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.	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

Electronically Filed
Apr 18 2023 10:39 PM
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' APPENDIX
VOLUME 66
PAGES 16,251–16,500

K. LEE BLALACK II
(*pro hac vice*)
JONATHAN D. HACKER (*pro hac vice forthcoming*)
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
KORY J. KOERPERICH (SBN 14,559)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, Nevada 89169

D. LEE ROBERTS (SBN 8877)
COLBY L. BALKENBUSH (SBN 13,066)
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Ste. 400
Las Vegas, Nevada 89118

Attorneys for Appellants/Petitioners

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
1.	Complaint (Business Court)	04/15/19	1	1–17
2.	Peremptory Challenge of Judge	04/17/19	1	18–19
3.	Summons - UMR, Inc. dba United Medical Resources	04/25/19	1	20–22
4.	Summons – United Health Care Services Inc. dba UnitedHealthcare	04/25/19	1	23–25
5.	Summons – United Healthcare Insurance Company	04/25/19	1	26–28
6.	Summons – Health Plan of Nevada, Inc.	04/30/19	1	29–31
7.	Summons – Sierra Health-Care Options, Inc.	04/30/19	1	32–34
8.	Summons – Sierra Health and Life Insurance Company, Inc.	04/30/19	1	35–37
9.	Summons – Oxford Health Plans, Inc.	05/06/19	1	38–41
10.	Notice of Removal to Federal Court	05/14/19	1	42–100
11.	Motion to Remand	05/24/19	1	101–122
12.	Defendants' Statement of Removal	05/30/19	1	123–126
13.	Freemont Emergency Services (MANDAVIA), Ltd's Response to Statement of Removal	05/31/19	1	127–138
14.	Defendants' Opposition to Fremont Emergency Services (MANDAVIA), Ltd.'s Motion to Remand	06/21/19	1 2	139–250 251–275
15.	Rely in Support of Motion to Remand	06/28/19	2	276–308
16.	Civil Order to Statistically Close Case	12/10/19	2	309
17.	Amended Motion to Remand	01/15/20	2	310–348

Tab	Document	Date	Vol.	Pages
18.	Defendants' Opposition to Plaintiffs' Amended Motion to Remand	01/29/20	2	349–485
19.	Reply in Support of Amended Motion to Remand	02/05/20	2 3	486–500 501–518
20.	Order	02/20/20	3	519–524
21.	Order	02/24/20	3	525–542
22.	Notice of Entry of Order Re: Remand	02/27/20	3	543–552
23.	Defendants' Motion to Dismiss	03/12/20	3	553–698
24.	Notice of Intent to Take Default as to: (1) Defendant UnitedHealth Group, Inc. on All Claims; and (2) All Defendants on the First Amended Complaint's Eighth Claim for Relief	03/13/20	3 4	699–750 751
25.	Plaintiffs' Opposition to Defendants' Motion to Dismiss	03/26/20	4	752–783
26.	Appendix of Exhibits in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss	03/26/20	4	784–908
27.	Recorder's Transcript of Proceedings Re: Motions	04/03/20	4	909–918
28.	Defendants' Reply in Support of Motion to Dismiss	05/07/20	4	919–948
29.	Recorder's Transcript of Proceedings Re: Pending Motions	05/14/20	4	949-972
30.	First Amended Complaint	05/15/20	4 5	973–1000 1001–1021
31.	Recorder's Transcript of Hearing All Pending Motions	05/15/20	5	1022–1026
32.	Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint	05/26/20	5	1027–1172

Tab	Document	Date	Vol.	Pages
33.	Defendants' Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	05/26/20	5	1173–1187
34.	Plaintiffs' Opposition to Defendants' Motion to Dismiss First Amended Complaint	05/29/20	5 6	1188–1250 1251–1293
35.	Plaintiffs' Opposition to Defendants' Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	05/29/20	6	1294–1309
36.	Defendants' Reply in Support of Motion to Dismiss Plaintiffs' First Amended Complaint	06/03/20	6	1310–1339
37.	Defendants' Reply in Support of Their Supplemental Brief in Support of Their Motions to Dismiss Plaintiff's First Amended Complaint	06/03/20	6	1340–1349
38.	Transcript of Proceedings, All Pending Motions	06/05/20	6	1350–1384
39.	Transcript of Proceedings, All Pending Motions	06/09/20	6	1385–1471
40.	Notice of Entry of Order Denying Defendants' (1) Motion to Dismiss First Amended Complaint; and (2) Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	06/24/20	6 7	1472–1500 1501–1516
41.	Notice of Entry of Stipulated Confidentiality and Protective Order	06/24/20	7	1517–1540
42.	Defendants' Answer to Plaintiffs' First Amended Complaint	07/08/20	7	1541–1590

Tab	Document	Date	Vol.	Pages
43.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	07/09/20	7	1591–1605
44.	Joint Case Conference Report	07/17/20	7	1606–1627
45.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	07/23/20	7	1628–1643
46.	Transcript of Proceedings, Plaintiff's Motion to Compel Defendants' Production of Unredacted MultiPlan, Inc. Agreement	07/29/20	7	1644–1663
47.	Amended Transcript of Proceedings, Plaintiff's Motion to Compel Defendants' Production of Unredacted MultiPlan, Inc. Agreement	07/29/20	7	1664–1683
48.	Errata	08/04/20	7	1684
49.	Plaintiffs' Motion to Compel Defendants' Production of Claims File for At-Issue Claims, or, in the Alternative, Motion in Limine on Order Shortening Time	08/28/20	7 8	1685–1700 1701–1845
50.	Defendants' Opposition to Plaintiffs' Motion to Compel Defendants' Production of Claims File for At-Issue Claims, Or, in The Alternative, Motion in Limine on Order Shortening Time	09/04/20	8	1846–1932
51.	Recorder's Transcript of Proceedings Re: Pending Motions	09/09/20	8	1933–1997
52.	Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiffs to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	09/21/20	8 9	1998–2000 2001–2183
53.	Notice of Entry of Order Granting, in Part Plaintiffs' Motion to Compel Defendants' Production of Claims for At-Issue Claims,	09/28/20	9	2184–2195

Tab	Document	Date	Vol.	Pages
	Or, in The Alternative, Motion in Limine			
54.	Errata to Plaintiffs' Motion to Compel Defendants' List of Witnesses Production of Documents and Answers to Interrogatories	09/28/20	9	2196–2223
55.	Plaintiffs' Opposition to Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	09/29/20	9-10	2224–2292
56.	Defendants' Opposition to Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents, and Answers to Interrogatories on Order Shortening Time	10/06/20	10	2293–2336
57.	Reply in Support of Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures	10/07/20	10	2337–2362
58.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	10/08/20	10	2363–2446
59.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	10/22/20	10	2447–2481
60.	Defendants' Objections to Plaintiffs' Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/23/20	10 11	2482–2500 2501–2572
61.	Defendants' Objections to Plaintiffs to Plaintiffs' Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/26/20	11	2573–2670

Tab	Document	Date	Vol.	Pages
62.	Notice of Entry of Order Denying Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on Order Shortening Time	10/27/20	11	2671–2683
63.	Notice of Entry of Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/27/20	11	2684–2695
64.	Defendants' Objections to Plaintiffs' Order Denying Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiffs' to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	11/02/20	11	2696–2744
65.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	11/04/20	11 12	2745–2750 2751–2774
66.	Notice of Entry of Order Setting Defendants' Production & Response Schedule Re: Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	11/09/20	12	2775–2785
67.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/23/20	12	2786–2838
68.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/30/20	12	2839–2859
69.	Notice of Entry of Stipulated Electronically Stored Information Protocol Order	01/08/21	12	2860–2874

Tab	Document	Date	Vol.	Pages
70.	Appendix to Defendants' Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/08/21	12 13 14	2875–3000 3001–3250 3251–3397
71.	Defendants' Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/11/21	14	3398–3419
72.	Plaintiffs' Opposition to Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/12/21	14	3420–3438
73.	Recorder's Partial Transcript of Proceedings Re: Motions (Unsealed Portion Only)	01/13/21	14	3439–3448
74.	Defendants' Reply in Support of Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/19/21	14	3449–3465
75.	Appendix to Defendants' Reply in Support of Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/19/21	14 15	3466–3500 3501–3658
76.	Recorder's Transcript of Proceedings Re: Motions	01/21/21	15	3659–3692
77.	Notice of Entry of Order Granting Defendants' Motion for Appointment of Special Master	02/02/21	15	3693–3702
78.	Notice of Entry of Order Denying Defendants' Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	02/04/21	15	3703–3713
79.	Motion for Reconsideration of Order Denying Defendants' Motion to Compel	02/18/21	15 16	3714–3750 3751–3756

Tab	Document	Date	Vol.	Pages
	Plaintiffs Responses to Defendants' First and Second Requests for Production			
80.	Recorder's Transcript of Proceedings Re: Motions	02/22/21	16	3757–3769
81.	Recorder's Transcript of Proceedings Re: Motions	02/25/21	16	3770–3823
82.	Recorder's Transcript of Hearing Defendants' Motion to Extend All Case Management Deadlines and Continue Trial Setting on Order Shortening Time (Second Request)	03/03/21	16	3824–3832
83.	Plaintiffs' Opposition to Motion for Reconsideration of Order Denying Defendants' Motion to Compel Plaintiffs Responses to Defendants' First and Second Requests for Production	03/04/21	16	3833–3862
84.	Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/08/21	16	3863–3883
85.	Errata to Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/12/21	16	3884–3886
86.	Notice of Entry of Report and Recommendation #1	03/16/21	16	3887–3894
87.	Reply in Support of Motion for Reconsideration of Order Denying Defendants' Motion to Compel Plaintiffs Responses to Defendants' First and Second Requests for Production	03/16/21	16	3895–3909
88.	Recorder's Transcript of Hearing All Pending Motions	03/18/21	16	3910–3915

Tab	Document	Date	Vol.	Pages
89.	Defendants' Opposition to Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not be Held in Contempt and for Sanctions	03/22/21	16	3916–3966
90.	Recorder's Transcript of Hearing All Pending Motions	03/25/21	16	3967–3970
91.	Notice of Entry of Report and Recommendation #2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	03/29/21	16	3971–3980
92.	Recorder's Transcript of Hearing Motion to Associate Counsel on OST	04/01/21	16	3981–3986
93.	Recorder's Transcript of Proceedings Re: Motions	04/09/21	16 17	3987–4000 4001–4058
94.	Defendants' Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	04/12/21	17	4059–4079
95.	Notice of Entry of Report and Recommendation #3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time	04/15/21	17	4080–4091
96.	Recorder's Transcript of Hearing All Pending Motions	04/21/21	17	4092–4095
97.	Notice of Entry of Order Denying Motion for Reconsideration of Court's Order Denying Defendants' Motion to Compel Responses to	04/26/21	17	4096–4108

Tab	Document	Date	Vol.	Pages
	Defendants' First and Second Requests for Production			
98.	Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Request for Production on Order Shortening Time	04/28/21	17	4109–4123
99.	Defendants' Errata to Their Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production	05/03/21	17	4124–4127
100.	Defendants' Objections to Plaintiffs' Proposed Order Granting Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	05/05/21	17	4128–4154
101.	Recorder's Transcript of Hearing Motion for Leave to File Opposition to Defendants' Motion to Compel Responses to Second Set of Requests for Production on Order Shortening Time in Redacted and Partially Sealed Form	05/12/21	17	4155–4156
102.	Notice of Entry of Order of Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Question	05/26/21	17	4157–4165
103.	Recorder's Transcript of Proceedings Re: Motions	05/28/21	17	4166–4172
104.	Notice of Entry of Report and Recommendation #7 Regarding Defendants'	06/03/21	17	4173–4184

Tab	Document	Date	Vol.	Pages
	Motion to Compel Plaintiffs' Responses to Defendants' Amended Third Set of Requests for Production of Documents			
105.	Recorder's Transcript of Proceedings Re: Motions Hearing	06/03/21	17	4185–4209
106.	Recorder's Transcript of Proceedings Re: Motions Hearing	06/04/21	17	4210–4223
107.	Recorder's Transcript of Hearing Motion for Leave to File Plaintiffs' Response to Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Second Set of Request for Production on Order Shortening Time in Redacted and Partially Sealed Form	06/09/21	17	4224–4226
108.	Defendants' Objections to Special Master Report and Recommendation No. 7 Regarding Defendants' Motion to Compel Responses to Defendants' Amended Third Set of Requests for Production of Documents	06/17/21	17	4227–4239
109.	Recorder's Transcript of Proceedings Re: Motions Hearing	06/23/21	17 18	4240–4250 4251–4280
110.	Plaintiffs' Response to Defendants' Objection to Special Master's Report and Recommendation #7 Regarding Defendants' Motion to Compel Responses to Amended Third Set of Request for Production of Documents	06/24/21	18	4281–4312
111.	Notice of Entry Report and Recommendations #9 Regarding Pending Motions	07/01/21	18	4313–4325
112.	United's Reply in Support of Motion to Compel Plaintiffs' Production of Documents	07/12/21	18	4326–4340

Tab	Document	Date	Vol.	Pages
	About Which Plaintiffs' Witnesses Testified on Order Shortening Time			
113.	Recorder's Transcript of Proceedings Re: Motions Hearing	07/29/21	18	4341–4382
114.	Notice of Entry of Order Granting Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	08/03/21	18	4383–4402
115.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order and Overruling Objection	08/09/21	18	4403–4413
116.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time and Overruling Objection	08/09/21	18	4414–4424
117.	Amended Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order and Overruling Objection	08/09/21	18	4425–4443
118.	Amended Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 3 Regarding Defendants' Second Set of Requests for Production on Order Shortening Time and	08/09/21	18	4444–4464

Tab	Document	Date	Vol.	Pages
	Overruling Objection			
119.	Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt and Sanctioned for Violating Protective Order	08/10/21	18	4465–4486
120.	Notice of Entry of Report and Recommendation #11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified	08/11/21	18	4487–4497
121.	Recorder's Transcript of Proceedings Re: Motions Hearing (Unsealed Portion Only)	08/17/21	18 19	4498–4500 4501–4527
122.	Plaintiffs' Opposition to United's Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt and Sanctioned for Allegedly Violating Protective Order	08/24/21	19	4528–4609
123.	Recorder's Transcript of Proceedings Re: Motions Hearing	09/02/21	19	4610–4633
124.	Reply Brief on "Motion for Order to Show Cause Why Plaintiffs Should Not Be Hold in Contempt and Sanctioned for Violating Protective Order"	09/08/21	19	4634–4666
125.	Recorder's Partial Transcript of Proceedings Re: Motions Hearing	09/09/21	19	4667–4680
126.	Recorder's Partial Transcript of Proceedings Re: Motions Hearing (Via Blue Jeans)	09/15/21	19	4681–4708
127.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions and Overruling Objection	09/16/21	19	4709–4726

Tab	Document	Date	Vol.	Pages
128.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 7 Regarding Defendants' Motion to Compel Responses to Defendants' Amended Third Set of Request for Production of Documents and Overruling Objection	09/16/21	19	4727–4747
129.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed No to Answer and Overruling Objection	09/16/21	19 20	4748–4750 4751–4769
130.	Defendants' Motion for Partial Summary Judgment	09/21/21	20	4770–4804
131.	Defendants' Motion in Limine No. 1: Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Agreements with other Market Players and Related Negotiations	09/21/21	20	4805–4829
132.	Defendants' Motion in Limine No. 2: Motion Offered in the Alternative to MIL No. 1, to Preclude Plaintiffs from Offering Evidence Relating to Defendants' Agreements with Other Market Players and Related Negotiations	09/21/21	20	4830–4852
133.	Motion in Limine No. 4 to Preclude References to Defendants' Decision Making Process and Reasonableness of billed Charges if Motion in Limine No. 3 is Denied	09/21/21	20	4853–4868
134.	Defendants' Motion in Limine No. 10 to Exclude Reference of Defendants' Corporate Structure (Alternative Moton to be Considered Only if court Denies Defendants' Counterpart Motion in Limine No. 9)	09/21/21	20	4869–4885

Tab	Document	Date	Vol.	Pages
135.	Defendants' Motion in Limine No. 13: Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	09/21/21	20	4886–4918
136.	Defendants' Motion in Limine No. 14: Motion Offered in the Alternative to MIL No. 13 to Preclude Plaintiffs from Contesting Defendants' Defenses Relating to Claims that were Subject to Settlement Agreement Between CollectRX and Data iSight; and Defendants' Adoption of Specific Negotiation Thresholds for Reimbursement Claims Appealed or Contested by Plaintiffs	09/21/21	20	4919–4940
137.	Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	09/21/21	20	4941–4972
138.	Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	09/22/21	20 21	4973–5000 5001–5030
139.	Defendants' Motion in Limine No. 8, Offered in the Alternative to MIL No. 7, to Preclude Plaintiffs from Offering Evidence as to the Qualitative Value, Relative Value, Societal Value, or Difficulty of the Services they Provided	09/22/21	21	5031–5054
140.	Defendants' Motion in Limine No. 9 to Authorize Defendants to Offer Evidence of Plaintiffs Organizational, Management, and Ownership Structure, Including Flow of Funds Between Related Entities, Operating Companies, Parent Companies, and Subsidiaries	09/22/21	21	5055–5080
141.	Defendants' Opposition to Plaintiffs' Motion	09/29/21	21	5081–5103

Tab	Document	Date	Vol.	Pages
	in Limine No. 1: to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges			
142.	Notice of Entry of Order Regarding Defendants' Objection to Special Master's Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents about which Plaintiffs' Witnesses Testified on Order Shortening Time	09/29/21	21	5104–5114
143.	Plaintiffs' Opposition to Defendants' Motion in Limine Nos. 3, 4, 5, 6 Regarding Billed Charges	09/29/21	21	5115–5154
144.	Plaintiffs' Opposition to Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	09/29/21	21	5155–5169
145.	Plaintiffs' Motion for Leave to File Second Amended Complaint on Order Shortening Time	10/04/21	21	5170–5201
146.	Transcript of Proceedings Re: Motions (Via Blue Jeans)	10/06/21	21	5202–5234
147.	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Second Amended Complaint on Order Shortening Time	10/07/21	21	5235–5245
148.	Second Amended Complaint	10/07/21	21 22	5246–5250 5251–5264
149.	Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and-or Argument Regarding the Fact that Plaintiffs Have	10/08/21	22	5265–5279

Tab	Document	Date	Vol.	Pages
	Dismissed Certain Claims and Parties on Order Shortening Time			
150.	Defendants' Answer to Plaintiffs' Second Amended Complaint	10/08/21	22	5280–5287
151.	Defendants' Objections to Plaintiffs' NRCP 16.1(a)(3) Pretrial Disclosures	10/08/21	22	5288–5294
152.	Plaintiffs' Objections to Defendants' Pretrial Disclosures	10/08/21	22	5295–5300
153.	Opposition to Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Regarding the Fact that Plaintiffs have Dismissed Certain Claims and Parties on Order Shortening Time	10/12/21	22	5301–5308
154.	Notice of Entry of Order Denying Defendants' Motion for Order to Show Cause Why Plaintiffs Should not be Held in Contempt for Violating Protective Order	10/14/21	22	5309–5322
155.	Defendants' Opposition to Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	10/18/21	22	5323–5333
156.	Media Request and Order Allowing Camera Access to Court Proceedings (Legal Newsline)	10/18/21	22	5334–5338
157.	Transcript of Proceedings Re: Motions	10/19/21	22 23	5339–5500 5501–5561
158.	Amended Transcript of Proceedings Re: Motions	10/19/21	23 24	5562–5750 5751–5784
159.	Amended Transcript of Proceedings Re: Motions	10/20/21	24	5785–5907
160.	Transcript of Proceedings Re: Motions	10/22/21	24	5908–6000

Tab	Document	Date	Vol.	Pages
			25	6001–6115
161.	Notice of Entry of Order Denying Defendants' Motion for Partial Summary Judgment	10/25/21	25	6116–6126
162.	Recorder's Transcript of Jury Trial – Day 1	10/25/21	25 26	6127–6250 6251–6279
163.	Recorder's Transcript of Jury Trial – Day 2	10/26/21	26	6280–6485
164.	Joint Pretrial Memorandum Pursuant to EDRC 2.67	10/27/21	26 27	6486–6500 6501–6567
165.	Recorder's Transcript of Jury Trial – Day 3	10/27/21	27 28	6568–6750 6751–6774
166.	Recorder's Transcript of Jury Trial – Day 4	10/28/21	28	6775–6991
167.	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 28	6992–6997
168.	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 29	6998–7000 7001–7003
169.	Defendants' Objection to Media Requests	10/28/21	29	7004–7018
170.	Supplement to Defendants' Objection to Media Requests	10/31/21	29	7019–7039
171.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 1 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Agreements with Other Market Players and Related Negotiations	11/01/21	29	7040–7051
172.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 2: Motion Offered in the Alternative to MIL No. 1, to Preclude Plaintiffs from Offering Evidence	11/01/21	29	7052–7063

Tab	Document	Date	Vol.	Pages
	Relating to Defendants' Agreements with Other Market Players and Related Negotiations			
173.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 3 to Allow Reference to Plaintiffs' Decision Making Processes Regarding Setting Billed Charges	11/01/21	29	7064–7075
174.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 4 to Preclude References to Defendants' Decision Making Processes and Reasonableness of Billed Charges if Motion in Limine No. 3 is Denied	11/01/21	29	7076–7087
175.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 12, Paired with Motion in Limine No. 11, to Preclude Plaintiffs from Discussing Defendants' Approach to Reimbursement	11/01/21	29	7088–7099
176.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 5 Regarding Argument or Evidence that Amounts TeamHealth Plaintiffs Billed for Services are Reasonable [An Alternative Motion to Motion in Limine No. 6]	11/01/21	29	7100–7111
177.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	11/01/21	29	7112–7123
178.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 8, Offered in the Alternative to MIL No. 7, to Preclude Plaintiffs from Offering Evidence as to the	11/01/21	29	7124–7135

Tab	Document	Date	Vol.	Pages
	Qualitative Value, Relative Value, Societal Value, or Difficulty of the Services they Provided			
179.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 10 to Exclude Evidence of Defendants' Corporate Structure (Alternative Motion to be Considered Only if Court Denies Defendants' Counterpart Motion in Limine No. 9)	11/01/21	29	7136–7147
180.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 11, Paired with Motion in Limine No. 12, to Authorize Defendants to Discuss Plaintiffs' Conduct and Deliberations in Negotiating Reimbursement	11/01/21	29	7148–7159
181.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 13 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	11/01/21	29	7160–7171
182.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 14: Motion Offered in the Alternative MIL No. 13 to Preclude Plaintiffs from Contesting Defendants' Defenses Relating to Claims that were Subject to a Settlement Agreement Between CollectRx and Data iSight; and Defendants' Adoption of Specific Negotiation Thresholds for Reimbursement Claims Appealed or Contested by Plaintiffs	11/01/21	29	7172–7183
183.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 15 to Preclude Reference and Testimony	11/01/21	29	7184–7195

Tab	Document	Date	Vol.	Pages
	Regarding the TeamHealth Plaintiffs Policy not to Balance Bill			
184.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 18 to Preclude Testimony of Plaintiffs' Non-Retained Expert Joseph Crane, M.D.	11/01/21	29	7196–7207
185.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 20 to Exclude Defendants' Lobbying Efforts	11/01/21	29	7208–7219
186.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	11/01/21	29	7220–7231
187.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 27 to Preclude Evidence of Complaints Regarding Defendants' Out-Of-Network Rates or Payments	11/01/21	29	7232–7243
188.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 29 to Preclude Evidence Only Relating to Defendants' Evaluation and Development of a Company that Would Offer a Service Similar to Multiplan and Data iSight	11/01/21	29 30	7244–7250 7251–7255
189.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 32 to Exclude Evidence or Argument Relating to Materials, Events, or Conduct that Occurred on or After January 1, 2020	11/01/21	30	7256–7267
190.	Notice of Entry of Order Denying Defendants' Motion in Limine to Preclude Certain Expert Testimony and Fact Witness Testimony by Plaintiffs' Non-Retained	11/01/21	30	7268–7279

Tab	Document	Date	Vol.	Pages
	Expert Robert Frantz, M.D.			
191.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 38 to Exclude Evidence or Argument Relating to Defendants' use of MultiPlan and the Data iSight Service, Including Any Alleged Conspiracy or Fraud Relating to the use of Those Services	11/01/21	30	7280–7291
192.	Notice of Entry of Order Granting Plaintiffs' Motion in Limine to Exclude Evidence, Testimony And-Or Argument Regarding the Fact that Plaintiff have Dismissed Certain Claims	11/01/21	30	7292–7354
193.	Notice of Entry of Order Denying Defendants' Motion to Strike Supplement Report of David Leathers	11/01/21	30	7355–7366
194.	Plaintiffs' Notice of Amended Exhibit List	11/01/21	30	7367–7392
195.	Plaintiffs' Response to Defendants' Objection to Media Requests	11/01/21	30	7393–7403
196.	Recorder's Transcript of Jury Trial – Day 5	11/01/21	30 31	7404–7500 7501–7605
197.	Recorder's Transcript of Jury Trial – Day 6	11/02/21	31 32	7606–7750 7751–7777
198.	Defendants' Deposition Designations and Objections to Plaintiffs' Deposition Counter-Designations	11/03/21	32	7778–7829
199.	Defendants' Objections to Plaintiffs' Proposed Order Granting in Part and Denying in Part Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	11/03/21	32	7830–7852
200.	Notice of Entry of Order Affirming and	11/03/21	32	7853–7874

Tab	Document	Date	Vol.	Pages
	Adopting Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified			
201.	Recorder's Transcript of Jury Trial – Day 7	11/03/21	32 33	7875–8000 8001–8091
202.	Notice of Entry of Order Granting Defendants' Motion in Limine No. 17	11/04/21	33	8092–8103
203.	Notice of Entry of Order Granting Defendants' Motion in Limine No. 25	11/04/21	33	8104–8115
204.	Notice of Entry of Order Granting Defendants' Motion in Limine No. 37	11/04/21	33	8116–8127
205.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 9	11/04/21	33	8128–8140
206.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 21	11/04/21	33	8141–8153
207.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 22	11/04/21	33	8154–8165
208.	Plaintiffs' Notice of Deposition Designations	11/04/21	33 34	8166–8250 8251–8342
209.	1st Amended Jury List	11/08/21	34	8343
210.	Recorder's Transcript of Jury Trial – Day 8	11/08/21	34 35	8344–8500 8501–8514
211.	Recorder's Amended Transcript of Jury Trial – Day 9	11/09/21	35	8515–8723
212.	Recorder's Transcript of Jury Trial – Day 9	11/09/21	35 36	8724–8750 8751–8932
213.	Recorder's Transcript of Jury Trial – Day 10	11/10/21	36	8933–9000

Tab	Document	Date	Vol.	Pages
			37	9001–9152
214.	Defendants' Motion for Leave to File Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at Trial Under Seal	11/12/21	37	9153–9161
215.	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	11/12/21	37	9162–9173
216.	Plaintiffs' Trial Brief Regarding Defendants' Prompt Payment Act Jury Instruction Re: Failure to Exhaust Administrative Remedies	11/12/21	37	9174–9184
217.	Recorder's Transcript of Jury Trial – Day 11	11/12/21	37 38	9185–9250 9251–9416
218.	Plaintiffs' Trial Brief Regarding Specific Price Term	11/14/21	38	9417–9425
219.	2nd Amended Jury List	11/15/21	38	9426
220.	Defendants' Proposed Jury Instructions (Contested)	11/15/21	38	9427–9470
221.	Jointly Submitted Jury Instructions	11/15/21	38	9471–9495
222.	Plaintiffs' Proposed Jury Instructions (Contested)	11/15/21	38 39	9496–9500 9501–9513
223.	Plaintiffs' Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/15/21	39	9514–9521
224.	Recorder's Transcript of Jury Trial – Day 12	11/15/21	39 40	9522–9750 9751–9798
225.	Defendants' Response to TeamHealth Plaintiffs' Trial Brief Regarding Defendants' Prompt Pay Act Jury Instruction Re: Failure to Exhaust Administrative	11/16/21	40	9799–9806

Tab	Document	Date	Vol.	Pages
	Remedies			
226.	General Defense Verdict	11/16/21	40	9807–9809
227.	Plaintiffs' Proposed Verdict Form	11/16/21	40	9810–9819
228.	Recorder's Transcript of Jury Trial – Day 13	11/16/21	40 41	9820–10,000 10,001–10,115
229.	Reply in Support of Trial Brief Regarding Evidence and Argument Relating to Out-Of-State Harms to Non-Parties	11/16/21	41	10,116–10,152
230.	Response to Plaintiffs' Trial Brief Regarding Specific Price Term	11/16/21	41	10,153–10,169
231.	Special Verdict Form	11/16/21	41	10,169–10,197
232.	Trial Brief Regarding Jury Instructions on Formation of an Implied-In-Fact Contract	11/16/21	41	10,198–10,231
233.	Trial Brief Regarding Jury Instructions on Unjust Enrichment	11/16/21	41	10,232–10,248
234.	3rd Amended Jury List	11/17/21	41	10,249
235.	Defendants' Motion for Judgment as a Matter of Law	11/17/21	41 42	10,250 10,251–10,307
236.	Plaintiffs' Supplemental Jury Instruction (Contested)	11/17/21	42	10,308–10,313
237.	Recorder's Transcript of Jury Trial – Day 14	11/17/21	42 43	10,314–10,500 10,501–10,617
238.	Errata to Source on Defense Contested Jury Instructions	11/18/21	43	10,618–10,623
239.	Recorder's Transcript of Jury Trial – Day 15	11/18/21	43 44	10,624–10,750 10,751–10,946
240.	Defendants' Supplemental Proposed Jury Instructions (Contested)	11/19/21	44	10,947–10,952

Tab	Document	Date	Vol.	Pages
241.	Errata	11/19/21	44	10,953
242.	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	11/19/21	44	10,954–10,963
243.	Plaintiffs' Proposed Special Verdict Form	11/19/21	44	10,964–10,973
244.	Recorder's Transcript of Jury Trial – Day 16	11/19/21	44 45	10,974–11,000 11,001–11,241
245.	Response to Plaintiffs' Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/19/21	45 46	11,242–11,250 11,251–11,254
246.	Plaintiffs' Second Supplemental Jury Instructions (Contested)	11/20/21	46	11,255–11,261
247.	Defendants' Supplemental Proposed Jury Instruction	11/21/21	46	11,262–11,266
248.	Plaintiffs' Third Supplemental Jury Instructions (Contested)	11/21/21	46	11,267–11,272
249.	Recorder's Transcript of Jury Trial – Day 17	11/22/21	46 47	11,273–11,500 11.501–11,593
250.	Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,594–11,608
251.	Defendants' Opposition to Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,609–11,631
252.	4th Amended Jury List	11/23/21	47	11,632
253.	Recorder's Transcript of Jury Trial – Day 18	11/23/21	47 48	11,633–11,750 11,751–11,907

Tab	Document	Date	Vol.	Pages
254.	Recorder's Transcript of Jury Trial – Day 19	11/24/21	48	11,908–11,956
255.	Jury Instructions	11/29/21	48	11,957–11,999
256.	Recorder's Transcript of Jury Trial – Day 20	11/29/21	48 49	12,000 12,001–12,034
257.	Special Verdict Form	11/29/21	49	12,035–12,046
258.	Verdict(s) Submitted to Jury but Returned Unsigned	11/29/21	49	12,047–12,048
259.	Defendants' Proposed Second Phase Jury Instructions	12/05/21	49	12,049–12,063
260.	Plaintiffs' Proposed Second Phase Jury Instructions and Verdict Form	12/06/21	49	12,064–12,072
261.	Plaintiffs' Supplement to Proposed Second Phase Jury Instructions	12/06/21	49	12,072–12,077
262.	Recorder's Transcript of Jury Trial – Day 21	12/06/21	49	12,078–,12,135
263.	Defendants' Proposed Second Phase Jury Instructions-Supplement	12/07/21	49	12,136–12,142
264.	Jury Instructions Phase Two	12/07/21	49	12,143–12,149
265.	Special Verdict Form	12/07/21	49	12,150–12,152
266.	Recorder's Transcript of Jury Trial – Day 22	12/07/21	49 50	12,153–12,250 12,251–12,293
267.	Motion to Seal Defendants' Motion to Seal Certain Confidential Trial Exhibits	12/15/21	50	12,294–12,302
268.	Motion to Seal Defendants' Supplement to Motion to Seal Certain Confidential Trial Exhibits	12/15/21	50	12,303–12,311
269.	Notice of Entry of Order Granting Defendants' Motion for Leave to File Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at	12/27/21	50	12,312–12,322

Tab	Document	Date	Vol.	Pages
	Trial Under Seal			
270.	Plaintiffs' Opposition to United's Motion to Seal	12/29/21	50	12,323–12,341
271.	Defendants' Motion to Apply the Statutory Cap on Punitive Damages	12/30/21	50	12,342–12,363
272.	Appendix of Exhibits to Defendants' Motion to Apply the Statutory Cap on Punitive Damage	12/30/21	50 51	12,364–12,500 12,501–12,706
273.	Defendants' Objection to Plaintiffs' Proposed Order Denying Defendants' Motion for Judgment as a Matter of Law	01/04/22	51	12,707–12,717
274.	Notice of Entry of Order Denying Defendants' Motion for Judgement as a Matter of Law	01/06/22	51	12,718–12,738
275.	Motion to Seal Defendants' Reply in Support of Motion to Seal Certain Confidential Trial Exhibits	01/10/22	51	12,739–12,747
276.	Motion to Seal Defendants' Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits	01/10/22	51 52	12,748–12,750 12,751–12,756
277.	Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing on Defendants' Motion to Seal Certain Confidential Trial Exhibits on Order Shortening Time	01/11/22	52	12,757–12,768
278.	Plaintiffs' Opposition to Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing	01/12/22	52	12,769–12,772
279.	Plaintiffs' Opposition to Defendants' Motion to Apply Statutory Cap on Punitive Damages and Plaintiffs' Cross Motion for	01/20/22	52	12,773–12,790

Tab	Document	Date	Vol.	Pages
	Entry of Judgment			
280.	Appendix in Support of Plaintiffs' Opposition to Defendants' Motion to Apply Statutory Cap on Punitive Damages and Plaintiffs' Cross Motion for Entry of Judgment	01/20/22	52	12,791–12,968
281.	Notice of Entry of Order Granting Plaintiffs' Proposed Schedule for Submission of Final Redactions	01/31/22	52	12,969–12,979
282.	Notice of Entry of Stipulation and Order Regarding Schedule for Submission of Redactions	02/08/22	52	12,980–12,996
283.	Defendants' Opposition to Plaintiffs' Cross-Motion for Entry of Judgment	02/10/22	52 53	12,997–13,000 13,001–13,004
284.	Defendant' Reply in Support of Their Motion to Apply the Statutory Cap on Punitive Damages	02/10/22	53	13,005–13,028
285.	Notice of Entry of Order Shortening Time for Hearing Re: Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits	02/14/22	53	13,029–13,046
286.	Defendants' Response to Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits on Order Shortening Time	02/15/22	53	13,047–13,053
287.	Plaintiffs' Reply in Support of Cross Motion for Entry of Judgment	02/15/22	53	13,054–13,062
288.	Defendants' Index of Trial Exhibit Redactions in Dispute	02/16/22	53	13,063–13,073
289.	Notice of Entry of Stipulation and Order Regarding Certain Admitted Trial Exhibits	02/17/22	53	13,074–13,097
290.	Transcript of Proceedings Re: Motions Hearing	02/17/22	53	13,098–13,160

Tab	Document	Date	Vol.	Pages
291.	Objection to Plaintiffs' Proposed Judgment and Order Denying Motion to Apply Statutory Cap on Punitive Damages	03/04/22	53	13,161–13,167
292.	Notice of Entry of Judgment	03/09/22	53	13,168–13,178
293.	Notice of Entry of Order Denying Defendants' Motion to Apply Statutory Cap on Punitive Damages	03/09/22	53	13,179–13,197
294.	Health Care Providers' Verified Memorandum of Cost	03/14/22	53	13,198–13,208
295.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 1	03/14/22	53 54	13,209–13,250 13.251–13,464
296.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 2	03/14/22	54 55	13,465–13,500 13,501–13,719
297.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 3	03/14/22	55 56	13,720–13,750 13,751–13,976
298.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 4	03/14/22	56 57	13,977–14,000 14,001–14,186
299.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 5	03/14/22	57 58	14,187–14,250 14,251–14,421
300.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 6	03/14/22	58 59	14,422–14,500 14,501–14,673
301.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 7	03/14/22	59 60	14,674–14,750 14,751–14,920
302.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of	03/14/22	60 61	14,921–15,000 15,001–15,174

Tab	Document	Date	Vol.	Pages
	Cost Volume 8			
303.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 9	03/14/22	61 62	15,175–15,250 15,251–15,373
304.	Defendants' Motion to Retax Costs	03/21/22	62	15,374–15,388
305.	Health Care Providers' Motion for Attorneys' Fees	03/30/22	62	15,389–15,397
306.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 1	03/30/22	62 63	15,398–15,500 15,501–15,619
307.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 2	03/30/22	63 64	15,620–15,750 15,751–15,821
308.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 3	03/30/22	64 65	15,822–16,000 16,001–16,053
309.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 4	03/30/22	65	16,054–16,232
310.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 5	03/30/22	65 66	16,233–16,250 16,251–16,361
311.	Defendants Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions on Order Shortening Time	04/05/22	66	16,362–16,381
312.	Defendants' Motion for Remittitur and to Alter or Amend the Judgment	04/06/22	66	16,382–16,399
313.	Defendants' Renewed Motion for Judgment as a Matter of Law	04/06/22	66	16,400–16,448
314.	Motion for New Trial	04/06/22	66 67	16,449–16,500 16,501–16,677

Tab	Document	Date	Vol.	Pages
315.	Notice of Appeal	04/06/22	67	16,678–16,694
316.	Case Appeal Statement	04/06/22	67 68	16,695–16,750 16,751–16,825
317.	Plaintiffs' Opposition to Defendants' Rule 62(b) Motion for Stay	04/07/22	68	16,826–16,831
318.	Reply on "Defendants' Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions" (*on Order Shortening Time*)	04/07/22	68	16,832–16,836
319.	Transcript of Proceedings Re: Motions Hearing	04/07/22	68	16,837–16,855
320.	Opposition to Defendants' Motion to Retax Costs	04/13/22	68	16,856–16,864
321.	Appendix in Support of Opposition to Defendants' Motion to Retax Costs	04/13/22	68 69	16,865–17,000 17,001–17,035
322.	Defendants' Opposition to Plaintiffs' Motion for Attorneys' Fees	04/20/22	69	17,036–17,101
323.	Transcript of Proceedings Re: Motions Hearing	04/21/22	69	17,102–17,113
324.	Notice of Posting *Supersedeas* Bond	04/29/22	69	17,114–17,121
325.	Defendants' Reply in Support of Motion to Retax Costs	05/04/22	69	17,122–17,150
326.	Health Care Providers' Reply in Support of Motion for Attorneys' Fees	05/04/22	69	17,151–17,164
327.	Plaintiffs' Opposition to Defendants' Motion for Remittitur and to Alter or Amend the Judgment	05/04/22	69	17,165–17,178
328.	Plaintiffs' Opposition to Defendants' Motion for New Trial	05/04/22	69 70	17,179–17,250 17,251–17,335
329.	Plaintiffs' Opposition to Defendants' Renewed Motion for Judgment as a Matter	05/05/22	70	17,336–17,373

Tab	Document	Date	Vol.	Pages
	of Law			
330.	Reply in Support of Defendants' Motion for Remittitur and to Alter or Amend the Judgment	06/22/22	70	17,374–17,385
331.	Reply in Support of Defendants' Renewed Motion for Judgment as a Matter of Law	06/22/22	70	17,386–17,411
332.	Reply in Support of Motion for New Trial	06/22/22	70	17,412–17,469
333.	Notice of Supplemental Attorneys Fees Incurred After Submission of Health Care Providers' Motion for Attorneys Fees	06/24/22	70 71	17,470–17,500 17,501–17,578
334.	Defendants' Response to Improper Supplement Entitled "Notice of Supplemental Attorney Fees Incurred After Submission of Health Care Providers' Motion for Attorneys Fees"	06/28/22	71	17,579–17,593
335.	Notice of Entry of Order Granting Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	06/29/22	71	17,594–17,609
336.	Transcript of Proceedings Re: Motions Hearing	06/29/22	71	17,610–17,681
337.	Order Amending Oral Ruling Granting Defendants' Motion to Retax	07/01/22	71	17,682–17,688
338.	Notice of Entry of Order Denying Defendants' Motion for Remittitur and to Alter or Amend the Judgment	07/19/22	71	17,689–17,699
339.	Defendants' Objection to Plaintiffs' Proposed Order Approving Plaintiffs' Motion for Attorneys' Fees	07/26/22	71	17,700–17,706
340.	Notice of Entry of Order Approving Plaintiffs' Motion for Attorney's Fees	08/02/22	71	17,707–17,725

Tab	Document	Date	Vol.	Pages
341.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Retax Costs	08/02/22	71	17,726–17,739
342.	Amended Case Appeal Statement	08/15/22	71 72	17,740–17,750 17,751–17,803
343.	Amended Notice of Appeal	08/15/22	72	17,804–17,934
344.	Reply in Support of Supplemental Attorney's Fees Request	08/22/22	72	17,935–17,940
345.	Objection to Plaintiffs' Proposed Orders Denying Renewed Motion for Judgment as a Matter of Law and Motion for New Trial	09/13/22	72	17,941–17,950
346.	Recorder's Transcript of Hearing Re: Hearing	09/22/22	72	17,951–17,972
347.	Limited Objection to "Order Unsealing Trial Transcripts and Restoring Public Access to Docket"	10/06/22	72	17,973–17,978
348.	Defendants' Motion to Redact Portions of Trial Transcript	10/06/22	72	17,979–17,989
349.	Plaintiffs' Opposition to Defendants' Motion to Redact Portions of Trial Transcript	10/07/22	72	17,990–17,993
350.	Transcript of Proceedings re Status Check	10/10/22	72 73	17,994–18,000 18,001–18,004
351.	Notice of Entry of Order Approving Supplemental Attorney's Fee Award	10/12/22	73	18,005–18,015
352.	Notice of Entry of Order Denying Defendants' Motion for New Trial	10/12/22	73	18,016–18,086
353.	Notice of Entry of Order Denying Defendants' Renewed Motion for Judgment as a Matter of Law	10/12/22	73	18,087–18,114
354.	Notice of Entry of Order Unsealing Trial Transcripts and Restoring Public Access to	10/12/22	73	18,115–18,125

Tab	Document	Date	Vol.	Pages
	Docket			
355.	Notice of Appeal	10/12/22	73 74	18,126–18,250 18,251–18,467
356.	Case Appeal Statement	10/12/22	74 75	18,468–18,500 18,501–18,598
357.	Notice of Entry of Order Denying "Motion to Redact Portions of Trial Transcript"	10/13/22	75	18,599–18,608
358.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits	10/18/22	75 76	18,609–18,750 18,751–18,755
359.	Recorder's Transcript of Hearing Status Check	10/20/22	76	18,756–18,758
360.	Notice of Entry of Stipulation and Order Regarding Expiration of Temporary Stay for Sealed Redacted Transcripts	10/25/22	76	18,759–18,769
361.	Notice of Filing of Writ Petition	11/17/22	76	18,770–18855
362.	Trial Exhibit D5502		76 77	18,856–19,000 19,001–19,143
491.	Appendix of Exhibits in Support of Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/08/21	145 146	35,813–36,062 36,063–36,085
492.	Transcript Re: Proposed Jury Instructions	11/21/21	146	36,086–36,250

Filed Under Seal

Tab	Document	Date	Vol.	Pages
363.	Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	09/28/20	78	19,144–19,156

364.	Plaintiffs' Reply in Support of Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	04/01/21	78	19,157–19,176
365.	Appendix of Exhibits in Support of Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	04/01/21	78	19,177–19,388
366.	Plaintiffs' Response to Defendants Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	04/19/21	78 79	19,389–19,393 19,394–19,532
367.	Plaintiffs' Response to Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Request for Production on Order Shortening Time	05/05/21	79	19,533–19,581
368.	Appendix to Defendants' Motion to Supplement the Record Supporting Objections to Reports and Recommendations #2 & #3 on Order Shortening Time	05/21/21	79 80 81	19,582–19,643 19,644–19,893 19,894–20,065
369.	Plaintiffs' Opposition to Defendants' Motion to Supplement the Record Supporting Objections to Reports and Recommendations #2 and #3 on Order Shortening Time	06/01/21	81 82	20,066–20,143 20,144–20,151
370.	Defendants' Objection to the Special Master's Report and Recommendation No. 5 Regarding Defendants' Motion for Protective Order Regarding Confidentiality	06/01/21	82	20,152–20,211

	Designations (Filed April 15, 2021)			
371.	Plaintiffs' Response to Defendants' Objection to Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions	06/16/21	82	20,212–20,265
372.	United's Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time	06/24/21	82	20,266–20,290
373.	Appendix to Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time	06/24/21	82 83 84	20,291–20,393 20,394–20,643 20,644–20,698
374.	Plaintiffs' Opposition to Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time	07/06/21	84	20,699–20,742
375.	Defendants' Motion for Leave to File Defendants' Objection to the Special Master's Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Under Seal	07/15/21	84	20,743–20,750
376.	Plaintiffs' Response to Defendants' Objection to Special Master Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Questions	07/22/21	84	20,751–20,863
377.	Objection to R&R #11 Regarding United's Motion to Compel Documents About Which Plaintiffs' Witnesses Testified	08/25/21	84 85	20,864–20,893 20,894–20,898

378.	Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	09/21/21	85	20,899–20,916
379.	Appendix of Exhibits in Support of Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	09/21/21	85	20,917–21,076
380.	Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges	09/21/21	85	21,077–21,089
381.	Appendix of Exhibits in Support of Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges	09/21/21	85 86	21,090–21,143 21,144–21,259
382.	Motion in Limine No. 3 to Allow References to Plaintiffs' Decision Making Process Regarding Settling Billing Charges	09/21/21	86	21,260–21,313
383.	Defendants' Motion in Limine No. 5 Regarding Arguments or Evidence that Amounts TeamHealth Plaintiffs billed for Serves are Reasonable [an Alternative to Motion in Limine No. 6]	09/21/21	86	21,314–21,343
384.	Defendants' Motion in Limine No. 6 Regarding Argument or Evidence That Amounts Teamhealth Plaintiffs Billed for Services are Reasonable	09/21/21	86	21,344–21,368
385.	Appendix to Defendants' Motion in Limine No. 13 (Volume 1 of 6)	09/21/21	86 87	21,369–21,393 21,394–21,484

386.	Appendix to Defendants' Motion in Limine No. 13 (Volume 2 of 6)	09/21/21	87	21,485–21,614
387.	Appendix to Defendants' Motion in Limine No. 13 (Volume 3 of 6)	09/21/21	87 88	21,615–21,643 21,644–21,744
388.	Appendix to Defendants' Motion in Limine No. 13 (Volume 4 of 6)	09/21/21	88	21,745–21,874
389.	Appendix to Defendants' Motion in Limine No. 13 (Volume 5 of 6)	09/21/21	88 89	21,875–21,893 21,894–22,004
390.	Appendix to Defendants' Motion in Limine No. 13 (Volume 6 of 6)	09/21/21	89	22,005–22,035
391.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 1 of 8	09/21/21	89 90	22,036–22,143 22,144–22,176
392.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 2 of 8	09/21/21	90	22,177–22,309
393.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 3 of 8	09/22/21	90 91	22,310–22,393 22,394–22,442
394.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 4 of 8	09/22/21	91	22,443–22,575
395.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 5 of 8	09/22/21	91	22,576–22,609
396.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 6 of 8	09/22/21	91 92 93	22,610–22,643 22,644–22,893 22,894–23,037
397.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 7a of 8	09/22/21	93 94	23,038–23,143 23,144–23,174
398.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 7b of 8	09/22/21	94	23,175–23,260
399.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 8a of 8	09/22/21	94 95	23,261–23,393 23,394–23,535
400.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 8b of 8	09/22/21	95 96	23,536–23,643 23,634–23,801
401.	Defendants' Motion in Limine No. 11 Paired	09/22/21	96	23,802–23,823

	with Motion in Limine No. 12 to Authorize Defendants to Discuss Plaintiffs' Conduct and deliberations in Negotiating Reimbursement			
402.	Errata to Defendants' Motion in Limine No. 11	09/22/21	96	23,824–23,859
403.	Defendants' Motion in Limine No. 12 Paired with Motion in Limine No. 11 to Preclude Plaintiffs from Discussing Defendants' Approach to Reimbursement	09/22/21	96	23,860–23,879
404.	Errata to Defendants' Motion in Limine No. 12	09/22/21	96 97	23,880–23,893 23,894–23,897
405.	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 1)	09/22/21	97	23,898–24,080
406.	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 2)	09/22/21	97 98	24,081–24,143 24,144–24,310
407.	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 3)	09/22/21	98 99 100	24,311–24,393 24,394–24,643 24,644–24,673
408.	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 4)	09/22/21	100 101 102	24,674–24,893 24,894–25,143 25,144–25,204
409.	Appendix to Defendants' Motion in Limine No. 14 – Volume 1 of 6	09/22/21	102	25,205–25,226
410.	Appendix to Defendants' Motion in Limine No. 14 – Volume 2 of 6	09/22/21	102	25,227–25,364
411.	Appendix to Defendants' Motion in Limine No. 14 – Volume 3 of 6	09/22/21	102 103	25,365–25,393 25,394–25,494
412.	Appendix to Defendants' Motion in Limine No. 14 – Volume 4 of 6	09/22/21	103	25,495–25,624
413.	Appendix to Defendants' Motion in Limine	09/22/21	103	25,625–25,643

	No. 14 – Volume 5 of 6		104	25,644–25,754
414.	Appendix to Defendants' Motion in Limine No. 14 – Volume 6 of 6	09/22/21	104	25,755–25,785
415.	Plaintiffs' Combined Opposition to Defendants Motions in Limine 1, 7, 9, 11 & 13	09/29/21	104	25,786–25,850
416.	Plaintiffs' Combined Opposition to Defendants' Motions in Limine No. 2, 8, 10, 12 & 14	09/29/21	104	25,851–25,868
417.	Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders	09/29/21	104 105	25,869–25,893 25,894–25,901
418.	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders - Volume 1	09/29/21	105 106	25,902–26,143 26,144–26,216
419.	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders - Volume 2	09/29/21	106 107	26,217–26,393 26,394–26,497
420.	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment	10/05/21	107	26,498–26,605
421.	Defendants' Reply in Support of Motion for Partial Summary Judgment	10/11/21	107 108	26,606–26,643 26,644–26,663
422.	Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	10/17/21	108	26,664–26,673
423.	Appendix of Exhibits in Support of Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for	10/17/21	108 109	26,674–26,893 26,894–26,930

	Partial Summary Judgment			
424.	Response to Sur-Reply Arguments in Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	10/21/21	109	26,931–26,952
425.	Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties	10/31/21	109	26,953–26,964
426.	Plaintiffs' Response to Defendants' Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties	11/08/21	109	26,965–26,997
427.	Excerpts of Recorder's Transcript of Jury Trial – Day 9	11/09/21	109	26,998–27003
428.	Preliminary Motion to Seal Attorneys' Eyes Documents Used at Trial	11/11/21	109	27,004–27,055
429.	Appendix of Selected Exhibits to Trial Briefs	11/16/21	109	27,056–27,092
430.	Excerpts of Recorder's Transcript of Jury Trial – Day 13	11/16/21	109	27,093–27,099
431.	Defendants' Omnibus Offer of Proof	11/22/21	109 110	27,100–27,143 27,144–27,287
432.	Motion to Seal Certain Confidential Trial Exhibits	12/05/21	110	27,288–27,382
433.	Supplement to Defendants' Motion to Seal Certain Confidential Trial Exhibits	12/08/21	110 111	27,383–27,393 27,394–27,400
434.	Motion to Seal Certain Confidential Trial Exhibits	12/13/21	111	27,401–27,495
435.	Defendant's Omnibus Offer of Proof for Second Phase of Trial	12/14/21	111	27,496–27,505

436.	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 1	12/14/21	111 112	27,506–27,643 27,644–27,767
437.	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 2	12/14/21	112 113	27,768–27,893 27,894–27,981
438.	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 3	12/14/21	113 114	27,982–28,143 28,144–28,188
439.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 1 of 18	12/24/21	114	28,189–28,290
440.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 2 of 18	12/24/21	114 115	28,291–28,393 28,394–28,484
441.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 3 of 18	12/24/21	115 116	28,485–28,643 28,644–28,742
442.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 4 of 18	12/24/21	116 117	28,743–28,893 28,894–28,938
443.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 5 of 18	12/24/21	117	28,939–29,084
444.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 6 of 18	12/24/21	117 118	29,085–29,143 29,144–29,219
445.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 7 of 18	12/24/21	118	29,220–29,384
446.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 8 of 18	12/24/21	118 119	29,385–29,393 29,394–29,527

447.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 9 of 18	12/24/21	119 120	29,528–29,643 29,644–29,727
448.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 10 of 18	12/24/21	120 121	29,728–29,893 29,894–29,907
449.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 11 of 18	12/24/21	121	29,908–30,051
450.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 12 of 18	12/24/21	121 122	30,052–30,143 30,144–30,297
451.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 13 of 18	12/24/21	122 123	30,298–30,393 30,394–30,516
452.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 14 of 18	12/24/21	123 124	30,517–30,643 30,644–30,677
453.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 15 of 18	12/24/21	124	30,678–30,835
454.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 16 of 18	12/24/21	124 125	30,836–30,893 30,894–30,952
455.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 17 of 18	12/24/21	125	30,953–31,122
456.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 18 of 18	12/24/21	125 126	30,123–31,143 31,144–31,258
457.	Defendants' Reply in Support of Motion to Seal Certain Confidential Trial Exhibits	01/05/22	126	31,259–31,308
458.	Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial	01/05/22	126	31,309–31,393

	Exhibits		127	31,394–31,500
459.	Transcript of Proceedings Re: Motions	01/12/22	127	31,501–31,596
460.	Transcript of Proceedings Re: Motions	01/20/22	127 128	31,597–31,643 31,644–31,650
461.	Transcript of Proceedings Re: Motions	01/27/22	128	31,651–31,661
462.	Defendants' Index of Trial Exhibit Redactions in Dispute	02/10/22	128	31,662–31,672
463.	Transcript of Proceedings Re: Motions Hearing	02/10/22	128	31,673–31,793
464.	Transcript of Proceedings Re: Motions Hearing	02/16/22	128	31,794–31,887
465.	Joint Status Report and Table Identifying the Redactions to Trial Exhibits That Remain in Dispute	03/04/22	128 129	31,888–31,893 31,894–31,922
466.	Transcript of Proceedings re Hearing Regarding Unsealing Record	10/05/22	129	31,923–31,943
467.	Transcript of Proceedings re Status Check	10/06/22	129	31,944–31,953
468.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 1)	10/07/22	129 130	31,954–32,143 32,144–32,207
469.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 2)	10/07/22	130 131	32,208–32,393 32,394–32,476
470.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 3)	10/07/22	131 132	32,477–32,643 32,644–32,751
471.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume	10/07/22	132 133	32,752–32,893 32,894–33,016

	4)			
472.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 5)	10/07/22	133 134	33,017–33,143 33,144–33,301
473.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 6)	10/07/22	134 135	33,302–33,393 33,394–33,529
474.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 7)	10/07/22	135 136	33,530–33,643 33,644–33,840
475.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 8)	10/07/22	136 137	33,841–33,893 33,894–34,109
476.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 9)	10/07/22	137 138	34,110–34,143 34,144–34,377
477.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 10)	10/07/22	138 139 140	34,378–34,393 34,394–34,643 34,644–34,668
478.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 11)	10/07/22	140 141	34,669–34,893 34,894–34,907
479.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 12)	10/07/22	141 142	34,908–35,143 35,144–35,162
480.	Appendix B to Order Granting in Part and	10/07/22	142	35,163–35,242

	Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 13)			
481.	Exhibits P473_NEW, 4002, 4003, 4005, 4006, 4166, 4168, 4455, 4457, 4774, and 5322 to "Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits" (Tabs 98, 106, 107, 108, 109, 111, 112, 113, 114, 118, and 119)	10/07/22	142	35,243–35,247
482.	Transcript of Status Check	10/10/22	142	35,248–35,258
483.	Recorder's Transcript of Hearing re Hearing	10/13/22	142	35,259–35,263
484.	Trial Exhibit D5499		142 143	35,264–35,393 35,394–35,445
485.	Trial Exhibit D5506		143	35,446
486.	Appendix of Exhibits in Support of Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	09/28/20	143	35,447–35,634
487.	Defendants' Motion to Supplement Record Supporting Objections to Reports and Recommendations #2 & #3 on Order Shortening Time	05/24/21	143 144	35,635–35,643 35,644–35,648
488.	Motion in Limine No. 3 to Allow References to Plaintiffs; Decision Making Processes Regarding Setting Billed Charges	09/21/21	144	35,649–35,702
489.	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: to Exclude Evidence Subject to the Court's Discovery Orders (Exhibit 43)	09/29/21	144	35,703–35,713
490.	Notice of Filing of Expert Report of Bruce Deal, Revised on November 14, 2021	04/18/23	144	35,714–35,812

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
209	1st Amended Jury List	11/08/21	34	8343
219	2nd Amended Jury List	11/15/21	38	9426
234	3rd Amended Jury List	11/17/21	41	10,249
252	4th Amended Jury List	11/23/21	47	11,632
342	Amended Case Appeal Statement	08/15/22	71 72	17,740–17,750 17,751–17,803
17	Amended Motion to Remand	01/15/20	2	310–348
343	Amended Notice of Appeal	08/15/22	72	17,804–17,934
117	Amended Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order and Overruling Objection	08/09/21	18	4425–4443
118	Amended Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 3 Regarding Defendants' Second Set of Requests for Production on Order Shortening Time and Overruling Objection	08/09/21	18	4444–4464
158	Amended Transcript of Proceedings Re: Motions	10/19/21	23 24	5562–5750 5751–5784
159	Amended Transcript of Proceedings Re: Motions	10/20/21	24	5785–5907
47	Amended Transcript of Proceedings, Plaintiff's Motion to Compel Defendants' Production of Unredacted MultiPlan, Inc. Agreement	07/29/20	7	1664–1683

Tab	Document	Date	Vol.	Pages
468	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 1) (Filed Under Seal)	10/07/22	129 130	31,954–32,143 32,144–32,207
469	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 2) (Filed Under Seal)	10/07/22	130 131	32,208–32,393 32,394–32,476
470	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 3) (Filed Under Seal)	10/07/22	131 132	32,477–32,643 32,644–32,751
471	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 4) (Filed Under Seal)	10/07/22	132 133	32,752–32,893 32,894–33,016
472	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 5) (Filed Under Seal)	10/07/22	133 134	33,017–33,143 33,144–33,301
473	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 6) (Filed Under Seal)	10/07/22	134 135	33,302–33,393 33,394–33,529
474	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 7) (Filed Under Seal)	10/07/22	135 136	33,530–33,643 33,644–33,840
475	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 8) (Filed Under Seal)	10/07/22	136 137	33,841–33,893 33,894–34,109
476	Appendix B to Order Granting in Part and	10/07/22	137	34,110–34,143

Tab	Document	Date	Vol.	Pages
	Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 9) (Filed Under Seal)		138	34,144–34,377
477	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 10) (Filed Under Seal)	10/07/22	138 139 140	34,378–34,393 34,394–34,643 34,644–34,668
478	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 11) (Filed Under Seal)	10/07/22	140 141	34,669–34,893 34,894–34,907
479	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 12) (Filed Under Seal)	10/07/22	141 142	34,908–35,143 35,144–35,162
480	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 13) (Filed Under Seal)	10/07/22	142	35,163–35,242
321	Appendix in Support of Opposition to Defendants' Motion to Retax Costs	04/13/22	68 69	16,865–17,000 17,001–17,035
280	Appendix in Support of Plaintiffs' Opposition to Defendants' Motion to Apply Statutory Cap on Punitive Damages and Plaintiffs' Cross Motion for Entry of Judgment	01/20/22	52	12,791–12,968
306	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 1	03/30/22	62 63	15,398–15,500 15,501–15,619
307	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 2	03/30/22	63 64	15,620–15,750 15,751–15,821
308	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees	03/30/22	64 65	15,822–16,000 16,001–16,053

Tab	Document	Date	Vol.	Pages
	Volume 3			
309	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 4	03/30/22	65	16,054–16,232
310	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 5	03/30/22	65 66	16,233–16,250 16,251–16,361
295	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 1	03/14/22	53 54	13,209–13,250 13.251–13,464
296	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 2	03/14/22	54 55	13,465–13,500 13,501–13,719
297	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 3	03/14/22	55 56	13,720–13,750 13,751–13,976
298	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 4	03/14/22	56 57	13,977–14,000 14,001–14,186
299	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 5	03/14/22	57 58	14,187–14,250 14,251–14,421
300	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 6	03/14/22	58 59	14,422–14,500 14,501–14,673
301	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 7	03/14/22	59 60	14,674–14,750 14,751–14,920
302	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 8	03/14/22	60 61	14,921–15,000 15,001–15,174
303	Appendix of Exhibits in Support of Health	03/14/22	61	15,175–15,250

Tab	Document	Date	Vol.	Pages
	Care Providers' Verified Memorandum of Cost Volume 9		62	15,251–15,373
486	Appendix of Exhibits in Support of Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time (Filed Under Seal)	09/28/20	143	35,447–35,634
423	Appendix of Exhibits in Support of Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment (Filed Under Seal)	10/17/21	108 109	26,674–26,893 26,894–26,930
379	Appendix of Exhibits in Support of Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders (Filed Under Seal)	09/21/21	85	20,917–21,076
381	Appendix of Exhibits in Support of Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges (Filed Under Seal)	09/21/21	85 86	21,090–21,143 21,144–21,259
26	Appendix of Exhibits in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss	03/26/20	4	784–908
491	Appendix of Exhibits in Support of Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/08/21	145 146	35,813–36,062 36,063–36,085
365	Appendix of Exhibits in Support of Plaintiffs' Renewed Motion for Order to	04/01/21	78	19,177–19,388

Tab	Document	Date	Vol.	Pages
	Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions (Filed Under Seal)			
272	Appendix of Exhibits to Defendants' Motion to Apply the Statutory Cap on Punitive Damage	12/30/21	50 51	12,364–12,500 12,501–12,706
436	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 1 (Filed Under Seal)	12/14/21	111 112	27,506–27,643 27,644–27,767
437	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 2 (Filed Under Seal)	12/14/21	112 113	27,768–27,893 27,894–27,981
438	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 3 (Filed Under Seal)	12/14/21	113 114	27,982–28,143 28,144–28,188
429	Appendix of Selected Exhibits to Trial Briefs (Filed Under Seal)	11/16/21	109	27,056–27,092
405	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 1) (Filed Under Seal)	09/22/21	97	23,898–24,080
406	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 2) (Filed Under Seal)	09/22/21	97 98	24,081–24,143 24,144–24,310
407	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 3) (Filed Under Seal)	09/22/21	98 99 100	24,311–24,393 24,394–24,643 24,644–24,673
408	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 4) (Filed Under Seal)	09/22/21	100 101 102	24,674–24,893 24,894–25,143 25,144–25,204
391	Appendix to Defendants' Motion for Partial Summary Judgment Volume 1 of 8 (Filed Under Seal)	09/21/21	89 90	22,036–22,143 22,144–22,176

Tab	Document	Date	Vol.	Pages
392	Appendix to Defendants' Motion for Partial Summary Judgment Volume 2 of 8 (Filed Under Seal)	09/21/21	90	22,177–22,309
393	Appendix to Defendants' Motion for Partial Summary Judgment Volume 3 of 8 (Filed Under Seal)	09/22/21	90 91	22,310–22,393 22,394–22,442
394	Appendix to Defendants' Motion for Partial Summary Judgment Volume 4 of 8 (Filed Under Seal)	09/22/21	91	22,443–22,575
395	Appendix to Defendants' Motion for Partial Summary Judgment Volume 5 of 8 (Filed Under Seal)	09/22/21	91	22,576–22,609
396	Appendix to Defendants' Motion for Partial Summary Judgment Volume 6 of 8 (Filed Under Seal)	09/22/21	91 92 93	22,610–22,643 22,644–22,893 22,894–23,037
397	Appendix to Defendants' Motion for Partial Summary Judgment Volume 7a of 8 (Filed Under Seal)	09/22/21	93 94	23,038–23,143 23,144–23,174
398	Appendix to Defendants' Motion for Partial Summary Judgment Volume 7b of 8 (Filed Under Seal)	09/22/21	94	23,175–23,260
399	Appendix to Defendants' Motion for Partial Summary Judgment Volume 8a of 8 (Filed Under Seal)	09/22/21	94 95	23,261–23,393 23,394–23,535
400	Appendix to Defendants' Motion for Partial Summary Judgment Volume 8b of 8 (Filed Under Seal)	09/22/21	95 96	23,536–23,643 23,634–23,801
385	Appendix to Defendants' Motion in Limine No. 13 (Volume 1 of 6) (Filed Under Seal)	09/21/21	86 87	21,369–21,393 21,394–21,484
386	Appendix to Defendants' Motion in Limine No. 13 (Volume 2 of 6) (Filed Under Seal)	09/21/21	87	21,485–21,614
387	Appendix to Defendants' Motion in Limine	09/21/21	87	21,615–21,643

Tab	Document	Date	Vol.	Pages
	No. 13 (Volume 3 of 6) (Filed Under Seal)		88	21,644–21,744
388	Appendix to Defendants' Motion in Limine No. 13 (Volume 4 of 6) (Filed Under Seal)	09/21/21	88	21,745–21,874
389	Appendix to Defendants' Motion in Limine No. 13 (Volume 5 of 6) (Filed Under Seal)	09/21/21	88 89	21,875–21,893 21,894–22,004
390	Appendix to Defendants' Motion in Limine No. 13 (Volume 6 of 6) (Filed Under Seal)	09/21/21	89	22,005–22,035
409	Appendix to Defendants' Motion in Limine No. 14 – Volume 1 of 6 (Filed Under Seal)	09/22/21	102	25,205–25,226
410	Appendix to Defendants' Motion in Limine No. 14 – Volume 2 of 6 (Filed Under Seal)	09/22/21	102	25,227–25,364
411	Appendix to Defendants' Motion in Limine No. 14 – Volume 3 of 6 (Filed Under Seal)	09/22/21	102 103	25,365–25,393 25,394–25,494
412	Appendix to Defendants' Motion in Limine No. 14 – Volume 4 of 6 (Filed Under Seal)	09/22/21	103	25,495–25,624
413	Appendix to Defendants' Motion in Limine No. 14 – Volume 5 of 6 (Filed Under Seal)	09/22/21	103 104	25,625–25,643 25,644–25,754
414	Appendix to Defendants' Motion in Limine No. 14 – Volume 6 of 6 (Filed Under Seal)	09/22/21	104	25,755–25,785
373	Appendix to Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time (Filed Under Seal)	06/24/21	82 83 84	20,291–20,393 20,394–20,643 20,644–20,698
70	Appendix to Defendants' Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/08/21	12 13 14	2875–3000 3001–3250 3251–3397
368	Appendix to Defendants' Motion to Supplement the Record Supporting Objections to Reports and Recommendations #2 & #3 on Order Shortening Time (Filed	05/21/21	79 80 81	19,582–19,643 19,644–19,893 19,894–20,065

Tab	Document	Date	Vol.	Pages
	Under Seal)			
418	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders - Volume 1 (Filed Under Seal)	09/29/21	105 106	25,902–26,143 26,144–26,216
419	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders - Volume 2 (Filed Under Seal)	09/29/21	106 107	26,217–26,393 26,394–26,497
489	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: to Exclude Evidence Subject to the Court's Discovery Orders (Exhibit 43) (Filed Under Seal)	09/29/21	144	35,703–35,713
75	Appendix to Defendants' Reply in Support of Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/19/21	14 15	3466–3500 3501–3658
316	Case Appeal Statement	04/06/22	67 68	16,695–16,750 16,751–16,825
356	Case Appeal Statement	10/12/22	74 75	18,468–18,500 18,501–18,598
16	Civil Order to Statistically Close Case	12/10/19	2	309
1	Complaint (Business Court)	04/15/19	1	1–17
284	Defendant' Reply in Support of Their Motion to Apply the Statutory Cap on Punitive Damages	02/10/22	53	13,005–13,028
435	Defendant's Omnibus Offer of Proof for Second Phase of Trial (Filed Under Seal)	12/14/21	111	27,496–27,505

Tab	Document	Date	Vol.	Pages
311	Defendants Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions on Order Shortening Time	04/05/22	66	16,362–16,381
42	Defendants' Answer to Plaintiffs' First Amended Complaint	07/08/20	7	1541–1590
150	Defendants' Answer to Plaintiffs' Second Amended Complaint	10/08/21	22	5280–5287
198	Defendants' Deposition Designations and Objections to Plaintiffs' Deposition Counter-Designations	11/03/21	32	7778–7829
99	Defendants' Errata to Their Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production	05/03/21	17	4124–4127
288	Defendants' Index of Trial Exhibit Redactions in Dispute	02/16/22	53	13,063–13,073
462	Defendants' Index of Trial Exhibit Redactions in Dispute (Filed Under Seal)	02/10/22	128	31,662–31,672
235	Defendants' Motion for Judgment as a Matter of Law	11/17/21	41 42	10,250 10,251–10,307
375	Defendants' Motion for Leave to File Defendants' Objection to the Special Master's Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Under Seal (Filed Under Seal)	07/15/21	84	20,743–20,750
214	Defendants' Motion for Leave to File Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at	11/12/21	37	9153–9161

Tab	Document	Date	Vol.	Pages
	Trial Under Seal			
130	Defendants' Motion for Partial Summary Judgment	09/21/21	20	4770–4804
312	Defendants' Motion for Remittitur and to Alter or Amend the Judgment	04/06/22	66	16,382–16,399
131	Defendants' Motion in Limine No. 1: Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Agreements with other Market Players and Related Negotiations	09/21/21	20	4805–4829
134	Defendants' Motion in Limine No. 10 to Exclude Reference of Defendants' Corporate Structure (Alternative Moton to be Considered Only if court Denies Defendants' Counterpart Motion in Limine No. 9)	09/21/21	20	4869–4885
401	Defendants' Motion in Limine No. 11 Paired with Motion in Limine No. 12 to Authorize Defendants to Discuss Plaintiffs' Conduct and deliberations in Negotiating Reimbursement (Filed Under Seal)	09/22/21	96	23,802–23,823
403	Defendants' Motion in Limine No. 12 Paired with Motion in Limine No. 11 to Preclude Plaintiffs from Discussing Defendants' Approach to Reimbursement (Filed Under Seal)	09/22/21	96	23,860–23,879
135	Defendants' Motion in Limine No. 13: Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	09/21/21	20	4886–4918
136	Defendants' Motion in Limine No. 14: Motion Offered in the Alternative to MIL No. 13 to Preclude Plaintiffs from Contesting Defendants' Defenses Relating to Claims that were Subject to Settlement Agreement	09/21/21	20	4919–4940

Tab	Document	Date	Vol.	Pages
	Between CollectRX and Data iSight; and Defendants' Adoption of Specific Negotiation Thresholds for Reimbursement Claims Appealed or Contested by Plaintiffs			
132	Defendants' Motion in Limine No. 2: Motion Offered in the Alternative to MIL No. 1, to Preclude Plaintiffs from Offering Evidence Relating to Defendants' Agreements with Other Market Players and Related Negotiations	09/21/21	20	4830–4852
137	Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	09/21/21	20	4941–4972
383	Defendants' Motion in Limine No. 5 Regarding Arguments or Evidence that Amounts TeamHealth Plaintiffs billed for Serves are Reasonable [an Alternative to Motion in Limine No. 6] (Filed Under Seal)	09/21/21	86	21,314–21,343
384	Defendants' Motion in Limine No. 6 Regarding Argument or Evidence That Amounts Teamhealth Plaintiffs Billed for Services are Reasonable (Filed Under Seal)	09/21/21	86	21,344–21,368
138	Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	09/22/21	20 21	4973–5000 5001–5030
139	Defendants' Motion in Limine No. 8, Offered in the Alternative to MIL No. 7, to Preclude Plaintiffs from Offering Evidence as to the Qualitative Value, Relative Value, Societal Value, or Difficulty of the Services they Provided	09/22/21	21	5031–5054
140	Defendants' Motion in Limine No. 9 to Authorize Defendants to Offer Evidence of	09/22/21	21	5055–5080

Tab	Document	Date	Vol.	Pages
	Plaintiffs Organizational, Management, and Ownership Structure, Including Flow of Funds Between Related Entities, Operating Companies, Parent Companies, and Subsidiaries			
271	Defendants' Motion to Apply the Statutory Cap on Punitive Damages	12/30/21	50	12,342–12,363
71	Defendants' Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/11/21	14	3398–3419
52	Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiffs to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	09/21/20	8 9	1998–2000 2001–2183
23	Defendants' Motion to Dismiss	03/12/20	3	553–698
32	Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint	05/26/20	5	1027–1172
348	Defendants' Motion to Redact Portions of Trial Transcript	10/06/22	72	17,979–17,989
304	Defendants' Motion to Retax Costs	03/21/22	62	15,374–15,388
277	Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing on Defendants' Motion to Seal Certain Confidential Trial Exhibits on Order Shortening Time	01/11/22	52	12,757–12,768
487	Defendants' Motion to Supplement Record Supporting Objections to Reports and Recommendations #2 & #3 on Order Shortening Time (Filed Under Seal)	05/24/21	143 144	35,635–35,643 35,644–35,648
169	Defendants' Objection to Media Requests	10/28/21	29	7004–7018

Tab	Document	Date	Vol.	Pages
339	Defendants' Objection to Plaintiffs' Proposed Order Approving Plaintiffs' Motion for Attorneys' Fees	07/26/22	71	17,700–17,706
273	Defendants' Objection to Plaintiffs' Proposed Order Denying Defendants' Motion for Judgment as a Matter of Law	01/04/22	51	12,707–12,717
94	Defendants' Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	04/12/21	17	4059–4079
98	Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Request for Production on Order Shortening Time	04/28/21	17	4109–4123
370	Defendants' Objection to the Special Master's Report and Recommendation No. 5 Regarding Defendants' Motion for Protective Order Regarding Confidentiality Designations (Filed April 15, 2021) (Filed Under Seal)	06/01/21	82	20,152–20,211
61	Defendants' Objections to Plaintiffs to Plaintiffs' Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/26/20	11	2573–2670
151	Defendants' Objections to Plaintiffs' NRCP 16.1(a)(3) Pretrial Disclosures	10/08/21	22	5288–5294
64	Defendants' Objections to Plaintiffs' Order Denying Defendants' Motion to Compel	11/02/20	11	2696–2744

Tab	Document	Date	Vol.	Pages
	Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiffs' to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time			
60	Defendants' Objections to Plaintiffs' Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/23/20	10 11	2482–2500 2501–2572
199	Defendants' Objections to Plaintiffs' Proposed Order Granting in Part and Denying in Part Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	11/03/21	32	7830–7852
100	Defendants' Objections to Plaintiffs' Proposed Order Granting Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	05/05/21	17	4128–4154
108	Defendants' Objections to Special Master Report and Recommendation No. 7 Regarding Defendants' Motion to Compel Responses to Defendants' Amended Third Set of Requests for Production of Documents	06/17/21	17	4227–4239
431	Defendants' Omnibus Offer of Proof (Filed Under Seal)	11/22/21	109 110	27,100–27,143 27,144–27,287
14	Defendants' Opposition to Fremont Emergency Services (MANDAVIA), Ltd.'s Motion to Remand	06/21/19	1 2	139–250 251–275
18	Defendants' Opposition to Plaintiffs' Amended Motion to Remand	01/29/20	2	349–485
283	Defendants' Opposition to Plaintiffs' Cross-	02/10/22	52	12,997–13,000

Tab	Document	Date	Vol.	Pages
	Motion for Entry of Judgment		53	13,001–13,004
322	Defendants' Opposition to Plaintiffs' Motion for Attorneys' Fees	04/20/22	69	17,036–17,101
155	Defendants' Opposition to Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	10/18/21	22	5323–5333
141	Defendants' Opposition to Plaintiffs' Motion in Limine No. 1: to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges	09/29/21	21	5081–5103
417	Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders (Filed Under Seal)	09/29/21	104 105	25,869–25,893 25,894–25,901
50	Defendants' Opposition to Plaintiffs' Motion to Compel Defendants' Production of Claims File for At-Issue Claims, Or, in The Alternative, Motion in Limine on Order Shortening Time	09/04/20	8	1846–1932
56	Defendants' Opposition to Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents, and Answers to Interrogatories on Order Shortening Time	10/06/20	10	2293–2336
251	Defendants' Opposition to Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,609–11,631
89	Defendants' Opposition to Plaintiffs' Renewed Motion for Order to Show Cause	03/22/21	16	3916–3966

Tab	Document	Date	Vol.	Pages
	Why Defendants Should Not be Held in Contempt and for Sanctions			
220	Defendants' Proposed Jury Instructions (Contested)	11/15/21	38	9427–9470
259	Defendants' Proposed Second Phase Jury Instructions	12/05/21	49	12,049–12,063
263	Defendants' Proposed Second Phase Jury Instructions-Supplement	12/07/21	49	12,136–12,142
313	Defendants' Renewed Motion for Judgment as a Matter of Law	04/06/22	66	16,400–16,448
421	Defendants' Reply in Support of Motion for Partial Summary Judgment (Filed Under Seal)	10/11/21	107 108	26,606–26,643 26,644–26,663
74	Defendants' Reply in Support of Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/19/21	14	3449–3465
28	Defendants' Reply in Support of Motion to Dismiss	05/07/20	4	919–948
36	Defendants' Reply in Support of Motion to Dismiss Plaintiffs' First Amended Complaint	06/03/20	6	1310–1339
325	Defendants' Reply in Support of Motion to Retax Costs	05/04/22	69	17,122–17,150
457	Defendants' Reply in Support of Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	01/05/22	126	31,259–31,308
37	Defendants' Reply in Support of Their Supplemental Brief in Support of Their Motions to Dismiss Plaintiff's First Amended Complaint	06/03/20	6	1340–1349
334	Defendants' Response to Improper Supplement Entitled "Notice of	06/28/22	71	17,579–17,593

Tab	Document	Date	Vol.	Pages
	Supplemental Attorney Fees Incurred After Submission of Health Care Providers' Motion for Attorneys Fees"			
286	Defendants' Response to Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits on Order Shortening Time	02/15/22	53	13,047–13,053
225	Defendants' Response to TeamHealth Plaintiffs' Trial Brief Regarding Defendants' Prompt Pay Act Jury Instruction Re: Failure to Exhaust Administrative Remedies	11/16/21	40	9799–9806
12	Defendants' Statement of Removal	05/30/19	1	123–126
33	Defendants' Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	05/26/20	5	1173–1187
247	Defendants' Supplemental Proposed Jury Instruction	11/21/21	46	11,262–11,266
240	Defendants' Supplemental Proposed Jury Instructions (Contested)	11/19/21	44	10,947–10,952
48	Errata	08/04/20	7	1684
241	Errata	11/19/21	44	10,953
402	Errata to Defendants' Motion in Limine No. 11 (Filed Under Seal)	09/22/21	96	23,824–23,859
404	Errata to Defendants' Motion in Limine No. 12 (Filed Under Seal)	09/22/21	96 97	23,880–23,893 23,894–23,897
54	Errata to Plaintiffs' Motion to Compel Defendants' List of Witnesses Production of Documents and Answers to Interrogatories	09/28/20	9	2196–2223
85	Errata to Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for	03/12/21	16	3884–3886

Tab	Document	Date	Vol.	Pages
	Sanctions			
238	Errata to Source on Defense Contested Jury Instructions	11/18/21	43	10,618–10,623
430	Excerpts of Recorder's Transcript of Jury Trial – Day 13 (Filed Under Seal)	11/16/21	109	27,093–27,099
427	Excerpts of Recorder's Transcript of Jury Trial – Day 9 (Filed Under Seal)	11/09/21	109	26,998–27003
481	Exhibits P473_NEW, 4002, 4003, 4005, 4006, 4166, 4168, 4455, 4457, 4774, and 5322 to "Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits" (Tabs 98, 106, 107, 108, 109, 111, 112, 113, 114, 118, and 119) (Filed Under Seal)	10/07/22	142	35,243–35,247
30	First Amended Complaint	05/15/20	4 5	973–1000 1001–1021
13	Freemont Emergency Services (MANDAVIA), Ltd's Response to Statement of Removal	05/31/19	1	127–138
226	General Defense Verdict	11/16/21	40	9807–9809
305	Health Care Providers' Motion for Attorneys' Fees	03/30/22	62	15,389–15,397
326	Health Care Providers' Reply in Support of Motion for Attorneys' Fees	05/04/22	69	17,151–17,164
294	Health Care Providers' Verified Memorandum of Cost	03/14/22	53	13,198–13,208
44	Joint Case Conference Report	07/17/20	7	1606–1627
164	Joint Pretrial Memorandum Pursuant to EDRC 2.67	10/27/21	26 27	6486–6500 6501–6567
465	Joint Status Report and Table Identifying	03/04/22	128	31,888–31,893

Tab	Document	Date	Vol.	Pages
	the Redactions to Trial Exhibits That Remain in Dispute (Filed Under Seal)		129	31,894–31,922
221	Jointly Submitted Jury Instructions	11/15/21	38	9471–9495
255	Jury Instructions	11/29/21	48	11,957–11,999
264	Jury Instructions Phase Two	12/07/21	49	12,143–12,149
347	Limited Objection to "Order Unsealing Trial Transcripts and Restoring Public Access to Docket"	10/06/22	72	17,973–17,978
156	Media Request and Order Allowing Camera Access to Court Proceedings (Legal Newsline)	10/18/21	22	5334–5338
167	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 28	6992–6997
168	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 29	6998–7000 7001–7003
314	Motion for New Trial	04/06/22	66 67	16,449–16,500 16,501–16,677
119	Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt and Sanctioned for Violating Protective Order	08/10/21	18	4465–4486
79	Motion for Reconsideration of Order Denying Defendants' Motion to Compel Plaintiffs Responses to Defendants' First and Second Requests for Production	02/18/21	15 16	3714–3750 3751–3756
488	Motion in Limine No. 3 to Allow References to Plaintiffs; Decision Making Processes Regarding Setting Billed Charges (Filed Under Seal)	09/21/21	144	35,649–35,702

Tab	Document	Date	Vol.	Pages
382	Motion in Limine No. 3 to Allow References to Plaintiffs' Decision Making Process Regarding Settling Billing Charges (Filed Under Seal)	09/21/21	86	21,260–21,313
133	Motion in Limine No. 4 to Preclude References to Defendants' Decision Making Process and Reasonableness of billed Charges if Motion in Limine No. 3 is Denied	09/21/21	20	4853–4868
11	Motion to Remand	05/24/19	1	101–122
432	Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	12/05/21	110	27,288–27,382
434	Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	12/13/21	111	27,401–27,495
267	Motion to Seal Defendants' Motion to Seal Certain Confidential Trial Exhibits	12/15/21	50	12,294–12,302
275	Motion to Seal Defendants' Reply in Support of Motion to Seal Certain Confidential Trial Exhibits	01/10/22	51	12,739–12,747
276	Motion to Seal Defendants' Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits	01/10/22	51 52	12,748–12,750 12,751–12,756
268	Motion to Seal Defendants' Supplement to Motion to Seal Certain Confidential Trial Exhibits	12/15/21	50	12,303–12,311
315	Notice of Appeal	04/06/22	67	16,678–16,694
355	Notice of Appeal	10/12/22	73 74	18,126–18,250 18,251–18,467
292	Notice of Entry of Judgment	03/09/22	53	13,168–13,178
115	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 2	08/09/21	18	4403–4413

Tab	Document	Date	Vol.	Pages
	Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order and Overruling Objection			
116	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time and Overruling Objection	08/09/21	18	4414–4424
127	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions and Overruling Objection	09/16/21	19	4709–4726
128	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 7 Regarding Defendants' Motion to Compel Responses to Defendants' Amended Third Set of Request for Production of Documents and Overruling Objection	09/16/21	19	4727–4747
129	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed No to Answer and Overruling Objection	09/16/21	19 20	4748–4750 4751–4769
200	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified	11/03/21	32	7853–7874

Tab	Document	Date	Vol.	Pages
340	Notice of Entry of Order Approving Plaintiffs' Motion for Attorney's Fees	08/02/22	71	17,707–17,725
351	Notice of Entry of Order Approving Supplemental Attorney's Fee Award	10/12/22	73	18,005–18,015
357	Notice of Entry of Order Denying "Motion to Redact Portions of Trial Transcript"	10/13/22	75	18,599–18,608
40	Notice of Entry of Order Denying Defendants' (1) Motion to Dismiss First Amended Complaint; and (2) Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	06/24/20	6 7	1472–1500 1501–1516
274	Notice of Entry of Order Denying Defendants' Motion for Judgement as a Matter of Law	01/06/22	51	12,718–12,738
352	Notice of Entry of Order Denying Defendants' Motion for New Trial	10/12/22	73	18,016–18,086
154	Notice of Entry of Order Denying Defendants' Motion for Order to Show Cause Why Plaintiffs Should not be Held in Contempt for Violating Protective Order	10/14/21	22	5309–5322
161	Notice of Entry of Order Denying Defendants' Motion for Partial Summary Judgment	10/25/21	25	6116–6126
338	Notice of Entry of Order Denying Defendants' Motion for Remittitur and to Alter or Amend the Judgment	07/19/22	71	17,689–17,699
171	Notice of Entry of Order Denying Defendants' Motion in Limine No. 1 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Agreements with Other Market Players and Related Negotiations	11/01/21	29	7040–7051

Tab	Document	Date	Vol.	Pages
172	Notice of Entry of Order Denying Defendants' Motion in Limine No. 2: Motion Offered in the Alternative to MIL No. 1, to Preclude Plaintiffs from Offering Evidence Relating to Defendants' Agreements with Other Market Players and Related Negotiations	11/01/21	29	7052–7063
173	Notice of Entry of Order Denying Defendants' Motion in Limine No. 3 to Allow Reference to Plaintiffs' Decision Making Processes Regarding Setting Billed Charges	11/01/21	29	7064–7075
174	Notice of Entry of Order Denying Defendants' Motion in Limine No. 4 to Preclude References to Defendants' Decision Making Processes and Reasonableness of Billed Charges if Motion in Limine No. 3 is Denied	11/01/21	29	7076–7087
175	Notice of Entry of Order Denying Defendants' Motion in Limine No. 12, Paired with Motion in Limine No. 11, to Preclude Plaintiffs from Discussing Defendants' Approach to Reimbursement	11/01/21	29	7088–7099
176	Notice of Entry of Order Denying Defendants' Motion in Limine No. 5 Regarding Argument or Evidence that Amounts TeamHealth Plaintiffs Billed for Services are Reasonable [An Alternative Motion to Motion in Limine No. 6]	11/01/21	29	7100–7111
177	Notice of Entry of Order Denying Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	11/01/21	29	7112–7123
178	Notice of Entry of Order Denying	11/01/21	29	7124–7135

Tab	Document	Date	Vol.	Pages
	Defendants' Motion in Limine No. 8, Offered in the Alternative to MIL No. 7, to Preclude Plaintiffs from Offering Evidence as to the Qualitative Value, Relative Value, Societal Value, or Difficulty of the Services they Provided			
179	Notice of Entry of Order Denying Defendants' Motion in Limine No. 10 to Exclude Evidence of Defendants' Corporate Structure (Alternative Motion to be Considered Only if Court Denies Defendants' Counterpart Motion in Limine No. 9)	11/01/21	29	7136–7147
180	Notice of Entry of Order Denying Defendants' Motion in Limine No. 11, Paired with Motion in Limine No. 12, to Authorize Defendants to Discuss Plaintiffs' Conduct and Deliberations in Negotiating Reimbursement	11/01/21	29	7148–7159
181	Notice of Entry of Order Denying Defendants' Motion in Limine No. 13 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	11/01/21	29	7160–7171
182	Notice of Entry of Order Denying Defendants' Motion in Limine No. 14: Motion Offered in the Alternative MIL No. 13 to Preclude Plaintiffs from Contesting Defendants' Defenses Relating to Claims that were Subject to a Settlement Agreement Between CollectRx and Data iSight; and Defendants' Adoption of Specific Negotiation Thresholds for Reimbursement Claims Appealed or Contested by Plaintiffs	11/01/21	29	7172–7183
183	Notice of Entry of Order Denying	11/01/21	29	7184–7195

Tab	Document	Date	Vol.	Pages
	Defendants' Motion in Limine No. 15 to Preclude Reference and Testimony Regarding the TeamHealth Plaintiffs Policy not to Balance Bill			
184	Notice of Entry of Order Denying Defendants' Motion in Limine No. 18 to Preclude Testimony of Plaintiffs' Non-Retained Expert Joseph Crane, M.D.	11/01/21	29	7196–7207
185	Notice of Entry of Order Denying Defendants' Motion in Limine No. 20 to Exclude Defendants' Lobbying Efforts	11/01/21	29	7208–7219
186	Notice of Entry of Order Denying Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	11/01/21	29	7220–7231
187	Notice of Entry of Order Denying Defendants' Motion in Limine No. 27 to Preclude Evidence of Complaints Regarding Defendants' Out-Of-Network Rates or Payments	11/01/21	29	7232–7243
188	Notice of Entry of Order Denying Defendants' Motion in Limine No. 29 to Preclude Evidence Only Relating to Defendants' Evaluation and Development of a Company that Would Offer a Service Similar to Multiplan and Data iSight	11/01/21	29 30	7244–7250 7251–7255
189	Notice of Entry of Order Denying Defendants' Motion in Limine No. 32 to Exclude Evidence or Argument Relating to Materials, Events, or Conduct that Occurred on or After January 1, 2020	11/01/21	30	7256–7267
191	Notice of Entry of Order Denying Defendants' Motion in Limine No. 38 to Exclude Evidence or Argument Relating to	11/01/21	30	7280–7291

Tab	Document	Date	Vol.	Pages
	Defendants' use of MultiPlan and the Data iSight Service, Including Any Alleged Conspiracy or Fraud Relating to the use of Those Services			
190	Notice of Entry of Order Denying Defendants' Motion in Limine to Preclude Certain Expert Testimony and Fact Witness Testimony by Plaintiffs' Non-Retained Expert Robert Frantz, M.D.	11/01/21	30	7268–7279
293	Notice of Entry of Order Denying Defendants' Motion to Apply Statutory Cap on Punitive Damages	03/09/22	53	13,179–13,197
62	Notice of Entry of Order Denying Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on Order Shortening Time	10/27/20	11	2671–2683
78	Notice of Entry of Order Denying Defendants' Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	02/04/21	15	3703–3713
193	Notice of Entry of Order Denying Defendants' Motion to Strike Supplement Report of David Leathers	11/01/21	30	7355–7366
353	Notice of Entry of Order Denying Defendants' Renewed Motion for Judgment as a Matter of Law	10/12/22	73	18,087–18,114
97	Notice of Entry of Order Denying Motion for Reconsideration of Court's Order Denying Defendants' Motion to Compel Responses to Defendants' First and Second Requests for Production	04/26/21	17	4096–4108

Tab	Document	Date	Vol.	Pages
77	Notice of Entry of Order Granting Defendants' Motion for Appointment of Special Master	02/02/21	15	3693–3702
269	Notice of Entry of Order Granting Defendants' Motion for Leave to File Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at Trial Under Seal	12/27/21	50	12,312–12,322
202	Notice of Entry of Order Granting Defendants' Motion in Limine No. 17	11/04/21	33	8092–8103
203	Notice of Entry of Order Granting Defendants' Motion in Limine No. 25	11/04/21	33	8104–8115
204	Notice of Entry of Order Granting Defendants' Motion in Limine No. 37	11/04/21	33	8116–8127
205	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 9	11/04/21	33	8128–8140
206	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 21	11/04/21	33	8141–8153
207	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 22	11/04/21	33	8154–8165
341	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Retax Costs	08/02/22	71	17,726–17,739
358	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits	10/18/22	75 76	18,609–18,750 18,751–18,755
215	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion in Limine to Exclude Evidence Subject to the	11/12/21	37	9162–9173

Tab	Document	Date	Vol.	Pages
	Court's Discovery Orders			
147	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Second Amended Complaint on Order Shortening Time	10/07/21	21	5235–5245
242	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	11/19/21	44	10,954–10,963
192	Notice of Entry of Order Granting Plaintiffs' Motion in Limine to Exclude Evidence, Testimony And-Or Argument Regarding the Fact that Plaintiff have Dismissed Certain Claims	11/01/21	30	7292–7354
63	Notice of Entry of Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/27/20	11	2684–2695
335	Notice of Entry of Order Granting Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	06/29/22	71	17,594–17,609
281	Notice of Entry of Order Granting Plaintiffs' Proposed Schedule for Submission of Final Redactions	01/31/22	52	12,969–12,979
114	Notice of Entry of Order Granting Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	08/03/21	18	4383–4402
53	Notice of Entry of Order Granting, in Part Plaintiffs' Motion to Compel Defendants'	09/28/20	9	2184–2195

Tab	Document	Date	Vol.	Pages
	Production of Claims for At-Issue Claims, Or, in The Alternative, Motion in Limine			
102	Notice of Entry of Order of Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Question	05/26/21	17	4157–4165
22	Notice of Entry of Order Re: Remand	02/27/20	3	543–552
142	Notice of Entry of Order Regarding Defendants' Objection to Special Master's Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents about which Plaintiffs' Witnesses Testified on Order Shortening Time	09/29/21	21	5104–5114
66	Notice of Entry of Order Setting Defendants' Production & Response Schedule Re: Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	11/09/20	12	2775–2785
285	Notice of Entry of Order Shortening Time for Hearing Re: Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits	02/14/22	53	13,029–13,046
354	Notice of Entry of Order Unsealing Trial Transcripts and Restoring Public Access to Docket	10/12/22	73	18,115–18,125
86	Notice of Entry of Report and Recommendation #1	03/16/21	16	3887–3894
120	Notice of Entry of Report and Recommendation #11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs'	08/11/21	18	4487–4497

Tab	Document	Date	Vol.	Pages
	Witnesses Testified			
91	Notice of Entry of Report and Recommendation #2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	03/29/21	16	3971–3980
95	Notice of Entry of Report and Recommendation #3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time	04/15/21	17	4080–4091
104	Notice of Entry of Report and Recommendation #7 Regarding Defendants' Motion to Compel Plaintiffs' Responses to Defendants' Amended Third Set of Requests for Production of Documents	06/03/21	17	4173–4184
41	Notice of Entry of Stipulated Confidentiality and Protective Order	06/24/20	7	1517–1540
69	Notice of Entry of Stipulated Electronically Stored Information Protocol Order	01/08/21	12	2860–2874
289	Notice of Entry of Stipulation and Order Regarding Certain Admitted Trial Exhibits	02/17/22	53	13,074–13,097
360	Notice of Entry of Stipulation and Order Regarding Expiration of Temporary Stay for Sealed Redacted Transcripts	10/25/22	76	18,759–18,769
282	Notice of Entry of Stipulation and Order Regarding Schedule for Submission of Redactions	02/08/22	52	12,980–12,996
111	Notice of Entry Report and Recommendations #9 Regarding Pending Motions	07/01/21	18	4313–4325

Tab	Document	Date	Vol.	Pages
490	Notice of Filing of Expert Report of Bruce Deal, Revised on November 14, 2021 (Filed Under Seal)	04/18/23	144	35,714–35,812
361	Notice of Filing of Writ Petition	11/17/22	76	18,770–18855
24	Notice of Intent to Take Default as to: (1) Defendant UnitedHealth Group, Inc. on All Claims; and (2) All Defendants on the First Amended Complaint's Eighth Claim for Relief	03/13/20	3 4	699–750 751
324	Notice of Posting *Supersedeas* Bond	04/29/22	69	17,114–17,121
10	Notice of Removal to Federal Court	05/14/19	1	42–100
333	Notice of Supplemental Attorneys Fees Incurred After Submission of Health Care Providers' Motion for Attorneys Fees	06/24/22	70 71	17,470–17,500 17,501–17,578
291	Objection to Plaintiffs' Proposed Judgment and Order Denying Motion to Apply Statutory Cap on Punitive Damages	03/04/22	53	13,161–13,167
345	Objection to Plaintiffs' Proposed Orders Denying Renewed Motion for Judgment as a Matter of Law and Motion for New Trial	09/13/22	72	17,941–17,950
377	Objection to R&R #11 Regarding United's (Filed Under Seal)Motion to Compel Documents About Which Plaintiffs' Witnesses Testified (Filed Under Seal)	08/25/21	84 85	20,864–20,893 20,894–20,898
320	Opposition to Defendants' Motion to Retax Costs	04/13/22	68	16,856–16,864
153	Opposition to Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Regarding the Fact that Plaintiffs have Dismissed Certain Claims and Parties on Order Shortening Time	10/12/21	22	5301–5308

Tab	Document	Date	Vol.	Pages
20	Order	02/20/20	3	519–524
21	Order	02/24/20	3	525–542
337	Order Amending Oral Ruling Granting Defendants' Motion to Retax	07/01/22	71	17,682–17,688
2	Peremptory Challenge of Judge	04/17/19	1	18–19
415	Plaintiffs' Combined Opposition to Defendants Motions in Limine 1, 7, 9, 11 & 13 (Filed Under Seal)	09/29/21	104	25,786–25,850
416	Plaintiffs' Combined Opposition to Defendants' Motions in Limine No. 2, 8, 10, 12 & 14 (Filed Under Seal)	09/29/21	104	25,851–25,868
145	Plaintiffs' Motion for Leave to File Second Amended Complaint on Order Shortening Time	10/04/21	21	5170–5201
422	Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment (Filed Under Seal)	10/17/21	108	26,664–26,673
378	Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders (Filed Under Seal)	09/21/21	85	20,899–20,916
380	Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges (Filed Under Seal)	09/21/21	85	21,077–21,089
149	Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and-or Argument	10/08/21	22	5265–5279

Tab	Document	Date	Vol.	Pages
	Regarding the Fact that Plaintiffs Have Dismissed Certain Claims and Parties on Order Shortening Time			
363	Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time (Filed Under Seal)	09/28/20	78	19,144–19,156
49	Plaintiffs' Motion to Compel Defendants' Production of Claims File for At-Issue Claims, or, in the Alternative, Motion in Limine on Order Shortening Time	08/28/20	7 8	1685–1700 1701–1845
250	Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,594–11,608
194	Plaintiffs' Notice of Amended Exhibit List	11/01/21	30	7367–7392
208	Plaintiffs' Notice of Deposition Designations	11/04/21	33 34	8166–8250 8251–8342
152	Plaintiffs' Objections to Defendants' Pretrial Disclosures	10/08/21	22	5295–5300
328	Plaintiffs' Opposition to Defendants' Motion for New Trial	05/04/22	69 70	17,179–17,250 17,251–17,335
420	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment (Filed Under Seal)	10/05/21	107	26,498–26,605
327	Plaintiffs' Opposition to Defendants' Motion for Remittitur and to Alter or Amend the Judgment	05/04/22	69	17,165–17,178
144	Plaintiffs' Opposition to Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	09/29/21	21	5155–5169
143	Plaintiffs' Opposition to Defendants' Motion	09/29/21	21	5115–5154

Tab	Document	Date	Vol.	Pages
	in Limine Nos. 3, 4, 5, 6 Regarding Billed Charges			
279	Plaintiffs' Opposition to Defendants' Motion to Apply Statutory Cap on Punitive Damages and Plaintiffs' Cross Motion for Entry of Judgment	01/20/22	52	12,773–12,790
374	Plaintiffs' Opposition to Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time (Filed Under Seal)	07/06/21	84	20,699–20,742
25	Plaintiffs' Opposition to Defendants' Motion to Dismiss	03/26/20	4	752–783
34	Plaintiffs' Opposition to Defendants' Motion to Dismiss First Amended Complaint	05/29/20	5 6	1188–1250 1251–1293
349	Plaintiffs' Opposition to Defendants' Motion to Redact Portions of Trial Transcript	10/07/22	72	17,990–17,993
278	Plaintiffs' Opposition to Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing	01/12/22	52	12,769–12,772
369	Plaintiffs' Opposition to Defendants' Motion to Supplement the Record Supporting Objections to Reports and Recommendations #2 and #3 on Order Shortening Time (Filed Under Seal)	06/01/21	81 82	20,066–20,143 20,144–20,151
329	Plaintiffs' Opposition to Defendants' Renewed Motion for Judgment as a Matter of Law	05/05/22	70	17,336–17,373
317	Plaintiffs' Opposition to Defendants' Rule 62(b) Motion for Stay	04/07/22	68	16,826–16,831
35	Plaintiffs' Opposition to Defendants' Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended	05/29/20	6	1294–1309

Tab	Document	Date	Vol.	Pages
	Complaint Addressing Plaintiffs' Eighth Claim for Relief			
83	Plaintiffs' Opposition to Motion for Reconsideration of Order Denying Defendants' Motion to Compel Plaintiffs Responses to Defendants' First and Second Requests for Production	03/04/21	16	3833–3862
55	Plaintiffs' Opposition to Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	09/29/20	9-10	2224–2292
72	Plaintiffs' Opposition to Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/12/21	14	3420–3438
122	Plaintiffs' Opposition to United's Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt and Sanctioned for Allegedly Violating Protective Order	08/24/21	19	4528–4609
270	Plaintiffs' Opposition to United's Motion to Seal	12/29/21	50	12,323–12,341
222	Plaintiffs' Proposed Jury Instructions (Contested)	11/15/21	38 39	9496–9500 9501–9513
260	Plaintiffs' Proposed Second Phase Jury Instructions and Verdict Form	12/06/21	49	12,064–12,072
243	Plaintiffs' Proposed Special Verdict Form	11/19/21	44	10,964–10,973
227	Plaintiffs' Proposed Verdict Form	11/16/21	40	9810–9819
84	Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/08/21	16	3863–3883

Tab	Document	Date	Vol.	Pages
287	Plaintiffs' Reply in Support of Cross Motion for Entry of Judgment	02/15/22	53	13,054–13,062
364	Plaintiffs' Reply in Support of Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions (Filed Under Seal)	04/01/21	78	19,157–19,176
366	Plaintiffs' Response to Defendants Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order (Filed Under Seal)	04/19/21	78 79	19,389–19,393 19,394–19,532
195	Plaintiffs' Response to Defendants' Objection to Media Requests	11/01/21	30	7393–7403
371	Plaintiffs' Response to Defendants' Objection to Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions (Filed Under Seal)	06/16/21	82	20,212–20,265
376	Plaintiffs' Response to Defendants' Objection to Special Master Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Questions (Filed Under Seal)	07/22/21	84	20,751–20,863
110	Plaintiffs' Response to Defendants' Objection to Special Master's Report and Recommendation #7 Regarding Defendants' Motion to Compel Responses to Amended	06/24/21	18	4281–4312

Tab	Document	Date	Vol.	Pages
	Third Set of Request for Production of Documents			
367	Plaintiffs' Response to Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Request for Production on Order Shortening Time (Filed Under Seal)	05/05/21	79	19,533–19,581
426	Plaintiffs' Response to Defendants' Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties (Filed Under Seal)	11/08/21	109	26,965–26,997
246	Plaintiffs' Second Supplemental Jury Instructions (Contested)	11/20/21	46	11,255–11,261
261	Plaintiffs' Supplement to Proposed Second Phase Jury Instructions	12/06/21	49	12,072–12,077
236	Plaintiffs' Supplemental Jury Instruction (Contested)	11/17/21	42	10,308–10,313
248	Plaintiffs' Third Supplemental Jury Instructions (Contested)	11/21/21	46	11,267–11,272
216	Plaintiffs' Trial Brief Regarding Defendants' Prompt Payment Act Jury Instruction Re: Failure to Exhaust Administrative Remedies	11/12/21	37	9174–9184
223	Plaintiffs' Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/15/21	39	9514–9521
218	Plaintiffs' Trial Brief Regarding Specific Price Term	11/14/21	38	9417–9425
428	Preliminary Motion to Seal Attorneys' Eyes Documents Used at Trial (Filed Under Seal)	11/11/21	109	27,004–27,055
211	Recorder's Amended Transcript of Jury Trial – Day 9	11/09/21	35	8515–8723

Tab	Document	Date	Vol.	Pages
73	Recorder's Partial Transcript of Proceedings Re: Motions (Unsealed Portion Only)	01/13/21	14	3439–3448
125	Recorder's Partial Transcript of Proceedings Re: Motions Hearing	09/09/21	19	4667–4680
126	Recorder's Partial Transcript of Proceedings Re: Motions Hearing (Via Blue Jeans)	09/15/21	19	4681–4708
31	Recorder's Transcript of Hearing All Pending Motions	05/15/20	5	1022–1026
88	Recorder's Transcript of Hearing All Pending Motions	03/18/21	16	3910–3915
90	Recorder's Transcript of Hearing All Pending Motions	03/25/21	16	3967–3970
96	Recorder's Transcript of Hearing All Pending Motions	04/21/21	17	4092–4095
82	Recorder's Transcript of Hearing Defendants' Motion to Extend All Case Management Deadlines and Continue Trial Setting on Order Shortening Time (Second Request)	03/03/21	16	3824–3832
101	Recorder's Transcript of Hearing Motion for Leave to File Opposition to Defendants' Motion to Compel Responses to Second Set of Requests for Production on Order Shortening Time in Redacted and Partially Sealed Form	05/12/21	17	4155–4156
107	Recorder's Transcript of Hearing Motion for Leave to File Plaintiffs' Response to Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Second Set of Request for Production on Order Shortening Time in Redacted and Partially Sealed Form	06/09/21	17	4224–4226
92	Recorder's Transcript of Hearing Motion to Associate Counsel on OST	04/01/21	16	3981–3986

Tab	Document	Date	Vol.	Pages
483	Recorder's Transcript of Hearing re Hearing (Filed Under Seal)	10/13/22	142	35,259–35,263
346	Recorder's Transcript of Hearing Re: Hearing	09/22/22	72	17,951–17,972
359	Recorder's Transcript of Hearing Status Check	10/20/22	76	18,756–18,758
162	Recorder's Transcript of Jury Trial – Day 1	10/25/21	25 26	6127–6250 6251–6279
213	Recorder's Transcript of Jury Trial – Day 10	11/10/21	36 37	8933–9000 9001–9152
217	Recorder's Transcript of Jury Trial – Day 11	11/12/21	37 38	9185–9250 9251–9416
224	Recorder's Transcript of Jury Trial – Day 12	11/15/21	39 40	9522–9750 9751–9798
228	Recorder's Transcript of Jury Trial – Day 13	11/16/21	40 41	9820–10,000 10,001–10,115
237	Recorder's Transcript of Jury Trial – Day 14	11/17/21	42 43	10,314–10,500 10,501–10,617
239	Recorder's Transcript of Jury Trial – Day 15	11/18/21	43 44	10,624–10,750 10,751–10,946
244	Recorder's Transcript of Jury Trial – Day 16	11/19/21	44 45	10,974–11,000 11,001–11,241
249	Recorder's Transcript of Jury Trial – Day 17	11/22/21	46 47	11,273–11,500 11.501–11,593
253	Recorder's Transcript of Jury Trial – Day 18	11/23/21	47 48	11,633–11,750 11,751–11,907
254	Recorder's Transcript of Jury Trial – Day 19	11/24/21	48	11,908–11,956
163	Recorder's Transcript of Jury Trial – Day 2	10/26/21	26	6280–6485
256	Recorder's Transcript of Jury Trial – Day 20	11/29/21	48 49	12,000 12,001–12,034

Tab	Document	Date	Vol.	Pages
262	Recorder's Transcript of Jury Trial – Day 21	12/06/21	49	12,078–,12,135
266	Recorder's Transcript of Jury Trial – Day 22	12/07/21	49 50	12,153–12,250 12,251–12,293
165	Recorder's Transcript of Jury Trial – Day 3	10/27/21	27 28	6568–6750 6751–6774
166	Recorder's Transcript of Jury Trial – Day 4	10/28/21	28	6775–6991
196	Recorder's Transcript of Jury Trial – Day 5	11/01/21	30 31	7404–7500 7501–7605
197	Recorder's Transcript of Jury Trial – Day 6	11/02/21	31 32	7606–7750 7751–7777
201	Recorder's Transcript of Jury Trial – Day 7	11/03/21	32 33	7875–8000 8001–8091
210	Recorder's Transcript of Jury Trial – Day 8	11/08/21	34 35	8344–8500 8501–8514
212	Recorder's Transcript of Jury Trial – Day 9	11/09/21	35 36	8724–8750 8751–8932
27	Recorder's Transcript of Proceedings Re: Motions	04/03/20	4	909–918
76	Recorder's Transcript of Proceedings Re: Motions	01/21/21	15	3659–3692
80	Recorder's Transcript of Proceedings Re: Motions	02/22/21	16	3757–3769
81	Recorder's Transcript of Proceedings Re: Motions	02/25/21	16	3770–3823
93	Recorder's Transcript of Proceedings Re: Motions	04/09/21	16 17	3987–4000 4001–4058
103	Recorder's Transcript of Proceedings Re: Motions	05/28/21	17	4166–4172
43	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	07/09/20	7	1591–1605

Tab	Document	Date	Vol.	Pages
45	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	07/23/20	7	1628–1643
58	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	10/08/20	10	2363–2446
59	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	10/22/20	10	2447–2481
65	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	11/04/20	11 12	2745–2750 2751–2774
67	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/23/20	12	2786–2838
68	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/30/20	12	2839–2859
105	Recorder's Transcript of Proceedings Re: Motions Hearing	06/03/21	17	4185–4209
106	Recorder's Transcript of Proceedings Re: Motions Hearing	06/04/21	17	4210–4223
109	Recorder's Transcript of Proceedings Re: Motions Hearing	06/23/21	17 18	4240–4250 4251–4280
113	Recorder's Transcript of Proceedings Re: Motions Hearing	07/29/21	18	4341–4382
123	Recorder's Transcript of Proceedings Re: Motions Hearing	09/02/21	19	4610–4633
121	Recorder's Transcript of Proceedings Re: Motions Hearing (Unsealed Portion Only)	08/17/21	18 19	4498–4500 4501–4527
29	Recorder's Transcript of Proceedings Re: Pending Motions	05/14/20	4	949-972
51	Recorder's Transcript of Proceedings Re: Pending Motions	09/09/20	8	1933–1997
15	Rely in Support of Motion to Remand	06/28/19	2	276–308
124	Reply Brief on "Motion for Order to Show	09/08/21	19	4634–4666

Tab	Document	Date	Vol.	Pages
	Cause Why Plaintiffs Should Not Be Hold in Contempt and Sanctioned for Violating Protective Order"			
19	Reply in Support of Amended Motion to Remand	02/05/20	2 3	486–500 501–518
330	Reply in Support of Defendants' Motion for Remittitur and to Alter or Amend the Judgment	06/22/22	70	17,374–17,385
57	Reply in Support of Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures	10/07/20	10	2337–2362
331	Reply in Support of Defendants' Renewed Motion for Judgment as a Matter of Law	06/22/22	70	17,386–17,411
332	Reply in Support of Motion for New Trial	06/22/22	70	17,412–17,469
87	Reply in Support of Motion for Reconsideration of Order Denying Defendants' Motion to Compel Plaintiffs Responses to Defendants' First and Second Requests for Production	03/16/21	16	3895–3909
344	Reply in Support of Supplemental Attorney's Fees Request	08/22/22	72	17,935–17,940
229	Reply in Support of Trial Brief Regarding Evidence and Argument Relating to Out-Of-State Harms to Non-Parties	11/16/21	41	10,116–10,152
318	Reply on "Defendants' Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions" (*on Order Shortening Time*)	04/07/22	68	16,832–16,836
245	Response to Plaintiffs' Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/19/21	45 46	11,242–11,250 11,251–11,254

Tab	Document	Date	Vol.	Pages
230	Response to Plaintiffs' Trial Brief Regarding Specific Price Term	11/16/21	41	10,153–10,169
424	Response to Sur-Reply Arguments in Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment (Filed Under Seal)	10/21/21	109	26,931–26,952
148	Second Amended Complaint	10/07/21	21 22	5246–5250 5251–5264
458	Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	01/05/22	126 127	31,309–31,393 31,394–31,500
231	Special Verdict Form	11/16/21	41	10,169–10,197
257	Special Verdict Form	11/29/21	49	12,035–12,046
265	Special Verdict Form	12/07/21	49	12,150–12,152
6	Summons – Health Plan of Nevada, Inc.	04/30/19	1	29–31
9	Summons – Oxford Health Plans, Inc.	05/06/19	1	38–41
8	Summons – Sierra Health and Life Insurance Company, Inc.	04/30/19	1	35–37
7	Summons – Sierra Health-Care Options, Inc.	04/30/19	1	32–34
3	Summons - UMR, Inc. dba United Medical Resources	04/25/19	1	20–22
4	Summons – United Health Care Services Inc. dba UnitedHealthcare	04/25/19	1	23–25
5	Summons – United Healthcare Insurance Company	04/25/19	1	26–28
433	Supplement to Defendants' Motion to Seal Certain Confidential Trial Exhibits (Filed	12/08/21	110 111	27,383–27,393 27,394–27,400

Tab	Document	Date	Vol.	Pages
	Under Seal)			
170	Supplement to Defendants' Objection to Media Requests	10/31/21	29	7019–7039
439	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 1 of 18 (Filed Under Seal)	12/24/21	114	28,189–28,290
440	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 2 of 18 (Filed Under Seal)	12/24/21	114 115	28,291–28,393 28,394–28,484
441	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 3 of 18 (Filed Under Seal)	12/24/21	115 116	28,485–28,643 28,644–28,742
442	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 4 of 18 (Filed Under Seal)	12/24/21	116 117	28,743–28,893 28,894–28,938
443	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 5 of 18 (Filed Under Seal)	12/24/21	117	28,939–29,084
444	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 6 of 18 (Filed Under Seal)	12/24/21	117 118	29,085–29,143 29,144–29,219
445	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 7 of 18 (Filed Under Seal)	12/24/21	118	29,220–29,384
446	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 8 of 18 (Filed Under Seal)	12/24/21	118 119	29,385–29,393 29,394–29,527
447	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 9 of 18 (Filed Under Seal)	12/24/21	119 120	29,528–29,643 29,644–29,727
448	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial	12/24/21	120 121	29,728–29,893 29,894–29,907

Tab	Document	Date	Vol.	Pages
	Exhibits – Volume 10 of 18 (Filed Under Seal)			
449	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 11 of 18 (Filed Under Seal)	12/24/21	121	29,908–30,051
450	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 12 of 18 (Filed Under Seal)	12/24/21	121 122	30,052–30,143 30,144–30,297
451	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 13 of 18 (Filed Under Seal)	12/24/21	122 123	30,298–30,393 30,394–30,516
452	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 14 of 18 (Filed Under Seal)	12/24/21	123 124	30,517–30,643 30,644–30,677
453	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 15 of 18 (Filed Under Seal)	12/24/21	124	30,678–30,835
454	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 16 of 18 (Filed Under Seal)	12/24/21	124 125	30,836–30,893 30,894–30,952
455	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 17 of 18 (Filed Under Seal)	12/24/21	125	30,953–31,122
456	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 18 of 18 (Filed Under	12/24/21	125 126	30,123–31,143 31,144–31,258

Tab	Document	Date	Vol.	Pages
	Seal)			
466	Transcript of Proceedings re Hearing Regarding Unsealing Record (Filed Under Seal)	10/05/22	129	31,923–31,943
350	Transcript of Proceedings re Status Check	10/10/22	72 73	17,994–18,000 18,001–18,004
467	Transcript of Proceedings re Status Check (Filed Under Seal)	10/06/22	129	31,944–31,953
157	Transcript of Proceedings Re: Motions	10/19/21	22 23	5339–5500 5501–5561
160	Transcript of Proceedings Re: Motions	10/22/21	24 25	5908–6000 6001–6115
459	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/12/22	127	31,501–31,596
460	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/20/22	127 128	31,597–31,643 31,644–31,650
461	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/27/22	128	31,651–31,661
146	Transcript of Proceedings Re: Motions (Via Blue Jeans)	10/06/21	21	5202–5234
290	Transcript of Proceedings Re: Motions Hearing	02/17/22	53	13,098–13,160
319	Transcript of Proceedings Re: Motions Hearing	04/07/22	68	16,837–16,855
323	Transcript of Proceedings Re: Motions Hearing	04/21/22	69	17,102–17,113
336	Transcript of Proceedings Re: Motions Hearing	06/29/22	71	17,610–17,681
463	Transcript of Proceedings Re: Motions Hearing (Filed Under Seal)	02/10/22	128	31,673–31,793

Tab	Document	Date	Vol.	Pages
464	Transcript of Proceedings Re: Motions Hearing (Filed Under Seal)	02/16/22	128	31,794–31,887
38	Transcript of Proceedings, All Pending Motions	06/05/20	6	1350–1384
39	Transcript of Proceedings, All Pending Motions	06/09/20	6	1385–1471
46	Transcript of Proceedings, Plaintiff's Motion to Compel Defendants' Production of Unredacted MultiPlan, Inc. Agreement	07/29/20	7	1644–1663
482	Transcript of Status Check (Filed Under Seal)	10/10/22	142	35,248–35,258
492	Transcript Re: Proposed Jury Instructions	11/21/21	146	36,086–36,250
425	Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties (Filed Under Seal)	10/31/21	109	26,953–26,964
232	Trial Brief Regarding Jury Instructions on Formation of an Implied-In-Fact Contract	11/16/21	41	10,198–10,231
233	Trial Brief Regarding Jury Instructions on Unjust Enrichment	11/16/21	41	10,232–10,248
484	Trial Exhibit D5499 (Filed Under Seal)		142 143	35,264–35,393 35,394–35,445
362	Trial Exhibit D5502		76 77	18,856–19,000 19,001–19,143
485	Trial Exhibit D5506 (Filed Under Seal)		143	35,446
372	United's Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time (Filed Under Seal)	06/24/21	82	20,266–20,290
112	United's Reply in Support of Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified	07/12/21	18	4326–4340

Tab	Document	Date	Vol.	Pages
	on Order Shortening Time			
258	Verdict(s) Submitted to Jury but Returned Unsigned	11/29/21	49	12,047–12,048

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.

Electronic notification will be sent to the following:

Pat Lundvall
Kristen T. Gallagher
Amanda M. Perach
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

Attorneys for Respondents (case no. 85525)/Real Parties in Interest (case no. 85656)

Richard I. Dreitzer
FENNEMORE CRAIG, PC
9275 W. Russell Road, Suite 240
Las Vegas, Nevada 89148

Attorneys for Real Parties in Interest (case no. 85656)

Dennis L. Kennedy
Sarah E. Harmon
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148

Attorneys for Respondents (case no. 85525)

Constance. L. Akridge
Sydney R. Gambee
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Amicus Curiae (case no. 85656)

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

The Honorable Nancy L. Allf
DISTRICT COURT JUDGE – DEPT. 27
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent (case no. 85656)

Joseph Y. Ahmad
John Zavitsanos
Jason S. McManis
Michael Killingsworth
Louis Liao
Jane L. Robinson
Patrick K. Leyendecker
AHMAD, ZAVITSANOS, & MENSING, PLLC
1221 McKinney Street, Suite 2500
Houston, Texas 77010

Justin C. Fineberg
Martin B. Goldberg
Rachel H. LeBlanc
Jonathan E. Feuer
Jonathan E. Siegelaub
David R. Ruffner
Emily L. Pincow
Ashley Singrossi
LASH & GOLDBERG LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331

Attorneys for Respondents (case no. 85525)/Real Parties in Interest (case no. 85656)

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

McDONALD CARANO

Associate

Tara Teegarden

tteegarden@mcdonaldcarano.com

Direct: **702.873.4100** | Fax **702.257.4571**

Professional Background

Tara Teegarden is an attorney in the Commercial & Complex Litigation Practice Group at McDonald Carano. She has experience working on matters in both state and federal courts, including employment, environmental, civil rights, first-party bad faith, and tax law, representing local, state and national corporate entities in the real estate, healthcare, finance, energy, retail and manufacturing sectors.

Ms. Teegarden has assisted with various stages of the litigation process, such as providing initial evaluation of allegations, conducting legal research, and drafting pleadings, substantive and dispositive motions, discovery requests, discovery responses, and settlement agreements. She has also taken depositions and prepared witnesses.

Her employment litigation experience includes discrimination, harassment and retaliation under Title VII, as well as other federal and state labor and employment law statutes. Ms. Teegarden has worked closely with state and local agencies to ensure compliance with federal and state labor laws, and she also has experience drafting Ninth Circuit briefs in the employment law cases. Her environmental law experience includes environmental compliance and permitting matters, environmental due diligence, water law, and public land law. Ms. Teegarden has represented clients in environmental litigation involving state and federal enforcement actions.

During law school, Ms. Teegarden served as an Environmental Legal Intern for the Orange County Coastkeeper and an Advanced Law Student for the Environmental Law Clinic of the University of California, Irvine. One of her projects involved analyzing Federal Endangered Species Act expenditure reports in collaboration with the Defenders of Wildlife. She also authored an amicus brief for the California Court of Appeals that analyzed the Clean Water Act's anti-backsliding and the federal anti-degradation regulation.

Ms. Teegarden earned a J.D. from the University of California, Irvine School of Law, a Master of Science in Environmental Studies from California State University, Fullerton, and a Bachelor of Arts in Philosophy from the University of California, Los Angeles. During law school, she served on the Executive Board and as the Senior Notes and Comments Editor for the UC Irvine Law Review. She also served as Editor of the UC Irvine Journal of International, Transactional, and Comparative Law.

After completing her J.D. at the University of California, Irvine, Ms. Teegarden moved to Las Vegas and joined the litigation department of a national law firm. She is admitted to practice in Nevada state and federal courts.

Areas of Practice

Commercial & Complex Litigation

Energy, Environment & Natural Resources Law

Employment & Labor Law

Bar Admissions

Nevada

Education

J.D., University of California, Irvine School of Law, 2019

M.S. Environmental Studies, California State University, Fullerton, 2014

B.A. Philosophy, University of California, Los Angeles, 2012

016251

016251

Offices

LAS VEGAS
2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102
P: 702.873.4100 F: 702.873.9966

RENO
100 West Liberty Street, Tenth Floor
Reno, NV 89501
P: 775.788.2000 F: 775.788.2020

mcdonaldcarano.com

(continued)

Representative Engagement

- Defense of a company against allegations of breach of contract and bad faith, obtained favorable settlement
- Conducted independent investigation of harassment and discrimination claims
- Defense of a state agency in the civil rights context, culminated in dismissal

Professional Affiliations

- Editor, Communiqué, Clark County Bar Association magazine (2022)
- Member, Publications Committee, Clark County Bar Association (2021-current)
- Member, New Lawyers Committee, Clark County Bar Association (2021-current)
- Member, Southern Nevada Association of Women Attorneys

Community Engagement

Ms. Teegarden served as a Law Clerk for the Children's Law Center of California in Los Angeles. She conducted witness interviews, trial preparation, research and preparation of motions, custody orders, action reports, and subpoenas. She also monitored the enforcement of court orders.

Publications

"Assessing State Laws and Resources for Endangered Species Protection," Environmental Law Reporter, Environmental Law Institute, Washington, DC., 2017

Awards and Recognition

- Faculty Award, Law of Evidence, UC Irvine School of Law
- Faculty Award, Equity Litigation, UC Irvine School of Law
- Deans Award, Law and Behavior, UC Irvine School of Law
- Pro Bono120 Hour Award, UC Irvine School of Law
- Top 16, UC Irvine Law Moot Court, UC Irvine School of Law
- Class of 2014 Commencement Speaker, Environmental Studies Department, California State University, Fullerton (Master of Science program)
- Donald Kalish Prize, University of California, Los Angeles (Bachelor of Arts program)

016252

016252

Offices

LAS VEGAS
2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102
P: 702.873.4100 F: 702.873.9966

RENO
100 West Liberty Street, Tenth Floor
Reno, NV 89501
P: 775.788.2000 F: 775.788.2020

mcdonaldcarano.com

016252

McDONALD CARANO

Attorney

Julia Armendariz

jarmendariz@mcdonaldcarano.com
Direct: 702.257.4553 | Office: 702.873.4100

Professional Background

Julia Armendariz is an attorney in the Commercial & Complex Litigation Practice Group and Appellate Practice Group.

Mrs. Armendariz assists in all stages of the litigation process, including drafting motions, briefs, legal memorandums, demand letters, subpoenas, and discovery responses. She assists with litigation in state and federal court, at the appellate and Supreme Court levels, as well as before state and federal administrative agencies.

During law school, Mrs. Armendariz served as a judicial extern to the Honorable Chief Justice Kristina Pickering of the Nevada Supreme Court and as a judicial intern to the Honorable Eric Johnson of the Eighth Judicial District Court in Las Vegas. Mrs. Armendariz earned her J.D. from the William S. Boyd School of Law in 2021 where she graduated cum laude, received a CALI Excellence for the Future Award in Secured Transactions and was a Dean's Scholarship recipient.

016253

Professional Affiliations

- Member, Clark County Bar Association
- Member, Southern Nevada Association of Women Attorneys

Community Engagement

- Youth with a Mission, Uganda

Areas of Practice

Appellate

Commercial & Complex Litigation

Bar Admissions

Nevada

Court Admissions

Nevada

Education

J.D., William S. Boyd School of Law, 2021, cum laude (activities:NevadaLawJournal, Society of Advocates Mock Trial Team, Organization of Women Law Students, Graduate Student Law School Representative)

B.A., Political Science, University of Nevada, 2018, cum laude (Deans List 2014-2018, Mock Trial Team)

016253

Offices

LAS VEGAS
2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102
P: 702.873.4100 F: 702.873.9966

RENO
100 West Liberty Street, Tenth Floor
Reno, NV 89501
P: 775.788.2000 F: 775.788.2020

mcdonaldcarano.com

016253

016254

Karen Surowiec

PARALEGAL

ksurowiec@mcdonaldcarano.com
Direct 702.257.4524
Office 702.873.4100
V-Card

Education

- C.P., National Association of Legal Assistants (NALA)

Professional Background

Karen Surowiec is a paralegal in the Commercial & Complex Litigation Group of McDonald Carano. She assists in the preparation of motion papers and all supporting documents, and all written discovery requests and responses, as well as full preparation of electronic document productions from initial import, organization and review of client files through all processing and final production. Additionally, Karen supports the Gaming & Administrative, Construction Law, Real Estate & Land Use Planning and Employment & Labor Law Groups.

016254
016254
831
016254

016255

Brian Grubb

PARALEGAL

bgrubb@mcdonaldcarano.com
Direct 702.257.4564
Office 702.873.4100
V-Card

Designations & Certifications

- Paralegal Certificate, University of Nevada, Las Vegas

Professional Background

Brian Grubb is a paralegal in the Commercial & Complex Litigation Group of McDonald Carano. He assists in the preparation of motion papers and all supporting documents, and all written discovery requests and responses, as well as full preparation of electronic document productions from initial import, organization and review of client files through all processing and final production. Additionally, Brian supports the Real Estate, Construction Law and Employment & Labor Law Groups.

016255
016255
832
016255

EXHIBIT 7

Lash&GoldbergLLP

ALAN D. LASH

Phone: 305-347-4040
Fax: 305-347-4050
E-Mail: alash@lashgoldberg.com
Office Location: Miami

Overview

As a founding partner of Lash & Goldberg LLP, Alan Lash brings more than 30 years of complex business litigation experience to the Firm. He serves regional and national clients in a variety of industries including health care, real estate, finance, aerospace and retail. A seasoned litigator, Alan has litigated and arbitrated cases throughout the state of Florida and the United States. He has appeared in court and arbitration proceedings in California, Florida, Georgia, Illinois, New Jersey, North Carolina, South Carolina and Tennessee.

016257

016257

Alan has prosecuted and defended numerous high-profile cases, and has obtained several multimillion dollar arbitration awards, judgments and settlements in high stakes business disputes throughout the United States. He handles an array of complex cases involving diverse and complex subject matters, ranging from the defense of claims asserting violation of federal consumer protection statutes such as the Fair Debt Collection Practices Act and the Telephone Consumer Protection Act, to the prosecution and defense of shareholder disputes and derivative actions. Alan has defended numerous class actions, as well as securities, antitrust and False Claims Act cases, and has extensive experience litigating and arbitrating large managed care and third-party payer disputes.

Chambers USA 2021 and *Chambers USA* 2020 ranked the firm and Alan individually for healthcare in Florida, with clients reporting him to be an "excellent trial lawyer," "absolutely extraordinary and unparalleled in his ability in dealing with payor issues" and lauding the firm as "my go-to firm" with a team of lawyers that are "responsive, strategically excellent [and] always know the substance very well." *The National Law Journal* named Alan a 2020 "Elite Boutique Trailblazer." The Trailblazer honor spotlights "a handful of individuals that are truly agents of change." In addition, Alan is

016257

consistently recognized by *Best Lawyers in America* and Martindale-Hubbell's *Bar Register of Preeminent Lawyers* for both commercial litigation and health law. *Best Lawyers* recognized him as 2019 "Lawyer of the Year" for his work in Health Care Law in Miami, an honor awarded to only a single lawyer in a specific practice area and location. In 2012, Alan was selected as "The Most Effective Lawyer" in the arbitration category by the *Miami Daily Business Review/American Law Media.*

Alan additionally serves as an arbitrator for the American Arbitration Association (AAA) and the American Health Lawyers' Association (AHLA), and is selected by peers and industry leaders to arbitrate their complex business disputes. Certified by the Florida Bar as a specialist in health law, Alan serves as the Vice Chair for Educational Programs for the AHLA's Alternative Dispute Resolution Affinity Group, and is an inaugural member of the AAA's National Healthcare Dispute Resolution Advisory Council. He is a frequent guest lecturer, and has authored numerous articles in national publications addressing emerging and complex business litigation issues. Alan participates in various volunteer organizations and pro bono activities, and is a Fellow of The Florida Bar Foundation.

016258

Principal Practice Areas:

- Alternative Dispute Resolution
- Class Action Litigation
- Complex Commercial Litigation
- Consumer Litigation Defense
- Corporate, Partnership & Shareholder Disputes
- Employment Litigation
- Health Care Litigation
- Health Care Operations
- Real Estate Litigation

016258

Education:

- University of Miami School of Law
  - Juris Doctor
- Dickinson College
  - Bachelor of Arts

Admissions:

- Florida

016258

- United States District Court for the Southern District of Florida
- United States District Court for the Middle District of Florida
- United States District Court for the Northern District of Florida
- United States Court of Appeals for the Eleventh Circuit

Honors / Accreditations:

- Ranked by *Chambers USA* 2021 for healthcare in Florida
- Ranked by *Chambers USA* 2020 for healthcare in Florida
- Named a 2020 "Elite Boutique Trailblazer" by *The National Law Journal*
- Selected by his peers and named *Best Lawyers* 2019 "Lawyer of the Year" for his work in Health Care Law in Miami, an honor awarded to only a single lawyer in a specific practice area and location
- Named one of South Florida's "Most Effective Lawyers" in 2012 by the *Daily Business Review/American Law Media*
- Recognized nationally by his peers for current inclusion in *The Best Lawyers In America®* in two different categories: Commercial Litigation and Health Care Law
- Repeatedly recognized as one of the "Top Lawyers in South Florida," by *the South Florida Legal Guide*
- The law firm he co-founded has been named one of the country's "Best Law Firms" as reported in *U.S. News & World Report* in 2013
- Listed in Martindale-Hubbell Law Directory's *Bar Register of Preeminent Lawyers*
- Included in *Florida Trend's* "Legal Elite", *Florida SuperLawyers*, and "South Florida's Top Lawyers" in *Florida Monthly*
- Member of the Million Dollar Advocates Forum, a prestigious group of trial lawyers who have won multi-million dollar verdicts and settlements
- Inaugural Member of the American Arbitration Association's National Health Care Dispute Resolution Advisory Council
- Vice Chair for Educational Programs for the American Health Lawyers' Association's Alternative Dispute Resolution Affinity Group
- Florida Bar Certified Specialist in Health Law
- Fellow, The Florida Bar Foundation

Illustrative Recent Representations:

Among other notable cases, Alan has recently:

- Defended a national corporate employer in a physician's multimillion dollar wrongful termination arbitration that was tried through final hearing, resulting in a complete defense award

016259
016259

016259

- Obtained a final summary judgment on behalf of a national, publicly-traded retailer in a multimillion dollar state court breach of contract action against a commercial landlord regarding disputed contract language and lease charges
- Defended a not-for-profit hospital corporation in a federal court qui tam action brought by a former employee alleging false Medicare billings, resulting in a complete vindication and dismissal of all claims
- Obtained an 8 million dollar final arbitration award for a non-profit hospital against an affiliate of a multinational pharmaceutical conglomerate, and defeated the affiliate's 43 million dollar counterclaim, all of which was confirmed by a federal district court
- Defended a publicly-traded Fortune 500 company in a 20 million dollar breach of contract and partnership dispute that was tried to conclusion in arbitration before a former Chief Justice of the Florida Supreme Court
- Defended a non-profit corporation before a panel of three arbitrators in a "bet-the-company," 40 million dollar vendor contract dispute
- Obtained a multi-million dollar award against a national preferred provider organization on behalf of a multihospital health system following a two-week arbitration before a panel of three arbitrators
- Obtained a multimillion dollar award against a national health maintenance organization on behalf of a multihospital health system following a protracted arbitration, which was confirmed by a state trial court

016260
016260

016260

Lash&GoldbergLLP

ADAM J. STOLZ

Phone: 305-347-4040
Fax: 305-347-4050
E-Mail: astolz@lashgoldberg.com
Office Location: Miami

Overview

Adam Stolz is an associate in Lash & Goldberg LLP's Miami office. His practice focuses on complex business litigation and health care litigation. Prior to joining the firm, Adam served as a judicial law clerk to the Honorable Paul C. Huck in the United States District Court for the Southern District of Florida. During his clerkship, Adam addressed complex issues in civil and criminal matters through trial and worked on appeals before the Ninth and Eleventh Circuit Courts of Appeals. Prior to his clerkship, Adam worked on high-stakes class action and sophisticated civil matters at a boutique litigation firm.

016261

016261

Adam is a graduate of the University of Miami School of Law, *magna cum laude*, where he served as Managing Editor of the *University of Miami Law Review* and as a member of the Moot Court Board. While in law school, Adam served as a judicial intern for the Honorable Jose Martinez, United States District Court Judge for the Southern District of Florida. He received his Bachelor of Arts in Political Science from Union College.

Principal Practice Areas:

- Appellate Advocacy
- Arbitration and Alternative Dispute Resolution
- Class Action Litigation
- Complex Business Litigation
- Employment Litigation
- Government Investigations, False Claims Act and White-Collar Criminal Defense
- Health Care Litigation
- Health Care Operations

016261

Education

- University of Miami School of Law
  - Juris Doctor, *Magna Cum Laude*
  - Managing Editor, *University of Miami Law Review*
  - Member, *Charles C. Papy, Jr. Moot Court Board*
  - *Order of Barristers*
- Union College
  - Bachelor of Arts in Political Science
  - Presidential Scholarship

Admissions

- Florida
- U.S. District Court for the Southern District of Florida

Honors / Accreditations:

- Managing Editor, *University of Miami Law Review*
- Member, *Charles C. Papy, Jr. Moot Court Board*
  - 1st Place – 2018 Cristol, Kahn, Paskay Cup
  - 2nd Place and Outstanding Brief Award – 2017 Duberstein National Bankruptcy Competition
- *Order of Barristers*
- CALI Excellence for the Future Book Awards
  - Special Topics in Federal Courts (Professor - Hon. Adalberto Jordan)
  - Criminal Procedure
  - Duberstein Bankruptcy Moot Court Competition
  - Legal Communication & Research Skills I
- Honors, Litigation Skills Program (Pre-Trial & Trial)
- Supervising Writing Dean's Fellow (2016–18)
- Criminal Procedure Dean's Fellow (2017–18)
- Union College 2015 Frederick B. Hawley Jr. Memorial Award

016262
016262

016262

Lash&GoldbergLLP

ASHLEY SINGROSSI

Phone: 305-347-4040
Fax: 305-347-4050
E-Mail: asingrossi@lashgoldberg.com
Office Location: Miami

Overview

Ashley Singrossi is an associate in Lash & Goldberg LLP's Miami office. Her practice focuses primarily on appellate advocacy, complex business litigation, health care litigation, class actions, and white collar matters. Prior to joining the firm, Ashley was an associate at a boutique appellate law firm in Miami. There, she handled civil appeals in federal and state courts.

016263

Ashley received her law degree from University of Miami School of Law, *cum laude*, where she served as an editor on the *University of Miami Business Law Review* and her student note was selected for publication. While in law school Ashley also competed in national moot court competitions in Delaware and Washington D.C. for the *Charles C. Papy, Jr. Moot Court Board*, in which her team finished as Finalists and received a Best Brief Recognition award. Additionally, Ashley served as a judicial intern for The Honorable Alicia O. Valle in the Southern District of Florida and as a Certified Legal Intern for both the Miami-Dade State Attorney's Office and the University of Miami Children and Youth Law Clinic. She received her undergraduate degree in Media/Communications Studies, *cum laude*, from Florida State University.

016263

Principal Practice Areas:

- Appellate Advocacy
- Arbitration & Alternative Dispute Resolution
- Class Action Litigation
- Complex Business Litigation
- Employment Litigation
- Government Investigations & White-Collar Criminal Defense
- Health Care Litigation

016263

Education:

- University of Miami School of Law, J.D.
  - *Cum Laude*
  - Member, *Charles C. Papy, Jr. Moot Court Board*
  - Student Editor, *Business Law Review*
- Florida State University, B.S., Media/Communications Studies
  - *Cum Laude*
  - Minor in Law & Society

Admissions:

- Florida
- U.S. District Court for the Southern District of Florida
- U.S. Court of Appeals for the Eleventh Circuit

Honors / Accreditations:

- Published in Volume 26, Issue 3, *University of Miami Business Law Review*
- Finalist, *John T. Gaubatz Moot Court Competition*
- Competitor, *Ruby Vale Corporate Law Moot Court Competition*
- Finalist and Best Brief Award, *Weschler First Amendment Law Moot Court Competition*

016264

016264

016264

Lash&GoldbergLLP

BENJAMIN SHIEKMAN

Phone: 305-347-4040
Fax: 305-347-4050
E-Mail: bshiekman@lashgoldberg.com
Office Location: Miami

Overview

Benjamin Shiekman is a senior associate in Lash & Goldberg LLP's Miami office. His practice focuses primarily on complex business litigation, health care litigation, class actions, and white-collar criminal defense. Benjamin is an experienced litigator, having handled complex commercial, healthcare, and securities disputes in federal and state courts, as well as arbitration, representing several Fortune 500 companies. Benjamin has also handled large-scale regulatory investigations and white-collar criminal matters.

016265

016265

Benjamin received his law degree *magna cum laude* from the University of Florida Levin College of Law, where he was Executive Research Editor and Policy Chair of the Journal of Law and Public Policy and a member of the Order of the Coif. During law school, Ben was also an extern for the Honorable Susan H. Black at the U.S. Court of Appeals for the Eleventh Circuit. He also was a certified legal intern, representing underprivileged youth in juvenile delinquency and dependency matters. He received his undergraduate degree from Florida State University, graduating *cum laude*.

Principal Practice Areas:

- Alternative Dispute Resolution
- Class Action Litigation
- Complex Commercial Litigation
- Employment Litigation
- Government Investigations, False Claims Act and White-Collar Criminal Defense
- Health Care Litigation

016265

Education:

- University of Florida Levin College of Law, J.D., *magna cum laude*
  - *Journal of Law and Public Policy*: Executive Research Editor and Policy Chair
- Florida State University, B.S., Communication, *cum laude*

Admissions:

- Florida
- U.S. District Court for the Southern District of Florida

Honors / Accreditations:

- University of Florida Levin College of Law, *Journal of Law and Public Policy*: Executive Research Editor and Policy Chair and *Spring 2014 Note Winner* – (1st of 27 submitted)
- Book Awards: Trial Practice; Interviewing, Counseling, and Negotiation

016266

Select Publications:

- Note, *The Current Usage and Enforceability of Arbitration Clauses in*
  - *Bankruptcy Court Post-Stern: Have No Fear*, 25 U. FLA. J.L. & PUB. POL'Y 165 (2014).
- *Analysis of* Application of Consorcio Ecuatoriano de Telecomunicaciones
  - S.A. v. JAS Forwarding (USA), Inc., ILS GAZETTE (Feb. 7, 2014).

016266

016266

Lash&GoldbergLLP

DAVID R. RUFFNER

Phone: 305-347-4040
Fax: 305-347-4050
E-Mail: druffner@lashgoldberg.com
Office Location: Miami

Overview

David R. Ruffner's practice includes complex commercial and health care litigation with a concentration in employment law. David joined the Firm following his graduation from the University of Miami School of Law and works in Lash & Goldberg LLP's Miami office.

David has assisted in the defense of numerous contested matters in the employment space both in arbitration and in court, including disability, discrimination and wrongful termination cases. He also represents employers in the prosecution and defense of matters involving restrictive covenants, non-competition clauses, trade secrets, and confidentiality agreements. In addition to his employment practice, David advises and represents clients in international business disputes, insolvency, receivership and bankruptcy proceedings, and complex insurance matters.

Prior to joining Lash & Goldberg LLP, David served as a certified legal intern with the Florida Attorney General's Office, Criminal Appeals Division, in Miami-Dade County, where he argued several cases before the Third District Court of Appeal. While in law school, David was an active member of the Moot Court Board, where he competed in numerous interschool and intra-school competitions before state and federal judges. David was selected for membership in the Order of Barristers, a national honorary organization that recognizes law students who have excelled in moot court and mock trial activities.

016267

016267

Principal Practice Areas:

- Alternative Dispute Resolution
- Complex Commercial Litigation

016267

- Employment Litigation
- Health Care Operations
- Health Care Litigation
- Real Estate Litigation

Education:

- University of Miami School of Law
  - Juris Doctor
- University of Massachusetts Boston
  - Bachelor of Arts in Psychology
  - Graduated Summa Cum Laude

Admissions:

- Florida
- U.S. District Court for the Southern, Middle and Northern Districts of Florida
- U.S. Bankruptcy Court, Southern District of Florida
- United States Court of Appeals for the Eleventh Circuit
- U.S. Bankruptcy Court, Middle District of Florida

016268

Professional Affiliations:

- American Bar Association
- Florida Bar, Trial Lawyers and Labor and Employment sections
- Dade County Bar Association
- Order of the Barristers
- American Health Lawyers Association, Member

016268

016268

Lash&GoldbergLLP

EMILY L. PINCOW

Phone: 305-347-4040
Fax: 305-347-4050
E-Mail: epincow@lashgoldberg.com
Office Location: Fort Lauderdale

Overview

Emily L. Pincow is a partner in Lash & Goldberg LLP's Fort Lauderdale office. Prior to joining the Firm, Emily practiced in the New York and Miami offices of Weil, Gotshal & Manges LLP.

Emily has handled complex commercial litigation matters throughout the United States. She has defended large domestic and international corporations in high-stakes actions in federal and state courts at the trial and appellate court levels. Emily focuses primarily on the defense of class actions and multi-district litigations.

Emily has extensive trial experience, having assumed a principal role on multiple trial teams. Her trial experience includes obtaining three consecutive complete defense jury verdicts for a pharmaceutical conglomerate. She has litigated cases in a variety of industries involving claims under the False Claims Act, violations of consumer protection laws, and product defects and warranty claims.

Emily serves as a Chair of the American Bar Association's Mass Torts Litigation Subcommittee on MDL & Class Procedures. She is also a frequent author whose articles on complex litigation issues have appeared nationally in an array of industry publications.

Emily received her law degree, *magna cum laude*, from New York Law School, where she served as the Associate Editor of the *Law Review*. She received her undergraduate Bachelor of Science degree in psychology from Lehigh University.

016269

016269

016269

Principal Practice Areas:

- Alternative Dispute Resolution
- Class Action Litigation
- Complex Commercial Litigation
- Employment Litigation
- Government Investigations, False Claims Act and White-Collar Criminal Defense
- Health Care Litigation

Education:

- New York Law School, J.D., *magna cum laude*
  - *New York Law School Law Review*, *Associate Editor*
  - C.V. Starr Scholar
- Lehigh University, B.S., Psychology

Admissions:

016270

- Florida
- New York
- New Jersey
- U.S. District Court for the Southern District of Florida
- U.S. District Court for the Southern District of New York

016270

Honors / Accreditations:

- *New York Law School Law Review*, Associate Editor
- C.V. Starr Scholar
- New York Law School Rank 11/369
- The Legal Aid Society Pro Bono Publico Award
- New York State Bar Association, 2012 President's Pro Bono Service Award

Representative Cases:

- Member of trial team that secured three consecutive complete defense verdicts in mass tort talc litigation.
- Senior associate on trial team in a contract dispute over return provisions of a multi-million dollar lease for crude-oil railcars.

016270

- Associate on team representing global corporate client in consumer fraud cases defeating certification of nationwide and Florida state putative classes.
- Member of trial team representing corporate client against suit brought by the U.S. Department of Justice under the False Claims Act.
- Senior associate on team securing a complete dismissal on behalf of pharmaceutical company against consumer class action related to epinephrine injection recall.
- Associate on team representing foreign government for alleged human rights and property violations, including appeals to the Seventh and D.C. Circuits.
- Associate on trial team defending pharmaceutical entity in connection with Risperdal.

Select Publications:

- *Third Circuit Court's Highlighted Continued Hurdles with Ascertainability and Predominance in Consumer Class Actions*, ABA Newsletter (2018).
- *9th Circuit Endangers Mass Action Removal Under CAFA*, Law360 (2017).
- *Understanding the Latest Trends for Ascertainability and Predominance in Class Certification*, ABA Practice Point (2016).
- *A Case Study on How to Decertify Common Defect Classes*, Law360 (2015).
- *Prosecution of Off-Label Speech in a Post-Caronia World*, Law360 (2015).

016271
016271

016271

Lash&GoldbergLLP

ERIN R. GRIEBEL

Phone: 305-347-4040
Fax: 305-347-4050
E-Mail: egriebel@lashgoldberg.com
Office Location: Miami

Overview

Erin Griebel is a senior associate in Lash & Goldberg LLP's Miami office. Her practice focuses on complex business and health care litigation and appeals. Before joining the firm, Erin practiced in Missouri and Illinois, where she argued before the Missouri Supreme Court, intermediate state appellate courts, and the Seventh and Eighth Circuit Courts of Appeal.

016272

Erin is a graduate of Washington University in St. Louis School of Law, where she received the International Academy of Trial Lawyers Award and was a member of the Phillip C. Jessup International Law Moot Court Team. During law school, Erin interned with the Honorable William D. Stiehl, United States District Court Judge for the Southern District of Illinois.

Erin obtained a master's degree from Washington University Brown School of Social Work, where she was awarded a Richard Clarke Cabot Scholarship. She received her undergraduate degree from Southern Illinois University, where she was a Chancellor's Scholar and Dean's Scholar.

016272

Principal Practice Areas:

- Appellate Advocacy
- Arbitration and Alternative Dispute Resolution
- Class Action Litigation
- Complex Business Litigation
- Employment Litigation
- Government Investigations, False Claims Act and White-Collar Criminal Defense
- Health Care Litigation
- Health Care Operations

016272

Education:

Washington University in St. Louis School of Law, J.D.

- International Rounds Top 10 Oralist Award
- International Academy of Trial Lawyers Award

Washington University in St. Louis Brown School of Social Work, M.S.W.

- Richard Clarke Cabot Scholarship

Southern Illinois University – Edwardsville, B.A.

- Chancellor's Scholar
- Dean's Scholar

Admissions:

- Florida
- Illinois
- Missouri

016273

Honors/Accreditations:

- Served as Adjunct Faculty and Coach – International Law Program, Washington University in St. Louis School of Law
- Philip C. Jessup International Law Moot Court Team
- International Rounds Top 10 Oralist Award
- International Academy of Trial Lawyers Award
- United States District Court for the Southern District of Illinois, Judicial Intern for Honorable William D. Stiehl
- Washington University Brown School of Social Work, Richard Clarke Cabot Scholar
- Southern Illinois University, Chancellor's Scholar
- Southern Illinois University, Dean's Scholar.

016273

016273

Lash&GoldbergLLP

JUSTIN C. FINEBERG

Phone: 305-347-4040
Fax: 305-347-4050
E-Mail: jfineberg@lashgoldberg.com
Office Location: Fort Lauderdale

Overview

Justin C. Fineberg is a partner at Lash & Goldberg LLP, and is a resident in the Firm's Broward County office. Justin's practice includes complex commercial litigation, health care litigation and employment litigation, as well as select commercial transactions. Justin is the recipient of the Martindale-Hubbell Law Directory's highest "AV" rating for legal skills and professional ethics. In addition, *Chambers USA* 2021 ranked Justin in health care in Florida, with a client reporting, "He has an extraordinary understanding of cases and is a very effective litigator."

016274

016274

Justin has nearly 25 years of experience litigating complex commercial disputes. He has served as co-lead counsel in numerous cases which have proceeded to verdict, obtained several multi-million dollar judgments and awards, and defended various business interests against multi-million dollar claims. Justin has litigated and arbitrated cases throughout the state of Florida and the United States, including in Georgia, Illinois and North Carolina. As one example, Justin served as lead counsel in an arbitration proceeding in South Carolina that resulted in a substantial award for the Firm's clients.

Justin's law career started with a two-year clerkship for Justice Charles T. Wells of the Florida Supreme Court. His extensive experience includes litigating complex commercial matters in contract, tort and under state and federal statutes. Justin also litigates high profile employment disputes, successfully defending corporate clients against wrongful termination, discrimination, retaliatory discharge and whistleblower claims.

Justin also represents public and private corporations and individuals in commercial transactions. He has represented clients in multi-million dollar transactions and regularly counsels clients on various corporate and

016274

strategic issues. Justin's practice includes representing educational institutions and, in particular, companies focused on the development and delivery of online education.

Justin authored several articles published in a practice-group journal of the Florida Bar, in a practice-group journal of the American Bar Association, and the University of Florida Law Review. He is a member of the American Bar Association, the Florida Bar, and is an active member of the American Health Lawyers Association. He participates in various volunteer organizations and pro bono activities.

Principal Practice Areas:

- Alternative Dispute Resolution
- Complex Commercial Litigation
- Corporate, Partnership & Shareholder Disputes
- Employment Litigation
- Health Care Litigation
- Real Estate Litigation

016275

Education:

- University of Florida
  - Juris Doctor with honors
- University of Pennsylvania
  - Bachelor of Arts

Admissions:

- Florida
- U.S. Court of Appeals, Eleventh Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. District Court, Southern District of Florida
- U.S. District Court, Middle District of Florida

Honors / Accreditations:

- Ranked by *Chambers USA* 2021 for healthcare in Florida
- AV Rating from Martindale-Hubbell
- Fellow, Litigation Counsel of America

016275

016275

- Order of the Coif
- Senior Articles Editor, Florida Law Review
- Senior Law Clerk, Justice Charles T. Wells, Florida Supreme Court

Illustrative Recent Representations:

Among other notable cases, Justin has recently:

- Participated in the prosecution and defense of claims for a not-for-profit corporation in an arbitration conducted by a former Florida appellate court judge, resulting in a multi-million dollar award for the client
- Participated in the defense of a publicly-traded Fortune 500 company in a 20 million dollar breach of contract and partnership dispute that was tried to conclusion before the former Chief Justice of the Florida Supreme Court
- Participated in the defense of a not-for-profit corporation before a panel of three arbitrators in a "bet-the-company," 40 million dollar vendor contract dispute
- Participated in the prosecution of a multi-million dollar claim against a national preferred provider organization on behalf of a multihospital health system following a two-week arbitration before a panel of three arbitrators
- Participated in the defense of a not-for-profit hospital corporation in a qui tam action brought by a former employee
- Participated in the defense of an employer in a wrongful termination arbitration that was tried through Final Hearing resulting in a complete defense award
- Participated in the defense of an employer in an employment discrimination arbitration that was tried through final hearing resulting in a complete defense award
- Participated in obtaining a summary judgment in a multi-million dollar federal court employment discrimination lawsuit on behalf of a Fortune 500 company
- Represented a private corporation in the sale of its assets and real property in a multi-million dollar transaction
- Participated in the defense of a whistleblower claim brought against a healthcare company for claimed Stark violations, resulting in a total defense award
- Participated as lead counsel in the successful resolution of a breach of contract action against a former employee for misappropriation of confidential information
- Participated in the defense and prosecution of restrictive covenant

016276
016276

016276

016277

litigation, resulting in a consent permanent injunction being entered against the opposing party

016277

016277

016277

Lash&GoldbergLLP

JONATHAN E. FEUER

Phone: 305-347-4040
Fax: 305-347-4050
E-Mail: jfeuer@lashgoldberg.com
Office Location: Fort Lauderdale

Overview

Jonathan E. Feuer is a partner in Lash & Goldberg LLP's Fort Lauderdale office.

Jonathan has a broad range of complex commercial litigation experience representing clients at every stage of the litigation process, from pre-suit investigation through trial. Jonathan has prosecuted and defended cases in federal and state courts across Florida and throughout the country. Jonathan also represents clients in various arbitral fora, including the American Arbitration Association, the American Health Lawyers Association Dispute Resolution Service, and JAMS, among others. Jonathan's experience spans numerous practice areas, including high stakes business disputes, securities class action litigation, construction litigation, employment litigation, insurance disputes, healthcare disputes, and general business torts.

Jonathan has been recognized by his peers by earning an "AV" peer review rating from Martindale-Hubbell. He has also been named a Rising Star in Business Litigation by Super Lawyers every year since 2015, a recognition awarded to only 2.5% of all lawyers in Florida under the age of 40 or who have been practicing for less than ten years.

Jonathan is involved in numerous bar associations and is a past Chair and member of a Florida Bar Grievance Committee for Miami-Dade County's Eleventh Judicial Circuit.

Originally a New York native, Jonathan attended Queens College, where he received a B.A., magna cum laude. Jonathan relocated to South Florida to attend University of Miami School of Law, where he received numerous academic awards during law school, was a member of the University of Miami Business Law Review, and graduated magna cum laude.

016278

016278

016278

Education:

- Queens College, City University of New York
  - Bachelor of Arts, *magna cum laude*
- University of Miami School of Law
  - Juris Doctor, *magna cum laude*

Admissions:

- Florida
- United States District Courts for the Southern, Middle and Northern Districts of Florida
- United States Court of Appeals for the Eleventh Circuit

Honors / Accreditations:

- Martindale-Hubbell AV Preeminent Rating
- Florida *Super Lawyers* Magazine, Rising Star 2015 - 2022
- Dean's Certificate of Achievement in Legal Research & Writing
- University of Miami Business Law Review

016279

016279

016279

Lash&GoldbergLLP

JONATHAN E. SIEGELAUB

Phone: 305-347-4040
Fax: 305-347-4050
E-Mail: jsiegelaub@lashgoldberg.com
Office Location: Fort Lauderdale

Overview

Jonathan E. Siegelaub is a partner in Lash & Goldberg LLP's Fort Lauderdale office. His practice focuses on complex business litigation, health care litigation and white collar matters. He conducts internal investigations and defends clients in government enforcement proceedings and in other business disputes.

016280

Prior to joining the Firm, Jonathan served for two years as a law clerk to the Honorable James I. Cohn of the United States District Court for the Southern District of Florida. Before his clerkship, Jonathan spent five years as an associate at Proskauer Rose LLP in New York City, where his practice consisted of complex commercial litigation and white collar criminal defense.

016280

Jonathan received his law degree from Northwestern University, where he was an editor of the *Journal of Criminal Law & Criminology*. He received his undergraduate degree in Government from Wesleyan University. Prior to law school, Jonathan spent two years as an investment banking analyst, performing mergers and acquisitions and financing transactions for consumer products companies.

Principal Practice Areas:

- Alternative Dispute Resolution
- Class Action Litigation
- Complex Business Litigation
- Employment Litigation
- Government Investigations & White-Collar Criminal Defense
- Health Care Litigation

016280

Education:

- Northwestern University School of Law, J.D.
  - Comment Editor, *Journal of Criminal Law and Criminology*
- Wesleyan University, B.A., Government
  - Phi Beta Kappa
  - Omicron Delta Epsilon

Admissions:

- Florida
- New York
- U.S. Court of Appeals for the Fifth Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Court for the Middle District of Florida
- U.S. District Court for the Southern District of Florida
- U.S. District Court for the Eastern District of New York
- U.S. District Court for Southern District of New York

016281

Honors / Accreditations:

- Comment Editor, *Journal of Criminal Law and Criminology*

016281

016281

Lash&GoldbergLLP

MARTIN B. GOLDBERG

Phone: 305-347-4040
Fax: 305-347-4050
E-Mail: mgoldberg@lashgoldberg.com
Office Location: Miami

Overview

Martin Goldberg is a trial lawyer representing Fortune 100 and other clients in high stakes litigation and appeals in Florida and throughout the country. Marty leads a wide array of representations, including complex civil litigation, government enforcement and criminal investigations, class action defense, sports and media, and employment disputes. A portion of his practice has long been dedicated to the healthcare industry, where he represents a host of healthcare companies in litigation, operational and regulatory matters.

016282

016282

Marty is among a small number of lawyers recognized by *Best Lawyers In America®* in three different categories - Commercial Litigation, Health Care Law and Criminal Defense: White Collar. He has also been selected as one of South Florida's "Most Effective Lawyers" by the *Daily Business Review* and his practice contributed to Lash & Goldberg LLP being selected in 2018 as one of *Law 360's* top-five healthcare practices in the United States. *Chambers USA* 2021 ranked the firm and Marty in Florida, with clients reporting, "He is a former prosecutor and an aggressive trial lawyer who is as good as they come" and "He is very knowledgeable, fair and easy to work with."

In 2020, Marty received a number of additional recognitions:

**Law360* named Marty one of only five attorneys in the United States as an "MVP" for 2020 in Health Care. According to *Law360*, the award is provided to "an elite slate of attorneys that have distinguished themselves from their peers by securing hard-earned successes in high stakes litigation, complex global matters and record-breaking deals."

016282

Chambers USA 2020 ranked the firm and Marty individually in Florida, with clients reporting him to be "incredibly prepared and a very good strategist."

* *The Daily Business Review* named Marty a 2020 "Distinguished Leader" for his practice and law firm leadership.

**The National Law Journal* named Marty a 2020 "Elite Boutique Trailblazer." The Trailblazer honor spotlights "a handful of individuals that are truly agents of change."

**Best Lawyers* recognized Marty as the 2020 "Lawyer of the Year" for his work in healthcare law in Miami.

Marty's recent cases include arguing before the Florida Supreme Court, where he obtained a unanimous decision holding that State of Florida Healthcare Special Districts cannot operate medical facilities outside their legislatively demarcated boundaries. He also worked to secure victories before the federal District Court and Eleventh Circuit Court of Appeals in 2019 for a national healthcare company in a False Claims Act case which held that an FCA relator's Stark Law and Anti-Kickback claims failed for reasons including the lack of a non-fair-market-value transaction. And, he was retained by over 35 private, public and academic hospitals across Florida to file amicus briefs before the Florida Supreme Court and the Florida Fourth District Court of Appeal in support of the doctrine of exhaustion of administrative remedies. Additional representations are included below and in the representative cases section.

016283

016283

A native of Washington, D.C., Marty graduated with honors with a degree in accounting from the University of Maryland, where he was selected as the University's outstanding male undergraduate. After becoming a Certified Public Accountant, he graduated with honors from Georgetown University Law Center and then clerked for United States District Court Judge Sidney M. Aronovitz in the Southern District of Florida. Marty then served as an Assistant United States Attorney in the Southern District of Florida for seven years, focusing on economic and public corruption crimes. He prosecuted some of South Florida's most high profile and complex criminal cases at the time and received the Department of Justice's Director's Award for superior performance as a trial attorney. Desiring to build a law firm, Marty left government service to join his now long-time law partner and friend, Alan Lash, to form Lash & Goldberg LLP.

A sampling of Marty's additional experience includes representing:

- A healthcare company in obtaining summary judgment in a federal breach of contract case alleging damages in excess of $450 million.

016283

- A Hall of Fame golfer and his management company in various contractual, licensing and tort matters.
- The world's leading e-commerce company in defense of federal patent infringement lawsuits.
- A global leader in entertainment, sports and fashion management, and its clients in litigation and licensing matters.
- An international law firm and one of its solicitors in the defense of federal claims alleging civil fraud and conspiracy.
- 140 hospitals in a civil False Claims Act case alleging violations of the meaningful use regulations for Electronic Health Record systems.
- A State of Florida program to defend against a civil False Claims Act investigation and lawsuit alleging its failure to appropriately participate in the federal Medicaid program.
- A healthcare company to secure dismissal of a non-intervened qui tam alleging medically unnecessary inpatient admissions.
- A hospital company in defense of a putative class action regarding alleged improper billing.
- A Hall of Fame baseball player and his management company in various contractual and licensing matters and lawsuits.
- A leading worldwide strategy consulting firm regarding various governmental inquiries.
- A healthcare company in obtaining summary judgment and affirmance by the Eleventh Circuit Court of Appeals in a physician's federal discrimination lawsuit.
- A federal and state law enforcement agent at a federal criminal trial, resulting in a dismissal of all charges after a mistrial.
- A bank executive accused of bank fraud and other federal crimes.
- The former Chairman and Chief Executive Officer of an American entertainment and studio company in defense of defamation, tort and fraud claims.
- A hospital company to secure dismissal of a civil False Claims Act case alleging retaliation and Medicare/Medicaid fraud.
- A nationally known National Football League and sports broadcaster in the prosecution of a Lanham Act case in federal court involving the improper use of his name and likeness.
- Key executives employed by the largest financial institution in Canada in the defense of non-compete and tort claims.
- The former Miami Police Chief and Miami City Manager against federal criminal public corruption charges, and later representing his administrative interests before the Florida Supreme Court.
- A world leading multinational technology company regarding federal copyright claims.

016284

016284

016284

- A healthcare company against allegations of wrongful termination arising from purported Stark Law violations.
- A national telecommunications provider regarding the provision of services to various governmental authorities.
- A Florida Governmental Healthcare District, its Commissioners, General Counsel, Chief Executive Officer and Chief Medical Officer in defense of statutory and civil claims arising from the reappointment of a physician's medical staff privileges.
- A hospital company securing summary judgment against a physician's unjust enrichment claims for the provision of on-call services.
- A national subspecialty medical group in the trial court and on appeal before the Florida First District Court of Appeal, compelling whistleblower and breach of contract claims into arbitration.
- A Florida Governmental Hospital District as an Independent Counsel to investigate alleged wrongdoing by a Commissioner with findings submitted to the Governor of Florida.
- A hospital company alleging federal trademark infringement against a competitor for the unlawful use of the company's mark.
- A healthcare company against a physician's claims of federal race discrimination and retaliation due to the loss of the physician's medical staff privileges.
- Several Florida hospitals at trial and on appeal concerning whether a hospital is a place of public accommodation within the meaning of the Florida Civil Rights Act.
- Numerous companies in federal court defending class and individual claims alleging that websites are inaccessible under the Americans with Disabilities Act.
- A hospital company in securing dismissal after an evidentiary hearing of a $40 million claim alleging violations of the Emergency Medical Treatment and Active Labor Act.
- A hospital company on appeal to obtain reversal of a trial court's decision declining to compel arbitration of trade secret and tortious interference claims.
- Numerous clients in non-compete litigation in state and federal courts.
- A healthcare company to secure dismissal of a civil False Claims Act matter alleging performance of unnecessary testing in emergency rooms.

Principal Practice Areas:

- Alternative Dispute Resolution

016285
016285

016285

- Appellate Advocacy
- Class Actions
- Complex Commercial Litigation
- Employment Litigation
- Government Investigations, False Claims Act and White Collar Criminal Defense
- Health Care Operations
- Health Care Litigation

Education:

- Georgetown University Law Center
  - Juris Doctor
  - Cum Laude
- University of Maryland
  - Bachelor of Science
  - Cum Laude
  - Selected as the University's Outstanding Male Undergraduate
  - Selected as the University's first ever Outstanding Young Alumnus

016286

Admissions:

- Florida, Maryland and District of Columbia
- United States Supreme Court
- United States Court of Appeals, Eleventh Circuit
- United States District Court for the Southern, Middle and Northern Districts of Florida

016286

Honors / Accreditations:

- Ranked by *Chambers USA* 2021 in Florida
- Ranked by *Chambers USA* 2020 in Florida
- Named an "MVP" for 2020 in Health Care by Law 360, a designation given to only five attorneys in the United States
- Selected as a "Distinguished Leader" in 2020 by the *Daily Business Review*
- Recognized by *The Best Lawyers In America®* as 2020 "Lawyer of the Year" for Health Care Law in Miami
- Named a 2020 "Elite Boutique Trailblazer" by *The National Law Journal*
- Selected as one of South Florida's "Most Effective Lawyers" in 2012 by the *Daily Business Review*

016286

- Recognized nationally by his peers for current inclusion in *The Best Lawyers In America®* in three different categories: Commercial Litigation, Health Care Law and Criminal Defense: White Collar
- Repeatedly recognized as one of the "Top Lawyers in South Florida" by the *South Florida Legal Guide*
- The law firm he co-founded has been named one of the country's "Best Law Firms" as reported in *U.S. News & World Report*
- Previously Board Certified in Criminal Law, Florida Bar
- Director's Award as an Assistant United States Attorney, for superior performance as a trial attorney.

Professional:

- Certified Public Accountant, 1989
- Law Clerk, Honorable Sidney M. Aronovitz, United States District Court for the Southern District of Florida.

Illustrative Recent Representations:

A sampling of Marty's experience includes representing:

016287

- A healthcare company in obtaining summary judgment in a federal breach of contract case alleging damages in excess of $450 million.
- A Hall of Fame golfer and his management company in various contractual, licensing and tort matters.
- The world's leading e-commerce company in defense of federal patent infringement lawsuits.
- A global leader in entertainment, sports and fashion management, and its clients in litigation and licensing matters.
- An international law firm and one of its solicitors in the defense of federal claims alleging civil fraud and conspiracy.
- 140 hospitals in a civil False Claims Act case alleging violations of the meaningful use regulations for Electronic Health Record systems.
- A State of Florida program to defend against a civil False Claims Act investigation and lawsuit alleging its failure to appropriately participate in the federal Medicaid program.
- A healthcare company to secure dismissal of a non-intervened qui tam alleging medically unnecessary inpatient admissions.
- A hospital company in defense of a putative class action regarding alleged improper billing.
- A Hall of Fame baseball player and his management company in various contractual and licensing matters and lawsuits.
- A leading worldwide strategy consulting firm regarding various

016287

016287

governmental inquiries.

- A healthcare company in obtaining summary judgment and affirmance by the Eleventh Circuit Court of Appeals in a physician's federal discrimination lawsuit.
- A federal and state law enforcement agent at a federal criminal trial, resulting in a dismissal of all charges after a mistrial.
- A bank executive accused of bank fraud and other federal crimes.
- The former Chairman and Chief Executive Officer of an American entertainment and studio company in defense of defamation, tort and fraud claims.
- A hospital company to secure dismissal of a civil False Claims Act case alleging retaliation and Medicare/Medicaid fraud.
- A nationally known National Football League and sports broadcaster in the prosecution of a Lanham Act case in federal court involving the improper use of his name and likeness.
- Key executives employed by the largest financial institution in Canada in the defense of non-compete and tort claims.
- The former Miami Police Chief and Miami City Manager against federal criminal public corruption charges, and later representing his administrative interests before the Florida Supreme Court.
- A world leading multinational technology company regarding federal copyright claims.
- A healthcare company against allegations of wrongful termination arising from purported Stark Law violations.
- A national telecommunications provider regarding the provision of services to various governmental authorities.
- A Florida Governmental Healthcare District, its Commissioners, General Counsel, Chief Executive Officer and Chief Medical Officer in defense of statutory and civil claims arising from the reappointment of a physician's medical staff privileges.
- A hospital company securing summary judgment against a physician's unjust enrichment claims for the provision of on-call services.
- A national subspecialty medical group in the trial court and on appeal before the Florida First District Court of Appeal, compelling whistleblower and breach of contract claims into arbitration.
- A Florida Governmental Hospital District as an Independent Counsel to investigate alleged wrongdoing by a Commissioner with findings submitted to the Governor of Florida.
- A hospital company alleging federal trademark infringement against a competitor for the unlawful use of the company's mark.
- A healthcare company against a physician's claims of federal race discrimination and retaliation due to the loss of the physician's

016288

016288

016288

016289

medical staff privileges.

- Several Florida hospitals at trial and on appeal concerning whether a hospital is a place of public accommodation within the meaning of the Florida Civil Rights Act.
- Numerous companies in federal court defending class and individual claims alleging that websites are inaccessible under the Americans with Disabilities Act.
- A hospital company in securing dismissal after an evidentiary hearing of a $40 million claim alleging violations of the Emergency Medical Treatment and Active Labor Act.
- A hospital company on appeal to obtain reversal of a trial court's decision declining to compel arbitration of trade secret and tortious interference claims.
- Numerous clients in non-compete litigation in state and federal courts.
- A healthcare company to secure dismissal of a civil False Claims Act matter alleging performance of unnecessary testing in emergency rooms.

016289

016289

016289

Lash&GoldbergLLP

RACHEL HOLLADAY LEBLANC

Phone: 305-347-4040
Fax: 305-347-4050
E-Mail: rleblanc@lashgoldberg.com
Office Location: Fort Lauderdale

Overview

Rachel Holladay LeBlanc is a partner in Lash & Goldberg LLP's Fort Lauderdale office. Before joining the Firm, Rachel served as Chief Privacy Officer and Associate General Counsel for the South Broward Hospital District d/b/a Memorial Healthcare System in Florida. Prior to her work at Memorial, Rachel was a partner at Shutts & Bowen LLP, where she defended clients in complex commercial and class action cases.

016290

Rachel has significant litigation and operational experience in multiple facets of health care, including HIPAA and FIPA compliance, investigations and reporting, addressing regulatory issues, physician employment, Medical Staff Bylaws, Rules & Regulations, Policies & Procedures, Peer Review and Credentialing, Risk Management, Behavioral Health, Graduate Medical Education, Internal Review Board and clinical trial agreements, and compliance.

Rachel has also devoted time to the representation of parents in federal court in international kidnapping cases brought under the Hague Convention.

Rachel has been recognized by *Daily Business Review*, receiving a Florida Legal Award: Corporate Compliance 2018 for Privacy program and as a Top 40 Under 40, in 2014. She was also named among 100 Outstanding Women of Broward County, by the Boys and Girls Club of Broward County in 2016.

016290

016290

Rachel attended Georgia Southern University on a full scholarship receiving her undergraduate degree *magna cum laude*, and attended the Cecil C. Humphreys School of Law at the University of Memphis, where she received several scholarships, was Chief Justice of the Moot Court, and graduated *magna cum laude*.

Principal Practice Areas:

Arbitration and Alternative Dispute Resolution

Class Action Litigation

Complex Business Litigation

Employment Litigation

Government Investigations, False Claims Act and White-Collar Criminal Defense

Health Care Litigation

Health Care Operations

016291

Education:

- University of Memphis, Cecil C. Humphreys School of Law, J.D., *magna cum laude*
- Georgia Southern University, B.A., *magna cum laude*

016291

Admissions:

- Florida
- Tennessee
- U.S. Supreme Court
- U.S. District Court for the Southern District of Florida
- U.S. District Court for the Middle District of Florida

Honors / Accreditations:

- *Daily Business Review*, Florida Legal Award: Corporate Compliance 2018 for Privacy program
- *Daily Business Review*, Top 40 Under 40, 2014
- 100 Outstanding Women of Broward County, Boys and Girls Club of Broward County, 2016

016291

016292

- University of Memphis, Cecil C. Humphreys School of Law *Moot Court, Chief Justice*
- University of Memphis, Cecil C. Humphreys School of Law Rank 8/161
- Georgia Southern University, Bell Honors Academic Scholarship Recipient

016292

016292

016292

Lash&GoldbergLLP

VIRGINIA L. BOIES

Phone: 305-347-4040
Fax: 305-347-4050
E-Mail: vboies@lashgoldberg.com
Office Location: Fort Lauderdale

Overview

Virginia Boies is an associate in Lash & Goldberg LLP's Fort Lauderdale office. Her practice focuses on complex business litigation and health care litigation.

Virginia is a graduate of Columbia Law School, where she received the Harlan Fiske Stone Scholar award and served as the Executive Submissions Editor and Articles Editor of the *Columbia Journal of Law and the Arts*. While in law school, Virginia completed a judicial internship with New York State Supreme Court Judge Gerald Lebovits and served as an intern with the Office of the State Attorney for Broward County, Florida. Virginia graduated *Phi Beta Kappa* from the University of Miami, where she received her undergraduate degree, *summa cum laude*, in Economics.

016293

016293

Principal Practice Areas:

- Alternative Dispute Resolution
- Appellate Advocacy
- Class Actions
- Complex Commercial Litigation
- Employment Litigation
- Government Investigations, False Claims Act and White Collar Criminal Defense
- Health Care Operations
- Health Care Litigation

Education:

- Columbia Law School, J.D.
  - Harlan Fiske Stone Scholar

016293

    - Executive Submissions Editor and Articles Editor of the *Columbia Journal of Law and the Arts*
- University of Miami, B.A., Economics
    - *Summa Cum Laude*
    - Phi Beta Kappa

Admissions:

- Florida

Honors / Accreditations:

- Executive Submissions Editor and Articles Editor of the *Columbia Journal of Law and the Arts*
- Harlan Fiske Stone Scholar
- Phi Beta Kappa

016294

016294

016294

EXHIBIT 8

Arnall Golden Gregory LLP

Matthew M. Lavin

Partner

Direct: 202.677.4959
matt.lavin@agg.com

1775 Pennsylvania Avenue, NW
Suite 1000
Washington, District of Columbia 20006

BIOGRAPHY

Matt is a Healthcare and Commercial Litigation partner in the firm's Washington, D.C. office. He leads one of the most aggressive and respected provider-side reimbursement practices in the country. Matt's cases are regularly reported on in Becker's, Modern Healthcare, Bloomberg and other publications. Matt prides himself on being on the right side of healthcare – routinely taking on the big issues in high-stakes cases.

Matt has experience with practically every aspect of the healthcare industry including private and public payer relationships, reimbursement dispute, audits, third-party repricing and cost containment, marketing, financing, government relations, regulatory compliance, and licensing.

He has successfully resolved countless reimbursement disputes with payers such as Aetna, Anthem, AmeriHealth, Ambetter, Beacon, Centene, HealthNet, Humana, Cigna, UnitedHealthcare, HealthNet, Magellan, Blue Shield California, BCBS TX and many of the other Blue Card Network plans. Matt also has expertise in suits against 'cost-containment' vendors who egregiously underprice the value of out-of-network claims. He is skilled at addressing unjust overpayment demands, pre-payment reviews and audits.

Matt is a lawyer who always puts his client's needs first and is often able to settle matters without litigation.

016296

016296

Related Services

Complex Business Disputes
Government Investigations
Healthcare
Healthcare Litigation

Related Industries

Healthcare Private Equity
Home Health & Hospice
Hospitals & Health Systems

EXPERIENCE

- Represents physicians in cases against commercial and public payers in state and federal courts, nationwide.
- Represents multiple emergency medicine physician practices as plaintiffs in a civil RICO action against a major

016296

payer and its cost containment vendor.

- Lead counsel for plaintiffs in two ERISA class actions in California federal courts against major payers who systematically underpay claims for certain services.
- Represents providers in a RICO class action against a major payer accused of using illegal medical necessity guidelines to systematically deny behavioral health claims.
- Represents multiple behavioral health facilities in a $40M suit in federal court against BCBS Michigan for illegally underpaying thousands of patient claims.
- Represents Florida physicians and facilities in a $50M state court suit against Florida Blue for systematically denying claims.

CREDENTIALS

Education

Tulane University, Juris Doctor

New York University, Bachelor of Arts

Admissions

District of Columbia

016297

Court Admissions

United States District Court for the District of Columbia

United States District Court for the Western District of Michigan

United States District Court for Western District of New York

United States Court of Appeals for the District of Columbia Circuit

United States Court of Appeals for the Ninth Circuit

016297

NEWS & INSIGHTS

News

- Matt Lavin Quoted in Law360 Article Titled “9th Circ. Revives $8.6M Reimbursement Suit Against Cigna”, January 18, 2022, Law360
- AGG Adds High-Stakes Litigator, Prominent Healthcare Attorney to its Washington, D.C., Office, September 13, 2021, Arnall Golden Gregory LLP

Publications

016297

- Ninth Circuit Sides With Plaintiff, Reviving $8.6M Reimbursement Suit, January 26, 2022, Arnall Golden Gregory LLP
- Federal Court Sides with Plaintiffs on Motion to Dismiss $40+ Million Dollar Suit for Unpaid and Underpaid Claims, October 5, 2021, Arnall Golden Gregory LLP

016298

016298

016298

Arnall Golden Gregory LLP

Aaron R. Modiano

Of Counsel

Direct: 202.677.4048
aaron.modiano@agg.com

1775 Pennsylvania Avenue, NW
Suite 1000
Washington, District of Columbia
20006

BIOGRAPHY

Aaron is of counsel in the Healthcare and Litigation & Dispute Resolution practices.

Aaron focuses his practice on Parity Litigation and ERISA claims representing healthcare providers and patients against the largest health insurance companies in the country. Aaron also has experience and expertise in suits against 'repricing' and 'cost-containment' vendors who egregiously underprice out-of-network healthcare claims. He has also worked on plaintiff's environmental mass tort and class action litigation, concentrating on helping people harmed by exposure to hazardous soil, water, and air contaminants. Prior to joining AGG, Aaron worked in private practice where he represented clients in a wide range of civil litigation matters.

016299

Related Services

Complex Business Disputes
Government Investigations
Healthcare
Healthcare Litigation

016299

Related Industries

Healthcare Private Equity
Home Health & Hospice
Hospitals & Health Systems

EXPERIENCE

- Represents multiple ER practices as plaintiffs in a civil RICO action in federal court in NY
- Represents plaintiffs in numerous ERISA class actions in California federal court against Cigna, United and other payers for using Multiplan to systematically underpay outpatient claims
- Represents multiple facilities in a $40M suit in federal court against BCBS Michigan for illegally underpaying thousands of patient claims

016299

CREDENTIALS

Education

The Georgia Washington University School of Law, Juris Doctor

Yale University, Bachelor of Arts

Admissions

State of Florida

*Not admitted in the District of Columbia. Supervised by a member of the District of Columbia Bar.

NEWS & INSIGHTS

News

- AGG Adds High-Stakes Litigator, Prominent Healthcare Attorney to its Washington, D.C., Office, September 13, 2021, Arnall Golden Gregory LLP

Publications

- Ninth Circuit Sides With Plaintiff, Reviving $8.6M Reimbursement Suit, January 26, 2022, Arnall Golden Gregory LLP
- Federal Court Sides with Plaintiffs on Motion to Dismiss $40+ Million Dollar Suit for Unpaid and Underpaid Claims, October 5, 2021, Arnall Golden Gregory LLP

016300

016300

016300

EXHIBIT 9

Hilary S. Greene

Associate

P: 713-600-4963
F: 713-655-0062
hgreene@azalaw.com

016302

Hilary Greene focuses on large commercial matters in both trial and appellate courts. She has represented plaintiffs and defendants in multi-million-dollar cases. Ms. Greene has extensive experience in all phases of a case, from the initial investigation, to seeking injunctive relief, handling dispositive motions, pursuing extraordinary relief though mandamus, and prosecuting and defending appeals. She regularly works with liability and damages experts. Ms. Greene has handled civil matters for companies and individuals, on subject matters including contract disputes, business torts, fraud, executive-employment disputes, regulatory responses, trade-secret misappropriation, and catastrophic personal-injury cases. Her practice is industry wide, including oil and gas, healthcare, retail, and financial services.

Ms. Greene excels at bringing organization to complex, high-stakes matters. She routinely assists in every stage of trial, from witness preparation, to key pre-trial submissions, to motions in limine, and jury charges. She enjoys getting to know her clients and helping them successfully navigate issues that arise before, during, and after trial.

Ms. Greene earned her law degree from South Texas College of Law and served as a judicial intern to U.S. District Judge David Hittner of the Southern District of Texas during law school. She received her undergraduate degree from Tulane University.

016302

EDUCATION

- South Texas College of Law, 2005 (Highest Honors, Law Review)
- Tulane University, BSM Finance and Management, 2001 (With Honors)

ACTIVITIES

- South Texas College of Law Alumni Association Board of Directors, 2012 – 2015; Admissions Committee, 2012; Young Alumni Council, 2010 – 2012
- National Council of Jewish Women, Greater Houston Section Fundraiser Co-Chair, 2011
- Jewish Federation of Houston Young Adult Division Steering Committee, 2010 – 2011
- Houston Young Lawyers Association Special Olympics Committee, 2008 – 2009

ADMISSIONS

- State Bar of Texas
- S. District Court for the Southern District of Texas
- Fifth Circuit Court of Appeals

016303

IN THE NEWS

- AZA Energy Sector Client Sees Lawsuit Dismissed (https://azalaw.com/aza-energy-sector-client-sees-lawsuit-dismissed/)
- 9 Reasons We Are Even Stronger (https://azalaw.com/landing/9-new-lawyers/)

016303

016303

Jane Langdell Robinson

Partner

P: 713-600-4916
F: 713-655-0062
jrobinson@azalaw.com

016304

Jane Langdell Robinson is an appellate lawyer with extensive experience in state and federal appellate courts. Ms. Robinson has handled a wide variety of civil appellate matters, including mandamus proceedings, interlocutory appeals, and appeals of final judgments in Texas and other state appellate courts as well as numerous federal circuits, the Court of Appeals for Veterans Claims, and the United States Supreme Court. Trial lawyers often involve Ms. Robinson early in complex civil matters to assist with difficult issues of legal analysis and strategy as well as error preservation, trial consulting, and the briefing and argument of significant motions.

Ms. Robinson has been a co-author of *O'Connor's Texas Rules * Civil Trials*, the premiere civil trial rules guide for Texas lawyers and judges, since 2018. She has also been recognized by attorneys across the country as one of the Best Lawyers in America 2019-2022 for her appellate work.

Ms. Robinson is board certified in civil appellate law by the Texas Board of Legal Specialization (a distinction held by less than one percent of licensed lawyers in Texas). She has argued many appeals, including before the Texas Supreme Court, Texas intermediate appellate courts, and the Fifth Circuit Court of Appeals. In addition to handling appellate matters on behalf of the parties, Ms. Robinson has prepared several amicus curiae briefs in both state and federal court.

016304

Ms. Robinson also has extensive litigation experience in state and federal courts, including complex contract and commercial disputes as well as matters involving trademarks, copyrights, patents, and trade secrets.

Before joining AZA in 2007, Ms. Robinson worked at Baker Botts in Houston, Sheppard Mullin in Los Angeles, and Smith Anderson in Raleigh, North Carolina.

Ms. Robinson is admitted in Texas, California, North Carolina (inactive), all Texas federal courts, federal district courts in North Carolina, California, and Michigan, the Court of Appeals for Veterans Claims, the Fifth, Ninth, and Federal Circuit Courts of Appeals, and the United States Supreme Court.

Ms. Robinson graduated *magna cum laude* from Dartmouth College in 1995 and with honors from Duke University School of Law in 1998.

REPRESENTATIVE MATTERS

016305

- Won a $62.65 million verdict from a Nevada jury in a nationally watched case for emergency room physician group clients who were underpaid by United Healthcare, the largest insurer in the nation. The jury in this seven-week trial unanimously found malice, oppression, and fraud in the underpayment of the doctors. This verdict against a cluster of United Healthcare affiliates will serve as a bellwether for more than two dozen similar cases around the nation against various insurers.
- Successfully represented emergency room physicians in obtaining a $19.1 million Houston jury verdict against a large insurance company in the first case in the nation to litigate emergency room physicians' out-of-network pay from private insurance companies under the Affordable Care Act.
- Successfully briefed and argued mandamus petition before Texas Supreme Court and obtained first-ever recognition of privilege for communications between patent agents and their clients in a state appellate court.
- Successfully defended appeal of summary judgment for client in employment discrimination case.
- Won appeal for officer of business who had been held personally liable on a corporate debt under a Tax Code provision.
- Successfully opposed petition for writ of mandamus in Federal Circuit seeking to reverse district court's denial of motion to transfer venue.
- Led briefing and argument of successful judgment as a matter of law on trademark infringement claim against our client after eight-day federal jury trial.
- Successfully obtained summary judgment in copyright and trademark infringement lawsuit on behalf of outdoors magazine.
- Won appeal and obtained attorneys' fees award on behalf of whistle-blower client before federal Administrative Review Board.

016305

016305

- Argued and briefed critical aspects of successful motion for summary judgment in complex Uniform Commercial Code Article 2 case in Delaware bankruptcy court.
- Obtained dismissal for failure to state a claim of multiple counts in favor of client in trademark lawsuit brought in Southern District of New York.
- Represented the American Automobile Association (AAA) in multiple trademark actions against infringers.
- Successfully obtained dismissal of federal discrimination lawsuit on behalf of three Fortune-500 companies based in Houston.
- Represented major telecommunications equipment company in briefing and arguing monopolization claim against a competitor in arbitration resulting in favorable award for client.
- Briefed and obtained temporary restraining order and preliminary injunction in bet-the-company case for major provider of healthcare analytics threatened with loss of critical data source.
- *In re Silver*, 540 S.W.3d 530 (Tex. 2018) (successful petition for writ of mandamus recognizing privilege for confidential communications between patent agents and their clients)
- *Okpere v. National Oilwell Varco, L.P.*, 524 S.W.3d 818 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) (successfully defended summary judgment granted for client in employment discrimination case)
- *Gessner Engineering, LLC v. St. Paraskevi Greek Orthodox Monastery, Inc.*, 507 S.W.3d 865 (Tex. App.—Houston [1st Dist.] 2016, pet. denied)
- *Willis v. BPMT, LLC*, 471 S.W.3d 27 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (successful appeal for officer of business who had been held personally liable on a corporate debt under a Tax Code provision)
- *Plains Gas Solutions, LLC v. Tennessee Gas Pipeline Company, LLC*, 47 F. Supp. 3d 701 (S.D. Tex. 2014) (remand to state court of action which defendants removed based on allegation of federal jurisdiction under the Outer Continental Shelf Lands Act on behalf of client Plains Gas Solutions)
- *Bowers v. ConocoPhillips Co. et al.*, 2014 WL 2949446 (S.D. Tex. 2014) (dismissal of plaintiff's discrimination claim on behalf of three defendants)
- *Stutts v. Texas Saltwater Fishing Magazine*, 2014 WL 1572736 (S.D. Tex. 2014) (summary judgment on behalf of client Texas Saltwater Fishing Magazine in copyright infringement action)
- *Sentinel Integrity Solutions, Inc. v. Mistras Group, Inc.*, 2012 WL 2994661 (S.D. Tex. 2012) (judgment as a matter of law in favor of client Mistras Group, Inc. on Sentinel's trademark infringement claim)
- *In re Crown Vantage, Inc.*, 2007 WL 128009 (N.D. Cal. 2007) (partial summary judgment on behalf of client Fort James Corporation)
- *ConAgra Feed Co. Higgins*, 200 F.R.D. 265 (W.D.N.C. 2001) (judgment against defendant, dismissal of defendant's counterclaim, and award of fees as sanction against defendant on behalf of client ConAgra in breach of contract case)

016306
016306

016306

IN THE NEWS

- AZA Victorious in $62 Million Nationally Watched TeamHealth Trial Against Insurance Giant United Healthcare (https://azalaw.com/aza-victorious-in-nationally-watched-teamhealth-case-against-insurance-giant-united-healthcare/)
- Twelve AZA Lawyers Ranked among US Best for Commercial, Intellectual Property, Personal Injury Litigation and Appellate Law for 2022 (https://azalaw.com/twelve-aza-lawyers-ranked-among-us-best-for-commercial-intellectual-property-personal-injury-litigation-and-appellate-law-for-2022/)
- Houston Jury Sends U.S. Insurance Companies a Strong Message on Behalf of Emergency Room Doctors (https://azalaw.com/houston-jury-sends-u-s-insurance-companies-a-strong-message-on-behalf-of-emergency-room-doctors/)
- AZA Prevails for Apache Corp. at the Supreme Court of Texas (https://azalaw.com/aza-prevails-for-apache-corp-at-the-supreme-court-of-texas/)
- AZA Trial Lawyers Among Nation's Best for Commercial, Intellectual Property Litigation and Appellate Law for 2021 (https://azalaw.com/aza-trial-lawyers-among-nations-best-for-commercial-intellectual-property-litigation-and-appellate-law-for-2021/)
- AZA Gets Turkey Leg Hut Restaurant Lawsuit Dissolved in Two Weeks (https://azalaw.com/aza-gets-turkey-leg-hut-restaurant-lawsuit-dissolved-in-two-weeks/)
- AZA Names Four New Partners in Commercial and IP Litigation (https://azalaw.com/aza-names-four-new-partners-in-commercial-and-ip-litigation/)
- AZA Wins Texas Supreme Court Patent Agent Privilege Case That Could Have National Import (https://azalaw.com/aza-wins-texas-supreme-court-patent-agent-privilege-case-national-import/)
- AZA Patent Agent Privilege Appeal Named 'Texas Case to Watch' by Law360 (https://azalaw.com/aza-patent-agent-privilege-appeal-named-texas-case-to-watch-by-law360/)
- Jane Robinson to Argue Patent Agent Privilege Before Texas Supreme Court (https://azalaw.com/jane-robinson-argue-patent-agent-privilege-texas-supreme-court/)
- AZA Lawyers Zavitsanos, Robinson to Co-Author 2018 Issue of Essential Trial Guide O'Connor's Texas Rules * Civil Trials (https://azalaw.com/aza-lawyers-zavitsanos-robinson-co-author-2018-issue-essential-trial-guide-oconnors-texas-rules-civil-trials/)
- AZA's Jane Langdell Robinson Earns Prestigious Civil Appellate Law Certification (https://azalaw.com/azas-jane-langdell-robinson-earns-prestigious-civil-appellate-law-certification/)
- AZA Argues Newspaper Defamation Case Before Texas Supreme Court (https://azalaw.com/aza-argues-newspaper-defamation-case-texas-supreme-court/)
- Texas Supreme Court Agrees to Hear Fort Bend Defamation Case (https://azalaw.com/texas-supreme-court-agrees-hear-fort-bend-defamation-case/)
- In re SemCrude, L.P. (https://azalaw.com/case-summaries/in-re-semcrude-l-p/)

016307
016307

016307

016308

016308

016308

Jason S. McManis

Partner

P: 713-600-4969
F: 713-655-0062
jmcmanis@azalaw.com

016309

Jason S. McManis is a skilled trial lawyer who helps individuals and businesses navigate some of their most difficult problems. He has extensive experience handling high stakes patent, trade secret, employment, and business disputes across the oil and gas, healthcare, commercial and residential real estate, automotive, and aviation industries. He also represents plaintiffs and defendants in catastrophic personal injury and wrongful death cases.

016309

Mr. McManis excels at presenting complex and often highly technical issues to state and federal courts and juries around the country. In recognition of his work, Mr. McManis has been named a Texas Rising Star for five consecutive years. Rising Stars, a list compiled by Thomson Reuters' Texas Super Lawyers, honors leading attorneys age 40 and younger and those who have been in practice no more than 10 years.

Equally experienced representing both plaintiffs and defendants, Mr. McManis has taken on some of the largest companies in the world as lead counsel and as a key member of small trial teams. He has helped secure some of the largest patent infringement jury verdicts in the country in recent years, including one which has been recognized in the Texas Lawyer *Verdicts Hall of Fame*.

016309

In addition to that, Mr. McManis has fought for company founders to get their rightful share after their business partners had unlawfully forced them out of the company, successfully defended business partners against dissolution and breach of fiduciary duty claims, helped numerous businesses enforce employment agreements and protect their valuable intellectual property and confidential information, and helped physician groups successfully pursue claims against large insurance companies for systematic underpayment.

Mr. McManis is a graduate of the University of Virginia School of Law and, before that, Dartmouth College, where he was a four-year letterman on the baseball team.

REPRESENTATIVE MATTERS

- Represents a widow on behalf of herself and her three children in a wrongful death case stemming from a fatal helicopter crash in Leesburg, Florida.
- Won a jury trial on behalf of Nevada-based emergency room physician groups against United HealthCare for systematic underpayment for emergency room services. After a seven-week trial, the jury awarded $2.65 million for underpayment of claims and an additional $60 million in punitive damages for United Healthcare's fraud, oppression, and malice against the emergency room physicians. This verdict against a cluster of United Healthcare affiliates will serve as a bellwether for more than two dozen similar cases around the nation against various insurers.
- Successfully obtained complete dismissal of all claims and sanctions against a key competitor under the Texas Anti-SLAPP statute on behalf of a co-founder of Houston-based real estate private equity firm. The case settled while on appeal. No. 2020-52067 in Harris County's 215th District Court.
- Represented a business owner in a fraud and breach of contract suit relating to the sale of his automotive finance and insurance agency business to a large, national competitor. After successfully obtaining dismissal of multiple counterclaims brought by the national competitor, the case was resolved by settlement. *Powers v. IAS*, No. 6:20-cv-01136 (W.D. Tex.).
- Represents W&T Offshore in defense of trade secret claims brought by Arena Energy. *Arena Energy, LP v. W&T Offshore, Inc. and 31 Group, LLC*, Adv. Proc. No. 20-03404 (tel:20-03404) in the United States Bankruptcy Court for the Southern District of Texas.
- Represented Ruckus Energy in defense of trade secret claims brought by Blackbeard Operating related to exploration and production in Winkler County, Texas. The case was resolved by settlement prior to trial. *Blackbeard Operating, LLC et al. v. Ruckus Energy, Inc. et al.*, No. 342-316065-20 (tel:342-316065-20) in Tarrant County's 342nd District Court.
- Represents Targa in a complex fraud and breach of contract dispute against Vitol involving over $200 million in claimed damages, including the successful defense against a $150 million fraud

016310
016310

016310

damages claim in a bench trial. The case was one of Texas's first fully remote complex commercial trials conducted entirely by Zoom. It is currently on appeal.

- Successfully defeated three rounds of trade secret and breach of contract allegations brought by Ultra Premium Services against OFS International, LLC and related entities. After defeating Ultra's applications for temporary restraining order and preliminary injunction in federal court, the first case was settled shortly before trial. Following extensive briefing in two follow-on disputes, Ultra voluntarily dropped and dismissed its pursuit of all remaining claims pending in bankruptcy court and state court.
- Obtained a temporary restraining order and temporary injunction on behalf of C&J Energy Services against its former employees and their newly formed competing business, West Texas Cementers, following cross-examination of the CEO at the TI hearing. The case was resolved by a favorable settlement. *C&J Energy Services, Inc., et al. v. Jesse Ulate, et al.*, No. 2019-06048 (tel:2019-06048) in Harris County's 151st District Court.
- Obtained a total defense win on behalf of prominent Houston family business owner in a complex, potentially $30 million dispute with a take nothing verdict after five-week jury trial. *David Hotze v. IN Management, LLC et al.* No. 2016-36300 (tel:2016-36300) in Harris County's 61st District Court. The case was named among the largest Texas courtroom wins in 2018 by the *Houston Chronicle* in "The Biggest Courtroom Wins of 2018" (https://www.houstonchronicle.com/business/texas-inc/article/The-biggest-courtroom-wins-of-2018-13525404.php) (subscription required) and *Texas Lawbook* in "The Top Texas Litigation Stories of 2018" (https://texaslawbook.net/the-top-texas-litigation-stories-of-2018/) (subscription required).
- Represented Cellular Communications Equipment LLC in its patent infringement lawsuit against Apple Inc. during which the jury awarded CCE an eight-figure verdict against Apple after a seven-day trial. *Cellular Comms. Equipment LLC v. Apple Inc., et al.*, No. 14-cv-251, (E.D. Tex.).
- Represented Washington University (St. Louis) Professor Robert E. Morley in his lawsuit against Square, Inc., Jack Dorsey, and Jim McKelvey for patent infringement, breach of joint-venture and fiduciary duty, misappropriation of trade secrets, and exclusion of Dr. Morley from Square. *Robert E. Morley, Jr., et al. v. Square, Inc., et al.*, No. 10-cv-2243/14-cv-172, (E.D. Mo.).
- Obtained multiple jury verdicts on behalf of VirnetX Inc. in its patent infringement lawsuits against Apple Inc. *VirnetX, Inc. v. Apple Inc.*, No. 10-cv-417/12-cv-855, (E.D. Tex.).

016311

016311

EDUCATION

- University of Virginia School of Law, 2013
  - National Trial Advocacy College
  - *Virginia Law & Business Review*
- Dartmouth College, B.A., 2008

016311

ADMISSIONS

- State Bar of Texas
- U.S. District Court for the Southern District of Texas
- U.S. District Court for the Eastern District of Texas
- U.S. District Court for the Northern District of Texas
- U.S. District Court for the Western District of Texas
- U.S. District Court for the Eastern District of Missouri
- U.S. District Court for the Eastern District of Wisconsin
- U.S. District Court for the District of Colorado

LEGAL PUBLICATIONS AND CLE PRESENTATIONS

- "Trials, Depositions, Hearings, and other Remote Proceedings," State Bar of Texas Webinar, December 2020
- "Polishing Your Evidence: Technology in the Courtroom, including Apps," 2019 HBA Civil/Appellate Bench Bar Conference, Houston, April 2019
- "Lost Profits Damages: Cost Behavior Analysis, Calculation Methods" webinar, Strafford Publications, March 2019

016312

016312

HONORS AND AWARDS

- Texas Bar Foundation Fellow
- 2018 – 2022 Texas Rising Star honors for intellectual property litigation, a list compiled by Texas Super Lawyers, a Thomson Reuters business

IN THE NEWS

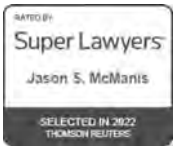
- Ten AZA Lawyers on Texas Rising Stars List for 2022 (https://azalaw.com/ten-aza-lawyers-on-texas-rising-stars-list-for-2022/)

- Flores and McManis Named AZA Partners (https://azalaw.com/flores-and-mcmanis-named-aza-partners/)
- AZA Victorious in $62 Million Nationally Watched TeamHealth Trial Against Insurance Giant United Healthcare (https://azalaw.com/aza-victorious-in-nationally-watched-teamhealth-case-against-insurance-giant-united-healthcare/)
- Eleven AZA Lawyers Make the 2021 Texas Rising Stars List (https://azalaw.com/eleven-aza-lawyers-make-the-2021-texas-rising-stars-list/)

016312

- Nine AZA Lawyers Earn 2020 Texas Rising Stars Accolades (https://azalaw.com/nine-aza-lawyers-earn-2020-texas-rising-stars-accolades/)
- Two More AZA Lawyers Elected Fellows of the Texas Bar Foundation (https://azalaw.com/two-more-aza-lawyers-elected-fellows-of-the-texas-bar-foundation/)
- Ten AZA Lawyers Earn 2019 Texas Rising Stars Accolades (https://azalaw.com/ten-aza-lawyers-earn-2019-texas-rising-stars-accolades/)
- AZA Wins Rare $2 Million Attorneys' Fees Award for Defendants (https://azalaw.com/aza-wins-rare-2-million-attorneys-fees-award-for-defendants/)
- Dr. Steven Hotze and Two Brothers Win Take-Nothing Verdict in Family Business Dispute (https://azalaw.com/dr-steven-hotze-and-two-brothers-win-take-nothing-verdict-in-family-business-dispute/)
- AZA Lawyers Earn 2018 Texas Rising Stars Accolades (https://azalaw.com/fourteen-aza-lawyers-earn-2018-texas-rising-stars-accolades/)

016313



016313

016313

John Zavitsanos

Partner

P: 713-600-4901
F: 713-655-0062
jzavitsanos@azalaw.com

016314

John Zavitsanos is a highly regarded trial lawyer who loves trying cases and loves winning. He has achieved success for a multitude of clients – both defendants and plaintiffs, from big energy companies to lone whistleblowers battling the odds.

He has tried almost 100 cases to verdict in litigation that runs the gamut: financial services, oil and gas, construction, complex commercial disputes, director and officer liability, non-compete and trade secret disputes, and defamation/business disparagement. He is the primary author of *O'Connor's Texas Rules * Civil Trials* 2018-2021, the premiere civil trial rules guide for Texas lawyers and judges.

He has learned from every jury trial by surveying the jurors after the case and learning what conventional wisdom has outlived its usefulness. That's a lot of input since even just he has tried more than a dozen cases in the last few years.

And his willingness – delight, actually – at trying a case with confidence has impressed numerous heavyweight clients. As one happy customer put it, "I find that many large law firms are willing to capitulate too quickly and pressure me to settle too soon." He said he knows that Mr. Zavitsanos is "serious about going to trial."

016314

Mr. Zavitsanos' considerable talents have been recognized by every possible legal rating service. For 18 consecutive years, he's been listed by *Best Lawyers in America*. He's recognized for his General Commercial Litigation work in Texas by the highly respected *Chambers USA: America's Leading Lawyers for Business*, published by London-based Chambers and Partners. He was also named a *Benchmark Litigation* Star in 2016-2022. And he is a Litigation Counsel of America Senior Fellow. And he was named a Lawdragon 500 Leading Plaintiff Financial Lawyers in America for 2021 with a focus on commercial litigation, intellectual property, and securities.

He has achieved the highest possible peer rating, AV Preeminent, by Martindale-Hubbell, the premier legal directory, for his Business Litigation practice. He's been named by his peers as one of the top 100 Texas Lawyers on the annual *Texas Super Lawyers* list for the past eleven years. And he is board certified in civil trial law by both the Texas Board of Legal Specialization and the National Board of Trial Advocacy, an accomplishment held by less than 2 percent of all practicing lawyers in the state of Texas.

Read More

The results of some of Mr. Zavitsanos' cases

016315

- In 2021, Mr. Zavitsanos won a $62.65 million verdict from a Nevada jury in a nationally watched case for emergency room physician group clients who were underpaid by United Healthcare, the largest insurer in the nation. The jury in this seven-week trial unanimously found malice, oppression, and fraud in the underpayment of the doctors. This verdict against a cluster of United Healthcare affiliates will serve as a bellwether for more than two dozen similar cases around the nation against various insurers.
- In 2021, Mr. Zavitsanos successfully represented emergency room physicians in obtaining a $19.1 million Houston jury verdict against a large insurance company in the first case in the nation to litigate emergency room physicians' out-of-network pay from private insurance companies under the Affordable Care Act.
- In 2021, Mr. Zavitsanos successfully represented the estate of a red snapper fisherman who had been cheated out of $1 million. We obtained $5.1 million for his heirs just when the jurors started to deliberate the four weeks of testimony they had heard. The pre-trial offer was $0.
- In 2020, Mr. Zavitsanos successfully represented emergency room doctors in obtaining a $9.4 million jury verdict against an Arkansas insurance company in a breach-of-contract case in which the insurance company grossly underpaid emergency room doctors. AZA was hired six days before trial. AZA will be representing more emergency room doctors' groups against insurance companies across the country that have been systematically stripping doctors of their pay. See the Texas Lawbook story on this win Six Days Notice, Six Witnesses, Six Jurors, 150 ER Doctors, Two Ticked Off In-House Counsel and a $9.4M Verdict (https://texaslawbook.net/six-days-notice-six-witnesses-six-

016315

016315

jurors-150-er-doctors-two-ticked-off-in-house-counsel-and-a-9-4m-verdict/) (subscription requited). It is in the 2020 Top 100 Verdicts as calculated by Verdict Search. It is was a 2020 Top 10 Verdict nationally.

- Won important ruling for an emergency room doctors' group trying to get fair pay from insurance company. The Federal Court applied the recent U.S. Supreme court decision *Rutledge v. Pharmaceutical Care Management Association* and found that the Texas Insurance Code includes an implied private right of action. The decision advances the law in favor of AZA's doctors' group clients demanding fair pay for their work.
- In 2020, Mr. Zavitsanos successfully represented National Oilwell Varco (NOV) in an Oklahoma jury trial over a tragic 2018 oil rig explosion that killed five workers. The devastating accident was the industry's deadliest since the Deepwater Horizon explosion in the Gulf of Mexico in 2010. The lawsuit was brought by two of the surviving families. After three weeks of grisly testimony, the jury found NOV only a small percentage responsible and found the company should pay far less than even the NOV pre-trial settlement offer. The jury awarded only one percent of the $200 million the plaintiffs' lawyers asked from the jury. The jury found other companies 90 percent responsible for the accident.
- In 2020 Mr. Zavitsanos was able to win a total dismissal of a $40 million lawsuit filed against his LNG plant builder client that was sued by a major international energy company over claims an investment was really a loan. Mr. Zavitsanos got the case dismissed on the eve of trial and his client never paid a penny to the giant energy company.
- In 2018, Mr. Zavitsanos successfully represented Dr. Steven Hotze, part owner of a large energy-sector family business, in a complicated dispute involving allegations of fraud, securities violations, and breaching of fiduciary duties with potential costs of up to $30 million. After a five-week trial and a 65-page jury charge with 45 questions, the jury came back with a total defense victory for Mr. Zavitsanos' client. The case was named among the largest Texas courtroom wins in 2018 by the *Houston Chronicle* in "The Biggest Courtroom Wins of 2018" (https://www.houstonchronicle.com/business/texas-inc/article/The-biggest-courtroom-wins-of-2018-13525404.php) (subscription required) and *Texas Lawbook* in "The Top Texas Litigation Stories of 2018" (https://texaslawbook.net/the-top-texas-litigation-stories-of-2018/) (subscription required).
- In 2017, Mr. Zavitsanos successfully tried a breach of contract and bad faith insurance case for client Prime Natural Resources which owned an offshore oil well damaged in Hurricane Rita. After six weeks in trial, AZA obtained a $41.6 million jury verdict against certain underwriters at Lloyd's, London, that included $27.3 million in punitive damages and $10.9 million for bad faith. The case was one of the top 100 2017 verdicts in the nation according to the National Law Journal.
- In 2016, Professional Janitorial Services of Houston hired Mr. Zavitsanos to end a nearly 10-year-old case against a union that lied about the cleaning business and cost the company to lose business. He stopped the stalling, got it to trial within a month and obtained a judgment of almost $8 million.

016316

016316

016316

This was the first case in the country to successfully go through a full trial that called into question the heavy handed tactics of SEIU, one of the three largest unions in the U.S.

- In 2016, Mr. Zavitsanos represented a client sued by the trustee for a bankrupt company who decided to drop his lawsuit against AZA's client after watching his expert witness cross examined by Mr. Zavitsanos. The legal dispute that never got to the jury even though it was three weeks into the trial involved a series of shopping centers and other properties worth more than $30 million and the question was whether company assets were divested improperly by AZA's client.
- In 2015, National Oilwell Varco was sued for $120 million by eight former employees claiming they were treated differently because of their race. Mr. Zavitsanos was hired after his client offered a substantial settlement that was refused. Instead he got on a take nothing verdict for NOV in this hard-fought case in which plaintiffs were represented by high-profile civil rights lawyer Angela M. Alioto of San Francisco's Law Offices of Mayor Joseph L. Alioto and Angela Alioto.
- In 2014, Enterprise Products Operating LLC hired Mr. Zavitsanos in a $45 million pipeline case when it became clear this case was going to trial. He and AZA replaced a BigLaw firm. He immediately shifted the pre-trial strategy to focus on destroying the defenses arising out of the failed construction of underground pipelines designed to carry gasoline and other products. AZA successfully settled the case on favorable terms for its clients less than two months before trial.
- In 2014, Mr. Zavitsanos and partner Elizabeth Fletcher won a take-nothing verdict from a Harris County jury for a Houston businesswoman, defeating multi-million dollar claims that she had received money from allegedly fraudulent commercial property sales.
- In 2013, Mr. Zavitsanos represented Plains All American Pipeline in a pipeline dispute with BP Oil Pipeline Company in which BP had obtained summary judgment against Plains before AZA got involved in the case. With colleague Lizzie Fletcher, Mr. Zavitsanos petitioned for reconsideration, got the summary judgment reversed, and won summary judgment for Plains, obtaining substantial attorneys' fees for Plains for defending the lawsuit.
- In 2013, Mr. Zavitsanos prevailed for a client with $115 million at stake in an energy sector lawsuit filed by more than 100 oil and gas producers. He represented Plains All American Pipeline after SemCrude, a major midstream oil and gas company, filed for bankruptcy in 2008 without paying the oil and gas producers who sold to SemCrude in the preceding months. AZA participated in over 225 depositions in the case and convinced a key opponent to drop out just before a summary judgment hearing.
- In 2012, Mr. Zavitsanos with partner Todd Mensing and firm attorneys Elizabeth Pannill Fletcher and Jane Robinson, garnered a defense win for Mistras Group Inc. in federal court by not only beating a competing company that sought $8 million in damages and was awarded nothing, but by also getting the trademark at issue dissolved. AZA lawyers won over both the judge and jury. It was the judge who granted Mistras the win on the $8 million trademark claim and the jury that found the mark was generic or descriptive.In 2011, Mr. Zavitsanos and Elizabeth Pannill Fletcher secured a

016317
016317

defense verdict for Mistras Group Inc. following a trade secret case that included an award of $750,000 in attorneys' fees. Mistras, a New Jersey-based company that assesses the safety of large corporate and infrastructure components such as refineries and bridges, was wrongly accused by Texas-based Sentinel Integrity Solutions of interfering with an employment agreement and obtaining confidential information when it hired a former Sentinel employee. According to Texas Lawyer's verdict list, this was the fourth largest defense win in Texas in 2011.

- In 2011, Mr. Zavitsanos, along with Todd Mensing of the Firm, represented a man defamed by *The Fort Bend Star* and a reporter at the paper and won both in an interlocutory appeal and a jury verdict. In this case the Houston Court of Appeals unanimously affirmed the trial court's denial of the Fort Bend Star's Motion for Summary Judgment and rejected the Star's argument that Texas should expand the "limited purpose public figure" doctrine. The jury later returned a remarkable $1.1 million verdict for the client over an article that made false allegations about his behavior and falsely claimed his father, a law enforcement officer, covered for him.
- In 2008, Mr. Zavitsanos was retained in a $40 million "bet the company" case involving claims brought against A&B Valve and Supply, an oilfield supply company by National Oil Well Varco. He was hired three months prior to the scheduled trial date. Shortly before Zavitsanos was hired, the trial court had entered a temporary injunction prohibiting A&B from doing business with a substantial number of its customers. This resulted in millions of dollars of losses. Within thirty days of being hired, Zavitsanos successfully obtained a writ of mandamus against the trial court and reversed the temporary injunction. They then proceeded to trial in March 2008. After five weeks of evidence, the jury returned a verdict in favor of Zavitsanos' client on all claims. This case received national and international attention and was featured in the *National Law Journal*, the *Texas Lawyer*, and over 25 newspapers around the world.
- In 2007, Mr. Zavitsanos was the lead trial counsel in a three-week trial involving a $150 million contractual dispute about a jointly owed offshore gas pipeline. Following a successful decision in favor of the Firm's client, the plaintiff immediately launched settlement discussion and resolved the dispute by paying a substantial amount to Zavitsanos' client in exchange for the acquisition of certain assets.
- In 2005, Mr. Zavitsanos was one of the lead attorneys representing over 63 plaintiffs in an accounting malpractice jury trial involving over $30 million in actual damages. The case was covered by the national media extensively. Shortly after trial began, the defendant settled for a confidential amount.
- Mr. Zavitsanos was statewide counsel for Mercedes-Benz USA for more than 25 year starting in 1990. During this time, Mr. Zavitsanos tried a number of cases to verdict and never lost a jury trial defending Mercedes-Benz.
- In 2003, Mr. Zavitsanos represented a national pharmacy company as a plaintiff in a significant breach of contract case. Following the completion of the evidence, the defendant agreed to settle

016318
016318

016318

the case for 95% of the damages and attorney's fees incurred by Mr. Zavitsanos' client.

- In 2002, Mr. Zavitsanos was the lead lawyer for the defense in an $8 million business tort case. The trial lasted over one month and included over 1,000 trial exhibits. Because of the voluminous number of documents and witnesses, Mr. Zavitsanos and his trial team utilized the latest technology to present the case to the jury. The trial was completely "paperless." Immediately prior to trial, Mr. Zavitsanos' client offered nearly $1 million to settle the case, which the plaintiff company rejected. Following the month- long trial, the jury found in favor of his client on every single claim.
- In 2001, Mr. Zavitsanos obtained a seven-figure jury verdict against a publicly traded company in a fraud claim brought by the company's former director of Mergers and Acquisitions.
- In 1997, Mr. Zavitsanos defended a Fortune 100 chemical company in a multimillion-dollar toxic exposure case. The plaintiff claimed that he was completely disabled due to being exposed to toxic substances. The plaintiff's "bottom line" settlement demand was over $4,000,000. The case went to trial and, following the cross examination of the plaintiff by Mr. Zavitsanos, the case settled for a small fraction of the plaintiff's final demand and the amount that Mr. Zavitsanos had offered more than 18 months previously.
- In 1996, Mr. Zavitsanos was the lead trial lawyer on behalf of seven police officers who filed suit alleging that they were terminated because of their political expression. The case was followed nationally by a number of police organizations and, following a successful appeal; it is now considered one of the leading decisions in this area of the law. *Brady v. Fort Bend County*, 145 F.3d 691 (5th Cir. 1998).
- In 1995, Mr. Zavitsanos represented an oil and gas limited partnership that was a defendant in a suit involving allegations of fraud and breach of fiduciary duty. The plaintiff sought $8 million in damages against Mr. Zavitsanos' client and several other defendants. Following a lengthy jury trial, Mr. Zavitsanos' client was exonerated on all counts, even though the other defendants were found liable.

016319

016319

EDUCATION

- Loyola University of Chicago (B.S., magna cum laude, 1984)
- University of Michigan (J.D., 1987)

HONORS & DISTINCTIONS

- Board Certified, Civil Trial Advocacy Specialist by the National Board of Trial Advocacy
- Board Certified, Civil Trial Law, Texas Board of Legal Specialization
- Leader in Texas General Commercial Litigation in the 2014- 2021 editions of Chambers USA: America's Leading Lawyers for Business
- Chambers USA Texas Trial Lawyers Spotlight honor 2021

016319

- The Best Lawyers in America, 2006-2022
- National Elite Trial Law Firm 2021 Award Winner
- 2019 Nicholas J. Bouras Award for Extraordinary Archon Stewardship presented by the National Council of the Order of Saint Andrew
- Lawdragon 500 Leading Plaintiff Financial Lawyers in America for 2021 with a focus on commercial litigation, intellectual property, and securities.
- Litigation Counsel of America Senior Fellow including Trial Law Institute, Diversity Law Institute and Order of Justitia
- Houston Bar Association Speakers Bureau Committee for the 2020-2021
- Benchmark Litigation Star in 2016-2022
- Texas Super Lawyers, 2003-2021
- Top 100 Texas Lawyers, 2011-2021
- Top 100 Regional Business Litigators, 2007-2016
- Who's Who in American Law
- Million Dollar Advocate Forum
- Outstanding Lawyers of America, 2003 – present
- Litigation Counsel of America, Fellow
- Texas Bar Foundation Fellow
- Who's Who in Energy, 2011-2014
- College of the State Bar of Texas, 2005
- Rated AV Preeminent by Martindale-Hubbell

016320

016320

REPORTED CASES

- In re M-I L.L.C., 59 Tex. Sup. J. 888 (Tex. 2016)
- Gessner Eng'g, LLC v. St. Paraskevi Greek Orthodox Monastery, Inc., 2016 Tex. App. LEXIS 12473 (Tex. App. Houston [1st Dist] 2016)
- Finserv Cas. Corp. v. Transamerica Life Ins. Co., 2016 Tex. App. LEXIS 11416 (Tex. App. – Houston [14th Dist.] 2016)
- In re Crestline Direct Fin., L.P., 2016 Tex. App. LEXIS 10712 (Tex. App. Houston [14th Dist.] 2016)
- ConocoPhillips Co. v. Noble Energy, Inc., 462 S.W.3d 255 (Tex. App. Houston [14th Dist.] 2016)
- BP Oil Pipeline Co. v. Plains Pipeline, L.P., 472 S.W.3d 296 (Tex. App. Houston [1st Dist.] 2015)
- Gudger v. CITGO Petroleum Corp., 574 Fed. Appx. 493 (5th Cir 2014)
- Klentzman v. Brady, 456 S.W.3d 239 (Tex. App. Houston [1st Dist.] 2014)
- In re M-I L.L.C., 2014 Tex. App. LEXIS 12024 (Tex. App. Houston [14th Dist.] 2014)
- Rapid Settlements, Ltd. v. Settlement Funding, LLC, 2014 Tex. App. LEXIS 9320 (Tex. App. Houston [14th Dist.] 2014)

016320

- In re Sugarland Anesthesia PLLC, 2013 Tex. App. LEXIS 14968 (Tex. App. Houston [14th Dist.] 2013)
- Sentinel Integrity Solutions, Inc. v. Mistras Group, Inc., 414 S.W.3d 911 (Tex. App. Houston [1st Dist.] 2013)
- Best Auto v. Mercedes-Benz USA, LLC, 2013 Tex. App. LEXIS 4844 (Tex. App. Dallas [5th Dist.] 2013)
- In re Citgo Petro. Corp., 2013 Tex. App. LEXIS 1899 (Tex. App. Waco [10th Dist.] 2013)
- Opuiyo v. Houston Auto M. Imps., Ltd., 2011 Tex. App. LEXIS 58 (Tex. App. Houston [14th Dist.] 2011)
- 1993 GF P'ship v. Simmons & Co. Int'l, 2010 Tex. App. LEXIS 8903 (Tex. App. Houston [14th Dist.] 2010)
- Macy v. Waste Mgmt., 294 S.W.3d 638 (Tex. App. Houston [1st Dist.] 2009)
- Klentzman v. Brady, 2009 WL 5174369 (Tex. App. Houston [1st Dist.], December 31, 2009).
- Amschwand v. Spherion Corp 505 F.3d 342 (5th Cir 2008) cert. denied, 128 S. Ct. 1493 (2008)
- Hollenbeck v. Mercedes-Benz USA, LLC, 2008 Tex. App. LEXIS 2806 (Tex. App. Austin [3rd Dist.] 2008)
- Devally v. Powell Watson Motors, 2007 Tex. App. LEXIS 9633 (Tex. App. San Antonio [4thDist.] 2007)
- Innovative Truck Storage, Inc. v. Airshield Corp., 2007 Tex. App. LEXIS 4883 (Tex. App. Corpus Christi [13thsDist.] 2007)
- Nat'l Oilwell, L.P. v. Sladic, 2006 Tex. App. LEXIS 4583 (Tex. App. Houston [14th Dist.] 2006)
- In re Bill Heard Chevrolet, Ltd., 2005 Tex. App. LEXIS 8838 (Tex. App. Houston [14th Dist.] 2005)
- Recognition Communication, Inc. v. American Automobile Ass'n., 154 S.W.3d 878 (Tex. App. – Dallas 2005)
- In re: KPMG, 2005 WL 66475 (Tex. App. Houston [14th Dist.] 2005)
- Comsys Information Technology Svc. Inc. v. Twin City Fire Ins. Co., 130 S.W.3d 181 (Tex. App. Houston [14th Dist.] 2003)
- Livesay v. Wellogix, Inc., 2003 WL 139730 (Tex. App. Houston [1st Dist.] 2003)
- Nat'l Union Fire Ins. Co. v. Willis, 296 F.3d 336 (5th Cir 2002)
- In re: Wheat, 2002 WL 31320095 (Tex. App. Houston [1st Dist.] 2002)
- Mota v. Univ. of Tex. Houston Health Sci. Ctr., 261 F.3d 512 (5th Cir 2001)
- Pratt v. City of Houston, F.3d 601(5th Cir 2001)
- Jones v. Star Motor Cars, 45 S.W.3d 350 (Tex. App. Houston [1st Dist.] 2001, no pet.)
- Texas Dept. of Public Safety v. Randle, 31 S.W.3d 786 (Tex. App. Houston [1st Dist.] 2001, no pet.)
- Metropolitan Life Insurance Co. v. Haney, 987 S.W.2d 236 (Tex. App. Houston [14th Dist] 1999, pet. denied)
- Brady v. Fort Bend County, 145 F.3d 691 (5th Cir. 1998)
- LaBella v. Mercedes-Benz of North America, 942 S.W.2d 127 (Tex. App. Amarillo, 1997, writ denied)
- Thompson v. City of Galveston, 979 F.Supp. 504 (S.D. Tex. 1997)
- Redwine v. AAA Life Ins. Co., 852 S.W.2d 10 (Tex. App. Dallas 1993, no writ)
- Evans v. United Air Lines, 986 F.2d 942 (5th Cir. 1993)
- Gulf Coast Inv. Corp. v. NASA 1 Business Center, 754 S.W.2d 152 (Tex. 1988)

016321

016321

016321

- In re Seiscom Delta, Inc., 857 F.2d 279 (5th Cir. 1988)

PUBLICATIONS, PAPERS AND CLE PRESENTATIONS

Mr. Zavitsanos' authorship and presentations at seminars include:

- Primary author of *O'Connor's Texas Rules * Civil Trials* 2018-2021
- "How to Command a Room: Impactful Presentations to Juries and Clients," Houston Bar Association seminar, February 2022
- "Strategies from Trial Titans: Trying a Case to the Modern Jury of the 2020s," Texas Association of Civil Trial and Appellate Specialists, September 2021
- "Civil Case Update," Texas Center for the Judiciary Spring Regional Conference, May 2021
- "Live Jury Trials in the Time of Covid: Lessons from the Front Lines," Litigation Counsel of America webinar, November 2020
- "How the Pandemic is Impacting the Future of Jury Trials in Texas," *Texas Lawbook* webinar, Houston, October 2020
- "The Art of Business Litigation: A Conversation," ALM's Texas Business Litigation CLE presentation, Houston, March 2020
- Contributing author of *Texas Business Litigation 2019*, published by *Texas Lawyer*
- "The Art of Business Litigation," University of Houston Law Center CLE, Houston, November 2019
- "Opening Statements in David vs. Goliath," America Bar Association, Litigation Section, New York City, May 2019
- "Tactical Considerations in Business Trials," Houston Bar Association, Litigation Section, Houston, April 2019
- "Mining for Silver: Discovery Update," 2019 HBA Civil/Appellate Bench Bar Conference, Houston, April 2019
- "Voir Dire Panel Perspective – Effective Voir Dire and Opening," Texas Bar CLE, Houston, October 2017
- "Lies in Business and Under Oath" CLE course in Philadelphia, Pennsylvania Bar Institute, December 2016
- "Punitive Damages in Commercial Litigation: Pursuing and Defending Claims – Leveraging Pretrial Motions, Discovery and Trial Strategies, Navigating Constitutional Restraints" webinar, Strafford Publications Inc., April 2014
- "Witness Credibility in Trial and Depositions," Texas Lawyer's In-House Counsel Summit, April 2014, November 2013, May 2012
- "Witness Credibility at Depositions and Trial – Do's and Don'ts," State Bar of Texas – Texas Minority Counsel Program, 18th Annual Conference, September 2010

016322
016322

016322

- "Lessons Learned from Trying a Breach of Fiduciary Case," Houston Bar Association, Litigation Section, December 2008
- "Cross Examination," University of Houston Law Foundation, Civil Litigation, February 2008
- Credibility and Impeachment – University of Houston Law Foundation; Advanced Evidence and Discovery, November 2007
- Witness Credibility – How To Prepare, Achieve, And Destroy It; Lorman Education Services, June 2006
- Preparing Your Witness for Deposition and Trial, Houston Bar Association, March 2006
- Types of Claims and Their Values, Houston Bar Association, September 2005
- Preparing Your Witness for Deposition and Trial, Houston Bar Association, November 2004
- Witness Credibility – How To Prepare, Achieve, And Destroy It, Lorman Education Services, September 2004
- Credibility and Impeachment: Fundamentals of Direct and Cross- Examination, University of Houston Law Foundation – How to Offer and Exclude Evidence, September 2002
- Preparing Your Witness for Deposition and Trial, University of Houston Law Foundation, June 2002
- Punitive Damages – Phase II, University of Houston Law Center – Litigation and Trial Tactics, December 2000
- Asserting, Contesting and Preserving Privileges Under the New Rules, University of Houston Law Foundation – Advanced Civil Discovery Under the New Rules, June 2000

016323

016323

IN THE NEWS

Zavitsanos One of Law360's 10 National 'Titans of the Plaintiffs Bar' for Groundbreaking Healthcare Jury Trial Wins (https://azalaw.com/zavitsanos-one-of-law360s-10-national-titans-of-the-plaintiffs-bar-for-groundbreaking-healthcare-jury-trial-wins-2/)

John Zavitsanos Interviewed on CNBC About Why Trial Lawyers Need to Work in Person (https://azalaw.com/john-zavitsanos-interviewed-on-cnbc-about-why-trial-lawyers-need-to-work-in-person/)

AZA Victorious in $62 Million Nationally Watched TeamHealth Trial Against Insurance Giant United Healthcare (https://azalaw.com/aza-victorious-in-nationally-watched-teamhealth-case-against-insurance-giant-united-healthcare/)

AZA and Three Name Partners Earn Honors in Benchmark Litigation's 2022 Guide (https://azalaw.com/aza-and-three-name-partners-earn-honors-in-benchmark-litigations-2022-guide/)

Ten AZA Lawyers Make Super Lawyers List; Four Rank among Top 100 (https://azalaw.com/ten-aza-lawyers-make-super-lawyers-list-four-rank-among-top-100/)

016323

Three AZA Partners Make Lawdragon's 500 Top Plaintiff Financial Lawyers List (https://azalaw.com/three-aza-partners-make-lawdragons-500-top-plaintiff-financial-lawyers-list/)

Twelve AZA Lawyers Ranked among US Best for Commercial, Intellectual Property, Personal Injury Litigation and Appellate Law for 2022 (https://azalaw.com/twelve-aza-lawyers-ranked-among-us-best-for-commercial-intellectual-property-personal-injury-litigation-and-appellate-law-for-2022/)

AZA's John Zavitsanos Interviewed on NPR About Office Opening During the Pandemic (https://azalaw.com/azas-john-zavitsanos-interviewed-on-npr-about-office-opening-during-the-pandemic/)

AZA Selected as a National Elite Trial Law Firm 2021 Award Winner (https://azalaw.com/azas-john-zavitsanos-selected-as-a-national-elite-trial-lawyer-2021-award-winner/)

AZA's 2020 Success Featured in New York Times Essay (https://azalaw.com/azas-2020-success-featured-in-new-york-times-essay/)

016324

Houston Jury Sends U.S. Insurance Companies a Strong Message on Behalf of Emergency Room Doctors (https://azalaw.com/houston-jury-sends-u-s-insurance-companies-a-strong-message-on-behalf-of-emergency-room-doctors/)

016324

AZA Earns Texas Super Lawyers Honors; Three Make Top 100 Lists (https://azalaw.com/aza-earns-texas-super-lawyers-honors-three-make-top-100-lists/)

TeamHealth ER Doctors' Group Wins $9.4 Million Arkansas Jury Verdict for Underpayment by Centene Corporation (https://azalaw.com/teamhealth-er-doctors-group-wins-9-4-million-arkansas-jury-verdict-for-underpayment-by-centene-corporation/)

AZA Trial Lawyers Among Nation's Best for Commercial, Intellectual Property Litigation and Appellate Law for 2021 (https://azalaw.com/aza-trial-lawyers-among-nations-best-for-commercial-intellectual-property-litigation-and-appellate-law-for-2021/)

For Seventh Year, Prestigious Chambers USA Ranks AZA Among Top Texas Commercial Litigation Firms (https://azalaw.com/for-seventh-year-prestigious-chambers-usa-ranks-aza-among-top-texas-commercial-litigation-firms/)

John Zavitsanos Earns Recertification by the National Board of Trial Advocacy (https://azalaw.com/john-zavitsanos-earns-recertification-by-the-national-board-of-trial-advocacy/)

016324

AZA Beats the Odds for Energy Company in Tragic Oklahoma Explosion (https://azalaw.com/aza-beats-the-odds-for-energy-company-in-tragic-oklahoma-explosion/)

AZA Gets Turkey Leg Hut Restaurant Lawsuit Dissolved in Two Weeks (https://azalaw.com/aza-gets-turkey-leg-hut-restaurant-lawsuit-dissolved-in-two-weeks/)

AZA, Three Firm Partners Honored by Benchmark Litigation Fifth Year in a Row (https://azalaw.com/aza-three-firm-partners-honored-by-benchmark-litigation-fifth-year-in-a-row/)

Texas Super Lawyers Again Honors Seven AZA Lawyers; Three Are Top 100 (https://azalaw.com/texas-super-lawyers-again-honors-seven-aza-lawyers-three-are-top-100/)

Barratry Suit Over Deepwater Horizon Spill Victims Dismissed (http://alm-aza.projekt77.com/barratry-suit-over-deepwater-horizon-spill-victims-dismissed/)

Prestigious Chambers USA Ranks AZA Among Top Texas Commercial Litigation Firms Sixth Year In A Row (http://alm-aza.projekt77.com/prestigious-chambers-usa-ranks-aza-among-top-texas-commercial-litigation-firms-sixth-year-in-a-row/)

016325

AZA's $20M Take-Nothing Verdict for National Oilwell Varco Stands on Appeal (http://alm-aza.projekt77.com/azas-20m-take-nothing-verdict-for-national-oilwell-varco-stands-on-appeal/)

016325

AZA Wins Rare $2 Million Attorneys' Fees Award for Defendants (http://alm-aza.projekt77.com/aza-wins-rare-2-million-attorneys-fees-award-for-defendants/)

Dr. Steven Hotze and Two Brothers Win Take-Nothing Verdict in Family Business Dispute (http://alm-aza.projekt77.com/dr-steven-hotze-and-two-brothers-win-take-nothing-verdict-in-family-business-dispute/)

AZA Lawyers Named Among Nation's Best for Commercial, Patent Litigation and Appellate Law (http://alm-aza.projekt77.com/aza-lawyers-named-among-nations-best-for-commercial-patent-litigation-and-appellate-law/)

National Oilwell Varco Wins $12 Million After Discovering Ex-Employees' Fraud (http://alm-aza.projekt77.com/national-oilwell-varco-wins-12-million-after-discovering-ex-employees-fraud/)

AZA Partner John Zavitsanos Organizes Summit on Religious Freedom (http://alm-aza.projekt77.com/aza-partner-john-zavitsanos-organizes-summit-on-religious-freedom/)

016325

AZA Scores One of the Nation's Top 100 Verdicts of 2017 (http://alm-aza.projekt77.com/aza-scores-one-of-the-nations-top-100-verdicts-of-2017/)

Former NOV Employee Begins Serving Prison Term for Felony Theft (http://alm-aza.projekt77.com/former-nov-employee-begins-serving-prison-term-felony-theft/)

AZA Obtains Judgment for Apache Corp. in Fraud Suit (http://alm-aza.projekt77.com/aza-obtains-judgment-for-apache-corp-in-fraud-suit/)

US Supreme Court Won't Overturn NOV Win in $120M Discrimination Suit (http://alm-aza.projekt77.com/us-supreme-court-wont-overturn-nov-win-in-120m-discrimination-suit/)

AZA Lawyers Zavitsanos, Robinson to Co-Author 2018 Issue of Essential Trial Guide O'Connor's Texas Rules * Civil Trials (http://alm-aza.projekt77.com/aza-lawyers-zavitsanos-robinson-co-author-2018-issue-essential-trial-guide-oconnors-texas-rules-civil-trials/)

Prime Natural Resources Wins $41.6 Million in Wellsure Insurance Dispute (http://alm-aza.projekt77.com/prime-natural-resources-wins-41-6-million-wellsure-insurance-dispute/)

016326

WSJ: Texas Union Fights to Stay in Bankruptcy after Losing Defamation Case (http://alm-aza.projekt77.com/wsj-texas-union-fights-stay-bankruptcy-losing-defamation-case/)

016326

AZA Lawyer Zavitsanos Tells Newspaper How Social Media Aids in Jury Selection (http://alm-aza.projekt77.com/aza-lawyer-zavitsanos-tells-newspaper-social-media-aids-jury-selection/)

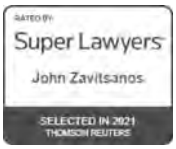
Houston Janitorial Service Wins $7.8 Million from Union Over Disparagement (http://alm-aza.projekt77.com/houston-janitorial-service-wins-5-3-million-union-disparagement/)

AZA Wins Sanctions Order Against Wells Fargo in Securities Fraud Lawsuit (http://alm-aza.projekt77.com/aza-wins-sanctions-order-wells-fargo-securities-fraud-lawsuit/)

Bankruptcy Trustee Dismisses Case After Expert Fails On Cross Examination (http://alm-aza.projekt77.com/bankruptcy-trustee-dismisses-case-expert-fails-cross-examination/)

AZA Partner John Zavitsanos Discusses Trial Techniques in Law360 Article (http://alm-aza.projekt77.com/aza-partner-john-zavitsanos-discusses-trial-techniques-law360-article/)

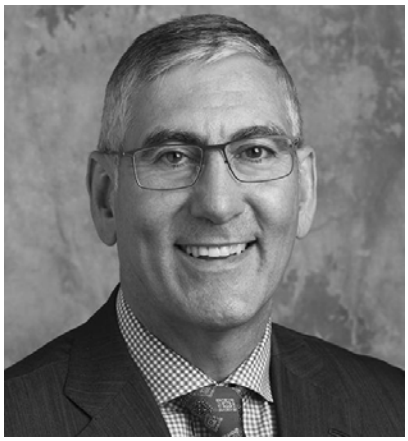
016326



016327

016327

016327



Joseph Y. Ahmad

Partner

P: 713-600-4900
F: 713-655-0062
joeahmad@azalaw.com

016328

016328

Joseph Y. Ahmad, a founding partner in the Houston law firm of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing P.C., is a lawyer for executives and has been recognized nationally as one of the best lawyers in his field. He represents executives in a variety of matters, including breach of contract, trade secrets, covenants not to compete, breach of fiduciary duty and other matters.

He was elected to the prestigious American Board of Trial Advocates, an elite group of the country's leading judges and civil trial lawyers. He has been selected by his peers as one of the "*Best Lawyers in America*" since 2003 and he was named a "2015 Lawyer of the Year" in the Houston area. Mr. Ahmad has been recognized as a leading lawyer in "*Chambers USA*: America's Leading Lawyers for Business." He has been named to the *Texas Super Lawyers* list since 2003, been on the *Texas Super Lawyers Top 100 in Houston* since 2006, and been in the *Texas Super Lawyers Top 100 in Texas* every year but one since 2006. He was also named a *Benchmark Litigation* Star in 2016-2022. Mr. Ahmad received the 2019 Distinguished Member Award from the South Asian Bar Association of Houston. He has received a rating of AV Preeminent by Martindale-Hubbell.

Having tried more than 50 cases to a verdict, and argued more than a dozen cases on appeal, he is a nationally recognized expert and frequent lecturer on a variety of law topics for organizations such as the American Bar Association, State Bar of Texas, The University of Texas School of Law, and the

016328

University of Houston Law Foundation. He has been a frequent commentator on legal issues for various media entities, including *The Wall Street Journal*, *The New York Times*, *Houston Chronicle*, and local television stations.

His more recent engagements include representing: a general counsel sued for trade secret theft, an owner of an accounting practice who signed a covenant not to compete and employment agreement with the buyer of his practice, and a group of physicians with senior administrative roles within their medical center to represent them in a breach-of-contract dispute. And he was recently widely quoted by media nationally for his representation of Dr. Hasan Gokul, a doctor improperly accused of stealing COVID-19 vaccine. AZA is handling Dr. Gokal's civil lawsuit against Harris County and Harris County Public Health for discrimination based on his race and national origin. Media coverage includes CNN's "Texas doctor fired for using leftover Covid-19 vaccine doses sues county for discrimination." (https://urldefense.proofpoint.com/v2/url?u=https-3A__www.cnn.com_2021_09_22_us_texas-2Ddoctor-2Dcovid-2Dvaccine-2Dlawsuit_index.html&d=DwMFaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=TZBTwZCmnh7SmjlknEjNbQqL20U51irfc4-WLd6UbUM&m=H1g0401I6v2vgLis9shqj91KE14dV5zNOJOjhn_Ihkc&s=tVRuWRPP-Yu5j5em3-XlO-joYoLrMVl7yCEnH8dU96Q&e=)

016329

He also recently on a $62.65 million verdict from a Nevada jury in a nationally watched case for emergency room physician group clients who were underpaid by United Healthcare, the largest insurer in the nation. The jury in this seven-week trial unanimously found malice, oppression, and fraud in the underpayment of the doctors. This verdict against a cluster of United Healthcare affiliates will serve as a bellwether for more than two dozen similar cases around the nation against various insurers.

016329

Blog

Mr. Ahmad also maintains a blog, ***Legal Issues in the Executive Suite (https://azalaw.com/blog/),*** where he explores issues involving trade secrets, covenants not to compete, executive compensation and other matters of importance to executives. ***Click here to read Legal Issues in the Executive Suite.*** (https://azalaw.com/blog/)

EDUCATION & CLERKSHIP

- Law Clerk to Hon. Benjamin F. Gibson, U.S. District Court, Western District of Michigan, 1987-89.
- University of Michigan, J.D., 1987.
- Lawrence University, B.A. with honors, 1984.

016329

ADMISSIONS & CERTIFICATION

- Admitted to bar 1987, Michigan; 1989, Texas.
- Admitted to all state and federal courts in Texas; U.S. District Court, Western District of Michigan; U.S. District Court, Eastern District of Wisconsin; U.S. District Court, Southern District of New York; U.S. District Court, Northern District of New York; U.S. District Court, District of Colorado; U.S. District Court, District of North Dakota;U.S. Court of Appeals, 5th Circuit; U.S. Supreme Court.
- Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization, 1996.

PROFESSIONAL AFFILIATIONS

- Houston and American Bar Associations (Sections: Litigation; Labor and Employment Law; Co-Chair of Trade Secrets, Covenants Not to Compete and Duty of Loyalty Subcommittee)
- State Bar of Texas (Sections: Labor; Litigation)
- Texas Trial Lawyers Association
- The Association of Trial Lawyers of America
- National Employment Lawyers Association
- Houston Chapter, National Employment Lawyers Association (past president – 2000)
- Fellow, Houston Bar Foundation
- Fellow, Texas Bar Foundation

016330
016330

REPORTED CASES

- *Brady v. Fort Bend County and R. George Molina*, 58 F.3d 173 (5th Cir. 1995), *reh'g en banc granted* (Aug. 25, 1995), *appeal dismissed* (Nov. 17, 1995)
- *Primeaux v. Conoco*, 961 S.W.2d 401 (Tex.App.-Houston [1st Dist.] 1997, no writ)
- *Washington v. HCA Health Services of Texas, Inc.*, 152 F.3d 464 (5th Cir. 1998), *cert. granted* 119 S.Ct. 2388 (1999)
- *Brady v. Fort Bend County*, 145 F.3d 691 (5th Cir. 1998), *cert. denied* 119 S.Ct. 873 (1999)
- *Pratt v. City of Houston, Tex.*, 247 F.3d 601 (5th Cir. 2001)
- *Siler-Khodr v. University of Texas Health Science Center San Antonio*, 261 F.3d 542 (5th Cir. 2001)
- *Mota v. University of Texas Houston Health Science Center*, 261 F.3d 512 (5th Cir. 2001)

PUBLICATIONS, PAPERS AND CLE PRESENTATIONS

Taking aim at non-competes, ELA/ABA 7th Transatlantic Conference: The Global Working World – Evolution, Opportunity and Challenge, Webinar, October 2021

016330

SLAPP Your Opponents: What Employment Lawyers Need to Know about the Anti-SLAPP Law, State Bar of Texas Webcast, October 2018

The Brave New World of Trade Secrets and Non-Competes: Drafting and Negotiating Non-Compete and Confidentiality Agreements, American Bar Association webinar, February 2018

Motions Practice in the Houston and Galveston Divisions: What's New, and What Can Be Improved?, Southern District of Texas Bench/Bar Conference, November 2017

Texas Trade Secrets and Covenants Not to Compete: Recent Updates, co-authored with Harrison Scheer, presented to Texas Association of Defense Counsel Annual Meeting, September 2017 in Seattle, WA.

The Federalization of Trade Secrets – Working with the Defend Trade Secrets Act, American Bar Association, Section of Labor and Employment Law, July 2016

Counterclaims and Anti-SLAPP Actions: What Happens When the Tide Turns?, American Bar Association Employee Rights and Responsibilities Committee, March 2016

016331

Voir Dire: Finding Your Enemies, The University of Texas School of Law CLE – Trial Skills Training Camp, October 2015

016331

SOX, OSHA, and Beyond: Litigating Whistleblower Claims at the U.S. Department of Labor, HBA Labor & Employment Law Section – Newest Developments in Litigating Whistleblower Claims, October 2015

Covenants Not to Compete: Where We Are Now, TX Employment Lawyers Association Annual TELA Conference, October 2015 in San Miguel, Mexico

*Recent Developments In Whistleblower Law: From a Whistleblower Lawyer's Perspective,*NELA Webinar – Recent Developments in Whistleblower Law, September 2015

Trade Secrets and IP in the Age of Employee Mobility, ABA National Symposium on Technology in Labor and Employment, Panelist, March 2015 in Naples, Florida

Covenants Not to Compete and Trade Secrets, ABA Section of Labor Employment Law – Technology in Labor & Employment Law, March 2015 in San Francisco California

Code Red: Emergency Injunctive Relief in Non-Compete Cases, ERR Midwinter Meeting – ABA Section of Labor & Employment Law Employment Rights and Responsibilities, March 2015

016331

Trade Secrets and Non-Compete Agreements in Texas: The Law is Changing. Are You Keeping Up? Texas Bar CLE Webcast, Panelist, December 7, 2010.

The Dodd-Frank Act: What it Means for Employment Lawyers, Texas Bar CLE Webcast, Panelist, November 30, 2010.

What the Texas Attorney Needs to Know About Unfair Competition and Non-Compete Claims, Lawline.com; Online CLE Seminar; 2010.

The Generational Effect of Juror Attitudes – Panelist, American Bar Association Section of Labor and Employment Law Annual Meeting, August 5-10, 2010, San Francisco.

Employee Handbooks: The Good, The Bad, The Useless – Panelist, South Texas College of Law CLE, 23rd Annual Employment Law Conference, July 15-16, 2010, Houston.

What You Need to Know About Unfair Competition and Non-Compete Claims, Houston Bar Association Continuing Legal Education; January 28, 2010, Houston.

016332

In The News

016332

AZA Expands Sexual Harassment Protection in Major Appellate Win against City of Houston (https://azalaw.com/aza-expands-sexual-harassment-protection-in-major-appellate-win-against-city-of-houston/)

AZA Victorious in $62 Million Nationally Watched TeamHealth Trial Against Insurance Giant United Healthcare (https://azalaw.com/aza-victorious-in-nationally-watched-teamhealth-case-against-insurance-giant-united-healthcare/)

AZA and Three Name Partners Earn Honors in Benchmark Litigation's 2022 Guide (https://azalaw.com/aza-and-three-name-partners-earn-honors-in-benchmark-litigations-2022-guide/)

National and International Media Cover Discrimination Lawsuit Filed by AZA Client Dr. Hasan Gokal, Improperly Accused of Stealing COVID-19 Vaccine (https://azalaw.com/national-and-international-media-cover-discrimination-lawsuit-filed-by-aza-client-dr-hasan-gokal-improperly-accused-of-stealing-covid-19-vaccine/)

Ten AZA Lawyers Make Super Lawyers List; Four Rank among Top 100 (https://azalaw.com/ten-aza-lawyers-make-super-lawyers-list-four-rank-among-top-100/)

016332

Twelve AZA Lawyers Ranked among US Best for Commercial, Intellectual Property, Personal Injury Litigation and Appellate Law for 2022 (https://azalaw.com/twelve-aza-lawyers-ranked-among-us-best-for-commercial-intellectual-property-personal-injury-litigation-and-appellate-law-for-2022/)

AZA Earns Texas Super Lawyers Honors; Three Make Top 100 Lists (https://azalaw.com/aza-earns-texas-super-lawyers-honors-three-make-top-100-lists/)

Houston City Council Settles Fire Department Discrimination Lawsuit, Agrees to Federal Consent Decree (https://azalaw.com/houston-city-council-settles-fire-department-discrimination-lawsuit-agrees-to-federal-consent-decree/)

AZA Trial Lawyers Among Nation's Best for Commercial, Intellectual Property Litigation and Appellate Law for 2021 (https://azalaw.com/aza-trial-lawyers-among-nations-best-for-commercial-intellectual-property-litigation-and-appellate-law-for-2021/)

For Seventh Year, Prestigious Chambers USA Ranks AZA Among Top Texas Commercial Litigation Firms (https://azalaw.com/for-seventh-year-prestigious-chambers-usa-ranks-aza-among-top-texas-commercial-litigation-firms/)

016333

AZA, Three Firm Partners Honored by Benchmark Litigation Fifth Year in a Row (https://azalaw.com/aza-three-firm-partners-honored-by-benchmark-litigation-fifth-year-in-a-row/)

016333

AZA Co-Founder Joe Ahmad Honored by the South Asian Bar Association (http://alm-aza.projekt77.com/aza-co-founder-joe-ahmad-honored-by-the-south-asian-bar-association/)

Prestigious Chambers USA Ranks AZA Among Top Texas Commercial Litigation Firms Sixth Year In A Row (http://alm-aza.projekt77.com/prestigious-chambers-usa-ranks-aza-among-top-texas-commercial-litigation-firms-sixth-year-in-a-row/)

AZA Ranked Again Among Top Texas Commercial Litigation Firms by Prestigious Chambers USA (http://alm-aza.projekt77.com/aza-ranked-again-among-top-texas-commercial-litigation-firms-by-prestigious-chambers-usa/)

Jury Asks to Award More Than Requested in Case AZA Joined on Eve of Trial (http://alm-aza.projekt77.com/jury-asks-award-requested-case-aza-joined-eve-trial/)

9 AZA Lawyers Again Named Among Nation's Best for Commercial, Patent Litigation (http://alm-aza.projekt77.com/9-aza-lawyers-named-among-nations-best-commercial-patent-litigation/)

AZA Ranked Among Top Texas Commercial Litigation Firms by Chambers USA (http://alm-aza.projekt77.com/aza-ranked-among-top-texas-commercial-litigation-firms-chambers-usa/)

AZA's Jane Langdell Robinson Earns Prestigious Civil Appellate Law Certification (http://alm-aza.projekt77.com/azas-jane-langdell-robinson-earns-prestigious-civil-appellate-law-certification/)

Nine AZA Lawyers Named Among Nation's Best for Commercial, Patent Litigation (http://alm-aza.projekt77.com/nine-aza-lawyers-named-among-nations-best-commercial-patent-litigation/)

AZA Wins Sanctions Order Against Wells Fargo in Securities Fraud Lawsuit (http://alm-aza.projekt77.com/aza-wins-sanctions-order-wells-fargo-securities-fraud-lawsuit/)

Chambers USA Ranks AZA Again Among Top Texas Commercial Litigation Firms (http://alm-aza.projekt77.com/chambers-usa-ranks-aza-among-top-texas-commercial-litigation-firms/)

AZA, Firm Attorneys Again Earn Chambers USA Commercial Litigation Honors (http://alm-aza.projekt77.com/aza-firm-attorneys-again-earn-chambers-usa-commercial-litigation-honors/)

016334

Houston's AZA Law Firm, 3 Name Partners Earn Benchmark Litigation Honors (http://alm-aza.projekt77.com/houstons-aza-law-firm-3-name-partners-earn-benchmark-litigation-honors/)

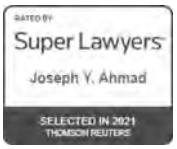
016334

Houston Litigation Boutique AZA Again Earns 'Best Law Firms' National Ranking (http://alm-aza.projekt77.com/houston-litigation-boutique-aza-again-earns-best-law-firms-national-ranking/)

AZA Co-Founder Joseph Ahmad Offers Tips on Courtroom Effectiveness in Interview with Law360 (http://alm-aza.projekt77.com/aza-co-founder-joseph-ahmad-offers-tips-on-courtroom-effectiveness-in-interview-with-law360/)

Eight Lawyers from AZA Named Among Nation's Best for Commercial, Patent Litigation (http://alm-aza.projekt77.com/eight-lawyers-aza-named-among-nations-best-commercial-patent-litigation/)

AZA Spotlighted in News Story "'Two Greeks and a Sheik': AZA is Exhibit A for Litigation Boutiques" (http://alm-aza.projekt77.com/aza-spotlighted-news-story-two-greeks-sheik-aza-exhibit-litigation-boutiques/)



016335

016335

016335

P. Kevin Leyendecker

Of Counsel

P: 713-600-4961
F: 713-655-0062
kleyendecker@azalaw.com

016336

P. Kevin Leyendecker is a trial lawyer with more than 20 years of experience trying both plaintiff and defense cases to jury verdict in state and federal courts. He has obtained eight figure verdicts and settlements on behalf of individual and corporate clients and together with his joint venture partners, recovered over $1 billion in settlements on behalf of individuals victimized by a wide variety of consumer, fraud and personal injury matters. In addition to his trial practice, Mr. Leyendecker has handled appeals to the U.S. Court of Appeals, 5th circuit and various Texas state appellate courts. He also serves as outside general counsel for energy companies located in and around Houston, Texas.

Mr. Leyendecker obtained both his law and undergraduate degrees from the University of Texas at Austin. Now that his youth sport coaching days are over, he enjoys attending his kids' sporting events from the stands and spending time with his family and friends at his ranch in South Texas.

REPRESENTATIVE CASES

- In 2021, Mr. Leyendecker won a $62.65 million verdict from a Nevada jury in a nationally watched case for emergency room physician group clients who were underpaid by United Healthcare, the largest insurer in the nation. The jury in this seven-week trial unanimously found malice, oppression, and fraud in the underpayment of the doctors. This verdict against a cluster of United Healthcare

016336

affiliates will serve as a bellwether for more than two dozen similar cases around the nation against various insurers.

- In 2020, Mr. Leyendecker successfully represented emergency room doctors in obtaining a $9.4 million jury verdict against an Arkansas insurance company in a breach-of-contract case in which the insurance company grossly underpaid emergency room doctors. AZA was hired six days before trial. AZA will be representing more emergency room doctors' groups against insurance companies across the country that have been systematically stripping doctors of their pay. The verdict is in the 2020 Top 100 Verdicts as calculated by Verdict Search. It is also a 2020 Top 10 Verdict nationally for the year so far.
- In 2017, Mr. Leyendecker successfully defended a class action in which the plaintiffs sought in excess of $5 billion in statutory damages under the Texas Civil Barratry statute. Mr. Leyendecker is currently defending his clients against the individual claims of the representative plaintiffs following the Texas Supreme Court[1]s denial of the petition for review of the underlying adverse class certification opinion.
- In 2016, following two jury verdicts in New York, Mr. Leyendecker and his joint venture partners recovered in excess of $45 million for 2,700 children who endured abusive treatment at dental clinics owned and operated by the Small Smiles[1] dental chain.
- In 2010, Mr. Leyendecker recovered $4.5 million for a widow and her three minor children following the wrongful death of her husband.
- In 2006, Mr. Leyendecker recovered $8.3 million for a minority shareholder in connection with an oppression claim arising out of the sale of his directional drilling business.
- In 2005, Mr. Leyendecker and his former joint venture partners recovered $450 million for several hundred former patients who underwent unnecessary invasive heart surgeries at a hospital in northern California.
- Mr. Leyendecker tried his first case before a jury in 1994. The trial resulted in an award of actual and punitive damages against a home warranty company and the verdict led to $2.75 million in settlements on behalf of several dozen homeowners.

016337

016337

EDUCATION

- JD, University of Texas at Austin, 1992
- BBA, University of Texas at Austin, 1989

ADMISSIONS

- State Bar of Texas, 1992
- U.S. District Court, Southern District of Texas
- U.S. District Court, Western District of Texas

016337

- U.S. Court of Appeals, 5th Circuit

IN THE NEWS

- AZA Victorious in $62 Million Nationally Watched TeamHealth Trial Against Insurance Giant United Healthcare (https://azalaw.com/aza-victorious-in-nationally-watched-teamhealth-case-against-insurance-giant-united-healthcare/)
- AZA Selected as a National Elite Trial Law Firm 2021 Award Winner (https://azalaw.com/azas-john-zavitsanos-selected-as-a-national-elite-trial-lawyer-2021-award-winner/)
- TeamHealth ER Doctors' Group Wins $9.4 Million Arkansas Jury Verdict for Underpayment by Centene Corporation (https://azalaw.com/teamhealth-er-doctors-group-wins-9-4-million-arkansas-jury-verdict-for-underpayment-by-centene-corporation/)
- AZA Beats the Odds for Energy Company in Tragic Oklahoma Explosion (https://azalaw.com/aza-beats-the-odds-for-energy-company-in-tragic-oklahoma-explosion/)

016338

016338

016338

Louis Liao

Associate

P: 713-600-4967
F: 713-655-0062
lliao@azalaw.com

016339

016339

Louis Liao focuses on commercial litigation and intellectual property litigation. He represents plaintiffs and defendants in a wide range of high-stakes disputes, including breach of contract, trade secret, and patent suits. Clients often rely on his background as a former engineer to deliver creative results and distill complex concepts for judges and juries.

Mr. Liao was recognized in the 2022 edition of *Best Lawyers: Ones to Watch* for intellectual property litigation. He received his law degree from Stanford Law School and a master's degree in engineering from Stanford University. While in school, he worked as a legal intern at the Sundance Institute in Los Angeles and a civil rights litigation organization in Texas.

Before entering the legal profession, he worked as an engineer in the oil and gas industry. He was an avid coder growing up and has years of experience as a full stack web developer. He graduated with highest honors from The University of Texas, where he received degrees in mechanical engineering and philosophy.

REPRESENTATIVE MATTERS

Commercial Litigation

016339

- Won a $62.65 million jury verdict for emergency room physicians in a Nevada state court case that attracted national media attention. After a seven-week trial, the jury unanimously found malice, oppression, and fraud against United Healthcare for underpaying doctors. This verdict will serve as a bellwether for more than two dozen similar cases against various insurers around the nation.
- Represented emergency room physicians in obtaining a $19.1 million Houston jury verdict against a large insurance company. The case was the first in the nation to litigate the amount that private insurance companies should pay for out-of-network emergency services under the Affordable Care Act.
- Successfully represented drilling company in bringing claims for theft of trade secrets and confidential software.
- Successfully defended former executive of offshore service company against noncompete and trade secret claims.
- Successfully defended property owner against premises liability claims in a personal injury lawsuit.

Patent Litigation

- Represented various plaintiffs in patent infringement lawsuits against major smartphone and semiconductor manufacturers. In several of these lawsuits, Mr. Liao actively handled matters from filing until resolution and has helped recover over $45 million for AZA's clients.
- Represented plaintiff in asserting multimillion-dollar patent infringement claims against major cellular network providers. Mr. Liao took lead roles in Markman briefing and opposing the defendants' invalidity challenge under 35 U.S.C. § 101. The case settled favorably after the Markman hearing.
- Represented various energy sector plaintiffs and defendants in patent litigation matters, including cases against competitor companies.

016340

016340

EDUCATION

- Stanford Law School, J.D., 2018
- Stanford University, M.S., Management Science and Engineering, 2018
- The University of Texas, B.S., Mechanical Engineering, and B.A., Philosophy, 2014

ADMISSIONS

- State Bar of Texas
- U.S. District Court for the Southern District of Texas
- U.S. District Court for the Eastern District of Texas
- U.S. District Court for the Western District of Texas

016340

HONORS and AWARDS

- *Best Lawyers*: Ones to Watch (2022)

IN THE NEWS

- AZA Victorious in $62 Million Nationally Watched TeamHealth Trial Against Insurance Giant United Healthcare (https://azalaw.com/aza-victorious-in-nationally-watched-teamhealth-case-against-insurance-giant-united-healthcare/)
- Twelve Young AZA Lawyers Ranked among Best Lawyers: Ones to Watch for 2022 (https://azalaw.com/twelve-young-aza-lawyers-ranked-among-best-lawyers-ones-to-watch-for-2022/)
- Houston Jury Sends U.S. Insurance Companies a Strong Message on Behalf of Emergency Room Doctors (https://azalaw.com/houston-jury-sends-u-s-insurance-companies-a-strong-message-on-behalf-of-emergency-room-doctors/)

016341

016341

016341

Michael Killingsworth

Associate

P: 713-600-4989
F: 713-655-0062
mkillingsworth@azalaw.com

016342

Michael Killingsworth focuses on intellectual property litigation and commercial litigation.

Mr. Killingsworth earned his J.D. from the University of Chicago Law School, where he completed the Doctoroff Business Leadership Program from University of Chicago Booth business school. While at law school, Mr. Killingsworth won all-university intramural championships in football and track.

Before attending the University of Chicago Law School, Mr. Killingsworth graduated with highest distinction with a bachelor's degree in political science, sociology and psychology from the University of Nebraska-Lincoln.

REPRESENTATIVE EXPERIENCE

- Won a $62.65 million verdict from a Nevada jury in a nationally watched case for emergency room physician group clients who were underpaid by United Healthcare, the largest insurer in the nation. The jury in this seven-week trial unanimously found malice, oppression, and fraud in the underpayment of the doctors. This verdict against a cluster of United Healthcare affiliates will serve as a bellwether for more than two dozen similar cases around the nation against various insurers.
- Was widely quoted by media nationally for his representation of Dr. Hasan Gokal, a doctor improperly accused of stealing COVID-19 vaccine. AZA is handling Dr. Gokal's civil lawsuit against

016342

Harris County and Harris County Public Health for discrimination based on his race and national origin. Media coverage includes the often used Associated Press story "Doctor cleared of COVID-19 vaccine theft sues Harris County." (https://urldefense.proofpoint.com/v2/url?u=https-3A__apnews.com_article_health-2Dlawsuits-2Dpublic-2Dhealth-2Dcoronavirus-2Dpandemic-2Dcoronavirus-2Dvaccine-2D24169f85bcc014f1d75c777548e3b510&d=DwMGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=TZBTwZCmnh7SmjlknEjNbQqL20U51irfc4-WLd6UbUM&m=Rka6FsPYD3xnDxOyaox4hKW_gDFsvbMbrGNwfCJPj3E&s=rQs0BAU7pWJD9k-8YJLoXmKAbdi7s7Wi4BLcUx6Ulu8&e=)

- Successfully represented emergency room physicians in obtaining a $19.1 million Houston jury verdict against a large insurance company in the first case in the nation to litigate emergency room physicians' out-of-network pay from private insurance companies under the Affordable Care Act.
- Won important ruling for an emergency room doctors' group trying to get fair pay from insurance company. The Federal Court applied the recent U.S. Supreme court decision *Rutledge v. Pharmaceutical Care Management Association* and found that the Texas Insurance Code includes an implied private right of action. The decision advances the law in favor of AZA's doctors' group clients demanding fair pay for their work.
- Successfully aided the criminal defense team of Dr. Hasan Gokal who was accused of theft of the COVID-19 vaccine when he made sure the vaccine went into needy arms rather than let the already opened vial expire and go to waste. Upon accusation by the District Attorney, a judge tossed the charge finding no probable cause. Subsequently, a grand jury returned a no bill, again finding no probable cause.
- At age 26, in 2020, Mr. Killingsworth was an integral part of a trial team that successfully represented National Oilwell Varco (NOV) in a $200 million jury trial over a tragic 2018 oil rig explosion that killed five workers. After three weeks of grisly testimony, the jury announced a verdict that was only a small fraction of NOV's pre-trial settlement offer.
- Also in 2020, Mr. Killingsworth successfully represented emergency room doctors in obtaining a $9.4 million jury verdict against an Arkansas insurance company in a breach-of-contract case in which the insurance company grossly underpaid emergency room doctors. AZA was hired six days before trial. AZA will be representing more emergency room doctors' groups against insurance companies across the country that have been systematically stripping doctors of their pay. The verdict is in the 2020 Top 100 Verdicts as calculated by Verdict Search. It is also a 2020 Top 10 Verdict nationally for the year so far.
- Mr. Killingsworth has served as lead counsel in reaching favorable settlements for his clients in excess of $400,000 related to wrongful termination and breach of insurance and lease contracts.
- Mr. Killingsworth has been a part of multiple intellectual property focused trial teams that have successfully recovered more than $50 million for AZA's clients.

016343
016343

016343

- He has also been involved in multiple contested successful injunction hearings, including at the temporary restraining order and temporary injunction stages, greatly aiding in achieving the objective sought by the client.

EDUCATION

- University of Chicago Law School, J.D., Spring 2018
  - Doctoroff Business Leadership Fellow
  - Paul R. and Edmund W. Kitch Scholarship
  - The Ruth Wyatt Rosenson Scholarship
- University of Nebraska-Lincoln, *highest distinction*, honors program with distinction, Spring 2015
  - Phi Beta Kappa
  - Chancellor's Scholar
  - Alan P. Bates Top Sociology Undergraduate Award
  - Canfield Scholar
  - Dean's List 2011-2015

ADMISSIONS

016344

016344

- State Bar of Texas
- U.S. District Court for the Southern District of Texas
- U.S. District Court for the Northern District of Texas
- U.S. District Court for the Eastern District of Texas
- U.S. District Court for the Western District of Texas
- U.S. District Court for the Northern District of Illinois
- U.S. District Court for the Northern District of Illinois Trial Bar

PRESENTATIONS and CLES

- *Effective Pre-Trial and Evidentiary Hearings Preparation: Key Considerations to Mitigate Risks,* The Knowledge Group Webinar, December 2021

IN THE NEWS

- AZA Client Port of Houston Wins $22.32 Million Jury Verdict in Federal Court (https://azalaw.com/aza-client-port-of-houston-wins-22-32-million-jury-verdict-in-federal-court/)
- AZA Victorious in $62 Million Nationally Watched TeamHealth Trial Against Insurance Giant United Healthcare (https://azalaw.com/aza-victorious-in-nationally-watched-teamhealth-case-against-

016344

insurance-giant-united-healthcare/)

- National and International Media Cover Discrimination Lawsuit Filed by AZA Client Dr. Hasan Gokal, Improperly Accused of Stealing COVID-19 Vaccine (https://azalaw.com/national-and-international-media-cover-discrimination-lawsuit-filed-by-aza-client-dr-hasan-gokal-improperly-accused-of-stealing-covid-19-vaccine/)
- AZA Selected as a National Elite Trial Law Firm 2021 Award Winner (https://azalaw.com/azas-john-zavitsanos-selected-as-a-national-elite-trial-lawyer-2021-award-winner/)
- Houston Jury Sends U.S. Insurance Companies a Strong Message on Behalf of Emergency Room Doctors (https://azalaw.com/houston-jury-sends-u-s-insurance-companies-a-strong-message-on-behalf-of-emergency-room-doctors/)
- TeamHealth ER Doctors' Group Wins $9.4 Million Arkansas Jury Verdict for Underpayment by Centene Corporation (https://azalaw.com/teamhealth-er-doctors-group-wins-9-4-million-arkansas-jury-verdict-for-underpayment-by-centene-corporation/)
- AZA Beats the Odds for Energy Company in Tragic Oklahoma Explosion (https://azalaw.com/aza-beats-the-odds-for-energy-company-in-tragic-oklahoma-explosion/)

016345

016345

016345

Omar Marawi

Associate

P: 713-600-4912
F: 713-655-0062
omarawi@azalaw.com

016346

Omar Marawi is an intellectual property lawyer with significant experience as an engineer at a leading semiconductor company. He analyzes the merits of patent and design infringement suits, aids in claim construction and prosecutes patents.

016346

Mr. Marawi's background includes work as a physical design engineer, validation engineer, and software engineer at technology giant Intel where he worked for four years. As an undergrad pursuing a degree in electrical engineering at the University of Texas, he created a self-driving robot car, his own Game Boy-style system, and an arcade game for the Android platform.

EDUCATION

- University of Houston Law School, J.D., 2020
  - *Houston Law Review*
- University of Texas, B.S., Electrical Engineering, 2015

LICENSE

State Bar of Texas

016346

Sammy Ford IV

Partner

P: 713-600-4965
F: 713-655-0062
sford@azalaw.com

016347

016347

Sammy Ford IV has tried over 20 cases before judges, juries, and arbitrators in his career. He represents companies and individuals around the country in all manner of civil matters, including complex commercial litigation, business torts, securities and consumer class actions, and catastrophic personal injury cases. He is board certified in Personal Injury Trial Law by the Texas Board of Legal Specialization.

In 2021, he successfully represented emergency room physicians in obtaining a $19.1 million Houston jury verdict against a large insurance company in the first case in the nation to litigate emergency room physicians' out-of-network pay from private insurance companies under the Affordable Care Act. In 2017, he served as second chair in a trial for an energy client suing an insurance company that refused to pay for damage to an offshore well caused by Hurricane Rita. He played an instrumental role in the presentation of the evidence over the course of the six-week trial that ended in a $41.6 million jury verdict that included $27.3 million in punitive damages. The case was one of the top 100 2017 verdicts in the nation according to the National Law Journal.

He graduated with honors from the University of Texas School of Law in 2007. While there, he served as Development Editor of The Review of Litigation and as Chair of the Career Services Committee of the Thurgood Marshall Legal Society. He participated in the school's first Supreme Court Clinic and was

016347

on a team that convinced the U.S. Supreme Court to review a client's case during a term in which the Court agreed to hear only 78 of the 8,517 cases filed. Mr. Ford clerked for the Honorable Jerry E. Smith of the U.S. Court of Appeals for the Fifth Circuit.

He was elected to the prestigious American Board of Trial Advocates (ABOTA), an elite group of the country's leading trial lawyers. He has been recognized by attorneys across the United States, making the list of the *Best Lawyers in America* 2020-2022 for commercial litigation and in 2022 for both plaintiff and defendant personal injury litigation. He was also named a 2017-2021 "Top 100 Texas Up & Coming" lawyer on the Texas Rising Stars list for his business litigation skills. Rising Stars, which has listed Mr. Ford since 2013, honors leading attorneys age 40 and younger and those who have been in practice no more than 10 years. He was cited for his business litigation acumen on their 2021 Super Lawyers list as well.

Mr. Ford is a native Houstonian who attended St. Thomas High School where he currently serves on the board. He attended Harvard University and graduated with high honors, magna cum laude, in 2004. At Harvard, he served as Historian of the Harvard Political Union, the College's debating society, and as Secretary of Harvard CHANCE, a group dedicated to mentoring and tutoring students from Cambridge Rindge and Latin School.

016348

He is active in the community as a member of the local and state bar associations and the local, state, and national trial lawyer associations. Mr. Ford is a member of the State Bar's Computer and Technology Section Council, and numerous committees of the Houston Bar Association.

016348

EDUCATION

- **The University of Texas School of Law, Austin, Texas**
  - J.D. – 2007
  - Thurgood Marshall Legal Society, Chair: Career Services Committee, 2005-2006
  - Review of Litigation (Volume 26), Development Editor, 2006 – 2007
  - Review of Litigation (Volume 25), Staff Member, 2005 – 2006
- **Harvard College**
  - A.B. (*Magna cum laude*) – 2004

CERTIFIED LEGAL SPECIALTIES

- Board Certified Personal Injury Trial Law, Texas Board of Legal Specialization

BAR ADMISSIONS

- Texas, 2008
- U.S. District Court Northern District of Texas
- U.S. District Court Southern District of Texas
- U.S. District Court Western District of Texas
- U.S. Court of Appeals 5th Circuit
- U.S. Court of Appeals 10th Circuit

CLASSES/SEMINARS

- Top 10 Tips in Preparing for Trial, Houston Bar Association Webinar, January 8, 2021
- Trials, Depositions, Hearings, and other Remote Proceedings, State Bar of Texas Webinar, December 11, 2020
- Ethics of A.I. & the Practice of Law, ACC Houston Annual Symposium Webinar, August 19, 2020
- HBA Litigation Section's 50th Anniversary of the 189th & 190th District Courts, Diversity: Winning with Inclusion, Panel moderator, September 19, 2019
- E-Discovery Update, Harris County Civil Judges Conference, August 5, 2019
- Top 10 Mistakes at Trial, Houston Paralegal Association- Advanced Paralegal Conference, April 26, 2019
- Silver Tongues: A Mock Voir Dire, 2019 HBA Civil/Appellate Bench Bar Conference, April 11, 2019
- Technology and the Law: 30 Apps in 30 Minutes, 17th Annual Texas Minority Attorney Program, April 5, 2019
- Top 10 Mistakes at Trial, Houston Bar Association seminar, March 15, 2019
- Building a Resilient Law Office: Tips on Making Sure That Disasters and Acts of God Don't Disrupt Your Practice, State Bar of Texas Annual Meeting, June 22, 2018
- 60 Apps in 60 Minutes, State Bar of Texas Annual Meeting, June 22, 2017
- Evidentiary Update: Experts, Attorney Fees, and Net Worth, panel at 2017 Houston Bar Association Civil/Appellate Bench Bar Conference, April 6, 2017
- New Discoveries in … Discovery, Corporate Counsel Institute, April 7, 2016
- New Federal Rules of e-Discovery, Advanced Evidence and Discovery, April 8, 2016
- Embrace the Power of Difference, Panelist, Bar Leaders Conference, July 25, 2015
- Cloudy, with a Chance of Ethics, State Bar of Texas Annual Meeting , June 19, 2015
- Technology in Your Law Practice: 30 Apps in 30 Minutes, Handling Your First (Or Next) Auto Collision Case, State Bar of Texas, December 10, 2014
- 30 Apps in 30 Minutes: Turning Your Mobile Device into an Advocate, President?s Annual Meeting and Advanced Personal Injury Seminar, Texas Trial Lawyers Association, December 4, 2014
- 30 Apps in 60 Minutes for Trial and Appellate Lawyers ? Turning Your iPhone (or Android) into an Advocate, Texas Association of Civil Trial and Appellate Specialists meeting, October 16, 2014

016349
016349

016349

- The Ethics of Cloud Computing, Computer and Technology Section, State Bar of Texas, January 2014
- Technology Skills for New Lawyers – What Law Students Need to Know, Houston Area Law Library Association, South Texas of Law, November 13, 2013
- 45 Apps in 45 Minutes, Eastern District of Texas Bar Foundation?s 2013 Bar Conference, October 30, 2013
- The Ethics of Cloud Computing, Law Practice Management Section, Houston Bar Association, September 11, 2013
- Mobile Applications, State Bar of Texas Annual Meeting, June 21, 2013
- Ethics of Cloud Computing, Houston Bar Association CLE, April 26, 2013
- Ethics of Cloud Computing, Houston Metropolitan Paralegal Association, March 12, 2013
- Cloud Computing and the Law, State Bar of Texas Annual Meeting, June 14, 2012
- Course Director, Personal Injury CLE, April 26, 2012

HONORS AND AWARDS

- American Board of Trial Advocates (ABOTA) member
- ABOTA's National Board of Representatives 2020
- Best Lawyers in America 2020-2022
- President's Award for Outstanding Service to the HBA on the Continuing Legal Education Committee
- Outstanding Pro Bono Partnership award from Chevron for 2019
- Top Lawyers List – Personal Injury, Houstonia Magazine, 2014
- Hot List, Lawyers of Color, 2014
- Top 40 Under 40, The National Trial Lawyers Association, 2013 – 2014
- Top 100 Trial Lawyers, The National Trial Lawyers Association, 2013 – 2014
- Texas Super Lawyers, a Thomson Reuters Business, 2021
- Texas Rising Star honors as presented by Super Lawyers, a Thomson Reuters Business, 2013 – 2021
- "Top 100 Texas Up & Coming" lawyer named by Texas Rising Stars 2017 – 2021

016350

016350

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

- State Bar of Texas, Chair of the Computer & Technology Section Council 2018-2019; Council member 2011 – Present
- State Bar of Texas, Pattern Jury Charges – General Negligence committee, appointments 2016 – 2022
- St. Thomas High School, Board of Directors, 2013 – Present
- Houston Bar Association, Litigation Section, Council Member, 2019 – 2020
- Houston Bar Association, Member, Law Week Committee, 2011 – 2015
- Houston Bar Association, Member, Houston Lawyer Editorial Board, 2011 – 2015

016350

- Houston Bar Association, Co-Chair, Golf Committee, 2012 – 2013
- Houston Bar Foundation, Member, 2013
- Texas Bar Foundation, Fellows, Member, 2013
- Houston Trial Lawyer Association, Board of Directors, 2011 – 2012
- St. Thomas High School, Member, Alumni Board, 2011 – Present
- Houston Bar Association, Member, Bench-Bar Pro Bono Committee, 2011 – 2012
- Texas Trial Lawyers Association, Member
- Houston Bar Association, Member
- Houston Young Lawyer Association, Member
- Houston Chowhounds, Member

PAST EMPLOYMENT POSITIONS

- Abraham, Watkins, Nichols, Sorrels, Agosto & Friend, 2010-2016
- Susman Godfrey, LLP, Houston, Texas, Associate, 2008 – 2010
- Honorable Jerry E. Smith, Circuit Judge, United States Court of Appeals for the Fifth Circuit, Law Clerk, 2007 – 2008

016351

IN THE NEWS

016351

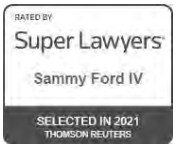
- AZA Client Port of Houston Wins $22.32 Million Jury Verdict in Federal Court (https://azalaw.com/aza-client-port-of-houston-wins-22-32-million-jury-verdict-in-federal-court/)
- **Ten AZA Lawyers Make Super Lawyers List; Four Rank among Top 100 (https://azalaw.com/ten-aza-lawyers-make-super-lawyers-list-four-rank-among-top-100/)**
- **Twelve AZA Lawyers Ranked among US Best for Commercial, Intellectual Property, Personal Injury Litigation and Appellate Law for 2022 (https://azalaw.com/twelve-aza-lawyers-ranked-among-us-best-for-commercial-intellectual-property-personal-injury-litigation-and-appellate-law-for-2022/)**
- **Houston Jury Sends U.S. Insurance Companies a Strong Message on Behalf of Emergency Room Doctors (https://azalaw.com/houston-jury-sends-u-s-insurance-companies-a-strong-message-on-behalf-of-emergency-room-doctors/)**
- **Eleven AZA Lawyers Make the 2021 Texas Rising Stars List (https://azalaw.com/eleven-aza-lawyers-make-the-2021-texas-rising-stars-list/)**
- **AZA Trial Lawyers Among Nation's Best for Commercial, Intellectual Property Litigation and Appellate Law for 2021 (https://azalaw.com/aza-trial-lawyers-among-nations-best-for-commercial-intellectual-property-litigation-and-appellate-law-for-2021/)**
- **Sammy Ford IV is Named AZA Partner (https://azalaw.com/sammy-ford-iv-is-named-aza-partner/)**

016351

- **Nine AZA Lawyers Earn 2020 Texas Rising Stars Accolades (https://azalaw.com/nine-aza-lawyers-earn-2020-texas-rising-stars-accolades/)**
- **AZA Gets Turkey Leg Hut Restaurant Lawsuit Dissolved in Two Weeks (https://azalaw.com/aza-gets-turkey-leg-hut-restaurant-lawsuit-dissolved-in-two-weeks/)**
- **AZA Wins First Amendment Appellate Ruling for Client Defamed on Facebook** (https://azalaw.com/aza-wins-first-amendment-appellate-ruling-for-client-defamed-on-facebook/)
- **Ten AZA Lawyers Earn 2019 Texas Rising Stars Accolades (https://azalaw.com/ten-aza-lawyers-earn-2019-texas-rising-stars-accolades/)**
- **AZA Scores One of the Nation's Top 100 Verdicts of 2017 (https://azalaw.com/aza-scores-one-of-the-nations-top-100-verdicts-of-2017/)**
- **Fourteen AZA Lawyers Earn 2018 Texas Rising Stars Accolades (https://azalaw.com/fourteen-aza-lawyers-earn-2018-texas-rising-stars-accolades/)**
- **Prime Natural Resources Wins $41.6 Million in Wellsure Insurance Dispute (https://azalaw.com/prime-natural-resources-wins-41-6-million-wellsure-insurance-dispute/)**
- **Sammy Ford Honored by Houston Bar Association for CLE Work (https://azalaw.com/sammy-ford-honored-houston-bar-association-cle-work/)**
- **Sammy Ford Is Fourth AZA Lawyer Elected to American Board of Trial Advocates (https://azalaw.com/sammy-ford-fourth-aza-lawyer-elected-american-board-trial-advocates/)**
- **Nine from Houston's AZA Law Firm Earn 2017 Texas Rising Stars Honors (https://azalaw.com/nine-houstons-aza-law-firm-earn-2017-texas-rising-stars-honors/)**
- **AZA's Jane Langdell Robinson Earns Prestigious Civil Appellate Law Certification (https://azalaw.com/azas-jane-langdell-robinson-earns-prestigious-civil-appellate-law-certification/)**
- **New AZA Attorneys (https://azalaw.com/landing/new-aza-attorneys/)**
- **FMC Technologies, Employee Force Cameron to Drop Non-Compete Suit in Texas (https://azalaw.com/fmc-technologies-employee-force-cameron-drop-non-compete-suit-texas/)**
- **Nine from Houston's AZA Law Firm Earn 2016 Texas Rising Stars Honors (https://azalaw.com/nine-from-houstons-aza-law-firm-earn-2016-texas-rising-stars-honors/)**

016352

016352



016352

016353

016353

016353

Thomas Frashier

Associate

P: 713-600-4956
F: 713-655-0062
tfrashier@azalaw.com

016354

Thomas Frashier is a trial lawyer who represents plaintiffs and defendants with a focus on complex commercial cases involving breach of contract, breach of fiduciary duties, and trade secret misappropriation. Mr. Frashier has experience at all stages of litigation including initial pleadings, taking and defending depositions, motion practice, and trial.

016354

Mr. Frashier began working at AZA in 2019 as a summer associate and returned for his second summer where he played a key role in a trial team that successfully represented emergency room doctors in obtaining a $9.4 million jury verdict. An eager advocate, Mr. Frashier has already obtained stand-up results in court for his clients. On the first day he was licensed, he argued and won summary judgment for a client in the healthcare industry.

He graduated from the University of Michigan Law School where he was the Executive Articles Editor of the *Michigan Business & Entrepreneurial Law Review* and Co-President of the Michigan Law ACLU. Before attending law school, he attended Southwestern University where he was a scholarship Tenor.

An Eagle Scout, he serves on the Lawyers for Literacy Committee of the Houston Bar Association and previously served as a volunteer Civics and English Instructor at Manos de Crito in Austin, where he helped permanent residents to become U.S. citizens in the final stages of naturalization process.

016354

EDUCATION

- University of Michigan Law School, J.D., *cum laude*
  - *Michigan Business & Entrepreneurial Law Review* (Executive Articles Editor)
  - Research Assistant – Professor Patrick Barry
  - ACLU (Co-President)
  - Texas Club (Co-Founder & Vice-President)
  - First-Generation Law Students

- Southwestern University, B.A. in Business, *cum laude*

ADMISSIONS

State Bar of Texas

LANGUAGES

016355

Basic Spanish

016355

IN THE NEWS

- AZA Client Port of Houston Wins $22.32 Million Jury Verdict in Federal Court (https://azalaw.com/aza-client-port-of-houston-wins-22-32-million-jury-verdict-in-federal-court/)

016355

016356

016356

EXHIBIT 10

016357

016357

016357

USA TODAY

nospitals scramble to delay federal law

Ken Alltucker
USA TODAY

Published 5:00 a.m. ET Dec. 11, 2021 | **Updated 11:17 a.m. ET Dec. 11, 2021**

Nearly 1 in 5 hospital visits result in patients getting the unwelcome surprise of an unexpectedly large bill because doctors or other providers weren't part of their insurer's network.

To protect consumers, Congress passed the bipartisan No Surprises Act last December. But doctors and hospital groups are trying to delay its Jan. 1 rollout over a narrow but crucial portion they contend unfairly favors insurers.

On Thursday, the American Medical Association, American Hospital Association and individual hospitals and doctors sued the federal government to halt federal regulators' proposed arbitration rules that would effectively end the most common forms of surprise billing.

016358

016358

The proposed rule unveiled by the Department of Health and Human Services and other federal agencies would give providers and insurers 30 days to hash out disagreements over payments or submit to binding arbitration to settle disputes. The lawsuit said regulators misinterpreted the law and proposed an "unfair and unlawful" arbitration system that starts with benchmark rates already negotiated by health insurers – the median, in-network rate for similar medical services.

The lawsuit contends insurers will rely on the arbitration rules to get an "unfairly low rate" and will have little incentive to include higher-cost providers in their network, "all to the detriment of patients."

"Our legal challenge urges regulators to ensure there is a fair and meaningful process to resolve disputes between health care providers and insurance companies," said AMA President Gerald E. Harmon.

More: 'Really astonishing': Average cost of hospital ER visit surges 176% in a decade, report says

The lawsuit follows a flurry of public comments submitted by this week's deadline from both proponents and detractors of the proposed rules.

Also this week, a jury in Nevada decided UnitedHealthcare must pay affiliates of the emergency medicine staffing company TeamHealth $60 million in damages over the insurer's payment practices.

CEO Leif Murphy said the jury's decision "helped stop the bleeding in the middle of a pandemic" for TeamHealth, which supplies physicians for 12% of the nation's hospital emergency rooms.

Murphy said his company filed several lawsuits against insurers across the country for payment disputes before Congress passed the surprise billing legislation. He said the cost of staffing doctors to take care of patients when they are in the emergency room or admitted to hospitals is becoming increasingly difficult to cover because of insurers' attempts to lower reimbursement. He worries that the new federal law could "shift the balance of power" to large insurers and embolden them to terminate higher-priced contracts to reduce the median price for services – which is the proposed starting point for arbitration.

016359

016359

"We're dealing with extremely high stress levels, lots of uncertainty on the front line, anticipation of COVID surge at any point," Murphy said. "And then you say we are not going to acknowledge the value of the service provided and we're going to cut pay? It's not a good situation."

A UnitedHealthcare spokesperson said the insurer will appeal the Nevada case "in order to protect our customers and members from private equity-backed physician staffing companies who demand egregious and anticompetitive rates for their services and drive up the cost of care for everyone."

'No one should have to worry about going bankrupt'

In November, an HHS report found 18% of emergency room visits by Americans with employer health insurance resulted in out-of-network charges. Patients having operations or giving birth at in-network hospitals had similar rates of out-of-network charges.

These unexpected charges averaged more than $1,200 from anesthesiologists and $2,600 from surgical assistants, according to the report.

016359

USA TODAY

The federal legislation has gained broad support among consumers, employers and insurers seeking to slow the growing cost of health care.

America's Health Insurance Plans, the trade association for private insurers, said millions of consumers each year face financial hardship after getting medical bills from out-of-network providers.

The Biden administration's rules to implement the law "are a critical step toward ensuring that ... surprise medial bills are a relic of our past," the trade association said in a statement.

The Congressional Budget Office estimated cost savings from lower medical bills would cut private insurance premiums 0.5 to 1% and would reduce federal deficits from savings for both employer plans and taxpayer-subsidized Affordable Care Act plans.

"Surprise billing has been a problem for decades," said Loren Adler, associate director of the USC-Brookings Schaeffer Initiative for Health Policy. "It has become more of a problem and more pronounced in the last decade or so."

016360

016360

The problem has worsened, Adler said, as private equity firms have acquired medical specialties such as anesthesiologists or emergency medicine staffing companies.

Hospitals often need coverage from these specialists whether or not they sign contracts with major private insurers. In cases where these specialists refuse to sign contract with insurers, they set their own rates. In some cases, consumers get billed for balances the insurer does not cover.

Even if consumers take the extra step of verifying a hospital or other medical facility is an in-network provider for their insurance plan, they often have no control over whether doctors and other providers at in-network hospitals are part of their insurer's network.

"The negotiating scales have been tilted in favor of doctors in this subset of specialties like emergency medicine and anesthesiology," Adler said.

Others say the federal law will bring long-overdue protections to patients.

"We have seen firsthand the devastating financial and emotional impact that happens to patients when they receive surprise medical bills," said Nancy Brown, CEO of the American Heart Association.

said. "At a moment like that (when) there's often no one around you, and if there is, the first thing on peoples' minds isn't to say, 'Are all of these providers in this patient's health insurance network?"

But critics of the arbitration rules say insurers will have the upper hand and will force doctors to accept lower rates. The American Society of Anesthesiologists said the rules are a "powerful mechanism for large health insurance companies to avoid negotiating on contracts and, ultimately, to extract financial concessions from local community physician practices."

The American Medical Association lawsuit said a North Carolina insurer already sent letters to some doctors demanding payment cuts, citing the new federal rules. If those doctors don't cut their rates, the insurer will terminate their contracts and leave patients with fewer options, the lawsuit states.

Staffing companies such as TeamHealth believe insurers will only accelerate contract terminations if the arbitration rules take effect Jan. 1.

"The outcome of that shifts the balance and does start to threaten our ability to staff," Murphy said.

Ken Alltucker is on Twitter at @kalltucker, or can be emailed at alltuck@usatoday.com

016361
016361

311

ELECTRONICALLY SERVED
4/5/2022 2:15 PM

016362

Electronically Filed
04/05/2022 2:15 PM
CLERK OF THE COURT

MSTY

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
Phillip N. Smith, Jr., Esq.
Nevada Bar No. 10233
psmithjr@wwhgd.com
Marjan Hajimirzaee, Esq.
Nevada Bar No. 11984
mhajimirzaee@wwhgd.com
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Daniel F. Polsenberg, Esq.
Nevada Bar No. 2376
dpolsenberg@lewisroca.com
Joel D. Henriod, Esq.
Nevada Bar No. 8492
jhenriod@lewisroca.com
Abraham G. Smith, Esq.
Nevada Bar No. 13250
asmith@lewisroca.com
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Attorneys for Defendants

Dimitri D. Portnoi, Esq.(*Admitted Pro Hac Vice*)
dportnoi@omm.com
Jason A. Orr, Esq. (*Admitted Pro Hac Vice)*
jorr@omm.com
Adam G. Levine, Esq. *(Admitted Pro Hac Vice)*
alevine@omm.com
Hannah Dunham, Esq. *(Admitted Pro Hac Vice)*
hdunham@omm.com
Nadia L. Farjood, Esq. (*Admitted Pro Hac Vice*)
nfarjood@omm.com
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000

K. Lee Blalack, II, Esq.(*Admitted Pro Hac Vice)*
lblalack@omm.com
Jeffrey E. Gordon, Esq. *(Admitted Pro Hac Vice)*
jgordon@omm.com
Kevin D. Feder, Esq. *(Admitted Pro Hac Vice)*
kfeder@omm.com
Jason Yan, Esq. *(Admitted Pro Hac Vice)*
jyan@omm.com
O'Melveny & Myers LLP
1625 Eye St. NW
Washington, DC 20006
Telephone: (202) 383-5374

Paul J. Wooten, Esq. *(Admitted Pro Hac Vice)*
pwooten@omm.com
Philip E. Legendy *(Admitted Pro Hac Vice)*
plegendy@omm.com
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036
Telephone: (212) 728-5857

DISTRICT COURT

ENTERED kl

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

DEFENDANTS' RULE 62(b) MOTION FOR STAY PENDING RESOLUTION OF POST-TRIAL MOTIONS
(on Order Shortening Time)

HEARING REQUESTED

016362

016362

016362

Case Number: A-19-792978-B

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.

Defendants UnitedHealthcare Insurance Company ("UHIC"), United HealthCare Services Inc. ("UHS", which does business as UnitedHealthcare or "UHC" and through UHIC), UMR, Inc. ("UMR"), Sierra Health and Life Insurance Company ("SHL"), and Health Plan of Nevada, Inc. ("HPN") (collectively, "Defendants"), seek a stay of execution pending resolution of Defendants' post-judgment motions (NRCP 62(b)) and appeal (NRCP 62(d)). Resolution of Defendants' motions could result in significant amendments to the judgment and will require time beyond the automatic 30-day stay for the Court to resolve. As for obtaining security pending the stay, Defendants' ability to pay the judgment is so plain that requiring a bond would be a waste of money. *See Nelson v. Heer*, 121 Nev. 832, 836, 122 P.2d 1252, 1254 (2005). For the reasons more fully set forth below, the Court should grant Defendants a stay of execution pending post-judgment motions and appeal.

This motion is based upon the attached points and authorities, the pleadings and papers on file, the declaration of Daniel Kueter, attached as Exhibit 1, and any oral argument this court may entertain.

Dated this 5th day of April, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Abraham G. Smith*
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8490)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
Attorneys for Defendants

016363 016363

DECLARATION OF ABRAHAM G. SMITH IN SUPPORT OF *EX PARTE* APPLICATION FOR ORDER SHORTENING TIME

STATE OF NEVADA)
COUNTY OF CLARK)

ABRAHAM G. SMITH makes the following declaration:

1. I am a Nevada attorney representing defendants in this action. I make this affidavit in support of the application for an order shortening time on "Defendants' Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions."

2. On March 9, 2022, this Court entered a judgment against defendants for $63,429,873.97. Written notice of entry was served the same day.

3. Defendants plan to file post-judgment motions no later than April 6, 2022.

4. Under NRCP 62(a), the automatic stay of execution on the judgment would expire on April 8.

5. NRCP 62(b), however, gives this Court the ability to continue the stay pending the resolution of post-judgment motions.

6. Good cause exists under EDCR 2.26 to hear this motion on shortened time. If this motion were heard in the ordinary course, the automatic stay would likely have already expired.

7. Defendants therefore ask this Court to hear the motion as soon as possible, and in any case no later than April 6, 2022, so that if necessary defendants can procure and post a supersedeas bond under NRCP 62(d).

8. In addition, if this Court denies the motion, a hearing on shortened time will minimize the likelihood of having to bring an emergency motion before the Nevada Supreme Court.

9. This motion and affidavit are made in good faith and not for the purpose of harassment or delay.

Dated this 5th day of April, 2022.

/s/ Abraham G. Smith
ABRAHAM G. SMITH

016364
016364
016364

ORDER SHORTENING TIME

ORDERED that "Defendants' Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions" will be heard on April 7, 2022, at 1:00 pm .m., in Department 27 of the Eighth Judicial District Court, 200 Lewis Avenue, Las Vegas, Nevada 89155.

April 5, 2022

Dated this 5th day of April, 2022

Nancy L Allf

TW

09B AFF EEFC 6F6D
Nancy Allf
District Court Judge

Respectfully Submitted By:
LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Abraham G. Smith*
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8490)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
Attorneys for Defendants

016365

016365

MEMORANDUM OF POINTS AND AUTHORITIES

A. A Stay Extension Should Be Granted Pursuant to Rule 62(b)

Defendants ask this Court to grant a temporary stay of the judgment pending the resolution of post-judgment motions under Rule 62(b). Under Rule 62(b), the Court may stay execution on a judgment while certain post-judgment motions are pending. This includes:

(1) under Rule 50, for judgment as a matter of law;

(2) under Rule 52(b), to amend the findings or for additional findings;

(3) under Rule 59, for a new trial or to alter or amend a judgment; or

(4) under Rule 60, for relief from a judgment or order.

Defendants intend to move for relief pursuant to Rule 50, Rule 59 and Rule 60. Once the judgment is filed, its execution is automatically stayed for thirty days. NRCP 62(a)(1). However, with post-judgment motions likely to be filed twenty-eight days after the judgment's entry (April 6, 2022), that limited thirty-day stay will not allow the Court to resolve Defendants' post-judgment motions. In fact, by the time Defendants have submitted their post-judgment motions, the automatic 30-day stay will be almost complete. The automatic stay will have long terminated by the time these motions are fully briefed.

It is in recognition of this precise problem that NRCP 62(b) was promulgated: to allow the stay of execution to continue while this Court considers whether to alter any aspect of the judgment or order a new trial. Here, resolution of Defendants' post-judgment motions could result in significant amendments to the judgment amount, or perhaps vacatur of the judgment entirely.

Defendants should not be required to begin paying the judgment when there is a possibility that the judgment is altered or vacated by this Court or following an appeal. Moreover, Plaintiffs will not be prejudiced by the stay pending post-judgment motions and appeal.

B. Defendants Should Not Be Required to Post a Supersedeas Bond to Secure the Rule 62(b) Stay

The stay provided by NRCP 62(b) was added by the 2019 amendments to the Nevada Rules of Civil Procedure. The Nevada Supreme Court has never interpreted this provision or what constitutes "appropriate terms for the opposing party's security" to justify a Rule 62(b) stay.

016366

016366

Nonetheless, the Supreme Court has addressed the broader topic of stays pending *appeal* on alternate security or even without a bond, at all. "The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay." *Nelson*, 121 Nev. at 835, 122 P.3d at 1254. Although Rule 62(d)(1) provides for an automatic stay if a supersedeas bond is posted—a stay that continues not just through the disposition of post-judgment motions, but through the entire appeal—the Court may consider a stay without bond under Rule 62(d)(2), depending on one or more of the following factors:

> (1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.

Id. at 836, 122 P.3d at 1254 (*quoting Dillon v. City of Chicago*, 866 F.2d 902 (7th Cir. 1988)). A party need not demonstrate every factor. Indeed, factors 4 and 5 are polar opposites, so both would never be present in a single case.

Waiver of the bond requirement is common when the defendant's financial security and ability to pay the judgment is clear. The district court has the discretion to waive the bond requirement in its entirety. *Fed. Prescription Serv, Inc. v. Am. Pharm. Ass'n*, 636 F.2d 755, 759 (D.C. Cir. 1980). In *Federal Prescription Services*, the D.C. Circuit affirmed the stay of execution without requiring a supersedeas bond when the defendant's documented net worth was 47 times the amount of the damage award. *Id.* at 761. And in *Fox v. Pittsburgh State University*, a supersedeas bond was not required pending resolution of post-judgment motions because a fund established by the defendant had sufficient funds to satisfy the judgment. 319 F.R.D. 342, 345-46 (D. Kan. 2017). Likewise, in *Arban v. West Publishing Corp.*, the Sixth Circuit found the district court did not abuse its discretion in granting a stay pending appeal without requiring defendant to post bond. 345 F.3d 390, 409 (6th Cir. 2003). Specifically, the Sixth Circuit stated "[i]n light of

016367

016367

the vast disparity between the amount of the judgment in this case and the annual revenue of the group of which West is a part, the district court's decision to grant a stay without a bond was not an abuse of discretion." *Id.*; *see also See Dillon v. W. Publ'g Corp.*, Case No. 3:03-CV-0203-ECR-RAM, 2007 WL 9728805, at *2 (D. Nev. Oct. 5, 2007) (granting stay pending post-judgment motions without requiring bond because the judgment amount was only slightly more than one percent of defendant's net operating costs).

If there are circumstances when a judgment debtor may be excused from posting a bond through the entire appeal, perforce a lesser showing would allow a judgment debtor to stay the judgment without bond pending post-judgment motions under NRCP 62(b).

Here, and keeping in mind the limited duration of a stay under NRCP 62(b), application of the *Dillon* factors strongly supports waiving the bond requirement. In this case, the collection process is straightforward. Defendants undisputedly have sufficient assets to cover the judgment amount and no attachment of property is required. *See Dillon*, Case No. 3:03-CV-0203-ECR-RAM, 2007 WL 9728805, at *2 (applying the *Dillon* factors and granting temporary stay). If the judgment is affirmed on appeal, Defendants can satisfy the judgment. It is unknown how long it would take to obtain a judgment following the appeal; thus, this factor is neutral. In support of the third and fourth factors, Defendants have included the declaration of Daniel Keuter, Chief Financial Officer for UnitedHealthcare's Employer & Individual business segment. Mr. Keuter's declaration conclusively establishes Defendants' financial security. Indeed, Defendant UHS itself as of December 31, 2020 held over 220 times the judgment amount in cash and cash equivalents, and well over 2,700 times the judgment amount in assets. Decl. of Dan Keuter Exhibit A (noting UHS' had $13,778 million in "Cash and cash equivalents" as of December 31, 2020).[1] As discussed above, courts have found financial security sufficient to waive a bond requirement with far less than is here. *Nelson*, 121 Nev. at 835, 122 P.3d at 1254; *Fed. Prescription Serv*, 636 F.2d

[1] *See also* PX 1002-04 (evincing ability to easily satisfy the judgments). Out of precaution, Defendants note that PX 1001 was subject to their motion to seal trial exhibits and do not waive any rights, including appellate review, related to the Court's disposition of that motion. In the instant motion, Defendants are only relying on information that was not subject to their proposed redactions to PX 1001.

016368 016368

at 761. Based on Defendants' financial security, the Court should have a high degree of confidence in Defendants' ability to pay any judgment. Mr. Keuter's declaration makes clear that Defendants' "ability to pay the judgment is so plain that the cost of a bond would be a waste of money." *See* Decl. of Dan Keuter. Because Defendants are relying on their uncontested ability to pay the judgment, the alternative fifth factor is inapplicable in this case.

Defendants have established their clear financial security, rendering the posting of a supersedeas bond unnecessary and a waste of money. Because application of the *Dillon* factors supports waiver of the bond requirement, Defendants request this Court grant its stay request and waive any requirement to post a supersedeas bond or alternate form of security.

C. Alternatively, this Court Should Grant an Interim Stay for Defendants to Post a Supersedeas Bond or Seek Further Relief from the Supreme Court

If this Court is not inclined to grant the stay pending the resolution of post-judgment motions, Defendants, in the alternative, ask this Court for a temporary, interim stay to allow them time to procure a supersedeas bond under NRCP 62(d) and NRS 20.037 or to seek an extension of the stay from the Nevada Supreme Court. Given the novelty of NRCP 62(b) and the lack of Nevada cases interpreting this rule, it would be prudent for this Court to allow the Supreme Court to provide guidance to the parties and this Court here.

016369

016369

CONCLUSION

For the forgoing reasons, the court should stay the execution of the judgment entered against Defendants pending the resolution of post-judgment motions. Based on Defendants' financial security, the Court should waive any requirement to post supersedeas bond.

Dated this 5th day of April, 2022.

/s/ Abraham G. Smith
Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Dimitri D. Portnoi, Esq.(*Pro Hac Vice*)
Jason A. Orr, Esq. (*Pro Hac Vice)*
Adam G. Levine, Esq. *(Pro Hac Vice)*
Hannah Dunham, Esq. *(Pro Hac Vice)*
Nadia L. Farjood, Esq. (*Pro Hac Vice*)
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
Phillip N. Smith, Jr., Esq.
Marjan Hajimirzaee, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd.
Suite 400
Las Vegas, Nevada 89118

Attorneys for Defendants

K. Lee Blalack, II, Esq.(*Pro Hac Vice)*
Jeffrey E. Gordon, Esq. *(Pro Hac Vice)*
Kevin D. Feder, Esq. *(Pro Hac Vice)*
Jason Yan, Esq. *(Pro Hac Vice)*
O'Melveny & Myers LLP
1625 Eye St. NW
Washington, DC 20006

Paul J. Wooten, Esq. *(Pro Hac Vice)*
Philip E. Legendy *(Pro Hac Vice)*
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036

016370

016370

EXHIBIT 1

016371

016371

EXHIBIT 1

MSTY

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
Phillip N. Smith, Jr., Esq.
Nevada Bar No. 10233
psmithjr@wwhgd.com
Marjan Hajimirzaee, Esq.
Nevada Bar No. 11984
mhajimirzaee@wwhgd.com
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Daniel F. Polsenberg, Esq.
Nevada Bar No. 2376
dpolsenberg@lewisroca.com
Joel D. Henriod, Esq.
Nevada Bar No. 8492
jhenriod@lewisroca.com
Abraham G. Smith, Esq.
Nevada Bar No. 13250
asmith@lewisroca.com
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Attorneys for Defendants

Dimitri D. Portnoi, Esq.(*Admitted Pro Hac Vice*)
dportnoi@omm.com
Jason A. Orr, Esq. (*Admitted Pro Hac Vice)*
jorr@omm.com
Adam G. Levine, Esq. *(Admitted Pro Hac Vice)*
alevine@omm.com
Hannah Dunham, Esq. *(Admitted Pro Hac Vice)*
hdunham@omm.com
Nadia L. Farjood, Esq. (*Admitted Pro Hac Vice*)
nfarjood@omm.com
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000

K. Lee Blalack, II, Esq.(*Admitted Pro Hac Vice)*
lblalack@omm.com
Jeffrey E. Gordon, Esq. *(Admitted Pro Hac Vice)*
jgordon@omm.com
Kevin D. Feder, Esq. *(Admitted Pro Hac Vice)*
kfeder@omm.com
Jason Yan, Esq. *(Admitted Pro Hac Vice)*
jyan@omm.com
O'Melveny & Myers LLP
1625 Eye St. NW
Washington, DC 20006
Telephone: (202) 383-5374

Paul J. Wooten, Esq. *(Admitted Pro Hac Vice)*
pwooten@omm.com
Philip E. Legendy *(Admitted Pro Hac Vice)*
plegendy@omm.com
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036
Telephone: (212) 728-5857

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

DECLARATION OF DANIEL KUETER IN SUPPORT OF DEFENDANTS' RULE 62(b) MOTION FOR STAY PENDING SOLUTION RESOLUTION OF POST-TRIAL MOTIONS *(on Order Shortening Time)*

HEARING REQUESTED

016372
016372

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.

DECLARATION OF DANIEL KUETER
IN SUPPORT OF DEFENDANTS' MOTION RULE 62(b) MOTION FOR STAY PENDING SOLUTION RESOLUTION OF POST-TRIAL MOTIONS

I, Daniel Kueter, under oath and penalty of perjury say:

1. I am over the age of 18 and am competent to testify regarding the matters asserted herein, which are based on my own personal knowledge, unless stated upon information and belief, as to which statements I am informed and believe to be true.

2. I have served almost 15 years with United HealthCare Services, Inc. ("UHS") in several roles. I presently serve as Chief Financial Officer for UnitedHealthcare's Employer and Individual ("E&I") business segment, a role I have held since May 2021. In that role, I am responsible for financial planning, forecasting, reporting, and compliance for UnitedHealthcare's E&I business. Among other things, I oversee members of UnitedHealthcare's finance and accounting departments.

3. Because of my position with UHS, I have personal knowledge of UHS' financial position, including its ability to pay the judgment entered against it and its affiliates in this case. Through my position with UHS, I am also familiar with UHS' consolidated financial statements for the years ending December 31, 2020 and December 31, 2019. These statements contain, among other things, the consolidated balance sheets for UHS. A true and correct redacted copy of the

consolidated balance sheets for UHS from its consolidated financial statements for the years ending December 31, 2020 and December 31, 2019 is attached hereto as Exhibit "A."[1]

4. As reflected in Exhibit A, as of December 31, 2020, UHS recorded $171,198,000,000 in total assets. This includes $13,778,000,000 in cash and cash equivalents.

5. As reflected in Exhibit A, as of December 31, 2019, UHS recorded $151,923,000,000 in total assets. This includes $8,871,000,000 in cash and cash equivalents.

6. Accordingly, to the extent UHS and its affiliates must themselves pay the judgment entered in this litigation, they have more than enough assets to cover the judgment amount. For that reason, no bond or other form of security should be required.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on the 5th day of April 2022, at Minnetonka, Minnesota.

Daniel Kueter

DANIEL KUETER

016374

016374

[1] Out of precaution, Defendants note that PX 1001 was subject to their motion to seal trial exhibits and do not waive any rights, including appellate review, related to the Court's disposition of that motion. In the instant motion, Defendants are only relying on information that was not subject to their proposed redactions to PX 1001.

EXHIBIT A

016375

016375

EXHIBIT A

United HealthCare Services, Inc. and Subsidiaries

Consolidated Financial Statements as of and for the Years Ended December 31, 2020 and 2019,
United HealthCare Services, Inc. – Parent Company
Consolidating Schedules as of and for the Year Ended December 31, 2020, and Independent Auditors' Report

016376

016376

Plaintiffs' Exhibit
PX 1001

ATTORNEY'S EYES ONLY

United HealthCare Services, Inc. and Subsidiaries
Consolidated Balance Sheets

(in millions, except share and per share data)	December 31, 2020	2019
Assets		
Current assets:		
Cash and cash equivalents	$ 13,778	$ 8,871
Short-term investments		
Accounts receivable, net of allowances of		
●ther current receivables, net of allowances of		
Assets under management		
Related-party receivables, net		
Prepaid expenses and other current assets		
Total current assets		
Long-term investments		
Property, equipment and capitalized software, net of accumulated depreciation and amortization of		
Goodwill		
●ther intangible assets, net of accumulated amortization of		
●ther assets		
Total assets	$ 171,198	$ 151,923
Liabilities, redeemable noncontrolling interests and equity		
Current liabilities:		
Medical costs payable	$	
Accounts payable and accrued liabilities		
Current portion of long-term notes payable to related party		
Unearned revenues		
●ther current liabilities		
Total current liabilities		
Long-term notes payable to related party, less current maturities		
Deferred income taxes		
●ther liabilities		
Total liabilities	85,366	66,328
Commitments and contingencies (Note 13)		
Redeemable noncontrolling interests		
Equity:		
Common stock, $1.00 par value - 10,000 shares authorized; 1,000 shares issued and outstanding		
Additional paid-in capital		
Retained earnings		
Accumulated other comprehensive income		
Nonredeemable noncontrolling interests		
Total equity		
Total liabilities, redeemable noncontrolling interests and equity	$	

See Notes to the Consolidated Financial Statements

016377 1001-005

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Fremont Emergency Services (Mandavia) Ltd, Plaintiff(s) vs. United Healthcare Insurance Company, Defendant(s)	CASE NO: A-19-792978-B DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Shortening Time was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 4/5/2022

Michael Infuso	minfuso@greeneinfusolaw.com
Keith Barlow	kbarlow@greeneinfusolaw.com
Frances Ritchie	fritchie@greeneinfusolaw.com
Greene Infuso, LLP	filing@greeneinfusolaw.com
Audra Bonney	abonney@wwhgd.com
Cindy Bowman	cbowman@wwhgd.com
D. Lee Roberts	lroberts@wwhgd.com
Raiza Anne Torrenueva	rtorrenueva@wwhgd.com
Pat Lundvall	plundvall@mcdonaldcarano.com
Kristen Gallagher	kgallagher@mcdonaldcarano.com

016378
016378
016378

Amanda Perach	aperach@mcdonaldcarano.com
Beau Nelson	bnelson@mcdonaldcarano.com
Marianne Carter	mcarter@mcdonaldcarano.com
Karen Surowiec	ksurowiec@mcdonaldcarano.com
Kimberly Kirn	kkirn@mcdonaldcarano.com
Colby Balkenbush	cbalkenbush@wwhgd.com
Daniel Polsenberg	dpolsenberg@lewisroca.com
Joel Henriod	jhenriod@lewisroca.com
Abraham Smith	asmith@lewisroca.com
Brittany Llewellyn	bllewellyn@wwhgd.com
Phillip Smith, Jr.	psmithjr@wwhgd.com
Flor Gonzalez-Pacheco	FGonzalez-Pacheco@wwhgd.com
Kelly Gaez	kgaez@wwhgd.com
Marjan Hajimirzaee	mhajimirzaee@wwhgd.com
Justin Fineberg	jfineberg@lashgoldberg.com
Yvette Yzquierdo	yyzquierdo@lashgoldberg.com
Virginia Boies	vboies@lashgoldberg.com
Martin Goldberg	mgoldberg@lashgoldberg.com
Rachel LeBlanc	rleblanc@lashgoldberg.com
Jonathan Feuer	jfeuer@lashgoldberg.com
Jason Orr	jorr@omm.com
Adam Levine	alevine@omm.com
Jeff Gordon	jgordon@omm.com

016379

016379

016379

Hannah Dunham	hdunham@omm.com
Paul Wooten	pwooten@omm.com
Dimitri Portnoi	dportnoi@omm.com
Lee Blalack	lblalack@omm.com
David Ruffner	druffner@lashgoldberg.com
Emily Pincow	epincow@lashgoldberg.com
Cheryl Johnston	Cheryl.Johnston@phelps.com
Jonathan Siegelaub	jsiegelaub@lashgoldberg.com
Philip Legendy	plegendy@omm.com
Andrew Eveleth	aeveleth@omm.com
Kevin Feder	kfeder@omm.com
Nadia Farjood	nfarjood@omm.com
Jason Yan	jyan@omm.com
AZAlaw AZAlaw	TMH010@azalaw.com
Beau Nelson	beaunelsonmc@gmail.com
Marianne Carter	mcarter.mc2021@gmail.com
Jessica Helm	jhelm@lewisroca.com
Cynthia Kelley	ckelley@lewisroca.com
Emily Kapolnai	ekapolnai@lewisroca.com
Maxine Rosenberg	Mrosenberg@wwhgd.com
Mara Satterthwaite	msatterthwaite@jamsadr.com
Tara Teegarden	tteegarden@mcdonaldcarano.com
Errol KIng	errol.King@phelps.com

016380

016380

016380

Dexter Pagdilao dpagdilao@omm.com

Hollis Donovan hdonovan@omm.com

Craig Caesar Craig.Caesar@phelps.com

016381

016381

312

Electronically Filed
4/6/2022 9:33 PM
Steven D. Grierson
CLERK OF THE COURT

MOT

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
Phillip N. Smith, Jr., Esq.
Nevada Bar No. 10233
psmithjr@wwhgd.com
Marjan Hajimirzaee, Esq.
Nevada Bar No. 11984
mhajimirzaee@wwhgd.com
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Daniel F. Polsenberg, Esq.
Nevada Bar No. 2376
dpolsenberg@lewisroca.com
Joel D. Henriod, Esq.
Nevada Bar No. 8492
jhenriod@lewisroca.com
Abraham G. Smith, Esq.
Nevada Bar No. 13250
asmith@lewisroca.com
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Dimitri D. Portnoi, Esq.(*Admitted Pro Hac Vice*)
dportnoi@omm.com
Jason A. Orr, Esq. (*Admitted Pro Hac Vice)*
jorr@omm.com
Adam G. Levine, Esq. *(Admitted Pro Hac Vice)*
alevine@omm.com
Hannah Dunham, Esq. *(Admitted Pro Hac Vice)*
hdunham@omm.com
Nadia L. Farjood, Esq. (*Admitted Pro Hac Vice*)
nfarjood@omm.com
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000

K. Lee Blalack, II, Esq.(*Admitted Pro Hac Vice)*
lblalack@omm.com
Jeffrey E. Gordon, Esq. *(Admitted Pro Hac Vice)*
jgordon@omm.com
Kevin D. Feder, Esq. *(Admitted Pro Hac Vice)*
kfeder@omm.com
Jason Yan, Esq. *(Admitted Pro Hac Vice)*
jyan@omm.com
O'Melveny & Myers LLP
1625 Eye St., N.W.
Washington, D.C. 20006
Telephone: (202) 383-5374

Paul J. Wooten, Esq. *(Admitted Pro Hac Vice)*
pwooten@omm.com
Philip E. Legendy *(Admitted Pro Hac Vice)*
plegendy@omm.com
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036
Telephone: (212) 728-5857

Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

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

HEARING REQUESTED

DEFENDANTS' MOTION FOR REMITTITUR AND TO ALTER OR AMEND THE JUDGMENT

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.

Defendants UnitedHealthcare Insurance Company ("UHIC"), United HealthCare Services Inc. ("UHS"), which does business as UnitedHealthcare or "UHC" and through UHIC), UMR, Inc. ("UMR"), Sierra Health and Life Insurance Company ("SHL"), and Health Plan of Nevada, Inc. ("HPN") (collectively, "Defendants"), move the Court to remit the excessive award of punitive damages in the judgment pursuant to NRCP 59(a), NRCP 59(e), and U.S. Const. amend. XIV, § 2.

As discussed in the concurrently filed Rule 50(b) motion, liability should not have been found as a matter of law, including because TeamHealth Plaintiffs[1] do not have standing to bring an Unfair Claims Practices Act cause of action. Therefore, the punitive damages award cannot stand. *See Wolf v. Bonanza Inv. Co.*, 77 Nev. 138, 143, 360 P.2d 360, 362 (1961) ("[I]n the absence of a judgment for actual damages, there [cannot be] a valid judgment for exemplary damages.").

But even assuming that Defendants were liable, the jury clearly rejected TeamHealth Plaintiffs' claim that they were entitled to their full billed charges. There is simply no justification for the colossal $60 million punitive damages award. "Awards of punitive damages are generally limited by procedural and substantive due process concerns." *Wyeth v. Rowatt*, 126 Nev. 446, 474, 244 P.3d 765, 784 (2010), *citing State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408,

[1] The "TeamHealth Plaintiffs" collectively refers to the three Plaintiffs that initiated this action, each of which is owned by and affiliated with TeamHealth Holdings, Inc.: 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").

016383

416–17, 123 S. Ct. 1513 (2003). And in Nevada, as in many other states, they are also limited by statute. NRS 42.005(1).[2] Here the punitive damages award blew past both limitations. This Court should now vacate, or at the very least significantly reduce, that award.

I.

THE PUNITIVE DAMAGES ARE UNCONSTITUTIONALLY EXCESSIVE

The punitive damages award in this case exceeds constitutional limits. Even when punitive damages are not limited by the cap of NRS 42.005, the federal and state Due Process Clauses independently prohibit the imposition of "grossly excessive" punishments on a tortfeasor. *Bongiovi v. Sullivan*, 122 Nev. 556, 582–83, 138 P.3d 433, 451–52 (2006); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 562, 116 S. Ct. 1589, 1592 (1996).

A. The Guideposts for Assessing Constitutionality

This Court must review the "excessiveness of a punitive damages award" using "the federal standard's three guideposts." *Bongiovi*, 122 Nev. at 683, 138 P.3d at 452. Those guideposts are: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." *Id.*; *State Farm*, 538 U.S. at 418. And because consideration of these guideposts is an "application of law," no deference to the jury's verdict is warranted. *Id.* (internal quotation marks omitted). Considering those guideposts here, this Court should conclude that the award of punitive damages against Defendants was grossly excessive.

B. This Case Does Not Exhibit Reprehensibility Necessary to Justify $60 Million in Punitive Damages

Reprehensibility of the defendant's conduct is "[p]erhaps the most important indicium of

---

[2] Defendants understand that this Court previously rejected application of the statutory cap in NRS 42.005(1). While Defendants preserve and renew their objection to that ruling here, the discussion on constitutional limits in section I below is an independent basis compelling remittitur of the punitive-damages award. This Court should therefore grant remittitur even if it does not reconsider the application of NRS 42.005(1).

the reasonableness of a punitive damages award." *BMW of North America v. Gore*, 517 U.S. 559, 575 (1996). Importantly, for purposes of the Court's post-judgment scrutiny of the judgment for excessiveness, the question of degree of any reprehensibility is distinct from jury's finding. "That conduct is sufficiently reprehensible to give rise to tort liability, and even a modest award of exemplary damages[,]" as a threshold matter, "does not establish the high degree of culpability that warrants a ***substantial*** punitive damages award." *Id*., 517 U.S. at 580 (emphasis added). As the United States Supreme Court has said, "[i]t should be presumed a plaintiff has been made whole for his injuries by compensatory damages, so punitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is ***so*** reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence." *State Farm*, 538 U.S. at 419 (emphasis added).

1. The *Gore* Factors for Determining the Degree of Reprehensibility Militate Against a Large Award

In *Gore*, the US Supreme Court identified five factors courts should consider in evaluating the reprehensibility of a defendant's conduct. 517 U.S. at 576-80. Each factor weighs heavily in favor of reducing this punitive damages award.

Whether the harm suffered by the plaintiff is "purely economic in nature." 517 U.S. at 576. The harm in this case was "purely economic." Consequently, this factor weighs against reprehensibility. In analyzing whether conduct is outrageous or reprehensible in a way that permits an award of punitive damages, economic harms are considered less reprehensible as threats to the "health or safety of others." *Bains LLC v. Acro Prods. Co.*, 405 F.3d 764, 775 (9th Cir. 2005) ; *see also Calloway v. Reno*, 116 Nev. 250, 993 P.2d 1259, 1267 (2000) ("Purely economic loss is generally defined as 'the loss of the benefit of the user's bargain . . . including . . . pecuniary damage for inadequate value, . . . or consequent loss of profits."). Also, "socially valuable task[s]" or "conduct that might have some legitimate purpose" is considered less reprehensible than conduct that is discriminatory. *Bains LLC*, 405 F.3d at 775. TeamHealth Plaintiffs argued to the jury that an excessive punitive damages award was justified "[b]ecause [Defendants'] greed is utterly, totally uninhibited and unhinged." 12/07/2021 Tr. 99:10. But this statement at

best only demonstrates that TeamHealth Plaintiffs suffered purely economic harm. TeamHealth Plaintiffs did not present and cannot now point to *any* evidence that establishes that the conduct here resulted in any physical harm. In the absence of physical harm, this factor weighs in favor of reducing the punitive damages award. *See State Farm*, 538 U.S. at 419, 426, 123 S.Ct. 1521, 1524-25; *Bains LLC*, 405 F.3d at 775.

Whether the defendant's "conduct evinced . . . indifference to or reckless disregard for the *health and safety* of others." 517 U.S. at 576. This is a business case. As set out more fully in Defendants' Motion for New Trial Due to Trial Errors, the only harm for which TeamHealth Plaintiffs presented evidence is economic: they received less payment than they demanded as reimbursement for certain out-of-network emergency medicine services. There is no evidence that these "underpayments" threatened anyone's health or physical safety—rather, TeamHealth Plaintiffs' parent company and investors received less of a windfall than they might have anticipated. There was no evidence presented that doctors' compensation was reduced or any emergency room in Nevada was forced to close due to these alleged underpayments. And there was no evidence presented that patient care was impacted.by these alleged underpayments. Moreover, the Defendants' motive in paying less than TeamHealth Plaintiffs' full billed charges was not "evil" or fraudulent—the only testimony on this subject consistently affirmed that Defendants intended to control skyrocketing healthcare costs for their clients and members. This factor weighs against reprehensibility.

Whether the plaintiff was "financially vulnerable." 517 U.S. at 576. While TeamHealth Plaintiffs claimed that Defendants' low reimbursement rates caused financial harm to TeamHealth Plaintiffs' business, *see, e.g.*, 11/12/2021 Tr. 115:19-24 (opposing counsel testifying that "[Defendants] shouldn't have cut [TeamHealth Plaintiffs'] reimbursement by taking the money out of our pocket and putting it into yours."), the same can be said of almost any business venture. TeamHealth Plaintiffs were not uniquely vulnerable. For instance, this case does not involve individuals with low incomes or senior citizens with fixed incomes, which are the types of circumstances this factor typically contemplates. *See, e.g.*, *Lompe v. Sunridge Partners, LLC*, 818 F.3d 1041, 1066 (10th Cir. 2016) (concluding plaintiff as a low-income college student was

016386
016386

financially vulnerable). And even considering the business enterprise, TeamHealth Plaintiffs were *never* on a financial precipice such that Defendants' reimbursement rates imperiled their commercial viability.[3] Indeed, opposing counsel inflamed the jury's passions by depicting TeamHealth Plaintiffs as righteous business entities that brought suit to look after smaller market players, including mom and pop practices, because they have the resources to take on a litigant with the size and power of Defendants. *See* 11/12/2021 Tr. 111:11-16 ("do you think that a mom and pop operation with four, or five, or six doctors has the resources to take on UnitedHealthcare?"); 11/23/2021 Tr. 151:4-8 ("[I]f you're a doctor in a practice of three or four people . . . are you really going to hire a lawyer or do something about it? I mean [Defendants] know that they have all the power and all the leverage"); 11/23/2021 Tr. 145:25-9. TeamHealth Plaintiffs presented no evidence regarding doctor compensation, let alone any evidence showing doctor compensation was affected by Defendants' reimbursement rates. Nor did TeamHealth Plaintiffs present any evidence that doctors were leaving the state or that emergency rooms had to close as a result of Defendants' reimbursement rates. This factor also weighs against reprehensibility.

Whether the "defendant has repeatedly engaged in prohibited conduct." 517 U.S. at 576. While TeamHealth Plaintiffs will argue that the jury found Defendants liable for underpaying a large number claims, it cannot be said that Defendants "repeatedly engaged in prohibited conduct." Defendants refused to pay the full amounts of TeamHealth Plaintiffs' invoices because they were unreasonable—and the jury agreed. *See* 11/29/2021 Verdict at Interrogatory Nos. 2-4, 7-9 (refusing to award TeamHealth Plaintiffs' billed charges). The jury thus found that Defendants' decision not to pay TeamHealth Plaintiffs' full billed charges was not "prohibited conduct." And while it is true that the jury found that Defendants underpaid TeamHealth Plaintiffs for the at-issue

---

[3] Plaintiffs argued to the jury that Defendants "cut us to the bone," 12/7/2021 Tr. 106:18, and scared the jury with visions of Defendants "gobbling up doctor's practices," such that when someone goes to the ER, Plaintiffs will no longer be able to staff ER doctors, but rather the patient will be "treated by someone that ultimately reports to an insurance executive whose job it is to cut costs." 12/7/2021 Tr. 110:2-10. The Court sustained Defendants' objection to this argument, noting that "[n]one of this is in evidence." 12/7/2021 Tr. 110:14-16.

016387

016387

claims,[4] those claims were reimbursed by consistently applying plan document benefits. *See* 11/10/2021 Tr. 25:24-28:5 (Mr. Haben testified that the allowed amount payable to providers "is defined by the benefit plan" and is not the billed charges); *id*. 33:22-34:2 (Mr. Haben testified that the allowed amount for out-of-network claims is paid based on what is "[d]efined in the benefit plan"); 11/16/2021 Tr. 148:12-18 (Ms. Hare testified that HPN's & SHL's claims processing system is designed to reimburse claims based on plan documents and not full billed charges). In other words, it is not as if each occurrence of declining to pay facially unreasonable invoices entailed an independent moment of *mens rea* by a managerial agent. This factor weighs against reprehensibility, or at least against finding reprehensibility to a significant extent.

Whether the defendant's conduct involved "deliberate false statements, acts of affirmative misconduct, or concealment." 517 U.S. at 579. First, TeamHealth Plaintiffs did not raise, and the jury did not determine, a cause of action for fraud. Second, the Court cannot infer from the verdict any determinations of intentional, deliberate, or affirmative acts to harm TeamHealth Plaintiffs, because imposing liability under the actual causes of action did not entail such findings.

For instance, liability for unjust enrichment lies as long as "retention of the benefit is unjust." Jury Instruction No. 22. The jury was not required to find that Defendants were *aware* of any unjustness, such that the verdict can be deemed to imply intentional misconduct. *Id*. Nor does anything in the instruction regarding breach of an implied contract connote intentional conduct. *See* Jury Instruction No. 26. Rather the Court explained to the jury that "contractual intent is determined by the *objective* meaning of the conduct of the parties under the circumstances," *not* by subjective intent. Jury Instruction No. 29 (emphasis added). Liability under the Unfair Claims Practices Act ("UCPA") required the jury to make an objective finding that Defendants owed money on a claim that they did not satisfy, and a subjective finding that Defendants had subjective awareness that that money was not *paid*. Jury Instructions Nos. 36, 37.

[4] The jury found that the appropriate reimbursement rate was, on average ~319% of Medicare, compared to the ~760% of Medicare TeamHealth Plaintiffs demanded, on average, for the At-Issue Claims, *see* 12/7/2021 Tr. 81:7-13, 116:19-25; 11/29/2021 Verdict at Interrogatory Nos. 2-4, 7-9, further underscoring the comparative reasonableness of Defendants' reimbursement at, on average, ~164% of Medicare.

016388
016388

But liability under the UCPA does *not* consider whether Defendants subjectively knew its *coverage determination* was incorrect, which is the only evidence of Defendants' conduct TeamHealth Plaintiffs presented. *See, e.g.*, Defs' Rule 50(b) Mot. at II.B.5. The jury instead determined that Defendants' *obligation to pay* the amount claimed "has become reasonably clear" by objective standards. Jury Instruction No. 36.[5] Similarly, to succeed on the claim under the Prompt Pay Act, the jury determined only that Defendants failed to pay a claim the jury deemed payable (Jury Instruction No. 38), not that Defendants were *aware* the claim required payment. Put simply, the causes of action underlying the compensatory damages do not require *mens rea*, so the verdict cannot imply *mens rea*.

Even the jury's imposition of punitive damages does not necessarily imply "deliberate false statements, acts of affirmative misconduct, or concealment." 517 U.S. at 579. The Court's instruction empowered the jury to impose punitive damages for "oppression, fraud, *or malice*," (Jury Instruction No. 39), and the verdict form similarly inquired whether they the jury found any of those three: "Do you find . . . oppression, fraud, or malice in any of the conduct[.]" "Special Verdict Form," filed Nov. 29, 2021, interrogatories 15 and 16. By the Court's instruction, "malice" may entail "conduct that is intended to injure a person ***or*** despicable conduct engaged in with conscious disregard," which in turn "means *knowledge of the probable harmful consequences* of a wrongful act and a willful and deliberate *failure to avoid* these consequences." Jury Instruction No. 39. Thus, the Court may infer from the jury's imposition of punitive damages nothing more than a determination that Defendants' failure to pay the amounts the jury deemed payable was "wrongful" and foreseeably harmful, and that Defendants were indifferent to financial harm that withholding the funds might cause. While it is possible the jury found Defendants culpable of fraud or oppression, it is not necessarily so, and there is no indication whatsoever that the jury did so, as compared to simply malicious. So, the Court cannot infer the jury did.

[5] As discussed in Defendants' Rule 50(b) Renewed Motion for Judgment as a Matter of Law, the jury's award of compensatory damages at a rate far below what TeamHealth Plaintiffs asserted was the amount owed, and different from the damages estimate either party's expert presented, necessarily means that Defendants' obligation to pay the amount the jury awarded had *not* become reasonably clear. Defs' Rule 50(b) Mot. at II.B.3.

016389
016389

Given the absence of any record that TeamHealth Plaintiffs' harm "was the result of intentional malice, trickery or deceit," *State Farm*, 538 U.S. at 419, this factor also militates against finding Defendants acted with a degree of repressibility "that warrants a substantial punitive damages award." *Gore*, 517 U.S. at 580.

2. Analogous Caselaw Confirms the Court Cannot Impute Sufficient Reprehensibility to Justify this Massive Award

Nevada case law on economic harm supports reducing the punitive damages award. In *Ace Truck v. Kahn*, which involved a pure business transaction, the court found a roughly one-to-one punitive to compensatory damage ratio appropriate. 103 Nev. 503, 511, 746 P.2d 132, 137-38 (1987). *Ace Truck* predates *Bongiovi*'s adoption of the federal guideposts articulated in *Gore*, but as the *Bongiovi* court observed, Nevada's pre-*Gore* standard "varie[d] only slightly from the federal standard" articulated in *Gore*. *Bongiovi*, 122 Nev. at 583, 138 P.3d at 452. *Ace Truck*, therefore, remains persuasive on the permissible amount of punitive damages allowable in business transaction cases.[6]

The Nevada Supreme Court has found larger punitive damages awards appropriate, but only where defendants reprehensibility was *much* higher than that supported by the jury's verdict. In *Evans v. Dean Witter Reynolds*, which supported a punitive damages award of ***2.4*** times compensatory damages, the defendants assisted a fiduciary with looting millions of dollars from the estate of his mentally and physically incompetent beneficiary. 116 Nev. 598, 602-04, 5 P.3d 1043, 1045-47 (2000). The reprehensibility of the *Evans* defendants was two-fold: (1) the particular vulnerability of an incompetent client; and (2) the fiduciary relationship that was violated.

---

[6] In unpublished decisions following *Bongiovi*, the Nevada Supreme Court continued to rely on *Ace Truck*'s pronouncement that "a simple business sales transaction in which the plaintiffs accused the defendants of misrepresentation and fraud ... can probably be said to be toward the lower end of the spectrum of malevolence found in punitive damages case." *Ace Truck v. Kahn*, 103 Nev. 503, 511, 746 P.2d 132, 137 (1987), *cited in Exposure Graphics v. Rapid Mounting Display*, No. 54069, 128 Nev. 895, 2012 WL 1080596, at *2 (2012) (concluding that this pre-*Bongiovi* assessment remains good law under the current "reprehensibility" framework). Defendants do not cite *Exposure Graphics* itself as controlling or precedential authority, NRAP 36(c)(3), but merely point out the Supreme Court's continued reliance on the published authority of *Ace Truck*, which has not been abrogated for this purpose.

016390

016390

This case stands in stark contrast to *Evans*. Whereas *Evans* centered on an utterly incompetent and helpless widow bilked of funds on which she relied for sustenance, *id.* at 1045-47), TeamHealth Plaintiffs are private equity backed business-savvy physician-staffing companies who were market driven to maximize their own interests in negotiation with other business entities at arm's length. In fact, this Court's rulings recognize that the parties are equally sophisticated. *See* 10/22/2021 Tr. 65:3-4 ("This is big business against big business."). And TeamHealth Plaintiffs dropped their allegation that there was a "special element of reliance or trust" between the parties such that "Defendants were in a superior or entrusted position of knowledge." *Compare* First Amend. Compl. ¶ 209 *to* Second Amend. Compl. TeamHealth Plaintiffs successfully moved *in limine* to exclude any reference to this allegation. 11/1/2021 Order Granting Plfs' Mot. *in Limine* to Exclude Evidence re Dismissed Claims.

This case also does not involve a fiduciary relationship, which further distinguishes it from *Evans* and emphasizes that this case is unlike the type of consumer-insurance-coverage cases quintessentially contemplated in NRS 42.005(2)(b)'s exception to Nevada's statutory cap on punitive damages. *Id*. ("The limitations on the amount of an award of exemplary or punitive damages prescribed in subsection 1 do not apply to an action brought against: . . . (b) An insurer who acts in bad faith regarding its obligations to provide insurance coverage"). "The duty owed by an insurance company *to an insured* is fiduciary in nature." *Powers v. United Servs. Auto. Ass'n*, 115 Nev. 38, 42, 979 P.2d 1286, 1288 (1999) (emphasis added). "A fiduciary relationship exists when one has the right to expect trust and confidence in the integrity and fidelity of another." *Id*. However, TeamHealth Plaintiffs abandoned any ability to claim that they are Defendants' fiduciaries when they dismissed their allegation that there was "special element of reliance or trust" existing between them. Not only are TeamHealth Plaintiffs not insureds, they also argued at trial that they are in direct competition with Defendants. *See* 12/7/2021 Tr. 110:2-3. It defies logic that a sophisticated commercial entity had the right to expect trust and confidence of an equally sophisticated competitor.

As discussed more fully below, the jury awarded punitive damages that were on average just under *23 times* the amount of compensatory damages. Even *if* TeamHealth Plaintiffs proved

016391
016391

facts satisfactory under the *Evans* standard, which they did not, the punitive damages award is excessive and should be reduced. Because the harm in this case is akin to that in *Ace Truck*, the damages award should be reduced even more.

C. The Extreme Disparity between the Compensatory and Punitive Damages is Unsustainable

The Nevada Supreme Court has held that "awards of punitive damages are generally limited by procedural and substantive due process concerns." *Wyeth*, 126 Nev. At 474–75, 244 P.3d at 784–85, *citing State Farm*, 538 U.S. at 416–17. And "the Fourteenth Amendment's Due Process Clause prohibits punitive damages awards that are grossly excessive or arbitrary." *Id.*; *Bongiovi*, 122 Nev. at 582, 138 P.3d at 451. An important guidepost for recognizing excessiveness is "the ratio of the punitive damages award to the actual harm inflicted on the plaintiff." *Id.*; *see Gore*, 517 U.S. 559.

1. The Ratios Between Compensatory and Punitive Damages are Absurd and Must Be Remitted

Here, the ratios are obscene. The *lowest* ratio is nearly 5:1, where the jury awarded $1,007,374.49 in compensatory damages to TeamHealth Plaintiff Fremont Emergency Services against Defendant Sierra Health and Life Insurance Company, and $5 million in punitive damages for the same plaintiff-defendant pairing. *Compare* 11/29/21 Special Verdict Form at 3, *with* 12/07/21 Special Verdict Form at 3. At the high end, however, the punitive damages award shot up to *14,210 times* compensatory damages—representing $281.49 in compensatory damages and $4 million in punitive damages to TeamHealth Plaintiff Ruby Crest against Defendant HPN. *Compare* 11/29/21 Special Verdict Form, at 4, *with* 12/07/21 Special Verdict Form, at 3. Given the minimal evidence introduced at trial related to defendant HPN, this outcome shocks the conscience. Overall, the punitive damages awards against all Defendants ($60 million) exceeded the compensatory awards ($2.65 million) by nearly 23 times.[7]

[7] As noted in the Motion for New Trial, opposing counsels' misconduct plagued the lability and punitive damages verdicts. Mot. for New Trial re Trial Errors at Sections I.A.2-3, I.B.1-2. In particular, TeamHealth Plaintiffs conditioned the jury into believing this case was about the quality of care regarding emergency medicine services and that Defendants were underpaying claims that saved lives. *Id.* at Sections I.A.2-3. Opposing counsel then parlayed that improper conditioning to inflame the jury's passions when arguing that the jury should award massive punitive damages.

The U.S. Supreme Court has not set a fixed ratio limiting punitive damages. *State Farm*, 538 U.S. at 425 ("[T]here are no rigid benchmarks that a punitive damages award may not surpass . . . ."). It has noted, however, that ***"few awards exceeding a single-digit ratio between punitive and compensatory damages ... will satisfy due process."*** *Id.* (emphasis added).

But punitive damages do not normally, or may not always constitutionally, exceed compensatory damages. As discussed *supra*, Section I.B.1., in cases of purely economic harm, the *high* end of such a ratio should be closer to 1-to-1. *Ace Truck*, 103 Nev. at 512, 746 P.2d at 138; *Bongiovi*, 122 Nev. At 583, 138 P.3d at 452. And *Bongiovi* itself involved a 1:1 ratio, which the Nevada Supreme Court considered substantial and justified only because "Bongiovi's conduct was reprehensible to a large degree because of the egregiousness and offensiveness of his statements about Sullivan" and because "Sullivan suffered *great emotional harm* and lost business." *Id.* Even under the extreme facts of the *Evans* case above, an appropriate ratio would be only 2.5 to one.

016393

And when, as here, the compensatory damages here are substantial, the Supreme Court has noted that "a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." *State Farm*, 538 U.S. at 425.

016393

This is not an exceptional case where the compensatory award itself was small in absolute terms or the injury was hard to detect. *See Gore*, 517 U.S. at 581. Indeed, the jury's compensatory awards were extremely precise because the economic injury consisted solely of the difference between what Defendants had already reimbursed and what the jury determined to be a reasonable rate of reimbursement; TeamHealth Plaintiffs disclaimed consequential damages. In addition, the awards taken together were substantial, totaling more than $2.65 million dollars. Even assuming that the smallest compensatory awards on their own might permit a higher ratio than 1:1, even up to the presumptive outer bound of 9:1, there is *no* constitutional justification for an overall

---

See id. at Sections I.B.1-2; *id*. at __ (arguing that "if you [the jury] talk with a whisper, I'm sorry, you have wasted a month and a half of your lives" (quoting 12/7/2021 Tr. 107:14-15)). As such, TeamHealth Plaintiffs were able to obtain an unconstitutionally disproportional punitive damages award through misconduct tactics that inflamed the passions of the jury.

punitives-to-compensatory ratio of almost 23:1. Even an award equal to compensatory damages, as in *Bongiovi* or *Ace Truck*, or perhaps as much as 2.5 times, as in *Evans*, would meet or even exceed the constitutional limit.

2. The Jury's Verdict Does Not Reflect the Requisite Individualized Analysis and is Thus Unreliable

Jurors are charged to thoughtfully, carefully and impartially consider the evidence before deciding upon a verdict. NEVADA JURY INSTRUCTIONS—CIVIL (2011 ed.) Instruction No. 11.01 ("Whatever your verdict is, it must be the product of a careful and impartial consideration of all the evidence in the case under the rules of law as given you by the court.").

In stark contrast to the deliberation taken in determining the compensatory award, the jury awarded punitive damages by repeatedly using the same round numbers. 12/7/21 Special Verdict Form at 2; 11/23/21 Special Verdict Form. This is striking because the evidence pertaining to each TeamHealth Plaintiff-Defendant pairing was vastly different. That is, the conduct of each Defendant differed vis-à-vis each TeamHealth Plaintiff and the harms of each TeamHealth Plaintiff varied. To be sure, of the 11,563 at-issue claims, UHS was responsible for 3,803 and HPN was responsible for 119. *See* PX 473. However, the jury awarded $4,500,000 in punitive damages to each TeamHealth Plaintiff against UHS and $4,000,000 in punitive damages to each TeamHealth Plaintiff against HPN. 12/7/21 Special Verdict Form at 2. In other words, while HPN was only responsible for 1% of the claims at-issue, it is responsible for 20% of the punitive damages award. *See* PX 473; 12/7/21 Special Verdict Form at 2. This is absurd. Moreover, of the 119 at-issue claims that HPN is responsible for, 109 were asserted by Fremont, 6 were asserted by Team Physicians, and 4 were asserted by Ruby Crest. PX 473. It shocks the conscious that HPN's conduct can be equally reprehensible vis-à-vis each TeamHealth Plaintiff. Similarly, even though Fremont asserted 10,387 of the at-issue claims, *i.e.*, ~90% of the at-issue claims, each TeamHealth Plaintiff was awarded the same punitive damages amount. PX 473; 12/7/21 Special Verdict Form at 2. It shocks the conscious that the jury could find that Defendants' conduct vis-à-vis Fremont was equally reprehensible to Defendants' conduct vis-à-vis Team Physicians and/or

016394

016394

Ruby Crest. Thus, the jury did not thoughtfully, carefully and impartially consider the evidence before deciding the punitive damages award and it is unreliable.

D. In Light of the Penalty Interest under the Prompt Pay Act, No Further Punitive Damages Are Appropriate

TeamHealth Plaintiffs have not demonstrated that Defendants would have been subject to any civil penalties—at least no penalties that are not already reflected in the compensatory damage award. For instance, although the Prompt Pay Act provides for heightened interest on unpaid claims—6% above the prime rate, *e.g.*, NRS 689B.255(1), as opposed to 2% above prime for ordinary prejudgment interest, NRS 17.130(2), NRS 99.040(1)(a)—those penalties are already reflected in the compensatory award.

Indeed, for that very reason, the judgment—with Prompt Pay Act penalty interest on the compensatory award—already reflects a punitive element. *Cf. Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 735 n.14, 192 P.3d 243, 250 n.14 (2008). TeamHealth Plaintiffs in this instance have to choose between the statutory penalty and punitive damages. An additional award of punitive damages for precisely the same conduct as that which gave rise to Prompt Pay Act liability—paying an unreasonably low reimbursement rate—is improper.

Alternatively, even if punitive damages may be combined with Prompt Pay Act interest, the award here is still grossly excessive. Looking at the Prompt Pay Act interest as an appropriate comparator, the *total* amount ($779,361.97) is just 29% of the compensatory award. That, of course, includes all of the interest, not just the 4% difference between ordinary judgment interest and the "penalty" interest under the Prompt Pay Act. This only confirms the analysis above: that a punitives award *equal* to compensatory damages—many times more than the comparable Prompt Pay Act penalty—scrapes the outer constitutional limit.

E. The No Surprises Act Replaces Jury Awards and Punitive Damages with a Regulatory Mechanism

Also significant is the Legislature's decision via the No Surprises Act (and Congress's similar effort at the federal level) to take the question of setting reimbursement rates for emergency medical services away from juries altogether. As of January 1, 2022, rather than allowing those disputes to proceed in a forum where claims for punitive damages or other penalties, may be

016395 016395

engineered, Assembly Bill 469 creates an expedited regulatory process: unreconciled differences proceed to binding arbitration. NRS 439B.160; NRS 439B.751(2); NRS 439.754; *see also* H.R. 133, § 103 (effective January 1, 2022).

Far from authorizing astronomical civil penalties for an insurer's alleged underpayment of a claim for emergency services, the Legislature has streamlined the resolution of rate-of-payment disputes and removed the threat of large punitive damages awards altogether. *See* NRS 439B.754. In this circumstance, the jury's award of $60 million in punitive damages is wildly incomparable to any civil penalty the Legislature did or would now authorize.

The purpose of punitive damages is to punish and deter a defendant's culpable conduct. *Bongiovi*, 122 Nev. at 580, 138 P.3d at 450. The enactment of the No Surprises Act may impact how insurers consider reimbursement rates, so the conduct at issue here—the way Defendants set their reimbursement rates—has already been addressed. Punitive damages awards are also intended to demonstrate to defendants and others that particular conduct is not acceptable and will not be tolerated. *Id.* But again, Defendants' future conduct has already been altered by the No Surprise Act. Thus, any additional deterrence is unnecessary based on the regulatory scheme set forth by the No Surprise Act. The Court should thus vacate the punitive damages award in its entirety.[8]

016396

016396

[8] As discussed *supra*, if the Court disagrees that punitive damages are entirely inappropriate, the Court should remit the award to an amount that comports with NRS 40.005 and both federal and state Due Process requirements. *See Ace Truck*, 103 Nev. at 511, 746 P.3d at 138 (remitting punitive damages award as the amount was disproportionate); *Albert H. Wohlers*, 114 Nev. at 1268, 969 P.2d at 962 (remitting award after concluding the punitives damage award was clearly disproportionate to the degree of reprehensibility); *Kellar v. Brown*, 101 Nev. 273, 274, 701 P. 2d 359, 359-60 (1985) (ordering remittitur because punitive award of more than five times the compensatory damages was disproportionate and unnecessary to deter future wrongdoing); *Mendez-Matos v. Municipality of Guaynabo*, 557 F.3d 36, 56 (1st Cir. 2009) (affirming district court's remittitur of punitive damages award because punitive damages award grossly exceeded what was necessary to punish and deter defendant's conduct).

II.

THE JUDGMENT MUST NOT BE READ TO IMPOSE PROMPT PAY ACT INTEREST ON TOP OF POST-JUDGMENT INTEREST

Once a judgment is entered, the principal amount is fixed for purposes of post-judgment interest.[9] NRS 17.130(2) does not authorize compound interest. *Torres v. Goodyear Tire & Rubber Co.*, 130 Nev. 22, 24, 317 P.3d 828, 829 (2014). Here, TeamHealth Plaintiffs' judgment includes a fixed amount of Prompt Pay Act interest. That interest, incorporated into the judgment, is fixed for purposes of calculating ordinary post-judgment interest. To allow plaintiffs to *continue* to seek Prompt Pay Act interest on top of post-judgment interest would impermissibly authorize compound interest. "As a general rule, compound interest is not favored by the law and is generally allowed *only* in the presence of a statute or an agreement between the parties allowing for compound interest." *Id.* Neither is present here. There is no statute authorizing TeamHealth Plaintiffs to recover compound interest, and Defendants have not agreed to permit TeamHealth Plaintiffs to recover compound interest. Accordingly, the Court should prohibit TeamHealth Plaintiffs from incurring any additional post-judgment interest under the Prompt Pay Act.

CONCLUSION

For the foregoing reasons, this Court should eliminate the award of punitive damages. Alternatively, it should reduce the ratio of punitive damages to be equal to the compensatory damages.

[9] Of course, if the judgment is partially satisfied, post-judgment interest runs only on the unsatisfied amount. NRS 17.130(1).

Dated this 6th day of April, 2022.

/s/ Abraham G. Smith

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
Phillip N. Smith, Jr., Esq.
Marjan Hajimirzaee, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd.
Suite 400
Las Vegas, Nevada 89118

Attorneys for Defendants

Dimitri D. Portnoi, Esq.(*Pro Hac Vice*)
Jason A. Orr, Esq. (*Pro Hac Vice)*
Adam G. Levine, Esq. *(Pro Hac Vice)*
Hannah Dunham, Esq. *(Pro Hac Vice)*
Nadia L. Farjood, Esq. (*Pro Hac Vice*)
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071

K. Lee Blalack, II, Esq.(*Pro Hac Vice)*
Jeffrey E. Gordon, Esq. *(Pro Hac Vice)*
Kevin D. Feder, Esq. *(Pro Hac Vice)*
Jason Yan, Esq. *(Pro Hac Vice)*
O'Melveny & Myers LLP
1625 Eye St. NW
Washington, DC 20006

Paul J. Wooten, Esq. *(Pro Hac Vice)*
Philip E. Legendy *(Pro Hac Vice)*
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036

016398

016398

LEWIS ROCA

016398

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April, 2022, a true and correct copy of the foregoing **"DEFENDANTS' MOTION FOR REMITTITUR AND TO ALTER OR AMEND THE JUDGMENT"** was electronically filed and 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:

Pat Lundvall, Esq.
Kristen T. Gallagher, Esq.
Amanda M. Perach, Esq.
McDonald Carano LLP
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

Judge David Wall, Special Master
Attention: Mara Satterthwaite & Michelle Samaniego
JAMS
3800 Howard Hughes Parkway
11th Floor
Las Vegas, NV 89123
msatterthwaite@jamsadr.come
msamaniego@jamsadr.com

Justin C. Fineberg
Martin B. Goldberg
Rachel H. LeBlanc
Jonathan E. Feuer
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
jfineberg@lashgoldberg.com
mgoldberg@lashgoldberg.com
rleblanc@lashgoldberg.com
jfeuer@lashgoldberg.com

Joseph Y. Ahmad (admitted *pro hac vice*)
John Zavitsanos (admitted *pro hac vice*)
Jason S. McManis (admitted *pro hac vice*)
Michael Killingsworth (admitted *pro hac vice*)
Louis Liao (admitted *pro hac vice)*
Jane L. Robinson (admitted *pro hac vice*)
P. Kevin Leyendecker (admitted *pro hac vice*)
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing,
1221 McKinney Street, Suite 2500
Houston, Texas 77010
Telephone: 713-600-4901
joeahmad@azalaw.com;jzavitsanos@azalaw.com
jmcmanis@azalaw.com;mkillingsworth@azalaw.com
lliao@azalaw.com; jrobinson@azalaw.com
kleyendecker@azalaw.com

Attorneys for Plaintiffs

/s/ Cynthia Kelley
An employee of LEWIS ROCA ROTHGERBER CHRISTIE

016399
016399

LEWIS ROCA

016399

313

Electronically Filed
4/6/2022 9:33 PM
Steven D. Grierson
CLERK OF THE COURT

RMJUD

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
Phillip N. Smith, Jr., Esq.
Nevada Bar No. 10233
psmithjr@wwhgd.com
Marjan Hajimirzaee, Esq.
Nevada Bar No. 11984
mhajimirzaee@wwhgd.com
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Daniel F. Polsenberg, Esq.
Nevada Bar No. 2376
dpolsenberg@lewisroca.com
Joel D. Henriod, Esq.
Nevada Bar No. 8492
jhenriod@lewisroca.com
Abraham G. Smith, Esq.
Nevada Bar No. 13250
asmith@lewisroca.com
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Dimitri D. Portnoi, Esq.(*Admitted Pro Hac Vice*)
dportnoi@omm.com
Jason A. Orr, Esq. (*Admitted Pro Hac Vice)*
jorr@omm.com
Adam G. Levine, Esq. *(Admitted Pro Hac Vice)*
alevine@omm.com
Hannah Dunham, Esq. *(Admitted Pro Hac Vice)*
hdunham@omm.com
Nadia L. Farjood, Esq. (*Admitted Pro Hac Vice*)
nfarjood@omm.com
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000

K. Lee Blalack, II, Esq.(*Admitted Pro Hac Vice)*
lblalack@omm.com
Jeffrey E. Gordon, Esq. *(Admitted Pro Hac Vice)*
jgordon@omm.com
Kevin D. Feder, Esq. *(Admitted Pro Hac Vice)*
kfeder@omm.com
Jason Yan, Esq. *(Admitted Pro Hac Vice)*
jyan@omm.com
O'Melveny & Myers LLP
1625 Eye St., N.W.
Washington, D.C. 20006
Telephone: (202) 383-5374

Paul J. Wooten, Esq. *(Admitted Pro Hac Vice)*
pwooten@omm.com
Philip E. Legendy *(Admitted Pro Hac Vice)*
plegendy@omm.com
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036
Telephone: (212) 728-5857

Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

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

HEARING REQUESTED

DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW

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.

016401

016401

LEWIS ROCA

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. LEGAL ARGUMENT 3

A. There Is No Evidence to Support Any of TeamHealth Plaintiffs' Claims Against SHL, HPN, or UMR 5

B. Defendants Are Entitled to Judgment as a Matter of Law on TeamHealth Plaintiffs' Cause of Action Under the Nevada Unfair Insurance Practice Act 7

1. TeamHealth Plaintiffs Lack Standing to Assert a Cause of Action Under the Unfair Claims Practices Act 7

2. Several Defendants Are Not Insurers and Cannot Be Held Liable Under the Unfair Claims Practices Act 11

3. TeamHealth Plaintiffs Have Presented No Evidence That Any Defendant's Liability Was "Reasonably Clear" Prior to Trial 13

4. TeamHealth Plaintiffs Have Presented No Evidence that Defendants Failed to Effectuate a Prompt, Equitable, and Fair Settlement 15

5. TeamHealth Plaintiffs Have Presented No Evidence That an Officer, Director, or Department Head of Defendants Knowingly Permitted the Alleged Violations 16

6. TeamHealth Plaintiffs Have Presented No Evidence of Damages from Defendants' Claims Process as Opposed to the Underlying At-Issue Claims 18

C. There Is No Evidence That Supports an Award of Punitive Damages 20

1. Punitive Damages Cannot Be Applied Against UHS or UMR Because They Are Not Insurers 22

2. Punitive Damages Cannot Be Awarded on a Cause of Action that Sounds in Contract 22

3. TeamHealth Plaintiffs Have Presented No Evidence of Oppression, Fraud, or Malice 24

a. No Evidence of Fraud 24

b. No Evidence of Oppression or Malice 25

D. Defendants Are Entitled to Judgment as a Matter of Law on TeamHealth Plaintiffs' Claim for Breach of Implied-in-Fact Contract 27

1. An Implied-in-Fact Contract Requires All Elements of Contract Formation 28

2. No Intent to Contract 29

3. No Promises Exchanged 31

4. No Meeting of the Minds on Material Terms 32

E. If the Court Disagrees that Defendants are Entitled to Judgment as a Matter of Law on TeamHealth Plaintiffs' Implied-in-Fact Contract

016402

016402

TABLE OF CONTENTS
(continued)

Page

Claims, Then TeamHealth Plaintiffs are Not Entitled to Judgment as a Matter of Law on their Unjust Enrichment Claims 34

F. Defendants Are Entitled to Judgment as a Matter of Law on TeamHealth Plaintiffs' Prompt Pay Act Claim 34

1. TeamHealth Plaintiffs Have No Private Right of Action Under the Prompt Payments Act 35

2. TeamHealth Plaintiffs Failed to Exhaust Administrative Remedies 36

G. TeamHealth Plaintiffs' Causes of Action Are Preempted by ERISA..... 37

III. CONCLUSION..... 38

016403

016403

TABLE OF AUTHORITIES

Page

CASES

Aetna Health Inc. v. Davila, 542 U.S. 200 (2004) 10

Aetna Life Ins. Co. v. Bayona, 223 F.3d 1030 (9th Cir. 2000) 38

Ainsworth v. Combined Ins. Co. of Am., 104 Nev. 587, 763 P.2d 673 (1988) 26

Albert H. Wohlers & Co. v. Bartgis, 114 Nev. 1249, 969 P.2d 949 (1998) 11, 12

Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 170 P.3d 989 (2007) 35, 36

Am. Safety Ins. Serv., Inc. v. Griggs, 959 So. 2d 322 (Fla. App. 2007) 20

Amini v. CSAA Gen. Ins. Co., No. 2:15–cv–0402–JAD–GWF, 2016 WL 6573949 (D. Nev. Nov. 4, 2016) 15

Bains LLC v. Acro Prods. Co., 405 F.3d 764 (9th Cir. 2005) 21, 26

Banks v. Sunrise Hosp., 120 Nev. 822, 102 P.3d 52 (2004) 4

Bell v. Am. Fam. Mut. Ins. Co., 127 Nev. 1118, 373 P.3d 895 (2011) 9

Bergerud v. Progressive Cas. Ins., 453 F. Supp. 2d 1241 (2006) 9

Big-D Constr. Corp. v. Take It for Granite Too, 917 F. Supp. 2d 1096 (D. Nev. 2013) 14

Blau v. Del Monte Corp., 748 F.2d 1348 (9th Cir. 1984), *abrogated on other grounds in Dytrt v. Mountain States Tel. & Tel. Co.*, 921 F.2d 7889 (9th Cir. 1990) 38

Blue Cross & Blue Shield of Ky., Inc. v. Whitaker, 687 S.W.2d 557 (Ky. Ct. App. 1985) 19

Burley v. Nat'l Union Fire Ins. Co. of Pittsburgh PA, No. 315CV00272HDMWGC, 2016 WL 4467892 (D. Nev. Aug. 22, 2016) 8

Calloway v. Reno, 116 Nev. 250, 993 P.2d 1259 (2000) 21

Cashill v. Second Jud. Dist. Ct. of State ex rel. Cty. of Washoe, 128 Nev. 887, 381 P.3d 600 (2012) 28

Certified Fire Prot. Inc. v. Precision Constr., 128 Nev. 371, 283 P.3d 250 (2012) ..... passim

City of Reno v. Bedian, 131 Nev. 1264 (Nev. App. 2015) 3

Clifford v. Geico Cas. Co., 428 F. Supp. 3d 317 (D. Nev. 2019) 13

Conner v. Decker, 941 N.W.2d 355 (Iowa Ct. App. 2019) 20

Coughlin v. Hilton Hotels Corp., 879 F. Supp. 1047 (D. Nev. 1995) 20

Crystal Bay Gen. Imp. Dist. v. Aetna Cas. & Sur. Co., 713 F. Supp. 1371 (D. Nev. 1989) 7, 8

D&D Tire v. Ouellette, 131 Nev. 462, 353 P.3d 32 (2015) 4

TABLE OF AUTHORITIES
(continued)

Page

DB Healthcare, LLC v. Blue Cross Blue Shield of Ariz., Inc., 852 F.3d 868 (9th Cir. 2017) 10

Desert Salon Servs., Inc. v. KPSS, Inc., No. 2:12–CV–1886 JCM (CWH), 2013 WL 497599 (D. Nev. Feb. 6, 2013) 22

Dewey v. Am. Stair Glide Corp., 557 S.W.2d 643 (Mo. App. 1977) 20

Edible Arrangements Int'l, Inc. v. Chinsammy, 446 F. App'x 332 (2d Cir. 2011) 20

Frank Briscoe Co. v. Clark County, 643 F. Supp. 93 (D. Nev. 1986) 22

Franklin v. Russell Rd. Food & Beverage, LLC, No. 14A709372, 2015 WL 13612028 (Nev. Dist. Ct. June 25, 2015) 22

Fremont Emergency Servs. (Mandavia), Ltd. v. UnitedHealth Grp., Inc., 446 F. Supp. 3d 700 (D. Nev. 2020) 27

Fries v. State Farm Mut. Auto. Ins. Co., No. 3:08CV00559LRH-VPC, 2010 WL 653757 (D. Nev. Feb. 22, 2010) 14

Fulbrook v. Allstate Ins. Co., Nos. 61567, 62199, 2015 WL 439598 (Nev. Jan. 30, 2015) 9, 23

Gonor v. Dale, 2015 WL 13772882 (Dist. Ct. Nev. July 16, 2015) 20

Great Am. Ins. Co. v. Gen. Builders, Inc., 113 Nev. 346, 934 P.2d 257 (1997) 23

Grisham v. Grisham, 128 Nev. 679, 289 P.3d 230 (2012) 32

Grosjean v. Imperial Palace, Inc., 125 Nev. 349, 212 P.3d 1068 (2009) 4

Guobadia v. Irowa, 103 F. Supp. 3d 325 (E.D.N.Y. 2015) 20

Hackler v. State Farm Mut. Auto. Ins. Co., 210 F. Supp. 3d 1250 (D. Nev. 2016) 16

Harter v. Gov't Emps. Ins. Co., No. 2:19-CV-1330 JCM (EJY), 2020 WL 4586982 (D. Nev. June 11, 2020) 15

Hartman v. Silver Saddle Acquisition Corp., 2013 WL 11274332 (Dist. Ct. Nev. Jan. 28, 2013) 20

Hetly v. Am. Equity Ins. Co., No. 208CV00522PMPLRL, 2008 WL 11389200 (D. Nev. Nov. 14, 2008) 10

Hicks v. Dairyland Ins. Co., No. 2:08-CV-1687-BES-PAL, 2009 WL 10693627 (D. Nev. Apr. 27, 2009) 10

Horacek v. Smith, 33 Cal. 2d 186, 199 P.2d 929 (1948) 29, 31

Hunt v. State Farm Mut. Auto. Ins. Co., 655 F. Supp. 284 (D. Nev. 1987) 8

Ins. Co. of the W. v. Gibson Tile Co., Inc., 122 Nev. 455, 134 P.3d 698 (2006) 23

TABLE OF AUTHORITIES
(continued)

Page

Joseph v. Hartford Fire Ins. Co., No. 2:12–CV–798 JCM (CWH), 2014 WL 2741063 (D. Nev. June 17, 2014) 34, 36

Kinder Morgan Energy Partners, L.P. v. Claytor, 130 Nev. 1205, *published at* Nos. 60131, 60667, 2014 WL 7187204 (Nev. Dec. 16, 2014) 26

Leasepartners Corp. v. Robert L. Brooks Tr. Dated Nov. 12, 1975, 113 Nev. 747 (1997) 34

Lubritz v. AIG Claims, Inc., No. 217CV02310APGNJK, 2018 WL 7360623 (D. Nev. Dec. 18, 2018) 14

M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd., 124 Nev. 901, 193 P.3d 536 (2008) 4

Magnum Opes Constr. v. Sanpete Steel Corp., 129 Nev. 1135 (2013) 27, 29, 31

Matarazzo v. GEICO Cas. Co., No. 219CV529JCMVCF, 2020 WL 1517556 (D. Nev. Mar. 30, 2020) 15

Matter of Est. of Kern, 107 Nev. 988, 823 P.2d 275 (1991) 32, 33

May v. Anderson, 121 Nev. 668, 119 P.3d 1254 (2005) 31, 32

Michelman v. Lincoln Nat. Life Ins. Co., 685 F.3d 887 (9th Cir. 2012) 19

Moench v. Notzon, 2008 WL 668612 (Tex. Ct. App. 2008) 20

Nev. State Educ. Ass'n v. Clark Cty. Educ. Ass'n, 482 P.3d 665 (2021) 24

Parlanti v. MGM Mirage, 2:05-CV-1259-ECR-RJJ, 2006 WL 8442532 (D. Nev. Feb. 15, 2006) 38

Patel v. Am. Nat'l Prop. & Cas. Co., 367 F. Supp. 3d 1186 (D. Nev. 2019) 13

Pioneer Chlor Alkali Co. v. Nat'l Union Fire Ins. Co., 863 F. Supp. 1237 (D. Nev. 1994) 26

Priority Healthcare Corp. v. Chaudhuri, 2008 WL 4459041 (M.D. Fla. 2008) 20

Provident Am. Ins. Co. v. Castaneda, 988 S.W.2d 189 (Tex. 1998) 19

Raider v. Archon Corp., 2015 WL 13446907 (Dist. Ct. Nev. June 19, 2015) 20

Rd. Highway Builders, LLC v. N. Nev. Rebar, Inc., 284 P.3d 377 (Nev. 2012) 22

Reno Club v. Young Inv. Co., 64 Nev. 312, 182 P.2d 1011 (1947) 31

Richey v. Axon Enters., Inc., 437 F. Supp. 3d 835 (D. Nev. 2020) 34

Safety Mut. Cas. Corp. v. Clark Cty. Nev., No. 2:10-CV-00426-PMP, 2012 WL 1432411 (D. Nev. Apr. 25, 2012) 18

Sanders v. Church Mut. Ins. Co., No. 2:12-CV-01392-LRH, 2013 WL 663022 (D. Nev. Feb. 21, 2013) 18, 19

Seagram v. David's Towing & Recovery, Inc., 62 F. Supp. 3d 467 (E.D. Va. 2014) 20

Sheeketski v. Bartoli, 86 Nev. 704, 475 P.2d 675 (1970) 3, 4

016406

016406

LEWIS ROCA

016406

TABLE OF AUTHORITIES
(continued)

Page

Smith v. Recrion Corp., 91 Nev. 666, 541 P.2d 663 (1975) 6, 28, 29, 31

Sprouse v. Wentz, 105 Nev. 597, 781 P.2d 1136 (1989) 22

State Farm Mut. Auto Ins. Co. v. Campbell, 538 U.S. 408 (2003) 21

State Univ. & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 103 P.3d 18 (2004) 4

Talbot v. Sentinel Ins. Co., No. 2:11-CV-01766-MMD, 2012 WL 3995562 (D. Nev. Sept. 10, 2012) 8

Turk v. TIG Ins. Co., 616 F. Supp. 2d 1044 (D. Nev. 2009) 14

Turnbow v. Dep't of Human Res., 109 Nev. 493, 853 P.2d 97 (1993) 20

Tweet v. Webster, 614 F. Supp. 1190 (D. Nev. 1985) 8, 13

U.S. East Telecommunications, Inc. v. U.S. West Information Sys., Inc., 1991 WL 64461 (S.D.N.Y. 1991) 20

U.S. Fidelity & Guar. Co. v. Peterson, 91 Nev. 617, 540 P.2d 1070 (1975) 19

United Fire Ins. Co. v. McClelland, 105 Nev. 504, 780 P.2d 193 (1989) 24

United First Ins. Co. v. McClelland, 105 Nev. 504, 780 P.2d 193 (1989) 9

Van Dyke v. St. Paul Fire & Marine Ins. Co., 448 N.E.2d 357 (Mass. 1983) 19

Walters v. Nev. Title Guar. Co., 81 Nev. 231, 401 P.2d 251 (1965) 20

Weast v. Travelers Cas. & Sur. Co., 7 F. Supp. 2d 1129 (D. Nev. 1998) 8

Wilson v. Bristol W. Ins. Grp., No. 209-CV-00006-KJD-GWF, 2009 WL 3105602 (D. Nev. Sept. 21, 2009) 9, 10

Youngman v. Nev. Irrigation Dist., 70 Cal. 2d 240, 74 Cal. Rptr. 398, 449 P.2d 462 (1969) 28

Yusko v. Horace Mann Servs. Corp., No. 2:11–cv–00278–RLH–GWF, 2012 WL 458471 (D. Nev. Feb. 10, 2012) 13, 16, 18

Zhang v. Barnes, 132 Nev. 1049, 382 P.3d 878 (2016) 3

STATUTES

1987 St. of Nev., Ch. 470 p. 1067 A.B. 811 ..... 7, 8

29 U.S.C. § 1102(b)(4) 38

29 U.S.C. § 1104(a)(1)(D) 38

29 U.S.C. § 1144(a) 37

NRS 233B.130 37

NRS 233B.133 37

NRS 42.002 25

NRS 42.005 ..... 22, 23, 24

016407

016407

TABLE OF AUTHORITIES
(continued)

	Page
NRS 42.005(1)	24
NRS 679A.100	11
NRS 679B.310(2)(b)	36
NRS 679B.310(4)–(5)	36
NRS 679B.370	36
NRS 686.310	16
NRS 686A.270	16
NRS 686A.310	10, 11, 23
NRS 686A.310(1)(e)	10, 13
NRS 686A.310(2)	7, 11
NRS 686A.310(e)	6
NRS 690B.012	35
NRS 690B.012(1)	35
NRS 690B.012(4)	35

OTHER AUTHORITIES

14A STEVEN PLITT ET AL., COUCH ON INSURANCE § 207:73 (3d ed. June 2021 update)	27
17A C.J.S. Contracts § 375 (1963)	31
Restatement (Second) of Torts § 908(2)	20
Restatement (Third) of Restitution and Unjust Enrichment § 49, cmt. e.	34
Richard A. Lord, Williston on Contracts § 68:1 (4th ed. 2003)	34

RULES

EDCR 2.67(b)(2)	20
NRAP 36(c)(3)	27, 29
NRCP 50(b)	3

REGULATIONS

Nev. Admin. Code 686A.625	10
Nev. Admin. Code 686A.627	11
Nev. Admin. Code 686A.650	10

016408

016408

I. INTRODUCTION

Defendants United Healthcare Insurance Company ("UHIC"), United Health Care Services Inc. ("UHS", which does business as UnitedHealthcare or "UHC" and through UHIC), UMR, Inc. ("UMR"), Sierra Health and Life Insurance Company ("SHL"), and Health Plan of Nevada, Inc. ("HPN") (collectively, "Defendants"), bring this Renewed Motion for Judgment as a Matter of Law ("Motion").

TeamHealth Plaintiffs[1] did not present any relevant evidence related to several of the Defendants, and no evidence related to key elements of nearly every cause of action in their Second Amended Complaint ("SAC"). The jury's verdict also forecloses TeamHealth Plaintiffs' unjust enrichment claims. This Court should direct a verdict on all of TeamHealth Plaintiffs' claims, which fail as a matter of law:

- TeamHealth Plaintiffs presented no evidence on the conduct of SHL, HPN, or UMR. Without such proof, all claims against these Defendants fail as a matter of law.
- All Defendants are entitled to judgment as a matter of law on TeamHealth Plaintiffs' claim under the Unfair Claims Practices Act. Because they are not insureds, TeamHealth Plaintiffs lack standing to bring this claim against Defendants. And two Defendants (UHS and UMR) are not insurers at all, so this statute does not apply to them. In addition, TeamHealth Plaintiffs failed to present evidence on key elements of this cause of action: (1) whether Defendants' liability was "reasonably clear"; (2) whether Defendants failed to effectuate a prompt, equitable, and fair settlement; (3) whether officers or directors knowingly permitted the violations; and (4) whether TeamHealth Plaintiffs were actually harmed by Defendants' claims process.

[1] The "TeamHealth Plaintiffs" collectively refers to the three Plaintiffs that initiated this action, each of which is owned by and affiliated with TeamHealth Holdings, Inc.: 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").

016409

016409

- TeamHealth Plaintiffs have not presented any evidence that could support punitive damages. The only cause of action for which TeamHealth Plaintiffs appropriately sought punitive damages is their claim under the Unfair Claims Practices Act.[2] Because only insurers can be liable under that Act, punitive damages cannot be awarded against non-insurer Defendants UHS and UMR. Punitive damages also cannot be awarded against any Defendant because TeamHealth Plaintiffs' claim under the Act sounds in contract, not tort. And even if punitive damages could be awarded on this claim, TeamHealth Plaintiffs have presented no evidence that Defendants acted with malice, fraud, or oppression.
- To the extent the Court disagrees that Defendants are entitled to judgment as a matter of law on TeamHealth Plaintiffs' cause of action for breach of implied-in-fact contract, Defendants must necessarily be entitled to judgment as a matter of law on TeamHealth Plaintiffs' unjust enrichment claims. That is, because these claims are mutually exclusive, unjust enrichment claims cannot stand when a valid contract exists.
- All Defendants are entitled to judgment as a matter of law on TeamHealth Plaintiffs' cause of action for breach of an implied-in-fact contract because TeamHealth Plaintiffs failed to present any evidence the jury could consider on basic questions of contract formation: (1) whether the parties intended to contract, (2) whether promises were exchanged, and (3) whether the terms of the contract were reasonably clear.
- All Defendants are entitled to judgment as a matter of law on TeamHealth Plaintiffs' Prompt Pay Act claim. Only insureds have standing to bring a suit under that Act, and TeamHealth Plaintiffs are not the Defendants' insureds. In addition,

[2] Even assuming that TeamHealth Plaintiffs properly asserted that they were seeking punitive damages when they raised this position for the first time halfway through trial, a position inconsistent with both the SAC and the Joint Pretrial Memorandum ("JPTO"), TeamHealth Plaintiffs are not entitled to punitive damages based on these claims because TeamHealth Plaintiffs' unjust enrichment claims fail as a matter of law.

016410

016410

TeamHealth Plaintiffs failed to exhaust available administrative remedies under the Insurance Code, rendering their claims nonjusticiable as a matter of Nevada law. Finally, the jury found that TeamHealth Plaintiffs were not entitled to their full billed charges, which necessarily means the At-Issue claims were not "fully payable" as required under the Act.

- All of TeamHealth Plaintiffs' causes of action are subject to conflict preemption under ERISA § 514, and Defendants are therefore entitled to judgment as a matter of law on every cause of action.

For the reasons discussed in this Motion, this Court should grant Defendants judgment as a matter of law.

II. LEGAL ARGUMENT

"If the court does not grant a motion for judgment as a matter of law made under Rule 50(a),[3] the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion." NRCP 50(b). "No later than 28 days after service of written notice of entry of judgment . . . the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59." *Id.* "In ruling on the renewed motion, the court may: (1) allow judgment on the verdict, if the jury returned a verdict; (2) order a new trial; or (3) direct the entry of judgment as a matter of law." *Id.* To bring a renewed motion for judgment as a matter of law under Rule 50(b), the moving party must have made a companion Rule 50(a) motion earlier in the trial. NRCP 50(b). *See, e.g.*, *Zhang v. Barnes*, 132 Nev. 1049, 382 P.3d 878 (2016); *City of Reno v. Bedian*, 131 Nev. 1264 (Nev. App. 2015). "The standards for granting a motion for judgment notwithstanding the verdict are the same as those for granting a directed verdict." *Sheeketski v. Bartoli*, 86 Nev. 704, 475 P.2d 675, 706 (1970).

---

[3] Defendants moved twice for judgment as a matter of law under Rule 50(a) during trial: in writing on November 17, 2021 after TeamHealth Plaintiffs' rested, and orally on December 6, 2021, after the jury returned its verdict on liability, but before the punitive damages phase. *See* Defs. Mot. for Judgment as a Matter of Law; 12/6/2021 Tr. 50:17-56:18.

016411

016411

This Court may enter judgment as a matter of law "when 'the evidence is so overwhelming for one party that any other verdict would be contrary to the law.'" *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 362, 212 P.3d 1068, 1077 (2009) (quoting *M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 910, 193 P.3d 536, 542 (2008)). Such a determination requires the establishment of clear, uncontradicted, self-consistent, and unimpeached evidence. *Sheeketski*, 475 P.2d at 677. In considering a motion for judgment as a matter of law, the court must view the evidence and all inferences from the evidence in a light most favorable to the party against whom the motion is directed; it must not weigh the evidence or evaluate the credibility of the witnesses. *State Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 986, 103 P.3d 8, 18 (2004); *Banks v. Sunrise Hosp.*, 120 Nev. 822, 839, 102 P.3d 52, 64 (2004); *Connell*, 97 Nev. at 438, 634 P.2d at 674. "[A] nonmoving party can defeat a motion for judgment as a matter of law if it presents sufficient evidence such that the jury could grant relief to that party." *D&D Tire v. Ouellette*, 131 Nev. 462, 466, 353 P.3d 32, 35 (2015).

Defendants are entitled to judgment as a matter of law on all of TeamHealth Plaintiffs' remaining claims.[4] Judgment should be entered in favor of SHL, HPN, and UMR for all claims, for the simple reason that TeamHealth Plaintiffs failed to present any evidence related to these Defendants on key elements of their causes of action. All Defendants are entitled to judgment as a matter of law on TeamHealth Plaintiffs' claim under the Unfair Claims Practices Act; not only because TeamHealth Plaintiffs lack standing under that Act, but also because they have presented no evidence on key elements of that claim. Because TeamHealth Plaintiffs properly sought punitive damages only under that cause of action, their claim for punitive damages must also fail. Every Defendant is entitled to judgment as a matter of law on TeamHealth Plaintiffs' claim for breach of implied-in-fact contract because TeamHealth Plaintiffs presented no evidence showing the basic elements of contract formation. To the extent the Court disagrees that Defendants are entitled to judgment as a matter of law on TeamHealth Plaintiffs' implied-in-fact contract claims,

[4] In fact, because all of TeamHealth Plaintiffs' causes of action are preempted by ERISA, *see infra* Section F, Defendants are entitled to judgment as a matter of law on all claims.

016412

016412

all Defendants are entitled to judgment as a matter of law on TeamHealth Plaintiffs' unjust enrichment claims because the jury found that there was an implied-in-fact contract between TeamHealth Plaintiffs and Defendants. And even if TeamHealth Plaintiffs properly sought punitive damages under their unjust enrichment claims (they did not), because those claims must be dismissed as a matter of law, TeamHealth Plaintiffs' punitive damages claims fail under this theory, as well. Every Defendant is also entitled to judgment on TeamHealth Plaintiffs' claim under the Prompt Pay Act, because TeamHealth Plaintiffs do not have a private right of action under that Act, because they failed to exhaust available administrative remedies, and because the jury found that TeamHealth Plaintiffs were entitled to only a portion of their full billed charges.

A. There Is No Evidence to Support Any of TeamHealth Plaintiffs' Claims Against SHL, HPN, or UMR

At the heart of TeamHealth Plaintiffs' case is their contentions regarding certain of UnitedHealthcare's (e.g., Defendants UHS and UHIC's) out-of-network programs—particularly, the development and implementation of the outlier cost management program. And yet, TeamHealth Plaintiffs introduced ***no evidence*** to establish any claim against SHL, HPN, or UMR, all of whom reimburse ***independently*** of the UnitedHealthcare out-of-network programs at issue in this case. No testimony came in regarding the history of any relationship or amount of pre-disputed claim reimbursements between SHL, HPN, or UMR on the one hand, and any of the TeamHealth Plaintiffs on the other. There is no evidence about any interactions or course of dealing between TeamHealth Plaintiffs and SHL, HPN, or UMR. While TeamHealth Plaintiffs did present some evidence concerning SHL, HPN, and UMR's different out-of-network reimbursement methodologies or programs, that evidence did not support their "one size fits all" approach to trying this case against different defendants with different reimbursement methodologies. As an initial matter, SHL and HPN's claims director actually testified that these two Nevada entities ***do not*** use "cost reduction or savings programs" and ***do not*** use MultiPlan – the thirty-party vendor featured prominently in TeamHealth Plaintiffs' case against UHS and UHIC. 11/16/2021 Tr. 158:14-18 (Ms. Hare testified that SHL and HPN do not use "cost reduction or savings programs"); *id.* 177:13-16 (same). And while TeamHealth Plaintiffs did establish that

016413

UMR earns a fee for certain out-of-network programs that do not pay claims at billed charges (*see, e.g.*, 11/15/2021 Tr. 188:22–189:7 (testifying that UMR has "programs that a client can elect to offer, and one of the ways that we charge for those programs is a percentage of savings")) and that UMR uses third-party vendors including (but not limited to) MultiPlan (*see id.* 211:8–11), the testimony clearly establishes that UMR developed these programs independently of UnitedHealthcare and in fact implemented programs using Data iSight ***independent of and before*** UnitedHealthcare. *See* 11/10/2021 Tr. 142:25-143:12; DX4569. Thus, the evidence regarding UMR merely establishes that UMR had "similar" programs with similar fee structures. *Id*. 194:20–205:2 (eliciting testimony from Mr. Ziemer about claims being paid based on UMR's out-of-network programs and UMR's fees); *id*. 221:10–224:16 (questioning based on how summary plan documents administered by UMR determine At-Issue Claim reimbursement). This is plainly insufficient. Nor have TeamHealth Plaintiffs introduced a single document that evidences a contract manifested by conduct. *See, e.g.*, P159 (UMR's administrative services agreement with a client); 11/15/2021 Tr. 197:21–203:23 (questioning related to P159 and how it relates to claims reimbursement). Without specific evidence apart from the list of claims itself (which purports to show the amounts billed and amounts allowed, and little else, *see* P473), TeamHealth Plaintiffs have not proved their causes of action against these Defendants—mostly glaringly as to SHL and HPN. This complete failure of proof makes any verdict against these Defendants contrary to law.

TeamHealth Plaintiffs' causes of action require proof of something more than a disparity between their billed charges and the amounts they received in reimbursement. Without evidence of a course of dealing between TeamHealth Plaintiffs, on the one hand, and SHL, HPN, and UMR on the other, there are no facts from which jurors could infer an implied-in-fact contract. *Smith v. Recrion Corp.*, 91 Nev. 666, 668, 541 P.2d 663, 664 (1975) (terms of an implied-in-fact contract are "manifested by conduct"). Without specific evidence about the individual claims submitted to these Defendants, their liability could not be "reasonably clear" for the purposes of TeamHealth Plaintiffs' Unfair Claims Practices Act claim. NRS 686A.310(e) (unlawful for insurer to "fail[] to effectuate prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear"). And without evidence about these Defendants' conduct in retaining a

016414

016414

benefit, there cannot be sufficient proof that they were unjustly enriched by paying TeamHealth Plaintiffs what they did on the claims that were submitted to them. Judgment should be entered in favor of UMR, SHL, and HPN on all causes of action.

B. Defendants Are Entitled to Judgment as a Matter of Law on TeamHealth Plaintiffs' Cause of Action Under the Nevada Unfair Insurance Practice Act

TeamHealth Plaintiffs bring a cause of action against all Defendants under the Unfair Claims Practices Act. That Act confers standing only on an ***insured*** as against its ***insurer***. TeamHealth Plaintiffs are not insureds, and several of the Defendants are not insurers. Even if they were, TeamHealth Plaintiffs have failed to offer evidence on several of the elements of this cause of action. Defendants are entitled to judgment as a matter of law.

1. TeamHealth Plaintiffs Lack Standing to Assert a Cause of Action Under the Unfair Claims Practices Act

Under the text of the Unfair Claims Practices Act, under the many decisions of the Nevada Supreme Court and other cases, and under the guidance of the Nevada Insurance Commissioner, no private right of action exists in favor of TeamHealth Plaintiffs against any Defendant.

The text of the Unfair Claims Practices Act is conclusive on this subject. The private right of action, added by the Nevada Legislature in 1987, is created by the following language:

> In addition to any rights or remedies available to the Commissioner, ***an insurer is liable to its insured*** for any damages sustained by the insured as a result of the commission of any act set forth in subsection 1 as an unfair practice.

NRS 686A.310(2) (emphasis added); *see also* 1987 St. of Nev., Ch. 470 p. 1067 A.B. 811. The Nevada Legislature in 1989 considered language to "expressly provide for action by a third party claimant for violation of the unfair claims settlement practices act by insurance companies," but no such enactment has ever been added. *Crystal Bay Gen. Imp. Dist. v. Aetna Cas. & Sur. Co.*, 713 F. Supp. 1371, 1377 (D. Nev. 1989). There is, therefore, no text supporting a cause of action in favor of a third-party claimant against any defendant.

TeamHealth Plaintiffs, as service providers, are mere third party beneficiaries to an insurance contract, and have no right to file claims for breach under the Unfair Claims Practices

Act. The seminal case on this subject, *Tweet v. Webster*, 614 F. Supp. 1190 (D. Nev. 1985), held that the Act did not create a private cause of action. In that case, Chief Judge Reed extensively canvassed the text and history of the Act, similar enactments in California and elsewhere, the model code upon which these acts are based, and legislative history, and concluded that no private right of action existed under the Act. "Where Nevada's insurance code has *no* language relating to other liability of insurers," other than those expressly provided, "none can be read in." *Id.* at 1194. "[W]here a legislature writes an insurance code with specific penalties and remedies for violation thereof, the code is as the legislature intended." *Id.*[5]

Case after case since *Tweet* and since the 1987 enactment of a private right of action has consistently refused to find an extra-textual right of action in favor of third-party claimants or medical providers. *See, e.g.*, *Crystal Bay*, 713 F.Supp. at 1376 (while right of action for insured, there was "no reason to disagree with [the court's] conclusion that the Act created no private right of action in favor of third party claimants against the insurer."); *Burley v. Nat'l Union Fire Ins. Co. of Pittsburgh PA*, No. 315CV00272HDMWGC, 2016 WL 4467892, at *2 (D. Nev. Aug. 22, 2016) ("It is well established that third party claimants have no private cause of action under NRS 686A.310."); *Talbot v. Sentinel Ins. Co*., No. 2:11-CV-01766-MMD, 2012 WL 3995562, at *4 (D. Nev. Sept. 10, 2012) ("The law in Nevada is clear: third-party claimants may not bring claims against insurers or their insured under NRS § 686A.310."); *Weast v. Travelers Cas. & Sur. Co*., 7 F. Supp. 2d 1129, 1132 (D. Nev. 1998) ("[T]he [Nevada Unfair Practices] Act created no private right of action in favor of third party claimants against the insurer."); *Hunt v. State Farm Mut. Auto. Ins. Co*., 655 F. Supp. 284, 287 (D. Nev. 1987) ("Nevada does not recognize a right of action on the part of a third-party claimant against an insurance company for bad-faith refusal to settle.").

---

[5] As noted above, the Nevada Legislature enacted a new provision of the Unfair Claims Practices Act two years after *Tweet*, that provided for a private right of action where "an insurer is liable to its insured." 1987 St. of Nev., Ch. 470 p. 1067 A.B. 811. As also noted, the Nevada Legislature considered and rejected a private right of action in favor of third-party claimants like TeamHealth Plaintiffs. *Crystal Bay*, 713 F. Supp. at 1377.

016416

016416

The Nevada Supreme Court has also held that that individuals in far closer privity than TeamHealth Plaintiffs to the underlying insurance contract lacked standing to sue. *See United First Ins. Co. v. McClelland*, 105 Nev. 504, 780 P.2d 193 (1989) (where dependent of person whose benefits were denied sued, dependent not considered insured under policy for purposes of standing); *Gunny v. Allstate Insurance Co.*, 108 Nev. 344, 346, 830 P.2d 1335, 1336 (1992) (where son injured in boat operated by father, son did not have standing to sue under NRS 686A.310 for claim under father's insurance policy).

Cases since *Gunny* have consistently applied its holding to permit only an insured with an insurance contract with the insurer to pursue claims under the Act. *See, e.g.*, *Fulbrook v. Allstate Ins. Co.*, Nos. 61567, 62199, 2015 WL 439598, at *4 (Nev. Jan. 30, 2015) ("This statute, however, does not provide a private right of action to third-party claimants."); *Wilson v. Bristol W. Ins. Grp.*, No. 209-CV-00006-KJD-GWF, 2009 WL 3105602, at *2 (D. Nev. Sept. 21, 2009) ("No private right of action as a third-party claimant is created under NRS 686A.310."). [6]

016417

It may be, as some federal district courts have suggested, that where the insured assigns its benefits to a third-party claimant such as a medical provider, that third-party claimant may step into the shoes of insured. But that is irrelevant to this case. "Without an assignment, voluntary or forced," TeamHealth Plaintiffs "still lacked standing to proceed directly against" Defendants for liability under the Act.[7] *Bell v. Am. Fam. Mut. Ins. Co.*, 127 Nev. 1118, 373 P.3d 895 (2011); *see*

016417

---

[6] In *Bergerud v. Progressive Casualty Insurance*, 453 F. Supp. 2d 1241 (2006), the court permitted a claim under the Act to survive a motion to dismiss where the plaintiff "is an insured, had a contractual relationship with [the insurer-defendant], and is a first-party claimant." *Id.* at 1250. The court also noted in *dicta* that "Nevada does not exclude non-contracting parties from asserting a private right of action for violation of the … Act. Instead, only third-party claimants and parties without a contractual relationship with an insurer cannot assert a claim under the … Act." *Id.* This *dicta*, however, was unrelated to the case and inconsistent with *Gunny*, insofar as it confuses *Gunny*'s holding on the common-law bad faith claim with the holding on the Unfair Claims Practices Act claim.

[7] Defendants have always contended—and continue to contend—that the Plaintiffs in fact received assignments of benefits from all of Defendants' plan members and by virtue of those assignments, stand in the shoes of Defendants' plan members which must result in all of Plaintiffs' claims being subject to preemption under ERISA. However, Plaintiffs have disclaimed any reliance on these assignments and the Court has repeatedly rejected Defendants' argument. Therefore, Plaintiffs are estopped from now changing course and accepting the benefit of receiving an assignment

also Hetly v. Am. Equity Ins. Co., No. 208CV00522PMPLRL, 2008 WL 11389200, at *3 (D. Nev. Nov. 14, 2008) ("However, generally, a valid assignment confers a right of standing upon the assignee to sue in place of the assignor."); *cf. Wilson*, 2009 WL 3105602, at *2 (finding no assignment of benefits to support common-law bad faith claim). For instance, in *Hicks v. Dairyland Insurance Co.*, No. 2:08-CV-1687-BES-PAL, 2009 WL 10693627 (D. Nev. Apr. 27, 2009), the Court held that a third-party claimant lacked standing under the Act where he was not an insured and lacked an assignment of benefits from the insured. *Id.* at *3. TeamHealth Plaintiffs have not only not proven such an assignment, they have disclaimed reliance on such an assignment. SAC at 2 n.5.[8]

Although TeamHealth Plaintiffs seek relief only under 686A.310(1)(e), *see* SAC ¶ 92–93; JPTO at 5 (citing SAC ¶¶ 90–97), other prongs under the heading of NRS 686A.310 refer to practices directed generally at "claimants." But TeamHealth Plaintiffs are not "claimants." The implementing regulations for the Unfair Claims Practices Act contemplate only two valid categories of claimants. A first-party claimant is defined as one "asserting a right to payment under an insurance contract or policy arising out of the occurrence of the contingency or loss covered by the contract or policy." Nev. Admin. Code 686A.625. A first-party claimant "does not include a person who provides service to an injured party." *Id.* A third-party claimant is "one asserting a claim against any person, corporation, association, partnership or other legal entity insured under an insurance contract or policy." *Id.* 686A.650. Likewise, a third-party claimant "does not include a person who provides service to an injured party." *Id.*[9] TeamHealth Plaintiffs

016418

016418

(potential standing as a third party claimant) while avoiding the consequences of such an assignment (ERISA preemption).

[8] If Plaintiffs chose to rely on assignments to manufacture standing for their Unfair Insurance Practice Act claim, then the claim would be preempted by ERISA. *See DB Healthcare, LLC v. Blue Cross Blue Shield of Ariz., Inc*., 852 F.3d 868, 873 (9th Cir. 2017) (valid assignment of benefits confers standing to bring claim under ERISA); *Aetna Health Inc. v. Davila*, 542 U.S. 200, 210 (2004) ("[I]f an individual, at some point in time, could have brought his claim under ERISA § 502(a)(1)(B), and where there is no other independent legal duty that is implicated by a defendant's actions, then the individual's cause of action is completely pre-empted by ERISA § 502(a)(1)(B).").

[9] The only contract contemplated by these definitions would be the "insurance policy or contract" which is defined as an "insurance policy, plan or written agreement for or affecting insurance by

do not qualify as first-party or third-party claimants under the Act. Indeed, TeamHealth Plaintiffs are categorically and specifically excepted from the definition of claimant.

In short, the consistent law, as developed by the Nevada Legislature, the Nevada Supreme Court, the Nevada federal district courts, and the Nevada Commission of Insurance excludes service providers such as TeamHealth Plaintiffs from having a private right of action under the Act. This Court should follow the copious and undisputed authority- and grant Defendants judgment as a matter of law.

2. Several Defendants Are Not Insurers and Cannot Be Held Liable Under the Unfair Claims Practices Act

Notwithstanding TeamHealth Plaintiffs' unequivocal lack of standing to pursue a claim under the Unfair Claims Practice Act, the plain text of the Unfair Claims Practices Act, the consistent and unanimous case law, and the implementing regulations apply the Act to insurers only. The text provides only that "an insurer is liable to its insured." NRS 686A.310(2). The title of NRS 686A.310 makes clear that it provides for the ***liability of [an] insurer*** for damages" (emphasis added). Nevada law defines an "insurer" as "every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance." NRS 679A.100. The Nevada Supreme Court in *Albert H. Wohlers & Co. v. Bartgis* held that a plan administrator is ***not*** an insurer for the purposes of NRS 686A.310 because they are not in the business of entering into insurance contracts. 114 Nev. 1249, 1264, 969 P.2d 949, 960 (1998).

Claims under the Unfair Claims Practices Act against UHS and UMR fail because those two Defendants are not insurers as to all claims, and UHIC is not an insurer with respect to some claims. 11/2/2021 Tr. 164:21–25 (Mr. Haben testified that some Defendants perform third party administrator services for ASO clients); 11/3/2021 Tr. 86:19–87:2 (Mr. Haben testified that defendants performing third-party administrator services pay claims based on the directives of the

---

whatever name called and includes all clauses, riders or endorsements offered by any person or entity engaged in the business of insurance in this State." Nev. Admin. Code 686A.627. This definition cannot encompass the unwritten implied-in-fact contract the jury found existed in this case.

self-insured client because defendants only "administer the funds"); 11/8/2021 Tr. 152:23–153:1 (Mr. Haben testified that UMR is a third-party administrator); 11/9/2021 Tr. 130:19–131:10 (Mr. Haben testified that "UMR is the third-party administrator" and "UnitedHealthcare itself is a third-party administrator . . . [f]or self-employed groups"); 11/10/2021 Tr. 21:11–22 (Mr. Haben testified that third-party administrators "do[] not incur the medical cost risk"); *id.* 24:10–17 (Mr. Haben testified that UHIC is a third-party administrator and an insurer); *id*. 29:16–19 (Mr. Haben testified that an administrative services agreement is between "the employer group, with the third-party administrator to perform services on their behalf"); *id*. 29:20–30:10 (Mr. Haben testified that certificates of coverage are only associated with fully insured plans and summary plan documents and administrative services agreements are associated with a self-insured plan); 11/15/2021 Tr. 183:19-23 (Mr. Ziemer testified that UMR "is a third-party administrator, so what that means is that our clients are employer groups, and they wish to self-fund their benefit plan."); *id.* 184:21-185:4 (Mr. Ziemer testified that UMR is a third-party administrator and that "the employer is actually the one that pays the claims. . . . So what UMR does is we administer the benefits [] that that employer group provides to us."). These Defendants act as plan administrators for employer self-funded plans. As an administrator of an employer self-funded plans, UHS and UMR are not insurers. The employers are insurers and UHS, UMR, and UHIC provide administration services. In *Albert H. Wohlers*, an insured argued that the plan administrator was liable because an administrator fits within the statutory definition of a "person," but the Nevada Supreme Court held that "when considering unfair claims practices" the Act "proscribes unfair practices in settling claims by an insurer, which [a plan administrator] is not." 114 Nev. at 1265.

Because UHS and UMR are plan administrators and not insurers with respect to all the At-Issue Claims, the Court should direct a verdict in favor of UHS and UMR with respect to all claims under the Unfair Claims Practices Act. Because UHIC is a plan administrator with respect to 119 At-Issue Claims, the Court should direct a verdict in favor of UHIC with respect to those claims. In total, Defendants are entitled to a judgment as a matter of law on TeamHealth Plaintiffs' cause of action under the Unfair Claims Practices Act with respect to 4,636 of the At-Issue Claims because they were submitted to self-funded plans.

016420

016420

3. TeamHealth Plaintiffs Have Presented No Evidence That Any Defendant's Liability Was "Reasonably Clear" Prior to Trial

The Unfair Claims Practices Act delineates and proscribes many unfair practices, but TeamHealth Plaintiffs' complaint and Joint Pretrial Memorandum restrict their claim to the practice described in NRS 686A.310(1)(e): "Failing to effectuate prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear." *See* SAC ¶ 92; JPTO at 5 (citing SAC ¶¶ 90–97). "This statute concerns the manner in which an insurer handles an ***insured's*** claim." *Patel v. Am. Nat'l Prop. & Cas. Co.*, 367 F. Supp. 3d 1186, 1193 (D. Nev. 2019) (emphasis added).

To prevail on this claim, TeamHealth Plaintiffs must prove that Defendants failed to fairly settle payment of an insurance claim after the Defendants' liability was reasonably clear. *Yusko v. Horace Mann Servs. Corp.*, No. 2:11–cv–00278–RLH–GWF, 2012 WL 458471, at *4 (D. Nev. Feb. 10, 2012) (granting summary judgment where plaintiff had not presented any evidence that an officer, director, or department head was aware of the conduct in question); *Tweet*, 614 F. Supp. at 1194 ("Furthermore, in the present case, plaintiffs do not present probative evidence supporting their allegation that their claim against CSAA had become 'reasonably clear.'").

Here, there is no probative evidence that Defendants' liability for the At-Issue Claims had become "reasonably clear" prior to trial. In most cases, the "reasonably clear" requirement is established by the fact the insurer had concluded internally that a particular claim should be paid but did not pay the claim. But the evidence at trial ***confirmed*** that Defendants in fact paid each of the At-Issue Claims. *See* 11/16/2021 Tr. 226:23-227:10 (Mr. Leathers testified that Defendants' data for the At-Issue Claims includes reimbursement amounts); *id.* 233:12-22 (Mr. Leathers testified that he analyzed claims that were allegedly underpaid as opposed to not paid). Defendants paid those claims based on methodologies designed to arrive at a reasonable reimbursement amount. And while the record is clear that Plaintiffs would like to have received a higher reimbursement, where the specific amount owed in dispute as to any one claim is not reasonably clear to the insurer, that is sufficient to defeat this claim. *See, e.g.*, *Clifford v. Geico Cas. Co.*, 428 F. Supp. 3d 317, 325 (D. Nev. 2019). In general, this claim is satisfied where the insurer waited

016421
016421

an "inordinate amount of time" to provide information about a particular claim. *See, e.g.*, *Fries v. State Farm Mut. Auto. Ins. Co.*, No. 3:08CV00559LRH-VPC, 2010 WL 653757, at *4 (D. Nev. Feb. 22, 2010); *Turk v. TIG Ins. Co.*, 616 F. Supp. 2d 1044, 1052 (D. Nev. 2009). But there is no evidence that any Defendant waited an inordinate amount of time before communicating about a claim. In fact, there is no evidence in the record about *any* Defendant's handling of *any* particular one of the At-Issue Claims.

Liability never became reasonably clear until the jury returned its verdict, which assessed liability for an amount *neither* party presented as the reasonable value of the charges. Disagreement between experts on the amounts of damages alone is enough to grant judgment to defendants because "liability has not become reasonably clear." *Lubritz v. AIG Claims, Inc.*, No. 217CV02310APGNJK, 2018 WL 7360623, at *7 (D. Nev. Dec. 18, 2018). Courts regularly hold that where there are genuine issues of material fact regarding the existence or scope of liability of an insurer, liability has perforce not become reasonably clear. *Big-D Constr. Corp. v. Take It for Granite Too*, 917 F. Supp. 2d 1096, 1118 (D. Nev. 2013).

Here, TeamHealth Plaintiffs' own expert Mr. Leathers offered two alternative theories of the amount of damages TeamHealth Plaintiffs suffered. *Compare* 11/17/2021 Tr. 16:15-16:24 (measuring damages based on full billed charges) *with id.* 286:25-287:8 (measuring damages based on average amount Defendants paid other out-of-network providers). And Defendants expert Mr. Deal offered yet another calculation. 11/18/21 Tr. 206:24-209:20 (measuring damages by comparing to out-of-network providers in same geographic region as each TeamHealth Plaintiff). And the jury's verdict further demonstrates that *no* Defendant's liability was reasonably clear because the jury *rejected* the amount TeamHealth Plaintiffs billed for each of the At-Issue claims, instead determining that a reasonable value was far less than what TeamHealth Plaintiffs requested. 11/29/21 Special Verdict Form. *See* 12/6/2022 Tr. 51:10-13. And the jury clearly disagreed with both experts, instead awarding $2.65 million in liability—an amount neither party offered as a proposed amount of damages. *Id*.

The Unfair Claims Practices Act does not prohibit good faith disagreements over the valuation of claims in the course of settling those claims. The Act targets delays in settlement

016422

016422

where liability, not coverage, has become reasonably clear. Because the parties' experts disagreed about the amount damages TeamHealth Plaintiffs suffered, liability never became reasonably clear until the jury rendered its verdict. And the jury's award of an amount significantly lower than TeamHealth Plaintiffs' billed charges necessarily means that there was no sum certain that was reasonably clear before trial. Based on the statutory text and the case law, liability for these At-Issue Claims is by definition not reasonably clear.

4. TeamHealth Plaintiffs Have Presented No Evidence that Defendants Failed to Effectuate a Prompt, Equitable, and Fair Settlement

TeamHealth Plaintiffs contend that Defendants failed to "effectuate a prompt, equitable, and fair settlement" because they did not negotiate with TeamHealth Plaintiffs on each of the At-Issue Claims. That is not what the Act requires. TeamHealth Plaintiffs presented no evidence that, ***where an individual claim was appealed and negotiated***, Defendants were unreasonable in negotiating a fair settlement. Indeed, they presented no evidence at trial that the parties negotiated reimbursement rates ***at all***. TeamHealth Plaintiffs offered no evidence that they communicated with Defendants and sought to negotiate a higher reimbursement on the disputed claims, and that Defendants rejected their reasonable demands for additional payment.

Without such evidence, TeamHealth Plaintiffs failed to prove that Defendants violated the Unfair Claims Practices Act as a matter of law. *See, e.g.*, *Harter v. Gov't Emps. Ins. Co.*, No. 2:19-CV-1330 JCM (EJY), 2020 WL 4586982, at *4 (D. Nev. June 11, 2020) (granting summary judgment where evidence showed defendant "negotiated in good faith"); *Matarazzo v. GEICO Cas. Co.*, No. 219CV529JCMVCF, 2020 WL 1517556, at *4 (D. Nev. Mar. 30, 2020) (granting summary judgment where insurer "promptly responded to plaintiff's requests and communications" and "had a basis for disputing plaintiff's demands for the full policy limit"); *Amini v. CSAA Gen. Ins. Co.*, No. 2:15–cv–0402–JAD–GWF, 2016 WL 6573949, at *6 (D. Nev. Nov. 4, 2016) (granting summary judgment where insurer "reasonably and promptly responded to claim communications and engaged in settlement negotiations").

016423
016423

5. TeamHealth Plaintiffs Have Presented No Evidence That an Officer, Director, or Department Head of Defendants Knowingly Permitted the Alleged Violations

For there to be liability under NRS 686.310, TeamHealth Plaintiffs must prove that an "officer, director, or department head of the insurer has knowingly permitted such an act or has had prior knowledge thereof." NRS 686A.270. Without evidence that an officer, director, or department head permitted the unfair insurance practices, TeamHealth Plaintiffs' claim fails as a matter of law. *Hackler v. State Farm Mut. Auto. Ins. Co.*, 210 F. Supp. 3d 1250, 1255 (D. Nev. 2016) (finding "Claims Teams Managers" did not qualify under the statutory requirements of NRS § 686A.270); *see also Yusko*, 2012 WL 458471, at *4 (granting summary judgment where plaintiff had not presented any evidence that an officer, director, or department head was aware of the conduct in question).

To be sure, TeamHealth Plaintiffs have presented testimony from officers of some of the Defendants. TeamHealth Plaintiffs questioned John Haben on the stand on five separate court days. 11/10/2021 Tr. 13:5-7 (Mr. Haben was the "Vice President of the out of network programs"). At no time did TeamHealth Plaintiffs ask Mr. Haben about his *prior* knowledge of any one of the At-Issue Claims. 11/2/2021 Tr. 123:13–128:22 (questioning based on *hypothetical* payment of $254 for treatment of a gun-shot victim); 11/9/2021 Tr. 27:18–40:12 (questioning of Mr. Haben related to one At-Issue Claim based on purported plan documents P444 (EOB), P120 (SPD), P290 (COC) elicited testimony based on documents, not prior knowledge); *id.* 40:15–45:10 (questioning related to Ruby Crest's purported appeal of the At-Issue Claim depicted in P444 (related testimony at 11/9/2021 Tr. 27:18–40:12) made clear that Mr. Haben had no knowledge of the claim appeal exhibit, P470, including Plaintiffs' counsel's assertion that Defendants would not engage with them during the appeal); *id.* 101:11–107:16 (questioning based on a MultiPlan document, P413, related to how Data iSight works made clear that Mr. Haben lacks knowledge of whether every At-Issue Claim priced by Data iSight amounted to 250–350% of Medicare); *id.* 126:16–129:20 (questioning related to the P444 At-Issue Claim and why the Data iSight pricing came out to 250% of Medicare but refusing to elicit Mr. Haben's understanding of that claim); 11/10/2021 Tr. 175:6–176:6 (questioning Mr. Haben based on *hypothetical*, but not At-Issue, claim); *id.* 176:7–181:12

016424

016424

(Mr. Haben read the billed charge and allowed amount from document regarding one At-Issue Claim but providing no testimony about his prior knowledge of the claim); *id.* 208:17–214:13 (Mr. Haben testified that P290 and P470 may not relate to the At-Issue Claim contained in P444). TeamHealth Plaintiffs did not elicit any testimony from Daniel Rosenthal regarding any particular At-Issue Claim. Joint Submission of Dep. Clips for Trial Record as Played on Nov. 12, 2021 10:05-06, 21:11-15 (Mr. Rosenthal testified that he was the former President of UnitedHealth Networks and the current CEO of Commercial Business for UnitedHealth Group's West Region). Rebecca Paradise, Vice President of Out-of-Network Payment Strategy, was questioned on a small number of At-Issue Claims, but she did not have prior knowledge of any of them. *See* 11/15/2021 Tr. 51:10-12; *id.* 7:22–8:4 (Ms. Paradise testified that claims in general may be paid at a higher amount than what would be remitted by MultiPlan based on direction of client); *id.* 10:4–12:12 (Ms. Paradise testified about an email regarding the experience of a United employee regarding an unknown claim priced by MultiPlan); *id.* 17:7–19:8 (questioning related to P444 that did not elicit Ms. Paradise's prior knowledge of the claim); *id.* 20:2–9 (Ms. Paradise testified that it would "untenable" for her to determine whether every claim using Data iSight was priced at 250% of Medicare); *id.* 117:5–15 (Ms. Paradise testified that she is "unaware of a specific situation" in which Defendants paid "ER claims at usual and customary"); *id.* 123:21–124:3 (Ms. Paradise testified that she does "not review[] any claim. I didn't review any of the thousands of claims that are at—at issue in this case."). Similarly, Scott Ziemer, UMR's Vice President of Customer Solutions, was questioned on a small number of claims, but he did not have any prior knowledge of them. 11/15/2021 Tr. 244:8-11; *id.* 194:20–205:2 (failing to elicit testimony from Mr. Ziemer about his prior knowledge of the specific At-Issue Claims despite showing him a demonstrative based on P473 because Plaintiffs focused on Defendants' fees); *id.* 211:8–11 (Mr. Ziemer testified that "to [his] knowledge we have not told MultiPlan or Data iSight" how to reimburse claims because "[w]e rely on their tool. They use publicly available information. They have their own algorithm to determine their reasonable amount."); *id.* 221:10–224:16 (questioning Mr. Ziemer on how a summary plan document relates to At-Issue Claims, but failing to elicit any testimony

016425

016425

regarding his prior knowledge of those claims); *id.* 236:11–12 ("I am not a plan document person.").

Not a single officer, director, or department head has been presented for SHL or HPN. Leslie Hare, the sole SHL and HPN witness, testified explicitly that she is not a department head. 11/16/2021 Tr. 199:11-15 (testifying that she reports to another person and does not consider herself a department head). Ms. Hare also testified that she did not have any prior knowledge regarding the At-Issue Claims. 11/16/2021 Tr. 135:6-18 (testifying that she is generally aware that the At-Issue Claims were submitted by TeamHealth Plaintiffs, but nothing else); *id.* 142:24-143:6 (failing to elicit testimony regarding the specific At-Issue Claims, but instead eliciting testimony that out-of-network claims in general get reimbursed pursuant to plan documents).

In sum, TeamHealth Plaintiffs presented no evidence that demonstrates that any officer, director, or department head permitted the unfair insurance practices that TeamHealth Plaintiffs allege.

016426

6. TeamHealth Plaintiffs Have Presented No Evidence of Damages from Defendants' Claims Process as Opposed to the Underlying At-Issue Claims

016426

TeamHealth Plaintiffs have no claim under the Unfair Claims Practices Act unless they prove they suffered a harm that is distinct from the underlying At-Issue Claims. *See Safety Mut. Cas. Corp. v. Clark Cty. Nev.*, No. 2:10-CV-00426-PMP, 2012 WL 1432411, at *2 (D. Nev. Apr. 25, 2012) ("Clark County does not identify any evidence raising a genuine issue of material fact that it suffered any damages from these two alleged claims handling failures apart from the denial of coverage itself."); *Sanders v. Church Mut. Ins. Co.*, No. 2:12-CV-01392-LRH, 2013 WL 663022, at *3 (D. Nev. Feb. 21, 2013) (damages under Unfair Claims Practices Act must be "costs which are separate and apart from damage caused by the underlying accident"); *Yusko*, 2012 WL 458471, at *4 ("Here, Yusko has not presented evidence of any damages resulting from Horace Mann's conduct. The only damages for which the Court has evidence are a result of the underlying accident, not the claims process or any conduct by Horace Mann."). That is, to have a valid claim under the Unfair Insurance Practice Act, TeamHealth Plaintiffs must have been separately harmed

by the ***claims process itself***, and not just through the performance of emergency medicine services that went uncompensated or undercompensated.

To the extent TeamHealth Plaintiffs presented any evidence at all that they were harmed by Defendants' conduct, that harm is limited to the plain fact that they received less than their full billed charges in Defendants' adjudication of the At-Issue Claims. They do not allege, and they have not proved, a harm that is distinct from the underpayments themselves. 11/16/2021 Tr. 65:7-10 (Leif Murphy, TeamHealth's CEO, testified that billed charges should be awarded because "[w]e perform the service"); *id.* 86:20-23 (TeamHealth "entitled to billed charge"); 11/22/2021 Tr. 75:21-76:2 (Mr. Bristow, TeamHealth Plaintiffs' corporate representative, testified that Defendants required to pay full billed charges even though they increased year over year); *id.* 85:19-22 (testimony from Mr. Bristow that "Plaintiffs' theory that they were entitled to full billed charges for the services that they billed for United members on an out-of-network basis was limited by a determination of whether those charges were or were not reasonable."). There is no evidence that TeamHealth Plaintiffs suffered "costs which are separate and apart from damage caused by the underlying accident." *Sanders*, 2013 WL 663022, at *3. For that reason, Defendants are entitled to judgment as a matter of law on TeamHealth Plaintiffs' claims under the Unfair Claims Practices Act.[10]

016427

016427

---

[10] Consequential damages are not permitted under the Unfair Claims Practices Act, at all. *See also Van Dyke v. St. Paul Fire & Marine Ins. Co.*, 448 N.E.2d 357, 362 (Mass. 1983) (affirming summary judgment for insurer because "any omission by [the insurer] to comply with [Massachusetts' UCPA] did not cause any injury to or adversely affect the plaintiffs"); *Michelman v. Lincoln Nat. Life Ins. Co.*, 685 F.3d 887, 901 (9th Cir. 2012) (rejecting liability under Washington statute where no damages arose from the nominal statutory violation); *Provident Am. Ins. Co. v. Castaneda*, 988 S.W.2d 189, 199 (Tex. 1998) (damages under Texas statute must be "separate and apart from those that would have resulted from a wrongful denial of the claim").

But even assuming the Unfair Claims Practices Act allowed consequential damages, such damages would be available only with a showing of insurer's bad-faith intent. *U.S. Fidelity & Guar. Co. v. Peterson*, 91 Nev. 617, 619-20, 540 P.2d 1070, 1071 (1975) (adopting "the rule that allows recovery of consequential damages where there has been a showing of bad faith by the insurer"); *Blue Cross & Blue Shield of Ky., Inc. v. Whitaker*, 687 S.W.2d 557, 559 (Ky. Ct. App. 1985) ("Absent some proof that [the insurer] acted intentionally, willfully or in reckless disregard of its insured's rights, we cannot uphold a verdict allowing consequential or punitive damages."). Such a limitation is necessary to prevent parties who cannot make out a bad faith claim, as TeamHealth Plaintiffs concededly cannot here, from recovering all of the damages of such a claim without evidence of the insurer's culpable mental state.

C. There Is No Evidence That Supports an Award of Punitive Damages

Based on the evidence submitted at trial, Defendants are entitled to judgment as a matter of law on TeamHealth Plaintiffs' claim for punitive damages under the Unfair Claims Practices Act.[11] Punitive damages are available only to punish or deter "conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." Restatement (Second) of Torts § 908(2); *see Coughlin v. Hilton Hotels Corp.*, 879 F. Supp. 1047, 1050 (D. Nev. 1995) (citing *Turnbow v. Dep't of Human Res.*, 109 Nev. 493, 853 P.2d 97, 99 (1993)) ("[P]unitive

---

[11] TeamHealth Plaintiffs did not seek punitive damages in connection with any other cause of action. JPTO at 5–6; *see also* SAC ¶¶ 80–89 (no allegation of entitlement to punitive damages in Second Claim for Relief for unjust enrichment). Because in the Joint Pretrial Memorandum TeamHealth Plaintiffs did not request punitive damages in connection with the unjust enrichment cause of action, they have waived the right to seek those damages on that cause of action. "As a general proposition a pretrial order does control the subsequent course of the trial and supersedes the pleadings." *Walters v. Nev. Title Guar. Co.*, 81 Nev. 231, 234, 401 P.2d 251, 253 (1965); *see also* EDCR 2.67(b)(2) (pretrial memorandum must present "a list of all claims for relief … with each category of damage requested"). Even assuming TeamHealth Plaintiffs actually sought punitive damages on their unjust enrichment claim, because Defendants are entitled to judgment as a matter of law on TeamHealth Plaintiffs' unjust enrichment claims, TeamHealth Plaintiffs are not entitled to punitive damages on this theory, either.

Furthermore, as previously argued, unjust enrichment is a species of "quasi-contract." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 380–81, 283 P.3d 250, 257 (2012))and therefore not a predicate tort for punitive damages. Accordingly, Nevada trial courts consistently find that punitive damages are not available for unjust enrichment claims. *E.g.*, *Gonor v. Dale*, 2015 WL 13772882, at *2 (Dist. Ct. Nev. July 16, 2015) ("To the extent that any claims for punitive damages against the Dale defendants (i.e. unjust enrichment detrimental reliance and quantum meruit) sound in contract, not in tort, such claim for punitive damages against the Date defendants is DENIED."); *Raider v. Archon Corp.*, 2015 WL 13446907, at *2 n.1 (Dist. Ct. Nev. June 19, 2015); *Hartman v. Silver Saddle Acquisition Corp.*, 2013 WL 11274332, at *3 (Dist. Ct. Nev. Jan. 28, 2013). Other jurisdictions are also in accord. *See Priority Healthcare Corp. v. Chaudhuri*, 2008 WL 4459041 *5 (M.D. Fla. 2008) ("Because unjust enrichment is not intended to be punitive, I find that punitive damages are not available under this theory"); *Moench v. Notzon*, 2008 WL 668612 *5 n.3 (Tex. Ct. App. 2008) (noting that "exemplary damages are not available for unjust enrichment"); *U.S. East Telecommunications, Inc. v. U.S. West Information Sys., Inc.*, 1991 WL 64461 *4 (S.D.N.Y. 1991) ("Neither are punitive damages available on an unjust enrichment cause of action."); *Edible Arrangements Int'l, Inc. v. Chinsammy*, 446 F. App'x 332, 334 (2d Cir. 2011) (punitive damages not allowed because a "claim of unjust enrichment is a quasi-contract claim for which the right to recovery is 'essentially equitable.'"); *Guobadia v. Irowa*, 103 F. Supp. 3d 325, 342 (E.D.N.Y. 2015) (no punitive damages for "unjust enrichment and other quasi-contract claims"); *Seagram v. David's Towing & Recovery, Inc.*, 62 F. Supp. 3d 467, 478 (E.D. Va. 2014) (same); *Conner v. Decker*, 941 N.W.2d 355 (Iowa Ct. App. 2019) (same); *Am. Safety Ins. Serv., Inc. v. Griggs*, 959 So. 2d 322, 332 (Fla. App. 2007) ("Unjust enrichment awards are not punitive, and allowing plaintiffs a recovery worth more than the benefit conferred would result in an unwarranted windfall."); *Dewey v. Am. Stair Glide Corp.*, 557 S.W.2d 643, 650 (Mo. App. 1977) ("Dewey's theory of recovery of actual damages is based on the contract theory of unjust enrichment. It is beyond question that punitive damages do not lie for a breach of contract. Thus, Dewey is not entitled to punitive damages.").

016428

016428

damages are not designed to compensate the victim of a tortious act but rather to punish and deter oppressive, fraudulent or malicious conduct."); *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003) (factors that indicate outrageous conduct: "the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident").

In analyzing whether conduct is outrageous or reprehensible in a way that permits an award of punitive damages, economic harms are considered less reprehensible as threats to the "health or safety of others." *Bains LLC v. Acro Prods. Co.*, 405 F.3d 764, 775 (9th Cir. 2005); *see also Calloway v. Reno*, 116 Nev. 250, 993 P.2d 1259, 1267 (2000) ("Purely economic loss is generally defined as 'the loss of the benefit of the user's bargain … including … pecuniary damage for inadequate value, … or consequent loss of profits."). Also, "socially valuable task[s]" or "conduct that might have some legitimate purpose" is considered less reprehensible than conduct that is discriminatory. *Bains LLC*, 405 F.3d at 775.

The only harm for which TeamHealth Plaintiffs presented evidence is that they received less payment than they demanded as reimbursement for certain out-of-network emergency medicine services. There is no evidence that these "underpayments" threatened anyone's health or physical safety; to the contrary, the only harm appears to be purely economic, in that TeamHealth Plaintiffs' parent company and investors received less of a windfall than they might have anticipated. Moreover, the Defendants' motive in paying less than TeamHealth Plaintiffs' full billed charges was not "evil" or fraudulent—the only testimony on this subject consistently affirmed that Defendants intended to control skyrocketing healthcare costs for their clients and members. On the evidence presented, TeamHealth Plaintiffs cannot be awarded punitive damages on their Unfair Claims Practices Act claim as a matter of law.

016429

016429

1. Punitive Damages Cannot Be Applied Against UHS or UMR Because They Are Not Insurers

The only cause of action for which TeamHealth Plaintiffs contend the jury can award punitive damages is their claim under the Unfair Claims Practices Act. *See* JPTO at 5–6. As explained above, this Act applies only to insurers and not to administrators of self-funded health benefits plans. For that reason, punitive damages cannot be awarded against UHS or UMR, who are not insurers and cannot be liable under the Act.

2. Punitive Damages Cannot Be Awarded on a Cause of Action that Sounds in Contract

TeamHealth Plaintiffs cannot obtain punitive damages against ***any*** Defendant because their cause of action under the Unfair Claims Practices Act sounds in contract, not in tort. NRS 42.005 permits punitive damages only "in an action for breach of an obligation not arising from contract," and the Nevada Supreme Court has ruled that punitive damages cannot be awarded under NRS 42.005 where an action "sounds in contract, and not in tort." *Rd. Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 284 P.3d 377, 384 (Nev. 2012); *see also Sprouse v. Wentz*, 105 Nev. 597, 602, 781 P.2d 1136, 1140 (1989) ("[P]unitive damages must be based on an underlying cause of action ***not based on a contract theory***." (emphasis added)). This prohibition applies not just to breach of contract claims, but broadly to any cause of action that "arises from" or "sounds in" contract. *Frank Briscoe Co. v. Clark County*, 643 F. Supp. 93, 100 (D. Nev. 1986) (breach of warranty claim cannot support an award of punitive damages); *e.g.*, *Desert Salon Servs., Inc. v. KPSS, Inc.*, No. 2:12–CV–1886 JCM (CWH), 2013 WL 497599, at *5 (D. Nev. Feb. 6, 2013) (contract-based causes of action for intentional interference with contractual relations, intentional interference with prospective economic advantage, and breach of the implied covenant of good faith and fair dealing cannot support an award of punitive damages); *Franklin v. Russell Rd. Food & Beverage, LLC*, No. 14A709372, 2015 WL 13612028, at *13 (Nev. Dist. Ct. June 25, 2015) (claims alleging failure to pay Plaintiffs Nevada's minimum wage do not "sound in tort, and in fact, are based on a contract theory").

It is undisputed that TeamHealth Plaintiffs' Unfair Claims Practices Act sounds in contract: they have ***conceded*** that their claim sounds in contract, and this Court ***agreed***. *See* Ps' Opp. to

016430
016430

Mot. to Dismiss at 25–26 (May 29, 2020); Order Denying Mot. to Dismiss FAC ¶ 68. For that reason alone, punitive damages cannot be awarded as a matter of law.[12] NRS 42.005.

Because TeamHealth Plaintiffs' Unfair Claims Practices Act claim sounds in contract, and because that claim is the ***only*** predicate for punitive damages in this case, TeamHealth Plaintiffs as a matter of law cannot recover punitive damages.[13]

Moreover, the ordinary way that a insurer in Nevada may be held liable for punitive damages in Nevada is through a tortious breach of the implied covenant of good faith and fair dealing in the insurance contract with its insured. *See, e.g.*, *Great Am. Ins. Co. v. Gen. Builders,*

---

[12] Were this cause of action to sound in tort rather than contract as this Court has held, then TeamHealth Plaintiffs would have no standing to bring a cause of action under the Unfair Claims Practices Act. The Nevada Supreme Court has held on multiple occasions that NRS 686A.310 does not create a private right of action in favor of third-party claimants—as opposed to insureds—like TeamHealth Plaintiffs. *See, e.g.*, *Fulbrook*, 2015 WL 439598, at *4 ("This statute, however, does not provide a private right of action to third-party claimants."); *Gunny*, 108 Nev. at 346) ("[W]e conclude that [plaintiff] has no private right of action as a third-party claimant under NRS 686A.310."); *see also* Mot. to Dismiss FAC at 23–24. TeamHealth Plaintiffs are judicially estopped from now arguing that this claim sounds in tort after convincing this Court that the claim was based on contract.

[13] Nor is TeamHealth Plaintiffs' Unfair Claims Practices Claim akin to a breach of the covenant of good faith and fair dealing between a insurer and an insured. Not only did TeamHealth Plaintiffs expressly abandon such a claim, 11/22/2021 Tr. 310:20-22 ("We're not pursuing bad faith as a basis for punitive damages."), but such a breach—even if proved—would amount only to *contractual* bad faith, not the kind of *tortious* bad faith necessary to sustain a claim for punitive damages. That is, in fact, why punitive damages against insurers are generally only available in claims by their insureds with whom they have, rather than an arm's length relationship, a special relationship of trust. *See, e.g.*, *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 354–56, 934 P.2d 257, 263 (1997). In *Great American Insurance Co.*, the Nevada Supreme Court explained that the breach in that situation is considered tortious because of the "inherently unequal bargaining positions" in the insurer-insured relationship, which is one of the "special relationships" creating duties akin to those of a fiduciary. *Id.* Absent that special relationship of trust and reliance, and where both parties are "experienced commercial entities represented . . . by professional and experienced agents," there is no tort liability to support a claim for punitive damages. *Id.* (vacating punitive damages award). Critically, the insurer's special relationship is specifically with its *insured*, not others to whom the insurer may owe contractual or other duties. *See Ins. Co. of the W. v. Gibson Tile Co., Inc.*, 122 Nev. 455, 462, 134 P.3d 698, 702 (2006). In *Insurance Co. of the West*, the Supreme Court held that an insurer acting as surety had no special relationship with its principal, so the insurer's breach was purely contractual, not tortious: "[t]herefore, as a matter of law, there was no basis for the jury's award of punitive damages." *Id.* at 464, 133 P.3d at 703.

Here, neither the Unfair Practices Act Claim nor the unjust enrichment claim is based on anything other than an arm's-length relationship between sophisticated parties. The fiduciary-like special relationship of trust applicable to the insurer-insured relationship is absent, and so is any tort that can sustain a claim for punitive damages.

Inc., 113 Nev. 346, 354–56, 934 P.2d 257, 263 (1997). In *Great American Insurance Co.*, the Nevada Supreme Court explained that the breach in that situation is considered tortious because of the "inherently unequal bargaining positions" in the insurer-insured relationship, which is one of the "special relationships" creating duties akin to those of a fiduciary. *Id.* Absent that special relationship of trust and reliance, and where both parties are "experienced commercial entities represented . . . by professional and experienced agents," there is no tort liability to support a claim for punitive damages. *Id.* (vacating punitive damages award). Critically, the insurer's special relationship is specifically with its *insured*, not others to whom the insurer may owe contractual or other duties. *See Ins. Co. of the W. v. Gibson Tile Co., Inc.*, 122 Nev. 455, 462, 134 P.3d 698, 702 (2006). In *Insurance Co. of the West*, the Supreme Court held that an insurer acting as surety had no special relationship with its principal, so the insurer's breach was purely contractual, not tortious: "[t]herefore, as a matter of law, there was no basis for the jury's award of punitive damages." *Id.* at 464, 133 P.3d at 703.

016432

3. TeamHealth Plaintiffs Have Presented No Evidence of Oppression, Fraud, or Malice

016432

NRS 42.005 requires "clear and convincing evidence" of "oppression, fraud or malice." NRS 42.005(1); *see also United Fire Ins. Co. v. McClelland*, 105 Nev. 504, 512, 780 P.2d 193, 198 (1989) (to obtain punitive damages, plaintiff must show evidence of "oppression, fraud, or malice"). Far from "clear and convincing" evidence, TeamHealth Plaintiffs have presented ***no*** evidence of fraud, oppression, or malice, that would permit a reasonable jury to award punitive damages under NRS 42.005.

a. No Evidence of Fraud

To prove fraud, TeamHealth Plaintiffs must prove (1) a false representation, (2) Defendants' knowledge or belief that the representation is false, (3) Defendants' intention to induce TeamHealth Plaintiffs' reliance on that representation, (4) TeamHealth Plaintiffs' justifiable reliance on the representation, and (5) damages. *Nev. State Educ. Ass'n v. Clark Cty. Educ. Ass'n*, 482 P.3d 665, 675 (2021).

TeamHealth Plaintiffs presented no evidence of any of these elements at trial, and therefore punitive damages cannot be awarded based on fraud. At most, TeamHealth Plaintiffs presented evidence that Defendants made some representations about FAIRHealth and Data iSight. *See* P363 (United Website Showing Fair Health Used as Benchmark); 11/3/2021 Tr. 27:24–37:4; 11/10/2021 Tr. 92:14–100:3, 104:6–109:23; 11/12/2021 Tr. 79:20–82:19, 85:6–88:6 (Mr. Haben's testimony that this P363 did not reveal any misrepresentations); P488 (United Healthcare Member Rights & Responsibilities Page). There is no evidence showing these representations were false, no evidence that TeamHealth Plaintiffs justifiably relied on these representations, and no evidence that these representations caused them to be harmed in any way. Indeed, TeamHealth Plaintiffs repeatedly argued to the jury that they had no choice but to treat Defendants' members by virtue of their legal obligations under EMTALA. *See, e.g.*, 11/2/2021 Tr. 30:7-31:10, 35:8-36:1 (opening argument discussing ER doctors' legal obligations under EMTALA); 11/15/2021 Tr. 154:14-21 (Dr. Scherr testifying to the same); 11/23/2021 Tr. 81:19-82:2 (Dr. Scherr disagreeing with Defendants' expert that ER providers are willing sellers because of EMTALA). Thus, representations about reimbursement criteria plainly could not have induced TeamHealth Plaintiffs to treat Defendants' members – by their own admission they had no such discretion.

The jury has discretion to award punitive damages only if it finds by clear and convincing evidence that the defendant was guilty of malice, fraud, or oppression in the conduct that provides the basis for liability. NRS 42.002. That is, to award punitive damages, the jury must find that Defendants acted fraudulently ***in their failure to negotiate*** equitable, fair, and prompt settlements in violation of the Unfair Claims Practices Act. The websites that TeamHealth Plaintiffs have offered into evidence have no connection with any failure to negotiate claims; those websites were published long before the dates of service on the At-Issue Claims. TeamHealth Plaintiffs therefore have not offered any evidence of fraud that could support an award of punitive damages.

b. No Evidence of Oppression or Malice

Oppression or malice requires that the defendant "knows of the probable harmful consequences of a wrongful act and willfully and deliberately fails to act to avoid those consequences." *Kinder Morgan Energy Partners, L.P. v. Claytor*, 130 Nev. 1205, *published at*

016433

016433

Nos. 60131, 60667, 2014 WL 7187204, at *4 (Nev. Dec. 16, 2014). To prove oppression or malice, TeamHealth Plaintiffs must prove "despicable conduct" that shows "a conscious disregard of the rights or safety of others." *Id.*; *see also Ainsworth v. Combined Ins. Co. of Am.*, 104 Nev. 587, 590, 763 P.2d 673, 675 (1988) (oppression is "a conscious disregard for the rights of others which constitute[s] an act of subjecting plaintiffs to cruel and unjust hardship"). Such "conscious disregard of the rights or safety of others" cannot, as a matter of law, include underpayments to TeamHealth Plaintiffs or their corporate parents, or a "strategy to terminate … contracts" with TeamHealth practice groups. *See* Ps' Resp. to Ds' Trial Br. re: Out-of-State Harms at 4. Such economic harms are not "reprehensible" in a way that could justify an award of punitive damages. *See Bains LLC*, 405 F.3d at 775.

TeamHealth Plaintiffs submitted no evidence that could support a finding of malice, fraud, or oppression. Indeed, there is no malice or oppression as a matter of law because Defendants ***paid*** the insurance claims at issue. *See Pioneer Chlor Alkali Co. v. Nat'l Union Fire Ins. Co.*, 863 F. Supp. 1237, 1250–51 (D. Nev. 1994) (acknowledging "difficulty constructing a factual situation where an insurer who violated [NRS 686A.310] could have done so with an oppressive or malicious intent yet not denied, or refused to pay, the claim"). Defendants cannot have had the "evil" state of mind required to prove malice or oppression—the only evidence concerning the states of mind of Defendants' executives shows that they were concerned about controlling costs for their clients and members, and this evidence concerns Defendants' out-of-network programs generally rather than the settlement of any particular At-Issue Claim. *See* 11/10/2021 Tr. 45:10–47:24 (Mr. Haben testified that Defendants' out-of-network programs are in place to help control costs and that they "continuously look at our out-of-network programs to make sure we're paying a fair and reasonable rate, and we're addressing costs."); 11/10/2021 Tr. 136:13–137:1 (Mr. Haben testified that Defendants reached out to Multiplan for help in controlling costs because "[c]lients were demanding better controls on medical costs, and they were looking for better solutions."); 11/11/2021 Tr. 23:21–24:4 (Mr. Haben testified that market intelligence revealed that Defendants were "behind our competitors" who were "doing a better job" to control client healthcare spend"); 11/15/2021 Tr. 199:14–23 (Mr. Ziemer testified that UMR has "a variety of programs under our

016434
016434

cost reduction and savings programs that are designed to help our clients control costs."); 11/12/2021 Tr. 215:22–23 (Ms. Paradise testified that "I'm focused on driving savings for the clients. I don't have accountability for any revenue related to the programs").

TeamHealth Plaintiffs both have failed to present evidence on a ***harm*** that could support punitive damages, and have failed to present evidence that Defendants had a state of mind that could support punitive damages.

Indeed, as discussed above, the very uncertainty of TeamHealth Plaintiffs' underlying claim that they have been underpaid precludes punitive damages. "In most instances, unless the insured would be entitled to a directed verdict on the underlying insurance claim, an arguable reason to deny the claim exists, precluding the imposition of punitive damages." 14A STEVEN PLITT ET AL., COUCH ON INSURANCE § 207:73 (3d ed. June 2021 update). As TeamHealth Plaintiffs cannot show such a clear entitlement to their billed charges, punitive damages are categorically improper.

016435

D. Defendants Are Entitled to Judgment as a Matter of Law on TeamHealth Plaintiffs' Claim for Breach of Implied-in-Fact Contract

TeamHealth Plaintiffs claim that Defendants breached an implied-in-fact contract under which they had agreed to pay TeamHealth Plaintiffs their full billed charges for all out-of-network services indefinitely into the future. None of the evidence presented at trial even begins to prove the existence of such a contract. "[A]n implied-in-fact contract exists where the conduct of the parties demonstrates that they (1) intended to contract; (2) exchanged bargained-for promises; and (3) the terms of the bargain are sufficiently clear." *Magnum Opes Constr. v. Sanpete Steel Corp.*, 129 Nev. 1135 (2013) (citing *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 379, 283 P.3d 250, 256 (2012)).[14] "The terms of an express contract are stated in words while those of

[14] Defendants cite *Magnum Opes* for its persuasive value, and its application of *Certified Fire*, not as precedent. NRAP 36(c)(3). Defendants note that this case has been cited by the Nevada Federal District Court as binding authority in this action. *See Fremont Emergency Servs. (Mandavia), Ltd. v. UnitedHealth Grp., Inc.*, 446 F. Supp. 3d 700, 705 (D. Nev. 2020).

an implied contract are manifested by conduct." *Smith*, 91 Nev. at 668, 541 P.2d at 664 (citing *Youngman v. Nev. Irrigation Dist.*, 70 Cal. 2d 240, 74 Cal. Rptr. 398, 449 P.2d 462 (1969)).

The evidence that TeamHealth Plaintiffs presented at trial shows that Defendants did ***not*** agree to pay them their full billed charges, and that Defendants in fact almost ***never*** paid their full billed charges. *See* 11/16/2021 Tr. 63:9-17 (Mr. Murphy testified that TeamHealth does "agree[] to discount to discount billed charges" to "get paid"); *id*. 65:17-22 (Mr. Murphy testified that reimbursement at less than billed charges was acceptable at time of claim submission); 11/17/21 Tr. 167:19-168:7 (Mr. Leathers, TeamHealth Plaintiffs' expert, testified that, prior to the period in dispute, Defendants paid TeamHealth Plaintiffs' full billed charges infrequently); 11/22/2021 Tr. 14-17 (Mr. Bristow testified that, prior to the period in dispute, Defendants paid TeamHealth Plaintiffs their full billed charges around 7% of the time). There is no evidence that Defendants intended to contract with TeamHealth Plaintiffs, no evidence that they promised to reimburse TeamHealth Plaintiffs at their full billed charges, and no evidence that Defendants agreed to any of the material terms of such of a contract. In fact, testimony from TeamHealth Plaintiffs' own former contract negotiator at trial explicitly contradicts TeamHealth Plaintiffs' contention that there was an implied-in-fact contract. 11/23/2021 Tr. 34:19-23 (Ms. Harris testifying that, once Fremont's contract with Sierra Health Plan of Nevada terminated, there was "no contract whatsoever between Sierra and Fremont."). Under these facts, judgment should be entered in Defendants' favor as a matter of law.

1. An Implied-in-Fact Contract Requires All Elements of Contract Formation

At the outset, an implied-in-fact contract has no different elements than an express written or oral contract, except that the elements are manifested by conduct and not words. "The distinction between express and implied in fact contracts relates only to the manifestation of assent; both types are based upon the expressed or apparent intention of the parties." *Cashill v. Second Jud. Dist. Ct. of State ex rel. Cty. of Washoe*, 128 Nev. 887, 381 P.3d 600 (2012). Thus, TeamHealth Plaintiffs must show that the parties: "(1) intended to contract; (2) exchanged

016436
016436

bargained-for promises; and (3) the terms of the bargain are sufficiently clear." *Magnum Opes*, 129 Nev. 1135, No. 60016, 2013 WL 7158997 (Table), at *3.[15]

2. No Intent to Contract

TeamHealth Plaintiffs presented no evidence at trial that shows that any Defendants ever intended to enter into a contract with TeamHealth Plaintiffs—or any evidence that TeamHealth Plaintiffs intended to enter into a contract with Defendants. Without this evidence, their implied-in-fact contract cause of action fails as a matter of law. "To find a contract implied-in-fact, the fact-finder must conclude that the parties intended to contract." *Certified Fire*, 128 Nev. at 379–80, 283 P.3d at 256; *see also Smith*, 91 Nev. at 669, 541 P.2d at 665 (citing *Horacek v. Smith*, 33 Cal. 2d 186, 199 P.2d 929 (1948)) ("In order to prevail on the theory of a contract implied in fact, the court would necessarily have to determine that both parties intended to contract, and that promises were exchanged.").

There is no evidence on record on which a jury could conclude the parties intended to contract.[16] The bare fact that TeamHealth Plaintiffs provided services to Defendants' insureds does not evidence an intent to contract. In *Steele v. EMC Mortg. Corp.*, 129 Nev. 1154 (2013), *published at* 2013 WL 5423081, the Nevada Supreme Court affirmed summary judgment on a contract claim where the plaintiff did not present evidence that she entered into a contract with the defendant, but relied only on the defendant's acquiescence to the plaintiffs' supposed performance. *Id*. at *1 ("Although appellant presented evidence that EMC Mortgage accepted loan payments from appellant and communicated with appellant regarding the loan's status, this conduct alone does not manifest the parties' intent to bind appellant to the terms of the loan so as to give rise to an implied contract between EMC Mortgage and appellant.").[17] Similarly here, TeamHealth

---

[15] *See supra* note 12.

[16] In fact, TeamHealth Plaintiffs successfully moved *in limine* to exclude evidence that categorically disproves the parties' intention to contract. *See* Mot. for New Trial at n.1 and Discovery Errors Sections I.B.1, I.C.1 (discussing excluded evidence regarding failed negotiations for network contract between TeamHealth Plaintiff Fremont and Defendants).

[17] Cited for persuasive value, not as precedent. NRAP 36(c)(3).

Plaintiffs rely solely on the facts that they performed out-of-network emergency medicine services, and that Defendants reimbursed them for those services on behalf of their plan members. 11/16/2021 Tr. 65:7-10 (Mr. Murphy testified that billed charges should be awarded because "[w]e perform the service"); 11/15/2021 Tr. 154:14-21 (Dr. Scherr only testified that they have to treat patients by operation of law); 11/10/2021 Tr. 25:24-28:5 (Mr. Haben testified that the allowed amount payable to providers "is defined by the benefit plan" and is not the billed charges); *id.* 33:22-34:2 (Mr. Haben testified that the allowed amount for out-of-network claims is paid based on what is "[d]efined in the benefit plan"); 11/16/2021 Tr. 148:12-18 (Ms. Hare testified that HPN's & SHL's claims processing system is designed to reimburse claims based on plan documents and not full billed charges). That is not enough to show contract formation.

Testimony from TeamHealth Plaintiffs' own employees underscores that there was no intent to contract between the parties. 11/22/2021 Tr. 95:1-6 (Mr. Bristow, TeamHealth Plaintiffs' corporate representative, explained that TeamHealth Plaintiffs submitted claims from TeamHealth Plaintiff Fremont under the Tax Identification Number of TeamHealth Plaintiff Ruby Crest because "we [] want also [to] have access to that health plan contract with a group that's not contracted."); *id.* 99:18-22 (Mr. Bristow emailed his colleague suggesting to "sub-TIN all of the Fremont sites under the other Nevada entity that is not contracted, but is getting better reimbursement at Team Physicians of Mandavia); *id.* 106:21-107:3 (Mr. Bristow was informed that Ruby Crest was non-participating with Defendants, so there was no contract between the parties); 11/23/2021 Tr. 34:19-23 (Ms. Harris testifying that, once Fremont's contract with Sierra Health Plan of Nevada terminated, there was "no contract whatsoever between Sierra and Fremont.").

If anything, Defendants' prior conduct establishes that there was ***no agreement*** to pay the TeamHealth Plaintiffs' full billed charges. TeamHealth Plaintiffs submitted evidence detailing Defendants' payments for the thousands of At-Issue Claims, which shows that Defendants rarely paid TeamHealth Plaintiffs' full billed charges. P473. "[T]he fact of agreement may be implied from a course of conduct in accordance with its existence," but the course of conduct here implies exactly the opposite of what TeamHealth Plaintiffs contend. 17A C.J.S. Contracts § 375, at 425

016438
016438

(1963). This is not a case in which a contract is implied because the parties "repeatedly adhered to" the terms of a contract "in their previous course of dealing." *Reno Club v. Young Inv. Co.*, 64 Nev. 312, 334, 182 P.2d 1011, 1021 (1947). Defendants' course of conduct repeatedly repudiates any notion that Defendants agreed to pay TeamHealth Plaintiffs their full billed charges on each reimbursement claim for out-of-network emergency medicine services.

There is no evidence that shows Defendants communicated by word and deed that that they intended to contract with TeamHealth Plaintiffs at any specific reimbursement rate for the disputed emergency medicine services, much less the TeamHealth Plaintiffs' full billed charges. In fact, TeamHealth Plaintiffs successfully moved to exclude any such evidence of contract negotiations. *See* 10/20/21 Tr. at 17:21–24. Regardless, that Defendants may have been willing to contract with TeamHealth Plaintiffs, had they been willing to agree to different terms, does not evidence that Defendants did agree to any particular contractual terms. *See* 11/16/2021 Tr. 63:9-17 (Mr. Murphy testified that TeamHealth does "agree[] to discount to discount billed charges" to "get paid"); *id.* 65:17-22 (Mr. Murphy testified that a certain reimbursement less than billed based on a wrap arrangement was acceptable at time of claim submission). "With respect to contract formation, preliminary negotiations do not constitute a binding contract unless the parties have agreed to all material terms." *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). There is no evidence of such an agreement here.

3. No Promises Exchanged

Another essential element of contract formation is that "promises were exchanged" through the parties' conduct. *Smith*, 91 Nev. at 669, 541 P.2d at 665 (citing *Horacek v. Smith*, 33 Cal. 2d 186, 199 P.2d 929 (1948)); *see also Certified Fire*, 128 Nev. at 379–80, 283 P.3d at 256 ("To find a contract implied-in-fact, the fact-finder must conclude that … promises were exchanged."); *Magnum Opes Constr. v. Sanpete Steel Corp.*, 129 Nev. 1135 (2013) (citing *Certified Fire*, 283 P.3d at 256) ("Turning to the parties' substantive arguments, an implied-in-fact contract exists where the conduct of the parties demonstrates that they … exchanged bargained-for promises.").[18]

[18] *See supra* note 12.

016439

016439

TeamHealth Plaintiffs presented no evidence at trial that shows the Defendants exchanged promises with TeamHealth Plaintiffs concerning the rate of payment for out-of-network emergency medicine services. 11/16/2021 Tr. 65:7-10 (Mr. Murphy testified that billed charges should be awarded because "[w]e perform the service"); 11/15/2021 Tr. 154:14-21 (Dr. Scherr only testified that they have to treat patients by operation of law); 11/10/2021 Tr. 25:24-28:5 (Mr. Haben testified that the allowed amount payable to providers "is defined by the benefit plan" and is not the billed charges); *id.* 33:22-34:2 (Mr. Haben testified that the allowed amount for out-of-network claims is paid based on what is "[d]efined in the benefit plan"). As discussed above, evidence of the parties' contract negotiations was excluded from evidence. TeamHealth Plaintiffs have not proved that Defendants exchanged promises.

4. No Meeting of the Minds on Material Terms

TeamHealth Plaintiffs also did not present any evidence at trial from which a jury could infer the terms of an implied-in-fact contract. "A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite" for a court "to ascertain what is required of the respective parties" and to "compel compliance" if necessary. *Grisham v. Grisham*, 128 Nev. 679, 685, 289 P.3d 230, 235 (2012); *see also May*, 121 Nev. at 672, 119 P.3d at 1257 ("A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite."). Here, there are at least two material terms that TeamHealth Plaintiffs did not established through evidence: price and contract term.

Price in particular is a material term to any contract for Defendants to pay TeamHealth Plaintiffs a specific rate for their services. Courts commonly find there to be no contract formation where the parties have not agreed to a price. *E.g.*, *Certified Fire*, 128 Nev. at 380, 283 P.3d at 256 ("There are simply too many gaps to fill in the asserted contract for quantum meruit to take hold. Precision never agreed to a contract for only design-related work, ***the parties never agreed to a price for that work***, and they disputed the time of performance." (emphasis added)); *Matter of Est. of Kern*, 107 Nev. 988, 991, 823 P.2d 275, 276–77 (1991) ("In the case at bar, several essential elements of a valid contract are missing. … [M]aterial terms such as subject matter, ***price***, payment terms, quantity, and quality are either altogether lacking or insufficiently certain and definite to

016440
016440

support specific performance." (emphasis added)). TeamHealth Plaintiffs did not present a shred of evidence that Defendants affirmatively agreed to pay them at the full billed charges or in any other amount. Indeed, within the span of this litigation they have changed their own view of what Defendants supposedly agreed to pay for out-of-network services. *See United Healthcare Ins. Co. v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 489 P.3d 915 (Nev. 2021) (noting that "[t]he providers alleged an implied-in-fact contract to provide emergency medical services to United's plan members ***in exchange for payment at a usual and customary rate***, and that United breached this contract by not doing so.").

Nor have Plaintiffs submitted any evidence of the duration or term of the implied-in-fact contract. To the contrary, TeamHealth Plaintiffs objected to Defendants questioning witnesses on this topic. *See* 11/10/2021 Tr. 168:22-169:4. TeamHealth Plaintiffs' position appears to be that the duration is indefinite—that Defendants somehow agreed to pay them at their full rates forever into the future. Yet TeamHealth Plaintiffs cannot point to a single piece of evidence that indicates anyone acting as an agent of the Defendants, by their actions, agreed to a specific term for this contract to persist in perpetuity. To the contrary, Defendants' witnesses have denied having agreed to any such term. 11/10/2021 Tr. 168:16–21 (testifying that the only contracts that Defendants enter into "need[] to be in writing on contractual paper that was drafted by our attorneys and approved and used and available through a database"); Joint Submission of Dep. Clips for Trial Record as Played on Nov. 12, 2021 39:21–41:23. In the context of an agreement to pay Plaintiffs' full billed charges, where payors and providers typically agree to far lower rates as part of network agreements that last only a few years, the contract duration is a material term of the contract. Without a meeting of the minds on that term, there can be no implied contract. *See Kern*, 107 Nev. at 991.

Based on the evidence at trial, any verdict finding that Defendants formed an implied-in-fact contract with TeamHealth Plaintiffs to pay their full billed charges for out-of-network emergency medicine services would be contrary law, and Defendants are entitled to judgment as a matter of law.

016441

016441

E. If the Court Disagrees that Defendants are Entitled to Judgment as a Matter of Law on TeamHealth Plaintiffs' Implied-in-Fact Contract Claims, Then TeamHealth Plaintiffs are Not Entitled to Judgment as a Matter of Law on their Unjust Enrichment Claims

As a matter of law, where, as here, a jury finds there is an enforceable contract between parties, the remedy of unjust enrichment is barred. The purpose of the remedy of unjust enrichment is to compensate a party that confers a benefit with reasonable expectation of payment and without an express agreement memorializing that expectation. Richard A. Lord, Williston on Contracts § 68:1, at 24 (4th ed. 2003). As comment e. to the Restatement (Third) of Restitution and Unjust Enrichment § 49 notes, the remedy of quantum meruit is "regarded in modern law" as an instance of "unjust enrichment rather than contract." This is well-established established in Nevada. *See, e.g.*, *Richey v. Axon Enters., Inc.*, 437 F. Supp. 3d 835, 849 (D. Nev. 2020) ("As a quasi-contract claim, unjust enrichment is unavailable when there is an enforceable contract between the parties."); *Leasepartners Corp. v. Robert L. Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 756 (1997) ("The doctrine of unjust enrichment or recovery in quasi contract applies to situations where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another or should pay for.").

Here, the jury found there was an implied-in-fact contract between TeamHealth Plaintiffs and Defendants. 11/29/21 Special Verdict Form. TeamHealth Plaintiffs' unjust enrichment claims thus fail as a matter of law, and Defendants are entitled to judgment as a matter of law on those claims. *See* 12/6/2021 Tr. 51:13-18.

F. Defendants Are Entitled to Judgment as a Matter of Law on TeamHealth Plaintiffs' Prompt Pay Act Claim

Neither the Insurance Code nor the Prompt Pay Act itself affords TeamHealth Plaintiffs a private right of action against Defendants. The Nevada Supreme Court has ruled that "the ***insurance commissioner alone has authority to enforce*** the insurance code," *Joseph v. Hartford Fire Ins. Co.*, No. 2:12–CV–798 JCM (CWH), 2014 WL 2741063, at *2 (D. Nev. June 17, 2014) (emphasis added), and that the Insurance Commissioner has "exclusive jurisdiction in regulating the subject of trade practices in the business of insurance." *Allstate Ins. Co. v. Thorpe*, 123 Nev.

016442
016442

565, 572, 170 P.3d 989, 994 (2007). No private right of action exists under the Prompt Payment Act. And even if it did, TeamHealth Plaintiffs are barred from asserting that right of action as a matter of law because they failed to exhaust available administrative remedies created by that Act.

1. TeamHealth Plaintiffs Have No Private Right of Action Under the Prompt Payments Act

No private right of action exists on the face of the Prompt Payments Act. The plain meaning of NRS 690B.012 is that an interest penalty will be imposed if an insurance company has determined that payment is owed, and failed to pay within thirty days. NRS 690B.012(4) ("If the approved claim is not paid within that period, the insurer shall pay interest on the claim … ."). The interest that accrues on the insurance claim acts as a punitive measure, which the Nevada Legislature has imposed on insurance companies to compel them to pay the policyholder's covered medical bills promptly. The statute does not impose any other liability onto insurers, and NRS 690B.012 does not create a private right of action even for policyholders, much less to third-party medical providers such as TeamHealth Plaintiffs.

If there were a private right of action implied in NRS 690B.012—and nothing in the text of the statute suggests there is—that right of action would belong to the ***insured***, not to TeamHealth Plaintiffs. The statute governs how an insurer approves and pays "a claim of its insured relating to a contract of casualty insurance." NRS 690B.012(1). The rights and duties of the statute therefore only accrue and flow to the policyholder, not to third-party medical providers. TeamHealth Plaintiffs are not insureds of Defendants under any contract, and they have repeatedly disclaimed any right to recover by standing in the shoes of insureds through an AOB. SAC at 2 n.1 (Plaintiffs "do not assert claims that are dependent on the existence of an assignment of benefits ("AOB") from any of Defendants' Members.").[19] TeamHealth Plaintiffs have no statutory standing to sue under the Prompt Payments Act, and Defendants are entitled to judgment as a matter of law.

---

[19] If TeamHealth Plaintiffs were to rely on EOBs, their cause of action would be preempted by ERISA. *See supra* note 8.

016443

016443

Even if there was a private right of action of which TeamHealth Plaintiffs could avail themselves, TeamHealth Plaintiffs did not prove, nor did they even allege, that Defendants did not pay for the At-Issue claims within 30 days. 11/16/2021 Tr. 226:23-227:10 (Mr. Leathers testified that Defendants' data for the At-Issue Claims includes reimbursement amounts); *id.* 233:12-22 (Mr. Leathers testified that he analyzed claims that were allegedly underpaid as opposed to not paid). In fact, TeamHealth Plaintiffs' corporate representative expressly admitted that Defendants paid ***every single*** At-Issue claim within 30 days. 11/22/2021 Tr. 73:24-74:14. Instead, TeamHealth Plaintiffs' entire case hinged on whether Defendants paid an appropriate amount for each claim. Because TeamHealth Plaintiffs did not present any evidence showing a violation of the Prompt Pay Act, Defendants are entitled to judgment as a matter of law on this claim.

2. TeamHealth Plaintiffs Failed to Exhaust Administrative Remedies

Defendants asserted an affirmative defense of failure to exhaust administrative remedies, and the evidence shows that Plaintiffs did not exhaust the available administrative remedies for their Prompt Payment 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*, 123 Nev. at 568, 571–72. Assuming the Prompt Payments Act creates a private right of action for third parties—notwithstanding the text and purpose of the statute—plaintiffs must first exhaust all available administrative remedies created by the Act.

The Insurance Code creates an administrative process that TeamHealth Plaintiffs were required to exhaust before coming to court. The Insurance Code allows a person to apply for a hearing of the Insurance Commissioner where that person is aggrieved by a "failure of the Commissioner to" enforce the Insurance Code. NRS 679B.310(2)(b); *see also Joseph*, 2014 WL 2741063, at *2 ("the insurance commissioner alone has authority to enforce the insurance code"). TeamHealth Plaintiffs were required to make such an application within 60 days of the alleged failure by Defendants to provide timely reimbursement. *See id.* On such an application, the Insurance Commission holds a hearing and makes a decision that can be appealed. NRS 679B.310 (4)–(5); NRS 679B.370. Within 30 days of an adverse final ruling rendered by the Insurance Commissioner, the TeamHealth Plaintiffs had the option of seeking judicial review of the

016444
016444

Commissioner's decision. NRS 233B.130; *see also* NRS 233B.133 (outlining briefing process for judicial review).

TeamHealth Plaintiffs presented no evidence that they complied with any of this administrative process. TeamHealth Plaintiffs have not alleged or proven exhaustion of the available administrative remedies, Defendants are entitled to judgment as a matter of law on TeamHealth Plaintiffs' claim under the Prompt Payments Act.

G. TeamHealth Plaintiffs' Causes of Action Are Preempted by ERISA

Under ERISA § 514, a state-law claim conflicts with ERISA and is expressly preempted if it "relates to" an employee benefit plan governed by ERISA. 29 U.S.C. § 1144(a). This action is undoubtedly related to employee benefit claims, and all of TeamHealth Plaintiffs' causes of action are preempted by ERISA.

Plaintiffs' claims are conflict preempted because they seek to compel thousands of different ERISA-governed plans administered by Defendants to pay them their unilaterally set charges without reference to the specific benefit rates established by the terms of each governing health plan—and without any of the plans ever having agreed to pay anything other than the plan benefit rates. For instance, if the governing plan adopted an out-of-network program that limited the member's benefit for out-of-network ER service to 200% of Medicare, any judgment finding that Nevada common law imposes an obligation on Defendants to pay the TeamHealth Plaintiffs their full billed charges, substantially above that out-of-network benefit, necessarily conflicts with the terms of the ERISA plan. D5499 (plan document instructing to use OCM exclusively); 11/10/2021 Tr. 126:4–131:4 (Mr. Haben testified that testimony discussing the plan document contained in D5499 required the OCM program to price out-of-network claims); 11/15/2021 Tr. 136:22-140:12 (Ms. Paradise testified that the usual and customary language in P146, a certificate of coverage for a fully insured plan, did "not suggest . . . that the physician reasonable and customary program established by FAIR Health would be used to reimburse an[] out-of-network emergency service"); *id.* 137:25-138:7 (Ms. Paradise testified that plan document must be reviewed to determine what out-of-network program applies); 11/16/2021 Tr. 142:24-143:6 (Ms. Hare testified that plan documents dictate out-of-network reimbursement); *id.* 148:12-18 (Ms.

016445

016445

Hare testified that HPN's & SHL's claims processing system is designed to reimburse claims based on plan documents and not full billed charges). But ERISA requires the Defendants to "specify the basis on which payments are made to and from [their plans]" and to administer their plans "in accordance with the documents and instruments governing the plan[s]." 29 U.S.C. § 1102(b)(4); 29 U.S.C. § 1104(a)(1)(D). Any verdict that awards remedies in excess of what Defendants owed under the governing plans would be contrary to ERISA.

ERISA preempts any state law that would, as Plaintiffs request, rewrite the terms of the governing health plans to require payment for out-of-network ER services at amounts higher than permitted by the plans. Indeed, it is well established that ERISA preempts implied-in-fact contract claims such as the TeamHealth Plaintiffs. *Aetna Life Ins. Co. v. Bayona*, 223 F.3d 1030, 1034 (9th Cir. 2000) ("We have held that ERISA preempts common law theories of breach of contract implied in fact…"); *Blau v. Del Monte Corp.*, 748 F.2d 1348, 1356 (9th Cir. 1984) (breach of implied-in-fact contract claim was conflict preempted), *abrogated on other grounds in Dytrt v. Mountain States Tel. & Tel. Co.*, 921 F.2d 7889, 7894 n.4 (9th Cir. 1990); *Parlanti v. MGM Mirage*, 2:05-CV-1259-ECR-RJJ, 2006 WL 8442532, at *6 (D. Nev. Feb. 15, 2006) (breach of contract claim conflict preempted).

016446

016446

III. CONCLUSION

For the foregoing reasons, this Court should grant Defendants judgment as a matter of law on all causes of action.

Dated this 6th day of April, 2022.

/s/ Abraham G. Smith

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
Phillip N. Smith, Jr., Esq.

Dimitri D. Portnoi, Esq.(*Pro Hac Vice*)
Jason A. Orr, Esq. (*Pro Hac Vice)*
Adam G. Levine, Esq. *(Pro Hac Vice)*
Hannah Dunham, Esq. *(Pro Hac Vice)*
Nadia L. Farjood, Esq. (*Pro Hac Vice*)
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071

K. Lee Blalack, II, Esq.(*Pro Hac Vice)*
Jeffrey E. Gordon, Esq. *(Pro Hac Vice)*
Kevin D. Feder, Esq. *(Pro Hac Vice)*
Jason Yan, Esq. *(Pro Hac Vice)*

Marjan Hajimirzaee, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd.
Suite 400
Las Vegas, Nevada 89118

Attorneys for Defendants

O'Melveny & Myers LLP
1625 Eye St. NW
Washington, DC 20006

Paul J. Wooten, Esq. *(Pro Hac Vice)*
Philip E. Legendy *(Pro Hac Vice)*
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036

016447

016447

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April, 2022, a true and correct copy of the foregoing "**DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW"** was electronically filed and 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:

Pat Lundvall, Esq.
Kristen T. Gallagher, Esq.
Amanda M. Perach, Esq.
McDonald Carano LLP
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

Justin C. Fineberg
Martin B. Goldberg
Rachel H. LeBlanc
Jonathan E. Feuer
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
jfineberg@lashgoldberg.com
mgoldberg@lashgoldberg.com
rleblanc@lashgoldberg.com
jfeuer@lashgoldberg.com

Joseph Y. Ahmad (admitted *pro hac vice*)
John Zavitsanos (admitted *pro hac vice*)
Jason S. McManis (admitted *pro hac vice*)
Michael Killingsworth (admitted *pro hac vice*)
Louis Liao (admitted *pro hac vice)*
Jane L. Robinson (admitted *pro hac vice*)
P. Kevin Leyendecker (admitted *pro hac vice*)
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing,
1221 McKinney Street, Suite 2500
Houston, Texas 77010
Telephone: 713-600-4901
joeahmad@azalaw.com;jzavitsanos@azalaw.com
jmcmanis@azalaw.com;mkillingsworth@azalaw.com
lliao@azalaw.com; jrobinson@azalaw.com
kleyendecker@azalaw.com

Attorneys for Plaintiffs

Judge David Wall, Special Master
Attention: Mara Satterthwaite & Michelle Samaniego
JAMS
3800 Howard Hughes Parkway
11th Floor
Las Vegas, NV 89123
msatterthwaite@jamsadr.come
msamaniego@jamsadr.com

/s/ Cynthia Kelley
An employee of Lewis Roca Rothgerber Christie LLP

016448

016448

LEWIS ROCA

016448

314

Electronically Filed
4/6/2022 10:33 PM
Steven D. Grierson
CLERK OF THE COURT

MNTR

D. Lee Roberts, Jr. (SBN 8877)
lroberts@wwhgd.com
Colby L. Balkenbush, (SBN 13066)
cbalkenbush@wwhgd.com
Brittany M. Llewellyn (SBN 13527)
bllewellyn@wwhgd.com
Phillip N. Smith, Jr. (SBN 10233)
psmithjr@wwhgd.com
Marjan Hajimirzaee (SBN 11984)
mhajimirzaee@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Daniel F. Polsenberg (SBN 2376N)
dpolsenberg@lewisroca.com
Joel D. Henriod (SBN 8492)
jhenriod@lewisroca.com
Abraham G. Smith (SBN 13250)
asmith@lewisroca.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Ste, 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

K. Lee Blalack, II (*Admitted Pro Hac Vice)*
lblalack@omm.com
Jeffrey E. Gordon *(Admitted Pro Hac Vice)*
jgordon@omm.com
Kevin D. Feder *(Admitted Pro Hac Vice)*
kfeder@omm.com
Jason Yan *(Admitted Pro Hac Vice)*
jyan@omm.com
O'MELVENY & MYERS LLP
1625 Eye Street N.W.
Washington, D.C. 20006
Telephone: (202) 383-5300

Dimitri D. Portnoi (*Admitted Pro Hac Vice*)
dportnoi@omm.com
Adam G. Levine *(Admitted Pro Hac Vice)*
alevine@omm.com
Hannah Dunham *(Admitted Pro Hac Vice)*
hdunham@omm.com
Nadia L. Farjood (*Admitted Pro Hac Vice*)
nfarjood@omm.com
O'MELVENY & MYERS LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000

Paul J. Wooten *(Admitted Pro Hac Vice)*
pwooten@omm.com
Philip E. Legendy *(Admitted Pro Hac Vice)*
plegendy@omm.com
O'MELVENY & MYERS LLP
Times Square Tower
Seven Times Square
New York, NY 10036
Telephone: (212) 728-5857

Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES (MANDAVIA), LTD., a Nevada professional corporation; TEAM PHYSICIANS OF NEVADA-MANDAVIA, P.C., a Nevada professional corporation; CRUM, STEFANKO AND JONES, LTD. dba RUBY CREST EMERGENCY MEDICINE, a Nevada professional corporation, Plaintiffs,	Case No.: A-19-792978-B Dep't 27 **(HEARING REQUESTED)** **MOTION FOR NEW TRIAL**

016449

016449

LEWIS ROCA

016449

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.

Defendants UnitedHealthcare Insurance Company ("UHIC"), United HealthCare Services Inc. ("UHS", which does business as UnitedHealthcare or "UHC" and through UHIC), UMR, Inc. ("UMR"), Sierra Health and Life Insurance Company ("SHL"), and Health Plan of Nevada, Inc. ("HPN") (collectively, "Defendants"), by and through their attorneys, hereby submit this Motion for New Trial ("Motion"), accompanied by a motion for leave to exceed thirty (30) page limit set forth in EDCR 2.20(a).

016450

016450

016450

TABLE OF CONTENTS

Page

Overview 1

Grounds for a New Trial Emanating from Discovery Errors 1

Introduction 1

Legal Argument 3

I. The Court's Evidentiary Rulings that It Purported to Base on Prior discovery Rulings Constituted Errors of Law that Deprived Defendants From Receiving a Fair Trial 4

A. Defendants Were Prejudiced By the Court's Prohibition of Evidence About TeamHealth Plaintiffs' Improper Coding and Claims Submissions 4

B. The Court Erred By Prohibiting Evidence and Argumentation On Reimbursement Rates that Inform What a Willing Buyer and Seller Would Consider Reasonable 9

1. Rates Offered Through the Parties' Network Negotiations, Including Medicare Rates 12

2. In-Network Rates with Other Payors 16

C. The Court Erred By Preventing Evidence About Provider Participation Agreements 20

1. The Contracts that Were in Place Between Fremont and Various Defendants Prior to the Period in Dispute Are Relevant to the Claims and Defenses in this Litigation 22

2. Contracts Between TeamHealth Plaintiffs and other Healthcare Payors and Health Insurers Are Relevant to the Claims and Defenses in this Litigation 24

3. Wrap/Rental Network Agreements Are Relevant to the Claims and Defenses in this Litigation 25

D. The Court's Ruling that Evidence of TeamHealth Plaintiffs' Costs Was Irrelevant was Erroneous 27

E. The Court Erred by Prohibiting Evidence of How TeamHealth Plaintiffs Set their Billed Charges 29

F. The Court Erred by Preventing Evidence and Argumentation About TeamHealth Plaintiffs' Corporate Flow of Funds 33

G. The Court Erred By Permitting TeamHealth Plaintiffs to Discuss Their Policy Not to Balance Bill When Defendants Were Precluded From Collecting Discovery on this Topic 37

II. The Court's Motions *in Limine* Rulings Based on Issues that Arose at the Start of Trial were Also Erroneous and Merit a New Trial 39

LEWIS ROCA

016451

016451

016451

TABLE OF CONTENTS
(continued)

Page

A. The Court's Improper Exclusion of TeamHealth Plaintiffs' Reference to Their "Special Relationship" with Defendants in Their Prior Complaint is an Error of Law That Supports a New Trial 39

B. The Court Erred By Allowing TeamHealth Plaintiffs to Admit Evidence that is Beyond the Scope of This Lawsuit 43

Grounds for a New Trial Attributable to Errors Occurring During the Course of, or Lead-Up to, Trial 47

Introduction 47

Legal Argument 52

I. TeamHealth Plaintiffs' Trial Strategy Unabashedly Revolved Around Inflaming the Jury's Passions, Which Involved Attendant Errors That Are Also Independent Grounds for a New Trial 54

A. Error of Laws and/or Abuse of Discretion That Enabled TeamHealth Plaintiffs to Inflame the Passions of the Jury 56

1. Allowing TeamHealth Plaintiffs to Refer to Themselves as "the Health Care Providers" 56

2. Allowing TeamHealth Plaintiffs to Tell the Jury the Case is About Quality of Care in Nevada 59

3. Allowing TeamHealth Plaintiffs to Repeatedly Condition the Jury into Believing that More Money was Owed By Analogizing Their Services to the Value of Human Life 62

B. A New Trial is Required to Cure Opposing Counsels' Rampant Injection of Personal Opinion as to the Justness of Their Clients' Cause, the Credibility of Witnesses, or the Culpability of Defendants and Otherwise Inflaming the Jury's Passions 64

1. Liability Phase Misconduct. 64

2. Punitive Damages Phase Misconduct or Errors of Law. 81

II. Because The Court Errantly Allowed Defendants' First Amendment Rights to be Violated, TeamHealth Plaintiffs Were Able to Further Inflame the Passions of the Jury 85

A. Defendants Were Held Liable for First Amendment Activity that Should Have Been Precluded by the *Noerr-Pennington* Doctrine. 85

B. Numerous Documents Protected by the First Amendment Were Admitted into Evidence Without Proper Foundation. 89

C. Inflaming the Passion of the Jury Through Use of First Amendment Protected Activity was Central to TeamHealth Plaintiffs' Trial Strategy 90

016452

016452

016452

LEWIS ROCA

TABLE OF CONTENTS
(continued)

Page

III. Irregularity in the Proceedings, Abuse of Discretion, and Errors of Law that Require a New Trial....93

A. Because TeamHealth Plaintiffs' Were Permitted to Change Their Punitive Damages Theory Whenever They Saw Fit, Defendants Were Denied a Fair Trial. 94

1. Defendants' Trial Preparations were Unfairly Hampered When, Without Amending the Operative Complaint, TeamHealth Plaintiffs Expand Their Punitive Damages Theory One Week Before Trial....95

2. Defendants Were Denied a Fair Trial When This Court Allowed TeamHealth Plaintiffs to Change Their Punitive Damages Theory by Modifying the Joint Pre-Trial Memorandum Just Before Jury Deliberations. 96

B. Because the Jury was Impaneled Using an Irregular Peremptory Challenge Process, Defendants Were Denied a Fair Trial. 98

C. The Improper Admission of Evidence During the Liability Phase of Trial Requires a New Trial....101

1. The Court Improperly Pre-Admitted or Conditionally Admitted Numerous Exhibits. 101

2. The Court Improperly Admitted Numerous Exhibits that Lacked Foundation. 104

D. The Improper Admission of Evidence During the Punitive Damages Phase Requires a New Trial....110

1. A New Trial is Required Because Irrelevant Financial Information was Admitted....110

2. A New Trial is Required Because the Reprehensibility of Defendants' Conduct was Assessed Based on Material that Did Not Give Rise to Liability. 113

E. The Use of Deposition Testimony in this Case was Fraught with Irregularity, Abuse of Discretion, and Unfair Surprise. 115

1. TeamHealth Plaintiffs' Inappropriately Designated Multiple Weeks' Worth of Deposition Testimony To Ambush Defendants and Impede Their Trial Preparations. 115

2. Deposition Testimony Was Presented to the Jury In Violation of Nevada Law and Prejudiced Defendants....116

3. TeamHealth Plaintiffs Were Permitted to Impeach Defendants' Witnesses With Deposition Testimony in Violation of Nevada Law. 118

TABLE OF CONTENTS
(continued)

Page

IV. Defendants Were Denied a Fair Trial Because This Court Permitted David Leathers to Testify Despite TeamHealth Plaintiffs' Impermissible Trial By Ambush Tactics 120

A. A New Trial is Required Due to the TeamHealth Plaintiffs' Expert Being Able to Provide Damages Opinion Contained in an Untimely Expert Report 121

B. A New Trial is Required Because TeamHealth Plaintiffs' Expert was Allowed to Provide Damages Opinion that was First Disclosed Two Days Before Taking the Stand. 124

Grounds for a New Trial Based on Jury Instruction Errors 129

Introduction 129

Legal Argument 130

I. The Failure to Instruct the Jury on Theories Defendants were Entitled to, Resulted in an Abuse of Discretion and Affected Defendants' Substantial Rights. 130

A. Failure of Condition Precedent. 130

B. Unfair Claims Practices Act Definition of Insurer. 132

C. Failure to Exhaust Administrative Remedies Under the Prompt Pay Act. 133

D. The Failure to Instruct the Jury on All Theories That Defendants Were Entitled to Materially Affected Defendants' Substantial Rights. 135

II. The Jury was Given an Unwarranted, Erroneous Rebuttable Presumption Instruction 136

A. A Rebuttable Presumption Instruction was Not Warranted. 136

B. The Jury was Erroneously Instructed on the Rebuttable Presumption Under NRS 47.250(3). 142

Cumulative Error 147

Conclusion 147

016454

016454

TABLE OF AUTHORITIES

Page

Cases

Albert H. Wohlers & Co. v. Bartigs,
114 Nev. 1249, 969 P.2d 949 (1998) 133

Allstate v. Thorpe,
123 Nev. 565, 170 P.3d 989 (Nev. 2007) 134

Azucena v. State, 135 Nev. Adv. Op. 36, 448 P.3d 534 (2019) 52, 65

Banks v. Sunrise Hospital, 120 Nev. 822, 102 P.3d 52 (2004) 140

Bass-Davis v. Davis, 122 Nev. 442 (2006) ..... passim

Bayerische Motoren Werke Aktiengesellschaft v. Roth, 127 Nev. 122, 252 P.3d 649 (2011) 52

Bayview Loan Servicing v. Sterling at Silver Springs Homeowners Ass'n, 2020 WL 1275611
(D. Nev. Mar. 17, 2020) 106

Beazer Homes Nevada, Inc. v. Eighth Jud. Dist. Ct.,
120 Nev. 575, 97 P.3d 1132 (2004) 42

BMW of North America v. Gore, 517 U.S. 599 (1996) 112, 114

Boland v. Nev. Rock & Sand Co.,
111 Nev. 608, 894 P.2d 988 (1995) 146

Bongiovi v. Sullivan, 122 Nev. 556, 138 P.3d 433 (2006) 112

Boone v. Redevelopment Agency of San Jose, 841 F.2d 886 (9th Cir. 1988) 87

Born v. Eisenman, 114 Nev. 854, 962 P.2d 1227 (1998) 53

Broughton v. Saul,
2020 WL 1327401 (D. Nev. Mar. 3, 2020) 46

Butler v. State,
120 Nev. 879, 102 P.3d 71 (2004) 70, 124

Cain v. Price, 415 P.3d 25 (2018) 131

Carmickle v. Comm'r of Soc. Sec., 533 F.3d 1155 (9th Cir. 2008) 46

Centralian Controls Pty, Ltd. v. Maverick Int'l, Ltd., No. 1:16-CV-37, 2018 WL 4113400
(E.D. Tex. Aug. 29, 2018) 20

Certified Fire Prot. Inc. v. Precision Constr., 128 Nev. 371 (2012) 9

Children's Hosp. Central Cal. v. Blue Cross of Cal., 226 Cal. App. 4th 1260 (Cal. Ct. App.
2014) ..... passim

DeJesus v. Flick, 116 Nev. 812, 7 P.3d 459 (2000) 53

TABLE OF AUTHORITIES
(continued)

Page(s)

Diomampo v. State, 124 Nev. 414, 185 P.3d 1031 (2008) 99

Doe v. HCA Health Servs. of Tenn., Inc., 46 S.W.3d 191 (Tenn. 2001) 27

Earl v. State, 111 Nev. 1304 (1995) 55

Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961) 87

Echevarria v. Ruiz Hernandez, 364 F. Supp. 2d 149 (D.P.R. 2005) 20

Evan Hotels, LLC v. Unite Here Local 30,
433 F. Supp. 3d 1130 (S.D. Cal. 2020) 87

Fairbanks N. Star Borough v. Tundra Tours, Inc., 719 P.2d 1020 (Alaska 1986) 27

Farr Man Coffee Inc. v. Chester,
1993 WL 248799 (S.D.N.Y. June 28, 1993) 117

Finkelman v. Clover Jewelers Boulevard, Inc.,
91 Nev. 146, 532 P.2d 608 (1975) 136

Flamingo Realty, Inc. v. Midwest Dev., Inc.,
110 Nev. 984, 879 P.2d 69 (1994) 10

Ford v. State, 122 Nev. 796 (Nev. 2006) 104

Frank v. State,
94 Nev. 610, 584 P.2d 678 (1978) 105

Frias v. Valle, 101 Nev. 219, 698 P.2d 875 (1985) 105

Garmong v. Tahoe Regional Planning Agency, 2021 WL 412386 (D. Nev. Sept. 9, 2021) 86

Gen-Probe, Inc. v. Amoco Corp., 926 F. Supp. 948 (S.D. Cal 1996) 86

Georgia v. McCollum, 505 U.S. 42 (1992) 99

Glover v. Eight Judicial Dist. Court of Nev.,
220 P.3d 684 (Nev. 2009) 103

Guerrero v. Smith,
864 S.W.2d 797 (Tex. Ct. App. 1993) 103

Gunderson v. D.R. Horton, Inc., 130 Nev. 67, 319 P.3d 606 (2014) 4, 53, 64

Hall v. Ortiz,
Case No. 58042, 129 Nev. 1120 (Oct. 31, 2013) 19, 23

Harper v. Los Angeles, 533 F.3d 1010 (9th Cir. 2008) 4, 53, 147

Havas v. Bank of Nevada, 96 Nev. 567, 613 P.2d 706 (1980) 136

016456

016456

TABLE OF AUTHORITIES
(continued)

Page(s)

Hazelwood v. Harrah's,109 Nev. 1005, 862 P.2d 1189 (1993), overruled on other grounds by *Vinci v. Las Vegas Sands, Inc.*, 115 Nev. 243, 984 P.2d 750 (1999) 53

Hogan v. State, 103 Nev. 21, 732 P.2d 422 (1987) 52

IGT v. Alliance Gaming Corp., 2010 WL 4867555 (D. Nev. Nov. 29, 2010) 12

In re N. Cypress Med. Ctr. Operating Co., Ltd., 559 S.W.3d 128 (Tex. 2018) 10

In re W.N. Connell & Marjorie T. Connell Living Tr., Dated May 18, 1972, 437 P.3d 1057, 2019 WL 1450277 (Nev. March 29, 2019) 114

Ins. Co. of the W. v. Gibson Tile Co., 122 Nev. 455, 134 P.3d 698 (2006) 42, 43

Kasper Global Collection & Brokers v. Global Cabinets & Furniture Manu. Inc., 952 F. Supp. 2d 542 (S.D.N.Y. 2013) 106

K-Mart Corp. v. Washington, 109 Nev. 1180, 866 P.2d 274 (1993) 53

Koebke v. Koebke, 476 P.3d 926, 2020 WL 6955291 (Nev. App. Nov. 25, 2020) 9, 27

Las Vegas Network, Inc. v. B. Shawcross & Assocs., 80 Nev. 405, 395 P.2d 520 (1964) 40

Las Vegas Sands Corp. v. Suen, 2016 WL 4076421 (Nev. July 22, 2016) ..... passim

Ledbetter v. State, 122 Nev. 252, 129 P.3d 671 (2006) 103

Lioce v. Cohen, 124 Nev. 1, 174 P.3d 970 (2008) ..... passim

M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd., 124 Nev. 901 (2008) 5

MB Am., Inc. v. Alaska Pac. Leasing, 132 Nev. 78 (2016) 4, 53

McNamara v. State, 132 Nev. 606, 377 P.3d 106 (Nev. 2016) 146

MDB Trucking, LLC v. Versa Prod. Co., Inc., 136 Nev. Adv. Op. 72, 475 P.3d 397 (2020) 136, 144

Medo v. Superior Court, 205 Cal. App. 3d 64, 251 Cal. Rptr. 924 (1988) 113

MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc., 134 Nev. 235, 416 P.3d 249 (Nev. 2018) 130, 131, 134

Michaels v. Pentair Water Pool & Spa, 131 Nev. 804, 357 P.3d 387 (Nev. Ct. App. 2015) 145

016457

016457

TABLE OF AUTHORITIES
(continued)

Page(s)

Mishler v. McNally, 102 Nev. 625, 730 P.2d 432 (1986) 105

Moseley v. Eight Judicial Dist. Court, 124 Nev. 654, 188 P.3d 1136 (2008) 120, 122

Moser v. State, 91 Nev. 809, 544 P.2d 424 (1975) 42

Nelson v. Heer, 123 Nev. 217, 163 P.3d 420 (2007) 4, 53

Nev. Indep. Broad. Corp. v. Allen, 99 Nev. 404, 664 P.2d 337 (1983) 53

NGA #2 Ltd. Liability Co. v. Rains, 113 Nev. 1151, 946 P.2d 163 (Nev. 1997) 130

Nguyen v. Sw. Leasing & Rental Inc., 282 F.3d 1061 (9th Cir. 2002) 19, 23, 32

Notrica v. State Compensation Ins. Fund, 70 Cal. App. 4th 911, 83 Cal. Rptr. 2d 89 (1999) 113

Oltz v. St. Peter's Comm. Hosp., 861 F.2d 1440 (9th Cir. 1988) 12

Palmer v. Ted Stevens Honda, Inc., 193 Cal. Rptr. 363 (App. 1987) 146

Park v. Sierra Pac. Power Co., 78 Nev. 297 (1962) 102

Parodi v. Washoe Medical Center, 111 Nev. 365, 892 P.2d 588 (1995) 65

Perez v. State, 127 Nev. 1166, 2011 WL 4527520 (Sept. 29, 2011) 118

Pertgen v. State, 110 Nev. 554, 875 P.2d 361 (1994), abrogated on other grounds by *Pellegrini v. State*, 117 Nev. 860, 34 P.3d 519 (2001) 4, 53, 147

Pioneer Chlor Alkali Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pennsylvania, 863 F. Supp. 1237 (D. Nev. 1994) 43, 114

Pizarro-Ortega v. Cervantes-Lopez, 133 Nev. 261 (2017) 3, 130, 145, 147

Rives v. Farris, 138 Nev. Adv. Op. 17, __P.3d __ (March 31, 2022) 143, 144

Rodriguez v. State, 128 Nev. 155, 273 P.3d 845 (2012) 102

Rural Telephone Co. v. Public Utilities Commission, 133 Nev. 387, 398 P.3d 909 (2017) 42

Samsara Investments LLC Series #4 v. Carrington Mort. Servs., LLC, 488 P.3d 678, 2021 WL 2493878 (Nev. Ct. App. 2021) 143

Sanders v. Sears-Page, 131 Nev. 500, 354 P.3d 201 (Nev. Ct. App. 2015) 105, 120, 122

Select Portfolio Servicing, Inc. v. Dunmire, 456 P.3d 255, 2020 WL 466816 (Nev. Jan. 27, 2020) 105

016458

016458

TABLE OF AUTHORITIES
(continued)

Page(s)

Shanks v. First 100, LLC,
134 Nev. 1010, 2018 WL 6133885 (Nev. Ct. App. Nov. 23, 2018) 105

Shannon v. State, 105 Nev. 782 (1989) 55

Sosa v. DirectTV, Inc.,
437 F.3d 923 (9th Cir. 2006) 86, 87, 88

Sprouse v. Wentz,
105 Nev. 597, 781 P.2d 1136 (1989) 95, 96, 97, 98

Stackiewicz v. Nissan Motor Corp., 100 Nev. 443, 686 P.2d 925 (1984) 53

State Farm Ins. Co. v. Campbell, 538 U.S. 408 (2003) 111, 114

State Farm Mut. Auto. Ins. Co. v. Porter, 186 F.2d 834 (9th Cir. 1950) 40

State v. Eighth Judicial Dist. Court (Armstrong), 127 Nev. 927, 267 P.3d 777 (2011) 38, 55

State v. McClear, 11 Nev. 39 (1876) 100

State v. Pritchard, 15 Nev. 74 (1880) 100, 101

Temple Univ. Hosp., Inc. v. Healthcare Mgmt. Alts., Inc., 832 A.2d 501 (Pa. Super. Ct. 2003) 17

Theme Promotions, Inc. v. News Am. Marketing FSI, 546 F.3d 991 (9th 2008) 86

Thomas v. State, 114 Nev. 1127 (1998) 106

Trang v. Bank of George, 2022 WL 594832 (D. Nev. Feb. 28, 2022) 87

Trepel v. Roadway Exp., Inc., 194 F.3d 708 (6th Cir. 1999) 117

Turner v. Comm'r of Soc. Sec., 613 F.3d 1217 (9th Cir. 2010) 46

U.S. Fidelity & Guaranty Co. v. Peterson, 91 Nev. 617, 540 P.2d 1070 (1975) 42

United States v. E.I. dupont de Nemours & Co., 351 U.S. 377 (1956) 12

United States v. Komasa, 767 F.3d 151 (2d Cir. 2014) 106

United States v. Skillman, 922 F.2d 1370 (9th Cir. 1990) 38, 55

Video Int'l Prod. Inc. v. Warner-Amex Cable Comm., Inc.,
858 F.2d 1075 (5th Cir. 1988) 86

Wyeth v. Rowatt, 126 Nev. 446, 244 P.3d 765 (2010) 113

Yates v. State,
103 Nev. 200, 734 P.2d 1252 (1987) 55

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes

NRS 16.030(4) 99, 100
NRS 16.040(1) 100
NRS 175.051 100
NRS 42.005(3) 113
NRS 439B.160 44
NRS 439B.700 et seq 44
NRS 439B.754(5) 44
NRS 47.120 23
NRS 48.015 ..... 12, 17, 27
NRS 48.025(1) 27
NRS 48.095(1) 83
NRS 50.025 105
NRS 50.025(1)(a) 82
NRS 50.115(1)(a) 54, 116
NRS 50.115(1)(c) 57, 82
NRS 51.035 40
NRS 51.135 105
NRS 52.015 105
NRS 52.025 105
NRS 686A.330(2) 133
NRS 686A.520 133

Other Authorities

Advisory Committee Notes, NRCP 32 117

Barak D. Richman et al., Overbilling and Informed Financial Consent--A Contractual Solution, 367 NEW ENG. J. MED. 396 (2012) 17

016460

016460

TABLE OF AUTHORITIES
(continued)

Page(s)

Keith T. Peters, "What Have We Here? The Need for Transparent Pricing and Quality Information in Health Care: Creation of an SEC for Health Care," 10 J. HEALTH CARE L. & POL'Y 363 (2007) 10

Nev. Civ. J.I. 12 PD.2 ..... 82, 111, 114

Nev. J.I. 12.1 82

Nev. J.I. 2.5 146

S.B. No. 68, Comm. on Gov't Affairs, Ch. 62, AB 469, Legis. Counsel's Digest (approved May 14, 2019) 44

Rules

EDCR 2.67(b)(2) 97

NRCP 16.1(a)(2)(B)(i) 120

NRCP 16.1(a)(2)(F)(i) 120

NRCP 16.1(e)(3)(B) 126

NRCP 26(e) 120

NRCP 3.4(e) 55

NRCP 47(b) 100

NRCP 59(a)(1) 3, 52

NRCP 59(a)(1)(A) 4, 53, 130

NRCP 59(a)(1)(B) 52

NRCP 59(a)(1)(C) 53

NRCP 59(a)(1)(F) 53

NRCP 59(a)(1)(G) 3, 53, 130

NRPC 3.3(a)(1)-(2) 86

Treatises

Restatement (Third) of Restitution and Unjust Enrichment § 49 27

Restatement (Third) of Restitution and Unjust Enrichment § 49(3) 9

Regulations

42 C.F.R. § 405.502 13

016461

016461

Overview

The grounds for new trial asserted in this Motion are broadly categorized as follows: (1) those emanating from discovery errors; (2) those attributable to errors occurring during the course of, or lead-up to, trial; and (3) those based on jury instruction errors.[1] While these errors are cumulative of one another, this Motion will address those three categories in turn.

Grounds for a New Trial Emanating from Discovery Errors

Introduction

Defendants have been prejudiced at virtually every turn of this lawsuit. From the outset, the Court made numerous errors of law in its discovery orders. Those orders—which denied almost every single category of documents on which TeamHealth Plaintiffs[2] refused to produce documents, and on which Defendants moved to compel—prevented Defendants from obtaining documents and testimony that were critical to their defenses and relevant to TeamHealth Plaintiffs' causes of action.

When trial approached and the time came for the Court to rectify these mistakes through the parties' motions *in limine*, the Court failed to rectify those errors. Instead, it committed numerous evidentiary errors. Those evidentiary errors warrant a new trial under NRCP 59(a)(1)(G) because they constituted errors of law occurring at trial that substantially prejudiced Defendants—indeed,

016462

016462

[1] For internal *infra* and *supra* citations, these broad categories will be referred to as "Discovery Errors," "Course of, or Lead-Up to, Trial Errors," and "Jury Instruction Errors." For example, citations would appear as follows: *infra* Discovery Errors Section I.A.; or *supra* Course of, or Lead-Up to, Trial Errors Section I.A.1. This motion does not address every ground for new trial that may be raised on appeal, and Defendants do not waive any objection merely because of its omission from this motion. *See Rives v. Farris*, 138 Nev., Adv. Op. 17, at *10, ___ P.3d ___, ___ (Mar. 31, 2022) ("a party is not required to file a motion for a new trial to preserve the party's ability to request such a remedy on appeal for harmful error to which the party objected").

[2] 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").

they fundamentally eviscerated Defendants' defenses and deprived the jury of critical facts relevant to the case.

This Motion concerns two sets of motions *in limine* through which the Court committed errors of law that prejudiced Defendants from receiving a fair trial. ***First***, the Court mischaracterized and misapplied its discovery orders with respect to seven topics of evidence that were relevant to the parties' claims and defenses at trial:

1. Improper submission of claims;
2. Rates that are probative of the reasonableness of Defendants' rates and TeamHealth Plaintiffs' billed charges, including the parties' negotiations about entering into provider participation agreements;
3. Provider participation agreements that TeamHealth Plaintiffs had with Defendants and other payers;
4. TeamHealth Plaintiffs' costs of rendering the at-issue emergency medicine services;
5. How TeamHealth Plaintiffs set their billed charges;
6. TeamHealth Plaintiffs' corporate flow of funds; and
7. Absence of record evidence regarding TeamHealth Plaintiffs' balancing billing practices.

Through its motions *in limine* rulings, the Court improperly expanded or otherwise misinterpreted its prior discovery orders to prevent Defendants from presenting evidence and argument at trial that upend the central premise of TeamHealth Plaintiffs' case-in-chief: that Defendants' reimbursements of emergency medicine services rendered by physicians contracted by TeamHealth Plaintiffs were unreasonable. The areas of evidence denied (or, in the case of balance billing arguments, improperly admitted) all prejudiced Defendants and impeded their ability to support numerous affirmative defenses; evidence pertaining to those defenses would have allowed the jury to determine whether TeamHealth Plaintiffs' full billed charges under which TeamHealth

016463

016463

Plaintiffs sought reimbursement were unreasonable. But the Court's erroneous motions *in limine* decisions deprived the jury from considering such evidence.

Second, the Court also made two erroneous motions *in limine* rulings that did not directly concern its prior discovery orders but, ultimately, prejudiced Defendants:

8. Improper exclusion of evidence regarding reference from FAC regarding special relationship between TeamHealth Plaintiffs and Defendants; and
9. Improper inclusion of evidence regarding references to Defendants' conduct after the relevant time period for discovery and evidence.

These rulings prejudiced Defendants' ability to get a fair trial because they influenced the extent of damages that the jury awarded TeamHealth Plaintiffs, including punitive damages, that would not have been awarded but for the Court's erroneous rulings.

The Court's erroneous evidentiary rulings prevented them from presenting centrally relevant evidence relating to the claims and defenses in this lawsuit, including about how TeamHealth Plaintiffs set their full billed charges on which TeamHealth Plaintiffs sought damages; evidence about whether those full billed charges constituted "reasonable value"; evidence of TeamHealth Plaintiffs' prior network contracts with Defendants; evidence of TeamHealth Plaintiffs' decision to terminate those contracts as a negotiating strategy; and evidence that would have allowed Defendants to present alternative damages arguments to the jury. Indeed, the double standard created by many of the Court's evidentiary rulings created a patently unfair outcome that created lopsided evidence in TeamHealth Plaintiffs' favor, depriving Defendants of any iota of fairness throughout the trial. The Court should grant a new trial.

016464

016464

Legal Argument

A court may grant a motion for a new trial on various grounds "materially affecting the substantial rights of the moving party." NRCP 59(a)(1). Those grounds include among other things an "error in law occurring at the trial and objected to by the party making the motion." NRCP 59(a)(1)(G); *see Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 269 (2017); *Bass-Davis v. Davis*, 122 Nev. 442, 453 (2006). Additionally, a new trial may be granted if there was an "irregularity in the proceedings of the court, jury, master, or adverse party or in any order of the

court or master, or any abuse of discretion by which either party was prevented from having a fair trial." NRCP 59(a)(1)(A). An abuse of discretion can occur when the district court misinterprets controlling law. *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88 (2016); *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014) (holding that a decision made "in clear disregard of the guiding legal principles [can be] an abuse of discretion").

Moreover, courts are permitted to view errors that occurred cumulatively in order to grant a new trial. *Harper v. Los Angeles*, 533 F.3d 1010, 1030 (9th Cir. 2008) (cumulative effect of evidentiary errors basis for new trial). As the Nevada Supreme Court has observed, trial errors that in isolation can sometimes be characterized as "harmless" may, when considered together, prove to be sufficiently prejudicial that a new trial is required. *See, e.g.*, *Pertgen v. State*, 110 Nev. 554, 566, 875 P.2d 361, 368 (1994), abrogated on other grounds by *Pellegrini v. State*, 117 Nev. 860, 34 P.3d 519 (2001); *see also Nelson v. Heer*, 123 Nev. 217, 227, 163 P.3d 420, 427 (2007) (leaving open the question whether the doctrine of cumulative error applies in civil cases).

016465

I.
THE COURT'S EVIDENTIARY RULINGS THAT IT PURPORTED TO BASE ON PRIOR DISCOVERY RULINGS CONSTITUTED ERRORS OF LAW THAT DEPRIVED DEFENDANTS FROM RECEIVING A FAIR TRIAL

016465

A. DEFENDANTS WERE PREJUDICED BY THE COURT'S PROHIBITION OF EVIDENCE ABOUT TEAMHEALTH PLAINTIFFS' IMPROPER CODING AND CLAIMS SUBMISSIONS

In denying Defendants the ability to make a presentation on TeamHealth Plaintiffs' improper coding and claims submissions, the Court prevented Defendants from asserting one of their key defenses and presenting valuable evidence concerning the true and accurate TeamHealth Plaintiffs' services. The Court denied Defendants the opportunity to make this presentation and defense first when it denied discovery into TeamHealth Plaintiffs' clinical records, which can evidence of improper coding and claims submissions. And the Court expanded upon this error by denying Defendants the opportunity to present any evidence concerning claims submissions and coding practices at trial. For these reasons, Defendants are entitled to a new trial on all claims.

On October 26, 2020, the Court ruled that TeamHealth Plaintiffs' clinical records were not discoverable. October 26, 2020 Order at 6 ¶ 18. Specifically, the Court ruled that clinical records

were not relevant because there was no dispute as to whether the disputed claims were allowed and allowable at the CPT code submitted and later adjudicated. *Id.* As Defendants noted in their Opposition to TeamHealth Plaintiffs' MIL No. 3, Defendants did not seek to offer clinical records into evidence at trial. Defs.' Opp. to Pls.' MIL No. 3 at 6. Nevertheless, Defendants' position is that that Order—like virtually every order denying Defendants necessary evidence to defend their case—was incorrect and prejudiced Defendants by preventing them from obtaining clinical records during discovery, for the reasons stated in Defendants' September 21, 2020 Motion to Compel—namely, that without TeamHealth Plaintiffs' clinical records, Defendants were prejudiced throughout this lawsuit because they were unable to rebut TeamHealth Plaintiffs' claims that the services for which they seek additional reimbursement were actually performed as billed and whether there were errors in TeamHealth Plaintiffs' claims data.

The Court then erred once again by granting TeamHealth Plaintiffs' MIL No. 3 and preventing Defendants from introducing *any* evidence or argument a number of relevant topics that relate to the reasonableness of TeamHealth Plaintiffs' billed charges. Those topics include: (i) that the disputed claims were improperly reported and coded; (ii) that those claims were not even submitted to Defendants; and (iii) that the services billed in those claims were not emergency medicine services. Defs.' Opp. to Pls.' MIL No. 3 at 6-7. The Court did not explain its reason for expanding the scope of its October 26, 2020 Order from the discoverability of clinical records to *any* argumentation and evidence about TeamHealth Plaintiffs' improper coding and claims submissions. 10/19/21 Tr. 201:3-14.

While a court's decision to admit or exclude evidence is within its discretion, *M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913 (2008), the Court abused its discretion by improperly expanding the scope of its discovery order on clinical records, which had nothing to do with the admissibility of evidence or argumentation concerning TeamHealth Plaintiffs' improper coding, improper submissions, and submissions of non-emergency medicine services that do not rely on the clinical records. By prohibiting this evidence, Defendants were prejudiced by being prevented from presenting critical data that would have allowed the jury to determine whether TeamHealth Plaintiffs' full billed charges in fact represented the "reasonable

016466
016466

value" of the emergency medicine services and whether there are any disputed claims that should not have been included in this lawsuit. Defendants were also prejudiced because this evidence was critical to support Defendants' affirmative defenses, including their affirmative defenses that TeamHealth Plaintiffs' claims are subject to setoff and/or recoupment with respect to claims for which Defendants made payment on the basis of CPT or other billing codes and TeamHealth Plaintiffs' billed charges, that TeamHealth Plaintiffs submitted claims to the wrong entity, and that they have been unjustly enriched by being awarded damages for services that are out-of-scope. *See* Joint Pre-Trial Memorandum ("JPTO") at 7-9. And Defendants were further prejudiced because the jury was left with the impression that every disputed claim for which it awarded damages was within the scope of TeamHealth Plaintiffs' Second Amended Complaint ("SAC") when, in fact, Defendants were prevented from collecting discovery, and introducing evidence, concerning the improper coding and submission of health benefit claims.

First, a new trial is a warranted because Defendants were prevented from introducing evidence that TeamHealth and its affiliates engaged in a fraudulent scheme to "upcode" the disputed services and unjustly enrich themselves at Defendants' expense. Improper coding, or "upcoding," occurs when a healthcare provider submits a claim for a CPT code corresponding to a service with a higher reimbursement rate than that of the service that the provider actually rendered. The Centers for Medicare and Medicaid Services ("CMS") describes upcoding as "abuse" of the medical billing system that results in "improper payments." Exhibit to Defendants' Opp. to Plaintiffs' MIL No. 3 (hereinafter "Opp. Exhibit") 3, Medical Learning Network, Medicare Fraud & Abuse: Prevent, Detect, Report (Jan. 2021), at 7, https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Fraud-Abuse-MLN4649244.pdf.

Defendants sought to introduce expert testimony to demonstrate that TeamHealth and its affiliates disproportionately and systematically submitted claims coded at the highest intensity levels for purposes of inflating TeamHealth Plaintiffs' reimbursements from Defendants. MSJ Exhibit 41, Revised Initial Report of Bruce Deal, attached as Appendix C to August 31, 2021 Expert Rebuttal Report of Bruce Deal, ¶ 14, fig. 1 ("Deal Revised Rep."). By way of example, ***TeamHealth Plaintiffs' own expert witness***, Scott Phillips, agreed in his expert report that the

016467

016467

amount of reimbursement for the disputed claims is higher for claims coded at higher intensity levels, and his expert report documents his analysis of the coding intensity relating to the disputed claims. MSJ Exhibit 42, Expert Report of Scott Phillips ("Phillips Rep.") at 17, Ex. 4; *see also* Opp. Exhibit 1, August 31, 2021 Expert Rebuttal Report of Scott Phillips ("Phillips Rebuttal Rep.") at 9, Ex. 12; Opp. Exhibit 2, Dep. of Scott Phillips ("Phillips Dep.") at 189:24-190:13 (Sept. 17, 2021). Defendants also sought to use this evidence to support their Sixth Affirmative Defense, which alleges that "[s]ome or all of Plaintiffs' billed charges are excessive under the applicable standards." JPTO at 7 (Sixth Affirmative Defense). Such inflation is unquestionably probative of whether TeamHealth Plaintiffs' full billed charges on which TeamHealth Plaintiffs obtained damages represented the "reasonable value" of any given emergency medicine service rendered under an upcoded CPT code. Be it through TeamHealth and its affiliates' inflation of the charges billed through this fraudulent upcoding scheme, TeamHealth Plaintiffs were able to present a topline damages value to the jury that, in many instances, was tainted with CPT codes that did not correspond to the actual services they provided. Defendants were prejudiced, moreover, because such evidence would have been compelling in support of their affirmative defense that "TeamHealth Plaintiffs' claims are subject to setoff and/or recoupment with respect to claims … that TeamHealth Plaintiffs' clinical records of their patients' care reveal to have been improperly submitted, either because TeamHealth Plaintiffs' clinical records do not support submission of the codes at all, or because TeamHealth Plaintiffs' clinical records establish that different codes should have been submitted." JPTO at 9 (Twentieth Affirmative Defense).

Second, the Court prevented Defendants from presenting to the jury expert testimony that TeamHealth Plaintiffs sought damages for health benefit claims it improperly submitted—or never even submitted—to Defendants for reimbursement. Evidence presented at trial demonstrated that TeamHealth Plaintiffs did not submit 491 claims found in PX 473, the at-issue claims list created by TeamHealth Plaintiffs, to Defendants. 11/18/2021 Tr. 215:12-217:18, 218:14-23, 226:14-227:4, 254:8-12, 263:8-264:7.

Defendants should have been permitted to offer evidence that some of the disputed benefit claims for which TeamHealth Plaintiffs seek damages were not submitted to any Defendant and

016468

016468

allow TeamHealth Plaintiffs to consider reducing any topline damages figure by the amounts represented by these "non-Defendant" claims. Instead, the jury granted damages relating to the disputed claims in the aggregate, necessarily reflecting that Defendants were prejudiced because they were likely made to pay damages in connection with reimbursement claims that were never submitted to them and are therefore outside the scope of TeamHealth Plaintiffs' SAC. Evidence contesting that some of the disputed claims, or portions of those disputed claims, were not in the scope of this case was clearly relevant to Defendants' affirmative defense that "TeamHealth Plaintiffs' claims are barred, in whole or in part, to the extent TeamHealth Plaintiffs failed to sue the appropriate entity." JPTO at 8 (Eighteenth Affirmative Defense). Indeed, the Court's October 26 Order inhibited Defendants' experts' analysis of market analyses, coding trend analyses, and their examination of TeamHealth Plaintiffs' inflated billed charges. That October 26, 2020 Order—while in of itself err— says nothing whatsoever about the admissibility of evidence that TeamHealth Plaintiffs did not submit certain benefit claims to these Defendants; that Order dealt strictly with whether clinical records related to the disputed claims were discoverable.

Third, TeamHealth Plaintiffs sought to preclude any evidence or argumentation in their MIL No. 3 about TeamHealth Plaintiffs' submission of claims for non-emergency services. The Court granted that requested, once again based on the October 26 Order. *See generally* October 26, 2020 Order. Of course, the October 26 Order had to do with the discoverability of clinical records. But the Court prevented Defendants from introducing evidence from both of TeamHealth Plaintiffs' expert witnesses that some of the At-Issue Claims do not reflect any emergency services. *See* Opp. Exhibit 2, Phillips Dep. at 208:3–14; *id.* at 240:21–25; Opp. Exhibit 4, Dep. of David Leathers ("Leathers Dep.") at 241:16–24 (Sept. 15, 2021); *see also* Defendants' Omnibus Offer of Proof (Nov. 22, 2021) at 183-186. Because TeamHealth Plaintiffs' disputed claims spreadsheet did not break out each claim service-by-service, there was no way for the jury to separate how much of the billed charges were for emergency claims versus non-emergency claims. *See* Defs.' Objection to Report and Recommendation No. 7 at 9. Defendants should have been permitted to offer evidence and argumentation about this issue because TeamHealth Plaintiffs' themselves limited the allegations in the SAC to Defendants' payments for out-of-network emergency medicine services.

016469

016469

See SAC ¶ 15. Instead, Defendants were prejudiced because the jury very likely granted damages for non-emergency services, and Defendants therefore were unable to make arguments in support of their affirmative defense that TeamHealth Plaintiffs were "unjustly enriched." JPTO at 7 (Twelfth Affirmative Defense).

The jury may have returned a different verdict had they known that TeamHealth and its affiliates engaged in a fraudulent upcoding scheme related to claims at issue in this lawsuit, had they known that hundreds of underlying claims for reimbursement were never even submitted to any Defendant, or that hundreds of those claims were not even for emergency services. The Court's unjust and unfair refusal to allow Defendants to present relevant evidence warrants a new trial.

B. THE COURT ERRED BY PROHIBITING EVIDENCE AND ARGUMENTATION ON REIMBURSEMENT RATES THAT INFORM WHAT A WILLING BUYER AND SELLER WOULD CONSIDER REASONABLE

Starting with multiple discovery orders and continuing through trial, the Court has improperly restricted the evidence relevant to this "reasonable value" case. The Nevada Supreme Court, and other sources of precedent and authority, all contemplate a broad presentation of evidence touching on reasonable value. *See Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371 (2012). Factors that are routinely considered, set forth in the Restatement (Third) of Restitution and Unjust Enrichment—which Nevada has adopted, *Koebke v. Koebke*, 476 P.3d 926, 2020 WL 6955291, at *2 (Nev. App. Nov. 25, 2020), and which informs TeamHealth Plaintiffs' unjust enrichment cause of action—include the value of the benefit in advancing the purposes of the defendant, the cost to the claimant of conferring the benefit, the market value of the benefit, and a price the defendant has expressed a willingness to pay, if the defendant's acceptance of the benefit may be treated as valid on the question of price. Restatement (Third) of Restitution and Unjust Enrichment § 49(3); *see also Certified Fire*, 128 Nev. at 380 n.3 (citing the Restatement and noting that "market value" is relevant to liability in restitution). Indeed, it is well established that "reasonable value" encompasses many factors: the Nevada Supreme Court has held that prior contracts, offers, "market value," and "***any other evidence*** regarding the value of services," may be considered to determine the "reasonable value" of services. *Las Vegas Sands Corp. v. Suen*, 2016 WL 4076421, at *4 (Nev. July 22, 2016) (emphasis added). Yet the Court instead denied first

discovery and then presentation of evidence of the full panoply of evidence relevant to reasonable value. As a result the jury heard an improperly limited and slanted presentation of evidence that omitted many categories that the law requires. As a result, Defendants are entitled to a new trial.

This is a case about the reasonable value of Defendants' reimbursement rates of TeamHealth Plaintiffs' health benefit claims and whether TeamHealth Plaintiffs' full billed charges reflect reasonable value. Defendants should have been able to examine the reasonableness of TeamHealth Plaintiffs' full billed charges. By preventing any real argument or evidence about the factors that the jury could consider to determine whether TeamHealth Plaintiffs' charges were reasonable, the Court effectively sanctioned TeamHealth Plaintiffs' carte-blanche ability to set whatever rates they want, and demand that they be reimbursed the entirety of their charges, regardless of whether their full billed charges were reasonable in the first place. In other words, the jury was left with the impression that Defendants' reimbursement rates of those charges were unreasonable, despite evidence produced in this case that Defendants' reimbursement rates far exceeded what Defendants paid Fremont when they were in-network prior to the relevant time period for the current dispute.

016471

016471

Evidence of other rates that inform what a willing buyer and seller would pay for a service in a given market is clearly relevant to the reasonableness of TeamHealth Plaintiffs' billed charges. *Suen*, 2016 WL 4076421, at *4. For instance, "customary method[s] and rate[s] of compensation" may be considered when analyzing a service's "reasonable value." *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 110 Nev. 984, 988, 879 P.2d 69, 71 (1994). California and other courts are in accord. *E.g. Children's Hosp.*, 226 Cal. App. 4th at 1278, 172 Cal. Rptr. 3d at 875 ("All rates that are the result of contract or negotiation, including rates paid by government payors, are relevant to the determination of reasonable value."); *In re N. Cypress Med. Ctr. Operating Co., Ltd.*, 559 S.W.3d 128, 132–33 (Tex. 2018) (examining multiple cases that look at factors other than the charge itself when evaluating the reasonableness of billed charges); *see also* Keith T. Peters, "What Have We Here? The Need for Transparent Pricing and Quality Information in Health Care: Creation of an SEC for Health Care," 10 J. HEALTH CARE L. & POL'Y 363, 366 (2007) ("The price of a particular provider's services depends on many factors including geography, experience, location, government payment methods, and the desire to make a profit."). Ultimately, the most probative evidence is

that which reveals "the price that would be agreed upon by a willing buyer and a willing seller negotiating at arm's length." *Children's Hosp. Central Cal. v. Blue Cross of Cal.*, 226 Cal. App. 4th 1260, 1275 (Cal. Ct. App. 2014).

Moreover, this evidence was relevant because TeamHealth Plaintiffs placed Defendants' state of mind at issue. In particular, counsel for TeamHealth Plaintiffs have sought a broad scope of admissible evidence for "state of mind, which is always relevant with respect to punitive damages." Tr. 10/22/2021 119:15–17 (argument of K. Gallagher). That places squarely at issue whether Defendants believed the rates they paid were reasonable or whether low rates were paid with a malicious and oppressive intent to harm TeamHealth Plaintiffs. Yet the Court prevented evidence or argumentation concerning what Defendants believe to be a reasonable rate of payment, why Defendants believe that to be a reasonable rate, and how Defendants calculate a reasonable rate of payment, in a case where a central issue is Defendants' state of mind when Defendants set a rate of payment for 11,584 claims for reimbursement.

016472

Defendants should have been permitted to present evidence and argumentation that could have provided the jury with bases for comparing TeamHealth Plaintiffs' inflated and unreasonable charges to charges for similar services in the market, including the amounts that TeamHealth Plaintiffs themselves routinely accept from other health insurers for the exact same services as the disputed claims. This includes (i) amounts that they routinely accept through Medicare, and (ii) amounts that they contractually agreed to accept from other health insurers, including many of Defendants' primary competitors. (The amounts that Fremont agreed to accept in previously agreed-to provider participation agreements with Defendants are also probative of whether Defendants' reimbursement rates for the disputed claims, *see infra* at I.C.) Defendants were therefore prejudiced by the Court's prohibition on argumentation about this relevant evidence that would have supported numerous of Defendants' affirmative defenses, including their defense that "[s]ome or all of TeamHealth Plaintiffs' billed charges are excessive under the applicable standards." JPTO at 8 (Sixth Affirmative Defense). And Defendants were prejudiced by the Court preventing them from introducing their expert witness testify about the relevance of Medicare and

016472

in-networks rates to determine the relevant market, which is central to the reasonableness of Defendants' rates.[3]

1. Rates Offered Through the Parties' Network Negotiations, Including Medicare Rates

On November 9, 2020, the Court ruled that TeamHealth Plaintiffs should not produce claims data relating to Medicare and Medicaid reimbursements. Nov. 9, 2020 Order ¶ 4. In so holding, this Court expressly stated that "[n]otwithstanding the foregoing, the Court does not make any admissibility ruling" regarding Medicare rates. *Id.* The Court then misunderstood that Order when at trial it granted TeamHealth Plaintiffs' request through their MIL No. 3 to preclude *all* evidence or argumentation that Medicare informs what a willing buyer and seller would consider reasonable reimbursement, that Medicare functions as a prime rate in the health care industry, and that Defendants' official corporate position was that reasonable value is Medicare plus a small margin. *See* 10/19/21 Tr. 208:21-209:2.

016473

This determination was erroneous because evidence of Medicare and Medicaid rates[4] satisfy the low burden for relevant evidence at trial. NRS 48.015 (relevant evidence is any evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence"). As noted above, "[a]ll rates that are the result of contract or negotiation, including rates paid by government payors, are relevant to the determination of reasonable value." *Children's Hosp.*, 226 Cal. App. 4th at 1278. In a case predicated on a breach of the implied-in-fact contract that TeamHealth Plaintiffs argued was formed based on rates that the parties negotiated as a percentage of Medicare, it simply makes no sense that Defendants were prevented from arguing that Medicare rates are a relevant metric that

[3] In the antitrust context, the relevant market is composed of products or services "that have reasonable interchangeability for the purposes for which they are produced – price, use and qualities considered." *Oltz v. St. Peter's Comm. Hosp.*, 861 F.2d 1440, 1446 (9th Cir. 1988); *IGT v. Alliance Gaming Corp.*, 2010 WL 4867555, at *3 (D. Nev. Nov. 29, 2010) (quoting *United States v. E.I. dupont de Nemours & Co.*, 351 U.S. 377, 404 (1956)).

[4] This includes evidence of managed Medicare and Medicaid reimbursement rates. The Court's November 9, 2020 Order specifically rejected a sentence from TeamHealth Plaintiffs' proposed order suggesting that managed Medicare and Medicaid reimbursement rates are "unrelated" to TeamHealth Plaintiffs' claims. November 9, 2020 Order ¶ 4.

factors into reasonableness. Indeed, ***TeamHealth Plaintiffs conceded that the Medicare fee schedule informed TeamHealth's setting of the at-issue charges.*** Opp. Exhibit 54, Dep. of Kent Bristow ("TPN NRCP 30(b)(6) Dep.") at 283:21-284:6.

Indeed, there is an enormous bulk of evidence in the record that TeamHealth Plaintiffs used Medicare rates as the basis for their negotiations with Defendants relating to a new network participation agreement. *See, e.g.*, MSJ Exhibit 41, Deal Revised Rep. ¶ 31, n.63; *see also* Opp. Exhibit 5, FESM003066; Opp. Exhibit 6, FESM000662–664; Opp. Exhibit 7, DEF010896; Opp. Exhibit 8, FESM003226–228. They also routinely used Medicare in their internal correspondence as a benchmark for measuring their collection rates and revenue, and even demanded that Defendants express their contractual offers as a percentage of Medicare. *E.g.*, Opp. Exhibit 9, FESM004086; Opp. Exhibit 5, FESM003066; Opp. Exhibit 10, FESM003782–83; Opp. Exhibit 11, FESM004193–95. They even budgeted their operations based on Medicare rates. *See* Opp. Exhibit 12, FESM010333; Opp. Exhibit 13, FESM003382; Opp. Exhibit 14, FESM004080; Opp. Exhibit 15, FESM000357 at 359. That TeamHealth Plaintiffs relied on Medicare rates to set their billed charges is no surprise—there are regulations dedicated to setting forth external factors that may be used by Medicare providers to determine whether a billed charge is reasonable. *See* 42 C.F.R. § 405.502 ("The law allows for flexibility in the determination of reasonable charges to accommodate reimbursement . . . ."). Accordingly, in numerous instances at trial, John Haben for Defendants testified about the importance of Medicare to Defendants' reimbursement rate determinations, yet neither he nor any other witness were permitted to explain that importance for the jury. *See* 11/10/2021 Tr. at 37:3-6 ("Q: What is United's view about how to determine a reasonable value of an out-of-network service? A: We will look at Medicare and we will pay above that with a reasonable premium above that."); *id.* at 39:4-10 ("Q: And what is the amount of the plaintiffs' bill charges when expressed as a percentage of the Medicare rate? A 763 of Medicare. Q And then what is the amount, of the allowed amount for the amount that United pay for these disputed claims when expressed as a percentage amount here? A 164 percent of Medicare."); *id.* at 113:16-116:12; 117:6-13; 117:24-118:3 (discussing Walmart Plan Document that contemplates OON ER reimbursement at 125% of Medicare); 137:15-23 (testimony about the egregious biller program, which was targeted

016474

016474

at 500% of Medicare initially); 159:14-25 (testimony regarding the % of Medicare for Benchmark Pricing).

Defendants' reference to Medicare rates was also central to their defense against TeamHealth Plaintiffs' claim under NRS 686A.310(1)(e) because the fact that Defendants reasonably set rates at Medicare plus a small margin is relevant to whether any of Defendants "fail[ed] to effectuate prompt, fair and equitable settlements of claims in which liability of the insurer ha[d] become reasonably clear." Defendants were prevented from pointing to Medicare rates—or any of the other metrics discussed in this Motion that Defendants considered when setting their reimbursement rates for the disputed claims—to demonstrate that they had an honest, consistent, and reasonable internal operating practice for determining a reasonable rate goes to whether Defendants were fair and equitable in settling claims. Likewise, that Defendants had an internal and consistent understanding that a reasonable rate of payment was the Medicare rate, plus a small percentage, would have been relevant for the jury to determine whether Defendants intended to enter into an implied-in-fact contract to pay full billed charges.

016475

As a result of the Court's erroneous ruling with respect to Medicare rates, Defendants were prejudiced by being prevented from explaining to the jury a key metric to which all parties referred when determining what they believed were reasonable rates of reimbursement. This prejudice was conspicuous throughout trial, as the amounts to which TeamHealth Plaintiffs believed they were entitled as a percentage of Medicare was ubiquitously discussed at trial, yet Defendants were hampered in their ability to rebut relevant testimony. To name just a few examples, Scott Ziemer testified about how the "overwhelming majority of providers" were paid up to a benchmark price of 500% of Medicare "to see what the market reaction was" before they would determine whether to lower that benchmark price. Defendants were prejudiced by Mr. Ziemer being prevented from providing details about the reasonableness of Defendants' benchmark pricing program that relied on Medicare rates, themselves an important benchmark for Defendants' state of mind regarding the reasonableness of their rates. *See* 11/16/2021 Tr. at 39:9-24. Likewise, TeamHealth Plaintiffs were permitted to introduce TeamHealth Plaintiffs' Exhibit 92, a document talking about an "initiative to start speaking in terms of Medicare," to examine John Haben. But the Court admitted the document

despite Mr. Haben's stated lack of sufficient personal knowledge about the document; the Court recognized that information for the document would have come from a different group not under Mr. Haben's purview because it described programs that Mr. Haben was in charge of, including target dates for when programs would go into effect. 11/3/2021 Tr. at 150:17-152:18. Accordingly, the jury heard testimony from Mr. Haben that could not accurately frame the importance of Medicare to Defendants' reimbursement rate determinations.

Similarly, TeamHealth Plaintiffs were allowed to introduce TeamHealth Plaintiffs' Exhibit 12 and elicit testimony from Mr. Haben about Defendants' initiatives that relied on Medicare. 11/2/3021 Tr. at 127:25-8. ("Q: Well, didn't United have an initiative internally that you were going to start changing the language, and instead of talking about -- did United have an internal program initiative in connection with this media outreach that going forward, we're not going to talk about how much of a reduction there is off of billed charges, we're going to convert it and talk about percentages of Medicare because the general public will think 250 percent or 500 percent of Medicare is egregious? Did United have that initiative? A: That's incorrect."). However, Defendants were prohibited from introducing evidence about how TeamHealth Plaintiffs negotiated their own in-network contracts with Defendants and other payors in terms of percentages of Medicare and how frequently TeamHealth Plaintiffs and other providers accepted rates at different percentages of Medicare. This allowed TeamHealth Plaintiffs to paint Defendants' usage of Medicare rates as a nefarious tactic, when in reality, expressing payment rates as a percent of Medicare is industry standard.

Perhaps the clearest example of prejudice that Defendants faced as a result of the Court's erroneous ruling is that Defendants' expert, Bruce Deal, was prevented from effectively testifying about the effect of Medicare rates on "reasonable value," including that Medicare serves as an important benchmark for evaluating reasonable value and comparing different methods of reimbursement on an apples-to-apples basis. It is true that Mr. Deal was permitted to discuss the fact that Defendants paid a "premium" on top of the Medicare amount, that he used Medicare as a comparator for his "reasonable value" calculations, and that he made comparisons of FAIR Health values to Medicare rates. *E.g.* 11/18/2021 Tr. at 85:10-25; 102:8-103:14; 106:7-12, 121:10-122:3,

149:9-156:6, 193:14-21. But this testimony was superficial: Mr. Deal was prevented from opining on necessary details about these issues, including *why* Medicare is a good comparator, or *why* commercial insurers pay a "premium" to Medicare. At most, Mr. Deal was permitted to testify that comparing reimbursement rates to Medicare rates is "the standard approach for lots and lots of studies involving any type of payment analysis." *Id.* at 121:10-122:3. Likewise, Mr. Deal testified that Medicare "is an objective [] payment methodology" that is a common industry standard to use as a comparator. 11/19/2021 Tr. at 62:15-23 ("Medicare is an objective [] payment methodology, and so it's very, very common for an analysis to look at a premium to Medicare."). Yet because of the Court's ruling, Mr. Deal was precluded from explaining why these facts are true and how these facts about Medicare are probative of the reasonableness of TeamHealth Plaintiffs' billed charges and Defendants' reimbursement rates.

The Court's motion *in limine* order on this area of evidence prevented Defendants' witnesses from completely answering questions concerning the process by which Defendants set rates, why they set those rates, or Defendants' state of mind in setting rates. Because Defendants describe rates internally and externally using the currency of "% of Medicare"—as do TeamHealth Plaintiffs—Defendants' witnesses were prevented from even answering questions regarding what a reasonable rate of payment is. Indeed, the very contracts that Defendants sign with emergency room providers, including TeamHealth Plaintiffs, often set forth reimbursement by describing a percentage of Medicare, rather than in dollars. In effect, the Court's orders preventing the parties from describing rates in terms of "% of Medicare" would be like omitting the term "dollars" or the $ symbol from a case involving monetary damages. Indeed, Defendants were prevented from admitting plenty of testimony they procured from depositions demonstrating that Medicare rates are a relevant benchmark for the reasonable value of the emergency medicine services for which TeamHealth Plaintiffs billed Defendants, the reasonableness of the reimbursement paid by Defendants on the disputed claims, and the parties' state of mind during the relevant time period. *See* Defendants' Omnibus Offer of Proof (Nov. 22, 2021) at 178-182.

2. In-Network Rates with Other Payors

A new trial is also warranted because the Court prevented Defendants from introducing

016477

evidence of TeamHealth Plaintiffs' in-network reimbursement data and rates that *they themselves produced* with health insurers other than the Defendants. *E.g.* Opp. Exhibit 20, FESM001548 (TeamHealth Plaintiffs' market data); *see also* Opp. Exhibit 21, FESM016202 (email correspondence describing agreements with payors); Opp. Exhibit 22, FESM008903 (presentation describing in-house rates with Blue Cross/Blue Shield). Specifically, the Court denied Defendants' MIL Nos. 1 and 2 and granted TeamHealth Plaintiffs' MIL No. 3 (10/19/21 Tr. 214:2-9) based on the Special Master's Report and Recommendation No. 5 that denied Defendants' motion to compel particular types of non-commercial and in-network data.

This was wrong. In a healthcare rate payment dispute like this one, "the scope of the rates accepted by or paid to [a medical provider] by other payors [or insurers] indicates the value of those services in the marketplace" and is therefore relevant to the "reasonable value" analysis. *Children's Hosp.*, 226 Cal. App. 4th at 1275; *see also Temple Univ. Hosp., Inc. v. Healthcare Mgmt. Alts., Inc.*, 832 A.2d 501, 508–10 (Pa. Super. Ct. 2003) (finding that the "reasonableness" of payments is based on "what the services are ordinarily worth in the community"); Barak D. Richman et al., Overbilling and Informed Financial Consent--A Contractual Solution, 367 NEW ENG. J. MED. 396, 397 (2012) (the "best proxy for informed bargaining is what similarly situated consumers and providers actually bargain for--namely, the rates negotiated between providers and private insurers"). There can be no meaningful dispute that evidence of TeamHealth Plaintiffs' network contracts with other payors satisfies Nevada's standard for relevant, admissible evidence at trial because it would have made the existence of the fact that TeamHealth Plaintiffs' charges to Defendants were inflated more probable to the jury. NRS 48.015. That evidence would have been probative of the amounts that TeamHealth Plaintiffs were willing to accept in an arm's-length negotiation.

The record was full of such evidence. For example, Defendants would have argued to the jury the fact that TeamHealth negotiated and accepted far lower reimbursement payments with another major health insurance company, Blue Cross/Blue Shield ("BCBS"). Opp. Exhibit 23, FESM008947 (TH-United Contribution and Comparison Report); Opp. Exhibit 24, DEF525474 (TeamHealth Presentation, Emergency Medicine (Apr. 2019)). TeamHealth Plaintiffs produced documents about their rates with BCBS, which they prepared and delivered to a senior executive of

016478
016478

UHS in 2019 as part of network contract negotiations with United. *See, e.g.*, Opp. Exhibit 23, FESM008947 (April 2019 report reflecting BCBS rate ($251 per visit) compared to United proposal ($445 per visit)); Opp. Exhibit 22, FESM008903 at 914 (April 2019 TeamHealth presentation featuring chart reflecting BCBS reimbursement rates from 2015 to 2018, all expressed as a percentage of Medicare fee schedule). TeamHealth provided these documents to Defendants before this lawsuit was filed, in connection with a key meeting between TeamHealth senior executives and a senior executive at UHS that was organized by the Blackstone Group and held at its offices in New York City, to explain TeamHealth's cost structure, revenue needs, and the amounts that TeamHealth would accept as reimbursement. Opp. Exhibit 16, Dep. of David Schumacher ("Schumacher Dep.") at 217:4–19; Opp. Exhibit 25, DEF011058 (April 15, 2019 email from TeamHealth's Murphy to UHC's Schumacher, "attaching some background material on our TeamHealth/UHG relationship"). To pick just another example, subsequent to terminating their network agreement with UHIC, Fremont entered into a direct agreement with MGM Resorts International, a large employer in the Las Vegas area and Defendant UMR's client for self-funded claim administration, to accept an "all-inclusive case rate of $320.00" per visit for the same services in the same geography as the at-issue services, but at a far lower rate than TeamHealth Plaintiffs are demanding in this lawsuit. Opp. Exhibit 26, DEF011280 (MGM Resorts Health and Welfare Plan Participating Provider Agreement (Feb. 27, 2019)); Opp. Exhibit 27, DEF011294 (Amendment No. 1 to the MGM Resorts Health and Welfare Plan Participating Provider Agreement (May 29, 2020)). To be clear, while TeamHealth Plaintiffs on the one hand agreed to that rate in a direct contract with Defendant UMR's customer, MGM, *for much of the same time period at issue in this lawsuit*, they are, on the other, claiming that the same amount or even greater amounts *are not* reasonable for Defendants or Defendants' other Las Vegas self-funded clients. *See, e.g.*, PX 473 at Rows 205, 1588, 1593, 1599, 1601, 1606, 2222, 4696, 4698, 4700, 4701, 4707, 4708, 4711, 4767, 4770, 4771, 4775, 4778, 4779, 4781, 4782, 4785, 4787, 4788, 6877 (listing multiple disputed claims with allowed amounts exceeding $320 per visit for employers including Walmart, Coca Cola, and Caesars Enterprise Services, LLC). The jury should have been permitted to hear this damning evidence.

016479

016479

At trial, Defendants would have introduced evidence and argumentation on their position throughout this case, as well as in the ordinary course of business, that the fair market value for out-of-network services is the Medicare rate plus a small margin. *See, e.g.*, Opp. Exhibit 17, May 21, 2021 Dep. of John Haben ("Haben Dep.") at 57:13–22; Opp. Exhibit 16, Schumacher Dep. at 70:1–8. This claims data—which TeamHealth Plaintiffs produced to Defendants—corroborates Defendants' position. MSJ Exhibit 41, Deal Revised Rep. ¶ 97 nn. 168 & 169. It is clearly unfair that Defendants were prohibited from putting on evidence and argument about their position on the fair market value for out-of-network services that led to the supposed implied-in-fact contract that formed the basis of TeamHealth Plaintiffs' SAC. And this position is more than reasonable: Defendants' expert, Bruce Deal, was prevented from testifying that in-network reimbursement rates are not only relevant to measuring the reasonable value of out-of-network claims, but that they are the *only* economically appropriate basis for comparison. MSJ Exhibit 41, Deal Revised Rep. ¶¶ 56–57, 61–62; *id.* ¶¶ 43–46; *see also* Defendants' Omnibus Offer of Proof (November 22, 2021) at 182-183. Additionally, TeamHealth Plaintiffs' counsel were allowed to insinuate that Defendants' programs that relied on multipliers of Medicare were "unilaterally selected," while Defendants were precluded from introducing evidence about how these programs were in fact tied to percentages of Medicare well over fair market value. 11/3/2021 Tr. at 166:18-21; 11/9/2021 Tr. at 131:23-132:8.

The Court's blanket exclusion of this evidence was particularly prejudicial in that the Court allowed TeamHealth Plaintiffs to introduce evidence of contractual rates that *Defendants* pay to other providers of emergency medicine services, as evidence in support of their claims of underpayment. *See, e.g.*, Opp. Exhibit 16, Schumacher Dep. at 57:24–63:18, 68:23–70:16, 154:11–192:6, 260:22–263:14. This outcome prevented Defendants' witnesses from explaining to the jury their own historical and contemporaneous understanding of the proper reimbursement for out-of-network services and what they consider to be a reasonable value for such services. This double standard is not only unfair, but reversible: if one party is permitted to introduce certain evidence—whether or not that evidence is relevant—the opposing party must be permitted to introduce evidence explaining it. *Nguyen v. Sw. Leasing & Rental Inc.*, 282 F.3d 1061, 1068 (9th Cir. 2002); *see also Hall v. Ortiz*, Case No. 58042, 129 Nev. 1120 (Oct. 31, 2013) (applying the same doctrine

016480
016480

under Nevada law). Put another way, courts have also recognized that exclusion of one party's certain evidence requires the exclusion of the other party's similar evidence. *See, e.g.*, *Centralian Controls Pty, Ltd. v. Maverick Int'l, Ltd.*, No. 1:16-CV-37, 2018 WL 4113400, at *5 (E.D. Tex. Aug. 29, 2018) (applying the idiom "what is sauce for the goose is sauce for the gander" to preclude either party's expert from offering testimony not specifically set forth in written reports).

To be clear, Defendants should have never been prevented from obtaining this evidence in the first place. TeamHealth Plaintiffs used Report and Recommendation No. 5 as a basis for refusing to produce this evidence. For the reasons explained above, that Report and Recommendation, and the Court's September 21, 2021 affirmance of that Report and Recommendation, erred because that data was relevant and necessary for Defendants to demonstrate that the rates for reimbursement that TeamHealth Plaintiffs sought for individual services was not reasonable. And the Court's trial ruling misinterpreted its September 21 affirmance by expanding Report and Recommendation No. 5 from preventing particular types of market data to *all* in-network data being inadmissible at trial.

016481

Defendants were therefore prejudiced at trial by the Court's errors of law preventing Defendants from admitting evidence of the market data produced by the TeamHealth Plaintiffs, as well as discrete network contracts that they had with other payors during the period in dispute, because such data and contracts are relevant as a matter of Nevada law. While not conclusive, that evidence constitutes clearly probative evidence of the price for which they are willing to sell their services and for which other payors or insurers are willing to pay. The Court's *in limine* rulings prevented Defendants from receiving a fair trial by constructing a one-way street whereby the jury overwhelmingly only heard evidence about the reasonableness of Defendants' reimbursement rates, without any consideration as to the reasonableness of *TeamHealth Plaintiffs' charges*. This manner of "grotesquely lopsided" evidence warrants a new trial. *See Echevarria v. Ruiz Hernandez*, 364 F. Supp. 2d 149, 152 (D.P.R. 2005).

C. THE COURT ERRED BY PREVENTING EVIDENCE ABOUT PROVIDER PARTICIPATION AGREEMENTS

Through pretrial discovery orders and at trial, the Court denied access to a critical category of evidence that would have provided the jury important evidence of reasonable value. Evidence of

the parties' course of dealing—including what Defendants paid TeamHealth Plaintiffs—would have been relevant to the implied contract claim and what is a reasonable value for an underlying claim for reimbursement. Likewise, what TeamHealth Plaintiffs accepted from other payors would be relevant under Nevada law to set reasonable value. That is because evidence of the TeamHealth Plaintiffs' prior agreements with certain Defendants is key to understanding the parties' prior course of dealing, from which TeamHealth Plaintiffs allege arises an implied-in-fact contract between the parties. Indeed, prior contracts are relevant to the reasonableness of subsequent rates as a matter of Nevada law, *Suen*, 2016 WL 4076421, at *4, as evidence of the parties' course of dealing and course of performance. And evidence of TeamHealth Plaintiffs' agreements with other payors besides Defendants—*evidence that they themselves produced*—is also relevant because it is informative of the TeamHealth Plaintiffs' view of what constitutes the reasonable value of the emergency medicine services that they bill for. The market data produced by TeamHealth Plaintiffs revealed that the rates they accepted from other payors was dramatically less than what they sought in this case. 11/19/2021 Tr. 188:3-9. That is clearly probative of the reasonableness of Defendants' reimbursement rates, *see Certified Fire*, 128 Nev. at 380 ("market price" is a relevant metric in unjust enrichment actions), yet the jury was deprived of this evidence.

016482

016482

The Special Master's Report and Recommendation No. 2, and the Court's adoption of that Order, sustained TeamHealth's and CollectRx's objections to Defendants' subpoena duces tecum seeking the parties' contracts (*i.e.*, provider participation agreements) and TeamHealth Plaintiffs' provider participation agreements with other healthcare payors. August 9, 2021 Order regarding Report and Recommendation No. 2 ¶ 9(e). Based on a misunderstanding of that Order, which only dealt with a subpoena duces tecum to non-parties, the Court granted TeamHealth Plaintiffs' MIL No. 3 and held that these provider participation agreements were inadmissible.

Like the Court's erroneous rulings regarding the admissibility of the Medicare rates and in-network rates with other providers, the Court's preclusion of evidence and argumentation about TeamHealth Plaintiffs' agreements with Defendants and other payors—agreements that laid out the rates on which TeamHealth Plaintiffs agreed to base their charges—was an error of law. Defendants were therefore prejudiced by the Court's prohibition on argumentation about this relevant evidence

that, like evidence of Medicare rates and in-network rates with other payers that informed TeamHealth Plaintiffs' charge setting, would have supported numerous of Defendants' affirmative defenses, including their defense that "[s]ome or all of TeamHealth Plaintiffs' billed charges are excessive under the applicable standards." JPTO at 8 (Sixth Affirmative Defense). Indeed, Defendants elicited voluminous testimony from John Haben, Kent Bristow, and Vince Zuccarello during their depositions that Defendants were prohibited from probing at trial. *See* Defendants' Omnibus Offer of Proof (November 22, 2021) at 108-156.

1. The Contracts that Were in Place Between Fremont and Various Defendants Prior to the Period in Dispute Are Relevant to the Claims and Defenses in this Litigation

"[I]n an action for the reasonable value of services, a written contract providing for an agreed price is admissible in evidence" and may be used to "demonstrate the value of the services rendered." *Children's Hosp.*, 226 Cal. App. 4th at 1274. The factfinder can only determine the "going rate" of a service by "accept[ing] a wide variety of evidence" to determine the "reasonable value" of the services. *Id.* Thus, relevant evidence includes among other things: (i) a party's testimony "as to the value of [its] services"; (ii) a party's "agreements to pay and accept a particular price"; (iii) a "price agreed upon by the parties," including in "a written contract"; and, (iv) a "professional's customary charges and earnings." *Id.* (internal citations omitted).

Given the SAC's repeated allegations about the parties' negotiations and contracts preceding and during the period in dispute are relevant to the "reasonable rate" for the claims at issue, *e.g.*, SAC ¶¶ 16, 31, 39, 46 and given the legal relevance of this information to the "reasonable value" of the full billed charges, *Suen*, 2016 WL 4076421, at *4, what a plaintiff offered to accept as payment for those services cannot logically be irrelevant to a dispute about the reasonable value of those same services. These allegations make relevant the rates that pre-dated the negotiations and from which the parties were negotiating a new potential agreement, as well as the rates that were exchanged during the course of these negotiations. Prior to the period in dispute, Fremont was a long-standing participating provider with UHC, UHIC, Sierra and HPN. MSJ Exhibit 41, Deal Revised Rep. ¶¶ 97–98. Then, after TeamHealth terminated those contracts in June 2017 and February 2019, the parties continued to negotiate over a new agreement, and TeamHealth offered

016483

016483

to contract at various reimbursement rates well below their billed charges. Opp. Exhibit 42, FESM001217 (email offering up to 300% of Medicare).

The Court's error of law resulted in a glaring absence of historical context for the rate dispute at the heart of the trial. Numerous witnesses at trial testified about the parties' contract renewal negotiations and Fremont's termination of its contracts with Defendants. For example, both John Haben and Rebecca Paradise were asked whether they "set 350 percent of Medicare as a rate that you were paying at first in order to slash reimbursement, and then you slashed it again to 250 percent of Medicare," yet they were prevented from discussing the fact that Defendants' rates of reimbursements to Fremont actually went up after Fremont terminated its contract with Defendants. 11/15/2021 Tr. at 144:14-145:17.

Furthermore, the Court errantly disregarded Nevada's rule of completeness, NRS 47.120(1), and allowed TeamHealth Plaintiffs to present select, favorable portions of PX 313 by redacting all reference to prior contracts and TeamHealth Plaintiffs' decision to terminate those contracts. 11/16/2021 Tr. 68:22-70:22, 96:24-97:23. In fact, TeamHealth Plaintiffs were able to inform the jury about their "policy" not to balance bill and avoid the fact that the balancing billing statement was in response to an email that: (1) explained that insureds "were unaware that TeamHealth Plaintiffs terminated their contract with S[HL]; (2) asked whether TeamHealth Plaintiffs would balance bill due to their terminating the contract; and (3) noted that HPN and SHL wanted to "work together to figure something out." *See* PX 313. However, TeamHealth Plaintiffs' termination of contracts was directly related, and thus relevant, to the balance billing information that was admitted into evidence. As such, pursuant to NRS 47.120(1), Defendants had the right to explore prior contracts and why they were terminated. *See also Nguyen*, 282 F.3d at 1068; *Hall*, 129 Nev. 1120.[5]

Defendants were prejudiced by being prevented from showing the jury the provider participation agreements between the parties, and the negotiations that took place related to Fremont's termination of those agreements. The jury clearly could have used this evidence to

[5] Likewise, TeamHealth Plaintiffs offered PX 314 and PX 325 in redacted form. Pursuant to NRS 47.120(1), Defendants should have been allowed to explore the information that was redacted before the jury because it was directly related, and relevant, to the evidence that was admitted.

determine whether the rates that TeamHealth Plaintiffs offered during those negotiations were reasonable.

2. Contracts Between TeamHealth Plaintiffs and other Healthcare Payors and Health Insurers Are Relevant to the Claims and Defenses in this Litigation

Likewise, the contracted rates between TeamHealth Plaintiffs and other healthcare payors serve as valuable reference points for assessing the reasonable value of the at-issue services because they reflect reimbursement amounts that the TeamHealth Plaintiffs willingly agreed to accept for the same services in the same geographic area. *Suen*, 2016 WL 4076421 at *4 (prior contracts, offers, and "any other evidence regarding the value of services," may be considered to determine the "reasonable value" of services). For example, after terminating their network agreements with Defendants and their affiliates, Fremont entered into a direct agreement with MGM Resorts International, a large employer in the Las Vegas area that is a self-funded client of Defendant UMR, to accept an "all-inclusive case rate of $320.00" for the same services in the same geography as the at-issue services, but at a far lower rate than TeamHealth Plaintiffs demanded from Defendants. Opp. Exhibit 26, DEF011280 (MGM Resorts Health and Welfare Plan Participating Provider Agreement (Feb. 27, 2019)); Opp. Exhibit 27, DEF011294 (Amendment No. 1 to MGM Resorts Health & Welfare Plan Participating Provider Agreement (May 29, 2020)). They also refused to extend this reimbursement rate to Defendants (or their other self-funded clients) after Defendants offered to contract at that rate. Opp. Exhibit 21, FESM016202 (email exchange refusing United's offer). In addition, TeamHealth negotiated and accepted far lower reimbursement payments with BCBS, one of Defendants' largest competitors. *See* Opp. Exhibit 23, FESM008947 (TH-United Contribution & Comparison Report); Opp. Exhibit 24, DEF525474 (TeamHealth Presentation, Emergency Medicine (Apr. 2019)). The Court erred by preventing Defendants from discussing the probative nature of these rates that the jury could have used as helpful guideposts for determining whether the rates that TeamHealth Plaintiffs demanded from Defendants fairly compare in light of the rates that they accepted from other payors—including some of Defendants' own clients.

Indeed, Defendants sought to have their expert Bruce Deal testify that "the correct economic approach to determining reasonable value is to examine actual market transactions and observe rates

016485

016485

paid in the marketplace between willing buyers and willing sellers in a competitive market." MSJ Exhibit 41, Deal Revised Rep. at 3. This "market framework" is a standard and accepted economic methodology for determining reasonable value, one which Mr. Deal has applied dozens of times in his work as an expert on the reasonable value of healthcare services. *Id.* at 36. Mr. Deal's market framework reflects a commonly understood methodology in the healthcare market. In fact, TeamHealth's CEO endorsed a similar framework for this analysis when he explained to a senior UHS executive during the parties' negotiations over a new national contract that "UCR [or the usual and customary rate] [is] ultimately defined by our in-network rates with the same payor, rates from other payors, and rates from the defendant to other providers." Opp. Exhibit 43, FESM008944 (Email from L. Murphy to M. Wiechart (Apr. 18, 2019)).

Further, as Bruce Deal explained in his report with respect to emergency department services, only payments for contracted services (as opposed to payments for non-contracted services) are relevant to determining reasonable value because a key assumption of the market framework is that either party must have the option to walk away from the transaction. MSJ Exhibit 41, Deal Revised Rep. at 41. While providers and payors negotiating a network agreement have the option to walk away, a patient receiving services from an out-of-network emergency physician generally does not have the ability to shop around and select another provider. *Id.* Mr. Deal therefore calculated benchmarks for assessing reasonable value based on (1) the allowed amounts that TeamHealth Plaintiffs actually received from other contracted commercial payors and (2) the amounts allowed by the Defendants to other contracted emergency medicine providers. *Id.* at 42–48.

016486

016486

3. Wrap/Rental Network Agreements Are Relevant to the Claims and Defenses in this Litigation

The Court determined during discovery that Defendants' "rental, wrap, shared savings program or any other agreement that United contends allows it to pay less than full billed charges" were discoverable. Opp. Exhibit 44, Mot. to Compel Ds' List of Witnesses, Production of Documents, and Answers to Interrogatories at 3 (referencing Pls' RFPs to Def. Nos. 9, 16). Defendants were compelled to produce, and ultimately did produce wrap/rental network agreements

with various third-parties, including contracts with third-parties Private Healthcare Systems, Inc. ("PHCS"), MultiPlan, Inc., and First Health Group Corp. Services. *See id.* Likewise, the Court ordered TeamHealth Plaintiffs to produce a wrap/rental network summary document that Mr. Bristow reviewed prior to his deposition. Report and Recommendation No. 11 at 5-6. There can be no meaningful dispute that the parties' wrap/rental network agreements are relevant to this action because the rates, and shared savings programs, underneath those agreements are probative of the existence of an implied-in-fact contract (or lack thereof). Nevertheless, the Court ruled that the parties could not use the rates paid under these agreements as evidence to inform whether Defendants' reimbursement rates for the disputed claims were reasonable. 11/20/2021 Tr. at 20:15-20.

Defendants were prejudiced by the Court's ruling, as both parties ultimately examined numerous witnesses about the wrap/rental agreements in this case. For example, Leif Murphy was examined at length about the fact that TeamHealth Plaintiffs had contracts with wrap networks, and he explained his view that rates paid under those agreements were reasonable. 11/16/2021 Tr. at 63:22-66:2. Yet Defendants were deprived of being able to elicit testimony about how the existence of these wrap/rental agreements informed the reasonableness of Defendants' reimbursements. Likewise, TeamHealth Plaintiffs examined John Haben extensively about TeamHealth Plaintiffs' Exhibit No. 3, the network access agreement between MultiPlan, Inc. and UHC. 11/2/2021 Tr. at 166:24-167:25; 11/3 Tr. 16:24-21:6, 24:13-26:10.

By preventing evidence and argumentation on this topic, Defendants were prejudiced because they were unable to elicit testimony that would allow the jury to further evaluate Defendants' state of mind on numerous topics that bear on the parties' wrap/rental network agreements, including with respect to the parties' disputes over reimbursement rates under TeamHealth Plaintiffs' statutory causes of action; and with respect to TeamHealth Plaintiffs' arguments for punitive damages that required proof that Defendants acted with malice and intent to defraud. TeamHealth Plaintiffs should not have been allowed to serve discovery requests on Defendants that seek the production of wrap/rental network agreements and then take the position at trial that such evidence of their own wrap/rental network agreements is irrelevant.

016487

016487

D. THE COURT'S RULING THAT EVIDENCE OF TEAMHEALTH PLAINTIFFS' COSTS WAS IRRELEVANT WAS ERRONEOUS

TeamHealth Plaintiffs' costs of doing business would have been relevant to TeamHealth Plaintiffs' breach of implied-in-fact contract claim and unjust enrichment claim. That is because the costs incurred by TeamHealth Plaintiffs to perform the at-issue emergency medicine services are directly relevant to the issue of whether any payment by Defendants was "reasonable" vis-à-vis the value of any services rendered. As a general rule, the actual costs to provide a service is probative of the reasonable value of that service. *See Fairbanks N. Star Borough v. Tundra Tours, Inc.*, 719 P.2d 1020, 1030 (Alaska 1986) ("[E]vidence of actual costs is relevant to a determination of reasonable value."); *see also* NRS 48.025(1) (recognizing that "[a]ll relevant evidence is admissible" unless an exception applies); NRS 48.015 (evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence"). Courts routinely allow evidence of the cost of a service in determining its reasonable value, as one factor to be considered by the factfinder. *See, e.g.*, *Doe v. HCA Health Servs. of Tenn., Inc.*, 46 S.W.3d 191, 198–99 (Tenn. 2001). And the concept that costs are an integral component in determining what constitutes "reasonable value" for healthcare services is endorsed by the Restatement (Third) of Restitution and Unjust Enrichment, which—as noted above—Nevada courts have adopted. *Koebke*, 2020 WL 6955291, at *2. Section 49(3)(c) of the Restatement states specifically that "the cost to the claimant of conferring the benefit" is one measure of damages resulting from unjust enrichment. Restatement (Third) of Restitution and Unjust Enrichment § 49.

A new trial is therefore necessary because the Court erred by relying on its February 4, 2021 Order to determine that evidence of TeamHealth Plaintiffs' costs are inadmissible, which prevented Defendants from presenting to the jury crucial evidence that TeamHealth Plaintiffs *themselves* produced that is probative of the reasonableness of their full billed charges. For example, TeamHealth Plaintiffs themselves produced evidence of how their costs related to their billed charges. *E.g.*, Opp. Exhibit 22, FESM008903; Opp. Exhibit 23, FESM008947. Defendants would have also presented evidence from the parties' experts that opined on the significance of costs to the

reasonableness of billed charges. For example, TeamHealth Plaintiffs' expert witness, Scott Phillips, specifically testified that when setting billed charges, he considered the cost of services one of three key factors relevant to determining the appropriate charge for emergency physician services. Opp. Exhibit 2, Phillips Dep. at 175:3–176:24; *see also* Defendants' Omnibus Offer of Proof (November 22, 2021) at 169-175. Defendants should have been allowed to offer testimony on costs from TeamHealth Plaintiffs' own expert witnesses, as well as Leif Murphy, who opined on TeamHealth Plaintiffs' costs during this deposition, but Defendants were prevented from admitting that testimony. *See* Defendants' Omnibus Offer of Proof (November 22, 2021) at 168-169. In fact, in an offer of proof outside the presence of the jury, Defendants elicited testimony from Mr. Murphy indicating that TeamHealth's average cost per emergency encounter was $150 per encounter. 11/16/2021 Tr. at 117:7-17; *id.* at 122:1-4. In the same offer of proof, Mr. Murphy confirmed that TeamHealth collected an average of $350 per encounter from commercial insurers. *Id.* at 123:8-124:1. Defendants should also have been permitted to present the expert testimony of Bruce Deal, who opined about the relative costs between hospitals and emergency department physicians generally, the relationship between providers' costs and the established Medicare rates for various services, and TeamHealth Plaintiffs' billing strategies. MSJ Exhibit 41, Deal Revised Rep. ¶¶ 13, 26–27, 40.

The Court also erred by preventing evidence of TeamHealth Plaintiffs' internal communications about their contracts with hospital facilities. 10/20/21 Tr. 48:6-19, 49:4-25, 50:2-6. This, despite TeamHealth Plaintiffs' deposition testimony that a provider's hospital relationships is an important factor that providers use to set their billed charges because those contracts can hold staffing companies harmless for uncompensated care. Specifically, TeamHealth Plaintiffs produced, without objection, their internal correspondence in which their employees discuss their agreements and relations with various Nevada hospitals, impliedly conceding their relevance. *E.g.*, Opp. Exhibit 34, FESM001238; Opp. Exhibit 35, FESM013515–17; Opp. Exhibit 21, FESM016202. For example, there was a series of exchanges between HCA and TeamHealth in which HCA learned that TeamHealth had gone out of network with Defendants and terminated Defendants' contract with Fremont. The two sides then discussed what HCA thought was

016489

016489

appropriate in terms in the payment of reasonable services and reasonable value for those services. Ultimately, the two sides compromised and agreed that TeamHealth would work out direct agreements with Defendants' customers—the Las Vegas Police Department, MGM Grand, and Caesars. *See* 10/20/2021 Tr. at 47:7-20.

In other words, commercial clients such as the Las Vegas Police Department, MGM Grand, and Caesars were concerned about their need to have to effectively subsidize TeamHealth Plaintiffs for uncompensated care. Defendants were prejudiced because Defendants would have shown the jury evidence of these communications to demonstrate that such subsidization was not a valid and reasonable basis for demanding their full billed charges that built into their price for this uncompensated care. This would have been valuable impeachment evidence that Defendants could have used to rebut trial testimony from TeamHealth Plaintiffs' executives that claim that uncompensated care justified the charges they set for the disputed services.

Moreover, Mr. Phillips himself submitted an affidavit saying that hospitals typically compensate staffing companies like TeamHealth for certain types of patients for whom reimbursement is expected to be low and that these hospital payments are key factors for staffing companies to evaluate when setting their charges for reimbursement by commercial health insurers. Opp. Exhibit 2, Phillips Dep. at 172:24–173:7. Thus, even TeamHealth Plaintiffs' own experts recognize the relevance of hospital payments to emergency room staffing companies when assessing the reasonableness of billed charges. But instead of allowing Defendants to argue the persuasiveness of this evidence to the jury and how it affects the reasonable value of TeamHealth Plaintiffs' billed charges, Defendants were precluded from offering evidence that TeamHealth Plaintiffs effectively conceded was relevant by producing it without objection during discovery.

E. THE COURT ERRED BY PROHIBITING EVIDENCE OF HOW TEAMHEALTH PLAINTIFFS SET THEIR BILLED CHARGES

Evidence that concerns TeamHealth Plaintiffs' practices and policies for setting their billed charges is clearly relevant to this lawsuit: TeamHealth Plaintiffs' position that their billed charges represent the "reasonable value" of the disputed services. *E.g.* SAC ¶¶ 39, 46. Evidence about TeamHealth Plaintiffs' processes for setting charges would have been probative of whether their

practices and processes are arbitrary, or, likely to result in a reasonable price for emergency medicine services. A number of factors may be considered by the jury when determining whether rates are reasonable, such as the "customary method[s]" used to set those rates. *Flamingo Realty*, 110 Nev. at 988. Simply put, because TeamHealth Plaintiffs are seeking to recover their full billed charges, the reasonableness of those billed charges is directly at issue.

Yet, in its February 4, 2022 Order, the Court determined that evidence as to how TeamHealth Plaintiffs set their charges was not discoverable. Feb. 4, 2021 Order ¶ 11. The February 4, 2022 Order was erroneous and significantly prejudiced Defendants throughout this lawsuit because Defendants were deprived from fully collecting discovery about a central premise of TeamHealth Plaintiffs' lawsuit: that their full billed charges were reasonable.

Defendants were then prejudiced at trial on this area of evidence again. Rather than rectify its erroneous February 4 Order, the Court used the February 4 Order to deny Defendants' MIL Nos. 3-4, 11-12 precluding Defendants from discussing how TeamHealth Plaintiffs set their billed charges, *i.e.*, TeamHealth Plaintiffs' methodology for determining a dollar figure.

016491

It is hard to overstate the prejudicial effect of the Court's motions *in limine* orders with respect to the parties' respective rate determinations and processes. Throughout trial, TeamHealth Plaintiffs were permitted to argue that their billed charges were reasonable, yet Defendants were prevented from impeaching that testimony with evidence about the reasonableness of the process by which TeamHealth Plaintiffs came to set those charges. For example, TeamHealth Plaintiffs' counsel suggested that Defendants' falsely created a narrative that emergency physician prices rose substantially over time. 11/3/2021 Tr. at 123:3-9 ("Q: Tactics, they make you all look good and make the doctors look like they're egregious billers is you're going to develop extensive messaging, including media statement, general talking points, questions and answers, and other materials to support our media and other outreach efforts, right? A: That was a pretty long question. I don't agree with your context in the beginning.") However, Defendants were precluded from introducing ample evidence that TeamHealth Plaintiffs inflated charges to increase profits.

For example, Kent Bristow provided testimony that would allow the jury to infer that TeamHealth Plaintiffs were able to inflate the billed charges because they had data on what services,

in what regions, paid what rates. Opp. Exhibit 48, Dep. of Kent Bristow ("Fremont NRCP 30(b)(6) Dep.") at 23:15-25; *see, e.g.*, 11/22/2021 Tr. at 76:3-12 (discussing TeamHealth Plaintiffs' increasing charges to Defendants). Yet Defendants were unable to show TeamHealth Plaintiffs' arbitrary inflation of their billed charges, and in turn why Defendants' refusal to pay TeamHealth Plaintiffs' full billed charges was reasonable, without referencing TeamHealth Plaintiffs' decision-making and strategy in setting those rates. Similarly, Leif Murphy testified that TeamHealth Plaintiffs use a "process" that incorporates "factors that go into the setting of the chargemaster involving chargemasters to set their billed charges" (11/16/2021 Tr. at 82:25-84:20), yet Defendants were prevented from following up about what those factors were. *See* 11/16/2021 Tr. at 98:12-99:2. And in a multitude of instances during trial, despite the Court's determination that evidence of rates offered between the parties' during their negotiations was off-limits, TeamHealth Plaintiffs opened the door to these arguments. Defendants sought to introduce evidence of how TeamHealth Plaintiffs set their billed charges, but the Court rejected Defendants' arguments at every turn. *See, e.g.*, 11/15/2021 Tr. at 39:14-41:10, 144:14-146:8 (Defendants' counsel stating that in order to ask about provider participation agreements terminating between the parties, he would need to discuss "the fact that there was a network agreement. But the fact is they've left an impression with this jury that Fremont's rates were being continuously cut over this period of time by United when in fact, they were going up during this period of time and the reimbursements were going up over $1.1 million"); 11/16/2021 Tr. at 82:7-23, 98:12-100:2 (Defendants' counsel prevented from asking whether the amount of money that TeamHealth Plaintiffs collect is "the same or different than the way standard billing companies charge fees in the industry" to set chargemasters); *see also* 11/22/2021 Tr. at 209:2-14, 214:6-10 (door to TeamHealth Plaintiffs' costs not opened despite discussion of TeamHealth Plaintiffs' cost methodologies).

TeamHealth Plaintiffs also disclosed documents during discovery showing that they specifically chose to forego becoming participating providers with Defendants "to get better leverage" and to push Defendants into paying over 400 percent beyond what is paid under Medicare. Exhibit 4 to Defendants' MIL No. 3, Nov. 2, 2017, Email; *see also* Opp. Exhibit 48, Fremont NRCP 30(b)(6) Dep. at 109:8-11. In other words, what TeamHealth Plaintiffs ultimately were paid for out-

016492

016492

of-network rates was more than what their internal analysis showed was reasonable: strategizing to forego a contract and set rates based on that strategy is similarly relevant for determining whether what was ultimately paid as a percentage of those rates is reasonable. *See also id.* at 103:21-104:11. Defendants should have been permitted to offer this evidence as impeachment evidence to rebut any of TeamHealth Plaintiffs' witnesses' testimony or positions that their full billed charges represented the value of disputed services, let alone the *reasonable* value of those services. Defendants would also have admitted testimony that they procured from deposing John Haben and Kent Bristow that would have been clearly probative and relevant to this reasonable value analysis, but were prohibited from eliciting at trial. *See* Defendants' Omnibus Offer of Proof (November 22, 2021) at 156-167.

Besides being clearly relevant, the Court's decision to permit TeamHealth Plaintiffs to introduce and argue similar evidence about how Defendants set their reimbursement rates had the effect of creating an unfair double standard. The Court in its October 27, 2020 Order found that discovery regarding Defendants' approach to reimbursement was permitted. Ord. Granting Pl.'s Mot. to Compel Defs.' List of Witnesses, Production of Documents and Ans. To Interrogatories on Ord. Shortening Time (Oct. 27, 2020), at ¶ 6. The Court used this order as a basis for denying Defendants' MIL No. 4 and allowing TeamHealth Plaintiffs to offer evidence and discuss Defendants' approach to reimbursement, on the basis that TeamHealth Plaintiffs had the burden of proof. 10/20/21 Tr. 44:18–23; 10/22/21 Tr. 40:7-9. Accordingly, the trial featured immense amounts of discussion and testimony concerning Defendants' processes for determining the reimbursement rates that they believed were reasonable.

The double standard allowed by the Court exacerbated its error of law that prevented Defendants from introducing evidence and argument about this clearly relevant area of discovery. Logically, if TeamHealth Plaintiffs' charge-setting methodology is irrelevant, then arguments and evidence that those charges are reasonable from the outset (before Defendants act on them) must also be irrelevant. Fairness dictates that if one party is permitted to introduce evidence pertaining to a topic, the other party must be permitted to do so as well, or both parties should be precluded from offering the irrelevant evidence. *Nguyen*, 282 F.3d at 1068.

016493

016493

To be sure, Defendants should have never been denied discovery concerning TeamHealth Plaintiffs' processes for setting their billed charges. But even to the extent the February 4 Order was not erroneous—it was, for the reasons stated above—that Order should not have controlled at trial because TeamHealth Plaintiffs changed their litigation strategy to seek reimbursement for full billed charges. Previously, TeamHealth Plaintiffs' theory of their case was that a certain, fixed percentage of their billed charges constituted the "reasonable value" on which they were entitled to reimbursement from Defendants. With their full billed charges being the basis for the damages they sought from the jury, Defendants should have been allowed to introduce evidence and argumentation to the jury as to how TeamHealth Plaintiffs set those charges because such evidence would have been unquestionably relevant and probative of the reasonableness of those charges. That Defendants were denied from doing so after TeamHealth Plaintiffs changed their litigation strategy on the eve of trial is yet further evidence that Defendants were unfairly prejudiced by the Court's determination that evidence and argumentation concerning how TeamHealth Plaintiffs set their charges was inadmissible.

016494

016494

F. THE COURT ERRED BY PREVENTING EVIDENCE AND ARGUMENTATION ABOUT TEAMHEALTH PLAINTIFFS' CORPORATE FLOW OF FUNDS

Evidence of how TeamHealth Plaintiffs built into their full billed charges amounts that TeamHealth Plaintiffs sought as profits above physicians' costs for rendering services should have been admitted. By preventing Defendants from explaining to the jury how TeamHealth Plaintiffs' charges considered their own profit-making, Defendants were prejudiced by being hamstrung from developing its defense that TeamHealth Plaintiffs' charges did not reflect the reasonable value of their emergency medicine services, which was a core issue at trial. Defendants should have been allowed to present this relevant evidence to the jury that any collections above the physicians' costs become TeamHealth's profits; that is, the physicians who actually provide the emergency medicine services at issue are not entitled to any profit sharing or ownership in the proceeds of their services, which flow to TeamHealth. Opp. Exhibit 38, September 17, 2021 Expert Rebuttal Report of Bruce Deal to Dr. Joseph T. Crane ¶ 11. At the least, this evidence would have been yet another datapoint for the jury to consider as to whether TeamHealth Plaintiffs' billed charges were tied to reasonable

value. At most, this evidence could have shed light on whether TeamHealth Plaintiffs exhibited bad faith in setting excessive charges to line their own pockets.

Defendants' position is that the Court erred with respect to numerous discovery orders—the result being that Defendants were prejudiced in their ability to collect relevant, non-privileged discovery in preparation for trial. The Court's February 4 Order is no exception: as it pertains to TeamHealth Plaintiffs' corporate flow of funds, the Court's February 4 Order found that TeamHealth Plaintiffs were not required to produce discovery regarding certain aspects of the TeamHealth business structure, particularly the portion that related to Blackstone—its business relationship with Blackstone and its profitability. Feb. 4, 2021 Order ¶¶ 7, 11.

Throughout the trial, TeamHealth Plaintiffs were permitted to introduce evidence and argument suggesting that Defendants' conduct resulted in underpayment of physicians or reduced payment to physicians or firing of physicians. Indeed, the very first thing that TeamHealth Plaintiffs' counsel told the jury was that this case is not just "about passing money from one corporate pocketbook to another," but rather it was about "to be treated the same as others . . . when it comes to reimbursement for emergency medical care paid to . . . health care practitioners"—thus suggesting that Defendants were not treating members receiving emergency medicine services from TeamHealth Plaintiffs equally or fairly. 11/2/2021 Tr. at 23:19-24:15. Further, TeamHealth Plaintiffs offered testimony from a physician, Dr. Frantz, regarding the immeasurable value of TeamHealth's services to the physicians and to the communities they serve. Opp. Exhibit 41, Dep. of Robert Frantz ("Frantz 9/24/21 Dep.") at 13:24–16:10; 69:12–17 (Sept. 24, 2021). Similarly, TeamHealth Plaintiffs' counsel asked Bruce Deal repeatedly about whether low reimbursement rates from insurance companies could affect physicians' pay and, in turn, the quality of care. 11/19/2021 Tr. at 141:15-144:13. Other examples abound where TeamHealth Plaintiffs were permitted to laud their physicians and suggest that their physicians deserved income that they were not in fact being paid based on the way that corporate funds flowed within TeamHealth. *See, e.g.*, 11/16/2021 Tr. 56:1-19 (questioning Leif Murphy) ("Q: … What kind of attrition was TeamHealth having among its doctors? A: We -- plus or minus a couple of percentage points. It's always going to be around 10 percent. Q: Okay. Now, do some of the TeamHealth doctors burn out? A:

016495
016495

Unfortunately, yes. Q: Why? A: It is an extremely difficult, high-intensity role in healthcare. Burnout is probably the highest in emergency medicine over any other specialty. You're standing ready at all hours of the day for a patient to arrive with a completely unknown condition. It could be trauma. It could be a heart attack. It could be any number of different things. And you have got be on your game and ready to take care of that patient."); 11/17/2021 Tr. 256:8-18 (questioning Robert Frantz) ("Q: Okay. Now, even though you don't think you have any expertise about what 282 should be compensated as, et cetera, do you have a point of view about reimbursement with a larger company? MR. ROBERTS: Objection. Calls for a narrative. For relevance. THE COURT: Overruled. THE WITNESS: Well, sure. I mean, if reimbursement is not adequate, then we're going to have difficultly, you know, for sure recruiting and retain -- retaining physicians to work in these facilities, and it can undermine the care and the community for the safety net of emergency medicine."). And the prejudicial effect of the Court's erroneous motion *in limine* ruling was felt greatly during closing argument, in which counsel for TeamHealth Plaintiffs repeatedly suggested that Defendants were bullying TeamHealth without an adequate ability to refute that TeamHealth was not being taken advantage of because of the enormous profits they were making as a result of Defendants' payments on the disputed charges. *See, e.g.*, 11/23/2021 Tr. at 151:4-8 ("[I]f you're a doctor in a practice of three or four people . . . are you really going to hire a lawyer or do something about it? I mean [Defendants] know that they have all the power and all the leverage. . . . I mean this is unbelievable."); *see also id.* at 268:1-3 ("And if you [the jury] haven't figured out already why a lot of providers just give up and take the rate" Defendants remit, "it's because of" Defendants. "This isn't easy, and most providers frankly won't do it.").

Defendants were prejudiced by being preventing from introducing evidence to rebut TeamHealth Plaintiffs' insinuation that Defendants' alleged underpayments directly impacted doctor pay. *E.g.* 11/2/2021 Tr. at 151:5-151:7 ("Q: Okay. So here's what I want to know, Mr. Haben, is it correct that with every percentage you cut, United makes more, and the doctors are paid less?"); 11/2/2021 Tr. at 150:12-13 ("Q: Okay. So back to my question. The more you cut, the less we get paid, and the more you make?"); 11/3/2021 Tr. at 120:25-121:8 ("Q: But when it comes to our doctors, who are asking for the reasonable rate, you don't agree with that? MR. ROBERTS:

Objection. Foundation. THE COURT: Overruled. BY MR. ZAVITSANOS: Q: Right? A: I don't agree with what? Q: You're entitled to be treated reasonably, but he's not. A: That's not what I said.") TeamHealth Plaintiffs' counsel also mischaracterized witness testimony by insinuating that UMR "deserves to make more on a given emergency room visit than the ER doctors, whose job is to treat patients and save lives." 11/15/2021 Tr. at 192:6-14; *id.* at 193:3-11; *id.* at 203:3-7 ("Is it reasonable for UMR to make 75 more dollars per 99285 visit than the ER doctors who are treating the patients; is that reasonable?"); *id.* at 204:23-205:2 ("I'm asking whether you're proud that you made more than the doctors? Does that make you feel good inside?"). If Defendants had been allowed to introduce evidence showing that physicians were not entitled to profit sharing and that profits flowed exclusively to TeamHealth, these emotional appeals would have clearly been proven false. For example, in an offer of proof outside the presence of the jury, Leif Murphy clearly testified that physicians would not be entitled to any portion of the proceeds of this lawsuit. 11/16/2021 Tr. at 115:18-21 ("Q Under the physicians' various employment contracts and independent contractor agreements, is there a provision entitling them to a portion of the amount the jury awards in this case? A: In these particular contracts, I don't believe so.").

016497

016497

Had the Court permitted Defendants to introduce evidence of the corporate flow of funds within TeamHealth, it would have been relevant and helpful rebuttal evidence that Defendants were not taking advantage of TeamHealth Plaintiffs' physicians or ordinary Nevadans. By successfully arguing that Defendants should be precluded from offering rebuttal evidence showing that the money TeamHealth skims from the top of Defendants' reimbursements does not benefit the physicians or the larger community, TeamHealth Plaintiffs improperly gained a double-standard on who can offer evidence on relevant issues at trial. Defendants were prejudiced by the large swath of this evidence harming their ability to defend against the massive punitive damages amount that the jury awarded TeamHealth Plaintiffs based on the unfair admission of this evidence. A new trial is warranted on this basis.

G. THE COURT ERRED BY PERMITTING TEAMHEALTH PLAINTIFFS TO DISCUSS THEIR POLICY NOT TO BALANCE BILL WHEN DEFENDANTS WERE PRECLUDED FROM COLLECTING DISCOVERY ON THIS TOPIC

The Court's decisions throughout this lawsuit concerning TeamHealth's balance billing policies and procedures were inconsistent and constituted unfair prejudice to Defendants. TeamHealth Plaintiffs have wielded balance billing as a sword and shield: precluding Defendants from obtaining any evidence on these balance-billing policies and then asserting at trial that Defendants have introduced no evidence that TeamHealth Plaintiffs have a policy to balance bill. This prejudice stands as yet another error that warrants a new trial.

TeamHealth Plaintiffs successfully prevented Defendants from discovering information related to their balance billing policies. On March 29, 2021, the Special Master submitted a Report & Recommendation to the Court that Plaintiffs' Objections to United's Notices of Intent to Issue Subpoena Duces Tecum to TeamHealth and Collect Rx should be granted in their entirety. This included Defendants' request for policies, procedures and communications regarding balance billing. Based on Plaintiffs' objection that "documents about balance bill … is clearly irrelevant," the Special Master determined that documents regarding balance billing were not discoverable. Report and Recommendation No. 2, March 29, 2021 at 4:24-26 and 5:5-6. On August 9, 2021, the Court affirmed and adopted in its entirety Report and Recommendation No. 2. Defendants therefore sought to prevent TeamHealth Plaintiffs from presenting evidence and argumentation on TeamHealth Plaintiffs' policies about balance billing because its prejudicial effect would substantially outweigh its probative value, through Defendants' MIL No. 15. The Court rejected the MIL, finding that there was "sufficient discovery." 10/22/21 Tr. 88:11-12.

Because Defendants have been precluded from probing the veracity of TeamHealth Plaintiffs' balance billing claims through discovery, they were stripped of any means of impeaching TeamHealth Plaintiffs' balance billing testimony. By way of just some examples, when Defendants' counsel sought to cross-examine Leif Murphy about TeamHealth Plaintiffs' balance billing policy, Defendants' counsel was unable to corroborate or confirm Mr. Murphy's testimony that TeamHealth Plaintiffs did not balance bill a patient receiving emergency medicine services from 2006 through 2019, assuming no error in remit advice. 11/16/2021 Tr. at 85:18-86:19. Similarly, TeamHealth

016498
016498

Plaintiffs' expert, David Leathers, was permitted to state that he had seen no evidence indicating that any of TeamHealth Plaintiffs balance billed any of Defendants' members for the disputed services. 11/17/2021 Tr. at 49:8-50:6. And during Leslie Hare's trial testimony, TeamHealth Plaintiffs were permitted to question and effectively argue that TeamHealth Plaintiffs provided a benefit to Sierra Health and Life as well as Health Plan of Nevada that no balance billing occurred. 11/16/2021 Tr. at 178:19-185:17. This, despite Defendants' repeated objections, and despite Defendants' inability to rebut this testimony with anything more than meager testimony at disparate points in trial that witnesses were unsure whether *no* balance billing took place with respect to any of the disputed claims. *See, e.g.*, 11/8/2021 Tr. at 20:15-20 ("Q: And you know that for every single one of the claims at issue in this case, there was no balance billing, right? A: I don't know that to be true. Q: If that was true, the statement would be a little Pinocchio-ish, would you agree? A: I would -- I would disagree."); *id.* at 73:3-19 ("Q: Well, you know that TeamHealth, for the claims at issue in this case, did not balance bill one person. A: No, I don't know that for a fact. I believe they had collection efforts. Q: No, sir. I'm talking about the claims at issue in this case. A: I don't know for a fact."). In fact, in an offer of proof outside the presence of the jury, Defendants elicited testimony from Leif Murphy that TeamHealth balance billed nearly $30,000 to patients in 2017. 11/16/2021 Tr. at 124:2-6.

By preventing Defendants from impeaching TeamHealth Plaintiffs' balance billing testimony, the Court permitted an unfair outcome whereby TeamHealth Plaintiffs were allowed to point to the absence of evidence from the record of instances in which they balance billed—an absence resulting from their stonewalling of any discovery on this issue—and argued that it demonstrated that they did not, in fact, balance bill. This is exactly the scenario that NRS 48.035 seeks to protect against. *See, e.g.*, *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 933, 267 P.3d 777, 781 (2011) (noting that "unfair prejudice" under NRS 48.035 is "an appeal to the emotional and sympathetic tendencies of a jury, rather than the jury's intellectual ability to evaluate evidence" (internal quotation marks omitted)); *see also United States v. Skillman*, 922 F.2d 1370, 1374 (9th Cir. 1990) (holding that unfair prejudice under FRE 403—which is substantially similar to NRS 48.035—"appeals to the jury's sympathies, arouses its sense of horror, provokes its

016499

016499

instinct to punish, or otherwise may cause a jury to base its decision on something other than the established propositions in the case").

Thus, under NRS 48.035, the probative value of this evidence was substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury. That is because the admission of this evidence would impermissibly serve to induce sympathy in the jury. TeamHealth Plaintiffs' purpose of offering testimony that they do not balance bill patients and do not want patients in the middle of the dispute when they vehemently opposed any other discovery regarding balance billing is designed to inflame and unfairly prejudice the jury against Defendants. This unfair result should not have been permitted.

II.
THE COURT'S MOTIONS *IN LIMINE* RULINGS BASED ON ISSUES THAT AROSE AT THE START OF TRIAL WERE ALSO ERRONEOUS AND MERIT A NEW TRIAL

A. THE COURT'S IMPROPER EXCLUSION OF TEAMHEALTH PLAINTIFFS' REFERENCE TO THEIR "SPECIAL RELATIONSHIP" WITH DEFENDANTS IN THEIR PRIOR COMPLAINT IS AN ERROR OF LAW THAT SUPPORTS A NEW TRIAL

On October 7, 2021—just three weeks before trial, and in response to Defendants' Motion for Partial Summary Judgment—TeamHealth Plaintiffs filed their SAC, in which they dismissed half of their causes of action, dropped three of the eight Defendants from the action entirely, and deleted every mention of MultiPlan, Data iSight, and "conspiracy" from their complaint. Not surprisingly, amending their complaint mooted most of the issues in Defendants' Motion for Partial Summary Judgment.

The parties then met and conferred to discuss what allegations from the FAC could be addressed at trial. 10/20/2021 Tr. at 95:12-15. The parties agreed on virtually everything, but one point of contention that the parties raised with the Court concerned what was in paragraph 209 of the FAC: "A special element of reliance or trust between the Health Care Providers and the Defendants [existed], such that, Defendants were in a superior or entrusted position of knowledge" (hereinafter "Paragraph 209"). *Id.* at 96:19-20. In anticipation of TeamHealth Plaintiffs' trial theme that TeamHealth Plaintiffs were assisting community-based health providers that were taken advantage of by Defendants, Defendants sought to discuss the fact that TeamHealth Plaintiffs dropped Paragraph 209 as impeachment evidence. TeamHealth Plaintiffs' counsel argued that