanted to say, okay, check your notes.

10 MS. ROBINSON: Okay.

11 Okay. Implied contract. What we have seen here is that all
12 of the Defendants have acknowledged both -- actually, verbally but as
13 well with their conduct that they have an obligation to pay us something.
14 No one has denied that they could just simply refuse to pay us. And, in
15 fact, they have often acknowledged that they have an obligation to pay
16 something that is reasonable, you know. Yeah, I think my colleague
17 Mr. Zavitsanos said, "If you could just pay a nickel, would that be okay"?
18 And there was an acknowledge that, no, that would not be okay.

19 And I think that the jury could certainly infer for every single
20 Defendant that their past conduct -- and I want to emphasize that the
21 case law on implied-in-fact conduct, the contract focuses on frequently a
22 history of conduct between the parties. That is often the basis to show
23 that there's been an offer and acceptance, that the parties have a mutual
24 intent to contracts, and there's no question that there is a very extensive
25 history that we treat their patients, and they pay us.

1 In addition, there's also evidence that we submit claims
2 according to their requirements and that we -- and that we agreed not to
3 balance bill their patients. And those are on top of just the actual
4 treatment. And so those are promises when we have evidence that, you
5 know, we exchanged a promise, right, we're not going to balance bill
6 your patients. And they have acknowledged that they have an obligation
7 to pay us. And, once more, they probably had an obligation, that they
8 have even acknowledged and I think the jury can recognize, that they
9 have an obligation to pay us something that's not absurdly low and
10 probably even something that's reasonable.

11 And, in fact, what the Nevada Supreme Court has recognized
12 in *Certified Fire*, to be clear, there were many aspects of that contract
13 that the parties had not agreed to. It was not just price. In this case, I
14 think we really pretty much agreed to everything. We've agreed, we'll
15 treat your patients; we've agreed, we'll submit the claims the way you
16 want us to submit them; we've agreed, we will not balance bill your
17 patients. They agreed, okay, we'll pay you and we'll pay you in a certain
18 way. I think what we haven't agreed on is the amount. And *Certified*
19 *Fire* makes it clear that that amount can be -- the jury can imply a
20 reasonable amount.

21 There's been a lot of sort of suggestion that there needs to
22 be an offer and acceptance, and I think this probably goes even more to
23 the chart, honestly, than it does to this. But there's not an express offer
24 and acceptance in an implied-in-fact contract. It's not express. It's
25 shown by the parties' course of conduct. And that's what we have here.

1 On the PPA, again, the question of prompt payment, the
2 question is -- again, it's not an issue as to timing. It's an issue as to
3 amount. And they're not allowed to just partially pay. And that's what
4 we're saying we have here. We have a partial payment. It was timely,
5 but it was only partial, and that's not allowed. It wasn't fully paid. And it
6 was fully payable. We believe we have put on evidence that they
7 recognize that, you know -- and that we are entitled to it, whether they
8 recognize it or not. But we are entitled to a reasonable amount. And
9 they've paid us far below what is reasonable. It was -- if they had
10 actually -- you know, we believe that they recognized that it was fully
11 payable, and they just chose not to do so because they have a -- they
12 have a -- just a program of reducing rates just as far down as they
13 possibly can.

14 And as far as the failure to exhaust administrative remedies,
15 that's again been briefed. All of this has been briefed. But it's -- that's
16 not specific to this particular statute. I'm getting close. I want to give
17 Ms. Lundvall some time here.

18 On ERISA, I don't even remember if that came up. That is
19 black letter law. This is just a rate of payment, not a right to payment.
20 And, again, on Sierra and HPN, I think we've covered that we believe we
21 have evidence as to every single Defendant and not just the ones that
22 [indiscernible]. And then with that, I'd like to turn it over to my
23 colleague. Thank you, Your Honor.

24 THE COURT: Thank you.

25 MS. LUNDVALL: Thank you, Your Honor.

1 The Defendants filed a 38 page brief last night, and what
2 we're doing is trying to respond then within this allotted time frame.
3 And we thank the Court in giving us an opportunity to do so orally.

4 First and foremost, what I want to point out is that they
5 brought their motion pursuant to Rule 50(a). Rule 50(a) is a motion that
6 tests the evidentiary sufficiency. It does not test the legal sufficiency of
7 the claims. And so if you take a look at -- and I'm just going to recite
8 these for purposes of the record -- their argument that is found at B(1),
9 B(2), C(1), C(2), E(1), E(2), and F, all of those are legal arguments,
10 Your Honor, for which this motion is inappropriate.

11 Second is that they have tried to revisit issues that have
12 already been determined as law of the case. There are many of the legal
13 issues that were resolved in the context of the motion to dismiss. They
14 asked for a Nevada Supreme Court review on your determinations on
15 the motions to dismiss, and therefore that is law of the case. So,
16 therefore, there are -- one, two -- three arguments that are inappropriate
17 because of the law of the case. That would be the argument at -- found
18 at B(1), about whether or not that we have standing.

19 The argument at B(2), as to whether or not that we have
20 actionable claims against these parties, including third-party
21 administrators, I guess four points. The argument that is also dealing
22 with whether or not that there's a private right of action at all under the
23 Prompt Payment Act. And in addition, as to whether or not there was
24 preemption. All of those issues are law of the case.

25 Now, let me turn to two points that I just wanted to

1 separately address as to the sufficiency of the evidence to augment then
2 the presentation that was made by Ms. Robinson. First and foremost,
3 what I want to do is to address the punitive damage claims that they
4 suggested. Somehow Mr. Portnoi claims that we have waived the
5 opportunity to seek punitive damages under any of our claims, whether
6 it be unjust enrichment or under the statutory claims because of
7 statements that were contained within the joint pre-trial memorandum.

8 The parties have throughout the course of this entire trial
9 made additions to, changes to, deletions from, and additions to their
10 joint pre-trial memorandum. And so long ago we filed a brief then with
11 the court addressing the fact that not only were punitive damages
12 available under the statutory claims for which that we asserted, but we
13 also then filed a trial brief identifying that it was also available under R,
14 the matter in which that we were presenting our unjust enrichment
15 claim.

16 So there has been no waiver on that particular point.
17 Moreover, if you look at the second amended complaint, if you look at
18 the prayer for relief, that prayer for relief is not limited then to how it is
19 that we're seeking that claim.

20 So let me take a look at what the evidence is then before this
21 Court on punitive damages. All of the Defendants, every single one of
22 the Defendants and their representatives took that stand and they said
23 that they owed a duty to pay a reasonable amount. Every single one.
24 That's unrefuted. And what is at issue in this case is whether or not that
25 they did. What is the origin of that duty? That origin of the duty, that is

1 found in the legal claims that we have asserted.

2 But each and every one of the Defendants have also admitted
3 that what they did not do is to pay a reasonable value in accord with the
4 Affordable Care Act because the Affordable Care Act sets the minimum,
5 and that Affordable Care Act has language in there about usual and
6 customary. And each and every one of the Defendants have identified,
7 expressly by Ms. Hare, in addition by Mr. Ziemer, in addition by
8 Mr. Haben, in addition by Ms. Paradise, that, in fact, they did not include
9 mutual and customary within the way in their analysis determining them
10 under these different programs that they existed or, as Ms. Hare testified,
11 that they did not have programs, that they did not use usual and
12 customary as a foundation then for determining what was reasonable
13 value. That is in addition that they violated the Affordable Care Act.

14 So what do you -- what do you end up with from there? That
15 admission on both points gets us square with the oppression, it also gets
16 us square with the fraud, and the statements that were identified then by
17 Ms. Robinson, and I want to focus particularly then on the oppression
18 angle.

19 Oppression under blacks is designed as the act or instance of
20 unjustly exercising authority for power so that one or more persons are
21 unfairly prevented from enjoying the same rights that other people have.
22 Each and every one of these Defendants identified that we have a right
23 to expect reasonable payment for our services. That right is defined and
24 included as a minimum floor under the Affordable Care Act as being
25 usual and customary. And each and every one of them has admitted

1 that, in fact, they did not pay within that minimum amount; that they did
2 so in contravention of that.

3 So what you end up looking at then, if you go to the
4 definition then that is found under Chapter 42, under what is a conscious
5 disregard, which is the premise underlying our oppression fraud of
6 Chapter 42. Conscious disregard is defined as knowledge of probable
7 harmful consequences of a wrongful act and a willful and deliberate
8 failure to avoid those consequences.

9 Now the party -- each and every one of the Defendants have
10 acknowledged that, in fact, that there are harmful consequences that our
11 folks get under paid. The evidence that we've presented affirmatively
12 from our own books is that there is bad things that happen if, in fact, you
13 do underpay the physicians and, in fact, that you potentially jeopardize
14 then what is defined as the safety net of our community. That safety net
15 of our community is ER doctors, ER practitioners, ER clinicians. And in
16 fact, if you underpay them, you diminish that quality according to the
17 testimony that's been given in this case. You potentially jeopardize the
18 safety net of our community. And that is oppressive conduct.

19 As to -- and on top of it, the second prong under the
20 conscious disregard is that there's a willful and deliberate failure to act to
21 avoid those consequences. Each and one of the Defendants have taken
22 the stand and identified the -- or implied they identified that their
23 motivation for taking the conduct that they did was to underscore and to
24 increase the amount of profits that they were enjoying or to try to save
25 money allegedly for their clients and keep it in the context of a TPA.

1 What they were doing is they were deliberately placing their interest
2 over that safety net of community. And that is oppression that -- under
3 the definition -- that is found in chapter 42.

4 If you want case law to support that particular proposition,
5 let me give you the case then that should be well familiar to Mr.
6 Polsenberg. It is *Countrywide Home Loans v. Thitchener*. *Countrywide*
7 is probably the most recent case -- or one of the most recent cases that
8 speak on this particular point. Outlines very clearly what oppression is
9 or conscious disregard is and how it applies it. And certain cases in the
10 past have been overruled.

11 So the premise underlying *Countrywide* is that there were
12 red flags. There were notices that were identified and that people would
13 forward and continue to foreclose them as far as on a home and clear
14 out someone's home and disregard for their safety.

15 In this situation, we have the -- a similar or a analogous
16 factual pattern, is that these folks knew and understand that any of the
17 consequences of what their actions were. And they went forward at the
18 face of that. And why did they do so? Because they were motivated by
19 profit. And so, and now it's just been -- it is the *Countrywide Home*
20 *Loans* case that I brought to the Court's attention.

21 One addition of argument to the argument that was
22 presented analyzing the evidence. What I'm trying to do now is to focus
23 strictly as far as from the admin standpoint, because that's what he
24 motion is supposed to be about.

25 We have alleged an implied contract. An implied contract is

1 examined from the conduct of the parties. So what conduct do we have
2 then before the Court? The evidence has made clear that we perform
3 legal services on United's insureds. There's no question about that fact.
4 And as a matter of fact, that -- all you got to do is take a look at the
5 claims file and to acknowledge then that from that claims file you will
6 see that United has acknowledged that they had to be paid and that there
7 was coverage as far as were those claims and these folks with their
8 insureds. And we submitted those claims to you by payment on their
9 platform. Evidence is undisputed as far as -- concerning that. All you
10 got to do is take a look at the PD claims files that the parties have
11 submitted from an evidentiary standpoint.

12 And that's one thing that, I guess, to follow up and -- on one
13 comment that was made yesterday is an itch that I have. And that is this.
14 Entirely in their motion all they do is focus on the oral testimony that
15 was given from the witness stand. But what they ignore is all of the
16 written evidence that is found, and they don't even highlight any of those
17 points. And so, when you -- what we're trying to do is to ensure that the
18 Court understands that we're not relying, for purposes of this motion,
19 upon the oral testimony, but we're also relying upon the evidentiary
20 documentary, my exhibits, and [indiscernible].

21 So what was -- our offer then was the was the form of our
22 conduct. So we treated and we submitted those claims for payment.
23 Their acceptance was that they adjudged [sic] our claims, and they
24 acknowledged responsibility then for those claims. And including the
25 acknowledgement that the insured was covered for the work that we

1 performed. And they paid us something. That was their acceptance
2 then of the contract. In addition, our consideration then was the
3 performance and the submission that we did, and we even added a
4 cherry on the top, so to speak, in that we agreed not to balance bill their
5 members. And so, to the extent that that's offer, acceptance, and
6 consideration all in the form of conduct.

7 And so, to the extent that I guess what Mr. Portnoi suggests
8 is that somehow that those aren't sufficient terms, because the specific
9 price was not agreed upon. But the case law does not support that
10 premise. The case law suggests that there had to be an agreement
11 regarding price. And there's no question that the parties have agreed
12 and that the evidence in this case is that there is an obligation to pay
13 reasonable pricing.

14 Is there a dispute concerning what the specific dollar value is
15 to be ascribed to that reasonable value? Yes. But that disputed issue of
16 fact is for the jury to consider. It is not suggesting that, in fact, that there
17 was a lack of -- or a contract that was lacking in sufficient specificity for
18 its enforcement. And so, that implied contract then, Your Honor, is
19 found by those pieces of evidence. And we would submit.

20 Let me take one last quick peek at my notes to see if I've got
21 anything else for purposes of the record.

22 [Pause]

23 MS. LUNDVALL: I guess the one last piece that I want to
24 identify for purposes of our oppression argument is that in the
25 documents that we submitted, we had identified then that they were --

1 that the Defendants were receiving advice from their internal regulatory
2 and compliance people. And that was the Marin mail, what I call -- or it's
3 the Minny email. And I think it is Exhibit 314.

4 The testimony from Ms. Hare was that that was a provider
5 service from United. That was a provider service then that was afforded
6 to Sierra Health as well as to Health Plan of Nevada. And Mr. Ziemer
7 identified that they too got support that -- from provider services from
8 United. In that email, what they identified then is what the obligation
9 was under the Affordable Care Act and how that will make minimal
10 foundation and no with the minimal floor. But, in fact, what they did is
11 they went forward in the face of that and did something different than
12 what the law required. And so, but that is an additional support and for
13 the oppressive conduct that we believe the Court [indiscernible].

14 With that, Your Honor, we submit.

15 THE COURT: Thank you. And your reply, please.

16 MR. LEYENDECKER: Thank you for the opportunity, Your
17 Honor. First, a few -- two of the procedural points. I'm blessed to have
18 someone as able, Nevada practitioner, Mr. Polsenberg, sit next to me.
19 And so, a few points I want to make right up front. If the law of the case
20 hasn't attached to this, it would have attached, and we would have taken
21 an appeal right or something in that realm. A discretionary writ that is
22 denied based on -- as a discretionary writ doesn't cause the law in the
23 case to be attached.

24 Rule 50(a) relates to legally sufficient evidentiary case. And
25 so, as a result, it's common based on the fact that you have to have a

1 legally sufficient evidentiary basis to test not only the evidentiary basis
2 but the legal sufficiency. And so, the fact that we're making legal
3 arguments here really isn't something that we -- isn't something that
4 should preclude any of the arguments that are in our brief.

5 I also want to point out the fact is that we are relying on the
6 2.67(b)(2) statement in the joint pretrial memorandum really shouldn't be
7 a surprise. They're not in amendments to the joint pretrial
8 memorandum. You'll probably order that, Your Honor, because we filed
9 a joint pretrial memorandum with you and then filed no amendments to
10 it since we did so.

11 The second amended complaint -- the first amended
12 complaint earlier, all -- well, the second amended -- the first amended
13 complaint included a plea for punitive damages in the bad faith implied
14 covenant claim, which is not in the case but also included one inside the
15 paragraph for the Nevada Unfair Insurance Practices Act. The second
16 amended complaint, the only paragraph in that complaint that talks
17 about punitive damages is contained under the heading of Nevada
18 Unfair Insurance Practices Act.

19 When I had a discussion with Mr. McManis about the joint
20 pretrial memorandum, additionally, it did not -- but there was a point
21 where it did not break out what damages were under which claim. And I
22 told Mr. McManis we have to have that. It doesn't -- it governs how
23 we're going to try our case. It governs how we're going to cross Mr.
24 Haben. It governs how we're going to cross Ms. Paradise. It governs
25 what witnesses we're going to bring. So it is absolutely prejudicial to

1 amend the joint pretrial memorandum to add new claims for damages.
2 Now, we are not consenting to that. We are absolutely not. In the
3 *Strauss* case, the Nevada Supreme Court makes very clear that there is
4 severe prejudice to amend the 2.687(b)(2) statement without consent.
5 And that is -- that would color the entire trial. It would color the entire
6 presentation if we were to suddenly add claims for damages.

7 What I heard was that for the Insurance Practices Act for an
8 implied-in-fact contract, all that's required is repressible harm. That's the
9 only element for both of those claims. And that's just not true. The fact
10 is what we did was any response to the text of the Unfair Insurance
11 Practices Act, which makes an insurer liable only to its insured. It's
12 insured. We didn't hear anything about that in the response, and that's --
13 that is -- that silence is deafening, Your Honor.

14 And again, to quote, actually, *Certified Fire* here, "to find a
15 contract implied-in-fact, the fact-finder must conclude that the parties
16 intended to contract, and promises were exchanged, the general
17 obligations for which must be sufficiently clear." All elements of a
18 normal contract have to be present for an implied in fact contract.

19 When we talk about punitives, it is -- it's interesting the
20 presentation we've heard. So we've heard from Ms. Robinson that we
21 targeted them because they're the big guy. That's not usually how
22 punitive damages. Usually, punitive damages work where you try to
23 take advantage of the little guy. Where you have two big, sophisticated
24 companies going after each other on a financial dispute, where the party
25 that we're allegedly targeting has the resources to fight against it, that's

1 not usually a punitive case. And I'll also point out Mr. Blalack came up to
2 me and said well, back at sidebar, Plaintiffs disclaimed targeting as a
3 basis for punitive damages. We didn't see evidence of targeting in this
4 case. And in fact, when Mr. Leathers testified, he testified not that the
5 evidence of these claims, based on his expert analysis, was that they
6 were targeted, that they were -- that the payments were random. And
7 randomness is not targeting.

8 Ms. Lundvall focused on cruel and unjust hardship. But I
9 would note that she chose to give you the Black's Law Dictionary
10 definition but not the 42.005 definition. And the 42.005 definition, which
11 is what the Court is bound by not old English common law, is despicable
12 conduct that subjects a person to cruel and unjust hardship with
13 conscious disregard of the rights of that person. That is the definition in
14 42.005. And what we did not hear was the words despicable conduct
15 because we haven't seen evidence of despicable conduct. Nor did we
16 hear about what is the cruel and unjust hardship that has been done to
17 TeamHealth Plaintiffs.

18 There's a delta in terms of how much there -- they think we
19 should pay. There's a financial dispute. There's an economic dispute.
20 That is not cruel and unjust hardship. That is not what punitive damages
21 are for. With that, Your Honor, understanding that we have the jury
22 waiting outside, I'll be happy to take any questions you may have.

23 THE COURT: Thank you. All right. So the motion is
24 submitted. And I'm going to deny it because the Plaintiffs have made at
25 least a prima facie case with regard to each element of implied contract,

1 unjust enrichment, and the punitives. My biggest concern with regard to
2 whether or not the Plaintiffs could maintain their case was as to the
3 third-party administrators. And the way I read 686(a), it applies to claims
4 and claimants not just the insureds. So I think that I can proceed even
5 against third-party administrators.

6 MS. LUNDVALL: Your Honor, I believe that we submitted a
7 trial brief as far as on that point. And I know that Ms. Robinson had
8 incorporated, you know, by reference those trial briefs given their limits
9 on the time here. So on that point, I agree with the -- with you
10 concerning your analysis. But if there's any hesitation regarding that, I
11 would direct you then to our brief.

12 MR. POLSENBERG: Your Honor, can I have 20 seconds on
13 that?

14 THE COURT: You may.

15 MR. POLSENBERG: It's 686(a)(3)(10) --

16 THE COURT: And I just took it down to look at 42.

17 MR. POLSENBERG: I'm sorry. That's why I have different
18 tabs. That was -- before 1987, that was strictly a regulatory statute that
19 the insurance commissioner was able to regulate. In 1987, it was
20 changed to allow insureds to bring a right of action but only insureds.

21 THE COURT: Okay.

22 MR. POLSENBERG: Thank you, Your Honor.

23 THE COURT: Doesn't really change my analysis. I do think
24 that the Plaintiffs have standing as third parties. I do think they've made
25 a prima facie case on implied contract simply because the conduct was

1 to submit a claim. The claim was adjudicated and then paid. They are
2 obligated under law to provide the services. It's not a criminal case. It's
3 fair equitable reimbursement case. The Plaintiffs' witnesses were policy
4 setters. I don't think there's been any waiver. And the Defendants
5 admitted on the stand that they have a duty to pay a reasonable amount.

6 So with regard to punitive damages, I do think that the jury
7 can believe that the Defendants acted with conscious disregard of the
8 Plaintiffs' rights. And did you have more questions?

9 MR. POLSENBERG: No, thank you, Your Honor.

10 THE COURT: Okay. So Plaintiff to prepare the order. You
11 may incorporate findings and conclusions consistent with your briefs.

12 MS. LUNDVALL: Thank you, Your Honor.

13 MR. LEYENDECKER: Thank you, Your Honor.

14 THE COURT: Let's take a few minutes before we bring in the
15 jury, because we've all been here for an hour.

16 Could somebody request the marshal to come in? Let them
17 know it'll be 9:35. Court will be in recess until 9:35.

18 THE MARSHAL: 9:35

19 [Recess from 9:26 a.m. to 9:35 a.m.]

20 THE MARSHAL: 27 is back in session.

21 THE COURT: Thanks everyone. Please remain seated. Are
22 we ready to bring in the jury?

23 MR. BLALACK: We are, Your Honor.

24 MR. ZAVITSANOS: Yes, Your Honor.

25 THE COURT: And just refresh my memory. Did you rest

1 yesterday?

2 MR. ZAVITSANOS: No, we did not. We're going to do it in
3 front of the jury, Your Honor. But before we do it, I think Mr.
4 Killingsworth was going to offer some exhibits into evidence.

5 MR. KILLINGSWORTH: And Your Honor, would you like to
6 do that now or in the presence of the jury?

7 THE COURT: In the presence of the jury.

8 MR. KILLINGSWORTH: Okay.

9 THE COURT: And have you had a chance yet to look at those
10 conditionally admitted exhibits.

11 MR. BLALACK: We did -- the ones from yesterday, Your
12 Honor. I think there's five we did. And we've advised Mr. Leyendecker
13 that two of them we have no problem with. Three of them some of the
14 numbers are wrong. It was just down to cents.

15 MR. LEYENDECKER: Yeah, they're not wrong. They just --
16 they're whole numbers, and he asked me to reprint them with the cents
17 on them. And so on that, I'm going to do it --

18 MR. BLALACK: And then we're done.

19 MR. LEYENDECKER: That's 470 --

20 THE COURT: Let's put this on the record in front of the jury.
21 Let's bring in the jury.

22 MR. MCMANIS: Your Honor, before the -- I just want to flag
23 --- at the next break, there's one issue we need to take up. It should be
24 very short.

25 THE COURT: Fine. I always ask.

1 THE MARSHAL: All rise for the jury.

2 [Jury in at 9:36. a.m.]

3 THE COURT: Thank you, please be seated. So was there an
4 issue with exhibits to take up on the record?

5 MR. ZAVITSANOS: Yes, Your Honor. We're going to have --
6 Mr. Killingsworth is going to offer some exhibits.

7 MR. KILLINGSWORTH: Your Honor, I'd like to offer Plaintiffs'
8 Exhibit 130. I believe there's no objection from Defense counsel.

9 MR. BLALACK: No objection.

10 MR. KILLINGSWORTH: Plaintiffs' Exhibit 163.

11 MR. BLALACK: No objection, Your Honor.

12 MR. KILLINGSWORTH: Plaintiffs' Exhibit 165.

13 MR. BLALACK: No objection.

14 MR. KILLINGSWORTH: Plaintiffs' Exhibit 168.

15 MR. BLALACK: No objection.

16 MR. KILLINGSWORTH: Plaintiffs' Exhibit 428.

17 MR. BLALACK: No objection.

18 MR. KILLINGSWORTH: And then these last two exhibits
19 were conditionally admitted, but I believe they've been agreed to be
20 admitted fully. And that's 473-B as in boy 1.

21 MR. BLALACK: That's correct, Your Honor.

22 THE COURT: Thank you.

23 MR. KILLINGSWORTH: And 473-F.

24 MR. BLALACK: That's correct, also, Your Honor.

25 THE COURT: All right.

1 MR. KILLINGSWORTH: Your Honor, a couple more. We'd
2 offer 473-C, D, E and G with clarification that I'm going to add the cents
3 so that it's not a rounded dollar. It will be a dollar and cents. And with
4 that, I understand it's three.

5 MR. BLALACK: Once we got it down to the penny, we're
6 good.

7 THE COURT: Okay. So the Court will admit Exhibits 130,
8 163, 165, 168, 428, 473-F, 473-B, 473-C, D, E and G.

9 [Plaintiffs' Exhibit 130, 163, 165, 168, 428, 473-F, 473-B, 473-C, D, E,
10 G, and 4373-B-1 admitted into evidence]

11 MR. KILLINGSWORTH: Did you get B-1 in there, Your Honor?
12 473-B-1.

13 THE COURT: Oh, I thought I did, but B-1. If I missed that, B-
14 1.

15 MR. KILLINGSWORTH: Thank you, Your Honor.

16 THE CLERK: And I believe G was admitted yesterday.

17 MR. GORDON: And there's one more exhibit, Your Honor.
18 It's 5508. So we conditionally admitted with Linda Hare, Exhibit 5508,
19 which was the certificate of coverage for Shared Health Plan of Nevada.
20 I talked to Ms. Lundvall about it. She said there's no foundation. And on
21 transcript for Ms. Hare, page 194 through 196, I believe the proper
22 foundation was laid. She explained to the jury what the certificate of
23 coverage is. How she relies upon it. She knew about it. Her team relies
24 upon it for what they do. She then went to page 52 and talked about
25 how that contains the greatest of three language and all the processes

1 about it. And Ms. Lundvall said there's no foundation. I believe there's
2 accurate foundation for the admission of that document through the
3 testimony.

4 MS. LUNDVALL: Your Honor, there's no date on the
5 document. And so from the perspective of when you have no date, and
6 that's where the most critical foundation is to make sure that it falls
7 within the disputed period.

8 THE COURT: It --

9 MR. GORDON: And I made a -- sorry, Your Honor.

10 THE COURT: I'm going to overrule the objection and admit
11 5503. It goes to the weight rather than admissibility.

12 MR. GORDON: 5508.

13 THE COURT: 55 -- oh, 5508. Okay.

14 [Defendants' Exhibit 5508 admitted into evidence]

15 MR. GORDON: Thank you, Your Honor.

16 THE COURT: Thank you. All right. Plaintiff please call your
17 next witness.

18 MR. ZAVITSANOS: Your Honor, at this point, the Plaintiffs
19 rest.

20 PLAINTIFFS RESTS

21 THE COURT: Defendant, please call your first witness.

22 MR. BLALACK: Thank you, Your Honor. We're going to call
23 Mr. Bruce Deal. And before Mr. Deal is sworn -- go ahead, Mr. Deal.
24 While he's getting situated, we have a couple of exhibits that I'd like to
25 get into evidence that will be relevant to his testimony.

1 The first of those is -- my eyesight is going, Your Honor,
2 400 -- Defense Exhibit 4005 and Defense Exhibit 4168, which has been
3 objected to by Plaintiffs.

4 MR. LEYENDECKER: 4005 is agreed. There is an objection
5 on 4168 so that we remove certain claims that are subject to the limine.
6 Once that's resolved then I'd be okay with it.

7 THE COURT: I'll admit 4005 and conditionally admit 4168
8 subject Defendant's -- whether there will be an agreement on redaction.

9 MR. BLALACK: Thank you, Your Honor.

10 [Defendants' Exhibit 4005 admitted into evidence]

11 [Defendants' Exhibit 4168 conditionally admitted into evidence]

12 THE COURT: Okay, go ahead, please. Please have a seat
13 Mr. Deal.

14 THE CLERK: Please raise your right hand.

15 BRUCE DEAL, DEFENDANTS' WITNESS, SWORN

16 THE CLERK: Please have a seat and state and spell your
17 name for the record.

18 THE WITNESS: Yes, Bruce B-R-U-C-E. Last name Deal, D-E-
19 A-L.

20 THE COURT: Thank you. Please proceed.

21 DIRECT EXAMINATION

22 BY MR. BLALACK:

23 Q All right. Before we get started --

24 MR. KILLINGSWORTH: I'm sorry, Lee.

25 MR. BLALACK: Yes, sir.

1 MR. KILLINGSWORTH: I forgot. Your Honor, I have a couple
2 other new client representatives here today and I neglected to advise Mr.
3 Blalack. We have Dr. Brett Hansen of Sunrise and Dr. Jaime Primerano.
4 She's the Medical Director at Sunrise.

5 THE COURT: Right. She's been here previously. Thank you
6 and welcome.

7 MR. BLALACK: And Your Honor, while we're doing
8 introductions, I believe our medical director who's been our client
9 representative from here in Las Vegas, Dr. Lambert Poole is here again.
10 Now that the case is ours, our time to speak to the jury, I wanted to
11 reintroduce him to the jury. He's been with us this whole time.

12 THE COURT: welcome.

13 BY MR. BLALACK:

14 Q Good morning, Mr. Deal.

15 A Good morning.

16 Q If you could introduce yourself to the jury. Give them your
17 name, where you live, and what -- where do you work.

18 A Yes, my name is Bruce Deal. I live in Atherton, California.
19 My office is in Menlo Park, California. And I work for Analysis Group.

20 Q And what is Analysis Group?

21 A Analysis Group is an economic, financial and strategy
22 consulting firm.

23 Q How long have you been with Analysis Group?

24 A About 25 years now.

25 Q And what do you do for them?

1 A I'm a managing principal. That's one of the leaders of the
2 firm and it's a -- it's a corporation, but it's sort of like a partnership. I'm a
3 partner in the firm. And I lead the economic analysis in the Menlo Park
4 Office.

5 Q Okay. And when you say you lead the economic analysis,
6 what do you mean by economic analysis?

7 A Yeah, so we do a variety of different types of projects. I think
8 you heard Mr. Leathers yesterday speaking about some of his activities.
9 And what we do is relatively similar in the sense that much of our work
10 is in disputes and serving as an expert witness. Doing analysis in
11 regulatory and litigation and arbitration. Things like that. And then in
12 addition to that, we also do, and I also do work that is not related to
13 disputes. So economic studies of various sorts. We help run a big
14 program up in Washington State for hospitals up there. So there's a
15 variety of other types of non-dispute efforts that we work on.

16 Q Okay. And about how many folks work with you in the
17 Analysis Group firm?

18 A Oh, we're over 1,000 now. About 1200 I believe. That's
19 spread across a number of different offices in the U.S. And a few
20 overseas offices as well.

21 Q Okay. And you mentioned Mr. Leathers. Were you -- did
22 you have the opportunity to observe his testimony before the jury?

23 A I did. I watched some of it remotely, and I was here for some
24 of it.

25 Q Okay. And you've heard of the firm at which he works ,

1 Alvarez and Marsal?

2 A I have, yes.

3 Q And how would you characterize -- how would you compare
4 Analysis Group -- I'm not asking you to rate them. I'm sure you feel very
5 good about firm.

6 A I do.

7 Q You don't need to do any self-promotion here. But just as
8 the type of work in the market, for professional services, how would you
9 compare your understanding what Analysis Group does and what
10 Alvarez and Marsal does?

11 A Yeah, so there is some overlap. Obviously particularly in the
12 work Mr. Leathers was doing yesterday and the work that I do. In
13 general they do less dispute work than we do. We're the largest private
14 economic analysis firm that does disputes and litigation. They're not
15 one of the larger firms in that area. They do more other types of work
16 than we do. So they'll be involved in bankruptcies and things like that.
17 We don't really do much of that type of work. So there's sort of some
18 overlap, but they do a number of things that we don't, and they're
19 smaller in our area.

20 Q Okay. Now for the non-dispute related work, some of which
21 you described, can you give the jury in terms of your portfolio, a sense of
22 what that type of work involves.

23 A Yeah. Sure so I mentioned for instance that I help run a large
24 Medicaid program up in Washington State. So there's a supplemental
25 payment program that provides additional reimbursement to hospitals.

1 And I've been working with the hospital association up there, basically
2 all the hospitals in Washington, for almost ten years now, helping to do
3 the analytics on that program. It involves legislation, so working with
4 them on legislation. Helping to allocate funds. So that type of work, it's
5 not dispute related at all. It's involving the Medicaid program, and a
6 supplemental program. So that's a good example of that type of a
7 project.

8 In addition, for a number of years ago, we worked on a project post
9 911. There was a real concern in the insurance market about whether or
10 not property insurers would be able to insure buildings for instance,
11 when there was a risk of terrorism. So you have fire insurance and
12 floods, but most insurers were excluding terrorism. It's too hard to price
13 in the market. So the Government had a program to kind of backstop
14 that. And we were hired to do an economic analysis as it was getting
15 ready to end, whether or not the market -- the private market could or
16 could not accept that risk. So I co-authored a study with the Dean of the
17 Columbia Business School on that.

18 Q Now do you have a team of professionals at the Analysis
19 Group that work with you with frequency on your engagements?

20 A Yes, almost everything we do I would say involves a team of
21 effort. And that was certainly true in this matter as well. We had 3, 4 or
22 5 folks working with me doing some of the analytics under my direction.
23 You know, assisting with different research projects. Things like that.

24 Q Okay. I want -- I'm going to go through your background,
25 and qualifications and experience in much more detail for the jury so

1 they know a little bit more about you. But first I'd like to just orient them
2 to what your scope of work was. And I'm not asking for any opinions
3 that you might offer in this case. I'm just asking about how you define
4 your scope of engagement of work in this matter. So let me start by, if
5 you could, just kind of explain to the jury what were the things you were
6 looking at for purposes of evaluating the claims in this case.

7 A Certainly, so you're asking for types of documents and things
8 like that? Or are you --

9 Q Well, less -- I did want to talk about that. But less about the
10 materials you looked at and more about the questions --

11 A Right.

12 Q -- that you were evaluating. Not the answers. I'm not asking
13 for the answers, but the questions you were evaluating as you began
14 your work.

15 A Right. So the first question was just understanding the
16 claims in dispute. So analyzing the claims and various dimensions. And
17 understanding if there was problems with some of the claims that were
18 being disputed. So it's kind of a deep analysis of those claims. That
19 would be sort of question one. Question two, was to look at the bill
20 charges and particularly to examine the question of whether bill charges
21 are a basis for determining reasonable value. Second -- or third
22 question, excuse me, was a similar question, but rather than bill charges,
23 to look at out-of-network payment levels, as to whether that was
24 appropriate. That's all under the kind of broad heading of reasonable
25 value of the services. And then --

1 Q That third question. Did you undertake that analysis both
2 affirmatively on your own, and did you also look at it in the context of
3 responding to the opinions of Mr. Leathers?

4 A Yes. That's right. So I have some overall opinions as to the
5 applicability or lack thereof, of out-of-network rates. But I think we all
6 heard Mr. Leathers speak about out-of-network rates and do some
7 calculations. And I will be responding to that as well.

8 Q Now anything else that you -- in terms of key questions you
9 were also looking at either on your own, or we asked you to look at?

10 A Yeah, so certainly as a general matter, some of the other
11 witnesses that provided testimony that touches on the economic issues
12 in this case. So I've been asked to respond to that. And then generally
13 to look at the reasonable value.

14 Q Okay. That's very helpful. Thank you, sir. Now let me ask
15 you a follow up question on the scope of your work. Did your scope of
16 work include trying to determine why the disputed claims in this case
17 were paid as they were paid?

18 A No.

19 Q All right. Did you attempt to determine whether the claims
20 paid were paid properly according to the applicable health plan
21 documents for each claim?

22 A No.

23 Q And was that -- were either of those kind of questions, those
24 why questions, were they relevant to your analysis?

25 A No, they weren't.

1 Q And can you explain to the jury why that is?

2 A Certainly. So the question -- the broad question is the
3 reasonable value of the services provided. So I was not asked to
4 examine how the various Defendants determined the rates that were
5 paid, but rather to look at given the rates that were paid, how does that
6 measure up against different potential standards of reasonable value.
7 So I'm not focused on how any individual rate was determined or
8 whatnot. I'm taking that as a given, and then doing my analysis from
9 there.

10 Q So did it matter to your analysis how the Defendants arrived
11 at the allowed amounts that are at issue in the case?

12 A No.

13 Q Okay. So if they did it perfectly right, that was not relevant to
14 your analysis?

15 A Seems like that's a good thing in general, that it wasn't
16 relevant to my analysis.

17 Q And if they screwed something up, that wasn't relevant to
18 your analysis either?

19 A I agree with that.

20 Q So you were taking the numbers as -- in the data and
21 evaluating them against other information whether those allowed
22 amounts were reasonable?

23 A Yes, I think that -- I would agree with that characterization.

24 Q All right. Well, let's talk some more, sir, about your
25 background. First of all, if you would explain to the jury what your

1 educational background is.

2 A Yes. So I have an undergraduate degree from Pacific
3 Lutheran University, which is a liberal arts school up in the Pacific
4 Northwest in economics. I have a second major in global studies from
5 Pacific Lutheran. I did my graduate work at Harvard University. I have a
6 master's degree from the Kennedy School of Government at Harvard in
7 public policy. Essentially applied economics and health policy was a
8 particular focus of mine. I was then accepted into the PhD program at
9 Harvard. Did all the course work and passed the exams. I was working
10 on my dissertation when I started working with Analysis Group, and I did
11 not finish the dissertation. So I don't actually have the PhD, but I had all
12 the course work and exams for it.

13 Q Okay. And it indicates here under your -- I want to ask you
14 this. Let me bring up a demonstrative that I'd like to show you. And we
15 use this to kind of guide your discussion. I believe this is Defense
16 Exhibit 5518. We will not put this into evidence. Today we're just going
17 to use it to help the jury follow your testimony.

18 A Okay.

19 MR. BLALACK: Can you go to the next line, please, Shane?

20 BY MR. BLALACK:

21 Q So this is a little background on you, Mr. Deal. And I think it
22 describes there your education at the top; is that right?

23 A Yes, that's what we went over. That's right.

24 Q Now under employment there, it indicates Economics
25 Instructor, Harvard University. Do you see that?

1 A Yes.

2 Q What does that refer to?

3 A Yeah, so while I was doing my graduate work at Harvard, I
4 also was an instructor. So I taught economics mostly to mid-career
5 students. So it was folks that had been in a career for a while and were
6 coming back to their master's degree. So as they were getting ready for
7 the courses, they would need kind of basic economics training. And I
8 was teaching an economics class for them.

9 Q Okay. Now you indicated a moment ago, you did not
10 complete your -- you started your PhD course works but did not
11 complete the PhD. Mr. Leathers -- I don't know if you heard this
12 yesterday, Mr. Leathers suggested that it is inappropriate for or not
13 accurate to refer to yourself as a trained or professional economist if you
14 do not have an actual PhD degree hanging on your wall for economics.
15 Do you agree with that?

16 A No, I don't. I mean, certainly there are many economists that
17 have PhDs, but there are other economists who don't. It really is a
18 matter of training and expertise and experience.

19 Q Okay. And since you completed your education -- formal
20 education, have you worked in the field of economics in varying
21 capacities?

22 A Oh, yes, for sure. In fact the next bullet down on that
23 demonstrative talks about once I finished my master's, I actually worked
24 for Harvard University. They had a consulting part of the university,
25 called Harvard Institute for International Development, HIID. And they

1 provided economic consulting around the world. And we were hired by
2 the Governor of Indonesia to work on a variety of different economic
3 projects. We were the primary consultants to the Minister of Finance
4 over there. So that's an example of my initial work. And essentially --
5 I'm happy to go through the rest of it, if that would be helpful. But every
6 job I've held since then has been focused on economics and finance.

7 Q Okay. Now what year did you -- it says after your reference
8 to the Harvard University HIID engagement, it refers to the senior
9 consultant and manager, Arthur Andersen. Do you see that?

10 A I do.

11 Q So let me start -- what year did the senior consultant and
12 manager at Arthur Andersen follow the role -- the work you did for the
13 government of Indonesia?

14 A Yes. That's right. So I'm sort of dating myself a little bit, but
15 the Indonesia work for Harvard was 1990 to '91. And then, '91 to '94 plus
16 a little bit of consulting after that was when I was with Arthur Andersen.

17 Q Okay. And then, next on your employment list indicates that
18 you're a vice president and managing principal of the Analysis Group.
19 Did you go directly from Arthur Andersen to the Analysis Group or was
20 there some break in your engagement?

21 A As a direct employer, yes. What had happened was I
22 finished my masters, and then I worked in Indonesia, and then I worked
23 with Arthur Andersen in Seattle. Then I went back to Harvard. My wife
24 and I were actually both working on our PhDs back there. And it was
25 while I was working on my PhD that I started working with Analysis

1 Group. We -- one of our business models is to have not only people like
2 myself testify, but we also work with professors who testify. And he was
3 testifying for Analysis Group in an insurance matter and asked me to get
4 involved. And one thing led to another, and now it's been 25 years since
5 I've been at Analysis Group.

6 Q Got it. Okay. So 25 years, so that would put you going to the
7 Analysis Group around 1995 or '96?

8 A Yeah, that's right.

9 Q All right. So let's talk about your time at the Analysis Group.
10 And let's talk about your experience as a testifying expert first. And the
11 third bullet there says you've testified dozens of times in arbitration,
12 state, federal, and international courts. Do you see that?

13 A I do, yes.

14 Q Okay. So give the jury a little sense of your experience as an
15 engaged testifying expert.

16 A Yeah. So that occupies a lot of my time these days, is very
17 similar situations to where we are today. So I -- there's different -- what
18 do we call -- venues. So I could be in state court like this or federal court
19 or a regulatory action or private arbitration, which is like state work but
20 it's in a private setting, for example. So covering a variety of different
21 kinds of topics, although I spent a lot of time doing work in healthcare
22 and looking at reasonable value.

23 Q Okay. I want to talk about healthcare and concepts of
24 reasonable value in your work in a moment. I don't know if you heard,
25 Mr. Leathers testified that at least in the last whatever it was, ten years,

1 he thought he had been engaged to give testimony as an expert about 68
2 times, something in that range. Is your experience comparable to what
3 his experience is? As far as actually testifying.

4 A Obviously, I haven't lined up the exact list, but in terms of
5 testimony, what the dozens refers to is actual live testimony like this in a
6 jury trial or a -- what's called a bench trial, where it's just the judge. But
7 I've been deposed many times. Many cases do settle. This one hasn't
8 settled yet. But I've probably done a couple of hundred depositions
9 there. So I would say probably more, depending on how Mr. Leathers is
10 counting it, but.

11 Q So let's talk about that, the next bullet that says, "Healthcare
12 is the single largest testifying area, including payer, provider, and
13 enrollee disputes." Do you see that?

14 A I do, yes.

15 Q Would you please expound on what you mean by that, sir?

16 A Yes. So I work in a variety of different areas. I think Mr.
17 Leathers described that he does a lot of work in oil and gas and
18 intellectual property. I don't do as much in those areas. Healthcare is
19 really the place I do the majority of my work. I also work in finance and
20 other kinds of projects. But I would say the significant majority of my
21 projects involve insurance, and of that, healthcare is a big piece of it. So
22 literally, this exact kind of a dispute over reasonable value of rates for
23 hospitals or professionals, physicians, others. That's a big area of work.
24 I've been doing that for quite a number of years now.

25 But there's really a variety of other kinds of cases. I mentioned

1 enrollee on there. There's a lot of kind of class action matters, for
2 instance, where the enrollees might say my premiums were set wrong or
3 my claims weren't processed correctly or things like that. So it's really a
4 pretty wide variety of things within healthcare, almost all of them
5 involving pretty detailed data analyses. So claims data, enrollee data,
6 that's a theme of a lot of the work I do is, you know, heavy analytics of
7 databases and claims data and things like that. So -- but it's a variety of
8 different kinds of things.

9 Q And that data-driven type of analysis, is that typical or
10 atypical for economic analysis?

11 A Oh, actually, it's very typical. I mean, obviously, the name of
12 our firm is Analysis Group. We are heavy analytics people, so we tend
13 to be statisticians and economists and data scientists and others. And
14 almost every project that I can think of that I'm working on, say, now or
15 the last couple of years has had a fairly heavy data component. It will
16 often have some other component. There's sometimes documents,
17 things like that, that involve, you know, understanding the theory and the
18 structure of the case. But data analytics is central.

19 Q Okay. Now, that last bullet refers to dozens of assignments
20 measuring reasonable value for healthcare services. And you alluded to
21 this notion that you have done a lot of cases that are very similar to this.
22 Can you give the jury a sense of what you mean there, one, and then
23 two, explain how the work you've done in these other engagements
24 compared or doesn't compare to the dispute that we're evaluating here.

25 MR. LEYENDECKER: Objection, Your Honor. That calls for a

1 narrative. I don't mind a little bit, but this -- he may go on for 20 minutes
2 here. I don't know.

3 MR. BLALACK: I'll break it up. That's a fair objection.

4 BY MR. BLALACK:

5 Q Let me just ask you, let's start, sir, by just describing the
6 types of engagements reflected in that last highlighted clause there. And
7 then I'll follow up with a second question.

8 A Sure. Sure. I'd say in broad strokes, there are sort of two
9 areas where these reasonable value cases happen. One is with what we
10 call facilities, so hospitals. Most of them are in the out-of-network
11 context, so again, the broad issues are really quite similar across these
12 cases. It tends to be an out-of-network situation, oftentimes an
13 emergency situation, where a payment was made and there's a dispute
14 about was it a reasonable value. Was the level of the payment
15 reasonable value.

16 So I kind of divide them up into, again, facility, and mostly
17 hospitals within that. And then what we call professional fees or
18 physician fees, typically, but it could be nurse practitioners and others.
19 But those two, the data sources one uses can differ, but the broad
20 framework is often quite similar between those two.

21 Q Okay. So let's use those two pockets you refer to, facility
22 out-of-network disputes about the reasonable value of services and
23 professional disputes, and particularly out-of-network disputes for
24 reasonable value. How many of those types of engagements do you
25 think you've been engaged to review and render opinions on in the last

1 five years?

2 A Twenty-five, maybe. Something like that.

3 Q And have you given -- have you been qualified as an expert
4 witness by courts other than this one to give expert opinions and
5 testimony on those topics?

6 A I have, yes.

7 Q How many times, roughly?

8 A I've probably given live testimony -- every time I've given live
9 testimony, I've been qualified. Five, six, seven, something like that.

10 Q Now, the question I jumbled together with my first one was
11 given those -- that prior experience, can you tell the jury how
12 that -- those other cases and the work you've done on them compares or
13 doesn't compare to the issues we're addressing in this case?

14 A Sure. In very broad strokes, I'd say it's quite similar in the
15 sense that we're looking at the claims in dispute, understanding the
16 claims in dispute. That's always a part of the work that we're doing.
17 Then, we're looking at various -- what we call benchmarks or measures
18 of reasonable value. And I'm usually doing that in two contexts. One
19 would be by affirmative analysis, where I have -- I have views, I have a
20 framework that's rooted in economics and valuation as to how to think
21 about reasonable value.

22 So I'm usually coming up with and testifying about my own
23 opinion on reasonable value. And then -- and kind of like this case or
24 comparing what was -- what was allowed to that benchmark.

25 And then, most cases have an element like in this case, too,

1 where there's an alternative being proposed by the other side. And
2 someone like Mr. Leathers or it even can be some fact witnesses
3 sometimes. And I'm oftentimes analyzing and rebutting and describing
4 that potential problems with what they're doing. So that framework is
5 very similar.

6 Q Are there any aspects of what you undertook here that you
7 think are different or unique compared to what you've done on the other
8 cases, something you're doing here that you haven't done before,
9 anything like that?

10 A No. Of course, every case has its own, you know, particular
11 providers, things like that. But I would say that in broad strokes, this one
12 is really quite standard in terms of the types of claims and the framework
13 and the way to think about it. So it's sort of -- it's -- I put it squarely in
14 the middle.

15 Q Okay. Have you ever rendered an expert opinion before on
16 the reasonable value of an out-of-network healthcare service?

17 A Oh, yes.

18 Q Have you ever rendered an expert opinion before on the
19 reasonable value of an emergency service?

20 A Yes, many times.

21 Q Have you ever rendered an expert opinion on the reasonable
22 value of an emergency service on an out-of-network basis?

23 A Yes.

24 Q Okay. Have you ever rendered an opinion on the reasonable
25 value on out-of-network emergency service by an emergency medicine

1 professional?

2 A I have, although I haven't -- none of the -- well, I guess it
3 depends a little bit on how you consider an emergency room
4 professional. I've testified in trial on several cases where the patient
5 originated in the emergency room but ultimately was treated by a
6 cardiologist or a neurosurgeon. If I understand your question to be the
7 emergency room physician who is the initial point of contact there, I
8 have rendered opinions on that, but none of those cases have gone to
9 either jury trial or a bench trial.

10 Q Okay. So let's just make sure the jury understands what you
11 just said there. You have been engaged, conducted analysis, and
12 rendered an expert opinion before on the reasonable value of an out-of-
13 network emergency medicine service, but that was only in cases that
14 never ultimately reach final presentation to a jury. Did I hear you right?

15 A Involving the particular emergency room physician's
16 specialty; that's right.

17 Q But have you -- but I think I heard you say you have rendered
18 expert opinions that reach the presentation to a jury, that went to trial,
19 relating to out-of-network emergency services where the encounter
20 started in the emergency room, but another medical specialty was the
21 one in the suit?

22 A Yes, that's exactly right.

23 Q A cardiologist.

24 A For example, a cardiologist. I've had a couple of cases
25 involving neurosurgeons. So -- and then those would, again, be

1 situations where the initial presentation at the emergency room by the
2 patient might have -- might have been seen initially by an emergency
3 room doctor, and they would say, oh, this is chest pain, let's call in the
4 cardiologist. And then, the cardiologist would take it from there.

5 Q Okay. In your engagement, sir, on these type of matters,
6 have you been typically engaged by the payer side of the dispute, the
7 provider side of the dispute, or some combination?

8 A The payer side on these cases. I've certainly worked for
9 providers, and I mentioned the case -- or the project up in Washington
10 State working for hospitals, and I've worked for hospitals in the past. But
11 on the -- these reasonable value cases, it's generally working for the
12 payer.

13 Q Okay. Now, let's now talk a little bit about your engagement
14 in this case and what you -- what work you did. And I'm not asking for
15 any opinions from you yet. I just want you to describe from the time you
16 were engaged to the time you got here the kinds of things you did. Do
17 you understand what I'm inquiring about?

18 A I do, yes.

19 Q Okay. So first of all, let's start with do you have a memory of
20 generally, when you were first engaged to be an expert in this case?

21 A I believe it was May of 2021.

22 Q And if you could, just generally describe -- let me give you
23 some points of reference. Do you recall that the first deadline to submit
24 a report in this case was July 30th?

25 A I do remember that, yes.

1 Q So from the time you were engaged in May to the end of
2 July, could you just describe the type of data information you pursued,
3 what the steps you followed were, and then walk the jury through your
4 process between those two days?

5 A Yeah, certainly. So as I mentioned at the outset, in terms of
6 general assignments and areas to look at, understanding the claims in
7 dispute is always a part of these cases. So I would say there was
8 significant effort undertaken and -- to just understand what the claims in
9 dispute are alleged to be, analyzing the various datasets that are in the
10 case.

11 So there's data from both the defendants and the plaintiffs. So
12 first, trying to find those claims, match them up, analyze them. Then,
13 there's other analyses that are also done with those datasets to
14 understand other aspects of reasonable value. So a lot of work with the
15 claims data itself.

16 Some review of deposition testimony to just, again, develop
17 a general understanding of the case and are there particular economic
18 issues here. Some review of documents, as well. That was not as
19 intensive in this matter as some other matters because of the issues that
20 you raised earlier, that my focus was not on the particular
21 methodologies used. So in that case, I did review documents, but not as
22 extensive as in some other cases.

23 And then ultimately, it's doing the analytic work. I mean, we
24 also -- oh, I should say we also review relevant literature. So there's
25 academic studies, other types of work that speak to this issue. This is a --

1 this is -- a sort of a relatively big issue, I would say. It's one that there's a
2 lot of literature and analysis on. And so bringing that to bear to
3 understand that as part of the overall framework is also important.

4 Q When you say a big issue, you mean big in what way?

5 A So I would say big in terms of first, dollars. It is a significant
6 issue in the cost of healthcare. I would say also it's a fairly hot public
7 policy topic. So people may be familiar with things like the surprise
8 billing.

9 Q That's -- and I don't want you to discuss any issues here.

10 A Fine. Fine.

11 Q I guess what I'm asking is by big, do you mean it's a subject
12 of a lot of academic research and investigation?

13 A Yes, I think that's fair to say that. Yes. It's --

14 Q And so you say you canvass the literature, what do you
15 mean by that?

16 A Yeah. So a lot of what we do in -- in lots of projects is to
17 understand what, again, what literature is out there, what research has
18 been done by professors, for instance, or other researchers who have
19 published on this -- this subject or subjects relevant to this. So it's
20 reading the studies, it's thinking about how they're relevant or not,
21 adding them to our overall understanding or particular focus in terms of
22 our analysis. So again, that's a pretty common step in a lot of the
23 projects, and it's certainly part of this project.

24 Q Okay. Now, you mentioned that you reviewed some
25 depositions, some documents, but that that was not a particularly heavy

1 area of your focus. Did I understand you correctly?

2 A Yes, that's right.

3 Q Okay. Now, because of the questions you were trying to
4 answer in this case, did you study closely the complete record in the
5 case?

6 A No. Again, I've certainly reviewed some of the record, but I
7 would definitely not say that I'm deeply immersed in the entirety of the
8 record.

9 Q What was the purpose of you looking at any of the record
10 that you looked at?

11 A Again, there's a certain amount of familiarity with the case
12 that is very helpful in understanding. And you mentioned earlier -- or
13 you asked earlier about if there was anything particularly anomalous
14 about this case, for instance. And that's some of what we want to do is
15 to understand is there something about the facts of this case or the
16 structure that would suggest we need -- that I need to think about the
17 way I do my analysis in a different way. So almost really looking at it on
18 an exception basis, saying is there something here that's different. And
19 the short answer is no. There really wasn't anything different. But I
20 needed to kind of get an understanding of, you know, the various
21 dynamics of the parties, things like that.

22 Q In connection with your review or whatever evidence or
23 materials you saw, did you come to understand that some of the
24 Defendants in this case utilize things that are called out-of-network
25 programs to adjudicate out-of-network claims?

1 A I did, yes.

2 Q What -- and I think you testified that that -- it was not
3 necessary for you to understand the methodologies used to render the
4 opinions in this case; is that right?

5 A It was really not necessary; that's right.

6 Q Did you study closely the evidence on record relating to the
7 Defendants who have out-of-network programs, what those programs
8 were, how they work, what their purpose was? Was that part of your
9 focus?

10 A Certainly not part of my deep focus. I was aware of them
11 from reviewing the documents. I'm generally aware from the work I do
12 in this area of these types of programs that are out there. But it was not
13 a particular assignment or a focus of my testimony.

14 Q Okay. Was -- did you consider -- let me back up. Do you
15 understand from your review of the allegations in the case and the
16 defenses that the parties have some very significant disagreements
17 about those programs and their impropriety, and what constitutes a
18 reasonable rate. Do you have a general understanding that there is a
19 dispute on this question?

20 A I do, yes.

21 Q Okay. Now, leaving aside the question of what's the
22 reasonable value of the out-of-network services at issue in this case, are
23 you contemplating that you will render an opinion on whether my clients
24 are right or their clients are right regarding whether those programs
25 were proper and appropriate or anything like that?

1 A No. That's not in the scope of what I'm planning on offering
2 opinions on.

3 Q Okay. So you know there's a disagreement, but that's not
4 something you're going to pick a side in in the context of your opinion in
5 the case?

6 A Yeah. I think that's fair. Yes.

7 Q Okay. Now, sir, you've mentioned that you have a team
8 that's been working with you since you were engaged. Can you give the
9 jury a sense of just how many folks have been helping you on the matter
10 at hand?

11 A Yeah. It was about four or five that have been -- that have
12 been helping me on this project.

13 Q Okay. And they're all employed with the Analysis Group?

14 A They are.

15 Q Okay. Are these folks you've worked with before?

16 A Oh, yes. As I -- as I said, this is a big part of the work that I
17 do and there's a group of us that work on these projects together.

18 Q Now, the folks who help you on your team, also do they have
19 a concentration in health care reasonable value?

20 A Yes. I'd say sort of like me, there's -- they spend some
21 amount of their time working on other types of projects, more finance,
22 things like that. But all of them have deep healthcare experience.

23 Q Okay. So the jury has a sense of the extent of your work,
24 could you share with them the fees that you have charged today? I
25 mean, I know there may be fees in the last few days, but just most

1 recently up to date from engagement to now, the fees you charged and
2 admit?

3 A I think we've invoiced about \$525,000.

4 Q Okay. All right, now you said this is a big topic, this kind of
5 dispute; is that right?

6 A It is, yes.

7 Q And so, have you had engagements before where you billed
8 amounts comparable on dispute?

9 A Or even more, but yes. Sometimes less, sometimes more, it
10 depends.

11 Q Now you talked about the documents in that review. Can
12 you give the jury just a general sense of the type of data that you've
13 obtained and that you reviewed to try to go about your analysis?

14 A Yes. So almost always at the heart of any of these cases is
15 claims data. So if think of the spreadsheet, and I know there's been
16 spreadsheets shown, we may even show some today I suspect, where
17 you've got individual claims or even lines on claims. And very
18 frequently we're getting that information from both the provider so on
19 information about their claims related to the particular defendant and
20 sometimes other data.

21 And similarly for the plaintiff, we're getting information on, you
22 know, their claims data. So it's often times certainly the claims in
23 dispute that's a particular set of claims. Usually a subset of claims of the
24 interactions between the parties, so think of that as one spreadsheet.
25 And there's another spreadsheet -- these are big spreadsheets by the

1 way. It can be hundreds of thousands or millions of claims, from each of
2 the other parties. And that can cover a variety of years and different
3 types of services, things like that. So that's very common.

4 Q Okay. Now after you collected all this data, analyzed it, and
5 began to form your opinions, did you eventually prepare a written report
6 or submit for submission of the case?

7 A I prepared several reports. But that initial report, I think you
8 mentioned on July 30th, yes.

9 Q And you mentioned you eventually prepared some additional
10 reports?

11 A I did, yes.

12 Q Okay. What was the next report you prepared?

13 A There was a rebuttal report that I prepared. Going from
14 memory on -- there was what we call a simultaneous exchange.
15 Meaning that the reports from the defendants and the plaintiffs were
16 exchanged at the same time. So I believe Mr. Phillips and Mr. Leathers
17 were at that point both offering kind of financial and economic opinions.
18 So I did a rebuttal report addressing what they had proposed as the
19 methodology for reasonable value. That was the focus of my second
20 report.

21 Q Okay. Just so the jury is clear, we heard from Mr. Leathers
22 yesterday?

23 A Yes.

24 Q And you mentioned Mr. Phillips. I think Mr. Leathers
25 mentioned Mr. Phillips yesterday as well. You understand he was a

1 second damages expert that the Plaintiffs had retained at that time,
2 correct?

3 A That's correct. At the time of the first report exchange, they
4 were each offering opinions about reasonable value though in different
5 calculations.

6 Q And then you prepared this rebuttal report. And then did you
7 eventually prepare supplemental rebuttal reports to other witnesses in
8 the case, other expert witnesses?

9 A I did. There were two physicians, Dr. Crane and Dr. Frantz
10 who had provided not written reports, but deposition testimony covering
11 some various topics. I was asked to respond to those, so I submitted
12 expert reports in response to each of their deposition testimony.

13 MR. BLALACK: Okay. Now at that point, Your Honor, I'd like
14 to move to qualify Mr. Bruce Deal as an expert witness in this on the
15 topics of reasonable value of the topics disclosed in his report.

16 MR. LEYENDECKER: He's fine by the Plaintiffs, Judge.

17 THE COURT: Good enough. The witness may testify.

18 BY MR. BLALACK:

19 Q Thank you, Your Honor. All right. Mr. Deal, I'd like to start
20 with just some background information for the jury about the process by
21 which emergency department claims are generated and then reach a
22 health insurer, okay. That's really the process. And the jury does
23 become somewhat experts on this themselves. They may not need this,
24 but we'll do it anyway just to make sure they're up to date.

25 MR. BLALACK: If you could go to the next slide, Shane.

1 BY MR. BLALACK:

2 Q So Mr. Deal, could you -- on this slide, what are you trying to
3 describe for the jury?

4 A Yeah. Just at a very high level of the process that leads from
5 the patient walking in the door or being sometimes not able to walk into
6 the door of the emergency department through the bill being prepared
7 and then ultimately sent on to the payer, which in this case would be a
8 commercial insurance company.

9 Q Okay. I want to talk about this in more detail in just a second.
10 But you said something important, and I want us to talk about that. You
11 said sometimes the patient can't walk into the emergency room. Did I
12 get you right on that?

13 A That's accurate, yes.

14 Q So this is a type of medicine where the patient can arrive at
15 the provider without choice; is that right?

16 A Oh, yes. And I have some analyses and thinking on that. It's
17 what we call a forced transaction in economic terms. Meaning --

18 Q What is a forced transaction?

19 A Yeah, maybe it's easiest to start with what -- the opposite.
20 So a voluntary transaction is I want to go buy a pair of pants. I can go to
21 this store or that store or this mall and get it. I have a choice as to where
22 I'm going to go. An emergency situation, typically you don't have a
23 choice, and just from a public policy perspective, we typically don't want
24 you to make a choice. We don't want you -- at least a choice that would
25 endanger your health I should say.

1 If you're equal distance between two and you have a preference
2 that's fine. But we don't want people to say I can't afford that one. I
3 need to go to this one over here. So it's a forced transaction. You need
4 to go get, you know, some type of urgent medical care. Not always life
5 threatening, sometimes life threatening, but you need to go.

6 And, you know, there's some -- I'm not going to testify about the
7 regulations, but there are regulations that say you can go to any
8 emergency department and also say that your insurance company has to
9 pay for that.

10 Q Are you talking about EMTALA? Related to EMTALA?

11 A EMTALA, yeah. That's the acronym for that.

12 Q The jury has heard a lot about that. So when you say you
13 need to go, in fact, there can be, from your experience working in this
14 field, there can be occasions where a patient ends up in the emergency
15 department entirely as a function of the choice of an ambulance though?

16 A Oh, for sure. Yeah, exactly. Yes, I mean, I mean if you're
17 obviously if you're comatose for instance or you can't respond. But even
18 in other cases, it's sort of a -- you know, they really want you -- to get
19 you to the closest appropriate emergency room.

20 So, you know, kind of you can imagine you're in a car accident for
21 instance and depending on where the car accident happens and if you
22 need an ambulance, you're going to go to whatever the nearest hospital
23 is that can provide appropriate care.

24 Q On this background slide you refer to CPT code, which is
25 shorthand for current procedural terminology code. First of all, where

1 did we find -- where would the jurors -- the jury maybe wanted to find,
2 God forbid, CPT codes, how would you go about doing it? Where do you
3 find them?

4 A So these days you can just -- you can Google it. And
5 there -- and I mentioned on here, there's about almost 8,000 of them. So
6 you can essentially download if you wanted to -- as you say, I'm not sure
7 people have ever done this like read it cover to cover, but you could.
8 You can get literally a master list of all the CPT codes that are out there.

9 Q Who creates the CPT code?

10 A So the American Medical Association initially creates the
11 codes. And what's called CMS, Centers for Medicaid, and Medicare
12 Services, they also use those codes as do many, many insurers. But
13 originally, they're created -- the were created by the American Medical
14 Association.

15 Q Okay. And if you have -- would one code correspond to one
16 service for one procedure or is that capturing multiple things?

17 A It's a slightly complicated question, but the general answer is
18 one code is one service. There are some codes that are somewhat more
19 general. But particularly in this case, I think it's fair to think of it as each
20 code represents a unique service. So there are what we call evaluation
21 and management codes and those are some of the primary codes at
22 issue here. Which as the name would imply, it's sort of assessing,
23 diagnosing, managing the case.

24 And then there's a code for stitching up a finger or, you know,
25 reading an x-ray. There's -- if you then do things, procedure type codes,

1 then it would be additional lines on the bill. Think of that as lines on the
2 bill and each one of those lines has a particular code associated with it.

3 Q So if one were -- the jury were to look at a claim form and it
4 had five CPT codes, how many services or procedures would that
5 represent?

6 A It would probably represent if you sort of -- depending on
7 how you think about it, it would probably represent four particular
8 procedures and then one kind of overall evaluation and management
9 code.

10 Q And that term you referred to, evaluation and management,
11 what does that tend to -- what the MACPT manual contemplate by an
12 evaluation and management service?

13 A Yeah. As I sort of alluded to a moment ago, it's sort of
14 the -- again, kind of the overall assessment and management of the
15 patient, you know, kind of the diagnosis. It's that -- it's all of the sort of
16 almost thinking in management of the case is way to think about it. It's
17 sort of a lay person's way of thinking about it.

18 Q Okay. So let's just use the hypothetical. Let's say there's like
19 a heart attack or a gunshot, something like that on a claim and a provider
20 engages in an evaluation and management service information of that
21 patient. Would there be a code to characterize that evaluation and
22 management service?

23 A Yes, there would.

24 Q Well if the provider then went and engaged in surgery
25 assuming the provider was qualified to do that, or did some sort of chest

1 x-ray, would that typically be included in the evaluation management or
2 would that typically be billed as a separate service and procedure?

3 A Typically billed as a separate service. And we talked earlier
4 about the fact for -- let's take the cardiology example. So in those
5 cardiology cases, there was an initial evaluation and management code
6 and then they went and got cardiac catheterization, a stent, people may
7 have had friends or family gets those where they unblock the arteries.
8 So there's different codes associated with that.

9 So if you look at the bill, it would have initial evaluation of
10 management and then it would have various codes associated with the
11 cardiac catheterization.

12 Q Okay. So when you had a more acute patient encounter that
13 presents more substantial work for the physician provider, I'm not saying
14 every time but typically, do those claims tend to have multiple services
15 and procedures represented on the claim as opposed to just a single
16 claim?

17 A Yeah. That's a little bit of a hard question to answer
18 precisely as you alluded to in the sense that that's probably directionally
19 right that it would be surprising that a more severe case would also have
20 other line items. But the evaluation of management codes
21 themselves -- also recognize, there's different levels of severity of that.
22 So you could have somebody with chest pain that you've got to just be
23 monitoring and understanding what led to this. And that may just take
24 more effort to do that. So you might only have one code on that case,
25 but it might be one of the more severe codes.

1 Q And actually, you referred to that there on your chart where it
2 says ED level CPT code identified the severity and the episode of care
3 and are correlated resources used to treat the patient. What do you
4 mean by that?

5 A Yeah. So I know there's been lots of talk and the jury are
6 probably almost qualified experts at this point on the 99281, 99282. So
7 the core emergency evaluation codes are 99281 through 99285. Those
8 are the evaluation and management codes. There's also 99291, which is
9 technically a critical care code. So it's often billed in the ICU for instance,
10 the Intensive Care Unit or the Critical Care Unit, buy doctors who are
11 monitoring very sick patients. But it is sometimes also billed in the
12 emergency department. So that's actually the most severe is the 99291.
13 But of the other codes, it goes from 99281 to 99285.

14 Q Okay. And up in the right-hand corner, you refer to
15 something called a chargemaster; do you see that?

16 A Yes.

17 Q What is a chargemaster?

18 A So a chargemaster is sort of a -- think of it as sort of the list
19 price. So each hospital has a chargemaster, and each physician or
20 physician group would have what we call a chargemaster. I'm not really
21 sure of the origin of the name chargemaster. It's a bit of a funny name,
22 but it's a -- I mean, it's sort of a master list of all the charges. Maybe
23 that's where it comes from. But it's essentially a -- each CPT code is
24 irrelevant for that doctor. So not every doctor would have 7,800 codes,
25 because an orthopedic surgeon wouldn't be doing some kinds of

1 procedures for instance. But for the codes relevant for that specialty,
2 you would literally have a list price and that's the price that you put on
3 the bill for every payor and every patient.

4 Q Regardless of the means of reimbursement?

5 A Regardless of the means if they are what we call self-pay, so
6 they don't have any coverage. If they're government plan, like a
7 Medicare or they're private insurance, that kind of list price from the
8 chargemaster is what goes on the bill. And again, both the hospital has
9 one of those and the physician has one of those.

10 And one of the things about the emergency department is you're
11 going to get two bills, or your insurance company is going to get two
12 bills, one from the hospital and one from the professional. And each of
13 them would be using a chargemaster.

14 Q Okay. Down in that pink box on this slide, you make
15 reference to that notion in two different bills; is that right?

16 A Yes, that's right.

17 Q Have you ever heard the term surprise billing before?

18 A I have, yes.

19 Q What does that describe?

20 A Typically describes a situation where if you look on your
21 insurance list of what we call in-network providers or participating
22 providers, there's different terms, but you sort of -- people talk about
23 who's in your network and you say -- you can look and you can say oh,
24 Good Samaritan Hospital is in my network for instance. And you go to
25 Good Samaritan Hospital, and you get care, and all of the hospital care is

1 governed by the in-network -- your copay, your coinsurance, all that, but
2 you could get service from a physician that's at the hospital. It's typically
3 one of four specialties. It would typically either be an emergency
4 physician, an anesthesiologist, a pathologist, or a radiologist, the guys
5 who read the x-rays. Pathologists are the lab guys. And that physician is
6 not necessarily required to be in the same network.

7 So you could get this bill that says wait, my hospital was in-
8 network, but my physician bill is suddenly out-of-network and not
9 governed by the same plan regulations and rules and copays and things
10 like that. That's the surprise. It's not a good surprise typically. So, you
11 know, it's a bit of a funny term because I think of a surprise as being
12 good things, but it's not a good thing. It's a negative surprise. And
13 that's been some of the public policy concern for a long time, but it's
14 gotten more press recently.

15 Q All right. Now I want to turn -- go to the next slide please,
16 Shane. And this is a slide that refers to Dr. Frantz. Dr. Frantz testified in
17 this case yesterday. Did you see his testimony?

18 A I did, yes.

19 Q And in fact, Dr. Frantz was one of the doctors who offered
20 some opinions earlier in the case for which you provided a rebuttal
21 report; is that correct?

22 A That's accurate, yes.

23 Q Okay. Could you please describe -- well, let me back up and
24 ask a more foundational question. My memory of Dr. Frantz's testimony
25 is that he described various types of services that the TeamHealth, which

1 is kind of the parent company, offers to the staffing companies that
2 engage with the actual emergency room physicians. And he described
3 those various services and what he contended was the value those
4 services added to the service. Is that a fair way to characterize what you
5 understood his testimony to be?

6 A I think in broad strokes, yes. He wasn't quantifying the value.
7 But he was, I think, talking about a subset or a select set of services and
8 kind of how TeamHealth does it and the fact that that's sort of value add,
9 if you will.

10 Q Okay. And when you say he wasn't quantifying, you mean
11 he didn't try to assess a numerical amount to the actual service for each
12 claim?

13 A Yes. I believe he said he's not an expert in the reasonable
14 value or the financial side of it. And he wasn't saying this is worth an
15 extra \$2 a claim. He wasn't doing that. That's what I meant by that.

16 Q Now with respect to the services, you've got a listing of
17 services identified by Dr. Frantz in the left-hand column. Are those
18 services that you're talking about services he referenced in his
19 testimony; is that right?

20 A Yes, that's right. That was my understanding of some of the
21 services that he was talking about.

22 Q Okay. And could you please explain your analysis and
23 response to Dr. Frantz's position about whether TeamHealth's
24 contribution to the encounter is something that adds some new
25 incremental value to the service, economic value to the service?

1 A Yes. So you can see I've got five different services listed
2 here. I won't spend a lot of time on each one. But they were things like
3 the recruiting, the training, the billing. There was questions about did
4 they do -- you know his old company; did they do their own billing?
5 Things like that. Those are -- the middle column is sort of a general
6 comment, which is to say those are all services that every emergency
7 physician either solo practitioner or small group or big group needs to
8 do if you're going to be providing emergency services. And the
9 right-hand column is really making a pretty simple observation that
10 those are all good things and necessary things, but they're not the types
11 of things that what we see from an economic perspective leading to
12 different payment levels or different reasonable value for the services.

13 So the fact that you might have an efficient recruiting process may
14 be a good thing. It might lower your own costs, but it's not something
15 that payers would pay differentially for.

16 Q And why don't they? Why don't they pay differently for?

17 A They're paying for the actual clinic service, the encounter
18 with the patient and they're paying on a CPT code basis, which is a
19 standardized way of analyzing the service across different providers.

20 Q So they're not tailoring the reimbursement to this really
21 efficient provider as compared to this less efficient provider, that sort of
22 thing?

23 A I think that's accurate, yes.

24 Q Let's talk -- go to the next slide. This refers to -- you know,
25 we talked about earlier how once the patient walks into the emergency

1 room or is brought into the emergency room, how that results in a claim.
2 If you could now describe just generally, again, I think the jury's become
3 pretty adapt to this, how a claim then goes to the point of
4 reimbursement. Walk the jury through that process.

5 A Yeah. So just as a little side point, almost always these days
6 it's going electronically. So in the old days, it would literally be -- a bill
7 would be put in the mail and mailed off to the insurance company. And
8 occasionally that would still happen, but mostly this is an electronic
9 process where the provider, once they gather the information about --
10 you know, you have to show your insurance card is sort of the way it
11 manifests for a patient. You show your insurance card, and they take all
12 the information, and then they know where to send the bill.

13 So they say oh, this is -- you've got Blue Cross Blue Shield of
14 Massachusetts or whatever. They'll send that bill using the
15 chargemaster rates. So that's -- again, that's the standardized rates. And
16 then you can see I've got kind of a branching here on the second, middle
17 of this. So the first question is, is there a contract between the two
18 parties? And frequently there is in healthcare, but certainly not all the
19 time. If there is a contract, well then at least conceptually, although a
20 much of this is automated these days --

21 MR. LEYENDECKER: Your Honor, may we approach?

22 THE COURT: You may.

23 [Sidebar at 10:39 a.m., ending at 10:40 a.m., not transcribed]

24 MR. BLALACK: May I proceed, Your Honor?

25 THE COURT: Please.

1 MR. BLALACK: All right.

2 BY MR. BLALACK:

3 Q All right. Please continue.

4 A All right. Yeah. So what I was saying is if there's a
5 determination that there is some prior agreement, a contract, then the
6 rules of the contract would govern it. So it may have a payment level, it
7 may have a type of a copay, coinsurance. It gets processed through.
8 Much of that's done electronically these days. So it doesn't require
9 someone to literally look through each contract. That's loaded up in the
10 computer, but that -- they're processed.

11 I should mention the overall name for this process, and I think
12 maybe it's been used in a -- in the trials, oftentimes called adjudication,
13 claims adjudication. That's sort of the term of art, if you will, in this -- in
14 this field.

15 And then the second arrow at the bottom in the middle, that's if
16 there is no contract. And that's the situation we're in here in this case, is
17 what happens if its noncontracted. And what I've shown on the right is
18 just a conceptual framework of an application of an out-of-network
19 methodology. And you've been -- you've asked me a few questions this
20 morning about whether I'm studying the details of the out-of-network
21 methodology in this case, and the answer is no, I'm not. But there are a
22 variety of different out-of-network methodologies that are used by out
23 kinds of payers out there. And they may -- a given payer may even have
24 several possible solutions and things.

25 So then that's -- you know, oftentimes -- and we'll I'm sure

1 probably get into this. Infrequently that's full bill charges. Mostly it's
2 some other number that's generated from this methodology. And that is
3 then paid to the actual provider. And I note on there at the bottom that
4 its frequently accepted. So there are processes. This sort of being the
5 ultimate form of that processes. If the provider doesn't think that's
6 adequate, they can appeal to the payer typically, and there's often a
7 process for that. In extreme cases, they can sue.

8 And that's the nature of this particular dispute, as I understand it, is
9 the amount that was paid, the allowed amounts in these cases were --
10 are being disputed by the provider here. So that's where we end up in
11 these kinds of disputes.

12 Q So with that -- with respect to those spectrum of out-of-
13 network solutions, in your experience in the industry over the years,
14 have you observed that there was a single one out-of-network
15 methodology or solutions used by all commercial payers?

16 A No, not at all. There's a wide variety.

17 Q So to the extent the jury in this case has heard evidence of
18 multiple out-of-network methodologies even within one Defendant
19 based on the plan and other requirements, is that atypical in your
20 experience?

21 A No, that -- it's not atypical. It would be very common for a
22 given payer to have different methodologies available.

23 Q Okay. To your knowledge, is there any single standard in the
24 out-of-network contract context that says an out-of-network service will
25 be paid using this methodology?

1 A No.

2 Q Okay. Now, let's go to the next line. And you'll see it's
3 discussing illustrative examples of billed procedures from the disputed
4 claims. Do you see that?

5 A Yes.

6 Q And I want to talk about the disputed claims list in more
7 detail in a moment, but just briefly, if you could, describe here for the
8 jury what it is you're illustrating.

9 A Yeah. This is really just a couple of examples of what we
10 were talking about earlier in terms of the evaluation and management
11 codes, and then some additional codes associated with that -- with that
12 initial evaluation. So on the left, I've got sort of a more severe and
13 arrhythmia and irregular heartbeat. And I'm showing as an example the
14 types of codes that one might see on a bill for a patient that presented
15 with that type of a situation.

16 So, you know, if it's a very severe situation -- I mentioned this
17 99291 code. That's the most extreme. There are some numbers and
18 letters after it. Those are what we call modifiers. So you can have the
19 standard code and then you can sometimes have some modifiers that
20 will change the way it gets adjudicated. But this -- the first part of that --

21 Q Can I interrupt you one second, sir?

22 A Sure.

23 Q When you say a modifier, are you referring to the -- after the
24 code of this 25-SA?

25 A Correct. Yes.

1 Q Okay. And before you get too much farther, are the -- you
2 got two illustrations on this slide, correct?

3 A Correct.

4 Q Are these two illustrations just made up hypotheticals or are
5 these drawn from the disputed claims?

6 A Oh, these are from the disputed claims, yes.

7 Q Okay. So these are two actual claims in dispute today?

8 A They are.

9 Q Okay. So please continue describing those --

10 A Sure.

11 Q -- and [indiscernible].

12 A Sure. So what you see on the left is both the so-called E and
13 M. That's the abbreviation for evaluation and management. That's a
14 99291 on the left. And then there were two other lines that were billed.
15 So the -- what we call the line level detail, there's a 92960. It's a cardio
16 version. It's a, you know, electrical procedure on the heart. And then
17 there's an EKG -- or excuse me -- ECG, I should say. The 93010.

18 So this is how it works, is they kind of keep track of, oh, I did the
19 evaluation and management and then we did this procedure and then
20 we did this procedure, and each of those is typically recorded in the
21 notes by the doctor and then eventually a billing company or a biller will
22 convert that to a CPT code. It's not typical that the doctor would do that,
23 that coding. And there's regulations around how to do that and so forth.

24 The -- and you can see at the bottom I'm saying that the -- I'm
25 showing that the total charged on that was 2,870. That's the sum of each

1 of those would have its own charge from this list price that we talked
2 about, the chargemaster. In this particular case, the allowed amount was
3 \$1,649. Again, using various methodologies in that. This is not -- and
4 it's not something I've studied, as I said.

5 The right side is an example of a -- I think at least to my lay way of
6 thinking about it, a less severe situation, an ingrown toenail, where the
7 CPT code there would be a 99283. So that's right in the middle of the --
8 99281 being the lowest, 99285 being the highest -- before the really
9 severe one, the 99291. And I've just listed the description there. And
10 then they did an excision of the nail fold toe. That doesn't sound fun, but
11 it was some sort of a procedure to actually presumably take the skin or
12 do something.

13 So that's -- we mentioned there's the evaluation part of it and then
14 there's the actual thing they did in this case. And the charges there you
15 can see are 1,148, and the allowed amount is 173 in that case.

16 Q Okay. Let me ask you if I'm -- I guess tracking the numbers.
17 For the left-hand column, the most severe, if I -- if my math is right on
18 the calculator, that would mean that the allowed amount for the full
19 charges on this claim for the three services would be about 57 percent of
20 the charges? Is that about right?

21 A It sounds about right, yes.

22 Q Okay. And then for the less severe example, which had just
23 the moderate E and M service along with the incision of the nail fold toe,
24 if my math is right, that's about -- that's about 15 percent of the charges?

25 A Yeah. That sounds right.

1 Q Now -- and, again, these are from two claims that are in the
2 disputed claims file?

3 A That's correct.

4 Q That are in dispute for the jury to decide, correct?

5 A Correct.

6 Q Okay. Now, and this is an example where a less severe claim
7 has two services or procedures, and the more severe claim has three
8 services or procedures, correct?

9 A Correct.

10 Q Okay. All right. Thank you, sir. That's very helpful.

11 All right. Now I want to talk about the disputed claims in this
12 case, which is the [indiscernible]. And were you here yesterday when
13 Plaintiffs moved into evidence their dispute claims list, Plaintiffs' Exhibit
14 473?

15 A I was, yes.

16 Q Okay. And you saw Mr. Leathers give testimony about that
17 document?

18 A I did, yes.

19 Q Okay. And have you reviewed that claims spreadsheet
20 before it was introduced yesterday at trial?

21 A I have. I should note too -- and I think this came up in his
22 testimony -- there's been quite a number of versions of that. I believe
23 the version that was introduced yesterday was the most recent one, at
24 least that I'm aware of --

25 Q Okay.

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1 A -- in terms of the claims and disputes spreadsheet. So I -- I
2 was aware of it.

3 Q Okay. When you were engaged back in May, were you
4 provided a version of the disputed claims list to begin your work?

5 A Yes.

6 Q Do you remember if that was the very first version of the
7 disputed claims list that had been created by the Plaintiffs?

8 A It's my understanding it was not. It was the first version I
9 saw, but there was prior to my engagement, there, as I understand it,
10 had been at least one other one, maybe more --

11 Q Okay.

12 A -- before that.

13 Q And the version that you started working with and your team
14 started working with in the spring and early summer before your report,
15 do you recall roughly how many disputed claims were in that version of
16 the list?

17 A I believe it might have been 14,000. It might even have been
18 a little bit more than that. But something like that. Several thousand
19 more than are in it today.

20 Q Okay. Since that first version, do you know how many
21 versions have come out since the first one you had?

22 A I want to say five maybe. Something like that. I --
23 something -- I don't remember exactly, but something --

24 Q They've changed it quite a bit?

25 A It's changed a number of times, yes. Yes. Something like

1 that.

2 Q All right. But the analysis you were going to discuss with the
3 jury today, that's based on the final version that the Plaintiffs had
4 provided that was used as an exhibit in the case yesterday, correct?

5 A That's correct. I've learned in this business it's -- I always
6 hesitate to use the word final because I've heard that term many times in
7 the middle of a case, and then it almost always changes. But it's the
8 most recent one that I'm aware of. And it's the one that was moved into
9 evidence, as I understand it.

10 Q Okay. So let me -- let's do some summary discussion of that
11 list, and then we'll talk about some details on it.

12 MR. BLALACK: So, Shane, if you could bring up the list.

13 BY MR. BLALACK:

14 Q All right. So, sir, I'm showing the jury a summary of the bill
15 charges and the allowed amounts for the disputed claims in this case.
16 So if you could, describe what's depicted on the left-hand graph for the
17 jury.

18 A Yeah. So the left-hand graph is the totaled dollar amount
19 associated with the 11,000 plus claims in dispute. And so the left-hand
20 bar, the blue bar, is the total allowed amount. And you can see the
21 number at the top is 2.84 million. So that's the total amount that was
22 allowed by the various Defendants for the claims in dispute. The list
23 price, the chargemaster number, on the right in the -- in the red bar is the
24 total charges were about \$13.2 million.

25 Q Can I stop you? So when you say total, does that mean that

1 literally you're just adding up the allowed amounts for each of the 11,500
2 some odd clients for each allowed and each bill to get those numbers?

3 A That's right. Think of a big spreadsheet that has a column of
4 alloweds and a column of charge amounts. And literally we're summing
5 them up --

6 Q Okay.

7 A -- across all the 11,000 plus claims.

8 Q And then what are you referencing in the white box there as
9 to each of those?

10 A Yeah. So each of those represents a premium to the
11 Medicare amount. So the bill charges would be almost eight times the
12 Medicare amount, and the allowed amounts are a 64 percent premium.
13 Meaning 1 -- 164 percent of the Medicare amount. So each of them
14 represent a premium to Medicare.

15 Q Okay. And then in the right-hand side, sir, there's another
16 draft. Can you explain that one to the jury?

17 A Yeah. That's taking exactly the same numbers on the left
18 and just dividing it by the total number of claims. So it's on kind of a per
19 claim basis. And I think there's been some reference in the trial
20 testimony that I've seen to like \$246 per claim. That's the left-hand bar.
21 So, again, that's the -- that's the 2.8 million divided by the number of
22 claims. And the same thing with the bill charges, the \$1,145. It's the
23 same multiple of Medicare, as we call it, a multiple Medicare or a
24 premium to Medicare, because it's not changing anything, just doing it
25 on a per claim basis.

1 Q Okay. Thank you.

2 MR. BLALACK: Your Honor, I'm about to break into a new
3 area. I don't know if you would like to --

4 THE COURT: Yeah. This is good time --

5 MR. BLALACK: -- take a break --

6 THE COURT: Let's do.

7 MR. BLALACK: -- or just muddle through?

8 THE COURT: All right. So we'll take our morning recess.

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

14 Don't conduct any research on your own relating to the case;
15 don't consult dictionaries, use the Internet, or use reference materials.
16 During the break, do not post on social media. Don't talk, text, Tweet,
17 Google, or conduct any other type of research with regard to any issue,
18 party, witness, or attorney involved in the case. Most importantly, do
19 not form or express any opinion on any subject until the matter is
20 submitted to the jury.

21 It's 10:54. Let's be back at 11:10.

22 THE MARSHAL: All rise for the jury.

23 THE COURT: And, Mr. Deal, you may step down during the
24 recess.

25 THE WITNESS: Oh, thank you very much.

1 [Jury in at 10:54 a.m.]

2 [Outside the presence of the Jury]

3 THE COURT: Okay. The room is clear. Plaintiff, you had
4 something to put on the record I think.

5 MR. MCMANIS: Yes, Your Honor. We just have one --

6 THE COURT: And is it okay if the witness stays in the room?

7 MR. MCMANIS: Yeah.

8 THE COURT: It's unrelated?

9 MR. MCMANIS: That's fine.

10 We had one issue. The parties had exchanged invoices for
11 their testifying experts. And, to date, the Defense have not provided the
12 invoices for the next two experts who are going to take the stand. One
13 of them is going to take the stand I believe today; Ms. King. Invoices
14 through report dates were previously exchanged, so I don't think there's
15 any dispute about relevance or bias or anything like that.

16 The only reason that we have heard for their refusal to do
17 that was that we objected to producing the invoices for an expert who
18 did not testify. We didn't produce Mr. Leathers' invoices before he
19 testified. I don't think that's a basis to refuse to produce the other
20 relevant invoices. And so we would just ask for an order that they
21 produce those invoices before their witnesses take the stand.

22 THE COURT: Sir, a response?

23 MR. BLALACK: I will respond, Your Honor. We will gladly
24 produce the invoices for our experts. But they have to produce the
25 invoices for Mr. Phillips. Mr. Phillips worked for months and months and

1 months, provided multiple reports, sat for an expert deposition. He was
2 on their witness list and on the joint pretrial memo witness list, and then
3 at the last minute they dropped him. And so now they're going to get up
4 and they're going to say, A, about how much my clients spend expert
5 witnesses, and how expensive it is, and we were willing to do this.
6 [Indiscernible] doctor. And then they're going to be able to offer one
7 witness and spend \$100,000 on preparing a report. And it's just unfair
8 and it's inaccurate.

9 So my request is they -- we will definitely comply and
10 provide the invoices for any experts we're going to have on the stand or,
11 frankly, any expert we engaged if we had had one and didn't call
12 because they were on the witness list. But they can't point to us and
13 [indiscernible] and try to hide that they've spent lots and lots of money
14 on experts in this case, and then they kind of take us to task simply by
15 dropping an expert witness.

16 THE COURT: Any response?

17 MR. MCMANIS: Yes, Your Honor. First of all, any invoices
18 from an expert who didn't testify would be hearsay. Second of all, the
19 reason the invoices are relevant is for the motivation and bias and the
20 fact that, you know, a certain witness is being paid a certain amount for
21 their time and their effort. You don't produce invoices for consulting
22 experts who end up not testifying. That's not the normal course. If they
23 have other experts who did other work, we're not -- we haven't asked for
24 those invoices. We're simply asking for the invoices of the experts who
25 are testifying.

1 Mr. Leathers did his own work. Your Honor saw extensive
2 voir dire testimony on the work that he did. And his work was done
3 independently of any of the other experts. So I don't think that there is a
4 connection between what was spent on another expert who's not here
5 testifying akin to what might be a consulting expert that he -- you know,
6 in another circumstance, and the experts who are actually taking the
7 stand. I think there is a difference there.

8 THE COURT: Well, I'm going to require you to give the
9 Phillips' affidavit, but I'm not sure it's relevant because he didn't get
10 dropped off the list because he couldn't testify; he got dropped off
11 because they had two just in case.

12 MR. BLALACK: Well, thank you, Your Honor, for ordering it.
13 Let me say, normally I would completely agree with you. Normally I
14 would say if he's not taking the stand, there would no relevance to it,
15 except we've already had several comments made by counsel to this
16 jury about how much we're spending on experts --

17 THE COURT: Right.

18 MR. BLALACK: -- in this case. Suggesting somehow that
19 they're different. Like they're going [indiscernible] doctors are having a
20 hard go at it, but the big insurance companies are spending money out
21 the wazoo.

22 THE COURT: Okay.

23 MR. BLALACK: That's unfair and that's why it's relevant.

24 THE COURT: I'm not saying you're going to get to use it.

25 MR. BLALACK: I understand. But --

1 THE COURT: All right.

2 MR. BLALACK: -- to me, Your Honor, they can't do that and
3 then hide behind it. That's unfair.

4 THE COURT: Good enough.

5 MR. ZAVITSANOS: Your Honor --

6 THE COURT: Yes?

7 MR. ZAVITSANOS: -- may I just say one thing? So the bill --
8 let's be clear here. The bill is not evidence. It's an impeachment tool.
9 Right? And we need to be able to impeach their folks with their bills.

10 THE COURT: Right. And now you're --

11 MR. ZAVITSANOS: Mr. Phillips --

12 THE COURT: -- going to get to.

13 MR. ZAVITSANOS: -- is not going to be here. The -- who are
14 they going to impeach with Phillips' bills? I mean that's the -- that's the
15 point, is --

16 THE COURT: I think you just made my point for me.

17 MR. ZAVITSANOS: Yeah.

18 THE COURT: So you'll get the Defendants' remaining --

19 MR. ZAVITSANOS: Thank you. Yes, Your Honor.

20 THE COURT: -- remaining invoices and --

21 MR. ROBERTS: But, Your Honor, if the only point is
22 impeachment to show bias to the witness, then you should strike any
23 further comments they make saying that we're paying experts instead of
24 them. Because if that's the only thing relevant, they should not be able
25 to comment on that beyond the relevance that the Court has found when

1 we can't talk about how much --

2 THE COURT: All right.

3 MR. ROBERTS: -- they've spent on experts.

4 THE COURT: You guys, let's --

5 MR. ROBERTS: Thank you, Your Honor.

6 THE COURT: -- let's -- when things come up, we'll deal with
7 it.

8 MR. ZAVITSANOS: Yes.

9 THE COURT: You love your cases too much on both sides.

10 MR. BLALACK: Your Honor, for my planning -- I want you to
11 get your break. For my planning, how late do you want to go before we
12 break for lunch? And I'll try to organize.

13 THE COURT: I'd like to go another hour.

14 MR. BLALACK: So say 12:15?

15 THE COURT: Yeah.

16 MR. BLALACK: 12:15. Okay. Great.

17 THE COURT: Thanks.

18 MR. MCMANIS: You're definitely going into this afternoon,
19 right?

20 MR. BLALACK: Oh, yeah.

21 [Recess taken from 11:00 a.m. to 11:11 a.m.]

22 THE COURT: Be seated. Let's bring in the jury.

23 THE MARSHAL: All rise for the jury.

24 [Jury in at 11:13 a.m.]

25 THE COURT: Thank you. Please be seated. Okay. So we all

1 hope you had a nice break. We'll go 'til about 12:15 and break for lunch.
2 Mr. Blalack, go ahead, please.

3 MR. BLALACK: Thank you, Your Honor. I'd like to now ask
4 Shane to show Mr. Deal and the jury Plaintiff's Exhibit 473.

5 BY MR. BLALACK:

6 Q All right. Mr. Deal, the document I'm showing you is
7 Plaintiff's Exhibit 473. And I'll represent to you this is the final version of
8 the Plaintiff's disputed claims list that they offered into evidence and that
9 we discussed with Mr. Deal yesterday. Do you remember us -- me
10 asking questions of Mr. Leathers about this exhibit and Mr. Leyendecker
11 doing the same?

12 A I do, yes.

13 MR. BLALACK: Take a second and if you would, Shane, just
14 scan the rows.

15 BY MR. ZAVITSANOS:

16 Q Just take a second, sir, and familiarize yourself with Plaintiff's
17 Exhibit 473 and tell me -- tell the jury whether this appears to be the
18 same list of disputed claims that you reviewed for purposes of rendering
19 your opinions in this case.

20 A Yes, it does appear to be.

21 Q Okay. Just to remind the jury.

22 MR. BLALACK: If you could come across back to the left,
23 Shane. And then go all the way to the bottom. Go all the way to the
24 bottom. My bad. I probably gave you a bad direction.

25 BY MR. BLALACK:

1 Q So on this list -- oh, you know what, I don't know if this is --

2 A I think it's cut off a little bit on the left.

3 Q Yeah. Could you --

4 A The row.

5 MR. BLALACK: Could you fix that, Shane? All right. So I'm
6 trying to get the total count --

7 THE WITNESS: Right.

8 MR. BLALACK: -- of claims on this sheet. So Shane, could
9 you -- if there's some hidden or -- I learned a lot about hiding and
10 un hiding spreadsheets in this case. Can you do that?

11 THE WITNESS: You've got a little --

12 MR. BLALACK: Just make sure we're working with the right
13 document.

14 THE WITNESS: Yeah.

15 MR. BLALACK: Because there -- we're missing about 10,000
16 claims.

17 MR. LEYENDECKER: That is the correct document.

18 MR. BLALACK: There we go. Thank you.

19 BY MR. BLALACK:

20 Q So Mr. Deal, can you tell the jury how many disputed claims
21 are listed on Plaintiff's Exhibit 473?

22 A Yes. There's 11,563. You can see the last row number is
23 11,564 and there's -- the first row is a list of titles.

24 Q All right.

25 MR. BLALACK: So now, Shane, if you can, just scan across

1 and let's the jury -- remind the jury what values are here.

2 BY MR. BLALACK:

3 Q So row A is what, Mr. --

4 A That's the Plaintiff entity, Fremont in this case.

5 Q And row C is what?

6 A That's the facility where the care occurred.

7 Q By the way, there's a row there, row B, tax ID. Do you see
8 that?

9 A I do, yes.

10 Q We haven't talked about that yet. What is the tax ID?

11 A That's the -- it's the equivalent of a Social Security number
12 for a business.

13 Q Okay.

14 A Basically.

15 Q Is the tax ID ever relevant and used by healthcare providers
16 for providers for purposes of billing and reimbursement?

17 A Yes, it can be.

18 Q In what way?

19 A So it there can be multiple ways, but one of the ways
20 certainly is -- we mentioned contracts, for instance, a moment ago. So
21 the contract would typically be with, again, a group or a facility or
22 something and often times there's a reference to the actual tax ID of the
23 entity.

24 Q Okay. Now -- and is the tax ID ever associated with an entity
25 on a claim form or a claim submission?

1 A I believe it is. I'd have to review the exact electronic
2 submission, but my recollection is that it is.

3 Q Okay.

4 A Yes.

5 MR. BLALACK: Now, if you go across, Shane, you'll see
6 column E for county.

7 BY MR. BLALACK:

8 Q Do you know what that's referring to?

9 A Yes. Again, that's, in this case, Clark County, where
10 Fremont's located.

11 Q And you know, sir, that all the services listed in this exhibit
12 were reported for -- that were rendered somewhere in the State of
13 Nevada?

14 A That's my understanding, yes.

15 Q Okay.

16 MR. BLALACK: Now, if you go across, Shane, you'll see a
17 column that reads -- column I DOS.

18 BY MR. BLALACK:

19 Q What does DOS stand for?

20 A That's date of service.

21 Q And what's -- and is that relevant for the billing and payment
22 of a claim?

23 A It is, yes. You're typically referencing that. And in an
24 emergency setting, they're typically just one day, but in an inpatient
25 claim, for instance, you might have a first date of service and a last date

1 of service. But typically for emergency, it's just one day.

2 Q Okay. And then in Column K, there is a listing for bill
3 provider. Do you see that?

4 A I do, yes.

5 Q What does that refer to?

6 A That would be typically the clinician, who's actually
7 providing the care.

8 Q Okay. So, if the jury wants, they can actually see with the
9 names of the individual healthcare providers who rendered a dispute for
10 each claim, correct?

11 A Yes, they can.

12 Q Okay. Now, in column L, you'll see bill CPT. Do you see
13 that?

14 A Yes.

15 Q And what do you understand that to refer to?

16 A Again, that's the -- we've talked about this. That's the CPT
17 code and then if it's bundled, there would be a second or even a third
18 CPT code after that.

19 Q Okay. Mr. Leathers used that term yesterday, bundled. What
20 does bundled mean in this context?

21 A That's literally just what we were talking about earlier. It may
22 be more than one line on the claim.

23 Q So if the jury sees a document that refers to a bundled CPT
24 claim or an unbundled CPT claim, what is the difference?

25 A It just means that there was two lines or more on the bill

1 versus one. It -- each bill -- each line has its own charge associated with
2 it and its own allowed amount.

3 Q Okay. So the bundled is one service or multiple services?

4 A Multiple.

5 Q Okay. Now column M refers to charges. What's that, sir?

6 A That's the sum of all of the bill charges on the -- associated
7 with that CPT.

8 Q Okay. And then N is -- refers to allowed?

9 A Correct.

10 Q What's that?

11 A Again, that's the allowed amount, based on the various
12 methodologies that we've talked about. That's the total amount that's
13 expected between the insurance, the payor and the patient, if they have
14 some responsibility.

15 Q Okay. And then under O, it refers to PMT. Do you know
16 what that refers to?

17 A That's typically meaning payment.

18 Q Okay. And how is payment, if at all, different from allowed?

19 A So the -- as I mentioned, the allowed amount is typically
20 broken into the portion that's paid by -- we'll call the payor or sometimes
21 people call it the insurer and the patient would have some responsibility.
22 So in this case and in almost all these cases, the payor is coming up with
23 the allowed amount and paying their portion of it. And then it's up to the
24 provider to collect the remainder from the individual patient that
25 received the care. So you sometimes see differences between the paid

1 and the allowed, if they haven't yet collected or haven't recorded any
2 collection, for instance, from the patient.

3 Q And in your experience, what determines how much of a
4 sharing occurs between the health plan and the patient or the member
5 on the allowed amount?

6 A That would be governed by the plan documents and what
7 they --

8 Q So the actual plan benefit would describe that?

9 A Correct.

10 Q Okay. Now, if you go up a little farther, okay, you'll see a
11 column that reads plan name. Do you see that?

12 A Yes.

13 Q What does that refer to?

14 A Again, that -- in this case, it would refer to the Defendant
15 entity.

16 Q Okay. And then column W refers to employer. Do you see
17 that?

18 A I do.

19 Q What is that referring to?

20 A That's the information and the claims in dispute list as to
21 what their understanding or expectation, I guess, is, of who the employer
22 of the patient is. Sometimes there isn't an employer, but if there is an
23 employer, then it would be recorded there.

24 Q Okay. So most cases, would this be the plan sponsor?

25 A Yeah. Most cases that would be the plan sponsor. That's

1 right. So most people get their insurance through either themselves or a
2 family member --

3 Q Yep.

4 A -- that's an employee and that's what it was referencing.

5 Q Okay. Go a little farther to the right. You'll see a column,
6 AD.

7 A A -- sorry?

8 Q AD.

9 A D --

10 Q Alpha-delta?

11 A Yeah.

12 Q And do you understand what's referred to in that column?

13 A My understanding is that would be -- I don't know if I'd call it
14 a guess or an estimate or of whether this was what's called an ASO,
15 administrative services only. Think of that's basically a self-pay,
16 meaning -- not self-pay in a sense of for the patient, but it's a self-funded
17 plan, so the United Defendant in this case would be operating as what
18 we call the third party administrator on that claim, so it's not United
19 that's at risk for the financial side of it. It's the underlying-- typically the
20 employer and it's essentially another way of identifying the self-funded
21 plans.

22 Q Okay. And then the column AE says iSight. You heard Mr.
23 Leathers' testimony about what he -- what this reflected?

24 A I did, yes.

25 Q What do you understand AE to mean?

1 A I believe that's the Plaintiff's understanding of whether the
2 claim was adjudicated using the Data iSight program or not.

3 Q And that's the column that Mr. Leathers indicated that based
4 on his analysis, something less than 6 percent of the disputed claims
5 were reimbursed using Data iSight?

6 A That sounds right to me, yes.

7 Q Okay. And then you have the listing of the Defendants under
8 AG. Is that right?

9 A Yes.

10 Q And just to be clear -- so for example, if you look at the row
11 11559, that's an ASO claim, correct? A self-funded claim?

12 A That's correct, yes.

13 Q And the Defendant there is United Healthcare Services?

14 A Yes.

15 Q But the employer group who sponsors that plan and whose
16 money was used to reimburse the claim, that is not -- that is -- they are
17 not a defendant, correct?

18 A That's correct.

19 Q So for example, look at row 11 554 Coca Cola.

20 A Yes.

21 Q Coca Cola is the plan sponsor for that claim as far as you
22 know, correct?

23 A That's correct, yes.

24 Q And that's an ASO claim, and the Defendant is United
25 Healthcare Services and Coca Cola is not, correct?

1 A Right. That's correct.

2 Q Thank you.

3 MR. BLALACK: You could bring that down, Shane.

4 BY MR. BLALACK:

5 Q So sir, is this the type of data you were working with to
6 conduct your analysis of the disputed claim?

7 A Yes, that's right.

8 Q Okay. Now, let me ask you --

9 MR. BLALACK: We'll go back to -- bring up the
10 demonstrative.

11 BY MR. BLALACK:

12 Q I want to ask you to walk the jury through some observations
13 that you made about that list. And on this slide, you have a slide that
14 refers to over half the bill charges are for EDCPT Code 99285. Do you
15 see that?

16 A I do, yes.

17 Q Okay. Could you explain what you're describing in this
18 analysis?

19 A Yes. So think of that spreadsheet we just saw. There's
20 11,563 claims. This and then the next series of tables are just sort of
21 different ways of organizing them. So this particular slide that's up now
22 is looking at it by the primary CPT code. By primary, I mean one of the
23 evaluation and management codes. And so I've said -- I've gone through
24 the data, and I've said how many of them are associated with the 99281.
25 That's the least severe and that's 23, for instance. And then I've done

1 that for each of the different codes. The most severe, the critical care
2 99291, there were 550 and what I note in the title of this is that more than
3 half -- so 5,429 of them are associated with -- or it's actually about half of
4 them. More than half the bill charges are associated with that code, the -
5 - that's the highest of the, if you will, the kind of standard set of
6 evaluation and management codes, but it's not the most severe, which is
7 the 99291.

8 Q All right. So my -- you tabulate the 99284s, the 99285s and
9 the 99291s, the critical care codes, by my count, that comes out to about
10 9,514. Does that sound about right?

11 A It does, yes.

12 Q So would that represent about 82 percent of the total claims
13 in dispute?

14 A Your math sounds right to me, yes.

15 Q Okay. Well, I can assure you I didn't do it. That was my
16 phone. Now, let me ask you this, sir. Adjacent to this -- to each code,
17 you have a notation on a per claim basis of the allowed amounts is the
18 middle -- is the middle top column there.

19 MR. BLALACK: Shane, under per claim.

20 BY MR. BLALACK:

21 Q You have a notation about the allowed amounts per claim for
22 each code. Do you see that?

23 A I do, yes.

24 Q And then you have a single corresponding analysis for how
25 that compares to the Medicare fee schedule, correct?

1 A That's correct, yes.

2 Q It looks to me -- and I haven't actually confirmed it, but it
3 looks to me like for every code, the amount allowed both by the United
4 Defendants, the Defendants in this case, that Medicare increases with
5 each level of severity. Is that right?

6 A That's right. Of course, there -- depending on the program,
7 there can be somewhat differing amounts for any particular code, but
8 when we look at the aggregate of all of the claims in dispute, if you start
9 at the top and work your way down visually, what you see is an
10 increasing amount of allowed amounts for each of the codes.

11 So you start at the \$38 level for the -- there's only 23 claims, but
12 those are the least severe. Then 104, then 170, then 234, 272 and then
13 354 for the highest. And when you put those all together, that works out
14 to be just under \$250 per claim, 246.

15 Q Okay. So what effectively -- well, let me -- is it unusual for a
16 health plan, health insurer TPA to have a reimbursement methodology
17 that reimburses higher amounts for the higher level code?

18 A No. That's not unusual.

19 Q And so in this case, you know, based on the math, about 82
20 percent of the disputed claims are associated with the highest level
21 allowed amount?

22 A That sounds right, yes.

23 Q So let's go to the next slide. And in this analysis, what are
24 you describing for the jury, sir?

25 A So now, rather than looking at it on a code by code level, I'm

1 looking at it over time, so I'm looking at each of the different years.
2 There's a partial year for 2017 in the top row and a partial row at the
3 bottom for 2020 and a full year for 2018 and 2019. So all of the totals are
4 going to be identical to the totals we just saw, but the individual rows
5 now are of course organized differently. So this gives you and
6 understanding of how the, for instance, the allowed amounts and the bill
7 charges, number of claims, how they're distributed over time.

8 Q Okay. And it looks to -- from your analysis, like the bulk of
9 the dispute relates to 2019. Is that correct?

10 A Yes, that's right. 20 -- when it -- certainly the bulk in the
11 sense of that's the -- more than half of the dollars -- yeah. Almost 8
12 million of the 13 million. 2018 is pretty big, too. And then 2017 and 2020
13 are relatively small.

14 Q Now -- and then 2020, sir, that's -- you know, the dispute
15 period includes at the end of January, 2020, correct?

16 A That's right. It's a short period.

17 MR. BLALACK: Now, let's -- if you could, Shane, go to the
18 next slide.

19 BY MR. BLALACK:

20 Q And what are you describing for the jury in this slide, sir?

21 A Again, this is sort of the way we understand the claims in
22 dispute is to look at it on different dimensions. This is actually by the
23 TeamHealth Plaintiff, so we're looking at the three Plaintiffs are Fremont,
24 Team Physicians and Ruby Crest. And then I've actually given a little bit
25 more detail under Fremont, because Fremont actually covers a number

1 of different facilities, so this is actually the combination of the Fremont
2 and exactly which facility the care was provided at. The other two, Team
3 and Ruby Crest, only provided one facility each, so there's only one, one
4 level.

5 Q And I should have covered this earlier, sir. Do you know
6 where Team Physicians, what area is it located in Clark County or --

7 A No, no, no. It's up in the northwest part of the state.

8 Q Okay. What about Ruby Crest? Is that in Clark County or
9 somewhere else?

10 A No. I believe it might be Elko County, but it's up in the
11 northeast part of the state.

12 Q And you understand that each of those staffing companies
13 staff a single hospital?

14 A That's my understanding, yes.

15 Q But Fremont staffs multiple hospitals?

16 A Correct.

17 Q Do you know if it staffed all of those hospitals for the entirety
18 of the disputed period?

19 A I don't recall off the top of my head.

20 Q Okay. Now, when you say 90 percent of the bill of charges
21 are for Fremont, now you got the charges. What about the number of
22 claims? Can you give a sense of the number of actual claims? Is it
23 comparable?

24 A It's probably comparable. You can kind of -- it'd be a little bit
25 lower, because the average billed charge is a little bit higher at Fremont,

1 but it's -- you can see it's 10,600 out of 11,563, so it's still a significant
2 portion of that.

3 Q Okay. Understood. Okay. And then you've expressed that
4 data, again, as you did before on a per claim basis.

5 MR. BLALACK: Shane, could you slide over just a bit?

6 BY MR. BLALACK:

7 Q And then you've also expressed it as a percent of Medicare.
8 Is that right?

9 A Yeah. So the right hand column shows as a premium to
10 Medicare, what the allowed amounts are for each of the different
11 facilities and the -- each of the different Defendants -- or excuse me,
12 Plaintiffs.

13 Q All right. Now, if you could go to the next slide. And you -- if
14 you could describe for the jury what's represented here.

15 A Yeah. So this one doesn't show all of the columns, although
16 one could certainly do it in the same way, except there would have been
17 191 rows, so that would have been a lot of roads. This is simply
18 organizing it by the actual treating provider the treating clinician. So I've
19 shown some of the top five, just to get a feel for how many claims.

20 Q Uh-huh.

21 A Some of the larger volume clinicians have. But you can see
22 on the right, I've identified that there is 191 unique providers in the
23 case -- or in the claims in dispute.

24 Q And the jury will be able to review the disputed claims sheet,
25 Plaintiff's Exhibit 473 and compare it to the folks who testified in this

1 case to determine whether any of our witnesses provided any of the
2 disputed services, correct?

3 A Yes. They could compare the witness list to the claims in
4 dispute spreadsheet.

5 Q Now, if you would turn to the next slide. What are you
6 describing here, sir?

7 A So this one is actually not a table, so it's a little bit of a visual
8 break from all the numbers. These are examples of the employers, so
9 there's well more than 1,000 different employers, unique employers in
10 the database. We saw that field a moment ago with Coca Cola, for
11 instance. If you look at how many unique providers there are, there's a
12 lot.

13 These are some examples of what I understand to be some of the
14 local employers. You may see some national employers in there, in
15 addition to local employers, and these are just some of the -- you can see
16 Clark County itself is in here, for instance, And just examples.

17 Q Okay. Let me make sure I understand what you're saying.
18 When you say employer sponsors, are these the clients of the
19 Defendant's?

20 A Yes, that's exactly right. So this would be -- you know, think
21 of your company needing to get insurance for all of its employees. It
22 might go to United, either as a self-funded plan or as a fully insured
23 product, but they would be -- this would be Clark County going and
24 getting insurance from United.

25 Q Okay. And when you say national account, or a national

1 client, what were you referring -- what -- how are you distinguishing a
2 national account from a more local?

3 A Yeah, I think of Coca-Cola as an example we just saw. So
4 they're based in Atlanta, Georgia, and they've got employees all over the
5 country, so there's -- and Coca-Cola clearly is in this. We saw that a
6 moment ago. These are companies, essentially that are headquartered --

7 Q Okay.

8 A -- as I understand it in this area.

9 Q Okay. So just looking here, you found City of Las Vegas,
10 UNLV, Clark County School District, Metropolitan Police Department of
11 Las Vegas, the Library District, Wynn, MGM Grand, Caesars, University
12 Medical Center, those are all present as clients of the Defendants in the
13 disputed claims spreadsheet?

14 A Yes, that's correct.

15 MR. BLALACK: If we go to the next slide, please.

16 BY MR. BLALACK:

17 Q You'll see a reference to a summary of disputed claims by
18 Defendant and Funding Source. Could you describe what you're
19 showing the jury there?

20 A Yes. So these are sort of two different -- again, all of this is
21 sort of different looks at the data, if you will, kind of looking at the same
22 aggregate data. So the left-hand side is looking at the five defendant
23 entities to -- in addition to that, there's another, which I'll note in a
24 moment, but it's trying to give a sense of what share of the number of
25 claims are associated with each of the defendant entities. So for

1 instance, UMR, you can see is a little less than seven percent of the
2 claims and so forth.

3 Q Okay. That reference to other, 2.0, what are you referring to
4 there?

5 A Yeah, so -- and I'll come back to this in a -- in a few moments,
6 I think, but some of the actual entities that the United entities are actually
7 no longer defendants in the case, so in the claims in dispute list, there's
8 about two percent of them that are actually not associated with one of
9 these five defendants.

10 Q Okay. And so if I'm looking at this chart, it looks like about
11 half the disputed claims are related to either United Healthcare of United
12 Healthcare interest?

13 A That's correct.

14 Q And a little over 40 percent related to Sierra Health and
15 Health Plan of Nevada?

16 A That's correct.

17 Q And then UMR, United Medical Resources is a small fraction;
18 is that right?

19 A That's correct, yes.

20 Q Okay. As the -- well, I'm come back to this. Why don't you
21 go over the funding source next and then I have summary questions for
22 you.

23 A Yeah. So each of the five entities is either a TPA, meaning
24 there is only servicing self-funded clients, or they're a fully insured
25 product, meaning the company pays a premium and then the insurance

1 company is on the risk, or there's a mix of both. So the right side is
2 looking at what we call the funding source, meaning who's actually
3 paying for the claims here. So the red, left-hand side that's about, not
4 quite 60 percent, are from the fully insured products that are offered by
5 the United defendants. And about 41 percent are self-insured. So this is
6 your company is the one that's actually paying the claim. If the claim is
7 less expensive, they pay less. If it's more expensive, they pay more.

8 Q Okay. Have the allocations of that pie chart, both of the
9 Defendants and the funding source, modulated and changed over time
10 as the speedy claims list is checked?

11 A Yes, they have. They have.

12 Q These red and blue lines that moved a bit over the course of
13 the variations?

14 A They have moved a bit. There always been a -- quite a
15 number of both fully insured and self-insured for instance, but the exact
16 proportions certainly has changed.

17 Q All right. Now, let's talk about one of the things you said you
18 were going to examine. In particular --

19 MR. BLALACK: Thank you, sir.

20 BY MR. BLALACK:

21 Q You said that one of the questions that you were going to
22 evaluate was whether bill charges would represent a reasonable
23 benchmark or reasonable value for the steep claims; do you remember
24 that?

25 A I do, yes.

1 Q And then I think you said you also evaluated whether the out-
2 of-network payments, the rates out out-of-network payments that the
3 Defendant told you other health, emergency room providers would
4 represent a suitable benchmark for reasonable value; that was the
5 second question?

6 A Yes.

7 Q Okay. And then you mentioned that you have opinions
8 about what the appropriate benchmark is for reasonable value?

9 A I do.

10 Q Okay. So I don't want you to get into any numbers at this
11 point, or what the specific information is, I just want you to describe the
12 three specific different questions that you're evaluating.

13 A Sure. And I'll reference people to the bottom of this -- of this
14 slide, which is sort of my overview and summary. Yeah, you can see it
15 on the screen, so I don't need to move it. So bill charges, which I think
16 we've heard a lot about, or at least I've heard a lot about and the part
17 that I -- the trial I've been watching, which is obviously, again, that's the
18 chargemaster level. In my opinion, for quite a number of reasons, that's
19 not a proper measure of reasonable value.

20 Q Okay. What about the -- and I want to ask you about your
21 reasons and basis in a moment. What about the second of those out-of-
22 network payments?

23 A You can see on my -- on the bottom of that, it's my view
24 that's also not an appropriate measure of reasonable value. It's sort of
25 closer conceptually, but it's still not the appropriate basis --

1 Q Okay. That --

2 A -- to do a reasonable value analysis.

3 Q And again, I don't want you to get into any numbers or
4 specifics at this point, sir, but just you got a column to the right that says
5 correct. What are you indicating is the correct benchmark there?

6 A Yeah. So the correct benchmark for a reasonable value
7 analysis is to look at what we call market prices. So you want to look at
8 situations where you've got a willing buyer and a willing seller, both of
9 whom have alternatives. And that's a standard framework, certainly
10 standard in reasonable value, but standard in lots of valuations, when
11 you want to value a business or other kinds of things, you want to think
12 about a willing buyer, willing seller, kind of standard. Or a house is a
13 good example for valuing a house.

14 Q Okay.

15 A So in my view, that's the proper measure of reasonable
16 value.

17 Q Okay. So when you say reasonable value, with both buyer
18 and willing seller would agree to when they could both walk away. Have
19 you ever heard the term concept fair market value?

20 A I have, yes.

21 Q Is that similar to what you're describing, or different?

22 A Yeah, that's typically, essentially a synonym, and it's
23 essentially the same definition for it, yes.

24 Q And for purposes of the analysis you're conducting here, you
25 are specifically addressing your opinions to the concept of reasonable

1 value, which you understand is the standard in this case?

2 A I agree with that, yes. That's my understanding of the
3 standard and that is the framework that I'm using.

4 Q Okay. Let's talk about the first, the bill charges. Okay. Okay.
5 So why don't you begin explaining, sir, why you think bill charges are
6 not an appropriate benchmark for measuring reasonable value for out-
7 of-network [indiscernible]?

8 A Certainly. And so I've got a number of reasons. Maybe if we
9 show the next demonstrative, I can just start going through the list.

10 MR. BLALACK: Can you bring that up?

11 THE WITNESS: So the first --

12 BY MR. BLALACK:

13 Q Okay.

14 A Excuse me, did you have a --

15 Q Please proceed and explain what your first reason is.

16 A Yeah, sorry, I start going on these things, and I'm happy to
17 pause for questions. So the first reason, and again, we're showing a pie
18 chart here, is that unlike for lots of goods and services, where what the
19 bill charges is actually what's paid, we actually see very few
20 transactions, and I know there's been discussion of that here. But that's
21 highly relevant from an economic perspective to say our bill charge is
22 the right measure.

23 If 95 or 100 percent of the people all paid bill charges, then it might
24 be. But what we see down here when we -- when we look at even the
25 noncontracted claims -- so this is no contract, we still see only six

1 percent ever being paid at full bill charges.

2 So this is -- this is just not a measure that's paid a few times
3 in the real world, but it's certainly not representative of market
4 transactions. It's not representative of where we see actual transactions
5 happening. It's really an outlier is the way of thinking about that. So
6 that tells me, as an economist, that this isn't something that I want to
7 rely on, whereas you might think about, say the list price for a gallon of
8 gas is what it shows on the sign. There are people don't typically pay
9 less than that for a gallon of gas.

10 So in that case, you might see, you know, an equivalent chart
11 in that case that say people do pay the quote/unquote, "bill charges," to
12 the extent the bill is the price on the -- on the gas station. So --

13 Q So there's a difference between paying a market value where
14 the list price is typically paid, and a market value where the list price is
15 almost never paid?

16 A That's exactly right.

17 Q All right. Now, you've got to figure there that says full bill
18 charges are paid only 6.4 percent of the time. How did you determine
19 that number?

20 A Again, I looked at the noncontracted claim, so now I'm
21 looking at the situations where the -- there's no agreement, and I'm
22 counting up, I'm saying, well, if I have 1,000 total observations, how
23 many of those were paid, and I can do the math, we were doing it earlier,
24 what percent of is allowed as a percent of bill charges. You were doing
25 some math earlier, about 60 percent, or 50 percent. I'm literally looking

1 for 100 percent --

2 Q Okay.

3 A -- on that.

4 Q And when you say you looked at the actual claims, are you
5 referring to the data from the United Defendants, or the data from the
6 TeamHealth plans?

7 A This is the TeamHealth plans, yes.

8 Q And in fact, you heard Mr. Leathers testify yesterday to the
9 same figure about his own analysis of the TeamHealth plans, out-of-
10 network claims now, correct?

11 A Yes. I don't recall exactly what decimal place he had, but he
12 and I, I think had very similar calculations there.

13 Q I think he said about six percent, something like that?

14 A Something like that, yes.

15 Q And according to your analysis of the TeamHealth Plaintiff's
16 out-of-network claim data, they were reimbursed at full bill charges by
17 both insurers, other than my client's 6.4 percent?

18 A That's correct, yes. That's a good -- that's a good clarification
19 that this is excluding any of the defendants here.

20 Q Right. So that number, that 6.4 percent does not include the
21 data relating to my client's frequency of paying full charges?

22 A Yes. You can think of that as kind of what's the standard
23 practice, if you will, for an out-of-network claims, other than with United.

24 Q So based on this data, have you seen anything in the data,
25 the **11:46:19 out-of-network claims data, suggesting that any of their

1 out of --

2 MR. BLALACK: Strike that.

3 BY MR. BLALACK:

4 Q Any of their health insurers with whom they -- to whom they
5 submitted claims, pay full bill charges with any frequency?

6 A No. Again, obviously, six percent of the time, and that can
7 be -- that could be, you know, a small insurer; there could be different
8 reasons why you see that, but not on any frequency, no.

9 Q Okay. All right. Let's move to your second reason why you
10 think bill charges are not an appropriate benchmark. And if you could,
11 explain what you're describing here on reason two.

12 A Yeah. And this sort of gets a little bit into economics of the
13 reason that you don't see them is largely stems from the underlying fact
14 that they're what we call unilaterally set, meaning, basically there's really
15 no constraint on what you say your price is. So --

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

17 THE COURT: Okay.

18 [Sidebar at 11:47 a.m., ending at 11:48 a.m., not transcribed]

19 THE COURT: Okay. Overruled the objection.

20 BY MR. BLALACK:

21 Q All right. Mr. Deal, I'm sorry. If you could, just please
22 continue.

23 A Yes. So I was mentioning --

24 Q We were speaking of this concept of unilateral set charge.

25 A Yes. So what we mean by that is that the chargemaster --

1 again, whether it's a hospital, or in this case, a physician, is literally just
2 determined and written down, if you will, by the -- in this case, the
3 provider. So the difference is that the gas station example I gave, I
4 mean, in theory, you could say my gas is \$20 a gallon. That would be
5 unilaterally setting a price.

6 You would get, probably nobody coming to your station if you did
7 that. But so it would typically be constrained by the market in that case.
8 But in this case, again, bill charges are just set by the provider, not based
9 in general on any particular regulatory or other constraints.

10 Q So on this slide you referred to a study, and I'm kind of
11 breaking down the -- actually, it's a health -- a FAIR study, May 21st, 2019
12 state approaches. Would you describe, is this a study you relied on in
13 supporting your opinion about unilateral setting charges?

14 A Yes, I did.

15 Q Okay. What is the -- we've got a highlighted place. Could
16 you just read that out loud, so I understand what it is you're relying on?

17 A Yes, certainly. Maybe I'll make it a little bigger so it's -- we
18 can all follow along. The highlighted phrase is charges or list prices --
19 we've been talking about that as list prices -- face little constraint from
20 market forces and tend to be extremely high, relative to objectively
21 reasonable prices. This is particularly true for the specialties most
22 commonly involved in surprise out-of-network billing since, as discussed
23 earlier, physicians in these specialties have particularly strong incentives
24 to set high charges.

25 MR. BLALACK: Now, if you could pull that down.

1 BY MR. BLALACK:

2 Q What's the date of this study? Is it May of 2019?

3 A It is, yes.

4 Q Okay. So is this a study that is corroborative or consistent
5 with your own experience in this area?

6 A Oh, very much so, yes.

7 Q Now, let's go to the next slide, and there's a reference here to
8 a Yale study. Could you please state what study it is you're referring to
9 here?

10 A Yes. This is a -- what we call a working paper study from the
11 National Bureau of Economic Research by researchers associated with
12 Yale University.

13 Q Okay. What's the date of the study, sir?

14 A June of 2017.

15 Q Okay. And did you -- were you familiar with this study back
16 in 2017 when it came out?

17 A The working paper? I think I first saw it, maybe a little bit
18 after 2017, but I've been familiar with it for some time, yes.

19 Q You didn't review it for the first time in connection with
20 giving testimony in this case?

21 A I did not, no.

22 Q Okay. Now, what's the name of the group that is with the --
23 that sponsored this study?

24 A It's called the National Bureau of Economic Research.

25 Q Okay. I believe in this case, Plaintiff's counsel has

1 characterized the National Bureau of -- I'm sorry, I keep forgetting it. The
2 National Bureau of Economic Research?

3 A Yeah. NBER is the acronym.

4 Q Okay. I believe Plaintiff's counsel has referred to that group
5 as a PAC, like a PAC, like a political action committee. Are you familiar
6 with the National Bureau of Economic Research?

7 A I am very much, yeah.

8 Q Would you -- is that a fair characterization of what NBER is?

9 A It's completely inaccurate.

10 Q Okay. What -- how would you describe what NBER is?

11 A It's a very respected premier economic research entity. It
12 has -- it's competitive to be accepted as a -- what -- I think they call them
13 a fellow of NBER. I think every year they accept something like one out
14 of every five or ten people that would like to be associated with it. And
15 they sponsor studies of a wide, wide variety of topics. It's essentially a
16 premier economic research organization.

17 Q Okay. Do you have any -- I believe Plaintiff's counsel has
18 indicated or suggested that one or more of the defendants in this case
19 have provided financial support to NBER. Do you have any knowledge
20 of that?

21 A I'm not aware of that, no.

22 Q Okay. Would that -- let's say they did. I don't know if they
23 did or didn't. Would that affect your view of what the NBER is?

24 A No.

25 Q Now, this study -- I don't know if -- I don't know how much of

1 this trial you've been able to stay up with, but this study, this Yale study
2 has become quite the focus of a lot of attention by the Plaintiffs in this
3 case, would you have known that?

4 A I have -- I have heard reference here, and I've seen some of
5 the testimony, especially with the Yale study, yes.

6 Q Okay. So you agree some of the transcripts for the trial, or
7 when they were asked about the Yale study, there's information about
8 the Yale study?

9 A Yes.

10 Q The two researchers -- or the three researchers that are
11 described there, Zack Cooper, Fiona Scott Morton, Nathan, I'm not sure
12 how to pronounce it, Shekita?

13 A I think that's right, yes.

14 Q They're all -- seem to be affiliated with Yale; is that right?

15 A Yes, that's right.

16 Q And is Yale a respected university?

17 A I mean, I went to Harvard, so I grudgingly say yes, but -- no,
18 it's a -- kidding aside, it's a very -- it's a very good university, yes.

19 Q Okay. Let me ask you this, the characterizations of the study
20 that you heard described, do you think -- well, let me -- let me back up
21 and ask this foundational question. In the material you reviewed in the
22 transcript, did you see any evidence that any defendant in this case paid
23 any money to Zack Cooper, Fiona Scott Morton, or Nathan Shekita for
24 the Yale study?

25 A No.

1 Q Okay. So there was also a suggestion that because some
2 proposal had been edited by some employee of United Healthcare for
3 Zack Cooper, that one of them -- one of the defendants in this case had
4 some editorial control over the content of the Yale study. Did you see
5 any evidence that -- in the materials you reviewed of the cross-reference
6 that any defendant had editorial control over the studies?

7 A No, and that would be very nonstandard.

8 Q Okay.

9 A Yeah.

10 Q Now, are the -- is there -- if the defendants provided claims
11 data, one or more of the Defendants provided claims data in the NBER
12 for the study, would that be an unreasonable practice for a researcher to
13 obtain claims data for using research for healthcare?

14 A No. No. That's sort of the primary source of data for any
15 study looking at reimbursement, things like that. Would --

16 Q Why is that? What is that the primary source?

17 A Because that's where the data is. Sort of like robbing the
18 bank. That's where the money is. Because what you need for that is you
19 need data on what claims were received, what amounts were billed,
20 what was allowed. Oftentimes you're referencing how much of a
21 premium it is to Medicare, for instance, so that -- this is the standard
22 approach for lots and lots of studies involving any type of payment type
23 analysis, would be claims information. Could be from, say, Medicare if
24 it's involving a government study on Medicare, but often times they're --
25 well, essentially, always for a study of what we call commercial. That's

1 another way of just saying private insurance, by the way; you see
2 commercial sometimes. You basically have to get it from one or more
3 payers.

4 Q So your experience in this field, academic researchers
5 wishing to research trends within the commercial health insurance
6 market, would it be unusual to seek and obtain data from the health
7 insurer.

8 MR. LEYENDECKER: Your Honor, I don't mind Mr. Blalack
9 leading on background stuff. It'd be nice to hear from the witness on
10 these kinds of things.

11 THE COURT: All right. Rephrase.

12 BY MR. BLALACK:

13 Q Okay. Is it unusual, Mr. Deal, for a researcher to seek and
14 obtain --

15 MR. LEYENDECKER: Same objection, Your Honor. Asking
16 open-ended isn't unusual. You're loading it up with leading facts.

17 BY MR. BLALACK:

18 Q Is anything about this unusual, Mr. Deal?

19 A No, not at all. As I said, this is essentially the only way to get
20 this kind of information, is to, you know, work with a -- work with a
21 commercial insurance company, and you always have to request -- you
22 just -- you can't get this data just downloaded off the internet, for
23 instance, that sort of thing. That's frankly, one of the things I find
24 interesting as an economist in these types of cases is we have access to
25 this kind of data, so we can do that -- we can't publish anything from it.

1 We're not going to publish any studies about this case, for instance. But
2 if I wanted to, I would need to obtain some kind of commercial data like
3 this.

4 Q Okay. With respect to this Yale study, did it also address, like
5 the price study we looked at, the Health fair. Did it also address this
6 question, healthcare providers dipping in and out-of-network setting,
7 utilizing setting charges?

8 A It did. It did reference that, yes. And that's what I've
9 highlighted on here.

10 Q And could you just explain what the study is? Those are one
11 of my questions.

12 A Yeah. So again, we'll blow it up a little bigger, and I've
13 highlighted the -- it is -- where it comes from. That's the prior sentence.
14 It says, "It is the physician charge," that's the bill charges, "and it is not
15 competitively set. And they're referencing a 2006 study, which -- I mean
16 this is a common observation there. They happened to reference a very
17 popular study from researching Uwe Reinhardt from 2006.

18 Continuing. It says previous research shows that healthcare
19 providers' charges have little correlation to their negotiated rates and are
20 not influenced by bargaining leverage. Again, not -- sort of academic
21 speak for unilaterally set.

22 MR. BLALACK: All right. And if you could pull that out,
23 Shane, and go down to the bottom.

24 BY MR. BLALACK:

25 Q What's the other observation the study made on this

1 question?

2 A Similar and related. It says these out-of-network bills reflect
3 physician charges. Again, we talk bill charges, which unlike payments
4 for most medical services, and the emphasis there being on payments,
5 are not set through a competitive process.

6 Q Now in this case, you understand that the Plaintiffs are
7 staffing companies, correct?

8 A Yes.

9 Q And you have an understanding of their -- with whom they're
10 affiliated?

11 A You mean TeamHealth?

12 Q Correct.

13 A Yes.

14 Q Okay. And are you generally familiar with TeamHealth in the
15 marketplace?

16 A I am, yes.

17 Q What is TeamHealth?

18 A It's a large physician staffing company. There's a number of
19 them. It's -- TeamHealth is one of the largest. They have, as I
20 understand, the business model. They have a number of affiliated
21 groups like Fremont and Team Physicians and so forth. And they
22 basically do a lot of the services that were talked about by Dr. Frantz
23 yesterday.

24 Q And you -- and when you refer -- they're like a national
25 organization?

1 A Oh, yeah. They may even be internationally now, but they're
2 certainly national.

3 Q And you said they're one of the largest. So are there others?
4 Is there a market for this staffing business?

5 A There's a market in the sense that there's a number of
6 companies that are in this business of various sizes. So, in fact, Dr.
7 Frantz mentioned that his -- before it was purchased by TeamHealth, he
8 was -- I think he was the COO of -- chief operating officer, as I recall, of
9 one in Oklahoma. So you can have regional ones, smaller ones. You
10 can have big national ones. So MCARE is another big national one. I
11 think I may have heard reference to Sound Physicians. That's another
12 one. So yeah, there's several of them. But TeamHealth is big.

13 Q It says that in the study --

14 MR. BLALACK: Can you pull that out?

15 BY MR. BLALACK:

16 Q It says hospitals have outsourced their care with TeamHealth.
17 Also have higher physician charges and physician payments. What are
18 you referring to there?

19 A Again, that -- it's an observation that they're making based
20 on the data, where they look at the hospitals where -- they're able to
21 identify -- so they have this national data on physician charges and
22 allowed amounts as well. But the focus here is on charges. And they
23 can look -- they can associate that with individual hospitals. They then
24 map that onto -- is TeamHealth or MCARE is another one they look at,
25 who's staffing that and when do they start staffing it.

1 And then they're basically saying, kind of like I was doing earlier,
2 where I was slicing and dicing the data and showing it. They're saying
3 when I look at TeamHealth, do I say average charges that are higher or
4 lower than situations that don't have TeamHealth. And this is an
5 observation that they tend to be somewhat higher.

6 MR. BLALACK: Okay. Let's go to the next line.

7 BY MR. BLALACK:

8 Q I want to ask you about this concept of using data from a
9 large commercial payor such as United, per the study. What are you
10 describing here in this slide?

11 A Yeah. So I'm giving another example from the research,
12 although this is actually very applied research I would say, which is
13 another example of using exactly this kind of private commercial data.
14 So the red study -- the red cover is kind of a giveaway for those of us in
15 the kind of health research world. So this is a study by an organization
16 called MedPAC, which is the Medicare Payment Advisory Commission.
17 So this is every year Congress, you know, needs to evaluate the
18 Medicare program in various ways. And they get a study every year
19 from this organization, MedPAC. It's a government -- you see it says
20 report to the Congress.

21 Q Does that study sometimes address data related commercial
22 healthcare?

23 A It does, yes.

24 Q What are you referring to [indiscernible]?

25 A So you can see I've highlighted kind of their observation,

1 which is certainly an observation I've seen as well, that commercial
2 payment rates -- and they happen to be referring here to PPOs, preferred
3 provider organizations. That's one of the most common types of
4 commercial insurance -- remain higher than Medicare payment rates.
5 And think of what we'd just been talking about earlier, of commercial
6 having a premium to Medicare.

7 So this is their analysis to say -- each year they have to say, you
8 know, compared to -- where does Medicare stand relative to commercial
9 payment. So they're kind of looking at it almost in the reverse to say,
10 you know, how -- is Medicare close or whatever. Medicare is almost
11 always below commercial. And they're sort of tracking year by year, is
12 that -- how big is that gap and so forth. And that's the analysis that
13 they're doing, and they're using private commercial payor information to
14 do that.

15 Q And in this case, from a large national insurer?

16 A That's right. They don't identify who it is, which, again, it's --
17 that's not uncommon.

18 Q I was going to ask that. Is that a typical -- the entity giving
19 the data not being disclosed?

20 A It is typical. You sometimes do see it. Once in a while,
21 you'll see a study where they'll say I got my data from Anthem or
22 something like that, but it's not at all uncommon to not identify the
23 particular payor.

24 Q And if you go to the next slide, sir. You refer to a general --
25 the American Medical Association Internal Medicine. What do you --