

Case Nos. 85525 & 85656

In the Supreme Court of Nevada

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

Appellants,

vs.

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

Respondents.

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Case No. 85525

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

Petitioners,

vs.

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

Respondents,

vs.

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

Real Parties in Interest.

Case No. 85656

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CERTIFICATE OF SERVICE

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

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1 THE COURT: Yes, thank you.

2 MR. GORDON: My understanding was we use 90 minutes.
3 We've used 80 minutes so far. To say that this witness is stalling I think
4 is beyond mischaracterization. Mr. McManis is asking questions, he's
5 been cutting off the witness. The witness isn't allowed to answer the
6 questions and explain from his position, from his standpoint, and to give
7 the jury the information that they need to respond to his question.

8 They may not like his answers. They may be going through
9 some different theatrics to get to a point. That's their choice, their
10 decision, et cetera. We saw it with Mr. Haben for days and days and
11 days. So to say that he's stalling; I don't see it, I don't believe it. And
12 whatever Mr. Zavitsanos has to say about his answering and methods, I
13 just think it's wrong.

14 MR. ZAVITSANOS: Brief reply, Your Honor. No -- and then
15 I'll be quiet after this. I promise the Court that we would be moving at a
16 much, much faster pace once Mr. Haben got off. I think we -- I think
17 we've honored that. We've now gotten bogged down, and it's not Mr.
18 McManis' fault. And, Your Honor, I mean, the record speaks for itself.
19 That's all I'm going to say.

20 THE COURT: Good enough. All right. So take a break. I'll
21 see you at 4.

22 THE MARSHAL: All rise for the judge.

23 THE COURT: Thank you.

24 [Recess taken from 3:49 p.m. to 4:02 p.m.]

25 THE COURT: Are we ready for the jury?

1 MR. MCMANIS: Ready from the Plaintiffs, Your Honor.

2 MR. BLALACK: Yes.

3 THE COURT: Thank you. Mr. Gordon.

4 MR. GORDON: Yes, Your Honor. I apologize.

5 THE COURT: Good enough.

6 THE MARSHAL: All rise for the jury.

7 [Jury in at 4:03 p.m.]

8 THE COURT: Thank you. Please be seated. Mr. McManis,
9 please proceed.

10 MR. MCMANIS: Thank you, Your Honor.

11 BY MR. MCMANIS:

12 Q All right, Mr. Ziemer, I want to pick up where we left off. And
13 I want you to assume with me that for this proof number ending in
14 410018, that that's all one Las Vegas Sands plan. Can you assume that
15 with me?

16 A Sure.

17 Q Okay. And for the year 2019, are you aware of whether there
18 are any other Las Vegas Sands plans in evidence in this case?

19 A I'm not aware.

20 Q Okay. All right. So we have a Las Vegas Sands plan. The
21 Group number ending with 410018. The allowed amount on a 99285 of
22 \$230.30, right?

23 A That's what the -- that's what's on the screen, yes.

24 Q Okay. Now I want to take a look at what happens with the
25 next 99285, under the same Las Vegas Sands plan. What's the allowed

1 amount there?

2 A The allowed man is \$315.25.

3 Q All right. Same CPT Code, right?

4 A Same CPT Code.

5 Q Same employer and Group number?

6 A Same Group number. Same employer.

7 Q All right. And the date of service is just over a month later,
8 right?

9 A That is correct.

10 Q One month later, under the same Las Vegas Sands Group
11 and a different allowed amount. Is that random?

12 A There could be a lot of reasons for that. There's -- if you
13 think about our programs, and I don't know what program the Las Vegas
14 Sands has, but we have -- we have programs where there's a network.
15 Our CRS program has First Health, it has MultiPlan, and it has Change
16 Healthcare. I don't know whether or not one of those -- you know, there
17 was a change in the contract. I don't know whether or not there was a --
18 you know, there could be a lot of reasons why the allowable amount is
19 different.

20 Q And we see we have the same entity here. Fremont, right?

21 A Entity is the same, Fremont.

22 Q Okay. And you're not aware of any -- any contract that
23 Fremont entered into in that timeframe that would change the allowed
24 amount under the Las Vegas Sands 2019 plan, are you sir?

25 A I guess what I'm saying is, is that without understanding

1 what the plan is, looking at how the claim was processed, it's difficult to
2 speculate why the -- why something is different.

3 Q Sir, I'm just asking, you're not aware of any contract that
4 Fremont entered into between these two dates of service, that would
5 change the allowed amount; are you?

6 A I'm not aware --

7 MR. GORDON: Objection. Asked and answered.

8 THE WITNESS: I'm not aware of any contract.

9 THE COURT: Overruled.

10 BY MR. MCMANIS:

11 Q All right. If we take another look at a 99285 claim, under the
12 Las Vegas Sands plan, do you think it will be \$230 or \$315?

13 MR. GORDON: Objection. Calls for speculation.

14 THE COURT: Overruled.

15 THE WITNESS: I don't know.

16 BY MR. MCMANIS:

17 Q \$253. Do you see that?

18 A I see that.

19 Q Still at 99285, right?

20 A I see that.

21 Q Still Las Vegas Sands.

22 A Still the same group, yes.

23 Q Okay. Still here in Clark County. It's a claim from Fremont,
24 one of the Plaintiffs in this case, right?

25 A Yes.

1 Q Sir, which one of these three amounts on the screen is the
2 reasonable value for Fremont services for a 99285 in 2019?

3 MR. GORDON: Objection. Foundation.

4 THE COURT: Overruled.

5 THE WITNESS: Can you restate your question?

6 BY MR. MCMANIS:

7 Q Which one of these three amounts is the reasonable value for
8 Fremont Services on a 99285 in 2019?

9 A It's very difficult for me to answer. The -- these are to
10 different dates -- well, actually three different dates. So I would expect
11 that the dates, that they're reasonable amounts for those particular
12 dates. I think when we talked about your scenario here, it was the same
13 type of claim, it was the same plan, it was the same date, and we would
14 expect that it would be the same reimbursement.

15 Q Sir.

16 A I guess the issue is, is that we're talking about a group. What
17 I was trying to explain is that those two numbers in the middle, the 00s
18 that you have in your exhibit, that actually refers to different plans. I do
19 not know whether or not Las Vegas Sands has different plans. And so
20 that could be -- and for those different plans, I don't know whether or not
21 they have different out-of-network programs based on their plan.

22 So I'm trying to -- trying to explain there's a lot of things that could
23 go into this, but if this is the same plan; if this is the same dates of
24 service; I would expect the same reimbursement. But they're not.

25 Q Sir, do you remember what my question was?

1 A No. What's your question?

2 Q All right. If we have another 99285 under the Las Vegas
3 Sands plan in 2019, what do you think that one's going to be?

4 MR. GORDON: Objection --

5 THE WITNESS: If we had another --

6 MR. GORDON: -- calls for speculation.

7 THE WITNESS: -- plan.

8 THE COURT: That's sustained. You have to redo the form.

9 BY MR. MCMANIS:

10 Q Let's just take a look at the next 99285 in Clark County for
11 Fremont under the Las Vegas Sands Group 410018. Back down again to
12 \$230, right?

13 A Correct.

14 Q All right. Now you've got the Las Vegas Sands plan 2019
15 that we have in Exhibit 296. You have that in front of you, right, sir?

16 A I do, sir.

17 Q Okay. And you're not aware of even a single other Las Vegas
18 Sands Plan for 2019 that's been produced and is evidence in this case;
19 are you, sir?

20 MR. GORDON: Objection. Asked and answered.

21 THE COURT: Overruled.

22 THE WITNESS: I have not looked through this entire
23 document to see what's in it. I do not know the Las Vegas Sands plan or
24 plans. That's my testimony.

25 BY MR. MCMANIS:

1 Q Well, your testimony is that UMR follows the plan, right?

2 A UMR follows the plan document in the intent that we work
3 through with our customers, correct.

4 Q All right. If Exhibit 296 is the only Las Vegas Sands plan that
5 we have, can you tell me what in Exhibit 296 allows UMR to just change
6 the allowed amount all in the same claim year? Can you tell me what
7 from Exhibit 296, you've got it right in front of you, allows UMR to
8 change the amount?

9 MR. GORDON: Objection. Mischaracterizes his testimony.

10 THE COURT: Overruled.

11 THE WITNESS: I'm not a plan document person. I would
12 need to work my way through this entire document.

13 BY MR. MCMANIS:

14 Q This --

15 A But we have -- but we have --

16 MR. GORDON: Your Honor, if could you allow counsel to let
17 the witness answer his question?

18 THE COURT: Yeah, don't interrupt him.

19 MR. MCMANIS: I apologize, Your Honor.

20 THE WITNESS: But when we implement a group, we sit
21 down with them, and we walk through their benefits. What do you
22 expect us to administer. Part of that discussion is also about the out-of-
23 network plan or the out-of-network program that they want us to
24 administer on their behalf. Or they can actually choose to administer --
25 you know, they have a custom plan that they want us to administer. And

1 so between the plan document and those discussions with the customer,
2 that's how we determine how we're going to process claims.

3 BY MR. MCMANIS:

4 Q Are you finished with your answer?

5 A Yes, sir.

6 Q Okay. We started out with; I think you're the only person
7 from UMR we're going to have a chance to ask questions in front of this
8 jury. Do you recall that?

9 A I believe so, yes.

10 Q All right. I'm just asking the only person that I can, can you
11 point to anything in Plaintiffs' Exhibit 296 that supports UMR changing
12 the allowed amount for the same type of claim in the same county, in the
13 same plan year? Can you point us to anything, sir?

14 A I'm not familiar with the document.

15 Q So is that a no?

16 A I'm not familiar with the document, and I cannot right now
17 point to anything in this document.

18 MR. MCMANIS: All right. Your Honor, at this time I would
19 move to admit this summary of Plaintiffs' Exhibit 493 -- 473 without the
20 demonstratives on it, as a summary.

21 THE COURT: Any objection?

22 MR. GORDON: I'll object right now. We need to verify all of
23 the information that is contained on this demonstrative.

24 THE COURT: Good enough. We'll take it up first thing
25 tomorrow morning.

1 MR. MCMANIS: Okay. Thank you, Your Honor.

2 BY MR. MCMANIS:

3 Q All right. Now Mr. Ziemer, I heard you mention a little bit,
4 maybe there's another plan out there, maybe it has different terms.
5 Something like that right?

6 A I have --

7 Q Las Vegas Sands?

8 A Correct.

9 Q Okay. Well, I want to take a look at another excerpt from
10 Plaintiffs' Exhibit 473. And I'm not going to read the name, but can you
11 see that on this excerpt there's a patient name, sir?

12 A I see it. There's a patient name.

13 Q Okay. And I'm not going to ask you to read it out loud
14 because I want to make sure that we don't put that in the record. But do
15 you see this is another 99285 claim with a date of service in August of
16 2019?

17 A I see the date of service is August of 2019.

18 Q And the employer is Medical Transportation Management,
19 Inc. Do you see that?

20 A I see a portion of that name, yes.

21 Q All right. Do you know whether that's the UMR/ASO
22 customer?

23 A I do not know if that's the UMR customer off the top of my
24 head.

25 Q All right. Well, I'll represent to you that in the data we have,

1 it shows up as being a plan administered by UMR, okay?

2 A Okay.

3 Q All right. So we've got this patient, the 99285, and an
4 allowed amount of \$315.25. Do you see that?

5 A I see that.

6 Q What do you suppose happens -- well, let's just take a look.
7 All right. The same patient back to the emergency room in the same
8 year, for the same code. What's the allowed amount this time?

9 A The allowed amount on 8/14/19 is \$315.25. And on 11/27/19
10 the allowed amount is \$409.82.

11 Q Okay. Same patient, right?

12 A Same patient, different date of service.

13 Q Same county?

14 A Facility county is Clark County, correct.

15 Q Do you think that the \$409 in November of 2019 was more
16 reasonable or less reasonable than the \$315 in August of 2019?

17 MR. GORDON: Objection. Calls for speculation.
18 Mischaracterizes his testimony.

19 THE COURT: Overruled.

20 THE WITNESS: Can you restate?

21 BY MR. MCMANIS:

22 Q Do you think that the \$409 was more reasonable or less
23 reasonable than the \$315 in August of 2019?

24 A I don't think that I can answer the question. The point is that
25 they're on different dates. That they're in the same county, but they're

1 on different dates. As we talked about before in your example, right, we
2 would expect if it's the same type of claim for the same service and the
3 same plan, the same out-of-network program, right, and the same date
4 of service, we would expect the same reimbursement.

5 Q Do you think that this patient changed her plan between
6 August of 2019 and November of 2019?

7 MR. GORDON: Objection. Calls for speculation.

8 THE COURT: Overruled.

9 THE WITNESS: I don't know.

10 BY MR. MCMANIS:

11 Q Do you have any explanation -- well, let me ask this. Is it still
12 your testimony, despite seeing all the different numbers that we've just
13 looked at, these different numbers for the same patient, is it still your
14 testimony that UMR's just following the plan?

15 A UMR follows the plan.

16 Q Even with all the different amounts that we looked at?

17 MR. GORDON: Objection. Asked and answered.

18 THE COURT: Overruled.

19 THE WITNESS: UMR follows the plan.

20 BY MR. MCMANIS:

21 Q Do you know how many times if we go through this whole
22 file, Plaintiffs' Exhibit 473, you saw how big that spreadsheet was, right?

23 A I saw how big the spreadsheet was.

24 Q Do you know how many times if we go through that
25 spreadsheet, claim b claim, we'll see UMR paying different amounts for

1 the same types of claims on the same plans?

2 A I don't know.

3 MR. MCMANIS: Pass the witness.

4 THE COURT: Okay. Cross -examination, please.

5 CROSS-EXAMINATION

6 BY MR. GORDON:

7 Q All right. Mr. Ziemer, thank you for taking the time to be
8 here. We're going to go through some questions and allow you to
9 familiarize yourself with the jury, is that okay?

10 A Yes.

11 Q Where do you live Mr. Ziemer?

12 A I live in Wausau, Wisconsin. So if you think about the State
13 of Wisconsin and the hole in the middle, that's where Wausau is.

14 Q The Green Bay mask is a dead giveaway of something. Are
15 you married?

16 A I am married. My 20th anniversary is coming up here on
17 December 7th. Yes, I am aware that it is Pearl Harbor Day. And that fact
18 is not lost on my wife, either. And then we have two kids, 18 and 16.

19 Q All right. And please tell the jury did you attend college?

20 A I did attend college. I went to the University of Wisconsin at
21 Madison. And I had a wonderful experience there.

22 Q Did you earn a degree from Madison?

23 A Yeah, I earned a bachelor's degree in banking and finance.

24 Q And do you have any advance degrees?

25 A I do not have any advance degrees.

1 Q And after college, what did you do? Did you go to work
2 immediately after college when you graduated?

3 A After college I started working at Humana. They're an
4 insurance company. They had a -- actually I think at the time it was
5 known as Employer's Health Insurance. Then subsequently it was
6 bought by Humana. I think I worked there for maybe three or four years.
7 And then was able to take an opportunity with a TPA called Wausau
8 Benefits. Wausau is actually my hometown. I wasn't necessarily
9 interested in going back to my hometown to work. But that's where it
10 took me. And so Wausau Benefits was a small TPA, and we were
11 acquired by a company called Fiserv. They did data transactions. And
12 so they were accumulating or acquiring TPAs. And then Fiserv -- so
13 Fiserv I think had four or five different TPAs that they had acquired. And
14 then they sold us to UnitedHealthcare in 2008.

15 Q And let's go back to Humana. What type of work were you
16 doing at Humana?

17 A At Humana I was a claims processor. So I answered -- I
18 answered calls and processed claims.

19 Q And you mentioned you started at Wausau, and it went
20 through a series of acquisitions until it became part of Fiserv, I believe.
21 Just generally describe some of the roles and responsibilities that you
22 had at Wausau Benefits until it became Fiserv.

23 A Yeah, so I should -- I should state, I started out -- when I
24 started out at Employer's Health Insurance and Humana, man this has
25 been a long time ago, when I started out I was a claims processor. I

1 then became a supervisor at Humana for claims processing and
2 customer service. When I moved over to Wausau Benefits, it was in an
3 operational role. So I think I was a manager in the operations area. But
4 probably two years later I took a role in our network services or solutions
5 area. And so I want to say since probably 2003, I've really been involved
6 with our network area. And then I'm kind of getting additional
7 responsibility. I want to say about five or -- no, it's got to be longer than
8 that, probably eight or nine years ago, working on our pharmacy
9 solutions. And then probably two years ago, adding in our ancillary
10 solutions. Which I'm now responsible for.

11 Q And when you say ancillary solutions, can you explain what
12 that means?

13 A Ancillary solutions. It's really kind of an interesting area
14 because just all of the different things that are going on. So we do
15 things like telemedicine. And before, telemedicine was like, you know,
16 hey, I don't want to go to the doctor. I have a sniffle, so you know, can I
17 just, you know, call or can I, you know, use my phone? And now, it's just
18 expanded to so many different things. You know, being able to work
19 with members from a behavioral health perspective, that's just been
20 huge in the pandemic.

21 Or now, you can actually do physical therapy over your phone. So
22 telemedicine is really something huge. We also work with a lot of
23 different products that United sells. So they have their specialty benefits
24 program, so financial protection or vision, things along those lines. We
25 also have our -- we offer self-funded dental administration. So those are

1 some of the things that kind of fall into that ancillary bucket.

2 Q And when you first started at UMR, just to go back, what was
3 your position at that time?

4 A At UMR or at Wausau Benefits?

5 Q At UMR.

6 A At the time we became -- so United acquired us in 2008. And
7 at that time, I believe I was a manager in the network solutions area.

8 Q And what is your current position?

9 A My current position is vice president in our customer
10 solutions area. Responsible for ancillary, pharmacy, and network
11 solutions.

12 Q And describe for the jury the size of your team and who you
13 work with in your position.

14 A Yeah. So, you know, in total, we -- I think there is about just
15 a little over 50 people that report up through my department. From a
16 pharmacy standpoint, that's really about eight people. And then we
17 probably have another eight people that work on our ancillary solutions.
18 And then the remainder of the team is really focused in on network. And
19 so we have a team that focuses in on analysis.

20 So a lot of times, our customers are -- they just don't take us
21 at our word that something is a good idea for them. They actually want
22 to see whether or not a specific product or a solution is going to be a
23 benefit to them. So that -- that team really helps support a lot of the
24 analytics that we do for our customers. We have a team that is really
25 responsible for working with our existing clients, answering their

1 day-to-day questions; you know, making sure the implement -- clients
2 are implemented appropriately, making sure that renewals go in
3 appropriately.

4 And then we have a team that's responsible for our different
5 products and services. So, you know, we're talking here about
6 emergency claims and out-of-network solutions. So we have a team that
7 really is responsible for, you know, listening to our customers, listening
8 to the industry, listening to the different vendors that we use,
9 collaborating with United on what they're seeing so that we can, you
10 know, figure out what types of solutions would be good to offer our
11 clients.

12 And then they're responsible for implementing and then
13 managing those solutions on an ongoing basis. You know, we process
14 probably -- I have no -- millions of out-of-network claims. There's -- you
15 know, we always want to process things accurately, but we always
16 expect that there's going to be issues and we need to resolve those on
17 behalf of our clients.

18 Q You mentioned something that I would like you to expand
19 upon a little bit more in an answer to Mr. McManis' question
20 [indiscernible] is you listen to your clients and work with the clients. And
21 why is that important for what you do in your role and position?

22 A You know, listening -- our mantra, right, is meet the
23 customer where they are. And so the first part of that is listening. And
24 so it's important for us to, you know, listen to our account managers
25 because they're with our customers most often. What are they saying

1 about our out-of-network programs? It's important for us when we get
2 the opportunity to be in front of our customers, right, whether it's myself
3 or anybody on our team -- listen. What's causing them angst? What's
4 causing -- you know, what's -- where do they see things going? And so
5 it's important that we do that. It's important that we listen to industry
6 experts.

7 So whether if our -- you know, you go to, you know, different
8 conferences or you're listening to what other third-party administrators
9 are doing or you're listening to what UnitedHealthcare is doing. You
10 know, the best thing that you can do is listen so that you can figure out
11 where you want to go and where you want to take your products and
12 solutions. The more competitive solutions that you have, you know,
13 clients are going to be more apt to stay with you, and we're more apt to
14 win additional business and grow our business.

15 Q And just so we're clear. And you're employed by UMR; is
16 that correct?

17 A I am employed by UMR. I work for UMR, yes.

18 Q And have you heard of an entity called Sierra Health and
19 Life?

20 A I have heard of an entity called Sierra Life and -- Health and
21 Life.

22 Q Are you employed by Sierra Health and Life?

23 A I am not employed by Sierra.

24 Q Have you heard of Health Plan of Nevada?

25 A I'm sorry?

1 Q Have you heard of Health Plan of Nevada?

2 A I have heard of the Health Plan of Nevada.

3 Q All right. And are you employed by Health Plan of Nevada?

4 A I am not employed by Health Plan of Nevada.

5 Q And have you ever worked for UnitedHealthcare insurance
6 company and at UnitedHealthcare Services?

7 A I work for UMR. We're wholly-owned subsidiary of
8 UnitedHealthcare. And so, you know, in a way, I work for
9 UnitedHealthcare.

10 Q And the systems that UMR uses to -- you know, part of the
11 whole process of listening to clients and processing claims and finding
12 solutions for the client, does UMR have a separate system from the other
13 entities [indiscernible]?

14 A Yeah. So in 2008 when United bought Pfizer Health, the
15 reason that they bought Pfizer Health was because they noticed that
16 there was this industry called third -- TPA business that they couldn't
17 address with their own ASO solutions, their own self-funded solutions.
18 And so that's why they purchased us.

19 And so we have different systems from UnitedHealthcare. We
20 have a different management staff, right, that focuses solely on UMR
21 business. And our goal is to leverage certain things from
22 UnitedHealthcare, but at the same time, we don't want to be an exact
23 replica of UnitedHealthcare.

24 We want to be able to meet our customers' needs, meet where
25 they're at, build custom solutions for them. We don't want to just be a

1 duplicate of what UHC already have. And that's kind of the goal that
2 UHC has for us.

3 Q Just so I understand with a little bit more clarity, you
4 mentioned that you work collaboratively with UnitedHealthcare on some
5 type of programs, goals, and objectives for clients. How would you
6 characterize -- how would you describe if UMR has autonomy from
7 UnitedHealthcare and what it does, and how it relates to businesses?

8 A I mean, we -- again, we focus in on the solutions that our
9 customers want, right? So that's our primary goal. We want to leverage
10 all of the -- you know, all of the brain power from UnitedHealthcare. We
11 want to leverage the brain power from our vendors. We want to listen to
12 what our customers are. And if that -- if that brings us to a different
13 solution than United, then that's okay. But at the same time, there's also,
14 you know, some really good things that United does. There's some
15 really good things that our competitors do. And, you know, we want to
16 learn from that.

17 And a lot of our -- if you're -- if we're talking specifically about our
18 out-of-network programs and how they impact emergency care, a lot of
19 the solutions are not -- they're maybe similar to United. But because we
20 have different systems, we use different vendors, they're always going
21 to be slightly different. And because of kind of how we will customize
22 things, there could be -- there could be other reasons for differences as
23 well.

24 Q And when you say, "customize things", just briefly give us a
25 flavor of what you mean by customize things for the clients.

1 A Well, with -- if we're thinking about out-of-network programs,
2 you know, we have a -- today, we have a suite of five different programs
3 the client can choose from. At the same time, we have customers that
4 feel like cost containment in their out-of-network strategy is key to how
5 they want their benefits run.

6 And some of those customers have their own custom out-of-
7 network strategies. So they bring the solution to us. We actually have a
8 couple of customers here in Nevada that have their own out-of-network
9 solutions. And so -- again, you know, it kind of goes back to this we're
10 taking the direction of the benefit -- or of the employer, right? We're
11 administering the solutions that they want us to administer, and that
12 includes custom out-of-network programs as well.

13 Q And just so I'm clear. Does UMR provide coverage for the
14 fully-insured health plan?

15 A No. We do not take risk, so we are -- we are only
16 administering things from a self -- a self-funded standpoint.

17 Q And not taking risks, is that one of the differences between
18 fully-insured and self-funded plans?

19 A Yeah. A self-funded plan is where an employer actually is
20 paying for the plan amounts. So if you go to the doctor and the plan
21 pays 100 percent, for a self-funded customer, it's actually them paying
22 their -- it's the self-funded customer that's actually paying the doctor,
23 right? UMR administers the claim.

24 So a good example of this would be like Coca-Cola. They
25 administer -- or they determine their own benefits. They ask whoever

1 their administrators or their TPAs are to administer their benefit plan.
2 But Coca-Cola, at the end of the day, is the one that's actually paying the
3 claims that the members all right responsible for. Or maybe a better
4 example. Plaintiffs said that -- or Plaintiff presented something on Las
5 Vegas Sands Corporation, right? Las Vegas Sands, their benefit plan, it's
6 their money that we're using to pay their claims. Hopefully, that makes
7 sense.

8 Q Okay. Other than Las Vegas Sands, as you sit here today, are
9 you aware of any other ASO clients that UMR has in Nevada?

10 A Yes. We have -- we have a number of the casinos. So I know
11 that MGM is one of the -- one of our key clients actually through an
12 acquisition that we made of HealthSCOPE Benefits. Clark County is one
13 of our clients. But we have a number of clients within the State of
14 Nevada.

15 Q Okay. And with respect to out-of-network programs. We had
16 some testimony about it today for all those programs, but briefly
17 describe, if you can, for the jury what are some of the differences or
18 similarities and differences between the out-of-network programs of
19 UMR and UnitedHealthcare.

20 A It's a little bit difficult to explain the differences. While we
21 collaborate, we talk, and we've done comparisons. The comparisons are
22 at a very high level, and it starts to get nuanced. So a lot of our -- a lot of
23 our programs are similar, but because of the different vendors we have --
24 so for instance, UnitedHealthcare doesn't use First Health, they don't use
25 Change Healthcare, they don't use -- Cirrus is another out-of-network.

1 So there's different vendors that are involved.

2 How our claims systems are able to identify claims and what our
3 claims systems are able to do are different. So there's some nuances in
4 terms of certain capabilities on the United side versus certain capabilities
5 on the UHC side [sic]. So again, while our programs may be similar,
6 they're definitely different.

7 Q So you mentioned a vendor, First Health. What is First
8 Health?

9 A Excuse me. So First Health is -- we call them a secondary
10 network, I think in this context, versus calling it a wrap network. But First
11 Health is a network that contracts directly with providers. They are --
12 they contract with providers. But because of the way they contract with
13 providers, we're actually able to pay the claim at the out-of-network level
14 of benefits. And so for our programs where we're using First Health, we
15 actually put their logo on the ID card, so the providers know to -- that
16 they could expect a discount from First Health.

17 Q And what about Change Healthcare?

18 A Change -- excuse me. Change Healthcare is a -- is a company
19 that actually contracts with a number of different secondary -- or a
20 number of different networks. And so what they do is they identify
21 different networks. They have a hierarchy that -- that they're able to go
22 out to these different networks depending upon where the claim is at
23 and obtain a discount. So they do that for us.

24 They also do some things for some of our out-of-network
25 programs where if we are unable to get a reasonable secured rate either

1 through fee negotiation or a network, they will reprice the claim to a
2 percentage of Medicare. You know, I think most people try to think that
3 -- or at least I think that, you know, Medicare plus some type of a margin
4 would be a reasonable amount. But for, you know, our clients, right, you
5 know, they want to make sure that, you know, their members are being
6 taken care of as well. But Change Healthcare actually administers that
7 program for us.

8 And so for radiology, anesthesiology, pathology lab as well as
9 emergency claims where we can't get a reasonable discount through our
10 CRS program, they actually apply that percentage of Medicare. And then
11 we tell the providers if you don't agree with the percentage, call. Right?
12 And so they're calling Change Healthcare, and then Change Healthcare
13 will negotiate with that provider.

14 Now, with emergency claims, you know, we have to make sure
15 that the member is held harmless. So in the event that they can't explain
16 why 350 percent of -- or I'm sorry, I think it's 250 percent of
17 Medicare -- isn't reasonable, they'll actually negotiate up to billed
18 charges so that that member isn't held harm -- or that -- so that member
19 is held harmless.

20 Q And then lastly for Cirrus?

21 A So Cirrus is a -- Cirrus is really focused on facility claims. So
22 it's -- they don't -- they don't impact emergency position claims. But
23 Cirrus does similar things, right? They determine what a usual and
24 customary amount is for a facility claim. Just like, you know -- you
25 know, usual and customary for a physician claim might be -- you know,

1 again, it's dependent upon, you know, the benefit plan, but it could be --
2 or some of the products that the client chooses, it could be something
3 like Medicare, it could be something like Data iSight, it could be
4 something like FAIR Health, right? So Cirrus is another way of trying to
5 get what a usual and customary amount is for an out-of-network claim.

6 MR. GORDON: Your Honor, we're at a good spot if you want
7 to --

8 THE COURT: We are. Thank you.

9 All right. So let me give you the admonitions. We'll be in
10 recess until tomorrow at 8:30 a.m. I had told you on Friday that we'd
11 have a new schedule this week. The only day that's going to change is
12 we'll start late Wednesday, which would be 8:45. So can everybody do
13 without a new schedule? All right. So until tomorrow, we see you at
14 8:30.

15 Do not talk with each other or anyone else on any subject
16 connected with the trial. Don't read, watch or listen to any report of or
17 commentary on the trial. Don't discuss this case with anyone connected
18 to it by any medium of information, including without limitation;
19 newspaper, television, radio, internet cell phones or texting.

20 Don't conduct any research on your own relating to the case.
21 Don't consult dictionaries, use the internet or use reference materials.
22 Don't post on social media. Don't talk, text, tweet, Google or conduct
23 any other type of book or computer research with regard to any issue,
24 party, witness or attorney involved in this case.

25 Most importantly, do not form or express any opinion on any

1 subject connected with the trial until the matter is submitted to you.

2 Thank you for another great day. Have a good night. See
3 you tomorrow at 8:30.

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

5 [Outside the presence of the jury]

6 THE COURT: Mr. Ziemer, you may step down.

7 THE WITNESS: Thank you.

8 THE COURT: We have some matters to take up outside of
9 your presence. So if you'll please exit the room, too? Thank you.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: So if you guys want five now, we can go until
12 5:45. Do you want five minutes to ten minutes right now?

13 MR. BLALACK: I'm ready to proceed when you are, Your
14 Honor. We have a lot of work to do. So if you want to go, we'll take a
15 break. Whatever you prefer.

16 MR. ZAVITSANOS: Your Honor, yeah, we defer to the Court.
17 We're ready to go, but if Your Honor would like a break, then --

18 THE COURT: Let's be ready at 4:55.

19 MR. ZAVITSANOS: Thank you.

20 MR. BLALACK: Thank you, Your Honor.

21 [Recess taken from 4:45 p.m. to 4:54 p.m.]

22 THE COURT: And kindly move this so I can make eye contact
23 with Defense counsel.

24 MR. ZAVITSANOS: Oh, I'm sorry, Your Honor. I would have
25 welcomed that, Your Honor.

1 THE COURT: Thanks, guys.

2 MR. ZAVITSANOS: Sure.

3 THE COURT: That's what --

4 MR. ZAVITSANOS: Your Honor, we'll move this -- may I
5 leave this right here for right now?

6 THE COURT: Yeah. That's great.

7 MR. ZAVITSANOS: Is that all right?

8 THE COURT: So have the two of you conferred on an agenda
9 for us tonight?

10 MR. BLALACK: Well, Your Honor, I think the only thing I had
11 to cover was the --

12 THE COURT: It's voice-activated and there's one at the
13 podium.

14 MR. ROBERTS: Your Honor, are you talking about the -- for
15 purposes of the chart?

16 MR. BLALACK: The only think I had, Your Honor, was the
17 question of the need for request to be made for time allocation. Either
18 have them rest or a time allocation just for the remainder of the trial.
19 That's what we requested last Friday, was have them rest by the end of
20 the day. Submission we made this morning, ask that in the alternative, if
21 they weren't going to rest by the end of the day, that the Court adopt a
22 time allocation -- strict time allocation -- between now and when the last
23 day of proof is, which is 4:45 next Monday. And it'll be based on the
24 times the separate parties have exchanged, which were very tight, and I
25 mean very tight, and having us work a lot of hours between now and

1 then. It would allow us to do it without a mistrial.

2 So that was the sole issue I had to resolve tonight for the
3 Court. If there's other things, we'd be glad to address them.

4 THE COURT: Good enough. Is there anything else that you
5 would like to agendize at this point?

6 MR. ZAVITSANOS: Your Honor, just to be -- I'm sorry. There
7 is one issue that Mr. McManis wants to bring up, unrelated to this.

8 THE COURT: Okay.

9 MR. ZAVITSANOS: Would you like to hear that first?

10 THE COURT: No. Just I -- I'm just making an agenda now.

11 MR. ZAVITSANOS: Oh, okay. So yeah. I guess the first
12 issue is the request for the time allocation. The second issue, Mr.
13 McManis has an issue about something that his witness just said, and
14 it's concerning -- potentially opening the door on an issue around COVID.
15 And then, I think Ms. Robinson has something regarding the chart.

16 MS. ROBINSON: Right. I had understood the Court to be
17 interested in addressing the charge today, and we're certainly ready to
18 do so.

19 THE COURT: Just the start.

20 MS. ROBINSON: Yeah. Absolutely. And we're ready to do
21 so.

22 THE COURT: If we have the time today. But just -- I've just
23 got to keep things moving. Let's take --

24 MR. BLALACK: And on that point, Your Honor, I'll be glad to
25 do what I can, but my partner, Mr. Portnoi, will be handling the charge

1 conference. So if you want to get into much detail, then I'm going to
2 have to ask him to come join.

3 THE COURT: Good enough. I did indicate Friday that we
4 could get there today. Is there something reason he's not available?

5 MR. BLALACK: Your Honor, I misunderstood. I thought we
6 were going to be doing that on Tuesday night. So I may have just
7 misunderstood the Court.

8 THE COURT: Good enough. Let's take Mr. McManis' issue
9 first.

10 MR. MCMANIS: Thank you, Your Honor. I just wanted to
11 flag an issue that came up in Mr. Ziemer's direct, or I guess in his cross
12 with opposing counsel. And what Mr. Ziemer testified to were the great
13 value of the ancillary services that UMR provided, particularly during the
14 pandemic with telemedicine and so forth. And the concern is one, that
15 that's a limine that the Defendant moved on and precluded us from
16 being able to introduce any evidence about that. And waiting to be -- so
17 after Dr. Scherr stepped off the stand.

18 I don't know if there's anything we need to do with this
19 particular witness, but I do think it's important for us to be able to
20 present, you know, the -- at a high level, at least, as they did, the value of
21 some of the services we provided during the pandemic. Because they've
22 now opened that door to that issue specifically through nothing that we
23 did, no questions that we asked. And after we treaded very carefully
24 with Dr. Scherr around the pandemic and coached him not to talk about
25 that very carefully because we didn't want to violate Your Honor's

1 rulings. So I do want to flag that issue as probably something that will
2 come with a later witness from the Plaintiffs. But I do think that door is
3 open. Now what are we going to do?

4 THE COURT: And the spokesperson for the Defense, please?

5 MR. BLALACK: I can respond since I'm up here, Your Honor.
6 Mr. Gordon didn't ask any questions about the programs related to
7 COVID or services related to COVID or -- and even the reference that did
8 come up about COVID was completely an aside. The suggestion that his
9 testimony somehow was either elicited or even substantially addressing
10 the value proposition for health plans in the context of COVID, which
11 would be the flip side of what Mr. McManis is suggesting, I just think it's
12 an overstatement of what the witness said.

13 It can't possibly be that a witness who alludes to COVID in
14 the context of a response to a broad question is somehow opening the
15 door to discussion of all the value propositions that ER providers have
16 offered during COVID, particularly given how the public attention of the
17 last two years regarding, you know, collectively the role that frontline
18 healthcare workers provided during the pandemic. We just think that's
19 an overstatement and unfair.

20 THE COURT: Thank you.

21 MR. MCMANIS: May I respond, Your Honor?

22 THE COURT: You may.

23 MR. MCMANIS: So --

24 THE COURT: Everything always goes one, two, three, so.

25 MR. MCMANIS: So you know, I think that, you know,

1 opposing counsel runs the risk if they ask the wrong questions and if
2 their witness strays into something that they've asked to preclude from
3 the case, that that will open a door. And the question was "tell me about
4 ancillary services that you offer". And I think what would show up in the
5 transcript is the answer was, you know, including one of which was
6 telemedicine, which was huge during the pandemic. And so --

7 THE COURT: I'm still trying to see my dentist that way. It's
8 not working.

9 MR. ZAVITSANOS: Well, it doesn't hurt as much when they
10 drill.

11 THE COURT: I'm sorry. You guys, we've been together now
12 for a few weeks.

13 MR. MCMANIS: A little levity never hurt anyone, Your
14 Honor. So you know, we were very careful to not even mention COVID
15 or the pandemic because of Your Honor's ruling because they moved for
16 that to actually preclude us from being able to say it. And I recall the
17 argument was we asked to be able to, you know, just touch on it at a
18 high level as to what we do. And here we are, and we weren't allowed
19 to do that, and they brought it up.

20 THE COURT: I don't think the door has been opened at this
21 point, but I can say that the long, rambling responses to very short
22 questions would be objectionable, had they objected to that.

23 MR. BLALACK: Okay. Well, we'll advise the witness to try to
24 be more concise, Your Honor.

25 THE COURT: Thank you. All right. So now, let's take up the

1 time allocation issue the Defendant has.

2 MR. BLALACK: Well Your Honor, just to -- I think you've got
3 the filing we made last night or this morning.

4 THE COURT: Yeah, I--

5 MR. BLALACK: There's a chart in the back of that, and it's
6 probably a useful tool to understand what we've got in front of us. And
7 let me just explain what you're looking -- if you have it, just explain what
8 you're looking at. It should look like this.

9 THE COURT: Hang on. No, I've looked at it, off and on
10 today.

11 MR. ZAVITSANOS: There's two of them in mine.

12 THE COURT: I'm just pulling it up.

13 MR. BLALACK: There's only one.

14 MR. ZAVITSANOS: Oh. Yeah.

15 THE COURT: There's one. Yeah. Okay.

16 MR. BLALACK: This is a document that Mr. Leyendecker
17 prepared this weekend and sent to us, and we added our content to it.
18 And so let me walk through and describe what I believe the record is,
19 and I'll obviously invite my colleague to join me if I get something
20 wrong.

21 So what Plaintiffs did was lay out on the page, starting today
22 through next Monday, the last day of available proof. This is remaining
23 in their case in chief, with an estimate of the time they would need for
24 that witness and their direct and redirect. And then Plaintiffs put in an
25 estimate of the time we would need for cross of their witnesses. And

1 then farther up are the totals by day. And for the witnesses on the
2 Defense side, same drill. Identify the witnesses that were the most likely
3 witnesses we would call in our case. Again, assuming Plaintiff's proof
4 comes in as contemplated. And then there was an estimate for the
5 Plaintiffs' side, how they would take with each of those witnesses and
6 the same thing with us. So that's what this represents.

7 What we changed is only two things. The information for the
8 time estimates for the Defense, time with the witnesses. So both the
9 Defense estimates on the Plaintiffs' witnesses and then the Defense for
10 our witnesses. That was one change, to add more time consistent with
11 what we think we need for each of those witnesses.

12 And then, two, we assumed that we could get six and a half
13 hours of proof in each of those six days, which is premised on the
14 following assumption: that we have a 45-minute lunch break, which is
15 longer than we have -- we took today and that we've been taking of late,
16 and that we have an hour of breaks throughout the day. Basically, we
17 made -- we're running about three breaks a day. We're receiving 20
18 minutes a break, which is actually a little longer than --

19 THE COURT: Well, and you know, I usually ask you guys to
20 be back in 15 minutes, and very often, you all are 10 minutes late.

21 MR. BLALACK: Right.

22 THE COURT: And I realize this morning the courtroom door
23 was locked and that's our issue. But --

24 MR. BLALACK: Well, that's why I think this is a very
25 achievable target. The parties are all committing to finishing this trial

1 and not having a mistrial. So that will leave six and a half hours of time
2 for proof.

3 THE COURT: But they're already over on Ziemer and haven't
4 called Schumacher yet today.

5 MR. BLALACK: Which is, from my perspective, all the more
6 reason for the relief we request, because they've identified that they
7 need 14.1 hours. That's what their total adds up to for the witnesses
8 they want to call in their direct and redirect and for the
9 cross-examinations of our witnesses. That's what they told us, 14.1.
10 And we think it's tight, but if we can hit our six-and-a-half-hour days for
11 six days, we can get what we need to -- we've skinnied our case down
12 enough that we can get what we need to get done. They can have their
13 14.1.

14 THE COURT: Have you guys considered asking the jurors to
15 work from 8:30 to 5:30 with a half hour break?

16 MR. ZAVITSANOS: Your Honor, that would be fine with us.

17 MR. BLALACK: 8:30 to -- you mean instead of 4:45, Your
18 Honor? That would be fine with us, too, Your Honor. I mean, here's
19 my -- I'll just cut to the chase, Your Honor. We need about 23 hours to
20 put in our proof, which means examining the witnesses that they're
21 calling and putting on our witnesses. That's very tight, very efficient,
22 which I think we have been in this case, and hitting all of those witnesses
23 in the time. And if we -- if the jury and the court system is willing to start
24 earlier and stay late, we want to do that because we don't want a
25 mistrial. We've invested a -- our client has invested an enormous

1 amount of money, time, and energy to get to this trial and does not want
2 a mistrial.

3 But as I noted last week, we cannot be in a situation where
4 we have a handful of days for the, what, one, two, three, four, five, six,
5 seven, eight witnesses in three days when they're going to have an
6 opportunity to conduct examinations. And there's just stuff we've got to
7 cover. We haven't even gotten to our story yet. So that's all my way of
8 background to say we're fine with them having the 14.1 hours they've
9 indicated on this chart they need.

10 And my request is only that they be limited to that and
11 allocated however they want. And if they run over, then they run out.
12 And the same rule would apply to us. But they've had -- we had 25
13 hours of proof coming into today. They've used 19 to our 6.

14 THE COURT: Well, does that include the direct and redirect
15 only?

16 MR. BLALACK: That includes all time on the record,
17 exclusive of sidebars.

18 THE COURT: Because you've done an extensive amount of
19 cross-examination. So --

20 MR. BLALACK: We --

21 THE COURT: -- you can't discount that.

22 MR. BLALACK: As of Friday, we had used just over five and a
23 half hours. Just over six hours. They had used just over 19. All right.
24 So that's where we were coming into today. It was three to one. Or two
25 to one. Or no, it's three to one. Three to one is the time allocation

1 coming into today.

2 So we're not -- the proposal we've got here for time
3 allocation is not three to one. If we were to hit these marks, when the
4 trial was over, they would end up having about 55, 56 percent of the total
5 trial time with witnesses and we'd have about 45 or 44. That's if we do
6 what we proposed. So even if we hit all of these marks, we're still using
7 less time than Plaintiffs doing this, and that's because they've already
8 used 19 hours out of 25 -- or 24.

9 So our position, Your Honor, is they need 14.1 more hours of
10 trial time for their witnesses and our witnesses, fine. But they need to be
11 held to it. They can allocate it however they want. They can use it in
12 direct, cross, with their witnesses and with our witnesses, that's fine. But
13 they can't go over and then take it out of our time at this point in the trial,
14 because if that's how it is, we're not going to have a choice, we're going
15 to have to move for a mistrial.

16 THE COURT: I understand.

17 MR. ZAVITSANOS: So Your Honor, I'm going to let Mr.
18 Leyendecker -- Mr. Leyendecker is the one who labored to put this
19 together, so I would invite the Court, please, to hear from him. And then
20 I just have a couple of comments at the end that are not going to be
21 duplicative, Your Honor.

22 MR. LEYENDECKER: The big picture, number one, there's a
23 schedule that the parties are contemplating will result in the evidence
24 being finished no later than mid-day Monday. That's number one.
25 Agreed to, so it's not like he's -- the Defense is saying we have more

1 witnesses and we're not going to get it done.

2 Number two, we're ahead of the schedule. If you look, for
3 example, the schedule contemplates another hour of the Plaintiffs with
4 Mr. Ziemer tomorrow and a total of an hour, .15 to the Defendants. The
5 direct is done. There might be a very short recross. And Mr. Gordon
6 says he might have 45 minutes left. The Schumacher tape is going to be
7 about 25 minutes total. So we're ahead of the schedule already. That's
8 number one.

9 Number two, I've asked Mr. Blalack, because he has Mr.
10 Bristow in his case. Of course, he's not in state and we got a three-day
11 situation. He's got five hours allocated for Mr. Bristow. He said, well, I
12 don't know if I'm going to call him live, or I'm going to play a videotape.
13 There's no chance he's going to play five hours' worth of video tape in
14 light of the Court's limine rules. So I don't know, are you going to call
15 him live or play videotape?

16 MR. BLALACK: I haven't decided as of right now. I told you
17 I'd tell you at the end of the day.

18 MR. LEYENDECKER: Well, we're at the end of the day, Your
19 Honor. And respectfully, we're trying to figure out the schedule.

20 THE COURT: I'm not going to push him on that.

21 MR. BLALACK: We're having to react to the proof you all are
22 putting --

23 MR. LEYENDECKER: Here's my observation, Your Honor. If
24 they're going to play Mr. Bristow's video tape, I think it's exceptionally
25 unlikely in light of Your Honor's limine rulings, that they've got

1 anywhere near that in total video tape time. Now if they call him live, I
2 don't think it's really any different in light of the rulings, Because the vast
3 majority of what they did was negotiation style stuff with Mr. Bristow.

4 So we had a schedule. We're ahead of schedule. I anticipate
5 the Defendant's evidence is going to be a lot less than what's contained
6 on the schedule. And we're ahead of it. So with that, I'll let Mr.
7 Zavitsanos, have his piece.

8 MR. ZAVITSANOS: A couple of -- couple of points, Your
9 Honor. Let me start with the -- start with the conclusion and work
10 backwards. I am supremely confident down to my bones that we will be
11 done by midday on Monday. Supremely confident. Mr. Bristow testified
12 in an unrelated case that -- where the issue was contract negotiations.
13 He was on the stand for about four hours. I would say 75 percent of his
14 deposition, maybe more, touches directly on issues that the Court said
15 it's not going to be an issue. That's number one.

16 Number two, they've identified two MultiPlan witnesses.
17 Your Honor, I -- and counsel has told us that he doesn't know whether
18 he's going to call them or not. And if he calls them, they're going to --
19 they're going to be here live. Without getting into what's going on
20 outside of this courtroom, my spider sense is telling me I don't -- I think
21 -- I guess it's possible they show up. Given what's going on outside of
22 this courtroom and the fact that that would be fair game on the issue of
23 bias, I'm a little skeptical about them actually showing up.

24 And now if he wants to call them, that's fine. But Your Honor
25 we will be done by Monday at noon. Now finally, this gentleman here,

1 Mr. Ziemer, it's -- I think it's more than a coincidence that on the day that
2 we're talking about this, we got the kind of answers that we did when
3 Mr. McManis was asking him tight questions that elicited a yes or no. It
4 was cross-examination. We're entitled to a yes or no. On more than 50
5 percent of them, they were not responsive. He gave his little canned
6 rehearsed speech. On the ones where somewhere in there, there was a
7 yes, he gave a long explanation. And so I'm concerned -- I mean we will
8 honor this, but we're going to need good faith on the part of their
9 witnesses that this type of behavior is not going to continue.

10 And if we can get that, and I don't know how many witnesses
11 we have left, but -- that are their folks but --

12 THE COURT: Schumacher?

13 MR. ZAVITSANOS: Schumacher is a video.

14 THE COURT: All right.

15 MR. ZAVITSANOS: So that's not going to happen there.
16 Right. So it's their expert, I think Your Honor.

17 MR. BLALACK: You still have -- well, you still haven't called
18 anybody from Health Plan of Nevada.

19 MR. ZAVITSANOS: We're going to tomorrow. Yeah, we're
20 going to tomorrow. And that's going to be -- that's going to be -- Ms.
21 Lundvall is going to be examining her. But, Your Honor, if they will -- if
22 they will respond the way a witness is supposed to respond on cross, no
23 problem we're going to meet this schedule. In fact we'll be ahead of it.

24 THE COURT: Well, but the problem is I can't tell them how
25 to -- I can't tell them.

1 MR. ZAVITSANOS: Well, I understand. All I'm saying, Your
2 Honor is I can't -- right, but at the same time they shouldn't be rewarded
3 for that. Okay. And we have the burden of proof, right. Look, Your
4 Honor --

5 THE COURT: Okay, I get your point. I get it.

6 MR. ZAVITSANOS: Your Honor, we will honor it. We will
7 honor it. Okay.

8 MS. LUNDVALL: One addition point because neither one --
9 neither side has yet discussed this. And so on behalf of the Plaintiffs, the
10 threat that has been made is that there will be a mistrial. So what is the
11 standard for the imposition of a mistrial? That the party that the mistrial
12 is being declared against has engaged in gross misconduct. There
13 hasn't been any allegation of gross misconduct by the Plaintiffs on this
14 side.

15 And in fact, that if you want to balance some of the
16 allegations back and forth, why is it that the Defense did not agree to all
17 of the admissions of the exhibits that went on across the course of the
18 trial. There is reasons back and forth.

19 THE COURT: I'm not really ready for this argument. I really
20 want to focus -- and I'm aware of the standards. I really want to focus on
21 the time issue. Now --

22 MR. BLALACK: May I respond to those arguments, Your
23 Honor?

24 THE COURT: No, I have a question first. You guys agreed
25 on one and a half hours for openings. Are you going to have a similar

1 agreement on your close?

2 MR. BLALACK: I would hope, Your Honor. I would hope we
3 would have maybe about two hours each.

4 MR. ZAVITSANOS: Yeah.

5 THE COURT: Two hours each?

6 MR. BLALACK: That's fine.

7 THE COURT: Because if they go out Tuesday morning, you'll
8 have a verdict in two hours. Probably an hour.

9 MR. BLALACK: What --

10 THE COURT: Because no offense, you guys the same issues
11 get -- you know, you're very repetitive, and I know it's because of the
12 weight of the subject matter, but you guys have been educating them
13 now for three weeks.

14 MR. ZAVITSANOS: Yeah, so, Your Honor, and you're right,
15 you know, there has been, as with all trials, there's always a balance on
16 the repetition. The last witness, which is UMR, it's the same concepts,
17 they just have different names, right. So we have to put the proof on,
18 because otherwise they're going to move for a directed verdict. So but
19 McManis was very quick and with the Health Plan of Nevada and with
20 Sierra, it's going to be -- it's going to be the same concept. I mean
21 they're going to be very short.

22 THE COURT: Good enough. Would you like to respond?

23 MR. BLALACK: Yes, Your Honor, I have a couple reactions.
24 The time allocations that are reflected here, assume ending at 4:45 p.m.
25 on Monday the 22nd on the nose, not any time earlier. So that's the first

1 point. Secondly, Mr. Bristow was the corporate representative for all
2 three Plaintiffs in this case. He gave 28 hours of deposition testimony.
3 So if we designate -- if we were to put him on by depo designation, I
4 haven't made that decision, but if we were, it is not going to be difficult
5 to find five hours of deposition testimony that we want to admit in and
6 put in the evidence. I think we're going to be working hard to streamline
7 to get it down into a time limit where we can present that testimony if we
8 do it by video.

9 The limine rulings are going to knock out large swaths of that
10 testimony. We'll make offers of proof separately on that question. But
11 everything about -- there hasn't been any testimony about these actual
12 Plaintiffs and what they do, and the disputed claims, and the issues
13 related to how their charges are set. None of that is in evidence because
14 they haven't offered any witness on it. That's all going to come from Mr.
15 Bristow.

16 THE COURT: Okay.

17 MR. BLALACK: So who the Plaintiffs are, what they do, how
18 they set their charge -- the setting of their charges, what their charges
19 are, and what they do over the period of time, how were they paid, all of
20 that foundational evidence, which is not implicated by any of your limine
21 rulings is in these depositions across four days, 20 hours. There's more
22 than five hours, and we're not going to play more than five hours of
23 video.

24 Lastly, you know, we -- it is my current expectation that we
25 will call two MultiPlan witnesses, and if we do, then we'll go buy. I'm not

1 making a commitment here because I don't even have the final proof yet.
2 But I've been very candid with my colleagues on the other side to let
3 them know that I [indiscernible] that that would be if MultiPlan is going
4 to present testimony it's going to be live. And given that Mr. Zavitsanos
5 spent, what is it two weeks, talking MultiPlan, MultiPlan, MultiPlan,
6 MultiPlan, MultiPlan with Mr. Haben and then with Ms. Paradise, and you
7 know, there's a lot to respond to there.

8 So I appreciate opposing counsel telling me what I will and
9 won't do in terms of trying the case, but I can assure Your Honor, that I
10 am giving that a great deal of thought and the information that I have on
11 the sheet is a very reasonable estimate.

12 THE COURT: Good enough.

13 MR. BLALACK: With that, I'll renew my request, Your Honor,
14 for a time allocation that ensures that we can get to this end zone with
15 fair allocation between the parties.

16 THE COURT: Given the fact that we're ahead of the schedule
17 at this time, I'm going to deny your request. And if we need additional
18 time, it will be done in the form of adding -- we can start at 8:00 and go
19 to 5:30. You'll get the time, but you guys are going to have to close
20 Monday at the end of the day. I'm sorry, finish the proof. And then the
21 problem is when are we going to settle jury instructions? Is that going
22 to be -- it has to be done this week, if --

23 MR. BLALACK: Your Honor, we can either set time after
24 Court or before Court. And, frankly, I want to engage on the jury
25 instructions as soon as possible, but we haven't even started our proof

1 yet, so it feels a little premature.

2 THE COURT: Right. But the way that we'll address it is by
3 adding more hours rather than -- because you know, then I have the
4 argument on appeal that Plaintiff says we got jammed up and didn't get
5 to put our case on. So if you can both put your cases on, it will work.

6 MR. BLALACK: Well, again, Your Honor, based on the
7 numbers they gave us, if they hit their marks, and we hit our marks, we
8 can do that.

9 THE COURT: We can do it.

10 MR. BLALACK: But they can't just go over --

11 THE COURT: Got it.

12 MR. LEYENDECKER: So two things, Your Honor, real quick.
13 Number one, I think we like the 5:30 idea and number two on Friday --
14 last Friday anticipating that Mr. Blalack may want to call Mr. Bristow by
15 video, I said you've got four days in there, and I'm the one that did the
16 objections. And there's a lot in there to meet and confer about to
17 minimize the work for Your Honor. The sooner you can get me what
18 you have in mind.

19 THE COURT: No, I'm a public servant. Come on. You don't
20 have to --

21 MR. LEYENDECKER: There's a lot of public service going on
22 in this case, I understand that. So if he's seriously contemplating playing
23 the tape, the sooner he can say these are final --

24 THE COURT: Yeah.

25 MR. LEYENDECKER: -- the sooner we can get through that.

1 THE COURT: And he will. As soon as he makes that
2 decision. I'm not going to press him now.

3 MR. ZAVITSANOS: So Your Honor, one other thing, I had
4 understood, or I guess there was a misunderstanding, but I had
5 understood we were going to at least start talking about the jury
6 instructions today. Ms. Robinson's here. I made her take a 6:00 a.m.
7 flight this morning.

8 MR. BLALACK: I'm just saying, we haven't started our proof
9 yet.

10 THE COURT: I know.

11 MR. BLALACK: So there's a lot of issues.

12 THE COURT: Can we get on the record jury instructions that
13 are not objected to? Proposed by the Plaintiff and not objected to.
14 Proposed by the Defendant -- I mean are we that --

15 MS. LUNDVALL: I submitted them last night, Your Honor.

16 THE COURT: I know.

17 MS. LUNDVALL: We agreed on --

18 THE COURT: And they've been sitting up here all day, and I
19 barely got that deposition done at lunch today.

20 MS. LUNDVALL: No, no, I just wanted -- yes, we had -- we
21 had conferred and agreed on jointly submitted -- at least as to form
22 -- agreed as to form jury instructions. And then we submitted our
23 contested -- Plaintiff submitted our contested jury instructions early this
24 morning. So we're ready to go.

25 MR. BLALACK: And I think we've submitted ours. I think the

1 parties know which instructions there's agreement on and which are in
2 disagreement.

3 THE COURT: All right. So tomorrow file no objection jury
4 instructions. And then I'll -- when we settle them all, we'll get them in
5 order. In the correct order.

6 MS. LUNDVALL: I'm sorry just making sure I understand.
7 So we emailed them last night. Should we file them? Is that --

8 THE COURT: Yeah, and it should be -- oh, is this what it is?
9 Jointly submitted jury instruction .

10 MS. LUNDVALL: Yes, yes, we emailed jointly submitted in
11 Word copy --

12 THE COURT: Okay.

13 MS. LUNDVALL: -- last night.

14 THE COURT: Great. And the Law Clerk has them?

15 MS. LUNDVALL: Yes.

16 THE COURT: In Word?

17 MS. LUNDVALL: Yeah, I emailed him the joint instructions
18 last night, and then our set of contested instructions this morning.

19 THE COURT: Yeah. I always feel funny reading things if they
20 haven't been filed. So go ahead and file them as joint. Jointly
21 submitted.

22 MS. LUNDVALL: Yes, I'll file the joint. Do you want us to file
23 the contested as well?

24 THE COURT: Yeah.

25 MS. LUNDVALL: Okay. We'll figure it out. But we have to

1 file those in PDF.

2 THE COURT: That's fine. That's fine. We can deal with
3 whatever format you have. I just don't want to read them until they're
4 filed.

5 MS. LUNDVALL: Fair enough.

6 THE COURT: It's an ex parte contact.

7 UNIDENTIFIED SPEAKER: That makes good sense, Your
8 Honor.

9 THE COURT: Okay, all right. So what else do we have to do
10 today? Mr. McManis one more?

11 MR. MCMANIS: One, I think, uncontested issue that came
12 up. I noticed in the transcript from last Friday when the video deposition
13 was played, the testimony was not transcribed into the transcript. So I
14 think both sides probably want to have that transcribed. I don't know if
15 that's something we go back to the Court for on or if we can agree on
16 clips and file that in whatever --

17 MR. BLALACK: We're amenable to either, Your Honor.

18 THE COURT: I would prefer that it be documented and filed,
19 so that there's a good record. Okay. And a polite reminder, Mr.
20 Gordon, polite reminder. 473, you'll take a look at that tonight and let
21 me know if the summary can be admitted.

22 MR. GORDON: Yes, Your Honor.

23 THE COURT: Thank you. So we had a whole hour and didn't
24 use it.

25 MS. LUNDVALL: Sorry, and just to be clear, Your Honor.

1 When we emailed them, we emailed them to everyone, not -- so we
2 didn't impose on -- imposition of an ex parte communication.

3 THE COURT: Good enough. Thank you. Okay. So
4 tomorrow I'll ask them about working until 5:30. The other thing if I had
5 to bring them back Wednesday to deliberate I could do that. But I jam -
6 packed my morning for things that I couldn't put on the Chief
7 Wednesday and Thursday.

8 MR. BLALACK: And I'm going to be remaining, Your Honor,
9 through Wednesday in the event that deliberations continued, but
10 hopefully we'll have a verdict.

11 THE COURT: And when do you get back Sunday?

12 MR. BLALACK: I fly back in Sunday afternoon. I'll be back -- I
13 think my flight lands around 2, so I'll be in --

14 THE COURT: All right. So --

15 MR. BLALACK: And I can do -- Your Honor, as I said I've got
16 to do this tomorrow, but if we need to do a conference or something
17 over the weekend, our team can do it.

18 MS. LUNDVALL: So speaking for our team, I also have a
19 conflict on Saturday. If we need to do it Saturday, we'll make it happen,
20 but I would be available Sunday.

21 THE COURT: Well, I think I told Mr. Blalack that Saturday
22 was off limits because of his family.

23 MS. LUNDVALL: I think we're both expressing a desire to be
24 available and make it happen.

25 MR. BLALACK: Yeah, we'll make it happen.

1 THE COURT: You know, I'm not worried about the
2 professionalism. I know that you guys will resolve what you can and
3 bring to me what you can't.

4 MS. LUNDVALL: But I can be available Sunday afternoon, as
5 well, if that's -- you know, that would not be a problem for me.

6 UNIDENTIFIED SPEAKER: But, Your Honor, we -- and
7 between now and then we are at the Court's disposal.

8 THE COURT: I got it. All right, guys, everybody.


9 MR. BLALACK: Thank you, Your Honor.

10 MS. LUNDVALL: Thank you, Your Honor.

11 THE COURT: Have a good night. See you in the morning at
12 8:30.

13 [Proceedings adjourned at 5:25 p.m.]
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19

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
22 best of my ability.

23 

24 Maukele Transcribers, LLC

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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

HEARING REQUESTED

**DEFENDANTS' RESPONSE TO
TEAMHEALTH PLAINTIFFS' TRIAL
BRIEF REGARDING DEFENDANTS'
PROMPT PAY ACT JURY
INSTRUCTION RE: FAILURE TO
EXHAUST ADMINISTRATIVE
REMEDIES**



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

Defendants.

8 Defendants UnitedHealthcare Insurance Company (“UHIC”), United HealthCare
 9 Services, Inc. (“UHS”, which does business as UnitedHealthcare or “UHC” and through UHIC),
 10 UMR, Inc. (“UMR”), Sierra Health and Life Insurance Co., Inc. (“SHL”), and Health Plan of
 11 Nevada, Inc. (“HPN”) (collectively “Defendants”), by and through their attorneys of record,
 12 hereby submit the following brief in response to Plaintiffs’ Trial Brief Regarding Defendants’
 13 Prompt Pay Act Jury Instruction re: Failure to Exhaust Administrative Remedies.

14 This brief is made and based upon the following Memorandum of Points and Authorities,
 15 the pleadings and papers on file herein, and any argument presented at the time of hearing on this
 16 matter.



MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

TeamHealth Plaintiffs¹ contend that Defendants’ proposed jury instruction “manufactured” a requirement that TeamHealth Plaintiffs exhaust the administrative remedies that were available to them under the Prompt Pay Act. (Ps’ Br. at 2.) But administrative exhaustion is a longstanding principle under Nevada law. TeamHealth Plaintiffs’ assertion that there is a private right of action under the Prompt Pay Act misses the point—under Nevada law, where a plaintiff has an administrative process available to it, it is generally required to exhaust the available administrative remedies before filing suit in a district court. And under the Nevada Insurance Code, the statute and longstanding precedent establishes that exhaustion is required unless the statute states otherwise. TeamHealth Plaintiffs did not do so here. The jury should be instructed on the law related to Defendants’ defense of administrative exhaustion.

In addition, although styled as a “Trial Brief,” TeamHealth Plaintiffs raise arguments more properly raised in a motion for summary judgment or motion for directed verdict. However, the deadline to file a motion for summary judgment has long passed and the time to file a motion for directed verdict has not yet arrived as Defendants have not yet had an opportunity to present their case-in-chief to the jury. Thus, TeamHealth Plaintiffs’ “Trial Brief” should be disregarded for the independent reason that it is procedurally improper.

II. TEAMHEALTH PLAINTIFFS WERE REQUIRED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES UNDER THE PROMPT PAY ACT

Defendants have asserted a defense of failure to exhaust administrative remedies, and the evidence shows that Plaintiffs did not exhaust the available administrative remedies for their Prompt Pay Act claim. “[A] person generally must exhaust all available administrative remedies before initiating a lawsuit, and failure to do so renders the controversy nonjusticiable.” *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 568, 571–72 (2007). That is especially so here, where the

¹ “TeamHealth Plaintiffs” collectively refers to the three Plaintiffs that initiated this action, each of which is owned by and affiliated with TeamHealth Holdings, Inc. (“TeamHealth”): Fremont Emergency Services (Mandavia), Ltd. (“Fremont”), Team Physicians of Nevada-Mandavia, P.C. (“TPN”), and Crum, Stefanko and Jones, Ltd. d/b/a Ruby Crest Emergency Medicine (“Ruby Crest”).



1 Nevada Supreme Court has ruled that “the insurance commissioner alone has authority to
2 enforce the insurance code,” *Joseph v. Hartford Fire Ins. Co.*, 2014 WL 2741063, at *2 (D. Nev.
3 2014) (emphasis added), and that the Insurance Commissioner has “exclusive jurisdiction in
4 regulating the subject of trade practices in the business of insurance.” *Allstate Ins. Co.*, 123 Nev.
5 at 572, 170 P.3d at 994.

6 TeamHealth Plaintiffs focus on whether the Prompt Pay Act creates a private right of
7 action. (Ps’ Br. at 3–5.) But that misses the point: whether the Act creates a private right of
8 action or not, as a general principle of Nevada law, TeamHealth Plaintiffs were required to avail
9 themselves of the available administrative remedies *before* they filed their Prompt Pay Act claim
10 in this Court. *See Allstate Ins. Co.*, 123 Nev. at 568; *see also Nev. Dep’t of Taxation v. Scotsman*
11 *Mfg. Co., Inc.*, 109 Nev. 252, 254–55, 849 P.2d 317, 319 (1993) (taxpayer must exhaust
12 administrative remedies through Department of Taxation before filing suit); *Malecon Tobacco,*
13 *LLC v. State ex rel. Dep’t of Taxation*, 118 Nev. 837, 840 n.12, 59 P.3d 474, 476 n.12 (2002)
14 (collecting cases on administrative exhaustion doctrine).²

15 The Insurance Code creates an administrative process that TeamHealth Plaintiffs were
16 required to exhaust before coming to court. The Insurance Code allows a person to apply for a
17 hearing of the Insurance Commissioner where that person is aggrieved by a “failure of the
18 Commissioner to” enforce the Insurance Code. NRS 679B.310(2)(b); *see also Joseph v.*
19 *Hartford Fire Ins. Co.*, 2014 WL 2741063, at *2 (“the insurance commissioner alone has
20 authority to enforce the insurance code”). TeamHealth Plaintiffs were required to make such an
21 application within 60 days of the alleged failure by Defendants to provide timely reimbursement.
22 NRS 679B.310(2)(b). On such an application, the Insurance Commission holds a hearing and
23 makes a decision that can be appealed. NRS 679B.310(4)–(5); NRS 679B.370. Within 30 days
24

25 ² TeamHealth Plaintiffs assert that the Nevada Supreme Court’s holding in *Allstate* “is wholly
26 inapplicable” to their claims because it involved a different section of the Insurance Code. (Ps’
27 Br. at 5.) As the above-cited cases make clear, administrative exhaustion applies broadly to
28 cases in which an administrative process of any type was available to the plaintiff. It is not a
special rule that applies only to cases brought under NRS 690B.012, as TeamHealth Plaintiffs
suggest.



1 of an adverse final ruling rendered by the Insurance Commissioner, the TeamHealth Plaintiffs
2 had the option of seeking judicial review of the Commissioner's decision. NRS 233B.130; *see*
3 *also* NRS 233B.133 (outlining briefing process for judicial review). Only after these steps have
4 been taken would any private right of action be justiciable in the Nevada courts.

5 Because Nevada law requires TeamHealth Plaintiffs to exhaust all available
6 administrative remedies prior to bringing action under the Prompt Pay Act, the jury should be so
7 instructed.

8 **III. TEAMHEALTH PLAINTIFFS' BRIEF IS A PROCEDURALLY IMPROPER** 9 **MOTION FOR SUMMARY JUDGMENT**

10 TeamHealth Plaintiffs argue that Defendants' defense of administrative exhaustion is
11 legally invalid, at least with respect to their cause of action under the Prompt Pay Act. (*See, e.g.,*
12 Trial Brief at 3–5.) In addition to lacking merit, this argument is procedurally improper at this
13 stage as it is an argument that (1) should have been raised in a motion for summary judgment and
14 (2) now cannot be raised until the close of Defendants' case-in-chief when TeamHealth Plaintiffs
15 will have the opportunity to move for a directed verdict. The deadline for TeamHealth Plaintiffs
16 to file a motion for summary judgment was September 21, 2021, and they failed to file such a
17 motion.³ Moreover, a motion for directed verdict may not be brought "until a party has been
18 fully heard on an issue during a jury trial." NRCP 50(a)(1). Here, Defendants have not even had
19 a chance to begin presenting evidence supporting their administrative exhaustion defense as
20 TeamHealth Plaintiffs are still in the midst of their case-in-chief. Moreover, to date, TeamHealth
21 Plaintiffs have not presented any evidence to the jury rebutting Defendants' contention that
22 TeamHealth Plaintiffs failed to exhaust available administrative remedies under the Insurance
23 Code. Thus, the Trial Brief is procedurally improper at this stage and should be disregarded.
24 After Defendants have presented their evidence on administrative exhaustion and rested from
25 their case-in-chief, TeamHealth Plaintiffs will be free to bring a motion for directed verdict and
26 the Court can further assess the administrative exhaustion issue at that time if it so chooses.

27 ³ September 10, 2021 Order Granting in Part and Denying in Part Defendants' Motion
28 Requesting that the Court Set Certain Pre-Trial Deadlines at 3:21-22 (setting forth the various
pre-trial deadlines).



IV. CONCLUSION

For the foregoing reasons, this Court should approve Defendants' proposed jury instruction entitled "Nevada Prompt Pay Act: Plaintiffs' Failure to Exhaust Administrative Remedies."

Dated this 16th day of November, 2021.

/s/ Colby Balkenbush

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November, 2021, a true and correct copy of the foregoing **DEFENDANTS' RESPONSE TO TEAMHEALTH PLAINTIFFS' TRIAL BRIEF REGARDING DEFENDANTS' PROMPT PAY ACT JURY INSTRUCTION RE: FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES** 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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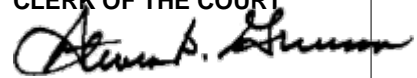
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20 /s/ Courtney Thompson

21 An employee of WEINBERG, WHEELER, HUDGINS
22 GUNN & DIAL, LLC

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

GENERAL DEFENSE VERDICT

We, the jury in the above-entitled action, find for Defendants UnitedHealthcare Insurance
Company, United HealthCare Services, Inc., UMR, Inc., Sierra Health and Life Insurance Co.,
Inc., and Health Plan of Nevada, Inc.

Dated this ____ day of _____, 2021.

FOREPERSON

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November 2021, a true and correct copy of the foregoing **GENERAL DEFENSE VERDICT** 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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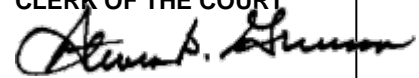
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CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE INSURANCE
COMPANY, a Connecticut corporation;
UNITED HEALTH CARE SERVICES
INC., dba UNITEDHEALTHCARE, a
Minnesota corporation; UMR, INC., dba
UNITED MEDICAL RESOURCES, a
Delaware corporation; SIERRA HEALTH
AND LIFE INSURANCE COMPANY,
INC., a Nevada corporation; HEALTH
PLAN OF NEVADA, INC., a Nevada
corporation; DOES 1-10; ROE ENTITIES
11-20,

Defendants.

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

**PLAINTIFFS' PROPOSED
VERDICT FORM**

Plaintiffs submit the attached proposed verdict form.

DATED this 16th day of November, 2021.

AHMAD ZAVITSANOS ANAIPAKOS ALAVI
& MENSING

By: /s/ Jane Langdell Robinson

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

UNITED HEALTHCARE INSURANCE
COMPANY, a Connecticut corporation;
UNITED HEALTH CARE SERVICES INC.,
dba UNITEDHEALTHCARE, a Minnesota
corporation; UMR, INC., dba UNITED
MEDICAL RESOURCES, a Delaware
corporation; SIERRA HEALTH AND LIFE
INSURANCE COMPANY, INC., a Nevada
corporation; HEALTH PLAN OF NEVADA,
INC., a Nevada corporation; DOES 1-10; ROE
ENTITIES 11-20,

Defendants.

Case No.: A-19-792978-B

Dept. No.: XXVII

Verdict for Plaintiff

We, the jury in the above-entitled action, find for Plaintiffs, Fremont Emergency Services, Team Physicians, and Ruby Crest Emergency Medicine, and against Defendants, United Healthcare Insurance Company, United Health Care Services, Inc., UMR, Inc., Sierra Health and Life Insurance Company, Inc., and Health Plan of Nevada, and assess the amount of

the Plaintiffs' damages as follows:

1. For Fremont Emergency Services:

United Healthcare Insurance Company Answer: \$ _____

United Health Care Services, Inc. Answer: \$ _____

UMR, Inc. Answer: \$ _____

Sierra Health and Life Insurance
Company, Inc. Answer: \$ _____

Health Plan of Nevada, Inc. Answer: \$ _____

2. For Team Physicians:

United Healthcare Insurance Company Answer: \$ _____

United Health Care Services, Inc. Answer: \$ _____

UMR, Inc. Answer: \$ _____

Sierra Health and Life Insurance
Company, Inc. Answer: \$ _____

Health Plan of Nevada, Inc. Answer: \$ _____

3. For Ruby Crest Emergency Medicine:

United Healthcare Insurance Company Answer: \$ _____

United Health Care Services, Inc. Answer: \$ _____

UMR, Inc. Answer: \$ _____

Sierra Health and Life Insurance
Company, Inc. Answer: \$ _____

Health Plan of Nevada, Inc. Answer: \$ _____

4. Did any of the Defendants (shown in the left column) fail to fully pay to any of the Plaintiffs (shown in the top row), within 30 days of submission of the claim, claims that were approved and fully payable?

Answer "Yes" or "No" in each box.

	Fremont Emergency Services	Team Physicians	Ruby Crest Emergency Medicine
United Healthcare Insurance Company			
United Health Care Services, Inc.			
UMR, Inc.			
Sierra Health and Life Insurance Company, Inc.			
Health Plan of Nevada, Inc.			

5. Do you find by clear and convincing evidence that any of the Defendants (shown in the left column) are guilty of fraud, oppression, or malice in any conduct that you found to constitute unjust enrichment or unfair insurance practices and that caused damage to any Plaintiff (shown in the top row)?

Answer "Yes" or "No" in each box.

	Fremont Emergency Services	Team Physicians	Ruby Crest Emergency Medicine
United Healthcare Insurance Company			
United Health Care Services, Inc.			
UMR, Inc.			
Sierra Health and Life Insurance Company, Inc.			
Health Plan of Nevada, Inc.			

6. Do you find by clear and convincing evidence that any of the Defendants (shown in the left column) are guilty of bad faith in any conduct that you found to constitute unfair insurance practices and that caused damage to any Plaintiff (shown in the top row)?

Answer "Yes" or "No" in each box.

	Fremont Emergency Services	Team Physicians	Ruby Crest Emergency Medicine
United Healthcare Insurance Company			
United Health Care Services, Inc.			
UMR, Inc.			
Sierra Health and Life Insurance Company, Inc.			
Health Plan of Nevada, Inc.			

Dated: November ____, 2021

Jury Foreperson

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD., a Nevada professional
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NEVADA-MANDAVIA, P.C., a Nevada
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EMERGENCY MEDICINE, a Nevada
professional corporation,

Plaintiffs,

vs.

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dba UNITEDHEALTHCARE, a Minnesota
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MEDICAL RESOURCES, a Delaware
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corporation; HEALTH PLAN OF NEVADA,
INC., a Nevada corporation; DOES 1-10; ROE
ENTITIES 11-20,

Defendants.

Case No.: A-19-792978-B

Dept. No.: XXVII

Special Verdict Form

We, the jury in the above-entitled action, answer the questions submitted to us as
follows:

1. The amount of money that should be awarded to Fremont Emergency Services against
the following defendants for punitive damages in order to punish those defendants is:

United Healthcare Insurance Company Answer: \$ _____

United Health Care Services, Inc. Answer: \$ _____

UMR, Inc. Answer: \$ _____

1 Sierra Health and Life Insurance Answer: \$ _____
 2 Company, Inc.

3 Health Plan of Nevada, Inc. Answer: \$ _____

- 4 2. The amount of money that should be awarded to Team Physicians against the following
 5 defendants for punitive damages in order to punish those defendants is:

6 United Healthcare Insurance Company Answer: \$ _____

7 United Health Care Services, Inc. Answer: \$ _____

8 UMR, Inc. Answer: \$ _____

9 Sierra Health and Life Insurance Answer: \$ _____
 10 Company, Inc.

11 Health Plan of Nevada, Inc. Answer: \$ _____

- 12 3. The amount of money that should be awarded to Ruby Crest Emergency Medicine
 13 against the following defendants for punitive damages in order to punish those
 14 defendants is:

15 United Healthcare Insurance Company Answer: \$ _____

16 United Health Care Services, Inc. Answer: \$ _____

17 UMR, Inc. Answer: \$ _____

18 Sierra Health and Life Insurance Answer: \$ _____
 19 Company, Inc.

20 Health Plan of Nevada, Inc. Answer: \$ _____

21 Dated: November ____, 2021

22 _____
 23 Jury Foreperson
 24
 25
 26
 27
 28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Ahmad, Zavitsanos, Anaipakos, Alavi and Mensing, P.C. and on this 16th day of November, 2021, I caused a true and correct copy of the foregoing **PLAINTIFFS' PROPOSED VERDICT FORM** through the filing system in the above-captioned case, upon the following:

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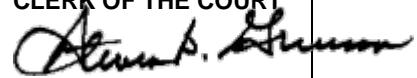
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/s/ Jane Langdell Robinson

An employee of Ahmad, Zavitsanos,
Anaipakos, Alavi & Mensing, P.C.

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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

9 Plaintiffs,

10 vs.

11 UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

12 Defendants.
13

CASE#: A-19-792978-B

DEPT. XXVII

14 BEFORE THE HONORABLE NANCY ALLF
15 DISTRICT COURT JUDGE
TUESDAY, NOVEMBER 16, 2021

16 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 13**

17 APPEARANCES:

18 For the Plaintiffs:

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

21 For the Defendants:

22 D. LEE ROBERTS, JR., ESQ.
K. LEE BLALACK, ESQ.
JEFFREY E. GORDON, ESQ.
23 DANIEL F. POLSENBERG, ESQ.
24 LAUREN KENNEY, ESQ.

25 RECORDED BY: BRYNN WHITE, MARIA GARIBAY COURT RECORDERS

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1 Las Vegas, Nevada, November 16, 2021

2
3 [Case called at 8:36 a.m.]

4 THE MARSHAL: -- is now in session. The Honorable Judge
5 Allf Presiding.

6 THE COURT: Thanks everyone. Please be seated. My
7 apologies for being late this morning. I left the home -- the house at
8 7:45. There were two accidents on the way here.

9 So let's call the case of Fremont v. United. Note the presence
10 of counsel and their representatives and bring in the jury.

11 MR. MCMANIS: Your Honor, Jason McManis, on behalf of
12 the healthcare providers.

13 THE COURT: Yes.

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

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

18 MS. LUNDVALL: Sorry to be asleep at the switch this
19 morning, Your Honor. I'm Pat Lundvall from McDonald Carano here on
20 behalf of the healthcare providers.

21 THE COURT: Thank you.

22 MR. GORDON: And Jeff Gordon on behalf of the Defendants.
23 Good morning, Your Honor.

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

1 MS. KENNEY: Lauren Kenney on behalf of the Defendants.

2 MR. BLALACK: Morning, Your Honor. Lee Blalack on behalf
3 of the Defendants.

4 MR. POLSENBERG: And Dan Polsenberg for the Defendants.
5 Your Honor, I had no traffic. You should move to my neighborhood.

6 THE COURT: You guys don't know that we were next door
7 neighbors for 23 years. We just moved to the other side of town. That's
8 funny. It's a really small town.

9 [Pause]

10 [Jury in at 8:38 a.m.]

11 THE COURT: Thank you. Please be seated. Good morning
12 everyone. Welcome to Tuesday. And we promised you that we would
13 finish this trial by next Tuesday. To do that, we're probably going to
14 need to have longer days. If you can't work until 5:30 p.m. today and for
15 the rest of the trial, let the Marshal know at the first break please. So it
16 would be 8:30 to 5:30 with a half hour lunch. We realize that could be an
17 imposition. If you have an issue, I'm not going to put you on the spot
18 here. Talk to the Marshal on the first break.

19 And then Mr. Gordon, did you have a chance to look at
20 Exhibit 473?

21 MR. GORDON: Yes. I did, Your Honor.

22 THE COURT: And do you have an objection?

23 MR. GORDON: And 473-A and B, no objection to 473A and B.

24 THE COURT: Good enough. 473-A and B will be admitted.

25 [Plaintiff's Exhibit 473-A and B admitted into evidence]

1 MR. MCMANIS: Thank you, Your Honor.

2 THE COURT: And Mr. McManis. Mr. Ziemer, you're under
3 the same oath you took yesterday. There's no reason to re-swear you.

4 THE WITNESS: Yes, ma'am.

5 SCOTT ZIEMER, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

6 THE COURT: And go ahead please Mr. McManis.

7 MR. MCMANIS: I think Mr. Gordon is still up. With your
8 permission, Your Honor, I'd like to introduce our two corporate
9 representatives who are with us today. Dr. Susan Rosenthal and Dr. Lisa
10 Mannina.

11 THE COURT: Thank you and welcome. Okay. Mr. Gordon,
12 go ahead please.

13 MR. GORDON: Oh, just one other issue. We have an exhibit
14 that we will initially admit, Defendants' 4006.

15 THE COURT: Any objection?

16 MR. MCMANIS: Subject to an agreement to conditionally
17 admit that for now and later reduce it down to the claims that are in
18 dispute, there's no objection, Your Honor.

19 THE COURT: Good enough.

20 MR. GORDON: And that's correct, Your Honor.

21 THE COURT: 4006 will be conditionally admitted.

22 [Defendants' Exhibit 4006 admitted into evidence]

23 THE COURT: Go ahead, please.

24 CROSS-EXAMINATION CONTINUED

25 BY MR. GORDON:

1 Q Morning, Mr. Ziemer. How are you?

2 A I'm well. Thank you.

3 Q Good. I just want to go a bit more on issues we were starting
4 yesterday, and we'll start with -- talk about UMR's out-of-network
5 program. From your testimony yesterday with Mr. McManis, you
6 described out-of-network programs sort of like a waterfall. Please
7 walk -- you know, briefly walk to the jury through the mechanics of how
8 UMR's waterfall out-of-network program works?

9 A Sure. So we had between 2016 and by 2020, we probably
10 had four different programs. And for our cost reduction and savings
11 program, it did, it worked like a waterfall. We had -- if an out-of-network
12 claim came in, we would look to the first network, which was First
13 Health. If the provider was not contracted with First Health, then we
14 would send that claim to MultiPlan. If the provider was not part of
15 MultiPlan, then it would go to Change Healthcare.

16 And so, an emergency claim could have -- we would have tried to
17 have gotten -- see if there was a network reduction through three
18 different network organizations. And then if not, we would have tried to
19 fee negotiate if it was more than \$1,000.

20 In 2018, we actually introduced a slight variation of that. And
21 rather than having Change Healthcare pass those emergency claims
22 where we weren't able to get a network reduction, we had First Health
23 apply a reasonable Medicare amount to those claims. We asked the
24 provider to write that off. And if they didn't agree with the amount that
25 we allowed on the claim, then they called Change Healthcare and were

1 able to negotiate that claim. So that was kind of the variation that we
2 introduced in 2018.

3 During this time, we also had our CRS benchmark program. So
4 that program drove more savings to our clients, primarily because it only
5 used one network. And so, these claims would go to MultiPlan.
6 MultiPlan would determine if it was part of their network. If it was not,
7 then they would attempt, potentially attempt to negotiate that claim.
8 And if not, it would fall to their Data iSight solution to apply a reasonable
9 amount.

10 For emergency claims, if -- or really any claims impacted by Data
11 iSight. Again, we asked the provider to write it off. But if they don't
12 agree with the amount, then they can call Data iSight and Data iSight will
13 negotiate on those amounts.

14 And then last but not least, we had our non-par cost containment
15 program. And so, really for emergency claims, which this trial is about,
16 those emergency claims, if we identified a claim as an emergency, they
17 really ran through that CRS benchmark product.

18 We did have a legacy program. So when we first introduced this
19 particular program, we were only using secondary networks. But then
20 sometime in 2018/2019 timeframe, we introduced a new NPC squared
21 product that used that benchmark type pricing.

22 Q And some of those programs, just so we're clear, what is
23 your understanding of which one of those programs was the most
24 popular program offered by UMR?

25 A So today the most popular, the one we had the most

1 membership in, is our CRS benchmark program. I think clients think that
2 it is a good --

3 MR. MCMANIS: Objection, Your Honor. This is hearsay.

4 THE COURT: Objection is sustained. You can rephrase.

5 BY MR. GORDON:

6 Q Okay. The CMR -- CRS benchmark program from your
7 perspective, is the one program that's offered to your clients, correct?

8 A Today we have the most membership in our CRS benchmark
9 program. I think clients see that as a --

10 MR. MCMANIS: Objection, Your Honor. Hearsay.

11 THE COURT: Objection sustained.

12 BY MR. GORDON:

13 Q I don't want you to tell the jury what your clients think.

14 A Okay.

15 Q I'm just asking you which one was picked as the most
16 membership and the most popular, that's it.

17 A Okay. CRS benchmark has the most membership.

18 Q All right, thank you. Now I want to ask you a few questions
19 as a follow up from some of the questions that Mr. McManis was asking
20 you yesterday. Do you recall that he asked you about there were six
21 claims that were allegedly administered by UMR in 2019? Had the
22 board? Do you remember that?

23 A Yes, sir.

24 Q Okay. And those six claims were ER services that were
25 provided to members, two health plans in Clark County. I believe it was

1 Las Vegas Sands and Medical Transportation Management, Inc. Do you
2 recall that?

3 A Yes. I recall that.

4 Q And then Mr. McManis initially started out with a large
5 spreadsheet that he represented -- or from Plaintiff's perspective, the
6 disputed claims in this case. Do you remember that?

7 A Yes, I recall.

8 Q Okay. And he also -- I want to talk to you today about that.

9 MR. GORDON: Shane, can you pull Plaintiff's Exhibit 473
10 please? If you just scroll through some of the pages real fast.

11 BY MR. GORDON:

12 Q Now, Mr. Ziemer, is this the exhibit you remember Mr.
13 McManis showing you about the disputed claims from Plaintiff's
14 perspective?

15 A Yes. I believe that this is the exhibit.

16 Q Okay. And I think yesterday you commented on how hard it
17 is to read?

18 A Yes. That's why I say yes, I believe that this is the exhibit.

19 Q That's why you've got to start wearing a Bears mask and not
20 a Green Bay Packers mask. We'll address that later.

21 So I'll represent to you that Exhibit 473, which was created and
22 introduced by Plaintiffs in this case, you know, not the Defendants, when
23 you look at that document, does that, from your perspective, is a full
24 record of UMR? Does that look like a document that's created and
25 produced by UMR?

1 A I don't believe that it is, no.

2 Q Okay. So this Exhibit 473, basically your position as a
3 courtroom rep would not be a business record of UMR, correct?

4 A That is correct.

5 Q And I'll further represent to you that this document contains
6 Plaintiff's content that it relates to the claims in dispute. So prior to
7 yesterday, before Mr. McManis showed you what's up on the screen as
8 Plaintiff's Exhibit 473, had you ever seen it or reviewed this exhibit
9 before?

10 A No, sir.

11 Q Okay. And as you sit here today, recognizing that you have
12 not seen it and you haven't reviewed it, do you have any idea if this
13 exhibit accurately reflects the actual UMR claims that are related to each
14 of the claims that Mr. McManis showed you yesterday?

15 A I don't know whether it accurately represents how UMR
16 processed the claims.

17 Q And do you have any idea of the allowed amount for the only
18 claims on that sheet represent the allowed amounts for those claims in
19 the UMR claim data system?

20 A I do not know whether they represent the allowed amounts
21 in the UMR system.

22 Q And the same, of course, with respect to employer
23 information?

24 A I do not know whether or not it represents the same
25 information that's in UMR's system.

1 Q Same question for the group number information.

2 A I don't know whether or not it represents the information
3 that's in UMR's system.

4 Q Okay Shane, take that down. So after showing you Exhibit
5 473, Mr. McManis then showed you what he called two summary
6 exhibits, Exhibit 473-A and 473-B. Do you remember that?

7 A I believe so, yes.

8 Q Shane, can you please pull up 473-A, please? Can you take a
9 look at that please, Mr. Ziemer?

10 A Yes, I remember this.

11 Q And do you -- so you remember that as a document he
12 showed you yesterday. And do you recall that Mr. McManis represented
13 to you yesterday that this document summarized four claims that UMR
14 administered for ER services and provided to members of the Las Vegas
15 Sands health plan? Do you remember that?

16 A Yes, that's what I remember.

17 Q And then Mr. McManis further represented with this
18 document that the claims that are the data -- claims that have been
19 summarized in this exhibit, is for ER services CPT code with a 99285
20 provided in Clark County. Do you remember that?

21 A Yes, I remember that.

22 Q And you can see from the sheet that that's data for 99285
23 of -- right in between dates of service. Looks like May and December of
24 2019. Do you see that?

25 A Yes, sir. I see that.

1 Q And if you look at Exhibit 473A. For the range of the allowed
2 amounts, he pointed out that two of the claims were \$230.30; do you
3 remember that?

4 A Yes, sir. I remember that.

5 Q Okay. Then there's another claim they identified for
6 \$253 -- \$253.33. Do you see that?

7 A Yes, sir. I see that.

8 Q And basic math that's a bit higher than 230.30. Do you agree
9 with that?

10 A I would agree with that. Yes.

11 Q I'm going to show you a fourth claim, which is for \$315.25.
12 Do you remember going through that yesterday?

13 A Yes, sir. I remember going through that.

14 Q Okay. So before yesterday, you never seen this exhibit,
15 which is Plaintiff's 473-A?

16 A No. I have never seen this.

17 Q And as you sit here today, do you have any reason to believe
18 that the information contained in 473-A is accurate?

19 A I don't know where the information came from. I can't
20 comment on its accuracy.

21 Q Okay. Shane, take that down please. And after going
22 through this Exhibit 473-A, Mr. McManis then showed you another
23 exhibit, Plaintiff's 473-B. Shane, can you pull it up please? And do you
24 recall seeing that exhibit yesterday?

25 A Yes. I recall seeing this exhibit.

1 Q And if you recall yesterday in this exhibit, Mr. McManis
2 pointed out that there are two claims, you know, that UMR allegedly
3 administered for ER services. The same member, Medical
4 Transportation Management, Inc., I believe, Health Plan. Do you
5 remember that?

6 A Yes. I recall that.

7 Q And he further represented that the data that's summarized
8 there is for two ER services with the same CPT code 99285, were
9 provided in Clark County in the same provider group with the same
10 patient in August -- the dates of service of August and November 2019.
11 Do you recall that?

12 A Yes. I recall that.

13 Q And then he said that they showed and pointed out that the
14 allowed amounts are different. One is for \$315.25, and the others were
15 \$49.82; do you remember going through that?

16 A Yes. I recall going through that.

17 Q And again, you know, prior to yesterday, had you ever seen
18 the data that was on 473-B?

19 A No. I have not seen this exhibit before.

20 Q And do you have any idea if the claim data regarding the two
21 claims that are summarized here on 473-B is accurate?

22 A I don't know whether it's accurate or not.

23 Q Okay. As you told the jury yesterday, you're here testifying
24 as the courtroom representative of UMR. Is that correct?

25 A That is correct.

1 Q And as a courtroom rep of UMR, do you have any idea
2 whether UMR produced actual claim data from its claim system for the
3 disputed claims in this case?

4 A It's my understanding that we submitted claims information
5 to support this case, yes.

6 MR. GORDON: Okay. Shane, can you pull up 4006, please?
7 Can you scroll up a little bit there, Shane? Tighten up and clarify a little
8 bit. Thank you. And you've got to move it around a little bit for Mr.
9 Ziemer.

10 BY MR. GORDON:

11 Q And if you take a minute or a quick look through that data,
12 Mr. Ziemer. Now did you do a quick review, basically a quick review, do
13 you recognize this exhibit?

14 A Yes. I recognize this.

15 Q And based on your review, the claim data filed or portrayed
16 here, do you have any -- does it look like the claims data that UMR
17 provided to us in this case?

18 A Yes. This looks like the claim filed, the claim detail that we
19 provided for this case.

20 Q And as a courtroom representative of UMR, please tell the
21 jury where this data would come from within UMR?

22 A This data would be pulled directly from our system, so our
23 claim processing system, and it looks like it represents all of the detail on
24 how we processed the claims.

25 Q Now, yesterday, when Mr. McManis had shown you Exhibit

1 473, 473-A, 473-B, for the [indiscernible] litigation. At any point did he
2 show you the actual claimed data for those six claims that were reflected
3 on 473-A and B?

4 A I don't believe so, all we saw is the -- was the summarization
5 that he provided.

6 Q As you sit here today, do you know if, you know, the data in
7 473-A and B match the raw data as contained in Exhibit 4006?

8 A I don't know whether or not it matches.

9 Q And have you ever compared the data from Defendant's
10 Exhibits 4006 to the data that was in Plaintiffs' Exhibit 473-A and B?

11 A No. I have not -- I have not compared it. I'm not a claim data
12 guy. I think we have somebody that is going to be testifying who is an
13 expert on claims data, later in the trial.

14 Q Okay. And when Mr. McManis questioned you, yesterday,
15 did the information that he showed you seem to be what you would
16 expect, UMR is asking about the same asking about the same plan, with
17 the same member, during a reasonable shorter timeframe?

18 A I'm sorry, can you repeat the question?

19 Q Sure, when Mr. McManis questioned you yesterday about
20 Plaintiff's Exhibit 473-B, the information he showed you seemed to be
21 what you expect, given that he was asking you about claims reportedly
22 from the same plan, and the same member, so it was roughly the same
23 period of time?

24 A It seemed odd. It's not out of the realm of possibility that --
25 that we can come up with different amounts. We're following, you

1 know, the same process, regardless, to determine the reasonable
2 amount, so Data Service can have an impact on how we're determining
3 the reasonable amount this information gets updated. But it was odd
4 that we would have claims in that closely together that were -- were
5 priced differently.

6 Q Okay. And were they actual claims that UMR produced,
7 which was in Exhibit 4006? Would that be helpful for you to understand
8 the answer to that question?

9 A I think going back to, you know, to actually how the claim
10 was processed on a UMR systems, so that particular report would be
11 important to, you know, confirm how the claim was processed, what was
12 allowed?

13 Q And if the jury wants to know whether the information
14 Mr. McManis showed you is accurate; what should they look at?

15 A They should go back to the -- how UMR processed the claim
16 and the information that's on the -- in the report that we provided.

17 MR. GORDON: Shane, can you pull up 473A, please.

18 BY MR. GORDON:

19 Q I just want to go back to this claim, and have you explain
20 some of it to the jury. Mr. McManis, you know, went through these
21 claims that are listed here, and he wanted to sort of show which one is
22 reasonable over which one is not, or more reasonable than not. So
23 basically your experience as a corporate rep of UMR, which of the latter
24 amounts that are on 473-A, in your experience are reasonable?

25 A Yeah. Quite honestly all of them are reasonable. Again, we

1 go through the same process to determine that reasonable amount, and
2 so if the data service necessitated a change in the reasonable amount,
3 then -- then we would continue to follow that same process.

4 You know, additionally there could be other things that went
5 on with these claims, again, I don't know, but some of them could have
6 been negotiated, so I think all of them are -- all of the amounts are
7 reasonable.

8 Q Okay. And as the corporate representative of UMR, what is
9 your understanding of "reasonable value" an environment with ER
10 services?

11 A Yeah. Our position, and my position is that, you know,
12 Medicare, plus some type of a margin for the provider is really what's
13 reasonable. Clients may want to pay more than that, just to keep their
14 members out of the middle, but we believe that Medicare plus a slight
15 margin is -- is what's reasonable to pay our network providers.

16 MR. GORDON: Okay. Your Honor, I'd move Exhibit 4006 into
17 evidence, and I pass the witness.

18 THE COURT: Any objection? Any objection to 4006?

19 MR. MCMANIS: Pursuant to the discussion we had earlier
20 about conditional admission, no objection, Your Honor.

21 THE COURT: All right. So 4006 will be admitted, and
22 redirect, please.

23 [Defendants' Exhibit 4006 admitted into evidence]

24 MR. MCMANIS: Thank you.

25 REDIRECT EXAMINATION

1 BY MR. MCMANIS:

2 Q Good morning, Mr. Ziemer.

3 A Good morning, sir.

4 Q I want to kick off with Plaintiff's Exhibit 473-A; you spent a
5 little bit of time talking about that this morning, right?

6 A Yes, sir.

7 Q Now you understand that Plaintiff's Exhibit 473-A comes
8 from the admitted exhibit, Plaintiff's 473, a large PDF we looked at a
9 week or so, right?

10 A I don't -- I don't know all the legalese, but, yes, I understand
11 that that's the document that you're presenting.

12 Q Okay. And do you know one way or the other, whether your
13 counsel objected to the admissibility of the exhibit?

14 A I do -- I do not know one way or the other.

15 Q Is it your testimony, sir -- well, let me ask you this. I think
16 what you said is that you cannot comment on the accuracy of Plaintiff's
17 Exhibit 473-A; is that right?

18 A I -- I can't comment whether it's accurate or inaccurate.

19 Q You had an opportunity last night to go back to your hotel,
20 review your claim's file, claim's file 4006, that you showed the jury this
21 morning, you had an opportunity to review that, right?

22 A I did not review any claims file.

23 Q Well, we'll get to that, but you certainly had the opportunity
24 to do so, didn't you, sir?

25 A I had the opportunity to review the claim status, yes.

1 Q All right. But you didn't?

2 A Correct.

3 Q Okay. Did you go back into the claim's file -- UMR's claims'
4 file, to see whether or not there were any different plan numbers for any
5 of these claims, is that something that you looked at last night, sir?

6 A I did not.

7 Q Do you recall talking about how these different amounts,
8 might be because -- well, there could be different plans, you're not really
9 sure; do you recall that?

10 A I believe that that was what we talked about yesterday, yes.

11 Q Okay. But you didn't bother to look at that last night, sir?

12 A No, sir.

13 Q And you haven't gone back to to compare, line by line,
14 whether these claims here, in 473A, are the same as what exists in your
15 claims' file; have you, sir?

16 A No, sir. I have not.

17 Q So you're not telling the jury, just to be clear, it is not your
18 testimony to the jury that Plaintiffs' Exhibit 473 is wrong; is it, sir?

19 A My testimony is, is I do not know whether it's accurate, or I --
20 and I don't know whether it's inaccurate.

21 Q Because you didn't check?

22 A Correct. I did not. I did not.

23 Q You haven't provided any reason for the jury to accept
24 UMR's claims' file, as opposed to the Plaintiff's claim file, have you, sir?

25 MR. GORDON: Objection. Your Honor.

1 THE COURT: Grounds?

2 MR. GORDON: Foundation. Mischaracterized testimony.

3 THE COURT: Overruled.

4 THE WITNESS: Can you repeat the question, please?

5 BY MR. MCMANIS:

6 Q Sure. And your testimony, you just walked through with
7 your lawyer right here --

8 A Uh-huh.

9 Q -- you walked through Plaintiff's Exhibit -- or Defendant's
10 Exhibit 4006, right?

11 A Yes, sir.

12 Q You said this is UMR's claim file?

13 A Correct.

14 Q This is UMR's data, correct?

15 A Correct.

16 Q All right. As part of that testimony you didn't provide any
17 reason to the jury to trust UMR's data, instead of the Plaintiff's data; did
18 you, sir?

19 MR. GORDON: Objection, Your Honor. Vague, in explaining
20 his position of how he viewed the data.

21 THE COURT: Overruled.

22 THE WITNESS: I explained that we pulled the information
23 from our claim system, which would be a representation of how the
24 claims were made.

25 BY MR. MCMANIS:

1 Q And did you pull the data, sir.

2 A No, sir. I did not.

3 Q Who pulled the data?

4 A I don't know the person who pulled the data.

5 Q Do you know when they pulled the data?

6 A I do not know exactly when they pulled the data, sir.

7 Q Okay. So you don't know anything about that file, other than
8 it's UMR's file?

9 A I know that it is UMR's file.

10 Q Just take UMR's word for it, not the Plaintiff's right?

11 MR. GORDON: Objection, Your Honor. Argumentative.

12 THE COURT: Objection sustained.

13 BY MR. MCMANIS:

14 Q Sir, if we go through the claims' file, line by line, for 99285
15 codes, the jury does that, and they find 54 different allowed amounts for
16 the claims period, is it your testimony that every single one of those
17 different amounts is reasonable?

18 A I would need to go back through and understand how all of
19 those different things were arrived at. But, yes, I mean, we go through a
20 process to determine what we think is reasonable, based on the plan that
21 the -- that the customer is asking us to administer.

22 Q Every single different amount, no matter what it is, sir, is
23 reasonable?

24 MR. GORDON: Objection. Argumentative.

25 THE COURT: Overruled. You can answer.

1 THE WITNESS: I haven't looked at all 54 different examples,
2 so it's difficult to give a blanket statement.

3 MR. MCMANIS: I'll pass the witness, Your Honor.

4 THE COURT: Recross.

5 RECROSS-EXAMINATION

6 BY MR. GORDON:

7 Q Mr. Ziemer, I just have one quick question, I think you noted
8 on some other information, and I just want to be clear. Is it your
9 understanding the Defendants intend to call a short witness who will be
10 able to walk through their -- the data line by line and then any other
11 comparison of that data, Mr. McManis alluded to; is that your
12 understanding?

13 A Yes. My understanding is that we will be calling someone
14 who's an expert in the claims' data.

15 MR. GORDON: Thank you, Mr. Ziemer.

16 THE COURT: Any redirect based upon that?

17 MR. MCMANIS: One question, Your Honor.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. MCMANIS:

20 Q Mr. Ziemer, other than an expert, did you hear from anybody
21 else who actually works for UMR?

22 A Not to my knowledge.

23 MR. MCMANIS: That's it, Your Honor. I pass the witness.

24 THE COURT: All right. Does the jury have any questions for
25 Mr. Ziemer, if so, this could be your time to write them down. I don't see

1 anybody giving me a high sign. All right. May we excuse Mr. Ziemer?

2 MR. MCMANIS: Yes, Your Honor.

3 THE COURT: All right. Sir, you may step down, you're
4 excused.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Thank you. Please call your next witness.

7 MR. MCMANIS: Yes, Your Honor. We call Mr. Dan
8 Schumacher, by deposition.

9 THE COURT: Do you need a minute to get settled?

10 MR. MCMANIS: Your Honor, I don't know if it's possible, but
11 for the transcript, when it's finally transcribed, can we make a request
12 that his testimony displayed by video be typed up into the transcript, as
13 well?

14 THE COURT: Any objection?

15 MR. ROBERTS: No objection, Your Honor.

16 THE COURT: All right. So your request will be granted.

17 MR. MCMANIS: Thank you, Your Honor.

18 THE COURT: Okay. This is a good time for a stretch break.
19 It's a little too early to take our first recess. So if anybody wants to stand
20 up that's fine, and let me know when you're ready.

21 MR. MCMANIS: We're ready, Your Honor.

22 THE COURT: Defendants, do you need a minute to get
23 settled.

24 MR. BLALACK: I think we're ready Your Honor.

25 THE COURT: Good enough. All right.

1 [Video deposition of Daniel J. Schumacher begins at 9:08 a.m.]

2 DIRECT EXAMINATION

3 BY MR. FINEBERG:

4 Q Good morning, Mr. Schumacher.

5 A Good morning.

6 Q Will you please state your name for the record?

7 A Daniel J. Schumacher.

8 Q And Mr. Schumacher, are you currently employed?

9 A I am.

10 Q Who is your employer?

11 A My employer is UnitedHealth Group.

12 Q What is your current position with UnitedHealth Group?

13 A I'm the Chief Strategy and Growth Officer.

14 Q How long have you had the position of Chief Strategy and
15 Growth Officer for UnitedHealth Group?

16 A April, 2021.

17 Q Can you generally describe for me your duties and
18 responsibilities as Chief Strategy and Growth Officer for UnitedHealth
19 Group?

20 A Yes. I oversee strategy, marketing, growth, RMD, for the
21 enterprise. And depending on which category folks are -- it's a thin layer
22 of people at the UnitedHealth Group level that coordinate across the
23 businesses.

24 Q Well, do you have an understanding of what TeamHealth is?

25 A My understanding of Team, is that it's a hospital-based

1 staffing company.

2 Q And can you describe for me, generally, what your duties
3 and responsibilities were as President and Chief Operating Officer of
4 UnitedHealthcare from March or April 2017, through [indiscernible]?

5 A My role as President and Chief Operating Officer of
6 UnitedHealthcare included direct accountability and oversight for two of
7 the -- or two of the UnitedHealthcare businesses, one being the
8 [indiscernible] individual business, E&I, and the other being global, as
9 well as enterprise functions that included network operations, clinical
10 and technological [indiscernible].

11 Q Did you ever work on the shared savings and the shared
12 savings program, as SSP?

13 A Yes.

14 Q And do you refer to the fees that are generated in those
15 instances as SSP fees?

16 A I don't know that I referred to them. It's fair to say they are
17 fees related to shared savings programs.

18 Q And as part of your duties and responsibilities as the
19 President and the Chief Operating Officer of UnitedHealthcare, from
20 March of 2017 through [indiscernible], were you aware of and familiar
21 with the shared savings fees that United generated from these services
22 provided by out-of-network providers?

23 A Yes, I was aware.

24 Q And why were you aware of that, sir?

25 A I was aware of it, as we build up our plans.

1 Q Were you aware of that as a source of revenues to United?

2 A Yes, I was.

3 Q And it's fair to say that when United receives a bill from a
4 provider, and let's focus on professional bills as what is at issue on this
5 case, that United receives the provider's bill charges on that bill; is that
6 fair?

7 A Billed charges are generally part of that bill, I believe.

8 Q And are you aware, sir, that in certain instances, United
9 adjudicates the claim at the provider's full billed charges; are you aware
10 of that?

11 A I'm assuming at some point we had paid billed charges.

12 Q Let's put up a different document. We'll mark this as Exhibit
13 6 to your deposition. Do you see on this page, the title is, "Polishing our
14 reputation, leading with integrity, relationships, and compassion?" You
15 see that?

16 A I do see that now.

17 Q And below that it says, "The strategic approach to lower a
18 medical expense and create leverage with a subset of providers in on
19 target with our shared growth goal." You see that?

20 A I do see that.

21 Q What does it mean in your executive council that when it
22 says that the strategic approach would create leverage with a subset of
23 providers?

24 A I did not author this document.

25 Q When the document, the executive council materials say that

1 the strategic approach with the adoption of the benchmark pricing
2 program would create leverage with a subset of providers, what is the
3 leverage that you and the executive council anticipated would be
4 created?

5 A That providers could have a range of responses.

6 Q My question to you, sir, is when the document as part of the
7 executive council materials says that the adoption of benchmark pricing
8 will create leverage with a subset of providers, what is the leverage that
9 you and the executive council anticipated would be created?

10 A I don't recall specifically discussing that with the executive
11 council.

12 Q And then look at the next clause. It says, "In actively
13 launching the program targeting non-par spend at a hundred percent of
14 billed charges." You see that?

15 A I do.

16 Q So my question to you, sir, is as part of the executive council
17 and the executive council materials, was the OCM program directed to
18 claims that were previously paid at a hundred percent of billed charges;
19 yes or no?

20 A No.

21 Q Do you agree with me, sir, that the shared saving revenues
22 were a significant source of revenue for United in the 2016, 2017, 2018,
23 2019, and 2020 timeframes?

24 A I would -- could you repeat the word you used? Significant?
25 Is that the word?

1 Q Yes, sir.

2 A I think it depends on how you define significant, United, in
3 relation to United, and I assume when you say United shorthand, you
4 mean in that health group?

5 Q Well, let's use United Health Care. You agree, sir, that the
6 shared saving revenues were a significant source of revenues for United
7 Health Care in 2016 through 2020?

8 A We could look up this date of -- I think that that revenue
9 source is less than five percent for United Health Care, single digits.

10 Q Take that document down for a moment, Mr. Sacker
11 (phonetic), and let's put up what we'll mark as Exhibit 11 to Mr.
12 Schumacher's deposition. It's a document Bates stamped EEF103857
13 through -- well, that's it, and it's the XL attachment, you may just want to
14 -- so turn the page to your -- if you would, and this is the attachment that
15 you recall receiving in -- from Mr. Haben?

16 A I don't specifically recall receiving it, this email, but I'm
17 assuming it was attached, and this is what it is.

18 Q And do you see here, sir, that on this chart that's marked as
19 Exhibit 11 to your deposition, it details the SSP revenues by year for
20 UNET, UMR, and National Accounts; do you see that?

21 A Yes, I do.

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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Q You understand, sir, that as you and United have adopted these programs, that at reduced compensation for the providers, you and United's profits had increased, right?

A As programs have been adopted by clients and they've paid us fees for the enhanced savings that they've yielded from those, those fees in relations to the cost of achieving them have grown.

Q And you're aware, sir, that there are instances where the fees that have been earned by United under the Shared Savings Program have exceeded the amount that's paid to providers; you understand that, right?

A In preparation for this deposition I reviewed produced documents that showed an example where the fees were -- the fees were in excess of the savings.

Q In other words, the fees paid to United were higher than the amount paid to the provider, right?

A Yes, I seem to recall in preparation there was -- for this testimony, there was a produced document that showed one example where that was the case.

1 Q A produced document by United, right?

2 A Yes.

3 [Video paused at 9:21 a.m.]

4 MR. MCMANIS: That completes the Plaintiffs' video, Your
5 Honor

6 THE COURT: Thank you.

7 [Video resumed at 9:21 a.m.]

8 BY UNIDENTIFIED SPEAKER:

9 Q And you understand, sir, that providers submit bills to United
10 Health?

11 A Yes, I do.

12 Q And are you familiar with the term of a provider
13 chargemaster? Do you know what a chargemaster is?

14 A Yes, I do.

15 Q What is your understanding of a chargemaster?

16 A A chargemaster is their -- the listed charge rate for particular
17 services, and they increase them at their discretion, and with varying
18 frequencies.

19 Q With varying frequencies; is that what you [indiscernible]?

20 A Varying frequencies, varying amounts, at their discretion.

21 Q And then you mentioned that at some point the programs
22 evolved, shared savings programs evolved to incorporate elements of
23 reference pricing Data iSight? So can you describe for me what you
24 mean by the incorporation of the elements as the referenced base price?

25 A Perhaps reference is the wrong word, but I would -- Data

1 iSight, as I understand it, is a proprietary collection of various charges,
2 and -- and then an indication of what a reasonable rate would be.

3 Q Where does your understanding of the Data iSight tool,
4 where does your understanding come from?

5 A My understanding comes from briefings from my team. I
6 also had a very high-level conversation with representatives from
7 MultiPlan.

8 Q Who did you speak with at MultiPlan about Data iSight
9 methodology?

10 A Well, to clarify, we didn't talk about specific methodology, we
11 talked about it in general terms, and that was with Dale White.

12 Q What do you recall, if anything, about your discussion with
13 Dale White from MultiPlan about Data iSight?

14 A Well, so I don't remember picking it up when we had already
15 started, and I think we use Outlier Cost Management, OCM as the -- I'll
16 say synonymous with Data iSight, I mean, I generally do, and OCM we
17 started some time earlier in, like, 2016, I believe, and then I remember
18 picking up more of the specifics on Data iSight as we started to talk
19 about benchmark pricing, and the relationship between the two.

20 Q And what is the relationship between Data iSight and
21 benchmark pricing?

22 A Well, my understanding is that -- so Data iSight is
23 proprietary, it reflects a whole bunch of members since they're taking
24 place across the healthcare landscape, and then it -- it derives what a
25 reasonable rate of reimbursement is. And what benchmark pricing does

1 is effectively puts a cap on, on egregious billing.

2 Q Okay. So your definition of a -- an egregious biller is not
3 necessarily related to the bill charged, it's related to a party that
4 demands more than the average rate of reimbursable?

5 A I think that when I think about what's egregious, whether it's
6 billing or the end payment, and they're linked together depending on
7 how it works, but, you know, I would -- I think that what -- what -- what's
8 reasonable or on a reimbursement basis is -- is what the market's
9 accepting on average.

10 Q So you're saying that if you didn't have another program, if
11 the employer group didn't adopt a different program, then the claim
12 would have been processed at billed charges?

13 A Depending on the plan documents.

14 Q And United was going to adopt the OCM program to address
15 those situations where there was no other out-of-network program, and
16 otherwise, the claim would have been paid in full billed charges; is that
17 correct?

18 A Leading up to this general time of what we found is that
19 United was uncompetitive in relation to our competitors, so we were
20 looking at ways to become more competitive and get closer -- get -- can
21 you hear me?

22 Q Yes, yes.

23 A We were out of position competitively, and out-of-network
24 was one dimension of that out-of-network challenge, and -- and lack of
25 competitiveness, so what we were working on is working on approaches

1 with our clients, you know, obviously, on the self-funded side, those are
2 programs that they're purchasing from us and opting to participate in,
3 and helping to define what they want their reimbursement to look like.

4 Q Why wasn't United uncompetitive then, according to your
5 testimony?

6 A It was a combination of factors, so, however -- however the
7 RNC Program was structured as dictated by the plan documents, what
8 wrap contracted rates were at, or being reimbursed at, those were all
9 contributing factors, and where we -- where we see it is in, you know, if
10 you look at how self-funded services are bought and sold, they often
11 look at, you know, a couple of important metrics, BIC, best in class, so
12 how do you compare on a rate basis for participating services, and then
13 as it moves into out-of-network, to the extent that members are held
14 harmless, then the network efficiency factor was calculated, and those
15 programs that held a member harmless qualified for it, and those that
16 didn't were excluded.

17 And so as we sit down with consultants and as we were trying to
18 sell business, we were seeing that we were -- we were out of position,
19 we weren't as competitive, and our enrollment was challenged.

20 Q Is it your testimony, sir, that clients had to affirmatively select
21 the benchmark pricing program in order for it to be implemented by
22 United?

23 A I believe it was an opt-in program.

24 Q Okay. So does that mean that the clients had to affirmatively
25 select the program in order to participate in the benchmark pricing

1 program?

2 A I believe clients selected the program.

3 Q Did clients have to affirmatively select the outlier cost
4 management program in order to participate in it?

5 A I believe so.

6 Q Was that the benchmark?

7 A Yes, to the -- to the earlier document that described the Dale
8 White meeting with 350 percent in there, and that would put us in line
9 with the competition, then we had ultimately revised it and went to 500
10 percent.

11 Q You're saying that -- how did you decide that 500 percent
12 was going to be the benchmark?

13 UNIDENTIFIED SPEAKER: You could answer.

14 MR. SCHUMACHER: I think we wanted to what -- one, how
15 we could operationalize it, two, client pick option of it, three, what
16 provider response and customer as well as employee or patient, I guess
17 in this case, responsibility.

18 Q Do you agree with me, sir, that the shared savings revenue in
19 the 2016 to '20 timeframe was an important source of revenue for United
20 Healthcare?

21 A Again, I would define important. Could I ask you to define
22 that?

23 Q I'm asking for your experience at United Healthcare, was it
24 important?

25 A It was --

1 UNIDENTIFIED SPEAKER: Using whatever definition of
2 important he wants to use.

3 THE WITNESS: Okay. So it is one element of many, many,
4 many factors that make up the revenue composition of United
5 Healthcare.

6 BY MR. FEINBERG:

7 Q And would you agree with me, sir, that the internal operating
8 income from the shared savings revenue was a significant revenue
9 stream for national accounts?

10 A I would agree that it is a -- it was a significant revenue stream
11 for national accounts. As it relates to internal operating income, we
12 looked at that -- at least I looked at it, in terms of the total relationship.
13 And to our discussion earlier, we talked about the different dimensions
14 of services that we supplied to our clients in that self-funded market,
15 which included basic administrative fees. It included participation in
16 savings to the extent that they adopted those programs. It may or may
17 not include outcomes on pharmacy rebates. As we underwrote and
18 priced our national accounts business and our return expectations
19 around those, all of those things would be factored in, the revenue, the
20 expense, to arrive at what internal operating income was.

21 So I would not -- I would not -- I don't think of it in terms of the IOI
22 on shared savings, because if you looked at, you know, the profitability
23 on the administrative services alone, that is something that we lose
24 money on. The expenses are in excess of the fees that we get from
25 clients. So we look at it in combination.

1 Q Okay. So you're saying you lose money on the
2 administration for national accounts?

3 A Broadly speaking, kind of on average, we lose money on the
4 administrative fees.

5 Q When a claim is processed by United on a fully insured basis,
6 where United is insuring the risk and writing the check, United pays less
7 on that claim than it does when it is an administrator or acting as an
8 administrator of a claim for a self-funded plan. Is that correct?

9 A No.

10 UNIDENTIFIED SPEAKER: Object.

11 BY MR. FEINBERG:

12 Q All right. So for every year when you set the premium at the
13 beginning of the year, if your medical spend is lower than what you had
14 budgeted based on the adoption of an OCM program, for example, then
15 those are revenues that would be retained in that year. And then in the
16 next year, you may have a different pricing model based on your prior
17 years' experience, right?

18 A No. That -- not trying to be difficult. There's a -- so you've
19 got a minimum -- let's say 85 percent minimum medical loss ratio.
20 Right? And when we look at what our medical costs are -- and there's a
21 whole bunch of adjustments as the numerator and premium with a
22 whole bunch of adjustments as the denominator, that is the medical loss
23 ratio as defined in the ACA. So if we say that that's 85 percent, as an
24 example, and we price our client base for the fully insured to hit that 85
25 percent. And then we end up reimbursing lower amounts for, in the case

1 that you brought up, out-of-network. Then our medical costs would go
2 down, our denominator would stay the same, and we would fall below
3 that 85 percent threshold in which that would require us to return that
4 differential to our clients in that year.

5 Q Who was responsible for overseeing that -- the program with
6 the benchmark pricing? Was that MultiPlan or was that United?

7 A MultiPlan helped partner in the administration of the plan.
8 The decisioning around it was made by United Healthcare.

9 Q Then is it your understanding that the claims were paid at the
10 benchmark of 500 on Medicare or you're saying that under the
11 benchmarking program, the claims were accepted?

12 A I'm saying that under the benchmarking program, when it
13 ended up paying -- paying out 500 percent, that the overwhelming
14 majority of providers that were paid that -- so billed charges were higher
15 and they accepted a 500 percent reimburse -- 500 percent of Medicare as
16 reimbursement -- accepted that in full. Then I would just -- back to that
17 conversation we had on benchmark pricing back in 2017, you know, with
18 the rec -- again, this is a space that we were behind some of our largest
19 competitors. And the recommendation at that point from MultiPlan was
20 to go to 350 percent.

21 And so we elected to start at 500 percent and see what the market
22 reaction was and see if we could operationalize it and the other elements
23 that I described earlier. And now this is just a progression to adjust it to
24 400 percent.

25 THE COURT: That would --

1 MR. BLALACK: That's it, Your Honor.

2 THE COURT: -- conclude the testimony. Okay. Let's take a
3 recess. It is 9:36. Let's start back about 9:50.

4 During the recess, don't talk with each other or anyone else
5 on any subject connected with the trial. Don't read, watch or listen to
6 any report of or commentary on the trial. Don't discuss this case with
7 anyone connected to it by any medium of information, including without
8 limitation, newspapers, radio, internet, cell phones, texting.

9 Don't conduct any research on your own relating to the case.
10 Don't consult dictionaries, use the internet or use reference materials.
11 Don't post on social media. Don't talk, text, tweet, Google issues or
12 conduct any other type of research with regard to any issue, party,
13 witness or attorney involved in the case. Do not form or express any
14 opinion on any subject connected to the trial until the matter is
15 submitted to you. 9:37. See you at 9:50.

16 THE MARSHAL: All rise for the jury.

17 [Jury out at 9:37 a.m.]

18 [Outside the presence of the jury]

19 THE COURT: Room is clear. Plaintiff, do you have anything
20 for the record?

21 MR. ZAVITSANOS: No, Your Honor.

22 THE COURT: Defendant?

23 MR. BLALACK: No, Your Honor.

24 THE COURT: Have a good recess.

25 MR. BLALACK: Thank you, Your Honor.

1 MR. ROBERTS: Your Honor?

2 THE COURT: Yes.

3 MR. ROBERTS: Is Mr. Murphy the next witness?

4 MR. ZAVITSANOS: Yes.

5 MR. ROBERTS: I do have a couple issues I wanted to clear
6 with the Court before he takes the stand out of the presence of the jury.

7 THE COURT: Okay.

8 MR. ROBERTS: So if it would be possible, I could do it now
9 or I could do it when we get back.

10 THE COURT: Let's do it right now, unless you want a
11 moment to prepare?

12 MR. ROBERTS: No, Your Honor. I'm ready to go.

13 THE COURT: Okay.

14 MR. ROBERTS: The -- and we had a bench conference. I'm
15 just not sure who's going to be taking him and just wanted to confirm
16 some discussions we had up at the bench. When we were determining
17 the scope of Mr. Haben's testimony, Plaintiffs confirmed that they
18 weren't going to bring up the fact that United was targeting TeamHealth
19 with out-of-network programs, that contract negotiations are out,
20 therefore no associated terminations by United of TeamHealth entities in
21 other states and no referring to alleged statement, because we can, with
22 respect to a reduction in rates.

23 THE COURT: Is there a response?

24 MR. ZAVITSANOS: Yes, Your Honor. That is all correct. We
25 don't intend to do any of that. With respect to the targeting, there is

1 evidence already in the record that there was disparity between what we
2 were getting paid in Nevada versus what others were getting paid. Now,
3 that is not United Health -- I don't believe that's United Healthcare. I
4 think that's Sierra and I believe that's Health Plan of Nevada. That
5 evidence is already -- I believe has been admitted. We do intend -- I
6 don't intend to ask this gentleman any questions about that, but with
7 respect to everything else that counsel just said, he is correct. We're
8 going to stay away from all of that.

9 THE COURT: Good enough. Your response, please?

10 MR. ROBERTS: I don't recall any admitted evidence of a
11 disparity to this point in the trial. If --

12 THE COURT: Can you pinpoint that for us?

13 MR. ZAVITSANOS: Your Honor, it is the claims data that we
14 submitted, and it is the -- which the Court admitted Mr. McManis'
15 examination, I believe. And then I believe there was evidence on what
16 the claims were from Health Plan of Nevada and Sierra for other out-of-
17 network providers. This is going to be subject of expert testimony. And
18 it's not necessarily targeting. That's not the way it's going to be
19 presented. It's going to be presented as essentially that these are just --
20 they pick kind of random amounts to reimburse and if you accept their
21 position that their amount is always reasonable, then why are they
22 paying other people more? That's not really targeting necessarily. And
23 that's been in the case from day one. And we intend to very much
24 develop that. So -- but again, I'm not going to ask this gentleman any
25 questions about that.

1 THE COURT: So it sounds like this will come up before the
2 expert testifies.

3 MR. ROBERTS: It does. You will not be asking Mr. Murphy
4 about any of this; is that correct? So I don't have to deal with it
5 [indiscernible]?

6 MR. ZAVITSANOS: Correct.

7 MR. ROBERTS: Okay. Very good, Your Honor. And then as
8 far as the scope of my permitted service, as you know, we've had about
9 12 questions regarding the amount of money that United made on the
10 out-of-network programs, \$1 billion, \$1.3 billion. I wanted to confirm the
11 amount of revenues that TeamHealth received from all of its physician
12 services with Mr. Murphy, which is publicly available data and I'm sure
13 he'll tell me if I'm wrong, but it's also in the billions of dollars. And I
14 think the jury's entitled to hear that, just to put it into perspective that we
15 have two big companies, not just one big company, both of whom have
16 a lot of revenues on their programs.

17 MR. ZAVITSANOS: Your Honor, we very much object to that
18 and let me explain why. The issue --

19 THE COURT: I thought that I had --

20 MR. ZAVITSANOS: You had --

21 THE COURT: -- directed you to steer away from that
22 previously.

23 MR. ZAVITSANOS: Correct.

24 MR. ROBERTS: Well, you had, Your Honor, but at this point
25 in the trial, they've injected the profits at every turn and it's terribly

1 unfair for them to talk about our revenues when we can't talk about their
2 revenues. And I thought the Court's concern is -- and we take exception
3 to this, Your Honor, but I thought the concern was that we could not talk
4 about the cost of providing the emergency room services.

5 So I'm not talking just about profits from emergency
6 departments. I'm not talking just about some backdoor way to get the
7 costs for providing emergency room services in. I'm just talking about
8 their revenues from all of their services, TeamHealth Holdings.

9 MR. ZAVITSANOS: Your Honor, we -- this has been the
10 subject of a very lengthy hearing that we had during the limine, this
11 exact point that counsel is addressing. So I believe the Court's already
12 ruled on it. Second, the issue of the revenues from the shared savings
13 was offered -- and Your Honor has seen it -- was offered to demonstrate
14 that the motive and the method for the shared savings programs was not
15 to reduce healthcare costs.

16 It is a -- essentially, it was an effort to kind of grab as much
17 money as they could. This is a direct response to the arguments that we
18 heard in opening about runaway healthcare costs, the ability to drop
19 premiums, that rates were going up. And so they did this at the client's
20 request. These are issues right down the fairway on what the
21 reasonable value is. Our revenues play no part in that whatsoever.

22 THE COURT: Okay. Mr. Roberts, I agree with Mr. Zavitsanos.
23 Would you like to say something further for the record?

24 MR. ROBERTS: No, Your Honor. I believe that -- you know,
25 again, I'm not talking about flow of funds to Blackstone Group.

1 THE COURT: I understand.

2 MR. ROBERTS: And I understand that was --

3 THE COURT: But they don't publicly report their revenue.

4 And there is a difference between the gross dollars in and what the
5 profitability is, so --

6 MR. ROBERTS: Right.

7 THE COURT: And that's not publicly --

8 MR. ROBERTS: Actually, they do report the revenue, Your
9 Honor. I was able to find it online. Fortune Magazine, a number of
10 sources.

11 THE COURT: That's hearsay, so --

12 MR. ROBERTS: But the final thing I had, Your Honor, is as
13 you may recall during opening statements, TeamHealth told the -- told
14 the jury that this case is about the quality of care in Nevada and the
15 quality of care that Nevadans will receive in emergency departments,
16 implying that if they award money, quality of care will improve, because
17 you know, insurance companies like United will pay more.

18 And Your Honor, when I deposed Mr. Murphy in Nashville,
19 there was a correspondence, which indicated that he was aware of
20 Nevada legislation, the Nevada Surprise Billing Act and of course, the
21 Nevada Surprise Billing Act sets a procedure for reimbursement of out-
22 of-network emergency department services currently and will continue
23 to do so in the future and therefore, any verdict in this case cannot affect
24 future payments for healthcare services or future quality of care in the
25 amount available to pay physicians. And I'd like to inquire into that topic

1 with Mr. Murphy.

2 MR. ZAVITSANOS: Your Honor, first of all, that's not this
3 witness. That's going to be the next witness, so I don't intend to get into
4 that kind of policy issue with him. Again, Your Honor, this is an issue
5 that the Court took up during limine about events transpiring after 2020.
6 And let me say, Your Honor, by the way, just parenthetically, this verdict
7 will have a profound effect on what happens going forward, because we
8 will have a --

9 THE COURT: That's only --

10 MR. ZAVITSANOS: Yeah. We'll have a benchmark for those
11 arbitrations, but --

12 THE COURT: Does it matter either way?

13 MR. ZAVITSANOS: It doesn't, because I'm not going to ask
14 him about that.

15 THE COURT: So let's take this up for the next witness.

16 MR. ROBERTS: Okay.

17 THE COURT: See how --

18 MR. ROBERTS: As long as he doesn't talk about impacting
19 quality of care in Nevada --

20 THE COURT: Well --

21 MR. ROBERTS: -- then I will need --

22 THE COURT: -- if --

23 MR. ROBERTS: -- to take it up, Your Honor.

24 THE COURT: -- if we're the fourth lowest in ratio in number
25 of doctors for patients, that's just -- that's another factor.

1 MR. ZAVITSANOS: Yeah. He does intend -- let me just be
2 clear, Your Honor. I'm sorry. I didn't mean to cut you off.

3 THE COURT: No. No. Go.

4 MR. ZAVITSANOS: He is going to talk about the benefits that
5 we provide and that he's here to support doctors and to support, you
6 know, quality medicine and what we've done to raise the standard -- I
7 mean, he's going to give a history of our company.

8 THE COURT: If you need a bench conference, just ask for
9 one.

10 MR. ROBERTS: I will, Your Honor.

11 THE COURT: If we need to define this -- the scope further
12 during the direct or before you cross. All right, guys. You still have four
13 minutes left of this recess.

14 [Recess taken from 9:46 a.m. to 9:52 a.m.]

15 THE COURT: Please remain seated.

16 MR. ZAVITSANOS: Thank you, Your Honor.

17 THE COURT: Is everyone ready?

18 MR. ZAVITSANOS: Yes, Your Honor.

19 MR. BLALACK: Defense is ready, Your Honor.

20 THE COURT: Okay. Let's bring in the jury.

21 [Pause]

22 MR. ZAVITSANOS: Your Honor, may I leave a copy of the
23 deposition over here, please?

24 THE COURT: Any objection to taking the deposition up?

25 MR. BLALACK: What's that?

1 MR. ZAVITSANOS: It's a copy of his deposition. May I leave
2 a copy of his deposition up there in case you refer to his deposition?

3 MR. ROBERTS: Of course. Although that looks like a menu
4 script. You better give him some reading glasses with it, too.

5 MR. ZAVITSANOS: We're not all your age.

6 [Pause]

7 THE MARSHAL: All rise for the jury.

8 [Jury in at 9:54 a.m.]

9 THE COURT: Thank you. Please be seated.

10 Plaintiff, please call your next witness.

11 MR. MCMANIS: Your Honor, quickly before we call our next
12 witness, I do want to put on the record two exhibits from the deposition
13 of Mr. Schumacher that was just played. The first one is deposition
14 exhibit number 6, which is Plaintiffs' Exhibit 94, which I believe has
15 already been admitted. And the second exhibit, Your Honor, was
16 deposition exhibit 11, which is Plaintiffs' Exhibit 361. And we move for
17 the admission of Plaintiffs' Exhibit 361.

18 THE COURT: Any objection?

19 MR. BLALACK: We object, Your Honor, for foundation. Mr.
20 Schumacher didn't write it or receive it.

21 THE COURT: I'm going to overrule the objection. 361 will be
22 admitted.

23 [Plaintiffs' Exhibit 361 admitted into evidence]

24 THE COURT: Now, Plaintiff, your next witness, please.

25 MR. ZAVITSANOS: Your Honor, we call Leif Murphy.

1 THE MARSHAL: Step up to the stand and face the clerk.

2 THE CLERK: Please raise your right hand.

3 LEIF MURPHY, PLAINTIFFS' WITNESS, SWORN

4 THE CLERK: Please have a seat. And may I have you state
5 your first and last name and spell them for me for the record?

6 THE WITNESS: My first name is Leif, L-E-I-F. My last name
7 is Murphy, M-U-R-P-H-Y.

8 THE CLERK: Thank you.

9 THE COURT: Go ahead, please.

10 MR. ZAVITSANOS: Okay.

11 DIRECT EXAMINATION

12 BY MR. ZAVITSANOS:

13 Q Good morning, Mr. Murphy. How are you?

14 A I'm well. Good morning.

15 Q Okay. All right. Who are you?

16 A I am the CEO of TeamHealth and a member of the Board of
17 Directors.

18 Q Okay. Are you the highest-ranking person in terms of
19 operations at TeamHealth?

20 A Yes, I am.

21 Q Okay. So the buck stops with you?

22 A It does.

23 Q Okay. So before we talk about TeamHealth, very, very
24 briefly, are you married?

25 A Yes, I am.

1 Q Children?

2 A Three.

3 Q Okay. And where are you from originally?

4 A Originally from Athens, Georgia. And I currently reside in
5 Nashville, Tennessee, where I've been for over 20 years.

6 Q Okay. Is that where TeamHealth is headquartered?

7 A We have a large office there in Nashville. And headquarters
8 is officially in Knoxville, Tennessee.

9 Q Okay. Where the World's Fair was years ago?

10 A Yes.

11 Q Okay. All right. And tell me briefly, what did your parents do
12 when you were growing up?

13 A My mother was a flight attendant, and my father was in law
14 enforcement.

15 Q Okay. All right. So why did you come here?

16 A I'm here because it's a big deal. I'm here because it's
17 important to all of our clinicians. I'm here because we need to collect the
18 unpaid balance for United's claims. And I think it sets a precedent for
19 insurance across the United States.

20 MR. ROBERTS: Objection and move to strike to the extent he
21 commented on a greater purpose for the lawsuit.

22 THE COURT: That was -- the last part of his testimony was
23 improper. Disregard the last sentence. Thank you.

24 BY MR. ZAVITSANOS:

25 Q Who was the person ultimately that pulled the trigger on

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698600

1 filing this lawsuit?

2 A Oh, that'd be me.

3 Q Okay. All right. So let's talk about TeamHealth. First of all,
4 who started TeamHealth?

5 A TeamHealth was founded by a physician leader. His name is
6 Dr. Lynn Massingale. He was an emergency medicine physician in
7 Knoxville, Tennessee. And he started our first contract site with the
8 University of Tennessee Medical Center about 43 years ago.

9 Q 43 years ago?

10 A Yes, sir.

11 Q Okay. Is Dr. Massengill still alive?

12 A He is. He is actually an active member of our board of
13 directors.

14 Q Okay. And that was going to be my next question. Does
15 TeamHealth have a board of directors?

16 A We do.

17 Q Okay. And does it have a lot of -- a chairman of the board?

18 A That would be Dr. Massingale.

19 Q Okay. All right. So the jury has heard a little bit about
20 TeamHealth. And I don't want to be duplicative. But tell me from your
21 standpoint, what does TeamHealth do?

22 A So --

23 Q With regard to emergency room physicians like what we're
24 doing here in this case.

25 A So at TeamHealth, we have a little over 400 physician

1 corporations that are affiliated to essentially provide emergency
2 medicine.

3 Q Okay. Now, hold on. You said 400. Are these 400 groups?

4 A Groups. Yes, sir.

5 Q So would that be like Fremont?

6 A That would be like Fremont.

7 Q Okay. And by the way, do you know this man here, Dr.
8 Scherr?

9 A I do. Very well.

10 Q Okay. All right. Good man?

11 A He's a fantastic man.

12 Q Okay. All right. So I'm sorry, I cut you off. So you said you
13 have about 400 groups. How many -- how many doctors and -- well, let's
14 start with doctors. Ballpark, how many doctors do you all -- do you all
15 work with --

16 A So we're about --

17 Q -- across the country?

18 A -- about 10,000 doctors. About over 16,000 clinicians, which
19 includes the mid-level.

20 Q Okay. Would that include nurse practitioners and physician
21 assistants?

22 A That's right.

23 Q Okay. All right. So I cut you off. My apologies. You were
24 telling us what TeamHealth does.

25 A So we are essentially the physician practices that staff the

1 hospitals in emergency medicine, hospital medicine, anesthesia. We're
2 also the national support center for our physicians across the country.
3 So we are essentially -- if there's a retirement in a physician and there's
4 an open position, we will recruit. We will onboard. We'll contract. We'll
5 credential. We'll enroll those physicians. We'll make sure that they're
6 compliant with the bylaws of the hospital. We'll make sure they're
7 enrolled in all of the different insurance programs, Medicaid, Medicaid,
8 commercial, et cetera. We will take the physicians' documentation of a
9 claim. We'll code it. We will bill it. We will work to collect it. We work
10 to identify insurance for patients that present without insurance. We go
11 through numerous steps to make sure that we've tried to identify where
12 insurance is available for our patient that presents without an ability to
13 pay.

14 Q Okay.

15 A We work hard on emergency response. So there are
16 numerous instances across the year where we have to respond as an
17 overall TeamHealth organization to things like hurricanes. So we
18 provide the National Support Center. If there is, for example, a hurricane
19 moving into a particular geography, we'll organize subject matter
20 experts, you know, four, five days before a storm comes in. Those
21 subject matter experts will meet with each of the facility medical
22 directors, the regional medical directors, SVPs, and group leaders to
23 make sure that the --

24 Q Hold on. So hold on. You said SPP?

25 A SVP. Sorry. Senior vice presidents.

1 Q Okay.

2 A Kind of through a hierarchy of physician leadership. To
3 make sure that our team's on the ground in the face of any type of
4 impending emergency have they know what the resources are that are --
5 that are available for them.

6 Q Okay. So you know -- you know that I'm from Houston,
7 right?

8 A I do.

9 Q Okay. Did you do anything recently in Houston that
10 underscores what you're talking about?

11 MR. ROBERTS: Objection. Relevance.

12 THE WITNESS: So --

13 THE COURT: The objection is sustained.

14 THE WITNESS: You know, for better, for worse --

15 BY MR. ZAVITSANOS:

16 Q Hold on, hold on, hold on. Let me ask a slightly different
17 question. Are you able to mobilize emergency room doctors when a
18 crisis is presented in other parts of the country?

19 A Yes, we are.

20 Q Okay. Just -- how many times have you all done that?

21 A We do it frequently.

22 Q Okay. Now, we heard -- we heard something in opening
23 about how the doctors that were with TeamHealth are independent
24 contractors, okay? Now, you weren't here for that, but independent
25 contractors. Do the doctors that work for -- well, let me start first with

1 Fremont, all right, where Dr. Scherr is at. Are those employees or
2 independent contractors?

3 A The very vast majority are going to be employed at Fremont.

4 Q Okay. Are there groups in other parts of the country where
5 the doctors are independent contractors?

6 A Yes, there are.

7 Q Are there groups across the country where the doctors are
8 employees?

9 A Yes, there are.

10 Q Why? Why one versus the other?

11 A It is -- there's been an evolution there. So there are -- many
12 doctors have preferred an independent contractor status. There are tax
13 advantages, especially around retirement benefits and some health
14 benefits. There's also some flexibility if they wanted to work outside of a
15 particular geography to be able to contract into another geography
16 slightly easier. But then there's also a significant base that came up
17 regionally as employed.

18 Operationally, it doesn't make any difference to me. I don't
19 typically look at the difference between employed or contracted. They're
20 serving, you know, the same patient base. They are, you know,
21 providing the same care. And you know, it's just the difference in the
22 contractual way that we align with the -- with the physicians.

23 Q Okay. And sometimes it's a little hard to understand because
24 of the masks.

25 A Sorry. It's hard to --

1 Q No, no, no, no. I'm taking the blame here. Can you tell us
2 what the word attrition means?

3 A Turnover.

4 Q Okay. So back in an envelope kind of ballpark, what kind of
5 attrition does TeamHealth have, say during the relevant time period
6 we're talking about here, which I think is '17 to January of '20? Let's use
7 that as kind of the endzones. What kind of attrition was TeamHealth
8 having among its doctors?

9 A We -- plus or minus a couple of percentage points. It's
10 always going to be around 10 percent.

11 Q Okay. Now, do some of the TeamHealth doctors burn out?

12 A Unfortunately, yes.

13 Q Why?

14 A It is an extremely difficult, high-intensity role in healthcare.
15 Burnout is probably the highest in emergency medicine over any other
16 specialty. You're standing ready at all hours of the day for a patient to
17 arrive with a completely unknown condition. It could be trauma. It could
18 be a heart attack. It could be any number of different things. And you
19 have got to be on your game and ready to take care of that patient.

20 Q Do we have doctors that have been with us 20 plus years?

21 A Yes, we do.

22 Q Okay. So tell us a little bit about what kind of support you
23 provide to the doctors and to the nurse practitioners in this practice
24 groups.

25 A So our -- so under our TeamHealth brand, you know, our

1 goal is to -- you know, to essentially, you know, make practice perfect.
2 So allow our clinicians to focus on the practice of medicine, to be able to
3 engage with their patients, and focus on the day-to-day medical aspects
4 of what they do. So TeamHealth through our National Support Center
5 and through our administrative structures provides a lot of support. All
6 the things I talked about before.

7 So recruiting, onboarding, enrollment, credentialing, everything
8 revenue cycle. So you know, the billing, the collection, the manage care
9 contracting, et cetera. We provide that centralized support in the event
10 of an emergency. So responding in a scenario like the hurricane I
11 described. And you'll know, we've move -- we will move -- we will
12 move, as you reference before clinicians around different geographies to
13 support a crisis. So you know, a hurricane hits, and we'll move clinicians
14 from Austin, from Dallas, from even Las Vegas down into Houston.

15 Q Okay. So let me ask you this. Let's get the billing people on
16 the equation for a second. Okay. I'm going to ask you about billing in
17 just a minute. If we take Billy out of the occasion, how many employees
18 does TeamHealth have that are not kind of practicing physicians or
19 people like that for shield. In other words, it enters sort of the lungs.

20 A It was about 2,200.

21 Q Okay. Okay. So now let's talk about billing. So does
22 TeamHealth provide a billing service?

23 A We do.

24 Q All right. Is that unusual for somebody other than the doctor
25 to do the billing in the industry?

1 A Not at all.

2 Q Okay. Explain.

3 A So it's complex. Here's a lot involved. We're -- you know,
4 we are, you know, collecting small dollar amounts. And sometimes for
5 my primary payer. A secondary payer, and a tertiary payer. And so we
6 removed.

7 A Tertiary.

8 Q Tertiary, so a third -- a third payer.

9 A Okay. And so as a function of that, we removed that
10 responsibility and that distraction from the physician so they can focus
11 on the practice of medicine.

12 Q Okay. The other physician groups that are not ER and are
13 not part of TeamHealth, do those kind of groups use third-party building
14 companies, as well?

15 A Yes. Very frequently.

16 Q Now, who sets the charges that are billed by the doctors and
17 nurse practitioners here in Nevada? For the -- for the folks at the -- I have
18 spent too long here.

19 A Our national support center.

20 Q Meaning TeamHealth?

21 A Yes.

22 Q Okay. Good. Do you know a man named Kent Bristow?

23 A I do.

24 Q Okay. Is he -- is he closer to the ground on this issue, the
25 billing issue than you are?

1 A He is.

2 Q Okay. So I'm going to just ask you kind of at a high level.
3 Okay. Do you have a general understanding of how charges are set?

4 A I do.

5 Q Okay. So tell us how charges are set. And if you can -- and
6 the jury has heard a little bit about this company called FAIR Health. So
7 tell us your understanding generally as the CEO of TeamHealth, how
8 charges are set?

9 A So charges need to be competitive in every market. FAIR
10 Health that you referenced is a -- I believe it's the largest independent
11 not-for-profit database of charges across the United States. They
12 probably have, you know, over 35 billion transactions in their -- inside of
13 their database. So we rely on FAIR Health as essentially an independent
14 source of what market intelligence looks like.

15 MR. ROBERTS: Your Honor, I apologize for interrupting.
16 Could we approach?

17 THE COURT: You may.

18 [Sidebar at 10:11 a.m., ending at 10:13 a.m., not transcribed]

19 THE COURT: Okay. Please proceed.

20 BY MR. ZAVITSANOS:

21 Q Okay. So, now, in terms of -- do you personally set the goal
22 charges, or are there other folks that do that?

23 A Other people do that.

24 Q Okay. And let me just ask this, and then I'm going to move
25 on, do you know whether FAIR Health is one of the tools that's used in

1 setting goal charges?

2 A Yes, it is.

3 Q Okay. Okay. Now, why is it -- I'm going to move the lens
4 back even further now. And why is it that TeamHealth sets the bill
5 charges as opposed to the doctors?

6 A Again, it's we are taking that, you know, burden of
7 administrative responsibility off of the physicians at the front line. And
8 so our -- our healthcare financial services entity will essentially study the
9 market rates and identify what's appropriate inside of that geography.

10 Q Okay. Now -- thank you, sir. All right. Now, I want to talk
11 about something else that's come up in the course of the case. Are you
12 familiar with a company called Blackstone?

13 A I am.

14 Q Okay. Does -- is Blackstone the ultimate parent of
15 TeamHealth?

16 A No, they are a shareholder.

17 Q They're a shareholder, okay. So -- and what -- and who or
18 what is Blackstone?

19 A Blackstone is an investment company. They own companies
20 all across the world. They own TeamHealth, they own Spanx. They
21 own, you know, ancestry.com. They own the Bellagio. They own the --
22 the Cosmopolitan. I think they own the area, so that could --

23 Q Okay.

24 A -- be a sense of just the scale.

25 Q All right. Mr. Murphy, does Blackstone play any operational

1 role in TeamHealth?

2 A They serve on the board of directors. They represent three of
3 the ten seats on the board of directors.

4 Q Three of ten?

5 A Three of ten.

6 Q Okay. My question is a little narrower. Okay. What's the
7 difference between what the board does and what the operations people
8 did?

9 A So the board provides an oversight. They're responsible for
10 vision and mission and management is execution, and planning and the
11 operational side.

12 Q Okay. So kind of the big picture? The big picture and
13 direction of the company?

14 A That's right.

15 Q Okay. And what do the operational folks do?

16 A We formulate a plan. We have our -- we have -- we execute
17 on the vision. We ensure that the things that are important to us is a -- is
18 a leading physician organization, our -- since they're laid out as goals,
19 that we target and then execute toward achieving.

20 Q Okay. Does Blackstone play a role in that, in the operational
21 side of the company?

22 A So they review our plans. They ensure that they're
23 consistent with the overall mission and vision. You know, they evaluate
24 the capital needs that are going to be required in the execution of that
25 plan. But no, they are not involved in the direct decision making or the

1 execution.

2 Q Okay. Thank you, sir. Now these other companies that you
3 mentioned that Blackstone owns, does TeamHealth have any direct
4 control over any of those companies?

5 A So I would doubt it. You know, I assume they operate the
6 same as they would with us, as a -- as an investor and shareholder and --

7 Q I mean, do you have any control over it?

8 A Oh, we have none, no.

9 Q That's what I'm asking.

10 A None, whatsoever.

11 Q Okay. So -- all right. Now, before this lawsuit was filed, did
12 United act -- actually, is TeamHealth, are they a self-insured entity? In
13 other words, do you all carry the risk of -- of being kind of your own
14 insurance company for your employees?

15 A For health insurance?

16 Q Yes.

17 A Yes, we do.

18 Q Okay. Did you use a -- or do you use a third-party
19 administrator for those clients?

20 A We always have, yes.

21 Q Okay. At one point, was United the third-party administrator
22 for TeamHealth?

23 A Yes, they were.

24 Q Okay. And off the top of your head, do you know what your
25 plan obligated out-of-network emergency room charges to be paid on?

1 A We paid 100 percent of bill charges.

2 Q Okay. Now, again, generally -- we're going to get into more
3 detail with other TeamHealth folks on -- other TeamHealth folks on this,
4 but do you know whether TeamHealth has entered into any wrap
5 agreements with a company called MultiPlan?

6 A Yes, I do.

7 Q Okay.

8 A And, yes, we have.

9 Q All right. Now, the jury heard a lot about wrap agreements,
10 and give us, very briefly, your understanding of what a wrap agreement
11 is.

12 A It -- so it is that agreement with MultiPlan is essentially an
13 agreement to where we have agreed to discount our billed charges. We
14 discount them by ten percent, and different insurance companies will
15 leverage that rental network, essentially, to get the benefit of that ten
16 percent discount. For us, we provide the discount because it protects,
17 like patients, and it ensures we get paid.

18 Q Okay. Does it -- does the wrap agreement -- do you know
19 what impact it has on your ability to balance bill members for that
20 discount, that ten percent discount?

21 A It puts -- it prevents any balance billing, that's right.

22 Q All right. Now, did TeamHealth terminate United Healthcare
23 as its third-party administrator?

24 A We did.

25 Q Why?

1 A We didn't like the -- we had issues with our overall
2 relationship with United. They were underpaying our claims.

3 MR. ROBERTS: Objection, Your Honor. This is subject to
4 motion in limine.

5 MR. ZAVITSANOS: I don't believe it is, Your Honor.

6 THE COURT: Can you approach?

7 [Sidebar at 10:20 a.m., ending at 10:20 a.m., not transcribed]

8 THE COURT: Okay. Objections been overruled. Go ahead,
9 please.

10 MR. ZAVITSANOS: Thank you, Your Honor.

11 BY MR. ZAVITSANOS:

12 Q Okay. Sir, did you all terminate United as your third-party
13 administrator?

14 A You did.

15 Q Okay. Now, you're a witness in the case and you haven't --
16 have you see any of the proceedings in this case, or the BlueJeans link?

17 A No, I have not.

18 Q Okay. So you don't know what evidence has come into this
19 case, right?

20 A No idea.

21 Q Okay. Sir, now, do you understand that the Plaintiff's in this
22 case, the three groups, Team Physicians, Ruby Crest, and Fremont are
23 seeking to recover their bill charges in this lawsuit?

24 A Yes.

25 Q Now, you had a wrap agreement with MultiPlan that calls for

1 a discount off of your bill charges, right?

2 A That's correct.

3 Q Okay. And -- and I think we heard in opening from Defense
4 counsel, that the Plaintiffs in this case, very infrequent that they get bill
5 charges; I'm going to represent that to you, okay?

6 A Okay.

7 Q So from where you sit, why should these three Plaintiffs be
8 awarded their bill charges, sir?

9 A We perform the service. We took care of the patients, and
10 our bill charges are fair.

11 Q Okay. Why wouldn't you just accept the wrap -- the wrap
12 arrangement?

13 MR. ROBERTS: Objection. Calls for a narrative.

14 THE WITNESS: We wouldn't have accepted the wrap
15 arrangement.

16 BY MR. ZAVITSANOS:

17 Q I'm talking about in this case. Why would you not accept the
18 wrap arrangement, and you're asking for billed charges?

19 A Well, at this point, we have expended incredible time and
20 energy and resource just to collect the unpaid balance, so the wrap
21 arrangement was available at the front end at the time of, you know, of
22 first bill.

23 Q Okay. Well, so if United had access to the wrap agreement
24 with MultiPlan for the -- I'll represent to you there's like 11,500 or so
25 claims in this case, okay? If United had access to that wrap agreement,

1 would we be here?

2 A We would not.

3 Q Okay. All right. Now, let's talk about balance billing, okay?

4 A Okay.

5 Q All right. Do you know what that is?

6 A I do.

7 Q Okay. So --

8 MR. ZAVITSANOS: Your Honor, may I ask counsel if he has
9 any opposition to Plaintiffs' 424?

10 MR. ROBERTS: It's in.

11 MR. ZAVITSANOS: It's what?

12 MR. ROBERTS: It's in.

13 MR. ZAVITSANOS: Oh, it's in?

14 MR. ROBERTS: Yes.

15 MR. ZAVITSANOS: Okay. So can we bring up 424, please?

16 THE COURT: It is, Attorney -- it is -- thank you.

17 BY MR. ZAVITSANOS:

18 Q Okay. So Mr. Murphy --

19 MR. ZAVITSANOS: Michelle, can you pull out the -- the --

20 BY MR. ZAVITSANOS:

21 Q Is this a -- is this a TeamHealth policy?

22 A Let me just take a minute here.

23 Q Sure.

24 MR. ZAVITSANOS: Michelle, can you scroll down a little bit?

25 Keep going. Oh, stop.

1 THE WITNESS: It is -- it is a TeamHealth policy, yes.

2 BY MR. ZAVITSANOS:

3 Q Okay. And is -- just describe very generally what that policy
4 is on that -- it's in evidence, the jury can read it on their time; tell us what
5 that is.

6 A Let me just give it a quick --

7 Q Sure.

8 A -- quick read here.

9 MR. ZAVITSANOS: And let's go, Michelle, please, to page 2.
10 Pull out section 8, please. Is -- right there, Michelle.

11 BY MR. ZAVITSANOS:

12 Q That's a lot of gobble -- what does that mean?

13 A Oh, I'll just give it a read here.

14 Q Sure.

15 A So it essentially means that you are not going to balance bill
16 our patients.

17 Q Okay. And is this kind of the directive to, I guess, some kind
18 of computer thing to make sure that you make sure that doesn't happen?

19 A Yes.

20 Q Okay. So Mr. Murphy, are you aware --

21 MR. ZAVITSANOS: You can take it down, Michelle.

22 BY MR. ZAVITSANOS:

23 Q Are you aware of whether, for the approximately 11,500
24 claims at issue in this case, did TeamHealth balance bill any of those
25 patients or United members?

1 A We would not have, no.

2 Q Okay. So do other companies balance bill patients?

3 A I believe that some do, yes.

4 Q Anything fundamentally wrong with that?

5 A There is not.

6 Q Okay. Why did TeamHealth decide not to balance bill
7 patients?

8 A It's been a longstanding policy for us on not balance billing
9 patients, and there -- there are a variety of reasons. One is patients can't
10 afford it. It's very difficult to go and bill another 11,500 claims for
11 balance bills to use the number that you stated. And quite frankly,
12 United collected the premiums from these patients and they underpaid
13 the bill, so we're here to collect that balance.

14 Q Given the choice between balance billing 11,500 patients, or
15 proceeding against United, which one did you guys select?

16 A Proceeding against United.

17 Q All right. Now -- okay. Now, let's look, please --

18 MR. ZAVITSANOS: Your Honor, can we approach for one
19 more second?

20 THE COURT: Yeah.

21 [Sidebar at 10:27 a.m., ending at 10:28 a.m., not transcribed]

22 MR. ZAVITSANOS: Okay. So Your Honor, I -- it looks like
23 they're a step ahead of me. That's already been done, so we offer 313,
24 the one that was most recently provided to Defendants.

25 MR. ROBERTS: And objection, Your Honor. Incomplete

1 document. Improper redactions. Foundation, and 48 [indiscernible].

2 THE COURT: You'll have to lay foundation.

3 BY MR. ZAVITSANOS:

4 Q Sir, you have a set of binders behind you. Would you,
5 please -- would you please pull out the binder that has Exhibit 313 in it,
6 Mr. Murphy. It's behind you, sir.

7 A Okay. I knew there was one other in this one, so --

8 MR. ZAVITSANOS: And Mr. Killingsworth will just check and
9 see if that's the one that's being offered. Your Honor, there's one
10 additional redaction that needs to be made. I don't intend to go into that,
11 okay? If somebody -- if we can pull up the rest of it if I can?

12 THE COURT: Yeah.

13 BY MR. ZAVITSANOS:

14 Q Okay. Mr. Murphy, who is Rena Harris?

15 A A senior contract manager at TeamHealth.

16 Q Okay. Now, does this document at the very top of the
17 document, relate to this issue of balance billing?

18 A It appears to, yes.

19 Q Does this appear to be a TeamHealth -- a TeamHealth email?

20 A It is a TeamHealth email directed to a United person, yes.

21 Q Okay. Any reason to doubt its authenticity?

22 A No.

23 Q Okay. And does this document confirm the document we
24 just looked at, Plaintiff's 424, concerning balance billing?

25 A It says we will not balance --

1 Q No. No. No. Don't -- don't say what it says.

2 A Yes, it confirm it.

3 Q Does this document confirm what we just looked at, at 424,
4 sir?

5 A Yes.

6 MR. ZAVITSANOS: Your Honor, at this point, we move for
7 the admission of 313, with the only additional redaction being the
8 subject line, Your Honor.

9 MR. ROBERTS: Objection, Your Honor. May we approach?

10 THE COURT: You may.

11 MR. ROBERTS: Thank you.

12 [Sidebar at 10:32 a.m., ending at 10:33 a.m., not transcribed]

13 MR. ZAVITSANOS: Okay. May I proceed?

14 THE COURT: No. I have to let the jury know that I overruled
15 an objection. Go ahead, please.

16 MR. ZAVITSANOS: Your Honor, at this point, with the
17 additional redaction that needs to be done, we move for the admission
18 of Plaintiff's 313.

19 THE COURT: And there will be an additional redaction?

20 MR. ZAVITSANOS: Yes, Your Honor, the -- yes, the one we
21 discussed before.

22 THE COURT: All right. So 313 will be admitted.

23 [Plaintiffs' Exhibit 313 admitted into evidence]

24 MR. ZAVITSANOS: Okay. Michelle, what I'd like you to do is,
25 if you can, I need you to pull out two [indiscernible]. This one and this

1 one, okay.

2 [Counsel confer]

3 MR. ZAVITSANOS: Just that. Nothing else. Not the front
4 two.

5 MR. ZAVITSANOS: Just that one line, Michelle.

6 BY MR. ZAVITSANOS:

7 Q Okay. Now --

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

9 THE COURT: Yes.

10 MR. ZAVITSANOS: Okay.

11 BY MR. ZAVITSANOS:

12 Q Mr. Murphy, does this appear to be an exchange between
13 somebody on the Defendant's side of the -- this business exchange and
14 someone on the TeamHealth side?

15 A Yes.

16 Q Okay. And what did the person on behalf of the
17 Defendants -- what was the question that they asked? Would you just
18 please read that out loud?

19 A Will you please confirm that it is not TeamHealth's intent to
20 balance bill our members?

21 Q Okay. And what was the response from the TeamHealth
22 person?

23 A We will not balance bill the member.

24 Q Okay.

25 MR. ZAVITSANOS: Michelle, take that down.

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1 BY MR. ZAVITSANOS:

2 Q Now, Mr. Murphy, in fairness, this was about one particular
3 member, correct? It said the member, right? Single.

4 A No, it's members.

5 Q Okay. Do you know why the Defendants keep bringing up
6 this balance billing issue in connection with the claims at issue in this
7 case?

8 A Why?

9 Q Do you know why the Defendant, United entities over here,
10 they keep talking about balance billing in this trial when there was no
11 balance billing for any of these claims, sir?

12 A Yeah.

13 Q Do you know?

14 A I believe -- I can speculate, but I do not know absolutely.

15 Q I don't want you to speculate. Okay. Thank you, sir. Now --
16 all right. Before the lawsuit was filed, did you know that United was
17 taking a percentage of the quote/unquote, savings that it -- through these
18 what they're calling programs, that they were taking a cut?

19 A I did.

20 Q Okay. What did you know about it?

21 A Before this trial or before --

22 Q I'm sorry. Before the lawsuit was filed, were you aware they
23 were taking a percentage of the savings?

24 A I was.

25 Q Okay. Let's look at -- I want to look at the Plaintiff's Exhibit

1 10.

2 MR. ZAVITSANOS: Michelle, will you please pull up
3 Plaintiff's Exhibit 10. And let's go to page 2.

4 BY MR. ZAVITSANOS:

5 Q Now this is -- Mr. Murphy, we're almost done.

6 MR. ZAVITSANOS: Pull up the top.

7 THE COURT: Now I show this was conditionally admitted; is
8 that correct?

9 MR. ZAVITSANOS: Your Honor, I think -- I believe the
10 Defendant moved for unconditional admission. This was used during
11 Mr. Blalack's examination.

12 MR. BLALACK: I think this is in evidence, Your Honor.

13 THE COURT: It is. All right. I apologize for the interruption.

14 MR. ZAVITSANOS: No, no.

15 THE COURT: Please go ahead.

16 MR. ZAVITSANOS: I -- my apologies.

17 BY MR. ZAVITSANOS:

18 Q Okay. All right. So, sir, I'm going to represent to you this
19 was covered earlier. Now let's get one thing straight. You're not on this
20 document, right?

21 A I don't -- no.

22 Q Okay.

23 A It's not an agreement with TeamHealth.

24 Q Okay. So this is an agreement it looks like between United
25 Healthcare and Walmart. See that?

1 A I do.

2 Q Okay. All right. Do you know a gentleman by the name of
3 John Haben?

4 A By name, yes.

5 Q Okay. You've never met him?

6 A I've not met him personally, no.

7 Q Okay. Now here's what I want to do. Oh. Now let's go to
8 page 60 of this --

9 MR. ZAVITSANOS: Michelle, will you pull out the shared
10 savings program, please, all the way across. Now, Michelle, follow me
11 here. Highlight from here, the word means, that would have been
12 payable to a healthcare provider. Okay.

13 BY MR. ZAVITSANOS:

14 Q Mr. Murphy, you took English in high school, right? Right,
15 sir?

16 A I did. Yes.

17 Q Okay. All right. So I'll represent to you that Mr. Haben told
18 the jury that what I've highlighted here does not mean that this is the
19 amount that would have been payable to the healthcare provider. It
20 simply means it's a formula to calculate shared savings. Okay. You with
21 me? Does that make any sense to you?

22 MR. BLALACK: Objection, Your Honor. Improper request to
23 give an opinion about the credibility of another witness and request for
24 expert opinion and a matter within --

25 MR. ZAVITSANOS: This is a --

1 MR. BLALACK: -- the province of the jury.

2 THE COURT: You'll have to lay more foundation.

3 MR. ZAVITSANOS: Yeah.

4 THE COURT: And you'll have to clarify.

5 MR. ZAVITSANOS: Yes.

6 BY MR. ZAVITSANOS:

7 Q Let me ask you this, sir. Just reading that, what does that
8 indicate to you about what would have been payable to a healthcare
9 provider according to this plan document?

10 A Our bill charge.

11 MR. BLALACK: Objection. Foundation. TeamHealth is not a
12 party to this agreement. He has no foundation to testify as to what the
13 intent of the parties was.

14 MR. ZAVITSANOS: This is the exact --

15 THE COURT: Overruled. He's only being asked with regard
16 to his own impressions.

17 BY MR. ZAVITSANOS:

18 Q What -- sir, let me ask it again. What does this indicate to
19 you, just using basic English, as to what amount would have been owed
20 under this plan?

21 A The amount that we were entitled to, which would have been
22 the bill charge.

23 Q Do you know whether this language is in every single shared
24 savings box in the ASO plans that aren't in evidence? Do you know one
25 way or another, sir?

1 A I do not.

2 Q Okay. Does it make sense to you that what is highlighted
3 means something other than the amount that would have been payable
4 to a healthcare provider?

5 A It does not, no.

6 Q Okay. All right.

7 MR. ZAVITSANOS: Take it down, Michelle.

8 BY MR. ZAVITSANOS:

9 Q Okay. Finally, I'm going to bring up Defendants' 5504. And
10 my esteemed opposing counsel is going to have some questions for you.

11 MR. ZAVITSANOS: Okay. So let's pull this out.

12 BY MR. ZAVITSANOS:

13 Q Do you have any crazy third cousins?

14 A Probably.

15 Q Okay. All right.

16 MR. ZAVITSANOS: So let's pull out these companies here.

17 BY MR. ZAVITSANOS:

18 Q Okay. Do you recognize some of those companies?

19 A I do. I even mentioned a couple.

20 Q Okay.

21 MR. ZAVITSANOS: Now, Michelle, close it out. Can you --
22 Michelle, can you see if -- ah, here we go. Let's go all the way across,
23 Michelle. All the way down. Right there. Okay. Now, Michelle, will
24 you -- oh, I need the heading, Michelle, please, up at the top here. Yeah.
25 Let's go from right here and here to here. Right there. Okay.

1 And, Michelle, will you please start highlighting every time it
2 says 50 percent. No, just the 50 percent, Michelle. Just the 50 percent.
3 Just under SSPE, please. Just start highlighting. Okay.

4 BY MR. ZAVITSANOS:

5 Q Mr. Murphy, how many crazy third cousins does TeamHealth
6 have?

7 A Everyone on this page is a third cousin. I can't tell you any of
8 them is crazy.

9 Q Okay. Well, you see that 50 percent.

10 A That would make them crazy.

11 Q Why do you say that?

12 A To essentially pay 50 percent of the shared savings in a --
13 that's discounted off of the otherwise payable amount of the bill charge
14 would be -- that would be crazy.

15 Q Would you ever agree to that, sir?

16 A I would not. And we did not.

17 Q Now you see TeamHealth --

18 MR. ZAVITSANOS: Now, Michelle, highlight that all the way
19 across.

20 BY MR. ZAVITSANOS:

21 Q Okay. Now what do you think about that? Do you see it says
22 zero?

23 A What do I think about that?

24 Q Yeah.

25 A Yeah. I think it's we anticipated that, you know, that would

1 be crazy to pay a shared savings plan like that, especially for emergency
2 medicine where we insist that we pay bill charge on any out-of-network
3 visit.

4 Q Last question, Mr. Murphy. Do you know these big ASO
5 plans with all this fine print and all this legal jargon? Do you know
6 whether these companies knew that 50 percent was the charge?

7 A So I would imagine that they knew the 50 percent that they
8 agreed to, but I don't believe that they would have thought that was 50
9 percent of the bill charge.

10 Q Fifty percent reduction.

11 A In fact, I think highlighting this amount was embarrassing for
12 the Blackstone team.

13 MR. ZAVITSANOS: I'll pass, Your Honor.

14 THE COURT: Cross-examination, please.

15 MR. ROBERTS: Yes, Your Honor. Thank you.

16 CROSS-EXAMINATION

17 BY MR. ROBERTS:

18 Q Good morning, Mr. Murphy.

19 A Good morning.

20 Q Answer to my first question is a number, only a number. Do
21 you know this -- first of all, for context, you know that this case is about
22 services provided in Nevada, right?

23 A I do.

24 Q How many hurricanes has TeamHealth helped Nevada with?
25 Just a number.

1 MR. ZAVITSANOS: Your Honor, the barn door is creeped
2 open.

3 MR. ROBERTS: I'll move on, Your Honor.

4 BY MR. ZAVITSANOS:

5 Q You mentioned physicians employed by TeamHealth for 20
6 years. Is that what you testified to earlier?

7 A I'm sorry. Can you give me the context?

8 Q Yes. In the context we're talking about, attrition, you did
9 mention that includes maybe 10 percent of physicians a year, but that
10 you did have physicians that were employed by TeamHealth for 20
11 years.

12 A That's correct.

13 Q But not in Nevada, correct?

14 A That have been a part of historical pieces that we acquired in
15 Nevada, but that's correct. We acquired our position in Nevada more
16 recently.

17 Q So, therefore, no physician in Nevada would have been
18 employed or contracted with by TeamHealth for more than about six
19 years, right?

20 A If you were not going to count their employment with their
21 Legacy practice, that's correct.

22 Q Is the name of the Legacy practice now different than the one
23 that you acquired for Fremont?

24 A Likely.

25 Q Who changes the name, the local entity or TeamHealth?

1 MR. ZAVITSANOS: Relevance, Your Honor. Appropriate
2 practice of medicine issue.

3 THE COURT: How is that relevant?

4 MR. ROBERTS: He brought up the fact that physicians were
5 employed by Legacy entities, but this particular entity that is suing
6 didn't even exist for more than a couple years.

7 THE COURT: The name is irrelevant. Objection is sustained.
8 BY MR. ROBERTS:

9 Q Would you agree that the entity that Dr. Scherr testified to,
10 Fremont Emergency Services share has only existed for a few years?

11 MR. ZAVITSANOS: Same question, Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: Honestly, I don't know if that entity was
14 essentially assumed and just the name changed or if that was a new
15 entity formed at the time of the acquisition.

16 BY MR. ROBERTS:

17 Q We told the jury that TeamHealth was involved in revenue
18 cycle, correct?

19 A Yes.

20 Q Billing, correct?

21 A That's correct.

22 Q Collections, correct?

23 A That's correct.

24 Q Setting charges, correct?

25 A That's correct.

1 Q Coding, correct?

2 A That's right.

3 Q So in other words, one of the things TeamHealth does is try
4 to maximize the profits of these physician groups. Is that fair?

5 A What we try to do is ensure that we get paid fairly for the
6 service we provide.

7 Q You aren't telling the jury that you don't try to maximize
8 profits, are you, sir?

9 A Maximizing profits would compromise patient safety. It
10 would compromise clinical quality, et cetera. No, we don't maximize
11 profit. We ensure that we deliver the highest level of care and that we
12 deliver outpatients excellence.

13 Q You told the jury that it was common in the industry for
14 physician practices to hire someone else to do the billing. It's common
15 in the industry. Is that your testimony?

16 A It is.

17 Q Is it common in the industry for the biller to charge the same
18 way you do?

19 A I'm not sure I understand the question.

20 Q You mentioned that billers -- that physician groups
21 commonly use billing services, billing companies.

22 A That's correct.

23 Q How do those companies typically charge? What's the
24 predominant way they charge?

25 A So we capture everything that occurred at the point of care.

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1 We code it into a claim. And we submit it for reimbursement to an
2 insurance company, all a part of our complex process. Charges are set
3 for us based upon what we believe to be a competitive rate. And we do
4 that with the use of Fair Health as, you know, the largest database for
5 determination. I can't tell you how our competitors do it. I can tell you
6 that they're reflected in the Fair Health database.

7 Q Is your portion of your amount collected calculated the same
8 way that an outside billing company's would be? That's just yes or no. I
9 don't want to get into any specifics.

10 MR. ZAVITSANOS: Speculation, Your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: Sorry. I don't understand the question.

13 BY MR. ROBERTS:

14 Q The amount of the money that's collected, is what you keep
15 the same or different than the way standard billing companies charge
16 fees in the industry?

17 MR. ZAVITSANOS: That one is a limine issue, Your Honor,
18 terms of -- in terms of what you keep.

19 MR. ROBERTS: They opened the door. They brought up --

20 MR. ZAVITSANOS: No.

21 MR. ROBERTS: -- that they did it the same way as other
22 billing companies, Your Honor.

23 THE COURT: I'll sustain the objection.

24 BY MR. ROBERTS:

25 Q Let's move to the discussion of chargemasters. You told the

1 jury a little bit about how TeamHealth goes about setting the
2 chargemasters for the physician groups in Nevada, correct?

3 A That's correct.

4 Q And the chargemasters is the amount of billed charges.
5 That's what is used to determine the amount of billed charges that goes
6 on the claim filed with an insurance company; am I correct?

7 A The billed charge is the price associated with each level of
8 acuity that we submit on a claim. That's correct.

9 Q Which is drawn from the chargemaster?

10 A The chargemaster is a price list. Yes.

11 Q And did you mention that you weren't as familiar with that
12 process as others in the company might be?

13 A I'm familiar with the process. I don't set the charges myself I
14 think was the question.

15 Q And you told the jury about the some of the factors that go
16 into the setting of the chargemaster. Are Medicare rates considered at
17 all in setting the chargemaster?

18 A They are not.

19 Q Is the cost of providing services factors into the setting of the
20 chargemaster?

21 MR. ZAVITSANOS: Your Honor, limine.

22 THE COURT: Objection sustained.

23 BY MR. ROBERTS:

24 Q Are charges set by the chargemaster, how often are they
25 increased?

1 A They are evaluated annually, in general. And they're
2 increased, typically, with the medical cost of inflation with reflection back
3 on, you know, the Fair Health database to ensure they remain consist
4 with that 80th percentile.

5 Q Are they ever set higher than the 80th percentile?

6 A Yes. Some vary higher. Some vary lower. But, you know, if
7 you look at it, it's anchored around that 80th percentile.

8 Q So you don't use the 80th percentile as the set price. It's
9 simply one factor you consider. Is that fair?

10 A So the database is a reflection of, like you said, all of the
11 competitors inside of the market. So it fluctuates. We don't want our
12 prices to fluctuate randomly with that number. So we ensure that we are
13 close to that 80th percentile, but we don't chase it with the smallest
14 penny.

15 Q Do the chargemaster charges, have they ever increased more
16 than once a year?

17 A In Nevada, I don't know.

18 Q In other markets?

19 A Honestly, I can't think of any where I have firsthand
20 knowledge of it. No.

21 Q Let's move to balance billing.

22 MR. ROBERTS: And, Shane, are you able to put Exhibit 424
23 up for me. And highlight the top third of the page.

24 BY MR. ROBERTS:

25 Q You previously identified this as a TeamHealth policy and

1 procedure, correct?

2 A That's correct.

3 Q And this policy and procedure indicates that you do not
4 balance bill patients. Is that fair to say?

5 A That's correct.

6 Q What was the date of this policy?

7 A The last review was on October 17 of 2019.

8 Q That's after this lawsuit was filed, right, with this policy in
9 writing?

10 A Yes.

11 Q And what about the 2016 version of this policy? Did it have
12 the language in it that patients would not be balance billed as policy?

13 A I don't know if it was in this specific policy. It looks like this
14 one was revised in '18, '11, '08, '07, '06. I would assume it was.

15 Q Do you know if it was, sir?

16 A I know that it was a policy for TeamHealth. I don't know if
17 this specific policy had it.

18 Q So it's not your testimony under oath that TeamHealth had
19 not sued patients for balance billing amounts claimed owed in 2016, is
20 it?

21 MR. ZAVITSANOS: Your Honor, to the extent this asks
22 about -- well, there's a limine issue, Your Honor, with that question right
23 there.

24 THE COURT: Why don't you --

25 MR. ZAVITSANOS: And it's not balance --

1 THE COURT: Why don't you approach?

2 [Sidebar at 10:56 a.m., ending at 10:57 a.m., not transcribed]

3 THE COURT: Okay. The question will be rephrased for you.

4 MR. ROBERTS: Thank you.

5 Can you put that back up, Michelle?

6 BY MR. ROBERTS:

7 Q And you just mentioned these dates from '06 to 2019. And
8 just to make sure I understand your testimony, you're telling the jury that
9 it's been the national policy of TeamHealth not to balance bill patients
10 since 2006, and this policy's never changed on that point from '06 to '19?

11 A So we have a book of policies that's very significant. We
12 have had a policy of not balance billing patients. That has stood for that
13 entire time frame, that's correct --

14 Q So --

15 A -- whether in this one or whether in another one.

16 Q So you're testifying under oath that from 2006 to 2019,
17 TeamHealth never balance billed an ER patient?

18 A Unless it was an error on misinterpretation of remit advice
19 that came from the insurance company, that's correct.

20 Q You looked at a shared savings document and told the jury
21 what your review of the amount payable was. And that's the amount
22 that you say you're entitled to billed charge, correct?

23 A That's correct.

24 Q If that's the amount that's payable, if that's the amount
25 you're owed, why does TeamHealth only get it six percent of the time?

1 A Our charge is fair. Our -- our charge is set based upon the
2 FAIR Health 80th percentile. If we are underpaid for a claim, we pursue
3 the payment of the unpaid balance. Unfortunately, you know, on a
4 claim-by-claim basis, it can be expensive to pursue. And unless it
5 amounts to a size of claims, like 11,500, it's hard to pursue it in litigation.

6 MR. ROBERTS: Shane, could you put up Exhibit 5504,
7 page 1?

8 BY MR. ROBERTS:

9 Q Now, we've talked a lot about the share savings program,
10 whether it's fair for United to earn a fee that it does under that program.
11 Can a provider like TeamHealth completely eliminate any shared savings
12 revenue to United simply by lowering its billed charges to the amount
13 that the insurance company's willing to pay?

14 A So since they reduced our charge to zero and provide free
15 service, yes, we could eliminate shared savings.

16 Q And you could eliminate shared savings during the large
17 portion of this time by reducing then 350 percent of Medicare, right?

18 A There's any arbitrary number we could reduce it to, but we'd
19 need to collect a reasonable and fair charge.

20 Q And the higher and the more unreasonable the billed
21 charges, the more savings goes to the insurance company when they cut
22 it, correct?

23 A So it depends on how that calculation is made.

24 Q And you're aware that when you're talking about a shared
25 savings program, you're talking about ASO clients, right, administrative

1 services only?

2 A That's correct.

3 Q And if United had not cut that charge and reduced the
4 amount it paid, then the other money -- the other money from the billed
5 charge would have come from the employers and the other ASO clients,
6 right?

7 A That's right. They would have paid a reasonable rate for the
8 service that was provided.

9 Q And you keep saying that, "We don't do anything for that
10 charge." But are you suing MGM in this case?

11 MR. ZAVITSANOS: Your Honor, he -- he didn't say it. I did.

12 THE WITNESS: I --

13 MR. ZAVITSANOS: And so I'm going to object to the
14 argumentative nature of that.

15 THE COURT: I'm going to overrule that because he speaks
16 for TeamHealth.

17 BY MR. ROBERTS:

18 Q Are you suing MGM? Are you trying to get that difference
19 from them that would originally come under their fund if United paid the
20 full billed charge?

21 A We don't have a contract with MGM. We have -- we are
22 suing United where we treated United's member who paid premiums to
23 pay for that healthcare.

24 Q And you're not doing the Metropolitan Police Department,
25 right?

1 A No. We're suing United.

2 Q That's right. Our ASO clients save the money, and we're the
3 ones getting sued, right? Don't you think that's providing a service to
4 our ASO clients?

5 A I -- I think that United, as I reference -- as I look at that
6 document, actually said the amount otherwise payable was the billed
7 charge. You should have remitted the billed charge on behalf of the
8 client.

9 Q So our clients should have paid their portion, 10.5 million,
10 and they should be out the money, not us?

11 A They should have been all along.

12 Q We've got this chart that you referred to where you said that
13 some of your sister companies were crazy cousins because they agreed
14 to pay 50 percent shared savings, right?

15 A That's -- to use Mr. Zavitsanos' term, yes, those are the crazy
16 third cousins.

17 Q So let's assume a bill charge -- and the jury's seen some of
18 these. It's \$14,000, right?

19 A No. We don't -- we don't have a charge that's higher than
20 1,800.

21 Q Read what I wrote, not what I said. I've got -- it's \$1,400.
22 Okay. So 1,400, assume that's the billed charge. Right?

23 A Okay.

24 Q And assume that United pays 400. Would you agree that
25 under the document you just read and your interpretation you gave to

1 the jury, that \$1,000 would be the savings, as calculated by that
2 document?

3 A Yes.

4 Q And you're saying that 50 percent is unreasonable. So
5 United would take a fee of \$500, right?

6 A More than we get paid.

7 Q And the client would save \$500. Now, let's go back to your
8 crazy-cousin analogy.

9 A Now, the client would have paid \$900. They only paid 500 to
10 United and 400 to us.

11 Q 400 to the provider and 500 to us. \$900.

12 A So that \$1,400 is for a level 5 high acuity emergency room
13 visit that --

14 Q Which --

15 A -- Dr. Scherr would have provided, you know, in the
16 emergency room at any time a night. So that \$400 is less than you're
17 going to collect for underpaying our billed charge. That's what you're
18 saying.

19 Q And this could also be for looking at a patient, say he's in
20 crisis, take him up in the ER, the doctor spent five minutes and did
21 nothing but admit him to the hospital, and that would also --

22 A No.

23 Q -- be --

24 A No, sir.

25 Q -- \$1,400?

1 A That would have been a level 1 or a level 2 claim. And that
2 would have been, you know, much lower than \$1,400. You're picking the
3 highest acuity claim right there.

4 Q And if it's a gunshot wound and the patient is in crisis, no
5 matter how long that ER physician spend with him, it's 1,400, correct?

6 A No. It could move into critical care --

7 Q Okay.

8 A -- and it could move up to 1,800.

9 Q But that would be in a different code, right?

10 A That's right.

11 Q And that would be an additional charge, right?

12 A But you picked a gunshot code, and United's collected more
13 than we have.

14 Q So let me get back to my question. Which is crazier for an
15 ASO client to do, pay 900 total to us and the provider or to pay \$1,400,
16 500 more, is this crazier than agreeing to 50 percent shared savings?

17 A So my crazy cousins, when they reviewed it, were absolutely
18 embarrassed that they paid more to United than they paid to the
19 emergency room physician. And no one objected to \$1,400 for a board
20 certified physician in emergency medicine to take care of a gunshot
21 victim.

22 Q So you told the jury that you fired United as your claim
23 administrator, correct?

24 A That's correct. Because we would have paid the 1,400.

25 Q Oh. No, you wouldn't.

1 A Yes, we would.

2 Q Under your current contract, sir, you don't pay billed
3 charges, do you?

4 A Out-of-network, we pay 100 percent of billed charge to
5 emergency medicine.

6 Q That's your testimony?

7 A Yes.

8 Q Under your current contract?

9 A No. This -- you referenced our United contract.

10 Q No. But you canceled with us. You went with a different
11 company. And under that new contract, you do not pay billed charges,
12 do you, sir?

13 A I actually believe that we did, but I haven't looked at that
14 contract recently.

15 Q You might want to go check it.

16 MR. ZAVITSANOS: Your Honor, also, we're outside the
17 relevant time period, Your Honor. And I move to strike that.

18 THE COURT: I think he's moving on to the next subject, so.

19 MR. ZAVITSANOS: Okay.

20 BY MR. ROBERTS:

21 Q So I'm going to ask you, sir, just to -- to get out 313. Do you
22 still have that in front of you, Exhibit 313?

23 A I do.

24 Q And counsel asked you to confirm that we were only talking
25 about a single member here that you were saying you would not balance

1 bill. You insisted that it was multiple members. And I'm not asking
2 about the question. I'm asking about the answer.

3 THE COURT: Hang on a second. Shane, did you add that
4 redaction?

5 MR. ROBERTS: Oh, I'm sorry. I didn't mean to put that up.
6 That's why I just asked him -- sorry.

7 MR. ZAVITSANOS: And, Your Honor, to the last question, I
8 didn't limit it to the answer. I think --

9 THE COURT: You can do that --

10 MR. ZAVITSANOS: Okay.

11 THE COURT: -- on your redirect.

12 MR. ZAVITSANOS: Okay. Yes, Your Honor. My apology.

13 BY MR. ROBERTS:

14 Q So I'm looking right at the top of the page right under, "Hi
15 JC." Does that answer, saying that you will not balance bill, talk about
16 multiple members or this single member?

17 A Well, the -- the question didn't refer to a single member. So I
18 think the intent was to answer the question, which referred to our
19 members, plural.

20 Q You didn't write this email, did you?

21 A No, but I can read it.

22 Q Did Ms. Harris consult with you before she wrote the single
23 word member?

24 A She did not.

25 Q And when she responded, she said, "We will not balance bill

1 this member," correct?

2 A No. She said, "the member."

3 Q The member. And this email was from 2019, after that new
4 policy -- that new revision of the policy was put out, correct?

5 A That's correct.

6 Q And do you know why this member was concerned about
7 being balance billed?

8 A Sir, I don't see a reference to an individual member. I see a
9 question about the members. Which seems United's more concerned
10 that all of the members are going to be balance billed when they
11 underpay our claim.

12 Q Have you ever seen an unredacted copy of this email?

13 A I don't believe I have, no.

14 Q And redaction is when the lawyers take and white out or
15 cover up --

16 A Oh, is it?

17 Q -- parts of the original --

18 A I didn't realize this was redacted.

19 MR. ZAVITSANOS: Your Honor, we're getting into an issue
20 covered by the limine. I limited my inquiry to the question and answer
21 that I -- that was up on the screen.

22 THE COURT: And --

23 MR. ROBERTS: I'll approach, Your Honor, to make sure I
24 don't run afoul to anything.

25 THE COURT: Come on up.

1 [Sidebar at 11:09 a.m., ending at 11:10 a.m., not transcribed]

2 THE COURT: All right. I've sustained an objection.

3 BY MR. ROBERTS:

4 Q Going back to 313, sir, the -- do you see the subject line?

5 MR. ZAVITSANOS: Judge, that is also redacted.

6 THE COURT: Yeah. Objection sustained.

7 MR. ROBERTS: Your Honor, what -- it's not redacted. I've
8 got the exhibit right in front of me.

9 MR. ZAVITSANOS: Your Honor --

10 MR. ROBERTS: It's still there.

11 MR. ZAVITSANOS: -- that is the point that I made when I
12 offered it. I said, that is the additional item that needs to be redacted,
13 Your Honor.

14 MR. ROBERTS: I'm not going to refer to anything that's
15 excluded.

16 MR. ZAVITSANOS: Your Honor --

17 THE COURT: You know, let's take our -- let's take a recess.
18 It's -- if -- we started at 9:50. I try to do it every hour.

19 So during the recess, don't talk with each other or anyone
20 else on any subject connected with the trial; don't read, watch, or listen
21 to any report of or commentary on the trial; don't discuss this case with
22 anyone connected to it by any medium of information, including, without
23 limitation, newspapers, television, radio, Internet, cell phones, or texting;
24 don't conduct any research on your own relating to the case; don't
25 consult dictionaries, use the Internet, or use reference materials.

1 During the recess, do not post on public media about being
2 in a jury trial. Don't talk, text, Tweet, Google issues or conduct any other
3 type of book or computer research with regard to any issue, party,
4 witness or 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 matter is submitted to the jury.
7 It's 11:12. Let's be back at 11:25.

8 THE MARSHAL: All rise for the jury.

9 THE COURT: And I'll ask you to step out of the room so
10 that --

11 THE WITNESS: Okay.

12 THE COURT: -- we can discuss this matter.

13 [Jury out at 11:12 a.m.]

14 [Outside the presence of the Jury]

15 THE COURT: Okay. The room is clear. Mr. Roberts, would
16 you like a short recess, or are you ready to go?

17 MR. ROBERTS: No. I'm ready, Your Honor, if -- if -- but I'd be
18 happy to give one --

19 THE COURT: I'm good.

20 MR. ROBERTS: -- to the Court or counsel with its comfort.

21 THE COURT: I -- let's go.

22 THE MARSHAL: Two of the jurors.

23 [Court and Marshal confer]

24 MR. ROBERTS: So the -- this goes to Exhibit 313. And at the
25 bench, I had previously objected to its admission as an incomplete

1 document and improper redactions, and suggested at the bench after
2 that, that even with the redactions being proper, that it took all the
3 context away from the email other than basically the date. The jury
4 knows nothing except their statement on the balance billed to member
5 and the date.

6 The bottom of the email chain that has been redacted from
7 the proposed exhibit states, "Since we were not able to come to an
8 agreement for Fremont Emergency Services with Health Plan of Nevada,
9 Sierra Health-Care Options, and Sierra Health and Life, please see
10 attached my termination confirmation letters where the contract shall
11 terminate midnight February 25th, 2019, as stated on your September
12 10, 2018 letter."

13 And I believe that by putting this exhibit in, they're opening
14 the door to me reading the rest of the exhibit. I said you don't get it at all
15 because it's incomplete and improper redactions. But now that they've
16 offered it, I should be able to get that into evidence.

17 But putting that aside, the only thing I wanted to bring up on
18 the subject line is that this only applied to HPN, Sierra Health and Life,
19 and Sierra Health-Care Options. That it only applied to three of the five
20 Defendants. That is the only thing I was going at, which is why I said I'm
21 not going to bring up anything excluded, I'm not going to read the
22 termination confirmation. All I wanted to do is get him to confirm that
23 this letter was only to three out of the five Defendants.

24 MR. ZAVITSANOS: Brief response, Your Honor?

25 THE COURT: Yes. Please.

1 MR. ZAVITSANOS: To the last point, Your Honor, no
2 objection whatsoever. That's perfectly appropriate. I had told the Court
3 that -- and forgive me, Your Honor. We are doing the best we can. It's
4 just there's a lot of documents here, and sometimes something slips by.
5 There's a -- in the subject line, I think in parenthetical, it says, "Contract
6 Termination." We missed that. I didn't ask about that. And we want to
7 redact that. But for what counsel just said, that is -- that's fair game.
8 That's fair game.

9 THE COURT: All right. So --

10 MR. ROBERTS: And --

11 THE COURT: Go ahead, please.

12 MR. ROBERTS: Okay. Just -- just before I forget about it, the
13 other point I wanted to put on the record is the Court prevented me from
14 then asking the witness if TeamHealth costs were one of the factors
15 considered in setting the chargemaster. We were prohibited from doing
16 a Folsom [phonetic] discovery into the chargemaster and how it's set.

17 But I objected to him going into the setting of the
18 chargemaster when he was on direct examination. He went forward,
19 and he told the jury the things that were considered, and he left out the
20 things he did not want the jury to hear. And now the jury has a
21 misconception because they have an incomplete story about what goes
22 into setting those chargemaster charges. And if they wanted to just stick
23 with the Court's ruling and says, "The master is what it is, you can't
24 dispute it, they get to set the charges, they provided the services," that
25 would have been fine. But they opened the door because we cannot let

1 the jury have an incomplete story about how that chargemaster is set.
2 Thank you, Your Honor.

3 MR. ZAVITSANOS: Would you like a response, Your Honor?

4 THE COURT: Please.

5 MR. ZAVITSANOS: Yeah. So, Your Honor, after the bench
6 conference, I think the Court probably noticed, my question was whether
7 FAIR Health was a variable that the company used in setting billed
8 charges. That was it. I didn't ask about anything else.

9 Now, FAIR Health has been discussed ad nauseam during the
10 course of this case. I mean sometimes repetitively by me. Okay? So it --
11 and by opposing counsel. And it has been discussed extensively. I
12 didn't ask him about anything other than that. And so I -- we did not --
13 and for what it's worth, Your Honor, cost is not -- I don't believe cost is
14 an issue without a -- come up to a fair market rate. But the Court's
15 already ruled on this. So I don't -- I don't believe I opened the door on
16 anything, Your Honor.

17 MS. LUNDVALL: Well, moreover, this exact exchange
18 occurred during the course of our hearing on motions in limine. We told
19 the Court what it is that we intended to proffer. The Court said that that
20 was acceptable and that that did not then breach or open a door then
21 dealing with the issue of cost.

22 THE COURT: Thank you. Any reply, please?

23 MR. ROBERTS: No. No reply, Your Honor.

24 THE COURT: All right. So 313, the door was not opened in
25 the presentation on direct. The fact that the termination only applied to

1 three Defendants is fair game. And the chargemaster, the door has not
2 been opened. So --

3 MR. ZAVITSANOS: And, Your Honor, if I could just ask
4 counsel please if he's going to use the exhibit, fine, if they could just -- I
5 know they've got a very savvy technical person here that could just --

6 THE COURT: Well, there's an additional redaction. So --

7 MR. ZAVITSANOS: Yeah, the additional redaction.

8 THE COURT: -- you two need to confer.

9 MR. ROBERTS: That's why I didn't want to have him put it
10 up.

11 THE COURT: Yeah. It --

12 MR. ZAVITSANOS: I mean you -- if your fellow can white it
13 out --

14 THE COURT: Good enough. Why don't --

15 MR. ZAVITSANOS: -- you can put it up.

16 THE COURT: -- the two of you confer on that. It's 11:18. You
17 still have seven minutes.

18 MR. ZAVITSANOS: Thank you, Your Honor.

19 MR. ROBERTS: Thank you, Your Honor.

20 THE COURT: Yeah.

21 [Recess taken from 11:19 a.m. to 11:26 a.m.]

22 [Outside the presence of the jury]

23 MR. ROBERTS: Your Honor, in an abundance of caution, I
24 need to run one more question by you in judge conference.

25 MR. ZAVITSANOS: Yes, Your Honor.

1 MR. ROBERTS: No, you're good. So I've just redacted an
2 email. It's in the same style as we've done to 313. And this is an email
3 from Mr. Murphy where he gives his personal definition of usual,
4 customary, and reasonable --

5 MR. ZAVITSANOS: Your Honor --

6 MR. ROBERTS: --which has come up over and over in this
7 case, their argument about reasonable -- usual, customary and
8 reasonable, claiming that it's the bill charge. And in this document, in
9 connection with a different dispute, Mr. Murphy defined that in a way
10 inconsistent with the way they are arguing this case.

11 MR. ZAVITSANOS: So Your Honor. A couple of things on
12 this. First of all, this touches on a limine point we had --

13 THE COURT: Which was?

14 MR. ZAVITSANOS: Which was in-network rates.

15 THE COURT: Oh.

16 MR. ZAVITSANOS: Okay? Second, Your Honor, Mr. Murphy
17 has not been -- I did not ask him what the definition of UCR is. He's not
18 been identified as a lay expert witness.

19 THE COURT: It's just not relevant --

20 MR. ROBERTS: We'll redact it, Your Honor.

21 THE COURT: -- if it's in-network.

22 MR. ROBERTS: The CEO of TeamHealth has given the
23 definition of UCR. And it's not just that. He says, UCR is ultimately
24 defined by our in-network rates with the same payor, rates from other
25 payors, and rates from the defendant to other providers. He's giving the

1 same definition we would like to argue in this case.

2 MR. ZAVITSANOS: So Your Honor --

3 MR. ROBERTS: The CEO of the company and it's not about
4 his network agreement. It's about a dispute because they don't have an
5 agreement.

6 THE COURT: I understand.

7 MR. ZAVITSANOS: Your Honor, I would say that it's the
8 same issue.

9 MR. ROBERTS: And we'll redact anything. We'll redact
10 everything except Mr. Murphy's name.

11 THE COURT: I'm going to sustain the objection. Would you
12 like to make a further record?

13 MR. ROBERTS: Yes. That I am being prevented from putting
14 in evidence an admission against interest by the top official in the
15 country where he admits that usual, customary, and reasonable is
16 ultimately defined by a different standard than they are seeking to have
17 the jury implement in this case

18 MR. ZAVITSANOS: Your Honor --

19 MR. ROBERTS: This is an admission by the top man of the
20 company, Your Honor.

21 MR. ZAVITSANOS: Your Honor, one unrelated thing that's
22 not repetitive. I just noticed this is an exchange between Mr. Murphy
23 and the general counsel of the company. This was inadvertently
24 produced. This is a privileged document. And Your Honor, we request
25 that this be snapped back.

1 THE COURT: Mr. Blalack?

2 MR. BLALACK: It's a little late for that, Your Honor. This
3 document was produced eight months ago. It's been used in about ten
4 different depositions, from the lawyers from TeamHealth over and over
5 and over and over again. And now if there's going to be a claim of
6 privilege on this, if they're go to assert that, we're going to want to brief
7 that substantially because --

8 THE COURT: The way I understand it, it's an apples and
9 oranges situation. It doesn't really apply in this case because we're only
10 talking about in-network here.

11 MR. ZAVITSANOS: That's right.

12 MR. ROBERTS: This is not a network agreement. If it was a
13 network agreement, why did Mr. Murphy say it's set by our in-network
14 rates with other providers?

15 MR. ZAVITSANOS: This is --

16 MR. ROBERTS: Rather than an in-network rate review? And
17 UCR is the exact term that this gentleman has used over and over in this
18 case. And he wants to put payable in our document up there and tell the
19 jury that it means something that we intended when we wrote it.

20 But I'm not allowed to put his document in front of him and
21 let the jury decide if that's what he intended when he wrote it. And if
22 they want to get the whole document in, that's fine with me, Your Honor.
23 This idea that you can take one sentence out of an email was his idea,
24 not mine.

25 THE COURT: So is your next line of inquiry with regard to

1 usual and customary?

2 MR. ROBERTS: Yes, my next line of inquiry was with regard
3 to getting him to make that indicia, yes.

4 THE COURT: So you can still go into that without getting
5 into this email.

6 MR. ROBERTS: He's -- I took his deposition. He's not going
7 to admit it. He's changed his mind about the definition since this lawsuit
8 was filed.

9 MR. ZAVITSANOS: This is about in-network rates, Your
10 Honor.

11 MR. ROBERTS: I've got five pages where he tries to waffle
12 around.

13 MR. BLALACK: Your Honor?

14 THE COURT: Yes. Go ahead.

15 MR. BLALACK: I want to address this because I've deposed
16 Mr. Bristow, the corporate representative, on all of these things including
17 this document. This is definitely not a statement about the in-network
18 negotiated rates, okay? I took the witness' testimony and can forward
19 that to you.

20 THE COURT: If you get there with Bristow, I'll consider it.

21 MR. BLALACK: Okay. Just to be clear, and I want the record
22 really clear on this in terms of what this document says. This is the CEO
23 of TeamHealth reporting to others in his organization. In the course of
24 that discussion, stating what his understanding of a usual and customary
25 rate is with out-of-network reimbursement. That's what the statement is.

1 This is the CEO of the company saying his understanding of what usual
2 and customary, usual and reasonable reimbursement is for out-of-
3 network services, and he's defining how that's done.

4 Now I showed that document to Mr. Bristow who is the
5 corporate representative of the plaintiff. He disagreed. He didn't dispute
6 that Mr. Murphy had that view. He disagreed with Mr. Murphy's view.

7 So we have a situation with the CEO of the company has one
8 view, and we can't be permitted to explore that with the jury. And the
9 corporate representative is going to take the stand for his testimony,
10 disagreeing with this -- with the statement by the CEO.

11 So not only do we think it's corroborative of our view of what
12 the standard is, one. But two, we have inconsistent positions taken by
13 the CEO and the corporate representative. That's why it's --

14 MR. ZAVITSANOS: Your Honor, brief reply in rebuttal. We
15 have done absolutely nothing, zero, to open the door to any kind of issue
16 like we're hearing about right now. Nothing.

17 We had extensive -- we had an extensive hearing before Your
18 Honor on this very point about in-network rates. And the Court was
19 clear, we had -- I think that hearing lasted well over an hour. And Your
20 Honor, and there's the -- and conveniently omitted from anything we've
21 heard is anything that I asked this gentleman that even comes within a
22 country mile of opening the door to in-network rates. I didn't do it.

23 THE COURT: You get the last word.

24 MR. BLALACK: We're not arguing he opened the door.

25 THE COURT: And you're arguing a credibility issue.

1 MR. BLALACK: Correct.

2 THE COURT: And I'm listening.

3 MR. BLALACK: I'm not arguing that he asked Mr. Murphy
4 something that makes this relevant. That's not the issue.

5 Now he has spoken endlessly with other witnesses about
6 what they think UCR is. He's asked Mr. Haben. He's asked Mr. Paradise.
7 They have asked [indiscernible] United thinks UCR means and how it's
8 defined over and over again.

9 This is the flip side of that. But I just want to be clear that
10 there's no argument we're making that Mr. Roberts should be able to ask
11 that question of Dr. Murphy, and have this document used if Dr. Murphy
12 needs is memory refreshed. There's nothing about that argument that's
13 attempting to open the door. This is just a straight out -- this is a central
14 issue on how do you define what is an out-of-network reimbursement
15 standard. And it impeaches the position advanced by the plaintiffs in the
16 case. But it's not -- we're not arguing they opened the door.

17 THE COURT: I understand. All right. Let's bring in the jury.

18 MR. ROBERTS: Your Honor, could I mark the redacted copy
19 of Exhibit 4918, Page 1 as a Court's Exhibit?

20 THE COURT: I assume there's no objection to that.

21 MR. ZAVITSANOS: No, no, Your Honor. Thank you.

22 THE COURT: Okay. So that'd be a Court's exhibit. Thank
23 you, Michelle.

24 [Court's Exhibit 4918 marked for identification]

25 MR. ZAVITSANOS: Hey Lee, how much longer do you have?

1 MR. ROBERTS: About 10, 15 minutes. Probably 10.

2 MR. ZAVITSANOS: Okay. And Your Honor, if -- just very
3 briefly, if they intend to bring that document on again-- up again, the
4 Court needs to see the full contents because it's all about the
5 negotiations.

6 THE COURT: If we do, we will.

7 MR. ZAVITSANOS: Yeah.

8 THE COURT: Okay. Come on up, Mr. Murphy.

9 THE MARSHAL: All rise for the jury.

10 [Jury in at 11:35 a.m.]

11 THE COURT: Thank you. Please be seated. And go ahead,
12 please.

13 MR. ROBERTS: Thank you, Your Honor.

14 BY MR. ROBERTS:

15 Q Okay, Mr. Murphy, just a few questions left. I'll get you out
16 of here before lunch.

17 A Thank you.

18 Q At least on my end. To go back up -- what you told the jury
19 when you were first testifying, you mentioned that TeamHealth was
20 owned by the Blackstone Group, correct?

21 A That's correct.

22 Q And that the Blackstone Group had people on your board of
23 directors. Is that correct?

24 A That's correct.

25 Q And was that three that you testified to?

1 A That's right.

2 Q And that's out of how many directors?

3 A Ten.

4 Q And the Blackstone is the largest or at least one of the largest
5 private equity groups in the country, correct?

6 A I believe so, yes.

7 Q And ultimately it was your decision to bring this lawsuit that
8 we're litigating today, correct?

9 A That's correct.

10 Q But isn't it correct that before you could file this lawsuit, you
11 were required to go to the board of directors for TeamHealth including
12 the three members from Blackstone to get approved?

13 A I reported our strategy and how we believed we had to go to
14 Court to collect the unpaid balance. And I don't know that we actually
15 had a formal approval, but I had the full support of the board.

16 Q Do you have your deposition there in front of you, sir, and
17 your reading glasses?

18 A I do.

19 Q If I could get you to turn to Page 108 of your deposition,
20 beginning at Line 14, and then onto Page 109, Line 25. And if you could
21 just read that silently to yourself.

22 A From 108 to 114?

23 Q I'm sorry.

24 MR. ZAVITSANOS: Your Honor, this is not inconsistent.

25 MR. ROBERTS: 108 to 109.

1 THE COURT: Objection's overruled.

2 MR. ZAVITSANOS: I'm sorry, Your Honor. This is improper
3 impeachment. It's not inconsistent.

4 MR. ROBERTS: It doesn't need to be impeachment for a
5 corporate officer, Your Honor.

6 THE COURT: Objection's overruled.

7 BY MR. ROBERTS:

8 Q So my question after reading page 109 is did the board of
9 directors encourage you to file this lawsuit?

10 A So it's very consistent with what I said. I recommended that
11 we file these lawsuits, and our board of directors was supportive is how I
12 phrased it.

13 Q Thank you, sir. Do you know who the president of Fremont
14 Emergency Services is, in Nevada?

15 A Yes.

16 Q Okay. And who is that?

17 A Scott Scherr.

18 Q Did you go to Dr. Scherr, the president of the entity actually
19 filing suit, and get his approval to file the lawsuit before you filed it in his
20 name?

21 A I did not. Did not think I needed to. Scott, as well as every
22 physician at TeamHealth, was very aware of our approach to trying to
23 collect underpayments. I've been very open in letters, town halls, in our
24 national medical meeting with all of our leaders, at which Scott attended
25 all of them. And I never heard any objection to filing lawsuits to collect

1 unpaid claims.

2 Q Isn't it true that Dr. Scherr didn't see this lawsuit until after it
3 had already been filed?

4 A I don't know the answer to that, but it would not surprise me.

5 Q You mentioned that one of the reasons you filed a lawsuit
6 was for the clinicians. Did I hear that correctly?

7 A That's correct.

8 Q And by clinicians, do you mean the physicians staffing the
9 emergency rooms here?

10 A For all of our clinicians.

11 Q Okay. Do you have employment agreements with your
12 clinicians?

13 MR. ZAVITSANOS: Relevance, Your Honor.

14 MR. ROBERTS: Your Honor, he said--

15 THE COURT: Overruled.

16 MR. ROBERTS: Thank you. Do you have employment
17 agreements with your clinicians?

18 THE WITNESS: We do.

19 BY MR. ROBERTS:

20 Q And do you have employment agreements or contracts with
21 the clinicians who are independent contractors?

22 A We do.

23 Q And do those contracts or employment agreements require
24 any of the money --

25 MR. ZAVITSANOS: Your Honor, limine, please.

1 THE COURT: Please approach.

2 MR. ROBERTS: He said he filed it for the clinicians, Your
3 Honor.

4 THE COURT: Objection sustained, and I'm enforcing the
5 motion in limine.

6 MR. ROBERTS: I have nothing further, Your Honor.

7 THE COURT: All right. Redirect?

8 MR. ZAVITSANOS: Nothing, Your Honor.

9 THE COURT: Does the jury have any questions of
10 Mr. Murphy? Thank you, Ms. Herzog. And it looks as though the only
11 nights this week we can work late would be the 18th and 19th. So let me
12 pull up my calendar. I think that's this Thursday and Friday, we can work
13 until late on Thursday and Friday.

14 And counsel, please approach.

15 [Sidebar at 11:41 a.m., ending at 11:42 a.m., not transcribed]

16 THE COURT: We all thank you for the question. And I get to
17 ask the questions.

18 Mr. Murphy, in what year did TeamHealth terminate United
19 Health as their company health insurance plan administrator?

20 THE WITNESS: Oh, I believe it would have been in 2000 --
21 effective in 2019.

22 THE COURT: Any follow up questions from the lawyers
23 based upon the jury question?

24 MR. ZAVITSANOS: Not from the plaintiffs, Your Honor.

25 MR. ROBERTS: One question, Your Honor.

FURTHER RECROSS-EXAMINATION

BY MR. ROBERTS:

Q Who is the new administrator, sir?

A Aetna.

Q Thank you.

THE COURT: Okay. Thank you all. We're going to take lunch now, and it is 11:43 so I'll ask you to be back at 12:15.

During the recess -- last question. May we excuse the witness?

MR. ZAVITSANOS: Yes, Your Honor.

THE COURT: All right. You'll be excused.

THE WITNESS: Thank you very much.

THE COURT: We'll take the recess.

MR. ROBERTS: Your Honor, I would request to ask the witness just a couple questions for an offer of proof outside the presence of the jury.

THE COURT: Good enough. So you're not quite excused yet, Mr. Murphy.

THE WITNESS: Okay.

THE COURT: All right. So during the recess, don't talk with each other or anyone else on any subject connected with the trial. Don't read, watch or listen to any report or commentary on the trial. Don't discuss this case with anyone connected to it, by any medium of information, including without limitation, newspapers, television, radio, internet, cell phones or texting. Don't conduct any research relating to

1 the case. Don't consult dictionaries, use the internet or use reference
2 materials.

3 Don't talk, text, tweet, use social media, google issues, or
4 conduct any other type of book or computer research with regard to any
5 issue, party, witness or attorney involved in the case. Do not form or
6 express any opinion on any subject connected with the trial until the
7 matter is submitted to you.

8 Thank you. We've had kind of a choppy morning but if you'll
9 please be ready at 12:15.

10 THE MARSHAL: All rise for the jury.

11 [Jury out at 11:44 a.m.]

12 [Outside the presence of the jury]

13 THE COURT: And Mr. Roberts, do you want a moment to
14 confer with your co-counsel?

15 [Counsel confer]

16 THE COURT: Everybody may be seated while they have a
17 moment to confer. Do you want a short recess to confer with your team?

18 MR. BLALACK: About five minutes, Your Honor. We just
19 need to get a couple documents.

20 MR. ROBERTS: Or if the witness is coming back, I could do it
21 right at the beginning of the break after lunch. I can get ready in five
22 minutes. The problem is I just didn't have the unredacted version.

23 THE COURT: Good enough. So --

24 MR. ROBERTS: -- which would be for the Court exhibit.

25 THE COURT: Let's be back at 12:15, and I'll ask the marshal

1 to tell them they're going to have an extra five minutes. I know that
2 delays your departure.

3 THE WITNESS: That's okay.

4 MR. ROBERTS: Is that okay, sir?

5 THE WITNESS: Yeah. Absolutely.

6 THE COURT: I have to tell you guys, all these references to
7 the South. I grew up in a little town in Kentucky called London. It's
8 halfway between Lexington and Knoxville.

9 THE WITNESS: Georgetown Community Hospital.

10 THE COURT: Yep. So I'll let you know. And Mr. Blalack, I
11 think is from Tennessee.

12 MR. ROBERTS: Mr. Murphy went to University of Virginia.

13 THE WITNESS: William and Mary.

14 MR. ROBERTS: Oh that's right.

15 THE WITNESS: Yes.

16 MR. ROBERTS: Oh my gosh, I had my wrong alma mater.
17 Thank you. I knew it was one of them. Thank you.

18 THE COURT: My mother is a direct descendant of the person
19 who donated --

20 [Recess from 11:46 a.m., to 12:17 p.m.]

21 THE COURT: All right. So this is next year's law clerk, Mayli
22 Alarcon. These are the lawyers. All right, so Mr. Roberts are you ready?

23 MR. ROBERTS: I am, Your Honor.

24 THE COURT: Please proceed. And just for the record, this is
25 an offer of proof with regard to testimony that I sustained an objection

1 to.

2 MR. ZAVITSANOS: Yes, Your Honor.

3 MR. ROBERTS: Thank you, Your Honor.

4 BY MR. ROBERTS:

5 Q Mr. Murphy --

6 MR. ZAVITSANOS: Do we have a copy of that for the
7 witness?

8 MR. ROBERTS: When I get to it, I'll get him a copy.

9 MR. ZAVITSANOS: Okay, okay, thank you. Thank you, Mr.
10 Roberts.

11 FURTHER RECROSS-EXAMINATION

12 BY MR. ROBERTS:

13 Q I was just going back to a question I asked in front of the jury.
14 The judge sustained the objection. You testified that one of the reasons
15 you filed this lawsuit was for the clinicians and that included the
16 physicians staffing the emergency rooms, correct?

17 A That's correct.

18 Q Under the physicians' various employment contracts and
19 independent contractor agreements, is there a provision entitling them
20 to a portion of the amount the jury awards in this case?

21 A In these particular contracts, I don't believe so.

22 MR. ROBERTS: Your Honor, if I could just give the witness a
23 copy of 4918? Actually you can kind of look at it and hand it to her. And
24 then we'll mark that copy as the Court's exhibit.

25 MR. ZAVITSANOS: And Mr. Roberts, can I just ask you what

1 you all redacted here.

2 MR. ROBERTS: That was your redactions in the original
3 production.

4 MR. ZAVITSANOS: Oh, okay.

5 THE COURT: Is it 4918?

6 MR. ROBERTS: 4918.

7 THE COURT: Thank you.

8 MR. ZAVITSANOS: And this is the one the Court sustained
9 the objection.

10 MR. ROBERTS: And I believe the redactions were made by
11 TeamHealth in the original document productions.

12 MR. ZAVITSANOS: Thank you.

13 BY MR. ROBERTS:

14 Q And sir, you recognize this as an email which you wrote to
15 other employees an officers at TeamHealth?

16 A I do.

17 Q And are there attorneys included on that list?

18 A Yes, there is.

19 Q Does this email summarize a meeting that you had with Dan
20 Schumacher of UHG or United Health Group?

21 A Yes, it does.

22 Q So looking at that first bullet point, brief and productions by
23 Dr. Galvin who turned it over to me. Who is Dr. Galvin?

24 A Bob Galvin is a member of our Board of Directors. And he is
25 the CEO of Equity Healthcare.

1 Q And -- and is that a part of the Blackstone Group?

2 A It is a -- yes, it is a benefit management organization affiliate
3 with the Blackstone Group.

4 Q Thank you. And is he the one who set up this meeting with
5 Professor Schumacher?

6 A He is.

7 Q Second bullet point I said that I assumed Dan wouldn't know
8 from initial of emergency department E.D. And took him through the
9 basics. 150 average cost per encounter. Is that TeamHealth's average
10 cost of an emergency department encounter?

11 A Across all encounters. It was at the time, yes.

12 Q And the time was 2019 -- April 2019.

13 A That's correct.

14 Q And even though this is addressed in part to your lawyers,
15 the \$150 average cost per encounter was something you communicated
16 to Mr. Schumacher at the meeting, correct?

17 A That's correct.

18 Q Going down to the bullet point, the beginning we don't
19 balance bill. Does it say we don't balance bill, but we pursue litigation as
20 a strategy. Zero suits in 16/17, suits by '18, 2. Zero suits in 2016/17
21 suits by '18. Settled 4 in first quarter on eve of trial, that were 475
22 percent of the MCR with inflators. Did I read that correctly?

23 A That's correct.

24 Q What is MCR?

25 A Medicare.

1 Q Continuing UCR ultimately defined by our in-network rates
2 with the same payor. Rates from other payors and rates from the
3 Defendant to other providers. Did I read that correctly?

4 A You did.

5 Q What does UCR stand for?

6 A Usual and customary reimbursement.

7 Q And the dispute which you're referring to, which is the
8 subject of this lawsuit, was this a lawsuit to recover for out-of-network
9 services?

10 A Yes.

11 Q And in that prior litigation, or at least in the settlement of that
12 prior litigation, you defined UCR by your in-network rates with that same
13 payor; the one you sued, right?

14 A So what -- what this is -- going to be careful not to conflate
15 two things. This is the resolution of these lawsuits that came in-network
16 rates that were targeted at these same payors of the contract, et cetera.
17 Those became the benchmarks that we negotiated in-network
18 reimbursement.

19 This lawsuit today, is about out-of-network reimbursement and
20 what UCR is for out-of-network reimbursement. They're two different
21 things.

22 Q Sir, was that lawsuit to recover for out-of-network services?

23 A When we brought the lawsuit it was. My comment was we
24 settled it. And upon settlement the prospective rate was based upon in-
25 network parameters.

1 Q And is there a different UCR for in-network and out-of-
2 network? Does that somehow vary according to who you're billing and
3 whether you have a contract with them?

4 A Yes.

5 Q Or is the UCR the UCR?

6 A This is a shorthand description of my discussion with Dan
7 Schumacher, which was I relayed to him that we had been successful in
8 litigation defining in-network contract rates. I used UCR as that
9 benchmark. So I could have just as easily said in-network
10 reimbursement rates were ultimately defined. So that was not intended
11 to say what is the usual and customary rate that went into this litigation
12 and what we were entitled to prior to settlement.

13 Q And at this same meeting, did you threaten to sue the
14 employers that United had contracts with?

15 A Where do you see that, Lee?

16 Q Let's look at the next page under my response, which I
17 assume is yours.

18 A That's right.

19 Q Fifth bullet point, last two sentences. Or second to the last
20 two sentences. And I'm referring to we have helped employers
21 understand why we need to bring them as parties to the lawsuits.

22 A Yeah, let me just -- if it's okay, I'll read the whole paragraph.

23 Q Sure.

24 A To help with context.

25 [Witness reviews document]

1 A Okay, I've read it. Can you -- do you mind repeating the
2 question or the reference?

3 Q Sure. And I'm going to draw attention to the sentence. My
4 expectation is that we will have at least five lawsuits with UHG's largest
5 employer customers by the end of 2019. You're telling United at this
6 meeting, if you don't agree to our rates, we're going to start suing your
7 customers directly, right?

8 A That's -- my expectation was based upon our lawyers
9 advising me that there was culpability on the employer side, that we
10 would also be including them in the lawsuits.

11 Q You also referred like you're starting direct contracting
12 discussions with employers. And in fact, you actually entered into direct
13 contracts after this with man of the largest employer groups that United
14 had contracts with; isn't that correct?

15 A I believe that's correct.

16 Q Right. People like MGM?

17 A I believe that's correct.

18 Q And -- and you agreed to rates for those direct contracts at a
19 fraction of the rate you were telling UHG they would have to pay if they
20 entered into a network agreement with you directly, correct?

21 A I don't recall that.

22 Q Do you recall that they were lower than the rates you were
23 offering UHG?

24 A I honestly don't.

25 MR. ROBERTS: Your Honor, I'd ask to mark Exhibit 4918 as

1 Court's exhibit.

2 THE COURT: We have previously --

3 MR. ROBERTS: Next one.

4 THE COURT: -- we have previously done that.

5 MR. ROBERTS: I had only marked a redacted version. And
6 this is the unredacted version, just to clarify, Your Honor.

7 THE COURT: Good enough. Any objection?

8 MR. ZAVITSANOS: It's just an offer of proof, Your Honor, so
9 I don't know that I have a basis for an objection, so --

10 THE COURT: So the unredacted 4918 will be admitted as the
11 Court's exhibit.

12 [Court's Exhibit 4918 admitted into evidence]

13 MR. ROBERTS: And I just have one more, Your Honor. I'll
14 give you your copy --

15 THE COURT: Okay.

16 MR. ROBERTS: -- as soon as your counsel checks and makes
17 sure it's okay with them.

18 MR. ZAVITSANOS: And, Your Honor, I know -- I'm sorry, I
19 know -- I know counsel is doing an offer of proof, and I don't really have
20 a basis to object, but I believe this is --

21 THE COURT: It's AEO.

22 MR. ZAVITSANOS: This is -- this is a document that centers
23 around legislative issues and lobbying, and I did not -- it's obvious from
24 the record I did not ask any questions around that to this witness, so I
25 just want that noted for the record, so --

1 MR. ROBERTS: And this offer of proof would be what we
2 intend to offer in our case if we were to go into this, Your Honor.

3 BY MR. ROBERTS:

4 Q So I've handed you a document that's been marked as
5 Proposed Exhibit 4643. Do you recognize this document as a PowerPoint
6 with your name on it?

7 A Yes, I do.

8 Q Is this a PowerPoint prepared for whom? It says United
9 Healthcare developing a collaborative national solution to address the
10 process.

11 A This was shared with Dan Schumacher.

12 Q Okay. So all the information in this document was revealed
13 to United Healthcare?

14 A It was.

15 Q And it's got your name on the front. If you'd look at the last
16 page, page 19. Does this indicate, for any questions about this
17 document, contact you?

18 A I'm sorry, look -- oh, look at page 19.

19 Q Page 19. It's the very last one in the stack.

20 A Yeah.

21 Q For questions or additional information, contact Leif Murphy,
22 right? So just a couple of things I want to get in the record quickly, Your
23 Honor, and then I'll be done. If you could turn to page 7, sir. The slide is
24 entitled "Despite its complexity."

25 A Okay.

1 Q Does this confirm the same thing in your email that you told
2 United Healthcare that the average cost to provide clinicians in an
3 emergency department is \$150 per encounter?

4 A That's correct.

5 Q And does this also go through and talk about your average
6 collection per encounter?

7 A It does.

8 Q And is it correct that you told United that your average
9 collection amount per commercial insured encounter was \$350 per
10 encounter?

11 A That's right. Net cash after any losses on co-payment,
12 deductible or unpaid claim.

13 Q Right. So if the insurance company allowed 350 and wrote a
14 check for 350, that would be here. But it would also include any amount
15 you got from other sources, like co-pays from the insured network?

16 A No, it would -- yeah, so essentially if we had unpaid self-pay
17 balances for a co-pay or deductible, those unpaid balances would
18 increase the amount that we were entitled, but United would shift the
19 burden of that payment over to the patient and so they were
20 uncollectible.

21 Q I've got it. So this doesn't have anything to do with the
22 amounts that were payable to you. This is just the average amount you
23 collected.

24 A That's right.

25 Q And that is from all commercial insurers, including United?

1 A Yes, that's right.

2 Q If you could turn to page 10, sir, slide starting "Balance
3 billing. Not a source of revenue, but rather a contract leveraging pool."
4 Does this indicate that in 2017, TeamHealth balance billed \$27,550 to
5 patients?

6 A That's correct. .08 percent of our encounters.

7 Q If you could turn to page 12, sir, slide entitled "Out-of-
8 network reimbursement is declining."

9 A Page -- I'm sorry, page 12, okay.

10 Q And right in the middle is a chart. Multi-year trend of
11 allowables. And this is the amount allowed by insurance companies,
12 correct?

13 A This is correct.

14 Q So for -- I'd just like to focus on the years at issue here, 2016,
15 '17 and '18. Is it correct that in 2016, your average allowed by Blue Cross
16 Blue Shield of in and out-of-network was 176 percent of Medicare?

17 A That's correct.

18 Q And then that gradually went up, correct?

19 A That's correct.

20 Q But it -- even in 2018 it was only 192 percent of Medicare,
21 correct?

22 A That's correct.

23 Q And that amount is substantially lower than the both, 35
24 percent of Medicare and 250 percent of Medicare, which TeamHealth
25 objects to in this current litigation, correct?

1 A It is -- Blue Cross Blue Shield has broken out on its own line
2 because of the relative scale that they bring, just compared to United.
3 But that is correct.

4 Q So let's ignore Blue Cross Blue Shield. All out-of-network
5 commercial reimbursements, non-Blue Cross Blue Shield in 2018 was
6 306 percent of Medicare, correct?

7 A That's correct.

8 Q And that's the adjudicated allowed amount, not the actual
9 amount remitted to TeamHealth, right?

10 A Let me just review the footnote to be sure.

11 [Witness reviews document]

12 A That's correct. Now remember this is a very small out-of-
13 network percentage of our patients. And you can see in that out-of-
14 network commercial, those are also a number of the ones, that are going
15 through the lawsuits to essentially bring them in-network at reasonable
16 rates of reimbursement.

17 Q If I could finally, sir, have you turn to page 14. Slide entitled
18 "Out-of-network reimbursement is unilaterally driven, arbitrary and
19 consistent." Let me have you look at page 2018 -- excuse me, year 2018
20 in the chart.

21 A Okay.

22 Q And we -- we have a column -- first column is percentage of
23 Medicare. Last column is the year. So am I reading this chart correctly
24 that in 2018, 45 percent of your out-of-network claims were paid between
25 100 and 199 percent of Medicare?

1 A That's correct.

2 Q And that's even lower than the amounts that were
3 adjudicated by United in this litigation, isn't it?

4 A And similarly likely disputed by us and being pursued.
5 Hence the 18 lawsuits.

6 MR. ROBERTS: That's all I have, Your Honor. I ask to mark
7 Exhibit -- proposed Exhibit 4643 as Court's Exhibit next in line.

8 [Court's Exhibit 4643 marked for identification]

9 THE COURT: It will be marked as a Court's Exhibit --

10 [Court's Exhibit 4643 admitted into evidence]

11 MR. ZAVITSANOS: Your Honor, may I have 60 seconds to
12 just ask two contextual questions?

13 THE COURT: You may.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. ZAVITSANOS:

16 Q Mr. Murphy, was the document about which you were just
17 asked prepared in connection with negotiations for in-network rates with
18 United? With -- in your conversation with Mr. Schumacher?

19 A It was originally prepared as a part of the lobbying in
20 Washington over how out-of-network billing should be used, and then
21 was subsequently used in those negotiations with Dan Schumacher for
22 the contracts.

23 Q Last question. During those negotiations, did Mr.
24 Schumacher make any comments reflecting United's attitude about
25 closing hospitals or the effect it would have on physicians?

1 A So from the prior email that we reviewed that talked about
2 the growing number of lawsuits and the escalation in underpayments in
3 out-of-network, I was very clear with Mr. Schumacher that reductions in
4 payment were ultimately going to reduce the pay that went to physicians
5 and that it would also be impossible for rural and smaller hospitals to be
6 able to subsidize physician pay given their payer mechs.12:38:43

7 Q And what was his response?

8 A That many hospitals in his mind needed to close and
9 physician pay needed to come down.

10 MR. ZAVITSANOS: That's all I have, Your Honor.

11 THE COURT: Okay.

12 MR. ROBERTS: One follow-up, Your Honor.

13 FURTHER RECROSS-EXAMINATION

14 BY MR. ROBERTS:

15 Q I know you said they were prepared int context of
16 presentation to Congress and then given to United. Since these
17 numbers were originally prepared for Congress, you did your best to
18 ensure they were absolutely accurate, correct?

19 A Actually, I think that would be an overstatement. We had to
20 respond very quickly to a fast-moving legislative process, so we did the
21 best we could with the information.

22 MR. ROBERTS: Thank you, sir. Nothing further, Your Honor.

23 THE COURT: May we now excuse Mr. Murphy?

24 MR. ZAVITSANOS: From the Plaintiff, yes, Your Honor.

25 THE COURT: Yes?

1 MR. ROBERTS: Your Honor, you mean in front of the jury?

2 THE COURT: Yeah. May we excuse him?

3 MR. ROBERTS: Unless the Court is going to let me go into
4 any of that?

5 THE COURT: I'm not. I'm not. But you've made a record.

6 MR. ROBERTS: I did have one request, though, just to make
7 sure we have an understanding. The document for 313 is -- was not yet
8 redacted. In the reference line, it has the word "termination".

9 MR. ZAVITSANOS: Yeah, we're going to fix that.

10 MR. ROBERTS: But can we just redact termination --

11 MR. ZAVITSANOS: Yes.

12 MR. ROBERTS: -- so at least we show that the --

13 MR. ZAVITSANOS: Yes.

14 MR. ROBERTS: -- who it's related to?

15 MR. ZAVITSANOS: Yes.

16 THE COURT: Make sure --

17 MR. ROBERTS: Then nothing further and no problem.

18 THE COURT: Make sure you agree on that and make sure
19 you work with the clerk because that's a hard job. I don't want to put her
20 on the spot. She's a fill-in today.

21 MR. ROBERTS: Yeah. We'll --

22 THE COURT: And she's a supervisor, so -- yeah.

23 MR. ROBERTS: Thank you.

24 MR. ZAVITSANOS: Yeah. We'll get it corrected, Your Honor.

25 THE COURT: Good enough. All right. So as soon as I see

1 the marshal, I'll give him the high sign to bring in the jury.

2 MS. LUNDVALL: Your Honor?

3 THE COURT: Yes?

4 MS. LUNDVALL: One issue, but I don't like to do bench
5 conferences in front of the jury. And so we had an issue over the
6 admission and the redactions associated with 313.

7 THE COURT: Right.

8 MS. LUNDVALL: There are four digital exhibits that we've
9 given to them that have been redacted to comport them with the Court's
10 motions in limine. And what I'm trying to do is to avoid a bench
11 conference. And so what I'd like to do is to find out if there's any
12 objections to the redacted versions of 295, 325, 314, and 348.

13 THE COURT: Let's give them a moment.

14 MR. ROBERTS: And these were proposed for use with Ms.
15 Hare?

16 MS. LUNDVALL: Yes.

17 MR. GORDON: Your Honor, that relates to a larger point that
18 we're looking at with the next witness, Hare. It would be pretty
19 impossible for her to testify to any question in this case. As the Plaintiffs
20 know and what is opposed there is the way that Sierra and HPN
21 reimburses their out-of-network claims is the greatest [indiscernible]
22 which is based on [indiscernible] which is in-network rates, Medicare,
23 and EME. So I don't know any question that she could answer, including
24 these documents which are redacted. All these documents relate to
25 communications between the parties after Fremont terminated the

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1 agreement.

2 So Sierra and HPN, this is the first time there's been a
3 provider group that terminated from in-network to out-of-network that
4 Sierra dealt with. So the communications deal with the termination and
5 any answer she gives would be based on the network rates, Medicare.
6 So I don't know how this examination can go forward.

7 MS. LUNDVALL: Your Honor, I have no intention of going
8 anywhere near in-network rates.

9 THE COURT: I know.

10 MR. GORDON: Well, then what would she talk about?

11 MS. LUNDVALL: So I --

12 MR. GORDON: We know these programs are totally different
13 than United. There is no MultiPlan. There's no shared savings, as we
14 know from the deposition. So any answer that Ms. Hare is going to give,
15 any answer, is going to be based on in-network rates, Medicare, and
16 that's it. So I don't know what she intends to ask, and I don't know what
17 she thinks she can get from this witness other than -- if it's not going to
18 be based on that.

19 THE COURT: Well, let's find out. Let me --

20 MR. GORDON: Yeah, but if there's really no --

21 MR. ROBERTS: It's fine if they want to do, just as long as we
22 can --

23 MR. GORDON: If it has nothing to do with the network,
24 aren't you just opening the door, or as Mr. Zavitsanos said, we're kicking
25 the barn door open. So if that's where they want to go, that's fine.

1 MS. LUNDVALL: Well, I have no intention of kicking the barn
2 door open, let alone me getting my shoe underneath the crack
3 underneath the door.

4 MR. GORDON: Nice shoe.

5 THE COURT: Good enough.

6 MS. LUNDVALL: Thank you, Your Honor.

7 THE COURT: So when the marshal comes in, we'll excuse
8 Mr. Murphy?

9 MR. ZAVITSANOS: Yes, Your Honor.

10 THE COURT: Good enough.

11 MR. GORDON: And I'll look at those exhibits.

12 THE COURT: So you guys can be at ease until I see the
13 marshal.

14 MS. LUNDVALL: Okay. Thank you. I was just trying to avoid
15 a bench conference and trying not to further delay.

16 [Pause]

17 THE MARSHAL: All rise for the jury.

18 [Jury in at 12:45 p.m.]

19 THE COURT: Thank you. Please be seated. And Plaintiff, am
20 I correct that we can excuse Mr. Murphy?

21 MR. MCMANIS: Yes, Your Honor.

22 THE COURT: Defendant, may we excuse Mr. Murphy?

23 MR. ROBERTS: Yes, we may, Your Honor. Thank you.

24 THE COURT: Very good. Thank you, sir. You may step
25 down and you're excused. Plaintiff, please call your next witness.

1 MS. LUNDVALL: We would call Leslie Hare.

2 LESLIE HARE, PLAINTIFFS' WITNESS, SWORN

3 THE COURT: Please proceed.

4 THE CLERK: Ma'am, can you state your first and last name
5 for the record, please, and spell them both?

6 THE WITNESS: Yes. My name is Leslie Hare.

7 THE COURT: Please spell.

8 MS. LUNDVALL: Ms. Hare, after you orient yourself, in the
9 corner of the witness box is a copy of your deposition transcript in the
10 event that it's needed, okay?

11 THE WITNESS: Yes, thank you.

12 THE COURT: And you can all see her? Thank you.

13 THE CLERK: Can we get the spelling of your name, please?

14 THE WITNESS: Sure. L-E-S-L-I-E, last name is H-A-R-E.

15 THE COURT: Go ahead.

16 DIRECT EXAMINATION

17 BY MS. LUNDVALL:

18 Q Ms. Hare, could you introduce yourself to the jury and
19 identify your place of residence?

20 A Sure. My name is Leslie Hare, and I live here in Las Vegas,
21 Nevada.

22 Q You're associated with Sierra Health and Life, the company;
23 is that correct?

24 A Yes. I work for Health Plan of Nevada, but I also am
25 accountable for Sierra Health and Life.

1 Q So you are associated both with Sierra Health and Life as
2 well as Health Plan of Nevada, correct?

3 A Yes. I'm accountable for both Health Plan of Nevada and
4 Sierra Health and Life business.

5 Q And you're actually the vice president of claims operations
6 for those two organizations?

7 A Yes, that's my current title.

8 Q And you understand that those two companies are two of the
9 Defendants in this action?

10 A Yes. I understand that Sierra Health and Life and Health Plan
11 of Nevada are both named as Defendants.

12 Q In other words, they are being sued in this action, correct?

13 A Yes. I understand that.

14 Q And you are aware that this action was filed in April of 2019,
15 correct?

16 A I'm not sure I know what exact date it's filed.

17 Q You don't have any reason to disagree with me, though, that
18 the complaint was filed in April of 2019?

19 A No, I don't have any other reason to disagree with you for
20 that date.

21 Q Now, previously, during the course of this case and after it
22 was filed in April of 2019, you had your deposition taken, did you not?

23 A Yes, I was deposed.

24 Q And you testified in a capacity as a corporate representative
25 for both Sierra Health and Life as well as Health Plan of Nevada on

1 certain topics, did you not?

2 A Yes. That was my capacity for the deposition.

3 Q And you understood your testimony, given the capacity in
4 which that you testified, bound the two companies that you were
5 testifying on behalf of?

6 A Could you repeat that question, please?

7 Q You understood during the course of your deposition that
8 your testimony bound the two companies that you had agreed to testify
9 on behalf of?

10 A I'm not sure I have a understanding of the term bound. I do
11 know that I testified on behalf as the corporate representative for Sierra
12 Health and Life and Health Plan of Nevada.

13 Q Now, currently and during the time of your deposition, you
14 testified -- when you testified, you were the vice president of claims
15 operations for those two companies; is that right?

16 A Yes, that was my title then, too.

17 Q And has your title changed since that point in time?

18 A No. It's remained consistent for Health Plan of Nevada and
19 Sierra Health and Life.

20 Q And across what period of time, then, have you been the vice
21 president of claims operations for those two companies?

22 A I've been in my role since about 2010.

23 Q And prior to 2010, you had an association with one or both of
24 those companies, correct?

25 A Yes.

1 Q And as a matter of fact, you've been associated with them for
2 over 25 years; is that right?

3 A Yes. I've been an employee of, at first, Sierra Health
4 Services, and since the acquisition, Health Plan of Nevada, Sierra Health
5 and Life, for -- it will be 26 years in January.

6 Q Now, in the capacity as vice president of claims operations,
7 you knew how your companies were reimbursing the Plaintiffs in this
8 action during the relevant time frame, correct?

9 A Yes. I'm responsible for and aware of how Health Plan of
10 Nevada and Sierra Health and Life were reimbursing Fremont from
11 February 2019 forward.

12 Q And did any of those claims then involve Ruby Crest?

13 A I believe that there were some Ruby Crest claims in some of
14 the deposition files.

15 Q And what about Team Physicians? Some of the claims
16 included Team Physicians, too; is that correct?

17 A I believe there might have been some Team Physicians
18 claims in there. I don't recall. It was a -- it was a pretty big file.

19 Q Now, you know that there are three Plaintiffs that are
20 bringing this action, correct?

21 A Yes, I believe I'm aware that there's three Plaintiffs.

22 Q All right. Now, you and I haven't spoken before, correct?

23 A Yes, that's correct.

24 Q And so that I can understand how much of a foundation that I
25 need to lay for my questions, since we're trying to move things along

1 here in the trial, what I'm going to ask you is a couple questions to find
2 out what preparation that you've done to testify here to the jury. All
3 right?

4 It's traditional for attorneys to gather all of the emails or
5 documents that may have been authored by a witness and give them an
6 opportunity to review them that have been produced in the case. Did
7 you have that opportunity?

8 A We reviewed --

9 MR. GORDON: Objection, Your Honor. To the extent this
10 gets into the attorney-client privilege area. I instruct the witness not to
11 answer.

12 THE COURT: Clarify your question, please.

13 BY MS. LUNDVALL:

14 Q I'm just simply asking if you had the opportunity to review
15 emails that you authored or documents that you may have authored.

16 A I don't recall reviewing any documents or emails I authored.

17 Q All right. So you don't have any recollection as part of your
18 preparation to review any of your emails or any of the documents that
19 you may have authored?

20 MR. GORDON: Your Honor, may we approach?

21 THE COURT: You may.

22 [Sidebar at 12:53 p.m., ending at 12:54 p.m., not transcribed]

23 THE COURT: Okay. An objection has been overruled. It
24 means you can answer the question.

25 THE WITNESS: Okay. Would you mind asking me that

1 question once more, please?

2 BY MS. LUNDVALL:

3 Q I will, because what I don't want to do is to confuse you in
4 any fashion, okay?

5 A Sure.

6 Q Now, you had the opportunity to review any of the emails or
7 documents that you may have authored that have been produced during
8 the course of this case, correct? Before you came to this courtroom to
9 testify to this jury, you had an opportunity to prepare, correct?

10 A Yes. I prepared with my attorneys.

11 Q All right. And part of that preparation allowed you an
12 opportunity to review documents that you authored, emails that you
13 may have authored, correct?

14 A I don't recall as a part of our preparation reviewing any
15 documents that I would have authored.

16 MR. GORDON: I mean, Your Honor, I mean, again I think
17 we're get into the approaching attorney/client privilege, which we're
18 trying to avoid.

19 THE COURT: She didn't step over the line either in the
20 question or the answer so far. Overruled.

21 BY MS. LUNDVALL:

22 Q What about documents that may have been authored by
23 other individuals within the department that you had responsibility for
24 supervision? Did you have the opportunity to review those?

25 A We reviewed several documents in my sessions with the

1 attorneys.

2 Q And the documents that you had the opportunity to review
3 before you came to testify here, did they include documents that were
4 authored by others that were under your supervision?

5 A I don't recall all of the documents that were reviewed. If
6 there's one that you specifically want me to take a look at, I'd be happy
7 to.

8 Q Okay. And did you have the opportunity to review a
9 document that related to Health Plan of Nevada in the context of their
10 reimbursement then of the claims that are at issue in this litigation?

11 A I reviewed some of our evidence of coverage and some of
12 our other benefit plan documents that would specifically outline how we
13 paid emergency services for nonplan providers.

14 Q And did that also include documents that had been authored
15 by those in your department and the department that touched upon
16 Health Plan of Nevada as well as Sierra Health and Life?

17 A Well, in general -- that's a pretty broad question, so in
18 general, I would say that the benefit plan documents aren't specifically
19 written by folks in my department, but they're used by the people in my
20 departments who configure our systems. And we -- I reviewed those
21 documents as a part of preparation today. And they were written by
22 others with HPN and SHL.

23 Q And now, the counsel that you did your preparation to testify
24 with today, they're the attorneys that are on this side of the courtroom
25 generally?

1 A Yes. That's correct.

2 Q And there's not separate counsel for Sierra Health and Life or
3 separate counsel for Health Plan of Nevada from the counsel that is also
4 representing United. Is that correct?

5 A I worked with the attorneys that you pointed out over on this
6 side of the room and we specifically worked on the material that I'm
7 accountable for, which is Health Plan of Nevada and Sierra Health and
8 Life.

9 Q But did you understand those attorneys to represent Sierra
10 Health and Life and Health Plan of Nevada and United?

11 A I didn't -- I don't know that I have any knowledge of that one
12 way or the other. I know that the extent of my preparation is what I have
13 personal knowledge of in my role, specifically for Health Plan of Nevada
14 and Sierra Health and Life.

15 Q Did your preparation also include information about court
16 orders that have been put in place by the judge in this case and with
17 instructions that you needed to obey those court orders?

18 A I don't recall getting that sort of instruction in that context.

19 Q Well, you would understand that you do have a duty to obey
20 the Court's orders, correct?

21 MR. GORDON: Objection, Your Honor.

22 THE COURT: Grounds?

23 MR. GORDON: Foundation.

24 THE COURT: Lay more foundation.

25 BY MS. LUNDVALL:

1 Q You do understand in general that you have duty to obey the
2 Court's orders as it relates to any restriction on your testimony to this
3 jury, correct?

4 A I think I could understand that, yes, absolutely.

5 Q And were you informed of court orders that have been put in
6 place by the Court that place restrictions upon your testimony?

7 A I don't recall being given language like court orders or any
8 restrictions, per se, as a part of the preparation.

9 Q Well then we may have to proceed a little bit more gently to
10 ensure that you do not violate of the court orders, okay?

11 A Okay.

12 Q All right. Let's turn to Health Plan of Nevada and Sierra
13 Health and Life. Now, neither of those companies offer TPA services. Is
14 that correct?

15 A Yes, that's correct.

16 Q They are a -- they offer fully insured products?

17 A Yes. Health Plan of Nevada and Sierra Health and Life offer
18 fully insured products to our members here in Nevada.

19 Q And under those fully ensured products, then, it is Health
20 Plan of Nevada and Sierra Health and Life that is taking the risk of
21 coverage for the plans or for the contract then that they've issued. Is that
22 correct?

23 A Yes, that's my general understanding of fully insured. In
24 terms of my day to day working knowledge in my capacity in claims
25 operations, I understand that we have various products that we support

1 for Health Plan of Nevada and Sierra Health and Life that are fully
2 insured.

3 Q Now, for those fully insured products, you used a
4 computerized platform then to adjudicate or to process the claims that
5 are submitted to Sierra Health and Life as well as Health Plan of Nevada;
6 is that correct?

7 A Yes. We have a claim platform.

8 Q And the claim platform is FASIS?

9 A Yes. Our adjudication platform is called FASIS.

10 Q And you use FASIS then as a claims processing platform
11 from start to finish?

12 A Yes. Claim -- claims are loaded into FASIS and they are
13 processed against benefit plans and plan provisions as well as eligibility
14 and provider contracts, other benefit constructs, in order to process
15 those claims through to completion.

16 Q And you do not have any other claims process platform other
17 than FASIS; Is that right?

18 A That's correct. Under my accountability for HPN and SHL,
19 those fully insured products are on FASIS and FASIS only.

20 Q And from your perspective, it's important to load accurate
21 information into FASIS so that you get an accurate adjudication of the
22 claim being processed. Is that correct?

23 A Yes. We put a high value on ensuring that we configure our
24 products and our members in a way within FASIS so that we can process
25 our claims accurately and efficiently, so that we can pay the claims

1 correctly the first time that we get them.

2 Q So -- and it underscores the old axiom that you have to make
3 sure that you put the proper information to get the proper result, correct?

4 A Yes. That's correct. We need to have an understanding of
5 what we are receiving and what processing against, so that we can
6 process it efficiently and correctly.

7 Q And part of that load into FASIS also is insuring that you
8 comply with all legal and regulatory requirements, correct?

9 A That is correct. We abide by our plan ben --

10 Q All I want to know is whether or not that when you load into
11 FASIS that you ensure that you're abiding then by all legal and
12 regulatory requirements, correct?

13 MR. GORDON: Objection, Your Honor. If you could allow
14 the witness to finish her answer.

15 MS. LUNDVALL: What I'm trying to do is be protective of the
16 witness.

17 THE COURT: I think it was just being -- just clarifying. So
18 overruled.

19 THE WITNESS: So we do abide by legal and regulatory
20 requirements that are outlined by a variety of different sources. Some of
21 those are in our plan benefit documents. Some of them are in federal
22 and state regulatory guidance.

23 BY MS. LUNDVALL:

24 Q All right. Now, on behalf of Sierra and Health Plan of
25 Nevada, is it your position that providers who are not in-network, then it

1 is the plan or the contract documents then that dictate how providers are
2 to be reimbursed?

3 A For providers that are not in-network?

4 Q Yes.

5 A It's the plan benefit documents that dictate reimbursement,
6 specifically for emergency services.

7 Q Or it is the contract -- the insuring contract under your fully
8 insured product then that dictates then how benefits are going to be
9 paid?

10 A Yes. I commonly refer to that as our plan benefit documents.

11 Q And those agreements are between Sierra Health and Health
12 Plan of Nevada and their clients, correct?

13 A Yes. Those are the documents. Those plan benefit
14 documents are the ones that when either an individual -- either on or off
15 the exchange or like an employer group or a union that purchases
16 coverage on behalf of their members or their employees. When they
17 purchase one of our plans, whether it be Health Plan of Nevada or Sierra
18 Health and Life. We issue those plan benefit documents to the members
19 and to whoever is purchasing the coverage and that is what outlines the
20 type of coverage they get and in the case of emergency services for
21 nonplan providers, it also specifically outlines how reimbursement is
22 calculated.

23 Q And just to make sure that we're not confusing the jury here.
24 The products that your two companies adjudicate are fully insured
25 products, whereby Sierra and Health Plan is taking the risk under the

1 insuring contract, correct?

2 A Yes. Health Plan of Nevada and Sierra Health and Life offer
3 fully insured -- a wide variety of different products. Sometimes they're
4 referred to as either PPO or point of service or HMO products. Often,
5 they're identified by that benefit schedule that outlines various cost
6 shares. But behind that is also a variety of different plan benefit
7 documents that outline with specificity how members are covered and
8 what covered services are and other plan provisions and specifically,
9 how emergency services for nonplan providers are reimbursed for those
10 fully insured products.

11 Q Now, neither Health Plan of Nevada or Sierra Health and Life
12 seek input from providers concerning the level of benefit to put into
13 those contracts, correct?

14 MR. GORDON: Objection. Vague.

15 THE COURT: Overruled.

16 THE WITNESS: Our plan benefit documents are written in
17 conjunction with state and federal regulations and also in a way that
18 we're putting the benefits together for our customers.

19 BY MS. LUNDVALL:

20 Q Ms. Hare, I'm going to go back to my question. My question
21 was whether or not that you sought input from providers before
22 reaching the agreement then between Health Plan of Nevada and
23 whatever clients then that agree to purchase your product.

24 MR. GORDON: Objection. Compound.

25 THE COURT: It is compound. You can break it down.

1 BY MS. LUNDVALL:

2 Q Health Plan of Nevada issue -- negotiates and issues a
3 contract with its clients, correct?

4 A By clients, you mean our employer groups, unions and
5 individuals --

6 Q Right.

7 A -- yes.

8 Q Okay. And you don't seek input from providers as to either
9 language or rates or amounts or anything of that nature then into those
10 documents, correct?

11 A Well, those are sort of two -- I'm struggling to answer your
12 question, because those are two separate issues. We prepare our plan
13 benefit documents to be sold to our customers and it's based upon the
14 existence of contracts with providers, so our contracted providers are
15 aware of the various plan benefit documents --

16 MS. LUNDVALL: Your Honor, I'm going to -- as far as to
17 interrupt the witness at this point in time and ask to move to strike,
18 because she's now referring to something different that is -- falls within
19 the scope of Court's order.

20 MR. GORDON: Your Honor, she's answering the question.
21 It's responsive to her question. She's cut her off a few time answering
22 the question. Here, is directly responsive to her question. She's allowed
23 to complete her answer.

24 THE COURT: I found it was nonresponsive, so I will strike the
25 last testimony. You can disregard it and you can ask again.

1 MS. LUNDVALL: Thank you.

2 BY MS. LUNDVALL:

3 Q I'm trying to make sure that I focus your attention under
4 contract that's at issue. Health Plan of Nevada negotiates a contract
5 them with the client, like the employer, the union groups for a fully
6 insured product, correct?

7 A Uh-huh. That's correct.

8 Q And you don't go knock on the door to the provider groups
9 and say what rate are you using, what rate should I put in here, how
10 much should I put into this plan, correct?

11 A I apologize. I'm attempting to answer your question, but
12 those -- your question is a phrased in a way that those two activities
13 don't necessarily go together like that. So we're building products with
14 benefits, and it's based on the existence of a contracted network, so that
15 sequence of events that you're describing in your question doesn't
16 necessarily exist.

17 Q We're talking about two separate concepts, right?

18 A You are talking about two separate concepts in a line of
19 events that doesn't necessarily happen.

20 Q And what I'm trying to focus your attention upon -- all right --
21 solely upon Health Plan of Nevada going to, let's say, Union A. They
22 want to buy a fully insured product from you. You sell them a fully
23 insured product. You write a contract with them. You have a plan with
24 them as to how you're going to pay claims for someone who has
25 coverage under that plan, correct?

1 A Yes.

2 Q In that circumstance, that circumstance, you don't go to any
3 out-of-network provider and say hey, what is your rate?

4 A So that's still a pretty broad hypothetical. And it could -- that
5 could be any number of different circumstances.

6 Q All right. Then let me ask the same question then for Sierra
7 Health and Life. Same circumstances. Sierra Health and Life wants to
8 sell a fully insured product. Now Union B. You negotiate a contract; you
9 draft a plan for the administration of that fully insured plan. You're not
10 going to the out-of-network providers and saying what are your rates
11 before you draft that plan, correct?

12 A Again, that's describing a sequence of events that doesn't
13 really exist in our world. If we want to talk specifically about, let's say
14 emergency services, we can talk about what happens within our plan
15 benefits documents about -- that describe how we reimburse emergency
16 services. Perhaps --

17 Q Well, let's turn your attention, then, to emergency services.
18 Now, neither Health Plan of Nevada or Sierra ever pay full bill charges,
19 correct?

20 A We have language in our plan benefit documents that
21 describe how we reimburse nonplan providers for emergency services.
22 And it's based in the language that comes from the Affordable Care Act.
23 It is rare that we pay bill charges. I can think of just once instance where
24 we pay bill charges, and it was based upon a specific instruction from
25 one specific group, and that's the Federal Employees Health Benefit Plan,

1 and the Federal Employees Health Benefit Plan, the federal government
2 specifically told us to pay billed charges, and that's the only instance I
3 can think of.

4 And in that case, the way I would answer your question is Health
5 Plan of Nevada and Sierra Health and Life was not driving the decision to
6 pay billed charges. We were paying, in accordance with our planned
7 benefit documents, it just so happens in that case that the Federal
8 Employees Health Benefit Plan was telling us to pay billed charges

9 Q And so under the other plans that were -- other than the
10 single plan that you just described?

11 A Uh-huh.

12 Q Your system is not set up ever to pay full billed charges,
13 correct?

14 A For nonplanned emergency services we pay, we have
15 configured our system to pay those claims according to the language in
16 our plan benefit documents, and that language is what we call the
17 greater of three. We've configured our system to pay that greater of
18 three rate.

19 Q Well, the greater of three rate, and you said that it is based
20 upon the Affordable Care Act, the Affordable Care Act puts a floor, puts a
21 minimum, has a minimum wage in it, correct?

22 A I'm not familiar with that term "minimum wage: What I am
23 familiar with is -- in my role, is that the Affordable Care Act specifically
24 described for us as a payor and all payers three rates that we should be
25 comparing to determine what the reimbursement rate is for nonplanned

1 emergency services.

2 Q And we'll get to the Affordable Care Act, but generally, as
3 you sit here, you understand that the Affordable Care Act puts a floor, a
4 minimum, it's not the ceiling, it's not a cap, it's the floor, correct?

5 MR. GORDON: Objection. Asked and answered.

6 THE COURT: Overruled.

7 THE WITNESS: I wouldn't characterize it in my knowledge as
8 a floor. It specifically describes for us how to set the reimbursements.

9 BY MS. LUNDVALL:

10 Q Now let me take you back then to your FASIS Program?

11 A Uh-huh.

12 Q Your FASIS Program is never set up to pay full billed charges
13 to these plaintiffs, whether under the Health Plan of Nevada products or
14 the Sierra Health and Life products, correct?

15 A That's -- that's correct. We pay in accordance with our health
16 benefit plans, so we pay the greater of three, and the only exception that
17 I know of is the Federal Employees Health Benefit Plan.

18 Q So even if the plaintiff's full billed charges were usual,
19 customary, and reasonable, you were never going to pay those full billed
20 charges, correct?

21 MR. GORDON: Objection. Foundation. Vague.

22 THE COURT: It's overruled.

23 THE WITNESS: Could -- could you repeat that question for
24 me, please?

25 BY MS. LUNDVALL:

1 Q Even if the employer -- or the Plaintiff's out-of-network
2 provider groups submitted billed charges to you?

3 A Uh-huh.

4 Q And even if those billed charges were usual, customary, and
5 reasonable, FASIS was not set up to pay those billed charges, correct?

6 MR. GORDON: Objection. Calls for speculation.

7 THE COURT: Overruled.

8 THE WITNESS: So all providers that submit claims to us
9 submit a data element on the claim called billed charges, and so we take
10 that in and adjust it into our system. I can't make the assumption that
11 the billed charge is usual, customary, and reasonable. That's -- that's not
12 necessarily an assumption that I can make, that it's usual, customary,
13 and reasonable. Plus, at the end of the day, we're going to revert back to
14 our standard, our health benefit plans direct us how to pay, and that's
15 where we get to the greater of three.

16 Q All right. So what I'd like for you to is to pick up your
17 deposition. It's up there in the corner. Now in your -- when you had
18 your deposition taken in this case you raised your hand to tell the truth
19 the same as you did before you took the witness stand here today?

20 A Yes, I did.

21 Q And what you were doing during the course of your
22 deposition was trying to give the best answer that you could at the time?

23 A Yes, I was.

24 Q And you also were given an opportunity to review your
25 deposition transcript after it was completed and after the transcript was

1 prepared and transcribed?

2 A Yes.

3 Q And you were given the opportunity to make changes,
4 correct?

5 A Yes, I was.

6 Q And that would have been so in the event that the court
7 reporter made some type of an error; is that right?

8 A Yes, that's my understanding.

9 Q All right. What I want you to do is to turn to page 73, and I'm
10 going to read aloud the question, and I'm going to go directly to your
11 answer then and that is followed after an objection. And what I want you
12 to do before I do that is to read silently to yourself then beginning at
13 page 73, line 11, and then go to page 74, line 4.

14 Now after reading that silently to yourself, does it continue to
15 be your position that Sierra Health Life and Health Plan of Nevada do not
16 pay full billed charges?

17 MR. GORDON: Objection, Your Honor. Mischaracterizes the
18 testimony.

19 THE COURT: Overruled.

20 THE WITNESS: I believe my testimony in the deposition is
21 consistent with what I just testified a few moments ago which is Health
22 Plan of Nevada and Sierra Health and Life rarely pay billed charges, and
23 the only instance that I can think of where we do is for the Federal
24 Employees Health Benefit Plan, where that sponsor, that plan sponsor
25 specifically told us to pay full billed charges.

1 BY MS. LUNDVALL:

2 Q Now on behalf of Sierra and Health Plan of Nevada, you
3 don't even have usual, customary, and reasonable written into any of the
4 plan documents for any covered service that's at issue in this case; do
5 you?

6 MR. GORDON: Objection to foundation and compound.

7 THE COURT: Overruled.

8 THE WITNESS: So what's at --

9 BY MS. LUNDVALL:

10 Q And that's a yes or no answer, okay?

11 A I --

12 Q You don't have usual, customary, and reasonable written
13 into any plan document for any covered services that's at issue in this
14 case, correct?

15 A We have a different -- we have language in our plan benefit
16 documents that -- that describe the greater of three. We use the term
17 medium par.

18 MS. LUNDVALL: Your Honor, and I'm going to as far as once
19 again interrupt the witness so that I can try to keep within the scope of --

20 MR. GORDON: Your Honor, can we approach on this?

21 MS. LUNDVALL: -- the Court's orders.

22 THE COURT: You may.

23 MR. GORDON: Can we approach please?

24 THE COURT: But let's address -- is it with regard to this
25 issue?

1 MR. GORDON: The issue that she's testifying to? Yes.

2 THE COURT: Yeah, come on up.

3 [Sidebar at 1:23 p.m., ending at 1:23 p.m., not transcribed]

4 BY MS. LUNDVALL:

5 Q Now back to my question to you, Ms. Hare, because the
6 objection was overruled, on behalf of Health Plan of Nevada and Sierra
7 Health, you don't have usual, customary, and reasonable written into any
8 planned document for any covered service that's at issue in this case,
9 correct? It's a yes or no answer.

10 A I don't think I can fully answer the question with just yes or
11 no. I can describe what is written into our plan documents. Am I
12 allowed to do that?

13 Q No. What I want you to do is pick up your deposition once
14 again, and turn to page 75, and on 75 read silently to yourself 15 to 21.

15 A Yes.

16 Q You do not have usual and customary written into any plan
17 document for the covered services that are at issue in this case, correct?
18 Yes or no?

19 A No, we don't use the term "usual and customary," we use the
20 term "eligible medical expenses, a part of our greater of three."

21 Q And I need to stop you right there once again. I'm
22 constrained by the same orders that you are, and so that's why I said this
23 was a yes or no question, okay? You don't have usual and customary
24 written into any of your plan documents, correct?

25 A To the best of my knowledge, I don't believe so.

1 Q And as a matter of fact, that it is your testimony that usual,
2 customary, and reasonable is irrelevant to the calculations of what
3 should be paid, correct?

4 A I'm not sure I understand what your definition is of usual,
5 customary, and reasonable. It's not a term that we necessarily are using
6 to describe reimbursement rates for emergency services. So if there's a
7 definition --

8 Q May I ask you to pick up once again your deposition
9 transcript? I'm going to get you to turn to page 77. At lines 4 and 5, did
10 you give the testimony, "Usual and customary isn't relevant to our plan
11 document"? Yes or no?

12 A Yes, I see that written here in the context of the question
13 being answered, yes.

14 Q And that was your testimony that was given during the
15 course of your deposition, correct?

16 A Yes.

17 Q All right. What I'd like to do is to see if we can't see a little
18 bit, your plan document in action, and so I'm going to show you a
19 demonstrative, walk you through that, and then ask you a few questions
20 if I could, please.

21 MS. LUNDVALL: Michelle, could you bring up the first
22 PowerPoint for me, please? And can you blow that up for me?

23 BY MS. LUNDVALL:

24 Q Ms. Hare, can you see the screen that's in front of you?

25 A Yes, I can.

1 Q This is a summary of some of the claims that are at issue in
2 this case that the jury is going to be asked then to look at and to
3 adjudicate. On the far left-hand column it identifies the entity or who
4 should be being paid, the provider group, that's Fremont, correct?

5 A Yes.

6 Q And then it goes to the facility at which the services were
7 being provided, and then it identifies the county in which those services
8 were performed, and then it gives the date; you see that?

9 A Yes, I see that.

10 Q And then it gives the date of service; do you see that?

11 A I just see one date on mine. It says the DOS which is
12 typically the date of service.

13 Q Date of service, there's a July 3rd, a July 4th, July 4, July 4 of
14 2019, and there's a November 13th on there; do you see that?

15 A Yes, I see those.

16 Q In the far right-hand column, it identifies then who was the
17 payor, and that was Sierra Health and Life Insurance Company; do you
18 see that?

19 A Yes, I see that.

20 Q And then there is a CPT code column. Now the CPT code,
21 you're familiar with, correct?

22 A Yes, I'm familiar with CPT codes.

23 Q And the CPT code there with the level of service, the level of
24 severity of either the injury or the illness by which a patient may present
25 for treatment, correct?

1 A The CPT code is a standardized coding, and it -- across the
2 industry. There's a standardized language with regards to when a 992,
3 99292 versus a 99284 should be used, yes, and it describes amount of
4 time, number of systems, several other factors that go into when those
5 level of codes should be used.

6 Q And typically, the higher the code that the more service, the
7 more care, the -- that needed to be provided to that particular patient,
8 correct?

9 A It's typically indicative of a -- of a more advanced or a higher
10 level of service, yes.

11 Q And the lower numbers then are indicative then of a lower
12 level of care or a lower level of services being done on the patient?

13 A It's typically described in the CPT book, yes, in that way.

14 Q All right. And there's varied CPT codes for these five claims
15 that are at issue; do you see that?

16 A Yes, I see that each line has a different CPT code on it.

17 Q And the charges vary, as well, based upon the different CPT
18 codes, correct?

19 A Yes, I see the various charges on each line item.

20 Q But the amount allowed is all the same; is that right?

21 A Yes, I see the same allowed amount all the way down.

22 Q So the relationship to the amount allowed is not related then
23 to the billed charge, correct?

24 A The allowed amount is set by the language in our plan
25 benefit documents that describes how we pay emergency services for

1 nonplanned providers, specific --

2 Q Let me -- as far as ask you this question, the allowed amount
3 then is not varied based upon the level of service as reflected in the CPT
4 code that the provider provides, correct?

5 A The allowed amount for emergency services for nonplanned
6 providers is calculated by the greater of three, and in this instance, the
7 greater of three --

8 Q And I need to stop you as far as at this point once again.

9 A Okay.

10 Q And I think that -- I'm hoping that at the break you then -- you
11 can speak with your counsel regarding the scope of what you're able to
12 testify to, okay? But what we're seeing as far as this example is that the
13 amount that was allowed did not vary based upon the level of service
14 that was provided by the ER provider, correct?

15 A The allowed amount was established by the -- a global
16 reimbursement. That's the methodology behind the allowed, so it's a
17 blend across the various types of service, and it is not directly correlated
18 to the CPT code.

19 Q You had indicated that in preparing both the plan documents
20 as well as the information that you input into the document that you
21 wanted to ensure that you were complying with the Affordable Care Act,
22 correct?

23 A Yes, that's one of the regulations we comply with.

24 Q And the shorthand term for the Affordable Care Act is ACA; is
25 that right?

1 A Yes, it's commonly referred to as the ACA.

2 Q And while none of your plan documents refer to usual and
3 customary and reasonable, it's your testimony though that they were
4 designed to comply with BACA?

5 A Yes, we have had language in our plan documents since the
6 ACA was passed and became federal regulation that reflects that
7 reimbursement rate methodology for nonplan providers for emergency
8 services.

9 Q I want to confirm with you, some testimony that you gave
10 during the course of your deposition, and that is that Sierra and Health
11 Plan of Nevada are not using cost reduction and savings programs; do
12 you recall that?

13 A I do recall that.

14 Q All right. So let me see if we can't confirm then you are not
15 using -- and that's your testimony then to the jury, correct?

16 A For emergency services here in Nevada, we don't use cost
17 reduction or savings programs. We use the language that's in our plan
18 benefit documents.

19 Q All right. What I want you to do now is go to an exhibit, the
20 binder behind you, because -- in particular, I want you to go to Exhibit
21 295.

22 MS. LUNDVALL: There's no objection and it's been placed in
23 the pretrial memo. From counsel, they have no objection to its
24 admission.

25 MR. GORDON: No objection.

1 THE COURT: All right. Exhibit 295 will be admitted.

2 BY MS. LUNDVALL:

3 Q Now, what I want to do is this, is I want to ask you just very
4 brief, to take a look at the exhibit, that email chain, and confirm that
5 you've seen this before.

6 A Yes, I've seen this.

7 Q This exhibit was used during the course of your deposition;
8 was it not?

9 A I believe it was used, yes.

10 Q And you also have had an opportunity to take a look at it
11 before you came here to testify?

12 A I think we might have looked over it, yes.

13 Q All right. So what I want to do is to start how email chains
14 began, but they're printed off in reverse order. So turn to page 2
15 because the very first one then carries over on the top of page 3. Now,
16 let's start with --

17 MS. LUNDVALL: Michelle, pull up the bottom of page 2 so
18 that we can get from who sent this.

19 BY MS. LUNDVALL:

20 Q This was a message that was sent by Sean Schoener,
21 correct?

22 A Yes, I see that Sean sent this, it appears on February 18th of
23 2019.

24 Q And Mr. Schoener then is the vice president of network
25 development and provider relations for Nevada and Utah; is that right?

1 A Yes, I see that on his tagline on this email.

2 Q And Mr. Schoener is in, what you refer to as provider
3 services for Sierra and for Health Plan of Nevada, correct?

4 A Yes. Shawn was in what we refer to on a daily basis as
5 provider services at that time.

6 Q Okay. So when I see Shaun Schoener, messages from him,
7 then he is from provider services, and provider services then afforded
8 services then to Health Plan of Nevada and Sierra, correct?

9 A Could -- can you ask me that question in a different way,
10 please?

11 Q Mr. Schoener, as the vice president of network development
12 and provider services, he provided information and services in the
13 context of -- well, let me back up this and try and make it simpler. If I see
14 Mr. Schoener, he equals provider services, correct?

15 A In this email, he's representing provider services.

16 Q Thank you. I didn't mean to make it complicated. All right.
17 And he is sending a question to a number of individuals, and you know
18 some of those individuals; do you not?

19 A I actually don't know any of the individuals on this email.

20 Q Well, let me -- as far as those start -- he's asking what he calls
21 a random question. As part of the ACA, or the Affordable Care Act, it
22 stipulates that out-of-network emergency care must be reimbursed at the
23 higher of three rates, and it identifies the three rates, correct?

24 A Yes, I see that he's written three phrases here.

25 Q And usual and customary is the second phrase, correct?

1 A Yes, he's put usual and customary behind number two.

2 Q But usual and customary doesn't appear within any of the
3 planned documents for which that Sierra or Health Plan of Nevada write,
4 correct?

5 A Our plan documents refer to --

6 Q Yes or no was my question. As we've talked about before,
7 usual and customary is not provided within your plan documents,
8 correct?

9 A Usual and customary is not in the emergency services
10 nonplan provider section of our plan documents.

11 Q All right. In an effort to try to make this go quickly, there's
12 also a reference then to -- in the next email up, to John Haben, with
13 United Health, correct?

14 A I'm sorry, I've lost where you're referencing.

15 Q To go up from the message from Shaun on page 2, toward
16 the bottom, and it makes reference to the out-of-network team under
17 John Haben, along with HCE for rate calculations, Rebecca Paradise
18 currently leads the out-of-network portions for UHN; do you see that?

19 A Yes, I see that is written in the email from Benjamin Passwick
20 [phonetic] back to several people.

21 Q Now, the back and forth then up through here is trying to
22 figure out who is -- could answer the question then for purposes of
23 Nevada. And it turns out to be that Katherine got taken off the chain, and
24 this is a Kathy question. Was Kathy a member of your team?

25 A I wasn't on this email at this point, but reading through it

1 right now, I think it's a reference to Cathy Ackerman [phonetic], just
2 based upon the email, and Cathy Ackerman is not on my team.

3 Q But you are familiar with Mr. Schoener and he provided -- he
4 afforded them provider services then to both Sierra as well as to Health
5 Plan of Nevada, correct?

6 A Yes. At that time, Shaun was in a role with provider services
7 for Health Plan of Nevada and Sierra Health and Life.

8 MS. LUNDVALL: Your Honor, I'm at the point where there
9 were three documents that counsel asked me to approach with.

10 THE COURT: Okay. 325, 314, and 348?

11 MS. LUNDVALL: That's correct, Your Honor.

12 THE COURT: Okay.

13 MS. LUNDVALL: He wanted an opportunity to review them.

14 THE COURT: Did you want a brief recess?

15 MR. GORDON: 325, object on foundation. Relevance. And
16 314, relevant and foundation.

17 MS. LUNDVALL: I mean, I -- since we have no -- one
18 additional point, I guess, that we will need a bench conference as far as
19 that.

20 THE COURT: So even though we only -- you guys only came
21 back into the courtroom an hour ago, we were here at 12:15, so it's been
22 an hour-and-a-half since we've had a recess, so we'll take a short recess
23 now.

24 During the recess, do not talk with each other or anyone else
25 on any subject connected with the trial. Don't read, watch, or listen to

1 any 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, newspapers, television, radio, internet, cell phones, or texting.

4 Do not conduct any research on your own relating to the
5 case. Don't consult dictionaries, use the internet or use reference
6 materials. During the recess, don't post any social media with regard to
7 the trial. Don't talk, text, Tweet, Google issues or conduct any other type
8 of research with regard to any issue, party, witness, or attorney involved
9 in the case.

10 Do not form or express any opinion on any subject
11 connected with the trial until the matter is submitted to you. It's 1:44.
12 Please be ready at 2:00 p.m.

13 THE MARSHAL: All rise for the jury.

14 [Jury out at 1:44 p.m.]

15 [Outside the presence of the jury]

16 THE COURT: The room is clear.

17 MS. LUNDVALL: Your Honor, 325, 314, and 348 have all
18 been redacted in the court then with the motions. The orders of the
19 motions in limine. What I don't want to do is to have any objection and
20 somehow the reopening of the door with redactions that we're done.
21 And so that's why I sought a bench conference so that so then there's no
22 allegation that [indiscernible] opening the door.

23 THE COURT: Good enough. And the response, please.

24 MR. GORDON: Exhibit 325, Ms. Hare does not appear at all
25 in this document, which is why I objected to it. And same with 314, and

1 also 314 deals with another, the UMR. She is not at all related to UMR.

2 THE COURT: What about 348?

3 MR. GORDON: I don't know 348 --

4 THE COURT: Because you were responding to a different
5 question --

6 MS. LUNDVALL: Yes.

7 THE COURT: -- asked by Ms. Lundvall. She was talking
8 about not opening the door by referencing these documents with the
9 witness.

10 MS. LUNDVALL: I understand I need to lay additional
11 foundation based upon the objections.

12 THE COURT: All right.

13 MS. LUNDVALL: And I have no comment back. But I just
14 wanted to make sure that if I do lay that foundation, the Court admits
15 them over their objection, then I -- that they then don't contend that
16 somehow that I'm opening the door.

17 THE COURT: Well, and we won't know whether or not the
18 door is opened until we see where the testimony goes.

19 MS. LUNDVALL: And I understand, based on our testimony,
20 I just want to make sure that they are not based upon the proffer of these
21 redacted exhibits.

22 THE COURT: Good enough.

23 MS. LUNDVALL: That's my --

24 THE COURT: Is there --

25 MR. GORDON: And so that's why I have to make an offer of

1 proof for this witness to go through the [indiscernible].

2 THE COURT: That -- we have a motion in limine on that.

3 And all that will do is delay the trial. So come back at 2:00, and we'll get
4 started back with the witness. Thank you.

5 MR. GORDON: Your Honor --

6 THE COURT: Wait. Mr. Gordon, there was one other thing.

7 MR. ZAVITSANOS: I'm sorry.

8 THE COURT: No. No. I want to make sure.

9 MR. ZAVITSANOS: That's the code of federal register, so
10 Your Honor, at this point, the witness has now several times said that
11 they follow the greatest of three and they -- and they reimburse in
12 accordance with the greatest of three. So Your Honor, we're going to
13 ask the Court to take judicial notice under NRS 47140, subpart 1, which
14 includes specifically the code of federal register. I just handed counsel a
15 copy of the code of federal register. For the Court's convenience, I have
16 highlighted --

17 THE COURT: You know, let's not -- I don't want to surprise
18 them with this. Give -- do your argument and then we'll come back early
19 for a response.

20 MR. GORDON: Yes.

21 MR. ZAVITSANOS: So Your Honor, let me hand the Court
22 with --

23 THE COURT: You can just leave it right there.

24 MR. ZAVITSANOS: So what that says, Your Honor, is that
25 the --

1 MR. GORDON: Are we doing this argument now or we're
2 doing it later?

3 THE COURT: We're going to listen to his argument --

4 MR. GORDON: Oh, I'm sorry. Yeah.

5 THE COURT: -- and then I'll give you a chance to respond at
6 the end of the breaks, because they're doing this without any notice to
7 you.

8 MR. GORDON: Understood, Your Honor.

9 MR. ZAVITSANOS: So the greatest of three, Your Honor, is a
10 little bit of a misnomer. It is a minimum wage law that essentially says
11 you cannot go below this level on reimbursement. So -- and I know the
12 Court has heard me say this before, but for the benefit of counsel, is the
13 equivalent of saying if you hire a neurosurgeon, you can't pay him less
14 than \$12 an hour because that's the minimum wage law. That does not
15 mean that is the market rate of the reasonable value.

16 The code of federal register makes clear that it is the -- it is
17 the lowest amount you can pay. It does not mandate that's what you
18 would pay. This witness now, three separate times said that the ACA
19 mandates or requires them to pay in accordance with that. That is -- first
20 of all, that's just verifiably incorrect. And that's why, Your Honor, we
21 would ask that the Court give this -- take judicial notice of this and advise
22 the jury of that.

23 Now, I don't believe that is putting the thumb on the scale
24 because that is not saying that they violated the greatest of three. It is
25 simply correct the erroneous statement that the witness made that the

1 greatest of three requires them to do it this way.

2 THE COURT: Good enough.

3 MR. ZAVITSANOS: It is -- yeah. So --

4 THE COURT: Thanks. All right. It's 1:49. Just be back a
5 couple of minutes early, Mr. Gordon. So see you guys about 1:58.

6 [Recess taken from 1:49 p.m. to 2:01 p.m.]

7 [Outside the presence of the jury]

8 THE COURT: Mr. Gordon, did you fully respond on the
9 record?

10 MR. GORDON: Yes, Your Honor.

11 THE COURT: Thank you.

12 MR. GORDON: My response is to Mr. Zavitsanos is about the
13 greatest of three, it's my recollection that what Ms. Hare testified to was
14 that she's not mandated or required to follow the federal register. Her
15 testimony was pretty clear and pretty consistent to the extent that she
16 could say anything, which was [indiscernible] claims pursuant to the
17 greatest of three, which was defined in the plan. That's her testimony.
18 She got a little bit until she's cut off. She [indiscernible] register is not
19 relevant to this witness. And I disagree with the characterization of how
20 she responded. In the greatest of three had been defined in the
21 [indiscernible] document as EME [indiscernible].

22 MR. ZAVITSANOS: And that's the problem, Your Honor, is
23 they basically changed the law. There is no such thing as EME under the
24 federal register. That's completely fabricated. That would be the subject
25 of cross. That's not the request. The request is that the Court take

1 judicial notice of this [indiscernible].

2 THE COURT: What is the CFR cite for, because I have to -- I'll
3 take it under advisement, because I have to review it.

4 MR. ZAVITSANOS: Yeah. Let me -- can I have the order.
5 Can I take it back?

6 MR. ZAVITSANOS: This is the actual CFR. And I've
7 highlighted the two sections.

8 THE COURT: Yeah.

9 MR. ZAVITSANOS: And I've given him a copy.

10 THE COURT: All right. Thank you. Okay. Just making sure.
11 All right. So that's under advisement. I assume that we'll consider that
12 with jury instructions. I'm not going to instruct them separately on the
13 law.

14 MR. ZAVITSANOS: Yes, Your Honor. Our position
15 [indiscernible] jury, the greatest of three has no application, because
16 that's minimum wage. And if they're paying minimum wage --

17 THE COURT: I understand your argument.

18 MR. ZAVITSANOS: Yeah. yeah.

19 THE COURT: I had to learn a lot of stuff for your trial.

20 THE MARSHAL: All rise for the jury.

21 MR. ZAVITSANOS: We're aware, Your Honor.

22 THE MARSHAL: Jury coming through.

23 [Jury in at 2:03 p.m.]

24 THE COURT: Thank you. Please be seated. Go ahead,
25 please.

1 MS. LUNDVALL: Thank you, Your Honor.

2 DIRECT EXAMINATION CONTINUED

3 BY MS. LUNDVALL:

4 Q Ms. Hare, what I'm going to try to do is see if I can't do this in
5 a very condensed fashion, in a very quick fashion. You know who Jason
6 Jefferson is; do you not?

7 A Yes, I do know JC.

8 Q And who is JC Jefferson?

9 A JC is in provider services as well.

10 Q So between JC Jeffers and Shaun Schoener, they provide
11 provider services then to Sierra Health and to Health Plan of Nevada,
12 correct?

13 A Yes. They represent Health Plan of Nevada and Sierra Health
14 and Life.

15 Q And they communicate information then to Sierra Health and
16 Life for purposes of administering and adjudicating claims; do they not?

17 A From an operational perspective, they would give my
18 department information, so that we can configure our systems and
19 processes, so that we can pay claims.

20 Q All right. And to the extent that you are familiar that Fremont
21 is one of the claimants or the Plaintiffs in this action, correct?

22 A Yes.

23 MS. LUNDVALL: All right. Your Honor, with that foundation,
24 we would offer Exhibit --

25 Is that 325? Okay. That's 325, 314, and 348.

1 MR. GORDON: No objection, Your Honor.

2 THE COURT: Okay. Exhibits 325, 314, and 348 will be
3 admitted.

4 [Plaintiffs' Exhibit 314, 325, and 348 admitted into evidence]

5 BY MS. LUNDVALL:

6 Q All right. What I'd like to do first and foremost is to pull up
7 Exhibit 325.

8 [Counsel confer]

9 THE WITNESS: 325?

10 BY MS. LUNDVALL:

11 Q May I take a look at your document?

12 [Counsel confer]

13 BY MS. LUNDVALL:

14 Q All right. As we go and try to load the proper document and
15 ensure that we're not in violation of any of the Court's orders, I'm going
16 to ask you to take a look at it, so we can make our examination in looking
17 at Exhibit 325, please. It should be a single sheet of paper.

18 [Pause]

19 BY MS. LUNDVALL:

20 Q Have you read it?

21 A I did.

22 Q All right. So beginning at, once again, the bottom. And let
23 me know if it's able to be loaded in time, I'm going to continue reading it
24 into the record. And my question to you then, Ms. Hare, is whether or
25 not I . Okay. I'm looking at the message that is dated February 25, 2019,

1 from JC Jefferson, who you identified was in provider services, correct?

2 A Yes, that's correct.

3 Q And provider services tries to afford services, including
4 regulatory and legal requirements that -- to Sierra Life as well as Health
5 Plan of Nevada, correct?

6 A I wouldn't describe it as providing legal and regulatory
7 services.

8 Q Well, they provide regulatory assistance, correct?

9 A No. I wouldn't describe them as providing regulatory
10 assistance.

11 Q Let's go to the subject line here. The subject line reads
12 Fremont Emergency Services. Do you see that?

13 A Yes, I do see that.

14 Q And there's a sentence that appears on the page where JC is
15 wanting -- I want to make sure that, effective 2/27/19, we are adjudicating
16 claims in accord with the ACA requirement. Did I read that accurately?

17 A It says we are adjudicating claims in accordance with the
18 ACA requirements. Yes, that's correct.

19 Q The sentence reads I want to make sure that, effective
20 2/27/19, we are adjudicating claims in accordance with the ACA
21 requirements. Did I read that correctly?

22 A Yes, you read it correctly.

23 Q Second message. JC Jefferson says -- and it's also in that
24 same email chain regarding Fremont Emergency Services. Once again,
25 he writes: Good morning. Can someone confirm if we are adjudicating

1 claims after 2/26 at the rates outlined below for HPN and SHL? Did I
2 read that correctly?

3 A Yes, you rode -- read that correctly.

4 Q And the initials for HPN and SHL are that of Health Plan of
5 Nevada and Sierra Health and Life, correct?

6 A Yes. We typically use those initials to refer to Health Plan of
7 Nevada and Sierra Health and Life.

8 Q And then the very last message then that appears at the top
9 there is from Coreen Spate. Are you familiar with Ms. Spate?

10 A Yes, I am.

11 Q And relay to the jury then your familiarity with her?

12 A Kareen is within my hierarchy.

13 Q And Ms. Spate then responds: Maury, the claims are not
14 being processed in this manner. The rates would have to be automated
15 for this to occur.

16 Did I read that correctly?

17 A Yes, you did.

18 Q Now the next document I want you to pick up is Exhibit 314.
19 And I have a few questions concerning that. And as you find that
20 document, I just want to confirm. Was your testimony to this jury that
21 your plan documents, your contract documents that -- on your fully
22 insured products, one of the things you have to do is to ensure that they
23 meet the requirements of the Affordable Care Act, correct?

24 A Yes. We've written our Health Plan of Nevada and Sierra
25 Health and Life documents specifically for the emergency services

1 provision for nonplan providers in accordance with what was in -- what
2 is in the ACA regulations.

3 Q All right. So I want to turn your attention then to Exhibit 314.
4 And I've got a few questions then concerning Exhibit 314 if I could. Feel
5 free to spend as much time as you want with it. But what I'm most
6 interested in is the message that starts at the bottom of page 1 and
7 continues onto the top of page 2. The information that I'm most
8 interested in is found at the top of page 2.

9 MS. LUNDVALL: Michelle, can you go to the top of page 2.
10 And the portion that said response from Nancy Minny [phonetic], can
11 you blow that up for me, please. You need to go up a little bit more.
12 Right there. Can you blow that for me, please?

13 Now the paragraph that's above that --

14 May I approach, Your Honor?

15 THE COURT: You may.

16 MS. LUNDVALL: Michelle, take that down for just a second,
17 please.

18 [Pause]

19 MS. LUNDVALL: Michelle, you're okay to put it back up.
20 BY MS. LUNDVALL:

21 Q All right. So what I'm going to do is this. Do you know who
22 Nancy Minny is or is affiliated with, correct?

23 A I'm familiar with Nancy Minny. She, from my knowledge,
24 works with UMR. But she doesn't work with Health Plan of Nevada or
25 Sierra Health and Life.

1 Q But to the extent though that she had the information that
2 was shared with members though of your organization, for example, JC
3 Jefferson, correct?

4 A I wasn't on this email, and I'm not able to read anywhere on
5 this email where JC is copied. So I can't speak to information that might
6 have been shared with JC from Nancy.

7 Q All right. So let me see if I can't help you out here a little bit.
8 Page 1 line 1. JC Jefferson appears on page 1 line 1; does he not?

9 A I don't see JC anywhere on page 1 line 1.

10 Q You're on Exhibit 314?

11 A 314, 001.

12 Q Yes. Line 1. Maybe I owe you an apology. You're right. I
13 do. From this perspective, the portions that reference or that went back
14 and with Mr. Jefferson, those got redacted out. Okay.

15 A Oh, okay.

16 Q But I will represent to you that you're not in violation of court
17 order, that there are -- Mr. Jefferson was on these emails that got
18 redacted, okay?

19 A Okay.

20 Q Accept my representation?

21 A Sure.

22 Q All right. What I want to do is direct your attention then back
23 to page 2, the information that -- from Nancy --

24 A And we're still on 314?

25 Q Yes. Now individuals associated with UHC, they perform

1 legal and regulatory compliance then for Sierra; do they not?

2 A That's a pretty broad question. We have folks here in Las
3 Vegas that write our plan documents and are experts in legal and
4 regulatory matters. And they write plan documents specifically for
5 Health Plan of Nevada and Sierra Health and Life. So I don't know that I
6 can say generically that people at UHC provide legal and regulatory
7 guidance. I would say that we have resources at Health Plan of Nevada
8 and Sierra Health and Life that write our plan documents in accordance
9 with state and federal regulations.

10 Q Turn to your deposition, please. Page 113. I'm going to read
11 aloud. Let me know if I've read it properly.

12 At page 13, line 17:

13 "Q Who performed regulatory and compliance analysis for
14 Sierra?

15 "A We look to UHC legal regulatory and compliance for analysis
16 when we need assistance on various state and federal regulations."

17 Was that your testimony in response to that question?

18 A Yes.

19 Q Now Nancy Minny, she too is affiliated then with compliance
20 for United, correct?

21 A I don't know that that's Nancy's role. I don't believe it is, but
22 I don't know for sure that that's Nancy's role.

23 Q All right. So let's go to your deposition once again. And this
24 time I'm going to turn your attention to page 112. And I'm going to start
25 reading at line 24. And we're talking about Nancy Minny at line 24. Let

1 me know whether or not these questions and this answer were given --
2 posed to you and the answer given to you by -- in your deposition.

3 Line 24: "She is affiliated with United?"

4 "A I believe so.

5 "Q And you understand her to be in the regulatory compliance
6 division in some way?"

7 There's an objection by counsel to form, and your answer
8 is I don't have any personal knowledge of that. Just based upon reading
9 this email, I can see that Julie Pickens says she works with Regulatory
10 and Compliance." Was that your testimony during the course of
11 your deposition?

12 A Yes, I can read that that's my testimony.

13 Q Now what I want to do then is turn your attention there to the
14 message from Nancy Minney [phonetic]. And the paragraph particular --
15 the sentence in particular that I want to focus your attention on is this.
16 "The regulation requires that a reasonable amount be paid before a
17 member is subjected to balance billing for out-of-network claims, not
18 using the cost reduction in savings program, we will use 100 percent of
19 bill charges." Do you see that sentence?

20 A Yes, I see that sentence.

21 Q And we confirmed that Sierra and Health Plan of Nevada do
22 not use a cost reduction in savings plan, correct?

23 A Yes, that's correct.

24 Q And so under this response or under this advice then from
25 Nancy Minney, it indicates that a reasonable amount is 100 percent of

1 bill charges, correct?

2 MR. GORDON: Objection. Form.

3 MS. LUNDVALL: That's what the sentence says.

4 THE COURT: Overruled.

5 BY MS. LUNDVALL:

6 Q Correct.

7 A I can read it, but Julie -- I don't know Julia Pickens. And I can
8 read what Julia Pickens said about Nancy Minney in the email. And
9 that's what I said in my deposition. What I can tell you is that Nancy
10 Minney isn't regulatory or compliance for Health Plan of Nevada or
11 Sierra Health and Life. So what's in this email isn't applicable to our plan
12 benefit documents for Health Plan of Nevada or Sierra Health and Life.

13 Q But what we do know is that for Sierra and for Health Plan of
14 Nevada, they do not use a cost reduction in savings program, correct?

15 A That's correct. For emergency services for non-plan
16 providers, we look to our plan benefit documents.

17 Q And under the language then that is found within this email,
18 that speaks to the Affordable Care Act, it identifies that for no pro rata, it
19 uses cost reduction in savings, you're going to use 100 percent of bill
20 charges. Did I read that accurately?

21 A You read the words on the email accurately, that's correct.
22 But as I said before, both Julia Pickens and Nancy Minney aren't
23 contributing to our regulatory and compliance guidance, or our plan
24 benefit documents for our fully insured business for Health Plan of
25 Nevada or Sierra Health and Life.

1 Q What I want you to do now is to turn to Exhibit 348. Are you
2 at Exhibit 348?

3 A Yes, I am.

4 Q I want to focus your attention only on the first page. The
5 very bottom entry then is J.C. Jefferson, correct?

6 A Yes, I see an email from J.C. Jefferson dated April 30th of
7 2019.

8 Q And the subject line is "Fremont Emergency Services."

9 A Yes, I see that.

10 Q And at that -- the second sentence, he writes, "I have mailed
11 in full of letters indicating we are not ACA client. So the sooner we can
12 get this loaded, the better." Did I read that accurately?

13 A Yes, you did.

14 Q Yet it's your testimony that Sierra Health Plan of Nevada
15 were obligated to be ACA compliance, correct?

16 A Yes, I -- I don't know what these mail bins full of letters were
17 or are even today. So I can't speak to what these letters are or what they
18 might have said.

19 Q Now what I want to do is go to a new topic, but make sure I
20 stay within the parameters of the Court's order. I'm going to turn to a
21 different area. That is dealing with balance billing. You're familiar with
22 the concept, correct?

23 A I understand the term balance billing in our industry.

24 Q All right. And having a provider agree that they will not
25 balance bill is a benefit to Sierra on the health line; is it not?

1 MR. GORDON: Objection to form.

2 THE COURT: Overruled.

3 THE WITNESS: Having a provider not balance bill is a benefit
4 to a member that might be subjected to bill charges.

5 BY MR. GORDON:

6 Q All right. And then it's also a benefit to Sierra Health and Life
7 as well as to Health Plan of Nevada, so that you don't have to deal with
8 customer complaints or the member complaints. Or maybe even some
9 type of a contractual provision, whereby you're obligated to hold
10 harmless the member.

11 MR. GORDON: Objection, compound.

12 MS. LUNDVALL: Right?

13 THE COURT: Break it down.

14 BY MS. LUNDVALL:

15 Q All right, so having a provider agree not to balance bill, as
16 you indicated, isn't that a benefit to the member, correct?

17 A Yes, it's a benefit to the member to not be subjected to a
18 provider's bill charges.

19 Q But it's also a benefit to Sierra as well as to Health Plan of
20 Nevada; isn't that right?

21 A I don't know that I would describe it as a -- as a benefit.
22 Certainly we have the member in mind. We never want them to be
23 subjected to a -- to a provider's bill charges.

24 Q Well, and if a member does get a balance bill a month, the
25 member then will come complain to the insurer who has afforded them

1 the coverage, correct?

2 MR. GORDON: Objection. Calls for speculation.

3 THE COURT: Overruled.

4 THE WITNESS: That -- that area is not necessarily under my
5 daily purview. So while I'm aware that there are complaints from time to
6 time from members that we try to handle, I don't have much more
7 personal knowledge about our processes of handling balance billing
8 complaints.

9 BY MS. LUNDVALL:

10 Q But I want you to use your common sense. If you have to
11 have a department that deals with member complaints. And if some of
12 those members complaints are about balance billing, and you don't have
13 to worry about balance billing from providers, that's a benefit to Sierra
14 and Health Plan; is it not?

15 MR. GORDON: Objection, compound. Argumentative.

16 THE COURT: Overruled.

17 THE WITNESS: I -- I would say that the benefit is again more
18 for the member to not get subjected to the bill charges the provider
19 might want to bill. And as always, Health Plan of Nevada and Sierra
20 Health and Life would prefer to have that provider as a contracted
21 provider so that we can provide that benefit to our members.

22 BY MS. LUNDVALL:

23 Q All right. And if you didn't have to have a complaint
24 department that dealt with balance billing complaints, that would be a
25 benefit to Sierra and to Health Plan of Nevada, would it not?

1 A I guess you could characterize it that way, if you'd like.

2 Q And occasionally, there are contracts that require insurers to
3 hold harmless a member, or hold harmless as far as the union or the
4 employer group or the client, in the event that their member gets
5 balance billed, correct?

6 A Well, typically that's with the contracted provider that we
7 look to the contracted provider to not -- to accept the contracted rate, and
8 to not balance bill the member.

9 Q And you would consider that to be a benefit, correct?

10 A It certainly is a benefit to our members, absolutely.

11 Q And if you've got -- you don't have the hold harmless based
12 upon balance billing that would be a benefit then to both Sierra as well
13 as Health Plan, correct?

14 A I -- I don't know that I have a -- a strong personal opinion
15 about that, other than the one I've expressed, that we would -- we want
16 our members to be protected via our contracts. And we certainly don't
17 want them to be exposed to providers bill charges.

18 Q And if they are exposed to bill charges, and you have a duty
19 or an obligation under the contract to hold harmless then, the client is
20 taking it's [indiscernible] from Sierra or Health Plan of Nevada. That also
21 is a benefit to Sierra and Health Plan of Nevada, correct?

22 MR. GORDON: Objection. Compound, also leading to
23 conclusion.

24 THE COURT: Overruled.

25 THE WITNESS: I don't know that I understand what hold

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