Case No. _____

In the Supreme Court of Nevada

UNITED HEALTHCARE INSURANCE COMPANY, UNITED HEALTH CARE SERVICES, INC., UMR, INC., SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC., 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,

and

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

Real Parties in Interest.

PETITIONERS' APPENDIX
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98	Transcript of Status Check (FILED UNDER SEAL)	10/11/22	46	11,150–11,160

CERTIFICATE OF SERVICE

I certify that on November 15, 2022, I submitted the foregoing "Petitioners' Appendix" for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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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
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An Employee of Lewis Roca Rothgerber Christie LLP

why.

MR. ROBERTS: What if you never know why? Can you set that aside and solely decide the case --

PROSPECTIVE JUROR 270: Yeah.

MR. ROBERTS: -- based on whether they've proven it? Okay.

PROSPECTIVE JUROR 270: Yes. Are you done with me?

MR. ROBERTS: I am.

PROSPECTIVE JUROR 270: Okay. It's just [indiscernible].

MR. ROBERTS: We'll turn it over to Ms. Wynn. All right.

PROSPECTIVE JUROR 254: 254. I would want to hear both sides. And of course if the Plaintiff if they proved it, then follow the Judge's orders. If they haven't proven, but followed the Judge orders. So I have to hear both sides, see the evidence, and then be able to make a decision from there, based on what we're told by the Judge [indiscernible].

MR. ROBERTS: Personally, you're setting the rules. If we never explain why do you think we should lose the case? Why we paid less?

PROSPECTIVE JUROR 254: If the Plaintiff proves that they deserve it, then on their -- [indiscernible] as a juror, they've proven their case, they honor it. If they haven't proven it, I still have to follow what the Judge says and make a decision from there.

MR. ROBERTS: Very good, I appreciate it. Mr. Ramsey?

PROSPECTIVE JUROR 219: 219. I agree with the way the system is set, the burden of proof is with the Plaintiff, and I would follow

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the Court's instructions.

MR. ROBERTS: If you could do it, if you're making the rules --

PROSPECTIVE JUROR 219: My personal opinion -- yes, sir. My personal opinion is the system is set. I agree with the way the system is set, the way the systems go.

MR. ROBERTS: Our world thinks it's the greatest justice system in the world, right?

PROSPECTIVE JUROR 219: We do.

MR. ROBERTS: Mr. Reese?

PROSPECTIVE JUROR 014: 014. Yes. Personally, I think you need to prove your side. There's two different -- two people, two groups, on an opposite side of an issue, and if only one side present theirs, and you don't present yours, then there's -- in other words, I think you need to prove why you paid less, and if not, if you don't, the Judge [indiscernible] to a certain direction with this, then why are we here, you know. The judges could make the that decision.

MR. ROBERTS: Well, let's just, hypothetically. You get to the end of the case, we haven't proven why we paid less, or what we paid was reasonable. But the Plaintiff hasn't proven, that we should have paid more, what do you do?

PROSPECTIVE JUROR 014: Well, if the Plaintiff presented the case and you don't, then I think the proof is on their side, because you're the Defendant.

MR. ZAVITSANOS: Your Honor, can we approach for one

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second.

THE COURT: In fact, why don't we just step out in the hall?

MR. ZAVITSANOS: Yes. Thank you.

[Sidebar at 1:54 p.m., ending at 1:56 p.m., not transcribed]

THE COURT: Okay. Thank you again for your professional courtesy.

MR. ROBERTS: All right. Mr. Reese?

PROSPECTIVE JUROR 094: Yes.

MR. ROBERTS: Let's make this real easy. If the judge instructs you that the Plaintiffs have the burden of proof --

PROSPECTIVE JUROR 094: Yes.

MR. ROBERTS: -- and they don't meet it in your mind. They don't convince you that it's more likely true than not true, that they should have been paid more, can you give us a defense verdict?

PROSPECTIVE JUROR 094: Yes.

MR. ROBERTS: Okay. Thank you, sir. All right. The end of the line. Mr. Cabrales?

PROSPECTIVE JUROR 041: 041. Personally, I think anyone who makes a claim has the burden of proof why they make that claim. That includes any complaint who says that their actions are justified. I want to see that justification, but I will adhere to the law of the instructions of the judge.

MR. ROBERTS: Okay. And we're not making a claim here, right? In your mind when you say that, you think anyone making a claim, but it sounded like you were talking about us.

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PROSPECTIVE JUROR 041: If what you are saying is that what you paid is reasonable, that to me sounds like a positive claim.

MR. ROBERTS: What if the judge were to instruct you that we had no duty to prove what we think was reasonable?

PROSPECTIVE JUROR 041: Then I will follow what the judge orders.

MR. ROBERTS: Okay. Thank you, sir.

So let me ask just a quick question to the group. And I know we've been going through this for a while. Has anyone heard anything about this case, maybe, since you were asked about it the first time? Anyone heard anything about this case through a friend, someone blurted it out, the news was on by accident, anyone heard anything?

IN UNISON: No.

MR. ROBERT: Nothing? Okay. Very good.

So we sort of talked a little bit about burden of proof now. We've talked about liability. But in addition to liability, if you find that United is liable to the Plaintiffs, then you also have to find that the Plaintiffs met the burden of proof on the amount. And it could be the ten and a half million Mr. Zavitsanos told you about. It could be zero, it could be something less. Is everyone okay holding them to their burden of proof on the amount of damages as well as liability? Anyone not okay with it? Who has more than two kids?

Now, I think something Ms. Carr said brought this up. And you mentioned that your -- two sides to every story. Was that you that said that? So you have more than one kid, you've got two kids. The first

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one runs in screaming and tells you what happened. Has anyone experienced a change in story when the second kid runs in?

PROSPECTIVE JUROR 049: Exactly.

MR. ROBERTS: So I would -- it wouldn't be fair to make a decision based solely on what the first kid told you, right? So what I would ask you, is everyone okay with committing to waiting to hear all the evidence, all of the instructions of the Court, wait until all of the evidence comes in before you make a decision about who is right and who is wrong here? Because the Plaintiffs gets to go first. The Plaintiffs get to go last if they want to. But everyone can wait until all that evidence comes in; is that fair? Thank you.

Almost done here. And I am going to ask you all the ultimate question one more time. And that is, if the Plaintiffs don't meet their burden of proof despite the fact they're providing medical services at emergency rooms in your home town, I want to see a show of hands from everyone who say if they don't meet their burden of proof, I can enter a defense verdict and send them home with nothing.

What about you, Ms. Hortillas?

PROSPECTIVE JUROR 114: What was that again, I'm sorry?

MR. ROBERTS: If the Plaintiffs don't meet their burden of proof, they don't prove to you that they are owed more money than they have received, can you send them home with nothing?

PROSPECTIVE JUROR 114: Yes, I can.

MR. ROBERTS: Okay. The record will indicate that the -- that the juror has nodded yes.

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Thank you for all of your time. Thank you for your honesty. We appreciate how much time and effort everyone has devoted to this long process. It helps us get a fair jury, and we all really appreciate it.

Is there anyone who has anything else they think I need to know, or the Court needs to know? Maybe I had asked a question up front here and never asked you in the back? Anything out there I missed? All right. Thank you so much.

THE COURT: Do you pass the panel for cause?

MR. ROBERTS: I pass the panel for cause, Your Honor.

THE COURT: Very good, thank you.

MR. ROBERTS: Thank you.

THE COURT: This will be a good time for a recess. And this will be a fairly long one because we're getting to the next step of jury selection. So I am going to say 2:30. It'll be a half hour.

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

Don't conduct any research on your own relating to the case. Don't speculate about the witnesses, about the legal issues or the lawyers. And so you can't consult dictionaries, use the internet, or use reference materials. Don't talk, text, tweet, Google, or conduct any other type of book or research with regard to any issue, party, witness, or attorney involved in the case. Most importantly, do not form or express

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any opinion on any subject connected with the trial unless you are selected for the jury and unless the jury deliberates.

Thank you again for understanding that it's hurry up and wait today. If you will be ready at 2:30, thank you.

THE MARSHAL: All rise for the jury.

[Prospective jurors out at 2:04 p.m.]

[Outside the presence of the prospective jurors]

THE COURT: Okay. So we are going to, at this point, talk about how you are going to do your strikes. The last four are alternates?

MR. ROBERTS: Yes, Your Honor.

THE COURT: All right. Plaintiff, why don't you explain the way that you understand the strikes to work?

MR. ZAVITSANOS: Your Honor, the way I understood it was that we strike first. The defense then strikes. We then strike again, but we cannot go -- we can't back-strike. We can only go forward, not backward. And the same would then hold true for the defense.

I know there may be some discussion about this. The only thing I will say is that that is the way I understood Your Honor did it. As I mentioned, I think, last week I think it was, I did come out to watch Your Honor do another voir dire -- I've got to say it the correct way, not the other way. I did watch the way Your Honor did her voir dire in the case right before ours. And for what it's worth, Your Honor, I did rely on that, and I structured my questioning to the panel around that methodology.

And so -- and I don't want to tip my hand too much about why I did it the way I did it, but I did understand there were no back-

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strikes, and so there were certain modes of questioning that I asked with that assumption in mind. And so our strong preference would be to do it the way I observed in the last trial and the way Your Honor explained it, I believe, early on in this case.

THE COURT: Thank you. Mr. Roberts?

MR. ROBERTS: Thank you, Your Honor. And I don't think I have ever picked a jury with you.

THE COURT: I don't think you have.

MR. ROBERTS: I don't think I have, but I have picked two to four a year in this jurisdiction since 2002. And the way that it's always been done in my experience is that under the statute, 16.030 and 040, that we exercise our four peremptory strikes against the potential jurors in the box. And there's nothing in the statute which says that you have to do them in order and that you waive your right if you strike Juror 5 before Juror 1.

And then we did do a little fishing over the weekend, and I think this may be the oldest case I have ever cited in Nevada, and that is the case of *State v. Pritchard, 15 Nevada 74 (1880),* no parallel Pacific Reporter cite that I could find, where d the court said that the right to challenge any juror peremptorily is absolute at any time before the juror is sworn. And that no circumstances can bring that right within the discretion of the court so long as it is confined to a -- to the number of peremptory challenged allowed by law.

And it seems to me that under the statute and under the wording of this case, we have our right to exercise peremptory strikes

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against the box in any order in which we want to. Now, if we waive, then I agree, it's waived. But as long as we exercise our strike when we are given the opportunity, there's nothing in Nevada law that would require us to make them in numerical order.

THE COURT: What was the statute cited? I have the NRS up. I have the case up, too.

MR. ROBERTS: Thank you, Your Honor. It's -- make sure I've got this right, 16.030 Section 4 and 16.040 Section 1, both of which indicate strikes are exercised against the persons on the panel or alternatively, the jurors, but don't say anything about the order in which they have to be exercised.

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MR. ZAVITSANOS: And Your Honor, I would like a brief reply.

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THE COURT: You may. Give me just a second to read this.

MR. ZAVITSANOS: Yes, Your Honor.

THE COURT: Okay. Go ahead, please.

MR. ZAVITSANOS: So Your Honor, I have not looked at the case Counsel was talking about. I'm going to -- I am going to take him at his word. He's an honorable gentleman, obviously. And I am just going to go by the excerpt that he read. Nothing that Counsel just read is inconsistent with the way Your Honor does it. What Counsel just read is whether or not you have the right to strike somebody for a peremptory and that there are no limitations on it. It does not address the mode of the way you're going to do the strikes.

I don't -- I did not hear anything that touched on that. It

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touched on whether you have an absolute right to make a strike, not the mode that you're going to do it. So I don't -- there's nothing inconsistent with what Counsel said with the way Your Honor does it.

THE COURT: Good enough.

Mr. Roberts, that's just the way we were taught and the way I have always done it in this court is not to allow any back strikes. So I am going to overrule your objection on that issue. Now, do you have the paper ready?

All right. So usually, I step out for this to give you guys a chance. But keep -- be mindful that if I bring them in at 2:30, you can still continue to do your strikes, and I can get some of the pretrial stuff out of the way.

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MR. ROBERTS: Yes, Your Honor.

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MR. ZAVITSANOS: I am not going to speak for him. I anticipate they've had a lot of discussion over the weekend about who they are going to strike. We've done the same. So I don't -- I don't think we need more than 15 minutes.

THE COURT: Well, after five days --

MR. ZAVITSANOS: Yes.

THE COURT: -- I think you guys knows where everybody stands.

MR. ZAVITSANOS: Yeah. I mean, we -- I think --

THE COURT: At this point --

MR. ZAVITSANOS: -- they could do ours, and we could do theirs.

THE COURT: I could do all of yours. Okay.

MR. ROBERTS: And Your Honor, if I could just say one thing --

THE COURT: Of course.

MR. ROBERTS: -- quickly for the record.

THE COURT: Certainly.

MR. ROBERTS: You know, our firm has an office in Florida and in Florida, you can back strike. But a back strike is defined in those cases as exercising a strike against the panel after you have been through the whole strike process. Where you hold the strike and use it after the entire jury panel has been picked, and that is not what we're asking to do here.

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THE COURT: I understand.

MR. ROBERTS: I just want to make sure that it's clear that we are not asking for back-strikes, as least as defined by the Florida cases.

THE COURT: I understand. All right, guys.

MR. ROBERTS: Thank you, Your Honor.

THE COURT: I'll be back as soon as you're ready or at 2:30. Thank you.

MR. ZAVITSANOS: All right. Thank you, Your Honor. Are we excused, Your Honor?

THE COURT: You have to stay here and do your strikes.

MR. ROBERTS: Oh, okay.

THE COURT: Yeah. I'm just going to go in my office.

[Recess from 2:12 p.m. to 3:00 p.m.]

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[Outside the presence of the prospective jurors]

THE COURT: Were we ready to bring in the venire?

MR. ZAVITSANOS: Yes, Your Honor.

THE COURT: Okay. Are you ready?

MR. BLALACK: Yeah.

THE COURT: Thank you.

[Pause]

THE COURT: Are we on the record?

THE CLERK: Yes.

THE COURT: Plaintiff, do you have any objection to the grounds for any strike by the Defendant?

MR. ZAVITSANOS: No, Your Honor.

THE COURT: Defendant, do you have any objections to any of the grounds for strikes by the Plaintiff?

MR. BLALACK: No, Your Honor.

THE COURT: Thank you.

[Pause]

THE MARSHAL: All rise for the jury.

[Prospective in at 3:03 p.m.]

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

Okay. Thank you, again, for your patience. At about 2:45 I realized the lawyers have not had a break since before 1:00. So thank you again for your courtesy.

THE CLERK: Will the following people please stand? Nerissa Gonzaga, Cindy Springberg, Katelyn Landau, Zerrick Walker, Angelo

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Torres, Catherine Ross, Dina Hortillas. Did I say that, right?

JUROR 007: Yes.

THE CLERK: Okay. Elizabeth Trambulo, Michael, Cabrales, Paul Reese, Isis Wynn, and Valerie Herzog. Please, raise your right hand all of you.

[The jury was sworn]

THE CLERK: Okay. Have a seat.

THE COURT: Thanks, everyone.

So if your name wasn't called, and you were not selected for the jury, please do not feel slighted for not having been chosen as a juror. We have followed very complex rules with regard to jury selection, and the process itself is very important. And we have followed those rules. The important thing to remember is that, yes, you were all qualified to serve on a jury, and I hope that you want to do that after having seen how exciting it is to have yourself looked at.

I hope you all get that chance because truly this is truly the bedrock of our society; the justice system.

So those of you whose names weren't called, you're now excused. You may talk about the case if you wish to, but you may not talk about it with anyone from the jury until after they came to a decision. So thank you, all.

[Prospective jurors excused]

[Pause]

THE COURT: Will you please re-order the jury?

THE MARSHAL: Sure, ma'am.

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[Pause]

THE COURT: Hang on a second. Another judge is looking for something that he left in this courtroom. I don't see it.

Okay. All right. So I'm going to go through some of the pretrial instructions for you guys to further instruct you on your duty as jurors. Now, some -- the case starts when the Plaintiff files a complaint with the clerk. And what I'm going to do now is introduce the trial. This is no substitute for the actual detailed instructions on the law that you will receive at the end of the case and before you retire to consider your verdict.

This is a civil case commenced by a plaintiff against a defendant. After five days of jury selection, you guys I think learned a lot about what the lawyers were saying. I was very impressed by the way you could answer those questions.

Do either of the counsel desire to have the pleadings read or would you waive the reading?

MR. ZAVITSANOS: Waive the reading.

MR. BLALACK: Agree, Your Honor.

THE COURT: All right. So the -- reading the complains has been waived.

The lawyers will tell you about their case after I finish these instructions, and we'll -- that will be tomorrow morning when they do opening arguments or opening statements.

Now, if you -- at this point, you have no way of knowing whether or not you're going to recognize a witness when they come into

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the room, so that's why you're instructed not to talk to each other about the case while it's pending. No one should try to talk to you about the case at any time, and if that occurs, let me know immediately. But if you do see that you recognize someone -- and it could be somebody who lives on your street or from your place of worship or from the grocery store. Just let us know about that right away. It happens quite frequently, so don't be upset if that happens to you.

If it turns out that you're acquainted with any of the facts of the case and you didn't realize it before now, let us know through the Marshal as well. The way that you communicate with us during the trial is through Marshal Allen. He will be present at all times when court is in session. And if for some reason he can't be here, another marshal would sit in.

During the course of the trial, the attorneys for both sides, the parties, and court personnel; we are not permitted to talk to you. And it's not that we're being antisocial, it's simply that we are bound by a code of ethics because we want the jury to make its decision based upon what you see and hear of the witnesses and the evidence, not based upon anything outside of the courtroom.

When you come in every day, please wear your juror badges. It will help you get through security. And also, I will request that you not talk to other people in the hall or elevators because if, in fact, you spoke to someone who is a witness, that would be prohibited. So kind of talk among yourselves on the recesses, please.

Now, it -- again, and some of this is repetitive, but we all

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have the same script so that we can do things similarly.

If you recognize a witness or you realize that you're familiar with the case, just -- again, just tell us. Don't be afraid to tell us. There's -- it happens often, and you should not be worried about it. But we do need to know.

Now, you are not to visit the scene of any of the acts or occurrences that are mentioned during the trial. And it's not because we don't want you to know about the case, but it could be that the place mentioned and testimony may be different from today than it was in the prior -- and that's more often, like, in a motor vehicle accident because those intersections can change, roads can be widened.

So don't do any research on your own, including going to the site of anything. You can't do any research with regard to the case. And it seems like a simple instruction, and it's so simple. Sometimes people make an error, and they don't understand a term and they want to Google it. At the end of each witnesses' testimony, you'll be given the chance to ask questions as a group, and that would be your chance to that. Again, we want you to form all of your impressions based upon what you see and hear in this courtroom.

So it seems -- so you can't, like, ask your friends who are experts in the area, and you can't get on the -- this is kind of an old script. Can't get on the information highway.

So don't do any kind of computer research. You cannot post on social media with regard to your trial experience until after the jury has deliberated and reached a verdict.

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So you can't put Facebook, Twitter, email, text, phone, or another means of communication because we want you to bring your every day, commonsense. And so you're limited to the documents and evidence and testimony evidence here at the time of trial.

The parties may sometimes raise objections to some of the testimony or evidence. Sometimes I sustain objections, or I direct you to disregard certain testimony. Please don't consider any evidence to which you have been asked to disregard. And it's the duty of the lawyers to object to evidence which they think might not be properly offered. And never be prejudiced against them or their clients for their objections.

I never intend -- I never have any interest in who wins the case. My job is to make sure they get an equally fair shot in this case. So if I say or do anything that infers that I favor one side or another, I don't, so please disregard that as well.

If you ever can't hear me or you can't hear a witness, let us know because we want you to hear and see everything in this courtroom.

Then you will be given the chance to ask questions of witnesses at the conclusion of their testimony, but if your question is asked, don't give it undue weight. And if your question isn't asked, don't give it undue weight because some things are just objectionable -- some questions can't be asked.

Now, I take notes during the trial of the witnesses' testimony. It's because I will have to decide legal issues outside of your presence, and so I want to make sure that I have my notes in order because I know

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what's coming on the next break.

Don't ever -- don't ever assume that I take favor with either side. I just take notes so I can be prepared.

Now, I have a rule here that -- in the old days, you could bring water in. Now, we can't because we have to have our faces covered -- our nose and mouth covered at all times in the courtroom, but if you need a break for any reason -- you can bring your water in and out, you just can't drink it in the courtroom.

If you need a break for any reason. Ask for one and we'll -- I will always give you a break, even if we just took break ten minutes ago because no one should be distracted by discomfort during the trial.

The trial proceeds in this way: First, the Plaintiff will make an opening statement outlining the case. After the Plaintiff does that, Defendant has the right to make an opening statement, or they may differ that until their case-in-chief. Neither is part -- neither is required to make an opening statement.

Opening statements are a synopsis or an overview about what the attorneys believe the testimony will be. Opening statements of attorneys are not evidence because the attorneys are not witnesses to any of the facts or controversy in this case.

After the opening statement, the Plaintiff will then introduce evidence and call witnesses. At the conclusion of the Plaintiff's case, the Defendant has the right to introduce evidence if they so desire.

After the Defense rests, the Plaintiff has the right to call rebuttal witnesses if they choose to do so.

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And at the conclusion of all the evidence, I will instruct you on the law. Do not be concerned with the wisdom of any rule of law stated in the instructions which I will read to you at the conclusion of the trial regardless of any opinion you may have as to what the law ought to be. It would be a violation of your oath to base a verdict upon any other view of the law than that given to you by the Court. And please understand that I don't make the law. The law in each state is created by the legislature, and it may be modified by the Nevada Supreme Court. But I don't make law, I just tell you what laws apply to the case.

After the instructions on the law are read to you, each party will have the right to argue orally to you in support of their case. That's called the closing argument. What is said in closing argument is not evidence. The arguments are designed to summarize and interpret the evidence for you and to show you how the evidence and the law relate to one another.

Since Plaintiff has the burden of proof, at the end of the case, they get to argue to you twice. They start, there's a response, and then they do a reply.

After the attorneys present the arguments, you will retire, you will select your foreperson, and you will deliberate the case and arrive at a verdict. Faithful performance by you of your duties is vital to the administration of justice. It is your duty to determine the facts and determine them from the evidence and the reasonable inferences that arise from such evidence. And in so doing, do not indulge in guesswork or speculation.

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The evidence which you are to consider will consist of the testimony of witnesses and exhibits admitted into evidence. The term witness means anyone who testifies in person or by way of a deposition. And it may include the parties to the lawsuit.

A deposition is simply an examination of the witness at a prior date under oath with the attorneys present where the testimony was taken down in written format. And those written questions and answers would be read during the trial.

Admission of evidence is governed by rules of law. From time to time, it may be the job of -- the duty of the attorneys to make objections and my duty as the judge to rule on those objections and decide whether a certain question may be asked or not. Please don't concern yourself with the objections made by the attorney or by my rulings. Please don't consider any testimony or exhibits to which an objection is sustained, or which is ordered stricken.

Further, you must not consider anything which you may have seen or heard when court is not in session, even if what you see or hear is said by one of the parties or by one of the witnesses. In every case there are two types of evidence; direct and circumstantial. Direct evidence is testimony about a -- by a witness about what they saw or heard or did.

Circumstantial evidence is testimony or exhibits which are proof of a particular fact from which if it is -- that fact is proven, you can infer the existence of a second fact.

If a witness testified that they just came in from out -- outside

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and it was raining, that would be direct evidence. If that same witness came in and didn't say anything about the rain but walked in wet, you could infer that they walked through the rain.

You may consider both direct and circumstantial evidence in this case. The law permits you to give equal weight to both, but it's up to you to determine how much weight to give any particular piece of evidence.

No statement, ruling, remark, or facial expression which I may make -- which you can see from here up -- during the course of the trial is intended to indicate my opinion as to what the facts are. I -- I don't decide the facts. That is for the jury to do. And you are the ones who have that responsibility. You alone must decide upon the believability of the evidence and its weight or value.

In considering the weight and value of any testimony, you take into consideration their appearance, attitude, behavior, the interest of the witness in the case, the relationship of the witness to any party to the case, the inclination of the witness to speak truthfully or not, the probability or improbability of the witness' statements, and all other facts and circumstances. You may give the testimony of any witness just such weight and value as you believe that witness is entitled to receive.

Let me remind you one more time. Don't talk to each other about the case or anyone who has anything to do with it until the end of the case when the jury goes to deliberate. Don't let anyone else talk to you about the case. And if someone should try to talk to you about the case while you were serving as a juror, report that to me immediately.

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There are some media requests. I have the Court's media policies here. And if anyone wants to read those, feel free, but the media has been instructed by our public information officer that you guys are off-limits during the trial. And while I'm not going to explain how on the record, in case someone else is hearing, we will make sure that if you want privacy at the end of the deliberation you will receive that to get to your cars without being subject to any press.

Don't make up your mind about what the verdict should be until you go to the jury room to decide the case and you discuss the evidence with your fellow jurors.

It is important throughout the trial to keep an open mind. At the end of the trial, you'll have to make a decision based upon what you recall of the evidence. You will not have a written transcript for your deliberation. We have a court recorder and not a court reporter. So if there's some testimony you think you might want to hear again in the deliberation room, write down the name of the witness, the exact minute, date and time, and we'll see if we can do a replay for you. But keep in mind, you will not have a transcript during the deliberation.

And I urge you guys to pay close attention to the testimony and exhibits as the trial proceeds. And if you will give the lawyers and their clients the same attention that you have given to me, that -- that will make it a great result because you've been so attentive and so -- such good listeners throughout this process. At the -- so I do urge you to continue to pay close attention. And that concludes my remarks.

Plaintiff, are you invoking the exclusionary rule?

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MR. ZAVITSANOS: No, Your Honor.
THE COURT: Defendant?
MR. BLALACK: We are invoking the rule, Your Honor.
THE COURT: All right. Good. I'm going to ask counsel to approach.
[Sidebar at 3:23 p.m., ending at 3:23 p.m., not transcribed]
THE COURT: Okay, everyone has their juror -- their juror badges now? There we go. All right. And Ms. Torres did you have a juror badge?
JUROR 05: Yes.
THE COURT: Okay. Good enough. Just making sure. We are going to excuse you for the day. Tomorrow we'll start at 9:30. You have a question, Ms. Wynn?
JUROR 11: Do we get a letter to take to our employers if we have been selected?
THE COURT: I can certainly get them for you. And if you want to wait for those. I didn't think about it, because I wasn't sure whether they were going to be done today. But I can get one done for all of you. Give me just a second.
[Pause]
THE COURT: It will take a few minutes. Yes, Ms. Herzog.
JUROR 12: I think it was Thursday we got a schedule for this week.
THE COURT: Uh-huh.
JUROR 12: And there was no court on Thursday or Friday.

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THE COURT: That's correct.

JUROR 12: Is that still the case

THE COURT: Yes.

JUROR 12: Okay.

THE COURT: Okay. Are there any questions while we're waiting? Yes, Ms. Springberg.

JUROR 2: Do we know about future weeks, if there are days that the Court will not be in trial?

THE COURT: I can. I know that next week, Thursday the 11th is a holiday. And we're expected -- there are no other days that we should expect to be dark. We do expect to have a verdict -- or you to deliberate and have a verdict by Tuesday the 23rd of November. That's two days before Thanksgiving. We've kind of talked about that already, though.

So for anyone who needs the letter to come from us to your employer, write your name and to whom it goes to on that letter, so that my assistant can do that right away.

And what I'm going to suggest is that let me give you the admonition. And those of you who need letters for your employers, just wait a few a minutes and the Marshal will run them out to you.

So during the recess -- we'll meet tomorrow at 9:30. You're instructed do not talk with each other or with anyone else on any subject connected with the trial. Don't read, watch, or listen to any report of or commentary on the trial. Don't discuss this case with anyone connected to it by any medium of information, including without limitation,

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newspapers, television, radio, internet, cell phones, texting. Don't conduct any research on your own relating to the case.

Don't consult dictionaries, use the internet, or use reference materials. You may not go on social media with regard to your jury experience until after it is over. Don't talk, text, tweet, Google or conduct any other type of book or computer research with regard to any issue, party, witness, or attorney involved in the case.

Do not form or express any opinion on any subject connected with the trial until the matter is submitted to the jury. Thank you so much for your attention. Have a good night. We'll see you tomorrow.

THE MARSHAL: All rise for the jury.

[Jury out at 3:27 p.m.]

[Outside the presence of the jury]

THE COURT: Okay. The room is clear. Give me a minute just to go talk -- it's a temp JEA. My assistant of 15 years has been on medical leave since May. So I'll be right back.

MR. ZAVITSANOS: Yes, Your Honor.

MR. ROBERTS: Yes, Your Honor.

[Pause]

MR. ZAVITSANOS: So -- and I just confirmed with Ms. Lundvall, the rule obviously does not apply to opening statements because that's not evidence, right.

MR. BLALACK: I mean the only issue we wanted to raise on the rule, Your Honor -- and Mr. Roberts tells me there might be some

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debate on this, is that the rule does not apply to a corporate representative or to an expert.

THE COURT: That's correct.

MR. BLALACK: If there's consent on that an agreement on that.

MR. ZAVITSANOS: I have no problem with that.

THE COURT: 30(b)(6) witnesses and experts are allowed to sit in.

MR. ZAVITSANOS: Yeah.

MR. BLALACK: Okay.

[Counsel confer]

MR. ZAVITSANOS: I'm sorry, I blame myself, Your Honor. So I think while they're conferring, I think we're going to start the lunches tomorrow.

THE COURT: Oh, I forgot about the dietary restrictions.

MR. ZAVITSANOS: And I forgot that, I'm sorry.

THE COURT: No, I did.

MR. ZAVITSANOS: No, I take -- I take responsibility for that too. I should have reminded Your Honor.

THE COURT: Let's --I want everybody's attention. Let's give them just a moment.

[Counsel confer]

MR. ZAVITSANOS: Your Honor, a couple of things --

THE COURT: Sure.

MR. ZAVITSANOS: -- before we get started on the ones that

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would need the Court's guidance. Number one, we did arrange to acquire a bigger monitor.

THE COURT: I see it.

MR. ZAVITSANOS: Okay. So if it's okay, while we are --

THE COURT: Are you our tech person?

MR. ZAVITSANOS: -- and I don't need to distract Court, but if our tech person quietly sets up while we address this, would that be okay with the Court, or would you rather us do it --

MR. BLALACK: I have no objection. I do think we need to get a guidance and a decision on where these are going to be situated.

THE COURT: You know, the Marshal does a lot of that, and he's not in the room right now. So I would suggest that we see if we can find a place for that one. I always make sure that all of the jurors and the witness can see whatever. And I give the witness permission to move about if they need to stand at the monitor.

MR. ZAVITSANOS: The witness does have a monitor I see on the stand.

THE COURT: Yeah. He does.

MR. ZAVITSANOS: So I don't think that's going to be an issue, this is really --

THE COURT: Sometimes it is. Based on the size of this monitor compared to that one.

MR. ZAVITSANOS: I see. Got it.

THE COURT: The benefit of the one here is that it's touch screen. So they can highlight --

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MR. ZAVITSANOS: I see.
THE COURT: -- certain parts or whatever they're looking at.
MR. ZAVITSANOS: I see.
THE COURT: And Brynn always has to instruct them on how to erase that.
MR. ZAVITSANOS: Got it.
THE COURT: The tap, yeah.
MR. ZAVITSANOS: So my request is, if it's okay, if our assistant here is just arranging things very quietly while we take up these issues.
THE COURT: Right.
MR. ZAVITSANOS: Otherwise we can come back later.
THE COURT: No, no, it's okay. But when it gets to moving things in the courtroom, I'm not going to do that without the Marshal here.
MR. ZAVITSANOS: Yes. Yes.
THE COURT: Because this is his territory.
MR. ZAVITSANOS: Got it.
MR. BLALACK: Yeah, and our only interest, Your Honor, is where it can be and that it's proper.
MR. ZAVITSANOS: Yeah, I'm not asking about that right now. I'm just saying taking things down. Okay, Your Honor. Thank you.
THE COURT: Now I need to let you guys know my schedule. I have tomorrow at noon an executive committee meeting that I must attend as the presiding civil judge. So we'll need to take a whole hour

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tomorrow. In fact a little bit longer because we only have one working elevator back here. You guys think you have it bad; we have it just as bad back here. So it took me like nine minutes one day to get up to the tenth floor. So we'll have to break by 11:50 and start after 1:00.

MR. ZAVITSANOS: So, Your Honor, just -- okay, on that point, I anticipate that on our side, depending on what the Court decides on these issues around these exhibits, our opening I expect is going to be about an hour and a half. That kind of jams them a little bit because Your Honor needs to be available at noon. If we -- if the jury's here at 9:30 and say we get started a quarter to --

THE COURT: You always start ten minutes late, no offense. It's just because there's always something we have to talk about.

MR. ZAVITSANOS: So I'm assuming then --

THE COURT: I'll adjust it so that the Defendant has all the time they need right after lunch.

MR. BLALACK: Yeah, we -- the parties agreed we wouldn't go over an hour and a half each. So we might finish less. But I think we have --

MR. ZAVITSANOS: All I'm saying Lee is that there's a possibility that Your Honor needs to go in the middle of your opening and --

THE COURT: No, no. I --

MR. ZAVITSANOS: -- I'm just raising that.

THE COURT: If we have to, I'll make sure that he doesn't get broken up.

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MR. BLALACK: Thank you, Your Honor. We'll just start after lunch.

MR. ZAVITSANOS: Yeah.

THE COURT: Yeah. And so if you guys don't start lunch with them tomorrow, they'll have a lunch. We could do it the next day and from here on out, a half hour.

MR. ZAVITSANOS: I think we're arranging to bring lunch in tomorrow, Your Honor.

THE COURT: Oh, you are.

MR. ZAVITSANOS: And you know I'll -- we'll try to have a few options and then I'll try to remember tomorrow to ask, the Court can inquire about any kind of allergies or --

THE COURT: And is it okay with both of you if I tell them that your clients have agreed to do this, to streamline the trial?

MR. ZAVITSANOS: Yes, Your Honor.

MR. BLALACK: That's correct. It's okay with us.

THE COURT: Good. Okay. What else?

MR. ZAVITSANOS: Okay.

MR. ROBERTS: We have a number of -- Your Honor, if this is a good time, I did want to briefly make a record on the conference we had during voir dire out in the hallway.

THE COURT: Please do.

MR. ROBERTS: I was inquiring I believe it was of Juror Reese on the front row --

THE COURT: Uh-huh.

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MR. ROBERTS: -- regarding the burden of proof. And as I explained in the hallway, the reason I felt that line of questioning regarding the burden and could he rule for us, even if we submitted no evidence and no explanation was because at this time, it's my understanding that we're not allowed to say that our reimbursement rate was based on our median in-network reimbursements --

THE COURT: That's right.

MR. ROBERTS: -- or any other standard based on in-network reimbursements. And under the apprehension that our witnesses may not be able to give a reason for the rates they pay under the rules articulated by the courts, I needed to know if anyone was going to hold that against us and could rule for us if the Plaintiffs did not meet our burden -- meet their burden, even though you know, we submitted no explanation for the rates we actually pay.

And I'm not complaining about any limitation by the Court. That came out, and I think Mr. Reese was a little confused probably because my questions were not very good. But I got his assurance that he could be fair and apply the burden of proof and I'm happy with that.

But in the back one of the arguments raised was that the issue was very complex because while on the implied contract claim, Plaintiffs agreed with my position, on the unfair insurance practices claim, they disagreed and said we do have to articulate a reason. And if we don't have a reason then that's bad faith.

Well, that just I believe highlights our position, Your Honor, that based on the claims that they make, our witnesses need to be able

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to say what they base their reimbursement rates on, even if the Court disagrees that that was a valid basis. And even if the Court instructs the jury that they -- that that's not a valid basis for payment, I think in order to defend the unfair practices act, our witnesses have got to be able to say why they paid the rates that they did, even if it involves network reimbursement rates.

THE COURT: Thank you.

MR. ROBERTS: Thank you, Your Honor.

THE COURT: And there was a response in the hall. Would you like to --

MR. ZAVITSANOS: Yes, Your Honor. So as I understand it, counsel just made an offer of proof. And so I don't necessarily have a response, other than just to correct one thing he said. I don't think I said what counsel said I said. I think there's a little bit of a misunderstanding. I think what I said was we have some vigorous disagreements about what the charge is going to look like, and that the elements of the unfair claim settlement practices claim that we have some vigorous disagreement about that. And the way that counsel had phrased the question was essentially asking that they commit to the law.

Now the other thing I will say is that I think he did get the question out to a couple of other folks. And then he did not -- and then I think he corrected it when he got back in, and he framed the question correctly, and he asked the rest of the panel. And I did not object to that.

THE COURT: Thank you. Did you have anything further?

MR. ROBERTS: No, nothing further, Your Honor.

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THE COURT: Thank you.

MR. ROBERTS: Thank you.

THE COURT: All right. Are we read to work our way through housekeeping?

MR. BLALACK: I believe we are, Your Honor.

THE COURT: Let's do it.

MR. BLALACK: So, Your Honor, I don't know what is next -- we have a couple of things. We have the pretrial conference where we filed the joint pretrial memo, Your Honor. Which if there are issues that you want to discuss we can. I think for the parties' perspective, although I provided commentary primarily what remains to be discussed are the items in XI, which are, you know, various sundry issues the parties have discussed and wanted to raise with the Court before the trial commences.

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THE COURT: All right. I need to get there. I turned around some of your orders today, so you know on breaks.

MR. BLALACK: Thank you, Your Honor.

THE COURT: A lot of -- a lot of pages on this docket. And what's the date of the filing of the pretrial?

MR. BLALACK: Your Honor, it was filed October 27th at 10:31 p.m.

THE COURT: Thank you. Okay. Just -- I'm opening it now. And where's the first issue that I should focus?

MR. BLALACK: Your Honor, if you go to Roman numeral 11, page 16, you'll see a header that reads, "Other matters the parties desire

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to bring to the attention of the Court."

THE COURT: Okay. I'm there.

MR. BLALACK: Okay. So Your Honor, you'll notice there's about four or five items listed there to discuss. Some of these have been resolved by agreement already. For example, lunches, which we've already discussed with the Court. Press coverage, issues like that that have already been presented.

THE COURT: Can we take them starting at the top? Deposition clips.

MR. BLALACK: Correct.

THE COURT: They need to be --

MR. BLALACK: So what I was -- the ones that I think were part of discussion, Your Honor, deposition clips at trial, demonstratives, and the identification of witnesses during trial.

THE COURT: Uh-huh.

MR. BLALACK: And then I believe the demonstrative issue ties into the pre-admission of exhibits issue that Plaintiffs wish to discuss. So the first issue, Your Honor, are deposition clips at trial. It is the Defense position stated there that the parties should take depositions of designated testimony, counter designations, objections. The Court will rule. And then once those rulings are made, the deposition --

THE COURT: Let me just clarify. This is direct, not impeachment?

MR. BLALACK: This would all be, yes, testimony admitted, offered by both parties after rulings on evidentiary objections by the

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Court, when all of those issues have been resolved. And now the question being presented is only how is the video being shown to the jury. Our position is that each side's designation should be cut in from the video and presented in the natural order in which the question was presented during the testimony at one time. So everyone -- the jury's advised that video deposition is about to be played. The video goes on. It plays through from the first clip to the end. And then it's done.

I'll let Mr. Zavitsanos explain, but I think their position is they want to play their clips. And then when -- just like it was -- the witness was live. And then we would respond with our clips. We don't think that is an efficient way to present the testimony, one. And two, we think because of how -- the cuts of the testimony, it'll be almost incapable of hearing to the jury because they'll give an answer, and then it'll completely skip to a different topic. The answers won't be in sequence to questions. So we just think it'll be very, very difficult for the jury to follow. So for that reason, Your Honor, we think our -- we request that Your Honor adopt our method. But Plaintiffs disagree.

MR. ZAVITSANOS: May I respond, Your Honor?

THE COURT: Please.

MR. ZAVITSANOS: Okay. So Your Honor, a couple things. So here's why we do not agree to that. When you have live witnesses, I put on a witness, counsel then goes. I then go again. Counsel then goes. Juries tend to identify who's calling a witness. They kind of identify, okay, this is the Plaintiffs' part, this is the Defense part. We very well may want to -- for a video deposition, we may want to play only one

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question and one answer because we want to make that impact.

If we are forced to take that question and answer and bury it in a 45-minute clip where the witnesses think that we called them -- because most of these depositions are going to come up during our part of the case -- during the Plaintiffs' part of the case. And so first of all, we're going to get penalized because the clip is very long. Second of all, the limited excerpt that we would want to play, gets a buried in a much longer thing. People stop -- people stop listening after about 20 minutes. I mean, I think that's what most of the empirical studies show. And I -- you know, we've had a number of trials where we literally have played just one question and one answer, and that's it. And we do that for effect.

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And so I think -- I think the depositions should be treated exactly the same way as the witnesses. And I will say this. These are excellent lawyers on the other side, and we work very well with one another. We are -- I am confident we will avoid duplication. There's not going to duplication. Okay. I mean, he doesn't want that. I don't want that. But I want to be --

THE COURT: The best lawyers don't have to say everything three times. That's all I'm going to say.

MR. ZAVITSANOS: I'm sorry?

THE COURT: The best lawyers don't have to say everything three times.

MR. ZAVITSANOS: Exactly.

THE COURT: Okay.

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MR. ZAVITSANOS: Exactly. And so that's exactly right. In fact, I think juries kind of punish people for doing that. So I want to be the master of what we present to the jury. Okay. I want -- I want to have 100 percent control over that, just like they do. So that's our response.

THE COURT: Now, I tend to agree that the Plaintiffs should control how they put their case on, but I'll keep an open mind to your reply.

MR. BLALACK: Thank you, Your Honor. The issue here is we all want to be the master of the presentation of the evidence, the best kind. But this is not going to be a live examination. And it can't be replicated as a live examination because you're presenting testimony that was recorded at another place in time, examined by a different set of lawyers at a different point in time. And by cutting it up in the way we're contemplating, we're going to sacrifice clarity and understanding of the jury because what they're going to see is question and answer, and then they might not hear the next three questions and answers that naturally follow, until -- for 30 minutes later until the video that we designated that's around the answer they get.

So you're going to have question and answer. Topic's going to change, go to something else. And then 30 minutes later, they're going to come back and hear the Q and A that was responsive and around that. And by that time, the connection that existed in the transcript at the time will be completely lost on them. And so what you're going to do is -- yes, the lawyers will feel good about how they presented it. But the jury will suffer because they will not get the

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testimony as it actually was presented at the deposition. And that's the sacrifice that I think we're going to be burdening the jury with for what I submit is not an adequate enough reason.

THE COURT: Thank you. I am going to adopt the Plaintiffs' proposal. However, if after the first deposition it appears to me to be disjointed or confusing to the jury, I simply could change my mind.

MR. ZAVITSANOS: I understand, Your Honor.

MR. BLALACK: Thank you, Your Honor.

With respect to the next issue, Your Honor, is demonstratives. I'm not sure if we still have a disagreement on this or not. But we had -- the parties had discussed not exchanging demonstratives. And it -- and for example, in advance of openings. I think we concluded it would be better to follow the typical practice of exchanging them in advance and having the opportunity to identify any objections in advance so that we don't have -- we can limit the number of times lawyers are getting up and making objections in the midst of the opening.

We think that makes sense here. So I don't -- and I think our proposal was to exchange those like tonight so that the parties could review them, and if there are any issues, raise them to the Court in the morning. I don't know where you all are on that now. But that's our position.

MR. ZAVITSANOS: So Your Honor, I -- you know, there's an ever-increasing movement of foot to force lawyers to share everything with the other side. And I -- we're in trial. We have the benefit of the

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Court's guidance on these limine rulings. I don't -- I don't think we have stepped off the fairway with any of the direction or rulings that Your Honor has given us. And I don't think they have either. And so I -- we are acutely aware of what the -- of what the Court has said is in, and what the Court has said is out.

But my concern is this. If you -- I mean, the -- we've put a lot of work into the openings, just like they have. And what's going to happen is we're going to have an hour and a half hearing tomorrow arguing about why we're using this word, why we're using this graphic, why we're using this. And if we have something in the opening, and they object, and you sustain it, we get penalized because Your Honor is making a ruling in front of the jury right off the bat, and we're in a hole. And we're very mindful of that.

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What we had proposed was we would exchange them tomorrow morning. And that way, they're not reorienting what they're going to do, and we're not reorienting what we're going to do. I mean, we're here. And you know, there has to be some element of kind of tactics and judgment or whatever that we don't have to show to the other side. And I -- that's my thought. So --

THE COURT: Is -- does the Plaintiff has a -- have a PowerPoint then?

MR. ZAVITSANOS: We have -- yes, a pretty extensive PowerPoint that frankly -- that a lot of it is -- includes language from some of the exhibits that we want to take up in a little bit. That is mostly what it -- what it contains. That's mostly what it contains.

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THE COURT: Okay. I usually just have you guys look at each other's PowerPoints right before --

MR. ZAVITSANOS: Yeah.

THE COURT: -- you do your opening. So --

MR. BLALACK: That -- this is -- I'm fine if what we're going to do is get a preview, we're each going to get a chance to see them in advance and raise an objection in advance, I'm fine with that. I'm not seeking to gain some proposing tonight.

THE COURT: Right.

MR. BLALACK: I certainly wasn't seeking to gain tactical advantage, given we're going in the morning.

THE COURT: I didn't take it that way.

MR. BLALACK: So if the Court is more comfortable with us doing it first thing in the morning, that's fine. I just think otherwise, we do risk some delay with objections, sidebars, and other things that --

MR. ZAVITSANOS: And Your Honor, I'm happy -- I'm sorry, Your Honor. May I respond?

THE COURT: Please.

MR. ZAVITSANOS: I'm happy to meet counsel here any time he wants tomorrow morning. I mean, I'll be here as early as he'd like. And we'll get it done in the morning, and he'll get to see this in the morning.

THE COURT: Good enough. Okay. So that takes care of the second issue.

MR. BLALACK: Correct.

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THE COURT: Takes us to lunches. That is resolved?

MR. ZAVITSANOS: Yes.

MR. BLALACK: That is -- that is resolved, Your Honor. And then the last issue --

MR. LEYENDECKER: Your Honor, just one minor housekeeping -- Kevin Leyendecker. One housekeeping on that. I thought Mr. Blalack and I had talked about this demonstrative exchange rule in kind of opening but having a different one once we go forward in the case. Where traditionally, again, if I put something up there and you clip my wings for it, then I'm going to pay the price for that. So I understand opening. My preference would be going forward that we not exchange.

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MR. BLALACK: We have no objection to that. I do think there's a difference between a demonstrative for closing and a demonstrative for opening.

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THE COURT: Got it.

MR. BLALACK: All right. Your Honor, the last issue in this list that I think is open is the timeline for each side to notify the other side of which witnesses will be called for the subsequent later days. And we have proposed a rule by which each side would notify the other party on the morning before the next trial day which witness or witnesses they're going to call the next day if they're in Nevada.

THE COURT: I normally do that at an afternoon recess.

MR. BLALACK: Okay.

THE COURT: So --

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MR. BLALACK: What time would that be, typically, Your Honor?

THE COURT: It depends, you know.

MR. BLALACK: Okay.

THE COURT: Sometimes when I see you guys changing subject matters, I'll just call one because you'll have more attention.

MR. BLALACK: Okay. The one request I'd make though to modify that is just the out of state problem we've got, which is bringing people in from out of state. Now, I don't think it's going to be an issue this week because opposing counsel has kindly told us the whole week's going to be devoted to this single witness. So it resolves our issues for this week. So I don't think we have anything to discuss.

But I think for -- to the extent they're going to call additional of our witnesses who are located out of state where we have to make more challenging logistical arrangements to get them here, make sure they've taken care of all of their affairs, you know, Your Honor, just an afternoon's notice, or even a 24 hours' notice is just not sufficient for us to be able to pull that off candidly. So we'd ask for something more reasonable, like 72 hours or something like that.

MR. ZAVITSANOS: May I respond, Your Honor?

THE COURT: Please.

MR. ZAVITSANOS: Yeah. So Your Honor, I think what I'm -- our position on this is -- so this week, again, the first witness is going to take this week into next week. I would like an opportunity maybe to visit with Mr. Blalack at the end of this week when we're done with the

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evidence. And what I'm -- my preference would be I would give him a list of those folks that we are almost certain not to call. Okay. And if I change my mind on them, then I'm willing to give him three days' notice on that. However, I mean, let's not kid ourselves. These -- both companies recognize the importance of this case. There's no -- I mean, they know exactly who we're going to call because of which depositions are the longest.

THE COURT: They have -- they have to know the order though because they're getting prepared.

MR. ZAVITSANOS: Yeah. No, no. I understand. And all I'm saying is, I think these folks that he's concerned about traveling, they're going to be here anyway, getting ready. And I -- you know, I'd like to give it to him the morning -- the morning -- if it's an out-of-town person, one day before. Okay.

Now, if he tells me -- if he tells me that person is not here and is going to have to travel, I will take him at his word, obviously. And okay, then we might switch up the order. But I don't -- I don't want to give them three days to have them here, when they're here already, you know, prepping them for what's coming. So that's all. I mean, we're on trial.

MR. BLALACK: Well, if I can address that, Your Honor. I'm not bringing anybody here in their case who I'm not told is going to be called in their case, for sure. Right. And so everyone who fits into that bucket, who are all the people they've subpoenaed. And that would be whether someone's in Nevada, or for that matter, much less Minnesota

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or New York, or wherever. I'm not bringing them here until I know that they are going to be needed and will be called because I'm not going to burden them with that exercise. So that's a null set of people who are coming here and just kind of hanging out waiting for -- to testify.

So the plan will be once he tells me I want this person two days from now, three days from now, is I'm going to bring them out. And -- but I just need enough heads up to know. For example, we have -- last week, he gave me five names. I believe one or two of those people are no longer on the witness -- list of witnesses in the joint pre-trial memo because they've withdrawn them. So their view's -- you know, like in any trial, their strategy's going to change. Who they really want versus who they thought they might want may change.

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I just want a heads up so that I can adjust logistically to get the right people here, and as opposed to having 24-hour notice and calling somebody and saying -- they say, well, I'd love to help you out, but I don't have childcare, or I've got an elderly somebody I've got to take care of. I just need a little more heads up for people outside of the state to make those kinds of arrangements.

THE COURT: All right. So Mr. Zavitsanos, you're going to have to work with Mr. Blalack because --

MR. ZAVITSANOS: Yes.

MR. BLALACK: - he's got the burden of arranging travel.

MR. ZAVITSANOS: And Your Honor, I am -- just -- just so it's clear, I am not -- I do not -- I have too much respect for him to try to jam him. I'm not doing that. If I could just indulge the Court. If we could just

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bookmark this and revisit this at the end of this week.

THE COURT: Well, it won't matter until next week, right?

MR. ZAVITSANOS: Yes.

MR. BLALACK: Correct.

MR. ZAVITSANOS: That's right.

THE COURT: Because you don't intend to finish with your three-day witness this week?

MR. ZAVITSANOS: Correct.

MR. BLALACK: Correct.

THE COURT: All right. Well, let's revisit it then Wednesday afternoon.

MR. ZAVITSANOS: Okay. Give us an opportunity to visit because I think -- yeah. I think I have an idea that might satisfy him and will take care of the issues I'm concerned about, so. But if we could just get started with the first witness, I think -- I think I've got a solution.

THE COURT: All right. And instead of asking in the afternoons, I'll try to remind everybody every morning.

MR. BLALACK: Thank you, Your Honor.

MR. ZAVITSANOS: Thank you.

MR. BLALACK: So I think that takes care of if there's -- unless there's something in the joint pretrial memorandum Your Honor wants to discuss, I think that --

THE COURT: Anything about press coverage?

MR. BLALACK: Well, that's in our view, tied up. The remote -- the access -- press access motions have already been presented to the

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Court. So I think -- I don't know that there's a need to address that further.

THE COURT: Okay.

MR. BLALACK: So from our perspective, unless there's something else in the joint pre-trial memo --

THE COURT: Oh, I was going to tell you guys, I've been trying to clear my motions calendars so that I can give you full days. It looks like I'm going to have one thing Wednesday morning at 9. It's something -- a TRO that came up. And on the 10th, Judge Bell more than likely will do my morning calendar. So that's what we're trying to do on our part.

MR. BLALACK: Okay. Thank you, Your Honor. We appreciate it.

THE COURT: And then you need to talk to the marshal about logistics. The brought in a monitor. And I just explained to them that before anyone goes to the monitor, I make sure everybody can see. And if they can, the witness can step down.

And Andrew, I wonder, would it be possible to remove this monitor from the courtroom for a while?

THE MARSHAL: Sure, if you want.

THE COURT: You could put it in my office.

THE MARSHAL: Sure. Sure.

THE COURT: Okay. Or your -- or the tech person, maybe the --

MR. ZAVITSANOS: Yeah, sure.

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THE COURT: What else did you all want to take up today?

MR. ZAVITSANOS: Your Honor, one last thing before Mr. Leyendecker raises his issue.

THE COURT: Yeah.

MR. ZAVITSANOS: I assume there's no issue with more than one person delivering the opening statement. That way we can break it up.

THE COURT: That will depend on what Mr. Blalack tells me.

MR. BLALACK: I will be flying solo, Your Honor. So they might be out numbering me, but if they want to bring in a party, that's up to them.

MR. ZAVITSANOS: All right.

THE COURT: Okay.

MR. ZAVITSANOS: Thank you.

THE COURT: There's your answer.

MR. ZAVITSANOS: Okay.

MR. BLALACK: I think the last issue, Your Honor --

THE COURT: Yeah.

MR. BLALACK: -- is the preadmission of exhibits.

THE COURT: All right.

MR. BLALACK: Mr. Leyendecker is here for the Plaintiffs. I'll address just some -- in response to his argument, some tactical issues. But I've asked Adam Levine with my team to join us if we get into the details when the time is [indiscernible].

THE COURT: Good enough. Do we have more appearances

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for the record today?

MR. BLALACK: He has not made an appearance yet, Your Honor, so he probably should do so.

MR. LEVINE: Good afternoon, Your Honor. Adam Levine for the Defendants.

THE COURT: Thank you and welcome.

MR. LEVINE: Thank you.

THE COURT: Anyone else from your team need to be introduced?

MR. LEVINE: Mr. Portnoi.

THE COURT: Mr. Portnoi.

MR. POLSENBERG: Dan Polsenberg for the Defendant, Your Honor.

THE COURT: Thank you, Mr. Polsenberg. And I see Shane is here for tech.

MR. GODFREY: That's correct.

THE COURT: We know you so well, Shane.

MR. GODFREY: Shane Godfrey for the record, Your Honor. Thank you.

THE COURT: And are there more people on your team that you need to introduce?

MR. ZAVITSANOS: Oh. I'm sorry, Your Honor.

MR. LEYENDECKER: Yes. Justin Fineberg.

MR. ZAVITSANOS: Mr. Fineberg is --

MR. FINEBURG: Good afternoon, Your Honor.

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THE COURT: Thank you. Welcome.

MR. FINEBURG: Thank you very much. It's a pleasure to meet you in person and thank you for allowing me to enter into the case pro hac.

THE COURT: Anyone else from your team you need to introduce?

MR. ZAVITSANOS: No. I don't think so, Your Honor.

THE COURT: Good enough. Okay. Mr. Leyendecker.

MR. LEYENDECKER: Yes, Your Honor. The first thing I'd like to do, the parties have conferred a number of times. We have swapped exhibit lists, swapped on those, including where there are objections and where they're agreed. And so the first thing I'd like to do -- and I understand the Defendants may not be in a position to say thumbs up or thumbs down right now. But I have a list of 70 exhibits, Plaintiff's exhibits, that by my cross-fertilization of where they had objections and where they don't, that these are unopposed. I have given them to Mr. Levine, and he's advised me that he doesn't think he can double check my math in real time, but that he thought he could do that perhaps by days' end.

And so whether I offered this now and ask the Court to admit them or first thing in the morning, I expect that I'm going to have about 70. He may identify one or two, perhaps, that I've gotten wrong. But the first order of business would be to admit these 70 or so exhibits that I understand the Defendants do not have an objection to.

THE COURT: Mr. Levine, are we putting you on the spot or

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are you ready to go?

MR. LEVINE: Your Honor, Mr. Leyendecker handed me this piece of paper with, I don't know, upwards of a hundred items on it. I have not cross-checked it. I don't even have my computer here to cross-check it against our exhibit list. I'll take him at his word that what he's listed here are exhibits --

THE COURT: No. No, no. You need to have a chance to look at it. We can do this in the morning.

MR. LEVINE: I'm happy to address it then, Your Honor.

MR. BLALACK: And Your Honor, there definitely are a number of exhibits -- some background. Mr. Leyendecker provided us 115 documents from their exhibit list that they wanted to use in their opening, asked us to review, and asked Mr. Levine to do so. He did. We confirmed that there were a number of those exhibits to which we had no objections at all. And then there were some we had objections that we withdrew.

So to the extent there are any objections -- any exhibits to which we didn't object or to which we've withdrawn objections, those are simple. They can be admitted, and he can refer to them in the opening. To the extent there's a dispute, it's only about anything where we still have a pending objection.

MR. LEYENDECKER: All right. To be clear, there's not -- the 115 were the 115 that I thought would allow the case to get going and examination to get going of the first witness so that we're not starting and stopping and starting and stopping. As it turns out, Your Honor, I

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think there's only about 22 to 25, either all or mostly all of them on the list that I gave the Defendants that are actually referred to in the opening. And of those 22 on that list, there's 7 that they've agreed to. And I think Mr. Levine probably could confirm those seven pretty easily. And there were about 15 that I'd like to engage Your Honor about, and they fall into two categories.

THE COURT: Do you have a list for me?

MR. LEYENDECKER: I have a list that I can read off. I was taking handwritten notes to try to -- may I approach, Your Honor?

THE COURT: You can tell me what they are.

MR. LEYENDECKER: They are Exhibits 25, 26, 37, 43, 73 I believe has been agreed to, 74 I also believe has been agreed to, 79, 94, which I believe has been agreed to, 100, 146, agreed to, 147, agreed to, 154, 175, 193, 213, 243, 246, 267, 287, agreed to, 363, 368, agreed to, and 509, which is an exhibit that was on and then off and then back on. And so that one, they may not have put their eyes on just yet, Your Honor.

THE COURT: And Mr. Levine, are you prepared to discuss these, or do you need some time?

MR. LEVINE: Your Honor, I'm -- he's listing these out for me for the first time --

THE COURT: For the first time.

MR. LEVINE: -- right here in real time. And so I mean, there are one or two that I recognize just by their numbers, and I could discuss, but if we're going to discuss these particular exhibits, I recommend we do it in the morning.

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THE COURT: All right.

MR. LEYENDECKER: Well, let me try this, Your Honor, because I think that the framework for each of the 17 that are not agreed to is very simple in straightforward. They fall into two categories of documents.

THE COURT: You know, you could really use your time well talking to him about this.

MR. LEYENDECKER: I have. We've tried three times and they've said we're just agreeing to disagree.

THE COURT: I got it.

MR. LEYENDECKER: All right? I mean, I -- we've gone, well, several times over several weeks, and we just -- it's because they have a point of view, for example, that while on the one hand, they will agree and have agreed to be clear, we have been exchanging these exhibits lists for weeks, Your Honor. The precise number and the ones I just identified as being on the opening, that's correct. It's the first time I identified those. But the majority of those are on the 115 that I sent to them a week or so ago.

So back to my big picture observation. There are two kinds of exhibits that are -- I just identified that they're not agreed to: those that relate to the Yale study, and there's -- and I can give you those numbers. That's number 37, number 79, number 100, and number 509. The rest that are contested all relate to reimbursement methodology, the out of network or the SSP programs. That's it.

So in -- and on those two categories of exhibits, Your Honor,

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they make three principle objections. Relevance, which I think the limine motions and rulings have spoken to both the Yale and reimbursement methodologies. Second, they say probative value is outweighed by the prejudice. Same thing. The limine rulings have spoken to the two categories I just described. The third objection they make is foundation to the document. The threshold for defeating a foundation objection to a document is very low. That's 50.015. All the proponent has to do is offer some evidence that would allow a juror or jurors to conclude it is what it purports to be. It's a United memo about the Shared Savings Program.

Now, what's interesting about this category is on foundation, they will at times -- for example, Exhibit number 295 is an exhibit they have agreed to, Your Honor. It's a February 2019 email that contains a discussion that essentially says who's in charge of the out of network program and responsible for figuring out the methodology. And the exhibit itself identifies Mr. Haben and Ms. Paradise. Not objected to. But yet, when I look at Exhibit 243, which is one of the ones on my opening, it's an email from Ms. Paradise to Mr. Haben about reimbursement methodologies, and they say foundation.

And so while normally, or typically, lawyers prove up the foundation on a document by asking the witness to identify it, that's not the only way. There are lots of ways. It's a very low bar. And so given that I have exhibits that they have agreed to, and the one I picked out for Your Honor as an example, 295, which identifies Mr. Haben and Ms. Paradise as in charge of those programs, that means necessarily any other email produced by the Defendant, right, on those programs

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satisfies the hurdle for authenticity under either 52.015 -- oh, I have two cases for you. I put them in the brief. That's the *Thomas* case, 114 Nevada 11.27. For the *U.S. v. Tank* case, 200 F.3d 627. It's a 9th Circuit case.

So the foundation objection, Your Honor, very low threshold. I think the Defendants are trying to conflate whether a witness has foundation to speak to a document with the foundation objection to the document itself. But as I just described at 30,000 feet, every single reimbursement methodology, out of network, SSP-style program document, and there's a bunch of them on our list, are clearly within both Mr. Haben, who will be the first witness, and Ms. Paradise, also subpoenaed to testify on the case.

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So just to refresh on that 295, I have an exhibit, an email they're agreeing can come in that identifies those two as in charge. But they want to object to the foundation of emails between those two. Or emails that aren't between those two, but they cover a reimbursement OON, you know, style of methodology situation. I think the foundation is established by the mere fact that they are agreeing to ones that show that they know.

Okay. Second example on foundation. There are what I'll call United Exhibit number 94 is an example. Ninety-four is a PowerPoint-style presentation. ASO benchmark pricing. Ninety-four, the Defendants agree to. This PowerPoint presentation does not say who wrote it. It doesn't say who received it. But it's clearly a United document, PowerPoint, not from so-and-so to so-and-so but a

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PowerPoint on the reimbursement methodology subject. There are others that are just like that that although they agree on some, others they won't. And what I'm telling Your Honor, as an example, they agree on 94, they agree on 368, they agree on 367. These are all what I'll call non-email, United-produced documents that are addressing reimbursement out of network, cost-saving-style program issues.

But at the same time, there are others, like 25 and 26 -- 25 and 193, also United PowerPoint-style presentations, that they say no foundation on. And so for the same reason I described on the email examples, the foundation for what I'll call the non-email PowerPoint-style reimbursement methodology, that's satisfied, too, given the low threshold.

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Now, as I say, the Yale studies are 37, 79, 509, and 100. The rest are reimbursement methodology. And so I think in light of the low threshold and in light of the fact that they are agreeing and have agreed to the admissibility of other reimbursement methodology style documents, emails, and PowerPoints, then that, in my view, the Court ought to admit those. At a minimum, though, you have the authority under 47.070 to conditionally admit them if you think that I'm not going to -- if you think right now there's not enough, given what they've already agreed can come in. And so either way, I ought to be able to talk about them and show snips of them in the opening.

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Now, last topic, Yale. There's a handful of the Yale studies in here. Of course, Your Honor has already addressed that in terms of the limines. It's relevance or probative value, the whole nine yards. So the

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only real question there is, again, foundation. But I have the same scenario. United documents, including the highest-level person in the company who was examined about some of them in his deposition. So the Yale study might be a little bit different than the reimbursement methodology in that I think there's a few of those. But there's no question there will be a videotape of Mr. Schumacher and Rosenthal, and they're all over those documents produced by United. Again, easily going to surpass the foundation threshold that's required to get them into the case.

So where does that leave me? What I would ask the Court to do, Your Honor, is to admit -- overrule the foundation, relevance, probative value outweighed by prejudice objections from the documents I just described. I'm happy to go through them one at a time to prove to the Court that they are, in fact, covered by this reimbursement, out of network, Shared Savings Program concept or the Yale study concept. We can do that if Your Honor would like. But I'm representing to the Court that that's the case. And again, if I put one in there that you have said, no, no, my limine, then I'm going to pay the price for that.

Now, they make one other objection, and it's an objection that I haven't seen before in the way that they make it. And that objection is this is an incomplete document. And so I said to Mr. Levine, well, okay. If you think I'm taking out page four of a seven-page document, and it's incomplete for that reason, then I understand that, and I'll fix that. But I don't think that's how they're making it. I think they're saying, well, maybe there's an email, right, that goes with that

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attachment and maybe the email has three attachments, and you're not putting them all together. You're just putting, for example, the PowerPoint presentation by itself.

Well, I have examples. In fact, the first one I gave you is just that, where they're offering on their exhibit list -- let me get it for you -- 94, no objection. PowerPoint-style, what I would say reimbursement methodology document, that was attached to an email. But on their list, they have the exact same document without the email. So I don't think -- if their incomplete document objection is because I've left out page three, so to speak, that's fine. We'll get page three in there. But if the objection is, well, you should have put the email, then that's new to me and that's contrary to what they're doing in their own exhibits.

So that's where it is, and we'd like to get those admitted. Or at a minimum, conditionally admitted, the ones that I described as being in the opening, Your Honor.

THE COURT: Thank you. Mr. Levine, are you prepared to respond?

MR. BLALACK: Your Honor, can I start and then ask Mr. Levine, because I think there's two things from our perspective. There's the global legal issues related to what Mr. Leyendecker just said, and then there's the details that Mr. Levine is much better suited to present. So let me kind of set the table from our perspective.

So first, what this request is is a motion in limine to preadmit exhibits, which this Court has a procedure for doing. It wasn't filed in a

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timely way. And as a result, we didn't have the opportunity to go through the orderly exercise that would have occurred. If this had been filed on whatever the deadline was, September 20th, September 21st? My guess is some of these, we would have settled by agreement, others we would oppose, we'd have briefed it. Your Honor would have had a chance to go into the details, could have heard argument on it in specific, and issued rulings. And we'd all have clarity well before 4:20 on the afternoon before opening statements.

This is a shortcut effort to do what a motion in limine to prove that it would seek to do and do it in 24 hours. That procedure doesn't work for us for a couple of reasons. Most importantly, as Mr. Levine explained, there's a lot of complexity in this list where things that are presented as if they're undisputed and self-evident, when you actually get into the exhibits, they're not. I'll have him explain a few examples in a moment. But even more fundamentally, most of this discussion was about foundation.

But the argument that was just made related to authenticity. Is the document what it reports to be? And Mr. Levine can correct me if I'm wrong, but I don't believe most or I don't know if any of the objections that are at issue on these documents are authenticity objections. We're not fighting about whether it can be admitted because there's no evidence it is what it reports to be. The question is is there a foundation? Someone with personal knowledge who can testify to what the purpose of what the document is and lay a foundation for why it's being admitted and for what purpose. I don't know what purposes all of

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these documents serve. What I've heard is -- today is it relates to the Yale study, and two, it relates to out-of-network programs.

It is absolutely true, Your Honor, that based on the in limine rulings, there are some things that are going to be admissible about the Yale study. Some things about out-of-network programs are going to be admissible because the Court denied motions in limine would have made all of that stuff inadmissible. But that doesn't mean every single document that relates to the Yale study, and every single document that relates to an out-of-network program is ipso facto in evidence.

There are -- depends on why it's being offered to prove what, for what purpose, and what other considerations relate to what that document contains in it, including hearsay and a host of other things. So that requires individualized analysis on the document basis. And normally, the way that would get resolved is there would be a witness on the stand, the document would be put in front of them, I'd ask -- we'd ask them foundational questions and then get answers.

And the objections and issues would either be resolved or at least the Court would have in front of it a good understanding of what the circumstances are to make an evidentiary ruling. And opposed to what we're doing here is talking about a list that no one has in front of them. There's no one that we don't know. We don't have like -- we're not all looking at the same document saying, oh, I get this. This is why we're offering this, and here's the foundation, and here's the burden.

So I object to the process that we're pursuing in trying to pre-admit these exhibits. We're glad to continue to meet and confer. We've

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reached agreement on some; we've withdrawn objections on others. Once they show the ones they want us to look at, I'm glad to continue doing that. But the notion that the Court should just be given a list of numbers and told these relate to out-of-network programs in Yale, therefore, they're in evidence -- that, I would object to, Your Honor.

So with that, I'll ask Mr. Levine to give you a little context about the meet and confer that ensued this last week or last week on the 115 so you get a sense of what I'm talking about.

MR. LEYENDECKER: Your Honor, before he does that, I'd like to just quickly respond to what Mr. Blalack's --

THE COURT: Motion, opposition, reply.

MR. LEYENDECKER: Okay. All right.

MR. LEVINE: Good afternoon, Your Honor. Nice to meet you in person.

A little context, and then we can decide whether we resolve these issues tonight or tomorrow morning. The parties have cooperatively exchanged exhibit lists, provides their exhibit list, provides their objections to the exhibits on the other party's list. Last -- I believe it was Tuesday afternoon, so a little less than a week ago -- we received from Plaintiff's counsel a list of 115 exhibits from their list to which we had objected, and we actually had not objected to all of them. When it was presented to us, it was presented as these are 115 documents from our list that we want to use in opening or earlier in the case, and will you consider? You know, let's meet and confer about you withdrawing your objections.

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We looked at the list of 115. There were a number of them that we had not objected to at all, so admissibility was fine. And then we had a meet and confer call to discuss the 115. Went through the exhibits; not all of them, but we started at the first one. The first one was the Ingenix settlement. Dead bang down in the middle of the plate covered in this action. Mr. Leyendecker said, all right, let's go to the second one. What's wrong with this one? The second one was a senate committee report on the Ingenix settlement.

Went to the third one. Third one was a draft initiative from 2014, where the custodian on the document was Rebecca Paradise. Okay. Rebecca Paradise will be testifying this case. It had never been shown to Ms. Paradise at her deposition. There was no email attached to it indicating she had received this email in 2014. In fact, in 2014, Ms. Paradise was not even in a position to be involved out-of-network programs. So we have a foundation objection to it.

Could they lay foundation with Ms. Paradise at her -- when she appears here at trial? It's possible. I frankly don't think they'll be able to do it, but we cannot withdraw our foundation exhibit just because they had informed us that she was the custodian on the document. And so it went on and on. There were exhibits on that list that were incomplete, and Mr. Leyendecker says, what do you mean by incomplete? There's a document -- I can show you, Your Honor, or I'll just -- if Your Honor is interested, I can show you.

But it's a document that looks like this. Exhibit 323 on the list. It was among the 115 key exhibits they wanted to talk about last

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Tuesday. That document is a redacted version of this document. So it's just this portion. That's all it was. So we maintain our foundation exhibit to that -- objection to that. We did, however, look at all of the 115, and we withdrew many of the objections we had. Some entirely, some partially. And that's -- and we sent them an email about this on Thursday with those revisions.

The next I heard from Mr. Leyendecker was moments before we came up here, when Mr. Leyendecker had a new list that had -- and I have no reason to think it's not accurate -- a list of documents on their exhibit list to which we have no objection. He asked me to check if that was accurate. I, of course, assume it's accurate, but I will check it to make sure when we get home -- when we get back to the office tonight, and we'll be able to let you know in the morning.

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Then Mr. Leyendecker stood up here, and I heard for the first time what you heard for the first time that there were additional exhibits or some reduced number of exhibits. I don't know if they're fully from the 115 universe or some new universe that, in addition to this list, he says they want to use in their opening, and he would ask us to withdraw objections to them. And he started to argue about some of those exhibits. I have not reviewed those exhibits, and I would ask as to those exhibits that I and my team get to review them, and we'll be able to let Mr. Leyendecker know whether we withdraw our objections to them. And if not, be able to present it to Your Honor in the morning.

THE COURT: Thank you. And your reply, please?

MR. LEYENDECKER: Yes, Your Honor. I'm not asking them

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to withdraw any objections. And 30 minutes ago when I conferred with counsel, it was clear to me that we were in an agreement to disagree, and Your Honor was going to have to break the ties on these issues. So I appreciate the sponsor of, well, let's continue to work offline. But it's been stop sign to stop sign, and we are at the agreement to disagree point of view.

Number two, Mr. Blalack told you that I should have filed a limine to admit these. Well, what maybe he wasn't aware of is the parties had agreed to take up exhibits after the limines. The objections to exhibits were not shared until after deadline to file the limines. So that's just a nonstarter. We had an agreement to take them up after limine, so that's what I'm doing. I get that they don't -- that maybe they're feeling like I'm whipsawing them. I've been trying for some time.

There is a tie that needs to be broken on whether the foundation objection to a document is going to be granted because Mr. Haben says, well, my name is not on this out-of-network cost management program, and I don't know what that is. Objection, Your Honor, foundation; don't let the document in. That is not the test for satisfying foundation of a document. But that's what the Defendants are trying to do writ large throughout these. And not only on ones where their names aren't on them.

As I pointed out in my beginning, they want emails that are from Paradise to Haben, and they say, foundation. So, you know, I do have a point of view about how well-taken those foundation objections are. I do think they can be established writ large on the small number of

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exhibits that I've identified for the opening. And so I'm going to ask Your Honor to do that in the morning.

THE COURT: So let me kind of give you guys some direction as to where I'm going. In my mind, it makes perfect sense to conditionally admit them and let the Plaintiff use them in the opening. Because if they say they will seek to admit it, and it doesn't get admitted, it's very prejudicial to the Plaintiff. So that's what I'm thinking. And we can take this up tomorrow at -- if it's possible for you to confer with regard to the 70.

MR. BLALACK: Okay. Thank you, Your Honor.

MR. ZAVITSANOS: Your Honor, can I make one -- I'm not going to get into the weeds here. I want to kind of preview one there for the Court so Your Honor can just be thinking about it because I'm virtually certain this is going to come up. May I? And it relates to the issue we're talking about right now.

THE COURT: Sure.

MR. ZAVITSANOS: So the Defendants here have really a very unusual understanding of the foundation rules. And I think what -- so Mr. Haben and Ms. Paradise, they are -- throughout the documents, they are the two highest ranking people for the so-called program that United was running.

THE COURT: I've heard their names for years.

MR. ZAVITSANOS: Yes, exactly.

THE COURT: Yes, okay.

MR. ZAVITSANOS: And so Your Honor denied the motion to

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quash. The Supreme Court affirmed Your Honor.

THE COURT: Or refused to review it.

MR. ZAVITSANOS: Yes. Excuse me, Your Honor. Correct.

So according to the Defendants, Commissioner Haben takes the stand and says, I don't remember this or I'm not sure I got it. Their position is I get to neither question him about it nor does it come in. Now, what is that? That effectively is them allowing the witness to unilaterally grant the motion to quash. That's really what we're talking about here. And I am previewing for the Court this issue is going to come up over and over and over and over again.

THE COURT: This is the second or third time you've brought that argument up in pretrial.

MR. ZAVITSANOS: That's right. And, well, if you think I'm bringing it up a lot? Wait until you hear their objections. And so I just want to preview that for the Court because Mr. Haben, I'm going to go through the entire program with him whether he's on the document or not because he was the head of the program.

Okay. And so I just -- you know, I know this is going to come up, and I don't want to have these 30-minute breaks during the cross where they're repeatedly raising this type of thing. Now, I know that -- I know that we filed a brief this morning, I think, on the conditional admission. So again -- and we did get --

THE COURT: Right. You did. And I have researched it over the weekend.

MR. ZAVITSANOS: Yes, Your Honor. And we did get the

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Court's guidance on that, but. And if Your Honor would like, I mean, we're happy to do a bench brief on this. I mean, this is -- but this is most unusual the position that they're taking. And I -- anyway, I --

THE COURT: Which is why I signaled that I'm inclined to conditionally admit. Did you have a response?

MR. BLALACK: Yes, Your Honor. I don't think it's unusual. And I think what we're proposing is just applying the Rules of Evidence. That's what we're proposing to do. Apply the Rules of Evidence as understood in this state, and for that matter, virtually every state. Which is what type of factual information do you need to be able to offer it into evidence? A document.

The issue is not the authenticity of the document. That is not what we're debating because it's not -- nobody -- these objections aren't going to be the document isn't what it purports to be. That's not what we're debating. The relevancy of a document is a function of foundation. It's a function of -- and personal knowledge. Does the person who's being asked about the document have any knowledge, foundational knowledge, about the document? That's what foundation is, and it's been applied that way forever. So we're not arguing for a new Rule of Evidence.

Likewise, the question of relevance, as the Court well knows, a document can be relevant for one purpose, and inadmissible for another purpose. It may very well be that many of the documents on Mr. Leyendecker's list, we end up not having a relevance objection to because by the time it's presented, we can see what they're trying to

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prove it for. We agree that that's fair game; no problem. But that's not what we're debating here. We're debating doing it now without any context, without any factual setting, and not even the documents; just the numbers and a representation of what they are. That's not appropriate procedure in our view, Your Honor.

THE COURT: I think we've kind of exhausted the subject today. I've given you a tentative ruling. And you guys, don't find that you love to fight so much that you don't try your case. It's all I'm going to say.

Now, anything else to take up today?

MR. LEYENDECKER: No, Your Honor.

MR. BLALACK: Not for us, Your Honor.

THE COURT: No? Have a good night, everybody. See you at 9:20, please, for the ruling.

MR. ZAVITSANOS: Excuse me, Your Honor?

MR. POLSENBERG: Thank you, Your Honor.

THE COURT: Please be here at 9:20 so we can finalize this issue.

MR. ZAVITSANOS: Yes, Your Honor.

[Proceedings adjourned at 4:33 p.m.]

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

Jessica B. Cahill

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DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES (MANDAVIS) LTD., ET AL., Plaintiffs, vs. UNITED HEALTHCARE INSURANCE COMPANY, ET AL., Defendants.	CASE#: A-19-792978-B DEPT. XXVII

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BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
TUESDAY, NOVEMBER 2, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 6

APPEARANCES:

For the Plaintiffs: PATRICIA K. LUNDVALL, ESQ.
JOHN ZAVITSANOS, ESQ.
JASON S. MCMANIS, ESQ.
JOSEPH Y. AHMAD, ESQ.

For the Defendants: D. LEE ROBERTS, JR., ESQ.
K. LEE BLALACK, ESQ.
JEFFREY E. GORDON, ESQ.
KEVIN LEYENDECKER, ESQ.
NADIA L. FARJOOD, ESQ.
DANIEL F. POLSENBERG, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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WITNESSES FOR THE PLAINTIFFS

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INDEX OF EXHIBITS

FOR THE PLAINTIFFS	MARKED	RECEIVED
455		137
268		154
294		157
3		164

FOR THE DEFENDANTS	MARKED	RECEIVED
None		

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Las Vegas, Nevada, Tuesday, November 2, 2021

[Case called at 9:24 a.m.]

[Outside the presence of the jury]

THE COURT: Thanks everyone. Please be seated. Calling the case of Freemont Emergency v. United Healthcare. Let's take appearances from the Plaintiffs first please.

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

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

MR. LEYENDECKER: Kevin Leyendecker on behalf of the healthcare providers.

MR. AHMAD: Joe Ahmad also on behalf of the healthcare providers.

MR. MCMANIS: And Jason McManis on behalf of the healthcare providers.

THE COURT: Thank you. For the Defendant, please.

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

MR. ROBERTS: Good morning, Your Honor. Lee Roberts on behalf of the Defendants.

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

MR. POLSENBERG: Morning, Your Honor. Dan Polsenberg

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for the Defendants.

MS. FARJOOD: Good morning, Nadia Farjood on behalf of the Defendants.

THE COURT: Thank you. Okay. We have the issue now still with regard to the Plaintiffs 70 proposed exhibits.

MR. LEYENDECKER: Yes, Your Honor. As I explained yesterday, I created from the Defendants the most current list of where they had objections to our list of 70 that I believe accurately reflect the ones that they don't have objections to. Mr. Levine told me that he would be able to get to that last night. I haven't heard from him. And when I just asked Mr. Blalack this morning, is Mr. Levine coming to tell the Court whether my homework was right or wrong, he said, no he's not, and I'm not prepared to answer on those 70.

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So I'm here to represent to the Court that to the best of my ability, I took their objections to our exhibits and identified the ones where there were no objections and that's what the 70 is. And those are the 70 that I would offer to the exhibits in my hand, Your Honor.

THE COURT: Thank you. Mr. Blalack?

MR. BLALACK: Your Honor, I do -- I'm checking with Mr. Levine right now on whether -- what the answer is of these 70 discreet exhibits that Mr. Leyendecker just referenced, and I'll provide an answer to the Court momentarily when I get a response.

I think more generally, based on the argument we heard yesterday, my understanding is the Court had basically decided it wasn't going to engage in an individualized document by document review of

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objections. It was going to conditionally admit whatever they were going to be proposing and what we were going to be proposing and that then there would be the possibility that something might not get into evidence later and that would have the consequences it would have. So that's the way, based on the discussion yesterday, we're proceeding. Unless there's some discreet, you know, specific issue that the Court wishes to resolve further.

THE COURT: Thank you. Is there a response?

MR. LEYENDECKER: Yes, Your Honor. There are two different issues. There are the exhibits that neither side has not objected to, and I told Mr. Levine if you want to prepare a list of ours, of our non-objections to yours, that's no problem. We're ready to admit those. The issue of contested exhibits is the conditional tentative order you -- that Your Honor gave us yesterday. But the non-objected to 70 is a discreet list, and I'm offering to admit those, because based on my representation to the Court, there are no objections to those. They had an opportunity. They said they were going to double check my work, and now they're here saying well we don't know.

MR. BLALACK: We lodged objections to the exhibits.

THE COURT: I don't want to prolong this argument because I want to bring the jury in right at 9:30. So I'll give Mr. Blalack a chance to regroup there.

MR. BLALACK: Yes, Your Honor. Mr. Levine has indicated to me that several of these are objected to, 286, 426, and then there's 15 exhibits that he says we objected to that the Plaintiffs claim we didn't.

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THE COURT: I didn't have 286 or 426 on the list of 70. So rather than prolonging the argument here, I'll go ahead and tentatively admit the 70 that was my tentative ruling.

MR. BLALACK: And that's why, Your Honor, I didn't --

THE COURT: So they'll be conditionally admitted today. Please approach to the Court.

MR. LEYENDECKER: Let me hand those. We'll mark this as Exhibit 1 to this hearing, Your Honor.

THE COURT: Yes, thank you.

MR. BLALACK: And, Your Honor, that's why I didn't address the 70, because it was my understanding whether they were contested or not, the Court was basically going to treat all the exhibits as conditionally.

THE COURT: Well, it was tentatively yesterday, now that's a final ruling. So they are conditionally admitted.

MR. BLALACK: Okay. And just so I can make my record, Your Honor, we think the conditional admission process is not of an appropriate procedure for the opening. And so, I just wanted to make a record that -- I understand the Court's ruling, but I want to make my record that we think that's not the proper procedure to follow and the exhibits that haven't been actually admitted should not be shown to the jury because the bell can't be un-rung later. But I wanted to state that objection for the record.

THE COURT: Okay.

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MR. LEYENDECKER: Last housekeeping. I would move to conditionally admit the exhibits identified yesterday afternoon, specifically as being in the opening. Conditionally admit those as well, Your Honor.

THE COURT: And did you want to make a record?

MR. BLALACK: I think our position on those is the exact same, Your Honor.

THE COURT: All right. So those will also be conditionally admitted. Anything else to take up before we bring in the jury?

MR. BLALACK: One thing, Your Honor. We've got opening statement issues to talk through in terms of the presentations. The parties have exchanged drafts, and we're reviewing those I think on both sides and that there may be issues that we need to raise with the Court. But I believe that -- Mr. Zavitsanos approached me about one of the in limine rulings related to prohibition of evidence on Medicare, which the Court granted. And I think we're trying to work out some -- I think there's some desire on their part to talk about Medicare and, you know, what our view on that is, and we're trying to work out an understanding where we had a line.

I mean, our view is we're going to want to make an offer of proof on it all. But in terms of where we can do this in a way that there would be no objection, we wouldn't have to stand up and object. So we're going to try to come up with an agreement on that.

THE COURT: Thank you.

MR. ZAVITSANOS: Brief response, Your Honor. So I think

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we are more than 90 percent in agreement on where the line is. And the reason I say that is because as the Court will see, and the Court has seen, I'm sure, there's been a lot of the briefing already, the word Medicare is probably on at least half of the documents in this case. And so, it's not possible to try the case without that word coming out. So -- and I recognize that and I -- and so, I think a little leeway on our side is appropriate. And I did confer with Mr. Blalack. And like I said, I think on 90 percent of the issues, we're in agreement. It may be 100 percent. We just need to kind of put a fine point on it.

So with the Court's permission, maybe when we are done with our opening statement, I can visit with counsel, and we can hopefully get to 100 percent and then put something on the record. It's not going to be -- I don't know if we're going to reach a 100 percent clarity. We'll just have to kind of take it as we go in terms of the objections, but I think this will actually expedite things, so.

MR. BLALACK: And I concur, Your Honor. And possibly we won't reach 100 percent agreement, but we could reach an agreement in a way that would reduce the number of objections and dramatically reduce the offers of proof. Because at current plan, we got very substantial offers of proof on these topics. So if we could reach agreement and narrow the areas where there's disputes about how and when Medicare rates could be referenced, that would be to everyone's benefit. And so the process that my colleague is suggesting is suitable for us.

THE COURT: Good enough. Thank you for your professional

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courtesy to each other.

MS. LUNDVALL: Your Honor, one additional thing is that the parties were required to exchange their demonstratives. We had an agreement that we would be here this morning by 9:00, by which to do so. We were here, and offered as far as two counsel for United, our PowerPoint presentation. We got theirs a little bit late, and I'm still going through it, but I can tell you that there is a significant number of issues for which that we believe fall within the scope of the motion in limines and the Court's orders on the motions in limines for which -- that we're going to need to take that up before they display any of those slides before the jury.

THE COURT: Good enough. All right. What other housekeeping matters do we have?

MR. BLALACK: We're looking at theirs as well, Your Honor, so I suspect we've probably got a few issues on our side as well that we're just identifying.

MS. LUNDVALL: Well to the extent that they have any objection, I'd like to know before we begin opening statement and to be able to resolve any of those issues so that we do not have to be interrupted.

THE COURT: So do you guys need another few minutes or -- yes?

MR. BLALACK: I think we do, Your Honor.

THE COURT: All right. So the Court will just be in recess until you guys are ready to go. And the staff will let me know when to

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come back.

MR. BLALACK: Thank you, Your Honor.

[Recess taken from 9:33 a.m. to 9:53 a.m.]

THE COURT: Thanks, everyone. Please remain seated. Is there an update?

MR. BLALACK: Yes, Your Honor. We've shared decks. I think the -- we have some things to work out separately on this Medicare issue, Your Honor, but I think the principal issue I have, Your Honor, is that there are excerpts of actual transcripts that are going to be -- they're not paraphrasing like the witness will testify that, but actual excepts of transcripts of testimony that has not been admitted in the case, into evidence.

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And so my understanding from Mr. Roberts is that a more typical practice here for opening is to not present the actual transcript to the jury, but to represent to the jury what the testimony will show, which we don't have an objection to, but the actual present -- well, I'll do that. I'll be showing slides where I'm saying a witness will testify that X occurred, as opposed to showing, you know, an actual except of the transcript with Q and A, which could certainly occur in evidence. That could be presented in evidence, the video, but not in the presentation of the demonstrative, and I just think that's concerning on that issue.

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THE COURT: And the response, please?

MS. LUNDVALL: Your Honor, what I'm trying to understand is this, we have -- and maybe it might be easier for us to show you what they contend is objectionable. May I approach?

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THE COURT: Please. Both of you have permission to move about. Everyone has permission to move about the courtroom.

MR. BLALACK: Thank you, Your Honor.

MS. LUNDVALL: Thank you, Your Honor. That particular demonstrative is a snippet of testimony that will be presented before the jury during the course of this case, and what they're objecting to is that somehow that this snippet is -- should not be able to be displayed. And so from this perspective, if the jurors were able to hear it, if the jurors, when they see it on the screen, they see it runs at the bottom of it, we -- or we should be able to make reference to it as a demonstrative during our opening.

THE COURT: Thank you. And a reply, please?

MR. BLALACK: Your Honor, this is a -- I'll defer to Mr. Roberts on this issue, I'm really deferring to his local knowledge and practice.

MR. ROBERTS: And Your Honor, I instructed my team to take out the transcript pictures that they put in their PowerPoint, and the way the rule has been explained to me by other judges is that the oral testimony, a deposition is read into evidence, and it's treated like other oral testimony, and showing the jury a written transcript of oral testimony emphasizes that testimony of their -- over other oral testimony that they might see, and when they disputed this this morning I did some quick research, and I found a case, Eastern District of California, 2007, 74 Federal Rule Service, Federal Rules Evidence Service 1052, *Buckley v Evans* [phonetic], which explain that "the preferable practice is not to

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send the written transcript statements or interrogatories to the jury room, but that the moving party read them into evidence. This avoids emphasizing such testimony at the expense of oral testimony for which the jury would not have a transcript."

And I believe that that general rule is followed in this jurisdiction, at least in my experience here.

THE COURT: You know, our experiences have been so different, so I'm going to overrule the objection, and certainly, the ruling applies reciprocally.

MR. BLALACK: Okay. Thank you, Your Honor. Then, well, you may see some transcript excepts in my opening.

THE COURT: Certainly.

MR. BLALACK: And then I think the last issue that we have on our side is there's a slide in their presentation that I'm not sure what number it is, the number 2, which is a listing of payments from United to ER providers in other states, not Nevada, and they're preparing it for Nevada, which we object to because nothing about our payment rates in other states are relevant to what's determined in Nevada, and if it is, then there's a whole lot of other evidence that we're going to want to get into evidence to contextualize those other rates in other states, and the jury -- and I'll have something on it, so this shouldn't be in evidence, and therefore, we object to it.

THE COURT: The response, please?

MS. LUNDVALL: May I approach, Your Honor --

THE COURT: Yes.

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MS. LUNDVALL: and be able to allow you to see this. If you recall, they had, United had offered a motion in limine suggesting that number one, that we should not be able to offer any evidence of out-of-network payments made to other providers. The Court denied that.

THE COURT: Uh-huh.

MS. LUNDVALL: Second is that they, I believe, had a motion in limine, and it was part of their motion for partial summary judgment speaking to the fact -- that they claimed that evidence from outside the State of Nevada that it should not be able to be presented to the jury either and the Court denied that as well.

And so to the extent that this is simply a comparison that shows where Nevada is in comparison to other states, and the out-of-network reimbursement rates that they afford to other states but that they don't afford to Nevada. Thank you.

THE COURT: And in reply, please?

MR. BLALACK: Your Honor, I don't think the Court has ruled that evidence of conduct occurring in other states is necessarily relevant and admissible as it relates to the claims of this case. So I take issue with the notion that any of the in limine rulings have made some affirmative decision on every piece of evidence about what's happening in Florida, Texas, South Carolina, and New York is all of a sudden fair game. If that's true, then the scope of the case is going to get a lot larger than it currently is.

So we don't think that's what your prior rulings in limine is, and we think it's really prejudicial to -- and I think, frankly, it's

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misleading, because each of these markets is unique in its own way. It has its own rate structures, its own set of competitors. They're independent separate markets, and so preparing what are the typical charges and typical rates in Nevada, while that might be fair game, it's not fair to compare it to Alaska and Oregon to suggest that there's an apple-to-apple comparison.

THE COURT: And again, the objection will be overruled for the same reason that -- reasons I gave during the motions in limine.

MR. BLALACK: Thank you. I think that addresses our issues, Your Honor. I'll leave it over to Mr. Leyendecker for his consent.

THE COURT: Thank you.

MR. LEYENDECKER: The first issue, Your Honor, is that there are a half a dozen or so slides, the first one, if I may show Your Honor, is on slide three, where it's got a high level Blackstone relationship.

THE COURT: And Mr. Blalack, so you can see what I'm looking at?

MR. BLALACK: Yes, Your Honor, I'm tracking.

MR. LEYENDECKER: A high level relationship of Blackstone to the Plaintiffs team held, and I understand that to be within the buoys of your limine ruling. But they continue on several other slides to layer on top the Blackstone, the Blackstone, the Blackstone providers, ta-da, ta-da, ta-da, and I think that's, as I described to Mr. Blalack, reveling in it beyond what I understood Your Honor said was okay.

MR. BLALACK: All right. Your Honor, if I could respond?

THE COURT: Please.

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MR. BLALACK: Your Honor, on the record, said we could do the following. We could establish the relationship between Blackstone and Team Health, and the relationship between Team Health and the three staffing companies in Nevada, and then the relationship between the staffing companies in Nevada and the ER providers within the contract that provided the service. And the only thing these slides do is literally walk through that sequence.

The first, to salvage the relationship and only the relationship. There's nothing else on here about Blackstone's finances, nothing about any of their operations, or any of the kind. It simply just says Blackstone, and establishes who -- introduces who Blackstone is, nothing more than that, shows its connection to Team Health. The next slide then shows Team Health's connection to the staffing company, which is the next step in the chain. And then the next slide shows the Team Health connection to Nevada.

So it's literally exactly, and it was constructed very precisely to stay completely within those lines. And Your Honor, before your in limine rulings, I had a whole bunch slides that were going to get into the financial relationships, the flows of funds, how claims payments were divvied up between these parties. All that's out to be compliant with the Court's orders.

So from our perspective, Your Honor, this is simply just establishing the connections that Your Honor identified in the in limine rulings.

THE COURT: And reply, please?

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MR. LEYENDECKER: I made my point. The only other observation I make is on the very first slide, which I said was okay, I neglected to point out that the second bullet says, "the world's largest private equity firm," and I think that goes a bit too far in light of the rulings. That's it.

THE COURT: No, I am not going to exclude this. I'll overrule your objection.

MR. BLALACK: Thank you, Your Honor.

MR. LEYENDECKER: The next one, Your Honor, is to slide number 36. It's a summary of Mr. Schumacher and begins with essentially a reference to the negotiations that Your Honor has said should be kept out per the limine rulings. And I don't think a party can open their own door by essentially getting into those discussions that took place between Mr. Schumacher, that involved the "because we can" comment.

MR. BLALACK: The answer here, Your Honor, is very simple. If the Plaintiffs are not going to offer evidence of Mr. Schumacher's statements in those discussions into evidence, fine, I'll take this out. But if they're going to offer evidence of discussions my client made to them that forms a basis of their claims, I'm entitled to explain where the conversation happened, who participated, what was the context of the conversation, why did my client say what he said, what was said back to him, you know, in every trial, what was the circumstance of this conversation that one side is focusing on.

I have no intention -- my understanding is that the

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negotiations of the parties are out, which is my plan is to stay out of them, and as much as I disagree with that ruling, but if they're going to get into evidence of communications that occurred as part of those negotiations, then I have to have the capacity to respond, and that's all this is doing.

And again, Your Honor, if you read the slide, it makes clear, all he said -- all I'm saying is where did the meeting happen, which is the first, who participated, which is the first bullets, and the second is what the allegation was against Mr. Schumacher and what his explanation was. That's it.

THE COURT: Any response, please?

MR. LEYENDECKER: Very briefly. This is no different than emails going back and forth in negotiations, and more importantly, we're not, certainly not in opening, going to get into the "because we can" and the discussions that took place. I don't think it's going to happen later, but it's certainly not happening in opening.

MR. BLALACK: Well, if they're not going to address the "because we can" issue in opening, I will modify this slide.

MR. LEYENDECKER: Well, I think the whole thing though, Your Honor, opens the door on the negotiations which are taboo per your limine rulings.

MR. BLALACK: Well that -- well, great.

THE COURT: So at the end of their closing, you'll make the adjustment if necessary.

MR. BLALACK: That's good. Thank you, Your Honor.

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MR. LEYENDECKER: The next one is also on the negotiation point, it's slide number 42, and there are three bullets on here, one of which deals with the substantive issue. The first two invoke various negotiations that were going on in Nevada, and for the same reason I squawked about the prior slide, I think the two bullet points indirectly opening the door on those negotiations and should come off.

MR. BLALACK: Well, Your Honor, again, this is simply -- the juror won't -- the jury won't -- will not know who this person is. They'll have no idea why I'm talking about this person. So the first two bullets are literally describing who the person is. Her title and role was as the lead contract negotiator for Team Health in Nevada. She's the one who had communications with my -- who is basically communicating with my client on their business relationship.

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So all I'm saying here is who she is, what her title was, and job function, and then in effect, if you look at the bottom here, we actually use her title. That's from her title from her business card, is contractor negotiator, so you can't even describe who she is without describing that she's a contract negotiator.

And I specifically used, in the second bullet, engaged in multiple discussions with defendants about reimbursement rates without saying contract negotiations so that -- to try to address any concerns plaintiffs would have, to keep it more general and generic. And so that's simply -- these two bullets are simply to say who is this person, why does she have any relationship to this dispute, and then what will she testify? That's it.

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THE COURT: Reply, please?

MR. LEYENDECKER: I don't have anything beyond what I've said. The subject is okay because the two I think open the door.

THE COURT: I think the third bullet is objectionable, but we can revisit it after the Plaintiff opens.

MR. BLALACK: The third bullet, Your Honor?

MR. LEYENDECKER: The third bullet is the one that relates to the substantive issue.

THE COURT: Right.

MR. LEYENDECKER: The first two are the ones that invoke the negotiating. Those are the two that I'm complaining about.

THE COURT: Oh, okay. So then take out the first two.

MR. BLALACK: Okay.

MR. LEYENDECKER: I think this is my -- there's a slide related to Mr. Phillips, which -- who we're not calling, and he's going to remove that, so that slide [indiscernible].

THE COURT: Thank you.

MR. LEYENDECKER: And the last one is slide 46. This is another Rena Harris slide where she's evidently testified about something not being implied by a contract. There is a timely objection on the record as to foundation. It's calling for a legal conclusion, and so I think that's an improper question and answer to play.

THE COURT: So --

MR. BLALACK: Your Honor, this is an entirely appropriate question, and they've got about 20 pieces of testimony in their deck right

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now that we objected to during the deposition, so if the rule's going to be that testimony can't be described to the jury as what they can hear, because at the time of the deposition the opposing party lodged an objection, then we need to go back and get -- pull out the slides and going to go through them one by one because all of those have timely stated objections on the record.

The rule for this ought to be exactly the same as the rule for theirs, which is we make a representation the testimony will be this, if at trial you don't admit it, then they can get up and make hay out of it.

MR. LEYENDECKER: Your Honor, I'm not -- the timeliness of the objection is not what matters. He's asking a lay witness for a legal conclusion about what does or doesn't constitute an implied contract under Nevada law, and there's no foundation. I was simply pointing out that objection was made then, and that's the difference between the typical objection form that makes it somewhere else.

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

MR. BLALACK: I think that's it, Your Honor.

THE COURT: Okay. Now are we ready to bring in the jury?

MR. ZAVITSANOS: Your Honor, can I ask a housekeeping question?

THE COURT: Of course.

MR. ZAVITSANOS: So I'm being told that people on BlueJeans can hear when I'm speaking with Mr. Ahmad here at the table.

MR. ZAVITSANOS: Is there a way that we can turn off this mic unless we're addressing the Court?

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THE CLERK: There's a little button right in front of it, if you press and hold it.

MR. ZAVITSANOS: Ahh-ahh, okay. Oh, if --

THE CLERK: I think you have to hold it the whole time.

MR. ZAVITSANOS: Ahh-ahh, got it. Okay. Joe, hold it the entire trial.

MR. AHMAD: Can I take it up with me while I do my opening?

MR. ZAVITSANOS: Okay. Thank you.

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

[Pause]

THE COURT: And can both parties represent that you don't have any witnesses on BlueJeans?

MR. ZAVITSANOS: Yes, we will, Your Honor.

THE COURT: Other than 30(B)(6) or experts?

THE COURT RECORDER: There's over 72 people on BlueJeans, so it's really hard for me to manage.

MR. ZAVITSANOS: Your Honor, the only thing I will say is, as I asked yesterday, I don't believe the rule applies to opening statements, so there may be, there may be folks watching the opening statements, but we will make sure that once the evidence starts --

THE MARSHAL: All rise for the jury, please.

MR. ZAVITSANOS: -- nobody will be on.

THE COURT: Thank you.

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

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THE COURT: Thank you. Please be seated. Good morning, everyone. Calling the case of Freemont Emergency Services v. United Healthcare Insurance Company, noting the presence of counsel, and good morning to the jury. Welcome to Tuesday.

Now there -- I would like to point out that there is media in the room. I have printed out our court rules with regard to media, and I need to instruct the media that should you violate any of the rules, I will revoke your right to be here. Thank you.

Okay. Does the Plaintiff wish to present an opening statement?

MS. LUNDVALL: We do, Your Honor.

THE COURT: Go ahead, please.

MS. LUNDVALL: Thank you, Your Honor.

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PLAINTIFFS' OPENING STATEMENT

MS. LUNDVALL: May it please the Court, and ladies and gentlemen of the jury. You have an opportunity do something very special in this case. While jury service is generally pretty cool, this case offers you just a little more. You see, most cases are about money, passing money from one pocketbook to another. In business cases, they're about passing money from one corporate pocketbook to another, but this case is about a little bit more, and it's about the quality of healthcare in Nevada, not simply here in southern Nevada, but across the State of Nevada, particularly about the quality of emergency medical care --

MR. BLALACK: Objection, Your Honor.

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MS. LUNDVALL: -- here in Nevada.

MR. BLALACK: Objection. Argument.

THE COURT: Please approach.

[Sidebar at 10:13 a.m., ending at 10:13 a.m., not transcribed]

THE COURT: And for the record, the objection was overruled.

MS. LUNDVALL: As I indicated, ladies and gentlemen, this case is about a little bit more. It's about the quality of medical care across the state of Nevada, particularly emergency medical care across the state of Nevada.

And more directly, you're going to hear us ask the question as to whether or not Nevadans, in particular, deserve at the very minimum to be treated the same as others across the state of Nevada when it comes to reimbursement for emergency medical care paid to physicians and other health care practitioners.

And let me tell you what I mean by that. The evidence in this case is going to show -- and you're going to get the opportunity to look at a comparison, state by state. And I know we have 50 states in the nation, okay. But to put them all on this slide makes this slide too busy. So what I did is I picked some at the top, picked some in the middle and I identified where Nevada fit. And that's key.

So where does Nevada fit in that scheme? South Carolina at the very top is reimbursed for emergency room visits by United, at the very top, at the average of $1,034. You know what's at the very bottom? Nevada. The very bottom at an average of $344 per visit to emergency

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medical rooms.

This case is going to give you an opportunity if you believe that it's deserved, to pull Nevada up from the bottom of that list. Now let me give you another comparison which you'll also going to see when you examine the evidence. This slide is another comparison, and this slide focuses specifically upon how much United is paying to other emergency room providers in the state of Nevada compared to how much that they are paying our clients.

Other emergency room providers in the state of Nevada are being paid on average, $528 per visit. Our folks, in contrast, even though we are providing over 20 percent of the services, statewide, for emergency room visits are only going to be paid $247. And the evidence, ladies and gentlemen, is going to reveal that that disparity is the result of intentional discrimination being practiced by United against the emergency room providers that we represent in this case.

At the end of this case, we're going to ask you to say enough is enough. We're going to ask you to say make them stop short changing us, short paying us, to reimburse us what we are entitled to be paid. We are going to ask you to reimburse us and to allow us to be reimbursed our billed charges. We are going to demonstrate that our billed charges are reasonable, usual, and customary within the industry. And we're going to ask you then to pay us the difference between those billed charges and what they have paid us at that low rate, that difference. Those will be the extent of our -- what we call our compensatory damages.

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Those compensatory damages, ladies and gentlemen, will begin to make us whole. But we're also going to ask you to punish United at the end of this case for their oppressive, egregious, and discriminatory treatment that they have practiced against the folks that were forced to bring this lawsuit. So let me talk about the parties in this case. Let me tell you about who we represent.

The first company that you're going to learn about is Team Physicians. Team Physicians is a group that provides emergency room services in Fallon, Nevada. Fallon, Nevada is in northern Nevada. It is home -- its principal claim to fame, so to speak, is that there is a military air training facility. It was built originally in 1942, and in 1996, the Navy made it their Top Gun military training service. You may be familiar with that or if you watch movies, you may be familiar with top Gun, the movie. Much of that movie was filmed near Fallon, Nevada.

If you buy onions at Wal-Mart, you're going to learn that many of those onions were farmed in fields between Fallon and Carrington, Nevada. There are folks that are the first to appear for Team Physicians. They provide emergency room services at the only hospital in Fallon.

The second company that we represent is called Ruby Crest, or who we refer to as Ruby Crest. Ruby Crest was named for the Ruby Mountains. They're located near Elko, Nevada.

Elko is even more remote than Fallon. It takes you three and a half hours to get from Elko to Salt Lake City. It takes you five hours to get from Elko to Reno, and it takes you seven hours to get to Las Vegas

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from Elko. It is even more remote, like I said, than Fallon. And what you learn that, ladies and gentlemen, is to be able to attract quality physicians to remote locations, you have to pay them fairly. And herein southern Nevada, we have to pay them fairly as well, because the competition is so very strong for quality physicians here in southern Nevada. And it's a fact of life. In general, you get what you pay for. If you want quality physicians, you have to pay them fairly.

Now, we also represent Freemont Emergency Services. Fremont Emergency Services provides emergency room delivery and eight different hospitals across our valley. The first one is the ER at Aliante in North Las Vegas. The next one is the ERR at the Lakes. It's on Fort Apache.

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The second or the third is MountainView Hospital on Tenaya Way. Dignity Health has three campuses in Henderson: St. Rose, St. Martin and the Siena campus here in Henderson. They also provide services at Southern Hills in Summerlin, and they also provide services at Sunrise Hospital and Sunrise Hospital as some of you may know, is smack dab in the middle of our city. It's on Maryland Parkway and it's basically the site, Ground Zero, for every major tragedy that happens in our community. People are treated there.

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What you're going to learn is that these three entities have been shortchanged by United on over 11,500 claims. That's what is at issue in this case.

Now let me tell you a little bit more about the deliveries of emergency room services. These are the common conditions that are

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treated in emergency rooms across our state. With the advent of the urgent care centers that are on what seems like about every third block in our community, the types of delivery of emergency care is -- this is typical. Gone are the days where anyone who's got insurance is going to the emergency room for sniffles or a cold or you know, some people used to refer to it as maybe somebody had a hangnail. Those types of days, with the advent of urgent care or people who have commercial insurance, those day are gone. They treat serious conditions in the emergency rooms that we staff.

These are the typical CPT codes and there's only three that are at issue. A CPT code is a type of a code that is assigned for the level of care that is needed for the person who is presenting themselves for treatment. And there's really only three that you're going to see across the course of this case. Level 3, Level 4, Level 5. And this slide then describes those various levels.

So let me give you an example. And let me put the full slide up here. The type of claim, one of which is the 11,500 claims that are at issue is a Level 5 claim . It's a claim that posed an injury for harm as a threat to life. This one in particular was a gunshot. Our bill charge; it was sent to United for payment was $1,428. What they sent to us was $254.

Now, thank goodness for computerized programs. You're not going to have to see a medical file for each one of those 11,500 claims. What we're going to present to you in large part are Excel spreadsheets that identify in the chronical and then highlight this

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information, so that you can see it in summary fashion. Excel spreadsheets aren't very fancy. They're not sex, drugs and rock and roll. They don't have a lot of bells and whistles. But what they will do is that they will give you an illustration of what is at issue in this case. And it will allow you then to summarize the evidence of all the different treatments done that we provided to insurers of United and for which they shortchanged us.

Now let me clear up what is a common misconception. It was mentioned during the jury selection phase of this but because we're entering a new phase, I want to make sure that we highlight it. And that is this. The folks that we represent, the ER providers, they are not employees of the hospitals. The hospitals are not in this courtroom. The hospitals provide one type of service.

The emergency room providers provide a different type of services. We contract with the hospitals. We enter into a contract that says we will provide emergency room services for every single person that walks through the door of that hospital presenting themselves with an emergency situation.

Now you may be thinking why is it that hospitals want to enter into a separate contract with emergency room providers? Well, I mean as far as I can give you some examples as to why they don't. There is a federal law and there is a state law. And that federal law and that state law is reflective of the public policy, not only of the state of Nevada but across our nation. And it's called the Emergency Medical Treatment and Labor Act. Similar statute that is found under Nevada

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Revised Statutes. And what does that say? It's a public policy that says any person in our nation, any person in our nation, any person in the state of Nevada that has an emergency and then comes through the doors of the emergency room, is to be provided stabilizing care, regardless of whether or not they can pay. Regardless of whether or not they have insurance.

If you walk through an emergency room door, the first thing that's going to be done is you're going to be assessed and you're going to be giving stabilizing care before anyone makes any inquiry about your ability to pay, if you have insurance or whether or not that the providers that is giving the medical care is able to be paid for the provision of those services. And that's a public policy that is apparent in this case.

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Now not only in my opinion is it ethically and morally right to treat people, you're going to understand that under this law, you're obligated legally to treat every person regardless of their ability to pay. And if you don't, there's a criminal sanction that is imposed upon you. So maybe you're starting to get a little idea as to why some of the hospitals then do not wish to take on that kind of liability, but we have.

How often are we obligated to provide that stabilizing care? 24 hours a day, seven days a week, 365 days per year.

Now let me highlight here something that I think is an important piece to understanding the motivation of the parties in this case, in particular, United.

These are all examples of physicians who are not subject to EMTALA. EMTALA, the Emergency Medical Treatment and Labor Act.

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This is federal law. This is state law.

Cardiologists, dentists, dermatologists, hematologists, OB-GYNs, oncologists, podiatrists, surgeons, urologist, urgent care centers; every person listed up on here, before they provide medical treatment, they can make an assessment if you have the ability to pay, if you have insurance and if in fact, if they choose, that they can turn you away. Emergency room providers cannot do that. They are legally obligated in addition to morally and ethically obligated to treat people with emergencies and provide that stabilizing care. So every physician, but for emergency room providers, are subject to EMTALA.

Now, one of the things I'd like to do is talk a little bit about the relationship between the emergency room providers and folks that we represent. Team Physicians, Ruby Crest and Fremont and a company called Team?

[audio interference]

THE COURT: Okay. Pardon my interruption. There's someone on BlueJeans who needs to mute themself please. Go ahead, please.

MS. LUNDVALL: Thank you, Your Honor.

Emergency room providers, they're the facts that are asked to triage the patient. They're the folks that are treating the people that come through the doors of the emergency room. They're on the front lines every single day.

They have affiliated themselves with a company called TeamHealth, and TeamHealth handles the business side of that

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transaction for them after they have provided the stabilizing care then to the patient.

Now you're going to learn from some of the testimony that you're going to see in this case is that this relationship is likened by some, to like a union. If you belong to a union, you have a union boss that goes to your employer and tries to negotiate for better working conditions or better pay. Others, if you're involved in the hospitality industry, you know that there's a front of the house, and you know there's a back of the house. Okay, the back of the house in the hospitality industry is supposed to be making the front end of the house look good.

Well, that's what TeamHealth does for the emergency room providers. They handle the back of the house stuff. If in fact you don't have experience with either of unions or the hospitality industry, think of it when you go to the average doctor. And when you step to the counter to check in, there's always businesspeople that are always running around. Those business people are handling the business transactions, the business side.

And so our clients, the emergency room providers have chosen to affiliate them in this company called TeamHealth. TeamHealth basically does the paperwork and does a lot of additional support and provides a lot of clinical advice and suggestions for the best provision of medical care, which allows the emergency room providers then to provide the best medical care then available to the patients that walk in the door.

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You're going to hear from a gentleman by the name of Dr. Jody Crane. Dr. Jody Crane will tell you a little bit about TeamHealth. He will describe -- and Dr. Crane is TeamHealth's chief medical officer. He'll describe a little bit about the origins of TeamHealth itself. How it was founded by physicians. It is led by physicians, and it is designed to care and to assist physicians.

And he describes very principally that the reason that TeamHealth exists, is to try and improve the quality of the care that the medical providers and the emergency room medical providers can deliver them to patients. And you're going to hear examples from Dr. Crane of different strategic pillars that TeamHealth employees so as to ensure that they are providing appropriate affiliation and appropriate health and assistance to the -- to the emergency room providers. Everything from trying to improve clinical quality, clinical operations, includes patient experience. They're also providing leadership in the form of continuing education. Things of that nature.

So now let me talk -- turn to the folks that we are suing. The folks that we had to bring the claim against. United Healthcare is member of its subsidiaries or its wholly owned companies. They have over 33 million members. They write in administering insurance across 50 states and they're in 150 countries. They are the largest insurance underwriting or administering coverage across our nation. And they are also the largest either writing or administering among insurance here in the State of Nevada.

Now one of the things that I think is kind of funny is when

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you're a juror, you get to learn something. And what you're going to learn is insurance 101. The more premium dollars you collect and the less premium dollar that is spent paid out on claims. And one of the things that we learn, if you pay less, you pay for it.

Now one thing that is unique about this case is that United does not contest that the folks that we provided medical services have coverage with them. They do not contest that we did the work. They do not contest that we deserve to be paid for the work that we did. What they contest only is the amount of which to be paid. It is their outward position that they are entitled to pay us whatever it is that they feel without having to prove if its reasonable.

But what you're going to learn, ladies and gentlemen, throughout the course of this case, is that we discovered internal documents, internal documents, documents from United, that acknowledge and admit that they have an obligation to pay our full billed charges. Think about that. That their outward position is that they can pay us whatever they want. They say we don't think you have a contract. We don't think we have any obligation by which to identify the amount that we're paying or the reasons for what we're paying.

But inwardly, they acknowledge, and they admit that they have a duty and an obligation to pay a full bill charges. And there are other conditional and internal documents will demonstrate, as will be described by my colleagues in a little more detail, is that the efforts that they were taking so as to figure out how to pay us less than our full billed charges and to figure out how to intentionally discriminate against

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TeamHealth so that they didn't have to pay TeamHealth their full bill charges. And how they were intentionally discriminated against the ER providers in this case. They shortchanged us on over $11,500. When we asked why? They went lower and lower and lower. Essentially, what they told us is if you don't like it, then sue us. So we get -- and in this courtroom, ladies and gentlemen, you will be able to decide what they can and can't do.

Now let me examine a little bit about why it is that I think that they're so cocky about the fact that they're not going to pay us full bill charges. What they are doing is they're taking advantage of two things that you're going to learn about in this case. Number one, they're taking advantage of the fact that EMTALA, the federal law, the state law, obligates us to treat everybody that walks through the door without regard to whether or not that they can pay or if they have insurance. They know we have a duty and an obligation to treat everybody.

You know there's an old adage about shoot me once, shame on you. Shoot me twice, shame on me. In other words, in the practice of law if I have a client that hires me, but they don't pay me, then shame on them. But if they come back to me the next day and say, all right, I want you to do more work for you, and I don't do anything to protect myself, then shame on me for not being able to protect myself and continuing to do work. But the emergency room providers don't have that option. They have a duty and an obligation to treat everybody that comes through the door. So it's after the fact then, after we've provided the services that we are submitting payment to them, and that's where

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they are shortchanging us.

The second thing that they're taking advantage of is this. There's really only two ways to protect yourself when you are an out-of-network provider like the emergency room medical writers in this case. And those two ways are you bring a lawsuit, which is what we did, or we balance bill the patient. In other words, if they -- if we sent them a bill for $1,400 and they only paid us $300 or $245 on that bill, that differential in most circumstance could be balanced billed then to the patient, but our emergency room providers have a policy. Not to balance bill. Not to push off those additional charges on to the patient. That is our policy. They know that that's our policy and they're taking advantage of that policy.

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So think about this. What they are doing is they're taking advantage of two policies that protect individuals who have an emergency and that need medical care for which -- that we are providing and that they know that we have a policy of not to balance bill.

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Now there's two things that I want to discuss very briefly before I pass literally the baton on to my colleagues. It's FAIR Health. FAIR Health you're going to learn in verified detail about in this case. FAIR Health is a nonprofit organization. They came as a result of something bad. Sometimes out of bad things come good things and FAIR Health is something good. FAIR Health is a --

MR. BLALACK: Your Honor, may we approach?

THE COURT: You may.

[Sidebar at 10:42 a.m., ending at 10:44 a.m., not transcribed]

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THE COURT: Thank you, everyone, for your -- for your courtesy. Go ahead, please.

MS. LUNDVALL: All right. Back to where I was. As I just said, you're going to hear about FAIR Health. And as I had indicated, sometimes good things come out of bad. FAIR Health is something that is good. It is something that you're going to hear about in this case at length. FAIR Health is a nonprofit organization that was created so as to gather information and to create a database and make information in that database hopefully transparent so that charges -- billed charges, expenses, things that are being sent to and gone back and forth between healthcare providers, including the emergency room healthcare providers, and payors, that that information is open and public. It basically is a database by which you can see what the prices that you're paying for the healthcare services that are being [indiscernible]. Okay?

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Two things about FAIR Health that are important to this case. Number one, is that the emergency room providers use FAIR Health to set their billed charges. They use FAIR Health, they use this database, they use this database -- it's even used by state, the state of Connecticut and the state of Massachusetts use FAIR Health, and they obligate providers by which to FAIR Health in -- in setting charges. But our emergency room providers use FAIR Health to establish their billed charges. And when you listen to the testimony, you will learn that those billed charges are usual, reasonable, customary within the industry.

Now, the second thing you're going to learn about in this case and why FAIR Health is important is this, United had an obligation

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to use FAIR Health for a certain period of time. They had the duty. They had an obligation to use FAIR Health. And then they stopped. And when they stopped, that's when all reimbursement rates started declining. When their duty to use FAIR Health was lifted from them, that's when different business plans began being implemented, being discussed and then implemented so as to drop the reimbursement rates to emergency medical providers.

Now, the other thing I'm going to discuss is this: Those of us who live in the desert are all familiar with brush fires. A brush fire, while a little fire, it will detract your attention from the big flame that's going on. The big flame that's going on are the 11,500 claims that they've short-changed us on. What United will want to do, and what we've learned is what United had planned to do is get you to distract your attention with brush fire.

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They are alleging that 254 of those claims were submitted under the wrong tax identification number. A TIN. That's what they call a sub-TIN. Tax identification number. Their contention is is that the services that were being provided here in Southern Nevada were being submitted under the tax identification number of folks of Ruby Crest affiliate up in Elko. And they're going to allege that those 254 claims are evidence of fraud. And they define fraud as trying to get more money than what you are entitled to.

What they will not tell you and what we're going to have to flush out with the exhibits and what we're going to have to flush out on the evidence and the testimony is this: Is that every single one of those

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254 claims that were submitted identified the provider as being from here in Southern Nevada, it identified the location of the provider as being here in Southern Nevada, and it used the price that was applicable for that particular claim here in Southern Nevada. And what they also won't tell you is the Ruby Crest price is actually lower than the Freemont -- than the Freemont price, than the Southern Nevada price. In other words, there's geographic adjustments based upon lots of different metrics that go into those geographic adjustments that we will discuss. But it was cheaper under the claim in Ruby Crest up in Elko than what was here in Southern Nevada. So all of those claims then that were submitted as far as under a sub-TIN issue did not result in any more payment to us. And, in fact, if it would have been paid at face value, it would have been less money.

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So what I'm suggesting to you, Ladies and Gentlemen, is that there is no fraud as they will claim. We believe it is a brush fire to try to detract your attention from the main event, and that main event is 11,500 claims. And when the Judge gives you the jury instructions at the end of this case, you're going to be able to decide who was actually cheating or trying to put their thumb on the scales of justice.

And, with that, I'm going to turn it over to my colleague, Mr. Ahmad, to describe the next phrase then of our presentation. Thank you.

MR. AHMAD: Thanks, Pat. Do I need a microphone, Nicole?

THE CLERK: Yes, please.

[Pause]

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[Counsel and Clerk confer]

MR. AHMAD: How is that? Can everyone hear me? Great. Well, good morning. My name is Joe Ahmad. I'm here as the second part to a three-part series. You have heard from my colleague Pat Lundvall. I will speak. My name is Joe Ahmad. And after I am done, Mr. Kevin Leyendecker, another one of my colleagues, will finish this up.

On behalf of our team, there are two other members I'd like you to meet. I think some of you had met Dr. Scott Scherr who's with us today, one of our medical directors, and also with us is Dr. Suzanne Rosenthal [phonetic], who is our assistant program director of our residency program.

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And I'd like to continue on and talk about, in a little bit more detail, about some things that you already heard, and it goes to the central issue of why are we here. In short, we are here to get our unpaid balances. That's what we are here for. We will demonstrate throughout this case that those charges are reasonable, and yet we were paid far less than what our billed charges were.

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Now, a little bit more about our system. I think you heard from Ms. Lundvall that we have to treat, unlike every -- other doctors, and actually unlike urgent care centers. Urgent care centers can reject patients based on their ability to pay. We cannot. We treat everyone. That means we treat the uninsured and we treat those that pay at a government rate, which you will hear is less than -- far less than reasonable value, patients with Medicaid and Medicare, and then, of course, we have those who have insurance, such as United. And in this

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case, United has taken the amounts that we have billed and paid 80 percent less. And so while United has the ability and the right to insure who it wants to insure, they can choose who they want to insure, we have to take their -- all their members, in fact, everyone. And then when we provide the service, we bill it, and then we find out what they have selected to us as payment.

So no law requires them to sell health insurance, but if they do, one thing we will demonstrate is they should pay the reasonable value of the doctors, nurse practitioners who provided these services and had been waiting for full payment.

Now, you're going to hear some terms in this case. You'll hear terms such as reasonable and customary. Sometimes abbreviated as R and C. You will hear usual, customary, and reasonable or also abbreviated as UCR. Why will you hear those terms? Because these are terms that United uses. These will be in United documents. They will discuss what reasonable value is. You will see, for example, out of network benefits. That's us. We are out of network. You will sometimes, by the way, see out-of-network abbreviated OON. They say they will pay the lower of the actual billed charges or what is the reasonable and customary amount. Also the usual, customary, and reasonable amount. You will see in this case we agree with that. If the billed charges are greater than reasonable, we should get what's reasonable. And United knows very well what is reasonable.

They have or had a system to pay what is reasonable. And how do we know? Well, you heard about FAIR Health. United and

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others use FAIR Health. Use this database of charges from not just United, but I think approximately 60 or more insurance companies. So it is a large database of information. And they use what's called the 80th percentile to calculate what is reasonable.

And you'll hear about FAIR Health and its reliability. How it's objective. It is a third-party. Its information is audited. Outlier claims are removed. Erroneous statements checked for. And you don't have to take our word for it. United's own retained expert -- and in this case you will hear from a number of experts that are retained by the various sides. Their expert verified that the data in the FAIR Health database is reliable and objective.

Now, one thing you will not hear is that FAIR Health, they just maintain the information, the database. And it is absolutely true. And you will hear that FAIR Health does not make any judgment on what is reasonable. FAIR Health has the database. Whether they may provide this database, this is United and others that when they were paying the reasonable amount selected the 80th percentile of that database.

You will see, for example, John Haben, United's Vice President of Out-of-Network Programs, talking about how reasonable and customary physician program price them at the FAIR Health 80th percentile. You will see that in United's documents. Reasonable and customary for out of network, FAIR Health 80th percentile. We will demonstrate to you in this case that 80th percentile is reasonable, United has acknowledged it is reasonable, and that our billed charges on average are at or actually a little bit under FAIR Health

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80th percentile. Reasonable and customary; usual, customary, and reasonable, as those terms are used even in United documents, they have acknowledged is the 80th percentile of FAIR Health. And that we will demonstrate that we are at or below on average the 80th percentile of FAIR Health.

Now, one thing you will see is charges by code. And you see a code up here, 99285. You've heard about the different levels of severity. You can look at the last number, 5. That is level 5. That is the highest severity. And by the way, yes, we see a lot of those. As you will hear from our doctors, particularly Dr. Scherr, our hospitals are very busy. Sunrise is the biggest emergency room in the state of Nevada. They get about 150 ambulances per day.

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So you will see a lot of 99285, and other charges. And you will see that our charges are in line with FAIR Health. We will prove that. And that will be our proof of what is reasonable. We will also show that our charges are in line with what others charge. Actually, others charge slightly more. So we will demonstrate reasonable, 80th percentile FAIR Health, our billed charges. Well, we're actually a smidge lower than that.

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So what happened? United was at 80th percentile, paying that as reasonable and customary. Well, in this case, you heard a little bit about these internal memos shared at the highest level at United. You will see a five-year scheme that United developed. That scheme was to move away from reasonable and customary into something much lower. Why? To generate more revenue. And they did this in two ways. You will hear about fully insured programs where United is actually

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coming out of pocket for the payment. They pay the claims. So obviously if they pay less, they keep more.

[Cell phone ringing]

MR. AHMAD: I hope that's not my phone. No. I don't have that ring.

The other way they do it, is if they act as a third-party administrator for someone else who actually pays the charges out of pocket. That is called self-insured. For example, if you have a particularly large employer, they may accept the responsibility of essentially insuring the claims themselves. And they will hire someone like United to act as a third-party administrator.

And in this five-year scheme, you will see that United develops programs where they will take. As one of their fees, they developed a fee that will take a cut of the amount that they pay less than the bill charge. They take 35 percent. They did not tell us about this cut. They did not tell us that that was happening.

What you will see is they developed a myriad of programs. That's what they did tell us about. Why? These programs were developed to get them off of reasonable and customary. One of those programs you'll hear about is SSP or SSPE, Shared Savings Plan Enhanced. Shared Savings because of course, now United is going to take a cut, 35 percent of those savings for the Employer. But in order to get that cut, they have to be under reasonable and customary. The more they are under reasonable and customary, the more they are cut.

So the goal is to get them off of reasonable and customary,

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get them off of fair health. Why? Generate additional savings by not running claims through U&C, usual and customary, and driving their seat back in an OON, out-of-network, to more aggressive pricing. And you will see the evidence of the five-year scheme, which moves further and further down from reasonable and customary, driving, as they would say, additional savings and additional money for United.

And like I said, they came up with programs to cover up and cloud what they are doing. Those aren't my speaker notes. That's actually what is on the internal United document. And there's a list -- well, there's sort of a list of some of the programs that they came up with. And you will hear about many of these programs designed to cloud what is really going on.

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One example is something called Data iSight. A small percentage of these claims were paid, allegedly, using Data iSight. United would send us and send their members, too, that -- when we sent -- submitted a bill and they came up with a payment that was much lower, they told us that they were using -- or they sent it out to a company called MultiPlan that was using this patented reference-based methodology, or proprietary methodology, Data iSight. That's what they told us.

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You can imagine, we tried to figure out how does Data iSight come up with their numbers. These numbers are, as you will see, far less than reasonable and customary. No one could explain that. And to this day, I don't think anyone will come to court and explain how Data iSight would arrive at its numbers. Now, sure, this is a small percentage

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of claims. But it is an example of how the process was kept up. And we could not figure out how this Data iSight process worked.

Another part of the scheme is United came up with their own percentages. And they used what is a percentage -- it will sound like a high percentage, such as 350 percent and 250 percent of CMS. What is CMS? Medicare. Number one, United came up with a system where they would essentially forget about -- they may tell you it's Data iSight. But what you will see in reality is it is a number that United picks. The 300 -- or 350 or 250. And they did something else. They made a conscious effort. Instead of talking about percentages of our billed charges, knowing that that would sound rather snippy because it would be a tiny fraction of billed charges, they made a conscious decision to change the narrative by using percentages of Medicare because it would sound higher. And that's what they did.

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And again, they would claim it was being used -- that proprietary methodology was coming up with the number, when in fact, they instructed Data iSight to pay at a certain rate. And they were told it was Data iSight reference-based methodology. We learn in this case that the number came from United, at a number they selected, a number designed to save and make them quite a bit.

And so that is why we are here. To get our bill charges. To get what is reasonable value. To get what we will show is at or slightly lower than fair. I'm going to turn it over to Mr. Leyendecker, who will finish this up. Thank you all.

MR. LEYENDECKER: Thank you, Joe.

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Good morning. Here's a dirty little secret about lawyers. We like the sound of our own voices. And the thing we like more after we work really hard --

MR. AHMAD: Hey, Kevin. If you want to hear your own voice, or have them hear it --

MR. LEYENDECKER: I think I'm loud enough. How do I turn this off?

The thing we like almost as much as the sound of our own voice, is to show just how good of a job we've done stifling through all the pieces of paper, right, getting it all organized. And I know we're overloading you all with a bunch of information. So before I show you a few more snippets of the documents that are inside of United's files, I just want to take a moment and get us back out to what I call 30,000-foot-high elevation.

We've got a dispute. As you heard Ms. Lundvall, we provide the service. They know they have to pay for the service. Just the core of the dispute is, are they paying the fair amount, the reasonable amount of services. So that's at 30,000-feet. All right. I'm going to show you how United, and its clients interacted. They were sly at the moment. What that world looked like before they started scheming. And make no mistake about it, we do think they were scheming. Okay.

I'm then going to show you a few slides on the impact of that behavior on the patients, on the employers that -- whose insurance money they're spending, and on my clients. All right. And then to wrap it up, I'm going to show you and talk to you a little bit about the legal

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claims at issue in the case. Your Honor at the end is going to give you the formal instructions. My version, which you're going to see is sort of translated to plain English. But be clear, Your Honor's going to give you the instructions, but we're going to cover those two.

So without further ado, okay, what's really going on? What is United and the employers -- how were they adjudicating and paying claims before they started what we say, scheming? And in that world, as you heard from Mr. Ahmad, usual and customary, UCR, a variety of acronyms, right. What those stand for are reasonable and customary charges. And before they started doing what we're unhappy about, right, there's a reference to FAIR health. You're going to hear a lot of evidence, FAIR health is fair, any type of FAIR health are reasonable charges.

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And before things went south, United -- a majority of their ASO clients -- ASO stands for administrative services only. And I didn't realize it until I started this case, but most of the health insurance in the country is through the employer. And so when you see ASO, administrative service only, that's United acting as the administrator for employer paid for health insurance. And what this document shows is is that a majority of those employers were paying based on this UCR concept.

Now, how do you change the narrative about what should be going on in healthcare? The first thing you do is you start manipulating public opinion. And what you're going to hear evidence about is in this case, United set about on a strategy, right, to get national story that

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quotes United statistics and spokespeople, and list supportive third parties to speak out, creating a surround sound approach. And one of the things United did was to interact with a professor at Yale University, Zack Cooper.

All right. So let's feed somebody information, highly recommendable person, Yale University. And he's going to be our talking point. We're going to do it at the national and the local market. Right. Everything we're doing to support the Cooper work. But their support is going to remain behind the scenes. So like at election time, when you see eyes in one direction or the other and it's like, Americans for America. Right. What is that? You know there's something going on behind the scenes. Well, United's strategy of manipulating the public opinion was to get spokespersons, like this gentleman professor at Yale, feed him the information, but remain behind the scenes. All right.

Here's an email, Mr. Cooper corresponding with folks at United. "I've had extensive discussions with reporting team at the New York Times. Their one request is the ability to identify team health. But we've taken steps to make sure that UHG" -- that's United Healthcare Group. That's the umbrella over the whole enchilada -- "is not named." Okay. They give you an article. Mr. Cooper writes an article. It gets picked up in the New York Times. All right. Internally, we're talking about it. There he is, Zack Cooper, story in the New York Times. Dan Rosenthal, very high-ranking United executive at the time this happens. Nice. Good job. Okay. Change the narrative, then change the programs.

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And so what I'm about to show you is a handful of these programs. And they're all targeted at eliminating the thing the employers were perfectly happy, and content, and it worked just fine, which is paying that UCR. Now, I'm going to predict that you're going to hear a lot of information from the United side of this case about oh, the cost, the ER doctors' charges are out of control, skyrocket -- skyrocketing charges. But I want you all to pay really close attention because what I think you're going to hear is the charges were actually level or going down, and everything was working just fine. But if you want to manipulate the public opinion, you've got to have a good story -- behind the scenes good story. Okay.

Benchmark pricing, one of the dozens of these programs targeting non-par. Let me stop right there. Whenever I see a word that's a little unusual, I want to explain that. Non-par means non-participating. You have participating doctors in networks, and non-participating. So non-par is the same as out of network. Target out-of-network spend, that's at 100 percent of billed charges. Right. That's the world that the employers were happy with, but the world United wants to change.

Outlier cost management, same thing. Claims that don't have any non-par program are paid at billed charges. They know this. This is what they want to change because they claim things are out of control. But as you're going to see in a few minutes, we don't think that's why they changed them.

Certificate of coverage. Those of you that have ever checked your insurance for like the fine print and the detail of what's what, you're

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looking at what's called a certificate of coverage. And here's an example from 2018. That's the contract between the patient with the insured and United, where it spelled out what's going to be covered, how's it going to be paid, et cetera, et cetera. And in 2018, this certificate of coverage says, okay, for emergency health services provided to a non-network provider -- there's another word. Non-par, non-network, those are all the same as out of network. So ER out-of-network. The eligible expense is the agreed upon rate, right, or the higher of the usual reasonable or customary amount, the median amount negotiated with network, or 110 percent of CMS. That's a reference to Medicare. 110 percent of Medicare.

2018, the greater of usual UCR in these other two. 2019, same company. Look what happens. We've got items two and three. But we have removed item one, number one UCR. Okay. Data iSight we heard from Mr. Ahmad. Third-party extensively patented, proprietary system for gathering and figuring out what's fair. Right. This is how United inside thinks of iSight. Right. Legally sound process. Let that soak in. Inside their offices, they're recognizing that iSight third-party can be a legally sound process to generate a reasonable discount off the charge. And they're debating, are we going to use that, or our own random calculated amounts.

As you saw, you're going to hear from Mr. Haben, the first witness in the case. And let me forewarn you, we're going to cover East Coast to West Coast, North America to South America. You're going to hear soup to nuts over the course of probably three days from Mr.

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Haben. And so I'm going to ask you to just -- the whole story is going to be unveiled there. So as best you can, remain patient and focused. It's going to be very entertaining and very interesting. All right.

He's acknowledging right here. He's going to acknowledge what that last slide just showed. We're going to tell you a little bit more. Okay. Is United concerned about their members? Members is another word for patient, or the person that has the insurance. "Maybe one omission happened." That's what I'm calling a scheme, their omission. I think it's a scheme. "Moving more claims to OON," that stands for out-of-network. "Moving more claims to out of network program solutions that have more member responsibility, greater member liability." This is their document. Look at the acronym right here they got out to the side. You're going to get to judge what you want to do about that.

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Okay. This is my favorite part, honestly. This last piece right here. You see, for me, you don't have to go look for a loophole if you write it in your own agreement with your members. So that when they call and they're squawking about why am I paying more of the bill, the person answering that call is going to say, well, just go look over there on page 48 in section 71, a little high, sub 2. We've told you in the fine print, you might have to pay more when we process them through these programs. Do they care about members?

Okay. Here it is. Brass tacks. 2016, United was paying about 99 percent of the money that was going to the healthcare providers, DR providers. It's going down and down and down and down, and in 2019, they're down to only paying 82 percent of the bill, right? And look what

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happening to the patients. This is the document I just showed you. You're going to hear the evidence for this, ladies and gentlemen. Do they care about their members? How about the employer clients? All right? That's another document you're going to see.

This document, I'm going to take a moment to just explain it. It's a little more detailed. It's an example claim where there's a 60 percent coinsurance. The bill charge is a thousand. The reasonable and customary would be $600. So in a world where they're paying a reasonable and customary, a discount off that full bill charge, a reasonable discount, the pay would be $600. That's the world they used to be in. And in that world, the employer's 60 percent is $360. All right? The rest would come from the patient, their copay, whatever the case may be. As Ms. Lundvall told you all, we don't balance the bill [indiscernible]. But if you adjudicate it at a reasonable discount off the top, then fine, we'll go on down the road.

But in the new world, all right, where they can take a 35 percent fee, same claim, the employer pays more. Now, in the world where they want to go and where they went, where the employer pays more, the doctor is going from 600 to 300. So the doctors get less, the patients have to pay more of the bill, and the employers have to pay more of the bill. All right?

Mr. Haben. All right. You're going to hear from him. He's going to acknowledge the net effect of these programs is we're cutting more than half. All right. Patient pays more of the share. Now, they're going to tell you, okay, if I lower the bill, then the patient's percentage is

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going to lower the overall dollars to the patient, and that's mathematically true. But they're putting a greater percentage of the responsibility on the patient. You all are going to get to decide whether you think that's good corporate citizen behavior.

Okay. Thirty-five percent. All right. There it is. Thirty-five percent of the savings. Well, what's the savings? The savings is the difference between the bill charges and the allowed amount. So in one world, it's okay to make your own fee as a function of the bill charge. That's United's world. But in the doctor world, no, no, no. We want to give you a fee based on Medicare. That's what's at stake here, folks. And this is what they've been doing.

2017, those are the average amounts per claim that ER Providers -- and make no mistake, those are doctors, those are nurse practitioners, those are physician's assistants. Those are the people, the providers and staff, in the ERs here in and around Las Vegas, up northeast, northwest. Down to 187. And so you bet your boots that at some point, we're going to say enough is enough. And that's why we're here.

Now, let that sink in for a moment. How can the bill charge be the reasonable value of the service if the vast majority of the time, my clients are not paid the bill charge? Okay. That's a fair question. You know why 99 percent of the time we don't get paid the bill charge? Because 99 percent of the time, insurance companies, everyone besides United, pays us a fair and reasonable discount off what they owe. And in the real world, if somebody pays you a little bit of a discount on what's

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fair, you're just going to go on down the road. It's not worth the time it takes to fight about it. But if you're going to do this, then you're going to have a fight. And that's why we're here.

So -- okay. How much did they make in 2020? If I shift it from the world they used to use with their employers to the new world, in 2020 alone? These are the claims. Four basic claims. And as I told you all, Your Honor is going to give you the technical legal instructions and descriptions of what those claims are. I'm going to talk about the first one, unfair insurance practices, in a little bit of detail. And then I'm going to touch on the others.

So what's -- I believe Your Honor is going to tell you all that unfair insurance practice is failing to effectuate a fair and equitable settlement of claims when liability has become clear. Pretty straightforward. United pays us on average 247. That's what they paid all the other ER providers in the valley. Think about that, manipulating public opinion. And the one thing the New York Times wanted; can we name TeamHealth to keep us [indiscernible].

Now, are we doing our part? As Ms. Lundvall told you all, they asked us, are you going to balance bill our patients? And we said, no. No, ma'am, no, sir. We're not going to do that. And we didn't. All right? We're doing our part of that, too. Is liability clear? They paid on every single claim in this case. Do you think they did that because they thought they didn't owe us any money? No. They know they owe. The fight is not whether there's an agreement of whether they have to pay us. The fight is whether the amount they paid is the reasonable value of

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the service.

The damages, the difference between the usual, reasonable and customary, UCR, and what they paid. They told us think about it. We say in this case, if you're going to get down the road all these years and not do what everybody else does and have, you know, a reasonable discount off what you know you owe, then you owe us the full amount. That's the bill charge. All right.

Unjust enrichment. That's another legal claim. That's essentially accepting a benefit without paying a reasonable value. The benefit is we are discharging their obligation to pay for the healthcare for their insurance as a benefit to them by not balance billing their members. That's a benefit to the Defendants, because when doctors send a big bill to the patient, to the member, a lot of times, the patient will call the insurance company and be unhappy about that. Why didn't you pay more? All right. Well, when we don't balance bill our patients, that saves them -- you're going to hear member abrasion. That saves them from all those phone calls of unhappy members. That's a huge benefit to them.

Implied contract. Implied contract is a legal concept that focuses on the conduct of the parties. They're -- if you stop and think about it, you realize all of you all have implied contracts all day long. You go -- Thursday night is Mexican food night with my wife now that my kids are grown. And so we like to go to Mexican restaurants. And I'll say I want a margarita on the rocks. All right. I'm not asking how much. But when I tell the waitress or the waitperson that I want that and they

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bring it, there's an implied agreement that I'm going to pay for it. It's just that simple. Okay?

Prompt pay, another legal claim. Judge is going to give you the instruction. My version in plain English is paying only part of the claim that you know you owe. And so our view on that is yes, you paid the claim, but you only paid a part of what you owe. So we're going to at the end of the day tell you that they violated the prompt pay statute. Now, one of the simpler, nicer things about this case is I expect all the various legal claims will be analyzed with a very similar damage model, which is what's the kind of UCR, what do they pay, you know, what's the typical underpayment. So whether that's unjust enrichment or implied contract, prompt pay or unfair insurance practices, I believe we're going to be able to evaluate all of that from this same basic model, all right?

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And so when you take the number of claims at issue and the amount that we say they've underpaid us, that's the ten and a half million dollars. A smidge under that, but that's the ten and a half million dollars we've been talking about for several days. But that's going to be your choice.

Okay. As I suggested a few minutes ago, John Haben, the United employee in charge of this whole deal, all these out of network programs, first witness in the case. There's a lot to cover with him. All right? I believe you're going to find it interesting, very entertaining at times, but it's going to be three days. So give us some time to get it all out. I appreciate your time this morning. Thank you very much.

THE COURT: Will the counsel please approach?

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[Sidebar at 11:35 a.m., ending at 11:36 a.m., not transcribed]

THE COURT: All right. So we are going to take a long lunch today because the Defendant will give their opening this afternoon. I don't want it to get cut up by the lunch break. So lunch is being provided for you during the trial. The two parties jointly are providing box lunches for you during the trial. If you have any dietary restrictions, please let the marshal know, or if you have any preferences or restrictions.

I'll give you the admonishment, but we won't be back until 1:15 today. And during the recess, do not talk with each other or anyone else on any subject connected with the trial. Don't read, watch, or listen to any report of or commentary on the trial. Don't discuss this case with anyone connected to it by any medium of information, including without limitation newspapers, television, radio, internet, cell phones, or texting.

Don't conduct any research on your own relating to the case. Don't consult dictionaries, use the internet, or use any reference materials. If anyone should try to talk to you during the recess, inform the marshal immediately.

And you may not conduct any investigation, test any theory of the case, recreate any aspect of the case, or in any other way investigate or learn about it on your own. Don't talk, text, tweet, Google, any social media, or conduct any other type of book or computer research with regard to any issue, party, witness, or attorney involved in the case.

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

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subject connected with the trial until the jury goes back to deliberate. Thank you for your kind attention. Please give that same kind attention to the Defense when they do their opening and have a nice lunch.

THE MARSHAL: All rise for the jury.

[Jury out at 11:37 a.m.]

THE COURT: And you guys will come back at 1:10 to put your issues on the record. Thank you. Court is in recess.

[Recess taken from 11:38:20 a.m. to 1:20 p.m.]

[Outside the presence of the jury]

THE COURT: My apologies to all of you for being late. Mr. Blalack, will you be ready to make those records now?

MR. BLALACK: Yes, Your Honor. So the first objection during opening arguments -- argument -- oh, sure.

MR. ROBERTS: Sorry, sorry. I'm going to make that first one, Your Honor.

THE COURT: Thank you.

MR. ROBERTS: Because I'm the one who poked Mr. Blalack to get up and object. And as you recall, this was right at the beginning and what plaintiff's counsel said was you know, most cases, jury, you're just about money and moving money from one corporate pocket to another, but this case is about the quality of healthcare in Nevada. And that's what we objected to.

And we objected first because our -- it's sort of the common honored rule of evidence clause is if you'll be able to prove what you say with a witness on the stand or a piece of evidence, you're probably not

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arguing. And I would submit to you that there's not a single bit of admissible evidence on the proposed exhibits in this case which would prove that how much the jury awards is going to have any effect on the quality of healthcare in Nevada. And in fact, this is not only argument, it's improper argument under *Lioce* and *Gunderson* (phonetic). And the part of *Lioce* I wanted to draw the Court's attention to --

THE COURT: I have it up here.

MR. ROBERTS: Thank you, Your Honor. Where the Supreme Court defined jury nullification as the jury's knowing and deliberate rejection of the evidence or refusal to apply the law because the jury wants to send a message about some social issue larger than the case itself. And that attorney arguments suggesting to the jury that if they found in their favor, they could remedy some social ill is entirely improper because it encourages the jury nullification.

And *Gunderson* confirmed that and explained that an attorney violates RPC 3.4(e) if the attorney is either alluding to a matter that is irrelevant given the law, or unsupported by admissible evidence given the facts which exactly is what telling the jury that this case is about the quality of care in Nevada. This is not an issue before the jury. And they did it at the beginning before they even talked about any evidence, that they had an opportunity through their verdict to improve healthcare in Nevada. Who's going to vote against that?

And I want to say, Your Honor, that under this Court's rulings, this is a rate of payment case. That's what this case is now about. Whether the rates we paid were reasonable. And even though

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they've got several other causes of action, there is going to be no claim which would allow the jury to make a finding that's going to improve the healthcare in Nevada.

And if this was an issue, then we would be able to prove things like the amount we paid per visit was more than the actual cost to the provider of care as shown on their own internal documents. We would be able to show the jury that there's no evidence that a single penny of any money they award will actually go to the physicians and nurses who provided the services. Not a single penny, and instead will go to line and increase the profits in the corporate coffers of their private equity care.

So that is in the jury's mind right now, and it's totally improper for them to be stewing on that the whole trial and thinking that that's what the case is about because this Court has overruled our objection.

So I would ask this Court to reconsider its ruling on our objection and to give a curative instruction because a curative instruction at this stage, under our case law, can still fix it. And that's what we ask the Court to do. Thank you, Your Honor.

THE COURT: Thank you. Any response, please?

MS. LUNDVALL: Thank you, Your Honor. I'm not going to be as animated as Mr. Roberts because I think that this issue is much more simple issue especially given the presentation that he gave.

One of the things that we complained to you was that there wasn't a single exhibit that was going to be presented to this jury that

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spoke to an opportunity to improve the quality of care here in Nevada. What he didn't make any mention of was oral testimony. And as the Court well knows, oral testimony from the witness stand is no different than what's on a written page. And we have witnesses that will provide oral testimony speaking to the fact in essence, you get what you pay for.

And so to the extent that we have evidence that we intend to present to the jury and will present to the jury, this speaks to that very issue and it takes it out of, number one, his contention that what I was doing was arguing to the jury rather than forecasting what the evidence will be.

Second point is that he suggested somehow that the argument, I'm going to call it my presentation, invited jury nullification. Jury nullification is when jurors are asked to ignore what the law is. There was nothing even remotely touching upon the idea where I suggested that somehow they had the ability to ignore what the law is. In fact, what we want them to do is to embrace and to apply the law. So nothing even remotely close to the idea that we were asking them to nullify the instructions that the Court would give them. And so therefore, we would ask the Court to deny the request for a curative instruction.

THE COURT: Thank you. Do you have a brief reply?

MR. ROBERTS: Yes, Your Honor. I think the law shows that it's not just asking the jury but encouraging or inferring. And the quality of medical services and the ability to improve that quality, it had nothing -- it just doesn't have anything to do with this case.

And I would add one quick thing that Ms. Lundvall can reply

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to. But I would remind the Court that we moved for summary judgment on their count seeking a declaratory judgment to force us to pay more money in the future. And they withdrew that because we had opposed it because guess what? There's no Nevada statute which imposes a mandatory process for settling the amount of reimbursement of out of network claims and that's been in place now, I think since January 1st of 2020.

So there is nothing this jury can do that would increase the amount that insurance companies or if the defendants pay them in the future for medical care. There is nothing they can do to improve the quality of medical care because the amount set for reimbursement of out of network emergency department services is now determined by a statutory process, not this jury's verdict. Thank you, Your Honor.

THE COURT: All right. I'm going to stay with the ruling and let's bring the jury in.

MR. BLALACK: Your Honor, I have one more record if I can make it?

THE COURT: Yes. Just get them ready and then I'll give you the high sign. Yes?

MR. BLALACK: Your Honor, I think the last objection was to the in that the argument or presentation regarding the Ingenix settlement, which we addressed in the hall, and I think the Court resolved that in a way that resulted in nothing objectionable from our side.

THE COURT: I think you objected before we knew where it

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was going, and we talked about it in the hall.

MR. BLALACK: Thank you, Your Honor.

THE COURT: All right. Good, so we'll bring the jury in as soon as I get the high sign.

MS. LUNDVALL: Thank you, Your Honor. If the Court needs any further record, what we found, have been able to pull up is the Court's ruling on that motion in limine dealing with the Ingenix settlement. And I think that when you actually look at the transcript and the Court's ruling as well as the written ruling, what you will learn is that we didn't even go as far as what the Court allowed us to do. And so we were two steps back from what the Court's ruling was, and therefore, we believe that the Court's ruling was the right thing -- was proper in the first place.

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THE COURT: Thank you all.

THE MARSHAL: All rise for the jury.

[Jury in at 1:30 p.m.]

THE COURT: Thank you. Please be seated.

Mr. Blalack, does the Defendant wish to present an opening statement?

MR. BLALACK: We would, Your Honor. Thank you.

THE COURT: Someone on the phone needs to mute themselves. We hear paper. Go ahead, please.

DEFENDANT'S OPENING STATEMENT

MR. BLALACK: The evidence will show that this lawsuit is part of a deliberate strategy to jack up the cost of emergency medicine

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services and then hide the bill that the TeamHealth claims are sending Nevada employers and employees.

Ladies and gentlemen, my name is Lee Blalack, along with my colleagues, Lee Roberts who you now know all too well. Jeff Gordon, my colleague, Nadia Farjood, we represent the defendants in this case. There's five of them: United Healthcare, United Healthcare Insurance Company, Health Plan of Nevada, Sierra Health and also UMR.

I'd also like to introduce my client -- one of my clients, Dr. Wu. You want to stand, sir? He is the medical director for Health Plan of Nevada, and also my colleague -- I think -- is Dan Polsenberg in the room?

MR. POLSENBERG: He is.

MR. BLALACK: He's one of our colleagues who is helping us in this case.

Ladies and gentlemen, the plaintiffs in this case are three companies that are owned by TeamHealth Holdings which is the largest emergency room staffing company in the country. It is based in Tennessee.

TeamHealth in turn is owned by the Wallstreet private equity giant, Belasko. The proof will show that the TeamHealth plaintiffs hire ER positions as independent contractors, not employees, and then enter agreements with hospitals to staff ERs at those hospitals. TeamHealth then bills out plans and health insurance like my clients for the services rendered by the ER doctors with whom they contract.

At its core of this lawsuit is what is about the reasonable

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payment for ER services that the TeamHealth plaintiffs rendered at 10 hospitals across Nevada from July 1, 2017 to January 31, 2020. It's important to stress that in this case, TeamHealth Plan has already been paid for their services.

The dispute here is not over whether my clients should pay for the ER services. You've already heard Mr. Leyendecker and Ms. Lundvall say that we had already paid and there's no dispute about that. So this is not a case about an insurance company denying benefit claim. The argument here is about how much of reimbursement is due to the plaintiffs for those claims.

The evidence will show that my clients have already allowed payment of $2.84 million on these claims. They want you to give them an additional $10.4 million on top of that, that from the amounts that they have already received from my client, nearly three times more.

But the important thing to remember as you're listening to the evidence in this case is that there was no previously agreed or understood agreement or handshake agreement between the parties as to the amount that was owed for these services. The TeamHealth witnesses you will hear in this trial will also concede that there is no Nevada statute, or regulation, or government book that sets a fee schedule or a payment methodology that must be used to reimburse the disputed services.

You will hear their witnesses tell you that they had a written contract with my clients that specified the payment amount that was owed for these services. They will also tell you there was no oral

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contract between the parties, not even a handshake. You see, the proof will show that the TeamHealth Plans were non participating in what you heard called out of network providers. And as a result, they are not entitled to payment of their full billed charges under Nevada law, only the reasonable value of those services.

Now the TeamHealth Plan has asserted that the reasonable value of the disputed services is whatever they say it is. Or put another way, whatever they decide to charge. You just heard their lawyers claim that they should be paid for those charges. That they will admit in their testimony, the witnesses' testimony, that the -- they set those charges by themselves, unilaterally with no market or other regulatory restraints or limits.

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The evidence will show that those charges are inflated and grossly unreasonable. And how do we know that? Because they almost never, and I mean never get paid. I will say that again. They almost never ever get paid their full charges. I will show you their own internal claims data, which documents how much they were paid for either disputed period for the same type of out of network ER services at issue in this case. And that data proves that health insurers other than my clients, so my client's competitors only pay the TeamHealth plans their full charges about six percent of the time. So well over 90 percent of the time, the TeamHealth plaintiffs were not paid their billed charges by people other than my clients.

The hard evidence will prove that the TeamHealth plaintiffs had zero expectation that they would be paid their full charges. And

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certainly had no legal right to demand those charges.

Now tying their charges to FAIR Health, which we learned about today is a misdirect. You will hear from FAIR Health itself in this trial. They have agreed to testify as an expert witness on our behalf. They will tell you that FAIR Health does not set industry standards for out of network payment rates, and that its charge database that does not define what is a reasonable value for an out of network service.

Most importantly the data provided by the FAIR Health expert witness will prove that the billed charges are entirely arbitrary because they are unilaterally set by the providers with no limits whatsoever. Now the TeamHealth Plan also makes the baseless allegations that my clients engaged in an improper scheme with a third-party company called MultiPlan. You heard a little bit about that earlier. And they've alleged that MultiPlan and my clients engaged in a scheme to defraud them of payments that they were owed.

But as I will explain to you shortly, the evidence shows that TeamHealth is bringing this false claim for a very simple reason. The proof will show that they're hoping to silence MultiPlan which is a third-party company that offers a health plan pricing service called Data iSight, and that service shows what's the reasonable value of healthcare services and how it compares to the billed charges that out of network providers show. The evidence will show that TeamHealth is desperate to silence so the MultiPlan can't show the market just how inflated TeamHealth's billed charges actually are, relative to the amounts that health plans typically pay for out of network ER service. As you listen to

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TeamHealth's testimony in the coming days, don't be fooled by this tactic to use litigation to distract from their own inflated charges.

Now ladies and gentlemen, I want to make something crystal clear. My clients do not question that ER doctors and nurses perform valuable services. ER doctors and nurses are heroes. They do incredibly important work in our communities, period. There is no dispute about that. That is not what this case is about. And as you listen to the evidence in this trial, remember that plaintiffs in this case are for-profit companies that staff the ERs, not the actual physicians who render the medical care.

There are over 11,500 claims at issue in this case. The evidence you will hear will show that they were rendered by 191 different physicians. Yet on their witness list for this trial, they listed only one of the physicians who rendered any of those services. He is a former board director of one of the plaintiffs, TeamHealth Plan.

The proof will show that ER staffing companies would set the bill charges at issue in this case are not entitled to gouge my client.

THE COURT: Mr. Blalack, I apologize for interrupting but I have to do this.

There is someone on the phone who is not muted, and you are interfering with the opening of the Defendant. If that happens again, you will not be allowed to join on BlueJeans. Thank you. I apologize. Please continue.

MR. BLALACK: Thank you, Your Honor. I appreciate it.

Just to repeat, ladies and gentlemen, the proof will show that

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the ER staffing companies which set the bill charges at issue in this case, they were not entitled to gouge my client's customers, which are the employers and employees of Nevada who actually pay for health insurance in this state, with inflated charges for those services. That's not fair, and Nevada employers and employees who my clients represent simply can't afford it.

Now, ladies and gentlemen, before I tell you more about the evidence in this case, I was trying to think how I could describe the problem that's at the center of the case in a way that makes sense. And here's an example that may help you understand the evidence that you hear in the trial. This is important because behind each one of those 11,500 disputed claims, there is a human being. There is a member of one of our -- my client's health plans. And that person is someone who went to an emergency room and found themselves facing not only a medical emergency but an unexpected financial risk as well.

So to help understand what you are going to be hearing a lot about in the next few weeks, I want you to imagine a woman who is driving her car on Charleston Boulevard here in Las Vegas. And as she is crossing an intersection, the car in the opposite lane turns into her lane and hits her. She's not seriously injured, but she's shaken up and needs medical assistance. An ambulance arrives, thankfully, on the scene a few minutes later, stabilizes her, and hauls her off to the ER. Let's say, the ER in Mountain View Hospital.

Now, she's in pain and doesn't really know where the ambulance is taking her. And she sure doesn't have the time or the

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inclination to pull out her insurance card to ask the ambulance driver to take her to a different hospital to ensure that the hospital and every professional in it is in her health plan as provider network. She just shows up at MountainView. She is taken into the ER. She is treated by an ER physician on duty at the time. The physician spends about 25 minutes with her, patches her up, sends her home. She's a little sore, but okay. It's not a good day, but she's thankful. It could have been much worse.

And a few weeks later, she gets a bill from MountainView Hospital. And she is relieved to see that the hospital is in her provider's health plan network. As a result, even though the hospital's billed charges are for thousands of dollars, the hospital has accepted a fraction of those charges as payment in full, which means that her deducible, coinsurance, and copayment are all very manageable.

But then a few days later, she gets a second bill. This one from an ER staffing company that is seeking payment for the services rendered to her by the ER physician. And boy, that is a surprise to her. Because even though that hospital was in her health plan network, the ER physician who treated her wasn't. And that staffing company is charging her almost $1,000 for her medical care. She's frustrated and worried because that's a lot of money and she didn't have any say in which hospital the ambulance would take her. She also had no say in the physician who would treat her and the amount the physician staffing company charged her. In this example, nearly $1,000 for an out-of-network ER service.

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So she calls the benefits manager at her job and asks what she should do. The benefits manager explains that her employer's health plan does provide, fortunately, some coverage for out-of-network ER services, and the plan will play what it believes is the reasonable value for the service. In this example, say $200. Now, the woman is left with what you've heard a lot about, a balance bill of about $800. And the staffing company wants to collect. Her health plan, say, HealthPlan of Nevada, thinks the amount already paid is reasonable and that the staffing company hasn't a right to be paid nearly $1,000 for that ER service when there was a prior negotiated agreement between them about the amount that would be paid. And the market data in that area shows that the services at issue were never paid at those charges, or almost never paid and are excessive.

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And of course, if the proper payment is nearly 1,000 rather than $200, it means that this woman's cost share, her patient responsibility is based off that higher amount, which means a larger coinsurance, copayment, and deducible. So what is she going to do? Does she tell the staffing company the amount already paid was fair and reasonable or does she pay the bill just because the staffing company demands whatever amount they decided to charge?

That problem, ladies and gentlemen, plays out thousands of times each year here in Clark County, and across Nevada more broadly. That problem is what is at the core and root of this lawsuit. And as you will learn in this trial, the proof will show that the inflated charges set by the for-profit staffing companies are not the reasonable value of those

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services.

Now, I want to tell you a little more about the case and give you some background on some key players and important healthcare terms because you're going to agree with Mr. Zavitsanos when he tells you you're going to be swimming in acronyms in this case. And there's just no getting around it. So I want to take you through a little bit of the background so you can follow some of the testimony and documents you are going to hear.

But first, I want to tell you about the key -- the key players in this story, all right. Now, the first is the Blackstone Group. It is the parent of TeamHealth holdings, the world's largest private equity firm. Next is TeamHealth. Blackstone owns TeamHealth. TeamHealth is the nation's largest clinical practice. The evidence will show it operates in 47 states, 30 million patients annually. There are 16,000 affiliated healthcare professionals with TeamHealth.

Now, TeamHealth then contracts with the individual Plaintiff staffing companies around the country. And in this case, the three that are at issue, there's one here based in Clark County called Fremont, there's one, where I am going to focus in some more detail in a minute, up in the northeastern part of the state called Ruby Crest, and one in the northwestern part of the state called Team Physicians.

Now, providers. We've all heard providers in this case, and there are many different types of providers. But in this case, 98, 99 percent of the claims at issue in this case are for physicians, medical doctors. Okay? ER physicians. And so the relationship between the

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various entities is that the providers, the ER providers, enter independent contracts with the individual staffing companies who are the Plaintiffs in this case; Ruby Crest, Team Physicians, and Fremont. So the staffing companies are owned by TeamHealth, again, based out of Knoxville. And TeamHealth is owned by Blackstone, which is based in Manhattan.

Now patient, member, employee; you are going to hear those terms a lot interchangeably. Now, ladies and gentlemen, my client's primary business is providing health insurance coverage through employers. That's -- most of these cases involve relationships working -- when I say my client's clients, I am talking about an employer. And the member is the person who has the health plan coverage. So you will hear terms like employee, member, and patient. So let me try to explain what that means.

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If you are a member of your employer's health plan, and in this case, I am using Caesars as an example. The employer is Caesars who is the sponsor of the health plan. The employee is the health plan member. So every one of those employees who is a member of the plan is a member of the plan. When that employee goes, as you've noted here in the illustration, to an ER and sees a doctor, they become a patient. And the costs they incur then become costs for the health plan.

Now, I'll give you a sense of who, in the claims that are in dispute in this case, the 11,500 claims. What you are going to find is that these are just a sample of what the evidence will show are the clients of my client, the employers who sponsored the health plans that are at issue in this case. Clark County, and then the MGM Grand, Caesars or

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the Metropolitan Police Department, you know, the -- so these are my client's clients. Each of them have employees who are members of the health plans and become patients who went to an ER where they visited with a TeamHealth physician.

Now, you've heard about two different types of health plans that were mentioned in the opening of the TeamHealth Plans. One are fully insured and the other is self-funded. And I just want to make sure you understand this distinction because it could be very important as you think about the evidence. In a fully insured plan, it's more like a traditional insurance policy. The employer purchases an insurance policy from the insurance company for its employees. It pays a premium, and I'll show you that in a minute.

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But when there are claims and medical care is rendered, the cost of paying the provider for the medical care is paid from two sources. It's paid by the insurance company who makes a payment to the provider, and then the patient provides a contribution in patient responsibility. But when you have a self-funded plan, and 40 percent of the claims in this case are related to these kind of plans, self-funded plans, there is no insurance company. There is no insurance company who is accepting the risk of providing the coverage. All of the costs of the medical care is coming directly out of the pocket of the employer.

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So when one of the employees becomes a patient and incurs medical costs, the patient still pays cost-sharing. But the contribution for the balance that goes to the provider is coming out of the employer's pocket, not the insurance company's pocket. So in every one of these

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self-funded claims that you're going to learn about in this case, my clients didn't pay a dime out of their own pocket for those claims. The money that they used to pay those claims was coming out of the pockets of the employees.

My client was a claims administrator, which is called a third-party administrator, a TPA. They're paid a fee, just a service fee, to help the employer run the plan in terms of setting up a network, processing claims, and the like. And that distinction will be very important as you hear some of the evidence in this case.

Now, I just talked about who pays the premium. In a fully insured plan, the employer, in this case Caesars, writes a check for the premium to the insurance company along with a contribution from the employees, usually in a payment withheld from their check. And in return, the insurance company accepts the risks that those employees are going to go to a doctor and incur medical costs that they'll have to pay.

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So if you think about your homeowner's or auto insurance, the insurer is accepting the risk you're going to have an accident, or a tree is going to fall on your house. And you're paying a premium to them to accept that risk. In that self-funded plan, the employer is paying an administrative fee to the claims' administrator, but the risk is being assumed and kept on the employee.

Now, you've heard other terms, in network and out of network. This is simple. The doctors in question did not have a network agreement with the insurer or the administrator where they say, if I

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rendered care to one of your members, I'll accept a certain payment. In the context of a network agreement, when you go to a network provider in your network for your plans, those doctors have agreed to a predetermined rate to be paid for services they render to you or any other members. For an out-of-network provider, there is no agreement. No contract, no handshake, no nothing, specifying what will be owed or not owed for an out-of-network provider.

Now, allowed amount versus billed, you've heard a lot about that. A lot of people, when you think allowed amount, think paid. The only reason it's not paid is because that allowed amount includes a portion that's the patient's responsibility.

So the insurance company or the administrator will pay a portion of that allowed amount and the balance will be paid by the employee through deductible, coinsurance, copayment. That's the allowed amount. That's the amount that under your health plan is the extent of your coverage. So if you think about other types of insurance, if you say I know I am covered for up to X amount of dollars, that's the allowed amount.

The billed charge is the amount that is the price put on the bill that you get. And in healthcare, the two are not the same, as the proof in this case will show. And those billed charges are set by the staffing company unilaterally, not subject to government regulation or requirements, unilaterally.

Now, how does patient responsibility get calculated? The evidence will show that when the billed charge is submitted, the

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administrator of the plan will look at the billed charge and determine the amount of coverage available for the service and set the allowed amount and remit payment of the allowed amount. So in this case, in the example, I am giving you $1,000 of charges and the allowed amount is 200. If the coinsurance of that plan, as an example, is 30 percent, the patient would be responsible for paying $60 of that 200. That is how the patient responsibility is calculated. Okay?

In this case, it is the Plaintiffs position, they told you and they will argue in this trial, that the allow -- the proper allowed amount for these disputed claims should have been the billed charge. That's their position. The billed charge was the proper allowed, not -- and we should -- we improperly limited it to 200. If they're right, then what the calculation would have been for patient responsibility is billed charges of 1,000 is the allowed amount of 1,000 times 30, which means the patient pays $300 of that 1,000. So in that situation, their position, they're arguing that the patient's responsibility is an additional 400 percent.

Now, you are going to hear a lot of evidence in this case about different reimbursement rates to different providers and whether there was a basis for it. You heard a lot of suggestion in the opening statement from the other side that we couldn't figure out how we were getting paid. There's no mystery here. Like every other type of health insurance, the plan document, the contract between the employer and the administrator or the health insurer determines what the benefit it. And those plan documents can be different because different employers pick different benefits and different plans.

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So in the example here, you could have employer A choosing one type of out-of-network program. I am just using one you are going to learn about in the trial called extended non-network reimbursement, shorthand ENRP. That would reimburse out-of-network emergency services at a certain rate. You could have a different employer select a different program for their own reasons. And that program might be the shared savings program, which you heard a little bit about in the opening, and I will describe it more for you later. So you could have two clients picking two different programs for their employees. And because they do that, that can produce two different payments for the same service to the same doctor. All right?

So in the situation with Plan A, because that employee patient has one type of coverage, they go to Dr. Doe, they receive a CPT code 99283 on January 15, 2019, and under that plan that the provider selected, they get paid $200 as the allowed. With the other employer, it's got a richer benefit for their employees when they select the shared savings program. And that employee goes to the same Dr. Doe and gets the same service on the same and he gets paid $500.

Now, I'll explain to you, it is my clients' position that the reasonable value of all of these services -- the reasonable value for all of these services, this for Corporate Physicians, UnitedHealth, and the other Defendants in this case, is the Medicare rate plus a small margin. All of these rates are above that. So some are premium rates of reimbursement and benefits, some are less. But wherever they are on that schedule is a function of customer choice, employers deciding what

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benefits they want their employees to have and extending something we all know about now and like.

Now, you are going to learn a little bit about how the employer self-funded market works from an expert we have called in the case. Her name is Karen King. She's employed as a benefits consultant. She advises large companies, like the ones I have showed you on the screen, in how to set up their health plans, how to retain a third-party administrator to run their plans. She is very, very knowledgeable about that market. And she will tell you that different employers pick different types of out-of-network benefits and programs for their employees based on their own priorities for what they want.

Some of those employers are very focused on cost control. They're going to give a little bit of a benefit, but not a rich one. They might choose an out-of-network program from an administrator like one of my clients that extends, you know, a very modest reimbursement. But other employers, and some on the screen I showed you, might choose a very rich benefit that pays a substantially larger amount because they don't want their employees pursued in collections actions and the responsibility of docking them. But that's a -- that's a function of customer decision-making about our plans.

She will testify she has reviewed the out-of-network programs that are at issue in this case. She will testify that she has reviewed those programs, and that the programs that the Plaintiffs complain about in this case are very similar, if not identical, to the programs that are used by all of our competitors. There is nothing about

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our program that you are going to learn about that is different than what Aetna is doing, what the Blues are doing, Cigna is doing, or anyone else.

Now, talking about the specific parties you are going to learn about in the case. First, here are the ten facilities that are affiliated with the three TeamHealth plans. There's eight here in Clark County, Ms. Lundvall walked through those with you. Then there is Ruby Crest, which is affiliated with the northeast -- Northeastern Nevada Regional Hospital in Elko. And then Team Physicians, which is up in -- in Fallon. So those are the three Plaintiffs. Those are the emergency rooms they staff with contracted doctors, and they're affiliated with TeamHealth.

Now, the disputed claims. There are about 11,500 disputed claims. And the billed charges for those claims -- oh, excuse me. The percent of those claims that are disputed by the three Plaintiffs are divided here. What you can see is that 90 percent of the disputed claims are from Freemont. So there's -- there are some claims from Team Physicians and Ruby Crest and some alleged damages. But as you can see here, this case is about Freemont. 90 percent of the disputed claims paid, priced, serviced, here in Clark County.

Now, the Defendants, five Defendants, and I have broken them out for you so you can see what types of plans they are. Now, there are two companies that are fully insured companies. We only do fully insured coverage for companies. Those are Sierra Health and HealthPlan of Nevada. There are two companies that only serve as third-party administrator. That's all they do. They never sell fully insured health insurance coverage because they never pay claims with their own

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dollars. Those are United Healthcare Services and UMR. And then United Healthcare Insurance Company does both. So it's [indiscernible].

Now, TeamHealth Plan is charges and payment. Just to give you a sense of how the numbers stack up. The process of disputed claims, their total bill charges was just over $13 million -- $13,200,000. The total amount allowed by my clients on those claims was just over 2.8 million. When you average those out, it shows that the average bill charged on those claims was $1145. And the average paid amount was 246.

Now, just so you can get a sense of reference, what this shows, is how those averages relate to the Medicare fee schedule. So the plaintiffs' charges of 1,145 correspond to 763 percent of the Medicare rate. The allowed amounts that my clients pay corresponds to 164 percent of the Medicare rate. So if you think of in the Medicare fee schedule, multiply it. It's not in dispute what they say they're owed is almost eight times what the rate would be for the Medicare claim.

Now, before I move on, I want to come to a slide that you were shown by opposing counsel. You all remember this slide that was shown to you earlier in their opening? And it's showing you United's claims in Nevada, plaintiffs 247, all other care providers 528. Everybody remember seeing that in the opening? The suggestion was that my clients were somehow being unfair because we were not paying this amount. The amount they're asking for on average is twice that amount.

So when they held this up to you and said they cheated us because they didn't pay us $528 on an average for [indiscernible]. The

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fact of the matter is what they want in this lawsuit, and they want you to award them is $1,145. Twice that.

Now, I want to talk about some other parties. The first is MultiPlan who you heard reference to a moment ago. And MultiPlan is a public company -- a big public company. And it does business with virtually all of the large health plans and health insurers in the United States. So it's a client of United Healthcare; it's also a client of Blue Cross Blue Shield, Anthem, Aetna, and Humana. And you may notice up there ladies and gentlemen, it's also a client of TeamHealth. So it also does business with TeamHealth.

MultiPlan offers many services, and I'll -- you're going to learn about all of these during proof, but the one that I want to focus on is Data iSight. Data iSight is the pricing service that was challenged by the plaintiffs in this case and that I gave you a little bit of introduction to earlier. All of those companies use Data iSight. You're going to hear testimony that Anthem uses Data iSight, United uses Data iSight, Blue Cross Blue Shield uses Data iSight, Aetna uses Data iSight. You'll even hear testimony from MultiPlan that employers -- self-funded employers currently use Data iSight.

Now, of the five defendants in this case, two of those defendants have absolutely no relationship to MultiPlan. Those are Sierra and HealthPlan of Nevada. So it's not the case that every document you saw earlier today that was referenced in the opening about MultiPlan was limited to one of the United entities because Sierra and HealthPlan of Nevada have never done business with MultiPlan at

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all.

Now, Mr. Ahmad acknowledged this even though we have all of these disputed claims in the case, 722 were reimbursed these costs. Six percent of the total. So when you're hearing all this evidence -- when you spend days talking about Data iSight, I want you to remember how little it touches this case because this is the strategy.

Now FAIR Health, that's one of the other third parties you're going to learn about. FAIR Health is a non-profit organization, and it receives claims data from all over the place, government, personal health insurers, and it brings that data in and then it stores it, it analyzes it, and it creates what it calls benchmarks that people in the healthcare industry can use for a variety of purposes, research, reimbursement, public policy.

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And they have two different data sets that they create. One is of the bill charge on those claims and the other is the paid amount, the amount that was actually shown up. Not just the charge but what was actually paid on those claims. And I'll explain to you those two things are very different. And so when the FAIR Health data comes in, it's broken out, and they have two different data sets for the bill charge and for the paid amount. And then they create these benchmarks, 98 percentile, 80th percentile, 70th percentile, 60th percentile.

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When you heard testimony earlier today -- or statements earlier today that TeamHealth uses FAIR Health to set its charges, its prices, it only uses the charge benchmark. It does not rely on any of the paid claims data that FAIR Health compiles and makes available.

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Now, I want to talk a little bit about the witnesses that you're going to learn about in this case. And before I do, I just want to see if you remember the Judge's instructions at the beginning when you were sworn. And you may remember that she said, to remember that what the lawyers say is not evidence. Remember that? And she gave you instructions. She said what the lawyers say is not evidence. What is evidence is what witnesses say, what documents are shown. And I want you to remember that, and I urge you to remember that because what I say, what Mr. Leyendecker says, it doesn't matter. We're here just to help guide you. What matters comes out of that box, what documents you see.

So we're going to all have different -- the lawyers are going to have different views on things. So I urge you to keep an open mind and listen closely to the witnesses because these are the people who are ultimately going to be the source of truth for you in this trial.

Now, you're going to hear from a lot of witnesses in the trial, but I want to preview just a few. So the first is Mr. Bristow -- Kent Bristow. He's the senior vice-president of revenue management at TeamHealth based in Knoxville. He is a financial executive, not a doctor. He's responsible for TeamHealth's network contracting and collections. He was their corporate representative for each of the three plaintiffs here in Nevada on everything they did. His testimony -- they testified through him, not through one of their doctors, through him. He will be their representative in this trial. He will testify about TeamHealth strategy for out-of-network reimbursement. And he will be a -- he was a

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witness to key meetings with my client that he will describe.

Next is Dr. Crane. I think one of my opposing counsel referred to Dr. Crane. He is a chief medical officer. He is also in Knoxville. He's not local. He did not render any emergency room service at issue in this case, not one. This is not a doctor who provided any care [indiscernible]. He was being called as what's called a non-retained expert to testify about services, non-clinical services that TeamHealth provides to emergency rooms. But he's going to tell you and admit he doesn't know what TeamHealth Services -- the ERs in this area -- in the three locations we're talking about here ever used or took advantage of. And he'll also tell you he had no opinion or knowledge about the single most important issue in the case, which is the reasonable value of the ER services.

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Next, is Dr. Robert Frantz. He is also a senior executive for TeamHealth. He leads one of their regions. They're broken up into regions all across the country in their corporate structure. And he is a president of TeamHealth West. He did not render a single ER service at issue in this case. He again, is another one of these non-retained experts who will testify about TeamHealth plaintiff's performance on certain metrics at three of the emergency rooms here in Clark County. He won't tell you anything about the other seven. And for the three he's talking about he won't have any data or documents to support his testimony. He will also say he has no opinion or knowledge about the core issue in the case which is the reasonable value of the disputed claims.

Next is John Haben, one of the witnesses from our client.

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And my colleagues on the other side are going to call him as their first witness, and you will hear testimony from him. He was -- he is retired. He spent 30 years working for United Healthcare. And after he broke 55, he went off to fish. He will be coming back to testify in this case. He was responsible for managing the employer client's out-of-network costs for United. That was his job. Now, I want you to pay real close attention, ladies and gentlemen, logo of United Healthcare doesn't mean everybody that's ever been affiliated with United Healthcare. He never worked with them or had any role whatsoever supervising or managing Sierra, Health Plan of Nevada, or UMR at all.

He will testify that United Healthcare and United Healthcare Insurance developed out-of-network programs for employer clients because they -- the clients demanded those programs to control excessive out-of-network costs and to protect employees from balance billing and collections activity by doctors. He will explain how out-of-market -- how the market for out-of-network ER services works and how it's changed over time and how United responded to its clients' demands for protection of those members and control of those costs.

You will also hear testimony from Becky Paradise who is -- who used to work for Mr. Haben. She reported to Mr. Haben. She, like Mr. Haben, has no role and has never had a role with Sierra, HealthPlan of Nevada or UMR. She basically has now been running these programs under Mr. Haben's direction and now after his departure. And she will explain how the program is designed to reimburse at a reasonable rate. She will also testify that the out-of-network programs are designed to

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protect employee clients and their employees from balance billing and collections activity.

Now, I want to talk about the legal claims that you're going to be asked to decide in the case. And there's four of them. There's breach of implied contract, unjust enrichment, unfair insurance settlement and violation of Nevada's account payroll. I'm going to take you through the evidence that you're going to hear on those four claims in some detail. Before I do, I want to start with one of the defenses you're going to hear about. And it's called the defense of unclean hands. Kind of an odd defense particularly in the COVID era but that's what it is. And in this defense, ladies and gentlemen, you're going to see evidence that is part of a scheme to extract higher payments from my clients.

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TeamHealth plaintiffs engaged in a billing practice that one of their own physicians called fraudulent. TeamHealth billed my clients for services rendered by Plaintiff Fremont out here in Clark County as if they were being provided by physicians affiliated with Ruby Crest. So the services rendered down here in Clark County, filled out on the claim form, put them through a backdoor contractual agreement, sent them out -- and sent them to my client for payment as if they had been performed through an agreement with Ruby Crest.

Now, you may be wondering why TeamHealth would do something like this, something so convoluted. Well, the proof will show that TeamHealth executed this scheme so that it falsely appeared that those services had been provided by doctors affiliated with Ruby Crest when in fact, they had been performed by doctors in Clark County who

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were contracted with Fremont. Mr. Bristow, who I told you about, the senior TeamHealth executive from Tennessee, he will testify that he's the one who came up with this scheme in early 2019, just before the TeamHealth plaintiffs filed this lawsuit. The evidence will show that Mr. Bristow attempted to take advantage of what he mistakenly believed -- he mistakenly believe there was a contract between my clients and Ruby Crest that paid Ruby Crest 95 percent of their bill charges. He thought there was a contract between them both. And because he did, he went through with this very elaborate scheme to have those claims billed out through Ruby Crest hoping he could get paid higher rates through that Ruby Crest contract. He only learned later that he was mistaken, there was no contract.

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Now, the claims data that you will be shown in this case will prove that TeamHealth did in fact, bill some of those disputed claims in this case for services rendered by Freemont here in Clark County through Ruby Crest as an [indiscernible]. So it's not just a conceptual thing. The claims in this case that are in dispute include those that were subject to what's called a sub-ten scheme. And the evidence will show that Mr. Bristow knew he was doing something wrong. The documents you will see, which are internal email from TeamHealth, it will show that Mr. Bristow was worried about being caught in the scheme by my clients. And he was worried that it would cause my clients to terminate the contract he thought existed with Ruby Crest.

Mr. Bristow will also admit that TeamHealth did not disclose this scheme to the doctors here in Clark County who actually rendered

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the ER services that were billed through Ruby Crest. So their doctors who did the service here in Clark County and had them billed thinking they were going to be billed out under Freemont, had no idea they were being billed out by Ruby Crest. And Mr. Bristow will testify he never shared that that's what TeamHealth was doing.

You will also hear testimony from other TeamHealth employees and doctors that they thought it was inappropriate for Fremont to submit claims through Ruby Crest as TeamHealth did here. This is Mr. Bristow explaining that he did not disclose the sub-ten scheme to doctors in Clark County who actually rendered the services.

And you will also hear testimony from a woman named Rena Harris who was formally one of Mr. Bristow's deputies. She's one of the people Mr. Bristow told to implement this scheme. She was the one that had to go do it. He came up with the idea, and she had to put it in motion. When she was put under oath as a former employee, not still working for TeamHealth, she testified that it was inappropriate for Fremont to bill services it provided under the tax I.D. number of Ruby Crest because Ruby Crest was not the rendering physician.

You will also hear testimony from Dr. Daniel Jones who is affiliated with Ruby Crest, was a former director of Ruby Crest. He will testify that Freemont submitting claims for reimbursement to United under Ruby Crest's tax I.D. number, he would consider that to be a fraudulent practice. He will testify by using the term fraud, he means lying for the purposes of obtaining money.

So ladies and gentlemen, later at the end of the trial, you will

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hear that my clients are asking you to find that we've established proof of unclean hands by the TeamHealth plaintiffs. And if you agree that we've met that burden of proof -- I'm not going to take you back to the burden of proof. But if we've met that burden of proof by a preponderance of the evidence, you can deny their claims for recovery even if you think we've underpaid them under Nevada law.

Now, let's get to the main event. The main event are their clients. We'll start with breach of implied contract. And the allegation is that the TeamHealth plaintiffs asserted that the party's conduct implied agreement for defendants paid in full bill charges. It is not disputed, Ladies and Gentlemen, that there was no written contract, which I agree with. It is also not disputed that there was no oral contract. So we don't even have a situation where one person says to the other, you know, if you'll do this, if you'll pay me X amount I'll provide [indiscernible] members for X amount of time. None of that. No written contract. No oral contract.

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And the plaintiffs' allegation -- keep this in mind Ladies and Gentlemen, because you're going to have to find that there was -- the conduct of the parties manifested an intent to contract through a breach. One of the key terms will be term. How long was this contract for? Was it for six months? Was it for a year? Was it two years?

You know Plaintiffs are going to testify this contract runs on in perpetuity. Until the end of time. Because they are providing emergency services that they have an obligation to provide. That they

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can't terminate people because of federal law, the Defendants have an obligation to pay it forever.

Now, Ms. Harris again, will testify before you, and she will testify that there was no implied contract between the parties, and the Fremont Plaintiffs were out-of-network for the Defendants. So we have no written contract. We have no oral contract. The TeamHealth employee who was Mr. Bristow's number 2, will testify there was no implied contract.

Now since the team of Plaintiffs rely on evidence of conduct to support their claim, you might think well what is the parties' dealings? How did they deal with each other? Did they act in a way that leaves the impression that they understood that the Defendants were supposed to pay full charges whenever they rendered services to a Defendant's -- you know, one of my client's members out-of-network? And the answer is no. There was no course of dealing between the parties that would support payment of full charges.

What I'm showing you, ladies and gentlemen is a description of evidence you're going to hear from their claims data. And their claims data will show that the before period of dispute, which starts on July 1, 2017, when they went out-of-network, my clients paid their full charges 70 percent of the time. Seventy percent.

So it would be one thing if prior to July 1, 2017, every time they treated one of our members on an out-of-network basis, my clients paid their full charges. And they said well, you did it before. You have an obligation to keep doing it. Not only did my clients not do it 100

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percent of the time, my clients hardly ever did it. My clients, like all of the other out-of-network health insurers and competitors of my clients, paid their full charges only 70 percent of the time, which absolutely rebuts the notion there was a course of dealings between the parties that would create an expectation for a right to demand full charges. Now Mr. Bristow will also acknowledge those same numbers when he's on the witness stand in front of you.

Now unjust enrichment. This claim, ladies and gentlemen is in the alternative to their contract claim. They're going to tell you that you should find that there was a contract. But then they're going to say you can disagree with us. At a minimum you should find that Defendants were unjustly enriched by the value of our services. And they should have to make us whole for the value they gave our members because they were [indiscernible] the full charge.

Now the problem with that, ladies and gentlemen, is Mr. Bristow is going to testify to you that he's not aware of any fee schedule or rate set by Nevada statutes or government agencies. They require payment of full charges for having for out-of-network fees or services. In fact there's not a fee schedule rate requiring anything during the period of this schedule. Much less full charges. So even in the absence of a private agreement between the parties, there's no evidence that there was some set standard by the Government or by some agency that says you shall pay out-of-network services at full charges.

Mr. Leathers is their expert. One of their experts. He was retained by the Plaintiffs. And he's going to come into this case and

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testify about what he believes the reasonable value of the services are. Now when you meet him, I want you to keep in mind what his background is. He's an accountant. Nothing against accountants, but he's not an economist. He wasn't trained by education or any other way, with any background or expertise in market economics. He will testify -- yes, and he frequently testifies, as does our expert, as a paid expert. And he's done it dozens and dozens of times.

He can testify that the TeamHealth bill of charges are unreasonable and he's going to give you a primary reason they're unreasonable, because they are below what he calls the 80th percentile FAIR Health bill of charges benchmark. We're talking about the benchmarks of data, there's one for paid claims and one for charges. He's right on that charge benchmark. He's saying look at the 80th percentile. They're under that. The charges are reasonable.

Now as I mentioned earlier, we're going to show you that Mr. Leathers is wrong. And the reason he's wrong is going to be explained by Mr. Mizenko and by the data analysis that Mr. Mizenko prepared. Mr. Mizenko is an expert who works for FAIR Health itself. The very entity they're [indiscernible]. He agreed to testify as an expert for us in this case. He will testify that the data does not set the industry standard for what is a reasonable rate. He will tell you that under oath. He will also tell you under oath that the Fair Health benchmarks are not even designed to measure the reasonable value of healthcare services. That's not what they're for. He will explain that those benchmarks only show what providers charge, not what they're typically paid.

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Now other point that Mr. Mizenko will show you is he did an analysis of the charges that the TeamHealth Plaintiffs used in preparing this case for the [indiscernible] services, and he compared them, the number of codes at issue to the various benchmarks that FAIR Health creates. And remember what their argument is. Their argument is that if you have no charge below the 80th percentile, it's reasonable. And you may have heard Mr. Ahmad say that the TeamHealth Plaintiff charges were reasonable because they were below the 80th percentile. Was anybody listening closely to how he modified that sentence? He said on average. On average, they're below the 80th percentile.

That's important, ladies and gentlemen, because as Mr. Mizenko found when he analyzed the data, if you actually look at the actual code combinations for the three Plaintiffs, those codes are over their own standard 30 percent of the time, 32 percent of the time. And if you measure it not by the 80th percentile, but by the median, which if you ever took statistics know it's the midpoint, the 50 yard line. They're over the median 70 percent of the time almost.

Now this whole FAIR Health benchmark is a distraction because that is not the proper standard for measuring reasonable value of an out of network service. Even using their standard, Mr. Mizenko is going to show you that they don't even comply with their own standard. The only way they can get it to comply with their own standard is to come up with an average of their charges across the whole population.

Now the data that Mr. Mizenko will provide and walk you through and then another expert, Mr. Deal will walk you through, and I'll

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show you something about Mr. Deal in a moment, shows why charge data in the FAIR Health benchmarks can't possibly be the basis for measuring reasonable value for two reasons. The data shows the charges are arbitrary and shows they're inflated. We'll take one at a time.

This is called a histogram. It's basically a charge that they have created related to the charges of the TeamHealth Plaintiffs. They did one of these for every charge at issue in this case. And it shows for this local, for this Plaintiff, for that service on a particular time period, a year, what were other providers charging for the same service in the same area. Every one of these lines, ladies and gentlemen, represents a charge -- a collection of charges that a group of providers in this area, which is the Las Vegas area, charged for this period in May of 2015.

Now first of all, it kind of looks like a [indiscernible] contest with everything everywhere. So the question I'm going to ask you is their position is that the 80th percentile -- and you might be confused. The 80 percentile is not 80 percent. The 80th percentile means that amount or less. So when someone says you're under the 80th percentile, what they're saying is you are at or below 80 percent of the other observations in the guide.

So their position here is that there's the 80th percentile. So their position is every one of these charges constitutes the reasonable charge. From here to here. Now this charge is at $200. There's four people -- four doctors who billed at 400. There were 1100 that billed at 800. There were another 976 that billed at 1600. Then there were 1705

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that billed at 1800. Is that the reasonable charge?

Well, maybe it's the $800 one, or I suppose it could be the $1200, or maybe the reasonable charge is the $1800. The point is, ladies and gentlemen, these charges are completely made up by individual providers and have no market relationship. And so using this scatter shot approach to the define what constitutes a reasonable value for service doesn't make economic sense.

But if it was just the fact that the charges in the FAIR Health data were, you know, all over the place, that would be one thing, but it's not. That applies in this case specifically. These are charges from the Plaintiffs in this case. We have three Plaintiffs, Fremont, Team Physician and Ruby Crest. Same service 99285, 99291. December 2017. Ruby Crest charged $767 for that service in December of 2017. That's what the bill would have shown up if you got that service.

But if you had been down here, had the same injury, had emergency surgery down here, the exact same service, you would have been charged 1360. Here for 99291, same scenario. You would get charged 796 by Ruby Crest, 1765 by Fremont. Same service, same time of year. Same Plaintiffs -- group of Plaintiffs.

Now it's not just that the bill charged is arbitrary. The bill charged is inflationary. How do we know that? Well, in the data that the FAIR Health expert provided and that was analyzed in this case, they lifted the charges for the 80th percentile benchmark that you've heard a lot about and tracked how it changed over time. What was it back in 2011? How did it change in 2012, 2013, 2014? And track how it grew

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over time. That is what the 80th percentile would have been in May of 2020, if starting in May of 2021, it had grown at the rate of inflation for physician services, which would have been 14 percent. That's what it would have been. What was it? That's what it was.

So what happened, ladies and gentlemen, the evidence is going to show that the FAIR Health 80th percentile of those charges, grew, grew, grew, Dropped down a bit, and then skyrocketed. And as of May 2020 it was $1991 for the 80th percentile. So think about it, ladies and gentlemen, $800 would have been the reasonable charge in November of 2017, and then $400 would have been the reasonable charge in May of 2020, and then 1991 would have been the reasonable charge in May of 2020. That is an arbitrary inflationary system, ladies and gentlemen. And Mr. Mizenko's testimony and the testimony of Mr. Deal will prove why that's so. And it will be the reason why the employers in Nevada, who are my client's customers, are demanding not to have reimbursements based on this.

Now the most important evidence you're going to hear in this case about why reasonable value of these services is not the full [indiscernible], it's right here. This is going to be plain data coming from the TeamHealth Plaintiffs own billing system. Which is going to show how often they were reimbursed at full charges by my clients' competitors. Not by my client, but by all the people that they do business with, other than us.

And what it's going to show is that when they're out-of-network with anybody else, they only had to pay their full charges 6.4

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percent of the time. So 93.6 percent of the time when they were submitting a claim as an out-of-network provider to Aetna, Blue Cross Blue Shield, Cigna, fill in the blank, they were getting paid something less than the full charges.

And I submit to you, ladies and gentlemen, the proof will show at the end of the case, that there is no way full charges can be reasonable value, when no one pays it.

Now you remember Mr. Zavitsanos asking you last week about his hypothetical taxi ride. And whether you would just pay the amount on the meter without any questions. You all remember that? I took note of that one. And as you're listening to the evidence in this case, think about that same taxi ride. But this time, think about whether you would pay whatever the cabby demanded if you didn't know when you got in the cab he was going to charge you 100 bucks to drive around the block, and when you could see his own business records, he only got paid that 100 bucks 6.4 percent of the time. Would that still be fair? Would that still be reasonable? Just because he said pay me.

Now you're going to hear testimony from an expert from our side, Bruce Deal, he's a retained expert. I mentioned him earlier. He's a recognized healthcare economist with a master's degree from Harvard University. He has 30 plus years of experience in healthcare valuation cases like this one. He's testified in a lot of cases just like Mr. Leathers has. He will testify that in the healthcare industry, billed charges are not the reasonable value of the services provided. He will testify that the reasonable value can only be measured as the amount that a willing

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buyer and a willing seller will pay and accept in an negotiated arm's length transaction. That's the proper measure of reasonable value.

Now you've heard everybody agree, what's the key profession in this case, is whether the $2.8 million that my clients already allowed and paid represent the reasonable value of the services. Well, on that question, ladies and gentlemen, I want you to know that there's data that you will see relating to Data iSight, which is supposedly this company that's artificially reducing payments to physicians, which will show that the Data iSight rate that's recommended to use to reimburse claims is accepted nationwide by ER physicians without even a question. Not so much as an email, a phone call, nothing, 85.7 percent of the time. You will hear testimony from multi-plan witnesses describing their data, who will explain that that is the case.

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And ask yourself as you're listening to the evidence, ladies and gentlemen, is there any better indicator of what is a reasonable amount than an amount that is accepted 85 percent of the time? Now TeamHealth, you will learn, is part of that very small percentage of out-of-network providers who object to reasonable reimbursements and demand their full bill charge. But just because they charge it doesn't mean they're owed it. And it sure doesn't mean it's reasonable value.

Now, the next claim is their unfair interest settlement claim. And on this claim, ladies and gentlemen, I think Mr. Leyendecker explained this. They allege that two of my clients, United Healthcare and UMR engaged in a scheme with multi clients to use the Data iSight pricing tool to artificially pay some disputed E.R. claims and then lied

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about it. They also claim my clients singled them out for unfair treatment.

Well, again, I just want to make clear everyone understands, my client didn't come up with Data iSight. Data iSight is a company available with a widely used tool in the industry to every one of my clients' competitors. And how do you know that? Their own expert is going to tell you that. Mr. Leathers will testify that Data iSight is widely used in the industry including by my clients' competitors.

In addition, ladies and gentlemen, TeamHealth, as I noted earlier, does business with MultiPlan. You're going to see a contract from Mr. Bristow signed to MultiPlan, where they continue to do business together, TeamHealth and MultiPlan. Now ask yourself, ladies and gentlemen, if it was true that TeamHealth really believed that MultiHealth was engaged in some nefarious scheme to cheat them out of millions of dollars, do you think they'd still be doing business with them year after year after year, during the course of this lawsuit?

Now Data iSight, which is the tool that they're tracking, let me give you a little bit of background on it. It uses a proprietary computer program to generate pricing recommendations for claims submitted to other network providers. It relies on publicly available data. Showing the amounts paid for hundreds of millions of medical services.

Now for physician services, which is what we're talking about here, the pricing is based on paid claims. So it's not based on what's on the bill charged. It's based on the paid amount. That's what they're measuring and tabulating. It compares those payments to like

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providers for similar services, similar severity levels, and similar overall condition. Now lastly, ladies and gentlemen, as I think I noted earlier, Sierra, my client Sierra, and my client HealthPlan of Nevada never even did business with Data iSight. Never used it. So it's just completely irrelevant.

Now you're going to -- you heard the Plaintiffs show you testimony that was a little confusing because they were trying to show you and suggest somehow my clients can somehow dictate to Data iSight to pay a rate different than what the Data iSight rate actually recommended. You may remember that in their opening. What they are not telling you is that was -- there was such a directive. It's called an ER override. And it was an instruction my clients gave Data iSight to comply with federal law. There is a federal rule tied to the Affordable Care Act, raised to three, requiring --

MR. ZAVITSANOS: Your Honor, may we approach?

THE COURT: You may. Let's step out into the hall, please.

[Sidebar at 2:41 p.m., ending at 2:45 p.m., not transcribed]

THE COURT: And for the record, I overruled the objection.

MR. BLALACK: So ladies and gentlemen, what I was explaining a moment ago is, I'm going to explain what actually happens between my clients if they [indiscernible] and make sure that you're listening to the evidence. You can tell how it [indiscernible] as compared to how it was described.

So there -- you're going to hear testimony about something called the ER override. And the way the ER override worked was when a

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claim for a nurse's service that was supposed to be adjudicated by Data iSight -- to Data iSight. The Data iSight rate would be developed using the Data iSight methodology and a proprietary methodology. And they would come up with their rate.

In this case, I'm just using a hypothetical. We'll say $300. It would then be compared to the override rate that my clients provided them, which was related to this kind of [indiscernible] and would be compared. And if the override was higher than the Data iSight rate, the greater of those two rates would be used. So in this example, the override would be the higher rate, and that would be the amount that we repaid on the claim.

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However, if the Data iSight rate that was recommended was higher than the override -- so in this case, the methodology recommended a price of $400 for this service; it would be compared to the override rate. That would be higher than the override, and so the higher amount would be paid.

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And so the override instruction that was provided today out of iSight was a floor. Make sure your methodology -- if it recommends a price, it recommends a price at least above this floor. If it doesn't, we're going to pay at least at this threshold. If it's higher, then we'll pay the higher amount. And again, this was compliance related.

Now, the fact that the process worked that way shows up in the data. And you're going to hear testimony from Mr. Leathers, their expert, who is going to admit to you that when he looked at the data, he confirmed that the claims paid using the Data iSight rate were paid at

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twice the rates of the other disputed claims. So when you're hearing all of this scary talk about Data iSight, remember that the Data iSight claims were paid at twice the amounts of the non-Data iSight claims.

Now, you've also heard testimony, ladies and gentlemen -- or excuse me -- heard information from Plaintiff's counsel about the shared savings program. And I just want to make sure as you're listening to the evidence you understand what the shared savings program was.

Now, first of all, their argument is that there is something nefarious about a program that's designed to control out-of-network healthcare costs and to prevent balance billing of the [indiscernible] because that's what the share savings program was. And some foundational information; as you're listening to the evidence of the five defendants in the case, two did not participate in any way, shape, or form, to the shared savings program. The health plan for the Nevada and Sierra Health.

So of the five defendants in this case, only the three in that circle -- United Healthcare Services, United Healthcare Insurance and UMR ever had any involvement with the share savings program.

Now, when you look at this -- the claims in this case, you're going to see that there's no way that well over half of the claims in this issue could ever even be touched by share savings because of which out of network program was being used to reimburse the claim and which defendant was reimbursing the claim.

So again, this is going to be another one of those things that

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sounds very scary, but when you get into the evidence you're going to learn that very, very few of the claims in this issue in this case were ever touched by the share savings program. Now, how did it work? I want to make sure you have a sense of the operation. So the staffing company, in this case, TeamHealth would bill a claim for a $1,000. The claim to administrator -- let's say in this case, UMR, would determine the allowed amount under the plan document is $400. I'm going to allow $400. That would result in a hypothetical savings of $600 on the bill sharing.

Based on that savings from potential collections from the provider, that savings would then be a benefit that the employer would receive from participating in the program. In this case, they would receive 70 percent of that benefit, which is, essentially, $420. My client would get the 30 percent fee associated with administering the shared saving program, which would result in a payment of $180.

So the provider would receive an allowed amount of 400, my client would receive $180 as a fee for administering the program. And then the balance would savings that the employer -- employee never had to deal with in collections action with [indiscernible] physician.

Now, the Fremont Plaintiffs in this case suggest that because the savings calculated from the share savings program was based on the bill charged for 1,000, it means that this is an acknowledgment from my clients that used share savings that the bill charged was owed and due. That's their argument. That because we had this program in place, it meant we were credited -- that that $1,000 in that example was in fact the due amount owed [indiscernible].

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That's just -- there's no way to support that. The witnesses in this case; there won't be a single one who is going to testify from our clients that they understood that the bill charge was an amount that represented reasonable value and that everybody involved was legally obligated to pay it. What was being purchased for that fee was not only control of out of network costs, but more importantly, an outcome -- because under this program, if this resulted in the outcome, the provider accepted the payment and agreed not to bounce to the member.

So what the employer getting out of this was the comfort of knowing that their employee wouldn't be harassed with collections. That's what the fee was for. But because the provider -- excuse me, because the -- my clients and their clients wanted to avoid litigating and fighting the doctors over a demand for a $1,000, doesn't mean that they all agreed the $1,000 was due in payment. And the best evidence we know that that's true is because nobody ever paid that $1,000. As I showed you earlier, the evidence indicates that they were paid that amount about 6 percent of the time.

Now, let me close by addressing the allegation that my clients unfairly targeted TeamHealth. And you're going to see evidence that I think when you hear it, you will understand the allegation is very hurtful. The evidence will show that my clients bent over backwards to deal with TeamHealth in good faith. And at every turn, TeamHealth responded with threats and deceit.

Now, the -- opposing counsel made a big deal of the Yale study. I think we heard the references to that. And the suggestion that

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somehow it was inappropriate for my clients to provide data in support for that study. What they didn't show you was the actual study. I don't know if anybody knows, they showed you emails about the study. They didn't actually show you the study. And I want to -- you're going to see that study in this case.

This was a study done by Yale University by three very renowned researchers on surprise billing. And the study found, in our model of physician behavior, we show that out of network billing allows physicians to significantly increase their payment rate, often because patients cannot avoid out of network physicians during emergency visits. This increase in price does not lead to a decrease in demand.

Mr. Deal with testify to you about -- there's something about inelastic demand. Emergency room providers know you're coming to their emergency room no matter what because you don't [indiscernible] looking at this [indiscernible] to figure out which hospital you're going to, and ambulance is taking you there. They know that no matter what their charges are, they're going to get a steady flow of payment. So unlike some providers, they're not incentivized to reduce rates [indiscernible].

Next, hospitals that outsource their [indiscernible] care to TeamHealth also have higher physician charges and physician payments.

Next, page 26 to 27; "We find that when TeamHealth enters a hospital, there is an increase in out-of-network billing by 32.6 percentage points, consistent with what we observed for in care, we also observed

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when Team Health enters a hospital there is a large increase in physician charges and physician payment rates."

Finally, Page 2. "These out of network bills reflect physician charges, which unlike payments for most medical services, are not set through a competitive process."

So ladies and gentlemen, nobody is going to argue any evidence that this research is anything other than bona fide profit. And there won't be any evidence that anything my clients did to provide data for those researchers to use was anything improper. Certainly not unfairly targeting TeamHealth to get out into the public domain what their [indiscernible] rates. Now, the proof will also show that TeamHealth acted in bad faith to extract higher reimbursements from my clients.

I'm going to show you evidence that TeamHealth used threats of litigation and threats to terminate business relationships as a [indiscernible] with us. We will show you evidence that they threatened not only to sue us, but to sue our -- sue our clients; our employer clients, the people we're representing, because they knew it would injure our market reputation.

The proof will also show -- and this is the irony of ironies, ladies and gentlemen. The proof will also show that United Healthcare was the third-party administrator of the TeamHealth benefit plan. That's right. TeamHealth was a United Healthcare client. They're one of those employers. We were providing health coverage for their employees.

The proof will show that they strategically used the threat of

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terminating their relationship with us to pressure us. And when my clients did not give into that pressure, they terminated our relationship and hired one of our biggest competitors.

So what you will see from the evidence, ladies and gentlemen, is that TeamHealth is a giant company. It knows how to play hardball and will pull every lever, including filing a lawsuit, to get what it wants. More money. But that's not all you will hear. You will also see the evidence about that [indiscernible] that I mentioned to you earlier. And it will show the lengths that Mr. Bristow and the other folks at TeamHealth and [indiscernible] would go to scam the payment system.

Now, the final claim in this case, ladies and gentlemen, is the violation of account payroll. And in short, this statute requires that a health insurer approve or deny -- one way or the other -- a benefit claim within 30 days of receipt. And if the claim is improved -- approved -- within that period, pay the claim within 30 days of approval. That's all the statute requires. Thirty days if you're approved, to pay. That's the same.

Now, [indiscernible] the TeamHealth Plaintiffs do not allege that my clients denied their claims. They're only complaint is the amount. So to establish liability under the statute, they must prove that my clients failed to make those payments within 30 days of when those claims were approved.

Now, we asked Mr. Bristow in his deposition whether he contented my clients delayed in properly paying these claims. And he said -- he will testify, even in this case, that he thought that my clients

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underpaid the claims. But he will tell you that he does not contend that my clients failed to timely make the payments they made, consistent with the statute. So we will argue at the end, after you receive instructions from the Court, that even if that allegation of underpayment was true, that it wouldn't be a violation of the statute.

Now, as we start this trial, ladies and gentlemen, you being to hear the evidence. I urge you to keep these final points in mind. The [indiscernible] issue in this trial, thousands of people in Clark County and across Nevada went to hospital ERs for medical care and the doctors who treated them often had no contract with the health plans that paid for most of that care. The staffing company that contracted with the ER doctors charge more and more each year for those services unbound by any contract or any market limit at any time.

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The proof will show that less than reasonable limits are put on the payments for these out-of-network services and the employers and the employees who also bear the costs of those increasing charges and pay more and more for that coverage, and they get less and less out of it.

The evidence in this trial will show that the Nevada -- excuse me, the Nevada employers who paid for most of that healthcare incurred by their employees demanded solutions to that problem, and they demanded those solutions from my clients who represented them. And the proof will show that they told my clients to control those healthcare costs that were increasing and limit the out of network reimbursements to reasonable amounts.

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The evidence will also show that my clients, just like their competitors, paid those reimbursements for out of network services to reasonable market rates. The evidence in this trial will prove that the TeamHealth Plaintiffs were determined to inflate their reimbursements by billing higher and higher charges each year and then suing my clients when they wouldn't double under to that pressure to pay those excessive charges. That's why we're here.

At the end of this trial, I'll return to review the evidence with you, and I will return to instruct -- to discuss the instructions that the judge will give you on Nevada law. And when I come back I'll ask you to render the only fair verdict that the evidence will support. I'll ask you to reject all of the TeamHealth Plaintiff's claims. I'll ask you to tell them that they are entitled to reasonable reimbursement for ER services, but they are not entitled to a $10 million windfall just because that's the price they decide to slap on a bill.

I thank you for your attention. I appreciate your time.

THE COURT: Thank you. This will be our afternoon recess.

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

If anyone tries to talk to you about the case, report that to me immediately. You are not to conduct any research on your own relating to the case. You can't consult dictionaries, use the internet, or use

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reference materials. Don't talk, text, tweet, use any social media platform, don't Google issues, don't contact any other type of book or computer research with regard to any issue, party, witness or attorney involved in the case. Most importantly, do not form or express any opinion on any subject connected to the trial until the jury deliberates.

Thank you for the kind attention you paid to both sides. It is 303. Lawyers be back at 3:15, jury at 3:20.

THE MARSHAL: All rise for the jury.

[Jury out at 3:04 p.m.]

[Outside the presence of the jury]

THE COURT: I kind of cut you off in the hallway on the objection only because you need to get that on the record. So let -- we can either do it now or at 3:15. What do you prefer? Right now?

MR. ZAVITSANOS: No, Your Honor, I'm going to withdraw it. But I do have something very important to address.

THE COURT: Good enough.

MR. ZAVITSANOS: May I proceed?

THE COURT: Please.

MR. ZAVITSANOS: Okay. So Your Honor, we had a very vigorous limine hearing that lasted a couple of days. One of the issues that the Court heard substantial discussion about was the Ingenix -- the terms of the Ingenix arrangement, which led to the creation of FAIR Health.

And I thought Your Honor actually struck a very nice balance between what we needed to get in and, you know -- I guess protecting

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them from the implications or the rest of the story, if you will. And Your Honor was very clear I thought during the limine hearing that all of these limine points were subject to review and reversal and -- if someone opened the door.

Now, when Defense counsel brought up slide 57 -- which I have to say, Your Honor, I thought he did a really nice job. I like watching very -- I like watching trial lawyers. And this was, to me, the single most effective point that he made during the -- during the Defense opening. May I approach, Your Honor?

THE COURT: You may. And have you shown it to Mr. Blalack?

MR. ZAVITSANOS: It's slide 57. I think they've got plenty of copies over there.

THE COURT: Thank you.

MR. ZAVITSANOS: Okay. So this slide, Your Honor, demonstrates that our charges escalated dramatically in 2018. Okay?

Now, the reason that they escalated dramatically is because that's when they stopped having to use FAIR Health. Okay? Now, Your Honor, that barn door is wide open. And I have to say -- I'm going to show my hand here, okay?

When we had a discussion this morning and Mr. Leyendecker and I had a very vigorous disagreement about this about whether we would object to this slide or not. And we decided we were going to leave the trap up there, and I think the Defendants stepped in it. And I think that door is now open to the terms of the Ingenix sale and the

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Ingenix -- and the terms of the Ingenix resolution because right now this jury is left with the impression that our charges just skyrocketed, okay, after they -- you know -- 2018.

So I mean, I don't know what to say. I don't know -- and we did not object -- I mean, they now cannot take the benefit of opening that door to say we can't tell the rest of what's going on here.

THE COURT: I can't make a call on this until I see how the evidence comes in, but I'm sure you would like to respond to that right --

MR. BLALACK: That'd be fine, if I could, Your Honor?

THE COURT: Of course.

MR. BLALACK: First of all, I don't know what opposing counsel is referring to. There's nothing on this slide that relates to that chart. Nothing. This chart -- this data comes straight out of the FAIR Health data that they're relying on. It's about FAIR Health data, not their choice. What this shows, Your Honor, is the growth in the benchmark; not their charges.

So as I explained, FAIR -- and FAIR Health will explain -- there are these bench -- you know -- you get all the data and they benchmark it at 90th percentile, 80th percentile, 70th percentile, 60th and 50th percentile. You can track how those percentile benchmarks change over time. Have they gone up? Have they gone down? Have they stayed the same? Et cetera.

What this shows is how that benchmark has moved over time. It doesn't describe their charges. It specifically says on the sheet, FAIR Health 80th percent of bill charges. 80th percentile had grown near

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inflation, so what it's comparing, as I said to the jury, we would prove through the expert is that the benchmark grows at a rate of 382 percent over this time. Whereas if it had risen at the rate of inflation, it would have risen 14 percent. But there is not a single reference on here to the Team Health Plaintiff's bill chart. Now, there are other places we will track that, but that's not involved in this slide.

MR. ZAVITSANOS: May I briefly reply, Your Honor?

THE COURT: You may.

MR. ZAVITSANOS: The problem with what counsel is saying is that because of their conduct with the Ingenix -- with the whole issue around Ingenix -- prices were artificially depressed for years. For years. And they were not allowed to catch up to where they needed to be until this -- until this Ingenix issue came to light.

And so he is essentially getting the benefit of the conduct that was in -- that --

THE COURT: I understand --

MR. ZAVITSANOS: -- led to the --

THE COURT: -- both arguments.

MR. ZAVITSANOS: Yeah, so --

THE COURT: But it's just premature for me at this point to make a call on whether or not the door is open.

MR. ZAVITSANOS: Well, the reason I'm raising it, Your Honor -- and I understand. The reason I'm raising it; I would like to raise it with Mr. Haben. I'd like to raise it -- in fact, I'd like to raise it -- you know -- pretty early. And the point is, these charges were depressed

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because of their conduct. And now we've got something to the jury that suggests that we've got this runaway healthcare crisis.

MR. BLALACK: If you'd like -- he'd like to do an offer of proof outside the presence of Mr. Haben, I have no problem with that.

THE COURT: No. No.

MR. BLALACK: But --

THE COURT: I'm not going to -- I'm not going to decide this issue just yet.

MR. BLALACK: Okay.

THE COURT: I understand both arguments.

MR. ZAVITSANOS: Okay. I know you do, Your Honor.

THE COURT: All right.

MR. ZAVITSANOS: And anyway, I -- anyway, I anticipate this is going to come up with Mr. Haben. I will approach the bench before I get into this topic, but it may even come up today.

THE COURT: Good enough. I'll see you guys at 3:20.

[Recess from 3:10 p.m. to 3:28 pm.]

[Outside the presence of the jury]

THE MARSHAL: -- is back in session.

THE COURT: Thanks, everyone. Please remain seated.

Okay. So on further consideration of the request, my inclination is not to open -- I don't think the one side open the door based on what I heard. But if you do open the door in your defense, I will require you to produce the witness in a rebuttal case.

MR. BLALACK: Understood. Thank you, Your Honor.

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THE COURT: All right. Are we ready to bring in the jury?

MR. ZAVITSANOS: Yes, Your Honor.

THE COURT: Thank you. And then let me -- can I indicate to you guys? I have to make a financial report every year. I can't accept your very gracious offer to provide my lunch but thank you.

UNIDENTIFIED SPEAKER: Do we have to report the candy, or can we --

UNIDENTIFIED SPEAKER: Well, how about the leftovers, Judge? Do those count, too?

MR. ZAVITSANOS: It's okay if we feed Your Honor's staff?

THE COURT: Well, I think it's fabulous. I think it's very generous and very gracious. It's just that I don't want to be the subject of --

MR. BLALACK: Understood.

MR. ZAVITSANOS: I understand.

THE COURT: -- any inquiry on it.

MR. BLALACK: Understood.

THE COURT: It will have a price. Mine is not $10 a day.

And thank you for the proposed jury instructions. Have you had any luck on a proposed verdict form?

MR. BLALACK: We haven't gotten to that yet, Your Honor.

THE COURT: Okay.

MR. BLALACK: We've got some agreement on some of the instructions, and there's others we'll clearly be in disagreement on --

THE COURT: Great.

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MR. BLALACK: -- which will be [indiscernible].
THE MARSHAL: All rise for the jury.
THE COURT: Thank you.
[Jury in at 3:30 p.m.]
THE COURT: Thank you. Please be seated. Plaintiff, please call your first witness.
MR. ZAVITSANOS: Your Honor, we call John Haben.
MR. BLALACK: Your Honor, I'll go retrieve Mr. Haben. I'll be right back.
THE COURT: Thank you.
MR. ZAVITSANOS: Your Honor, may I approach the podium, please?
THE COURT: Everyone has permission to move about during the entire trial.
MR. ZAVITSANOS: Thank you. Your Honor, with the Court's permission? I've laid out the exhibits I'm going to use so I can get to them easily.
THE COURT: Great.
THE MARSHAL: Sir, watch your step. Step through the stand and face the clerk over there.
THE CLERK: Raise your right hand.
JOHN HABEN, PLAINTIFFS' WITNESS, SWORN
THE CLERK: Please have a seat, and state and spell your name for the record.
THE WITNESS: My name's John Haben. H-A, B as in boy,

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E-N.

THE COURT: And can I --

THE CLERK: What's the spelling of John?

THE WITNESS: J-O-H-N.

THE CLERK: Thank you.

THE COURT: Okay. And can everyone see the witness? Yes. Can everyone see the screen? Thank you.

Go ahead, please.

MR. ZAVITSANOS: Thank you, Your Honor. May it please the Court, Counsel.

DIRECT EXAMINATION

BY MR. ZAVITSANOS:

Q Good afternoon, Mr. Haben.

A Good afternoon.

Q Thank you for being here.

A Thank you.

Q Okay. So I've got a lot of ground to cover with you. A lot, okay? So bear with me, all right?

A Okay.

Q Now, before I get into a little bit about your background and how you fit into the issues of this case, I'm going to ask your help in helping define some of the issues that I think the jury's going to hear. Okay?

A Okay.

Q All right. And as far as out-of-network reimbursements while

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you were at United. You were a senior person with the company, right?

A I was vice president of the out-of-network programs.

Q Okay. So you're very comfortable with a lot of the acronyms and terms that are used in the out-of-network world, right?

A I believe so.

Q Okay. Now, the first thing I want to talk about is something called CPT -- that's Charlie Paul Thomas codes, okay? How many CPT codes are there?

A I don't know.

Q Is it fair to say that there are thousands?

A Yes.

Q Okay. Now, let's talk about what a CPT code is. So as a way to be uniform about what doctors do and healthcare providers do and hospitals do, a code has been assigned for every type of diagnosis, every type of treatment. So for example, if you have toenail fungus, there's probably a CPT code for that, right?

A I'm not a CPT code expert. I would assume there is.

Q Okay. If you have cardiac arrhythmia, there's probably a CPT code for that, right?

A I would assume so. Yes.

Q Now, in emergency medicine, however, unlike all other doctors where it's tied to a part of the body or a type of specific treatment. For emergency room doctors, CPT codes are different, right?

A I believe so.

MR. BLALACK: Objection. Foundation.

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THE COURT: Overruled.

BY MR. ZAVITSANOS:

Q Is that right, sir?

A I believe so.

Q And in the emergency medicine world, unlike other parts of healthcare, there are five. Five CPT codes, right?

A Again, I'm not an expert. I assume you're correct.

Q Okay. And I've got them up here. I wrote them down in this chart.

THE COURT: I'm going to have to interrupt. I can't see Mr. Blalack. Can you move the charts so --

MR. BLALACK: Your Honor, I was going to move here anyway.

THE COURT: All right. I just have to be able to see if you make some objection.

MR. ZAVITSANOS: Let's see, Your Honor.

MR. BLALACK: If this is fine for Your Honor, I'll stand here.

THE COURT: Okay.

MR. BLALACK: Be out of his way.

THE COURT: Thank you, both.

MR. ZAVITSANOS: You may get tired. Okay.

MR. BLALACK: I've got chocolate.

MR. ZAVITSANOS: That's true.

BY MR. ZAVITSANOS:

Q Okay. Now, you see these codes up here?

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A Yes.
Q And they're identical except this last number here, right?
A Yes.
Q Okay. And in the world of emergency medicine, unlike everything else, the CPT codes in emergency medicine are based on the severity of the condition, right?
A Yes, I believe so.
Q Okay. So for example, the one that ends in 5, okay? And just so I can move this along, I'm just going to use this last number here, okay?
A That's fine.
Q 5 is the most serious, right?
A Yes.
Q Stroke?
MR. BLALACK: Objection. Foundation.
THE COURT: Overruled. He is laying foundation.
BY MR. ZAVITSANOS:
Q Stroke, right?
A I don't know. I'm assuming.
Q Gunshot, right?
A I would assume.
Q Okay. So if, say -- and you know that there's many claims, 99285 claims, in this case, right?
A I would assume so. Yeah.
Q Okay. Well, you've seen a bunch of 99285s over your career,

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right?

A I know there are 99285s in -- in claims, yes.

Q Yeah, okay.

A Yeah.

Q And that would include gunshots, right?

A Again, I'm not a coding expert. I'm not certified. But if you say so, I believe you.

Q All right. So I just want -- as the head guy at United while you were there for out-of-network claims. Talking about this 99285.

A Okay.

Q This one. The serious one.

A Yup.

Q That includes strokes, gunshots, heart attacks. Okay. If I tell you, Mr. Haben, this is what we charge to save someone's life that has been shot in -- during the relevant time period, your position to this jury is that amount is egregious, right?

A If the 14,000 -- 1,428 is egregious for that level of code? I don't know.

Q You don't know? How many emails do you think you wrote where you were talking about emergency room doctors charging egregious rates and specifically targeting team health? How many do you think you wrote using that word, egregious?

A I have no idea.

Q A lot? Quite a few?

A It's all relative. I don't know what you would mean by a lot,

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but you can ask me, and I'll tell you.

Q More than five?

A Yeah.

Q So we're here trying to figure out whether this amount is egregious or this amount is egregious. It's one of the things we're doing here. Now, I want to know from you as the head of out-of-network claims, before we get into your background. Are you telling this jury that saving someone's life who's been shot, that this amount, this charged amount is egregious?

A I would tell you and I would tell the jury when a claim is submitted, there's a lot of medical records that are involved. It could justify a reasonable amount. It could be 254. So a CPT code is typically one line item. I would assume if somebody got shot, that's one item in a large claim. $1,400 to save somebody's life? I would think it would be a lot more expensive than just one CPT code.

Q I'm only talking about emergency room doctors' charges. I'm not talking about the hospital, the radiologist, the ambulance, and I just need a straight-up answer, sir. From where you sit, having been at United for over 30 years, the guy who drove down reimbursements. Is it your testimony to this jury that this amount to the 99285 involving a gunshot, heart attack or a stroke, that amount is egregious?

MR. BLALACK: Your Honor, I'm going to object to the questioning. It's argumentative.

THE COURT: Overruled.

THE WITNESS: May I answer?

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THE COURT: It's overruled. You can.

THE WITNESS: Yeah. Thank you. If you put it in the perspective of saving somebody's life, $1,400 is not a lot of money.

BY MR. ZAVITSANOS:

Q Okay. It's what emergency room doctors do; they save people's lives.

A Of course they do.

Q Okay. So I don't know if you answered my question. Is it egregious or not?

A I don't know. I'd have to look at the claim.

Q You don't know if someone getting shot and the bill charge being $1,428 is egregious; that's your testimony to the jury?

A My testimony, which I think you asked me, was $1,428 worth somebody saving somebody's life? I'd say yeah.

Q It's egregious or no?

A No.

Q It's not? Okay.

A No.

Q So if United paid $254, you agree with me -- for a gunshot or a heart attack or a stroke -- we got shortchanged, right?

A It's a lot lower than 1,428.

Q Well, that's not what I asked you, sir. I want you to answer my question. Now, let me try it again. I apologize. I'm not the clearest guy, and I talk kind of fast and I'm from Chicago, so I'm sorry.

A It's fine.

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Q Okay. Let me try it again. If this amount, the 1,428, for saving someone's life in a gunshot is not egregious and is reasonable; do you agree with me that this amount, which is what you all pay, is egregious?

A Are you asking is it egregious compared to the 1,428?

Q Yeah.

A It seems a lot lower to save somebody's life, of course.

Q Of course, it is egregious?

A It's low.

Q I know it's low, and that's why we're here. I mean, we all get that. My question is do you agree what you paid in this case for somebody getting shot or a heart attack or a stroke for a 99285, the most serious code in the emergency room; that is egregious?

MR. BLALACK: Your Honor, I object to this line of questioning. There's the foundation as if there is some evidence showing the 1,428 is what was used to save someone's life. There's no evidence in the record on that.

THE COURT: Overruled.

MR. ZAVITSANOS: Okay.

THE WITNESS: Can I -- I'm sorry.

MR. ZAVITSANOS: And Your Honor, I'm going to object to the speaking objection also.

THE COURT: Yeah. And both of you, if at any time -- I do not allow speaking objections. You can ask to approach the bench.

MR. BLALACK: I'll approach, Your Honor.

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THE WITNESS: Your Honor, can I take a drink of water?
MR. ZAVITSANOS: And Your Honor --
THE COURT: You can. Yeah.
MR. ZAVITSANOS: -- I'm getting a little bit of the heebie-jeebies with Mr. Blalack behind me, so I'm going to move this. He was a Marine, I think.
MR. BLALACK: Don't go too far. I got to be able to find you.
MR. ZAVITSANOS: Okay. So how about -- okay. Well, that's not going to --
THE COURT: Mr. Haben, can you see the lawyer there?
THE WITNESS: Unless he writes something different, I'm fine. Thank you.
MR. ZAVITSANOS: Maybe I can ask the marshal to help me here. What do you all usually --
THE COURT: If you could put it between the -- so just don't obstruct their line of sight. We act like a team up here.
MR. ZAVITSANOS: Yes, Your Honor. Let me see if I can put it in the --
THE CLERK: It may block you on the recording; are you okay with that?
THE COURT: Oh, that's fine.
THE CLERK: I just want to make sure.
MR. ZAVITSANOS: Okay.
THE COURT: And let me interrupt for a minute. We have 95 on BlueJeans. Can both of you assure me that none of your witnesses

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are on unless they're an expert or a 30(b)(6)?

MR. ZAVITSANOS: Yes, Your Honor.

MR. BLALACK: The Defendants can, Your Honor.

THE COURT: Thank you.

MR. ZAVITSANOS: Yes, Your Honor.

BY MR. ZAVITSANOS:

Q Okay. I'm going to try one last time.

A Okay.

Q I think we established that for 99285 claims, the most serious, $1,428 is reasonable, right?

A Yes. For saving somebody's life, yes.

Q Sir, that's what emergency room doctors do. That's the most serious code, right?

A Level 5, yes.

Q And most of the claims in this case are 4s and 5s, right?

A I don't know for a fact.

Q Okay.

A I assume if they are, you're saying they are.

Q Okay. So my question, sir, is -- just yes or no, please.

A Okay.

Q Is the 254 egregious?

A The 254 is a lot lower than the 1,428. If you want to categorize it as egregious, that's fine.

Q Well, I would. But I just want to know what you would -- what you would do. Do you agree that this is egregious, 254

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what United paid?

A You know, I would say -- so if you're leaning on my expertise, first of all, I'm not a coder. People go to school to code claims. Secondly, when we look at claims, we look at Medicare. What does Medicare pay?

Q I didn't ask you about Medicare, sir.

A I understand, but --

MR. ZAVITSANOS: And objection, Your Honor. Limine.

THE COURT: Yeah, objection sustained.

BY MR. ZAVITSANOS:

Q Now, listen to my question. Do you not understand my question? I'm using your word that you began implementing in 2014. The word, egregious, which we're going to talk about in great detail.

A Okay.

Q Okay. Is the 254 -- yes or no; is that egregious?

A If you're talking about --

Q For a code 5?

A If you're talking about my reference to egregious in my emails, I compared egregious to a Medicare reimbursement rate.

Q Sir --

THE COURT: I just sustained an objection on that.

THE WITNESS: Oh, I'm sorry. I didn't --

MR. BLALACK: May we approach?

THE COURT: Yes.

THE WITNESS: I'm sorry. I didn't hear you.

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[Sidebar at 3:47 p.m., ending at 3:50 p.m., not transcribed]

MR. ZAVITSANOS: Your Honor, the Court's ruling?

THE COURT: The objection to the -- objection to the -- now I'm confused. I'm enforcing the motion in limine in favor of the Plaintiff on this matter.

MR. ZAVITSANOS: Very good.

THE WITNESS: Your Honor, could I ask what that means?

THE COURT: You'll have to confirm with your counsel at the next break.

THE WITNESS: Okay.

THE COURT: I confirmed that he has spoken to you about those few rules while we were up here.

MR. ROBERTS: I'll let you know when --

THE WITNESS: Okay. All right. Thank you.

BY MR. ZAVITSANOS:

Q Okay. Now, I'm going to try this one more time, sir. And I need just a yes or no answer. Otherwise, I will ask the Court to instruct you to answer yes or no and I don't want to do that, okay?

A Okay.

Q I want to be respectful. Yes or no, for a 99285, the most severe code in the emergency room, is $254 egregious?

A I'm not trying to be difficult, so I don't --

Q Yes or no?

A I'm trying -- I will call it --

Q And if you want to say I can't answer that, that's fine, too.

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A I can't answer that.
Q Okay.
A I need to reference other items. Thank you.
Q And you're the -- you were the head of the out of network programs. You were the top guy, right?
A Correct.
Q And you can't answer that?
A I am not a clinician. I cannot answer that.
Q When did you find out you were going to testify in this case?
A The specific date that it was coming, about two weeks ago.
Q Two weeks ago. Okay. And you knew you were going to testify, and you knew that the rates is the central issue in this case, right?
A The reimbursement rates?
Q Yeah.
A I believe so.
Q Okay. And there was nobody higher than you that was directly in charge of out of network at United while you were there, right?
A Other than the individuals I reported up to in UHM.
Q But your testimony to this jury is you can't answer that, right?
A No. There are multiple rates across the country, geographically, in a market. I can't answer that off the top of my head.
Q I'm not talking about Chicago; I'm talking about here. You can't answer that.

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A I'm not -- no, I can't.
Q All right.
A I'm not a coding expert.
Q Okay. Let's move on. Okay. I understand you're retired?
A Yes.
Q When did you retire?
A August 2nd of this year.
Q Do you have a consulting agreement with United?
A I do not.
Q Do you have any kind of a retention agreement where you are paid to be available?
A I have a severance agreement.
Q Yeah. A severance agreement. And in the severance agreement, where they give you some money, one of the conditions was you would be available to advise and assist the company, right?
A The severance agreement is I get paid my annual salary for another year and I'm available to testify if I'm called.
Q All right. And they paid for you to fly out, obviously, right?
A Yep. Yep.
Q Business class?
A Yes.
Q Okay. What's the charge for a business class ticket?
MR. BLALACK: Objection, Your Honor. Relevance.
THE COURT: Overruled.
BY MR. ZAVITSANOS:

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Q What's the charge, the billed charge, for a business class ticket? What was your ticket?

A I do not know. I didn't pay for it.

Q Was it more than $254?

A I do not know.

Q You don't know -- where do you live at?

A Minneapolis.

Q That's two time zones away?

A Yes.

Q How long of a flight is that?

A Three hours.

Q You don't know if a business class ticket from Minneapolis, Minnesota to Las Vegas, Nevada is more than $254, sir?

A I don't know. I haven't flown in three -- two years. I don't know.

Q Where are you staying?

A J.W. Marriott.

Q Is your hotel room more than $254 a night?

A I do not know.

Q All right. Let's move on. Okay. So I think the relevant time period that we're talking about here is 2017 to roughly January 2020. You with me?

A Yes.

Q Okay. And look, I sometimes get ahead of myself, and sometimes I talk kind of fast. I'm always talking about that time period in

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every question, unless I specifically say otherwise, okay?

A Okay.

Q You with me?

A [No audible response.]

Q Okay, good. Now, there is a cart next to you. Do you see that?

A A cart?

Q A cart. Do you see that?

A Yes.

Q It's hard to understand with these masks, okay? I have to pull it out like this a little bit. I don't know if I'm cheating. Okay? All right. So there is a cart next to you.

MR. ZAVITSANOS: And let me just first ask counsel if he has an objection to 455. Oh, by the way, Your Honor, just for the record, when I refer to an exhibit number, I always mean the Plaintiff's unless I say otherwise. Okay? Just for the record. Thank you, Your Honor.

Okay. So if I could ask Mr. Blalack whether he has an objection to 455.

MR. BLALACK: Yes, Your Honor. It's an incomplete document, Your Honor.

THE COURT: Okay.

MR. ZAVITSANOS: May I lay the foundation, Your Honor?

THE COURT: Yeah.

BY MR. ZAVITSANOS:

Q Okay. Do you see the binders next to you, sir?

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A On the cart? Yes.

Q Yeah. So you see Michelle back there? She's running the exhibits.

A I don't know who she is.

Q She's awesome. Okay. So on the spine of those binders, there's a range of the exhibit numbers. Can you see if you can find the one with 455?

MR. ZAVITSANOS: Michelle, don't put it up yet, please. If you would -- Your Honor, may the witness step down and get the binder?

THE COURT: Yeah. Mr. Haben, you may step over there.

THE WITNESS: Is that volume six of seven?

MR. ZAVITSANOS: Well, I don't know. It's -- the ranges are there. Whichever one contains 455, if you would not mind, please, getting it and opening it to the tab with 455. And we're going to be doing this a lot until we get enough of these exhibits admitted so that we can talk about them further. Okay?

BY MR. ZAVITSANOS:

Q Okay. Now, will you take a moment to just look at that, please? 455. Is that your name up at the top?

A Yes, it is.

Q And what's the status update?

A Can I spend just a second --

Q Sure.

A -- looking at this?

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Q Sure.

[Witness reviews document]

A Okay.

Q Does that have your name on it?

A Yes, it does.

Q Does it have Ms. Paradise's name on it?

A Yes, it does.

Q Is that during the relevant time period?

A You --

Q 2017 through January 2020.

A Yes. I'm assuming you're meaning the end of January.

Q Yes, sir.

A Yes.

Q Is this discussing some of these -- I got to look at this -- these are air quotes -- "programs"? Is that discussing some of these programs?

A Are you saying that because it says programs in here? Or -- I'm not trying to be difficult.

Q Well, no, because I'm going to get to whether they're really programs or not, or whether they're just -- they're something else. But I digress.

A Okay.

Q Does this deal with these programs that you all had during this time period?

A I think what it deals with is the out of network spend --

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Q Yes.
A -- for a fully insured business.
Q Yes, sir.
A Okay.
Q And is this a report that was either sent to you or created by you?
A I don't know if I -- it is most likely created, or I partook in partially creating it.
Q And does the memo part -- and just look at it -- does it look complete?
A When you say the memo, you mean just the --
Q The document. Yes, sir. I'm not talking about whether there was an email attached to it or anything like that. I'm saying does this document look complete.
A I think so.
MR. ZAVITSANOS: Okay. Your Honor, I move for the admission of Plaintiffs 455.
MR. BLALACK: No objection, Your Honor.
THE COURT: Exhibit 455 will be admitted.
[Plaintiffs' Exhibit 455 admitted into evidence]
MR. ZAVITSANOS: Okay. Michelle, please, if we can put it up. All right. Now, let's pull out the top part, please, Michelle. There we go.
BY MR. ZAVITSANOS:
Q Are you a blackjack player, sir?

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A I am not.
Q Okay. So when you get two aces, a lot of people split those and that's called doubling down, right?
A Yeah.
Q That's an effort to make more money, right? Doubling down, that term. You've heard that term, right?
A In my case, I lose. But yes.
Q Yeah. Okay. So this is the out of network double down, and it's got John Haben and Betsy -- I've always been calling it Paradise. Am I saying it wrong?
A I -- you're walking away. It's hard to hear you with the mask on. It's Paradise.
Q Paradise.
A Like you live in paradise.
Q Yeah.
A Okay.
Q Two Tickets to Paradise, the song.
A Right.
Q Yeah. Okay. So that's you and Ms. Paradise. And the two of you were the lead people on this out of network program development over the five years we're going to talk about, right?
A Yeah. I -- yes.
Q Okay.
A There was an additional person, but yes.
Q Okay. Now, let's go to page three.

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MR. ZAVITSANOS: And Michelle, can you see me okay here, Michelle? Can you please pull out this part here?

BY MR. ZAVITSANOS:

Q Okay. Now, let's talk about some other terms, here. One of these other terms is something called ASO. Can you see that that's mentioned there, where they're talking about an ASO score card? ASO score card. ASO migration score card. Do you see that?

A Yes, I see it.

Q Okay. ASO stands for administrative services only, right?

A Yes.

Q Okay. And by the way, your lawyer did a fabulous job in explaining what that was. Let me see if I can steal some of his thunder here and repeat what he said, okay?

A Yep.

Q An ASO client is like when you have a big company like AT&T, for example. They're one of your clients, right?

A Yeah, I believe so.

Q We're going to talk about them.

A Okay.

Q It's like when you have a company like AT&T where AT&T itself acts as the insurance company, right?

A Yes. They fund the claims.

Q Okay. But of course, AT&T doesn't know how to be an insurance company, and so they have to hire somebody to run the program and administer the claims, right?

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A Yes.
Q And that's what you do, right?
A That's what United does, yes.
Q Well, and I -- and by the way, just to be fair to you and the Defendants, there's a number of different entities here. I'm talking conceptually right now, right?
A I understand.
Q And the way that you measure how you get paid with these ASO clients, like AT&T or Caesar's or these others, right, is something called PMPM, right? That's a charge?
A That's a charge.
Q That's a charge that the third party administrator, United or one of the United companies, charges the ASO client, right?
A That -- that could be a vehicle of what the company is.
Q And this stands for per member per month, right?
A Correct.
Q So for example, as an example, you know, if you pick up an ASO client, you could say, just hypothetically, the PMPM is $20 per month, right?
A As an example?
Q Yes, sir.
A Yes.
Q And so for $20 a month, or $30, or $40, whatever it is, you are going to act as the insurance company and do everything except assume the risk, right?

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A It's a broad assumption, but just for this discussion.
Q Okay.
A There's a lot of other nuances to it, but yes.
Q Right. Now, these ASO clients, they have these -- there's usually three documents that go with these ASO clients. There's the summary plan description, the SPD.
A Yep.
Q That's one of them, right?
A Yes.
Q There's the certificate of coverage, the COC, right?
A Yes.
Q And we're going to look at some examples of those in a minute.
A Fair.
Q And then, there's the administrative services agreement, right?
A Correct.
Q And it's the administrative services agreement that identifies how much the PMPM is, right? That's usually where you put it, how much you're going to charge these ASO clients.
A I believe so. I am not directly involved in selling to the client.
Q Now, one thing we know is that what the world looked like in 2016 for most, and I mean most, of your ASO clients is that most of them, in the summary --
MR. ZAVITSANOS: You can sit down.

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BY MR. ZAVITSANOS:

Q Is that most of them in their plan booklet -- and by the way, the doctors are not signatories to these agreements, right?

A I don't know what you mean by that, but I'm assuming they're not -- they're not part of the agreement. Correct.

Q Yeah. I mean, if you and I sign an agreement, that doesn't bind Michelle, right? That's our deal, right?

A Yeah.

Q Okay.

A Yeah. Yeah.

Q And the administrative services agreement is between United and the ASO client, right?

A Yes.

Q Okay. Now, in 2016, most of these ASO clients had language in these plans that you all had agreed to that said you're going to pay at the usual, customary, and reasonable amount, right?

A I believe so, yeah.

Q And the problem with that is if you pay at the UCR rate -- that's another term to add. Usual, customary, and reasonable, right?

A Correct.

Q Okay. But the problem was when that language was in those plans, Mr. Haben, this is the fee you got and nothing else, right?

A I don't know for sure. I'm assuming that's the case.

Q But if you can get the clients away from the ASO fee -- or

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excuse me, from the UCR reimbursement, you not only could charge a PMPM, but you could also charge 35 percent between the difference of the bill charge and what you decided to pay, right?

A I think you maybe have misstated that. Get them away from UCR to what?

Q Let's say --

A To nothing, or?

Q To OCM. Let's say OCM, which we'll talk about in a minute.

A Okay.

Q If they went on this program, this OCM, where all you're doing is just cutting the reimbursement, you get a percentage of that cut in addition to the PMPM. Thirty-five percent of the reduction, right?

A It's not just the reduction, though. I think you're misrepresented it, if we wanted to --

Q Are you getting 35 percent of the difference between the bill charge and what you pay?

A If the client goes to OCM, we have a percentage of savings charge. If they go to other programs, some of the programs, we don't charge them for it at all.

Q Okay. I'm going to get to the programs in just a minute. Whether these are really programs. We're not --

A Okay.

Q You're already administering the claims, right?

A In terms of --

Q Before going to these other programs. You're already

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administering the claim for the ASO client, and you're charging them a monthly fee per member, right?

A Yeah.

MR. BLALACK: Objection.

MR. ZAVITSANOS: Okay.

MR. BLALACK: Vague, Your Honor. I don't know what we're talking about.

MR. ZAVITSANOS: Hold on. I'll get to it.

THE WITNESS: You were talking about claims payment, right? Paying --

MR. ZAVITSANOS: Yeah.

THE WITNESS: Sorry. Not -- I'm sorry.

BY MR. ZAVITSANOS:

Q And then --

THE COURT: And you guys -- please don't talk over each other.

THE WITNESS: Yeah. I'm sorry. I just realized that.

MR. ZAVITSANOS: I'm sorry. I -- my apologies.

THE WITNESS: Me, too.

BY MR. ZAVITSANOS:

Q And then, if you cut the amount of the reimbursement, you are literally taking money out of our pocket and putting it in yours. And here, on this document here, you've got a score card where you are migrating the reasonable and customary language to this other methodology that entitles you to get a cut in addition to this 35 percent,

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even though you're not doing anything more for that 35 percent other than just cutting the rate; is that so?

A I think you're misrepresenting. Can I --

Q No.

A Well, I don't think you're correct in your facts.

Q Well, you were trying to migrate your clients away from reasonable and customary, right? And you were keeping a score card of how you were doing, right?

A Can I --

Q No. That's what it says. Score card.

A Yeah, it does.

Q Okay.

A Can I explain it?

Q No. You'll get a chance with your lawyer. Okay. ASO reasonable and customary migration score card. Do you see that?

A Yeah. Those are the leads. We were selling to clients. So we go and approach the client and say, do you want to migrate.

Q My question was do you see that, Mr. Haben?

A I do.

Q Okay. All right. And by the way, the person who the score card was being evaluated against is you, John Haben, right? So the company was keeping score on you on this double down strategy, to basically increase revenue, right?

A That's not correct.

Q It's not correct that the primary motivation for these

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programs was to earn as much as you can so that by 2019, you were so successful that you were earning over a billion dollars a year on these 35 percent charges, even though you were already servicing the client, sir? Is that true?

A No. You're misrepresenting it.

Q Did you make over a billion dollars a year from the shared savings initiative?

A Yes. We make money for the program. The clients pay us for those services.

Q Yes, sir. But they already paid you -- and what are you doing exactly for that 35 percent?

A So for the out of network programs, the R&C is an application of a reimbursement method.

Q Sir --

A Well, you're asking me a question. Can I --

Q No, no, no. My question -- I didn't ask what R&C was. What are you doing --

A So we --

Q -- to earn that 35 percent above and beyond what you were already doing --

A Sure.

Q -- when you're earning this PMPM, sir?

A We --

MR. BLALACK: Your Honor, could you allow the witness to answer the question he was asked?

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MR. ZAVITSANOS: Judge, I'm trying to finish my question.

THE COURT: I thought he was clarifying the question.

BY MR. ZAVITSANOS:

Q Go ahead, sir.

A Okay. So the programs that we administer outside so when they migrate. What they pay us for is a member advocacy. So if the member's in the middle, we will get engaged and help them with their balance billing. That's the additional service that they're paying us for.

Q Now, wait a minute. I thought we agreed when we were talking about this PMPM, that you were acting as an insurance company in all respects, except you weren't assuming the risk, right?

A Correct.

Q Okay. So as an insurance company on the other stuff, not the ASO, but the -- it's another acronym -- the RFI business -- and that's fully insured, right?

Q Correct.

Q That's the other side of business, right? Okay.

A Okay.

Q Okay. So on the FI business, on the -- on the FI business, sir, if somebody calls -- a member calls, are you going to take their call?

A If a member calls?

Q Yeah.

A Yes.

Q And on the ASO business, if a member calls, are you going to take their calls as part of that PMPM fee?

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A Yes.

Q And if they tell you they have a problem, are you going to try to help them with that problem as part of the PMPM fee?

A Yes.

Q So what are you doing for that 35 percent?

A So those new programs had the advocacy piece. So if the member's getting balance billed, we would engage with the provider and say, what are you billing for, can you justify your charges, can we negotiate on behalf of the member to settle at a different amount.

Q Here's the problem I'm having. Before you began migrating over, the members by and large were not getting balance billed, correct, for the most part, right?

A I believe so.

Q Okay. And there was no need for member advocacy because the member went to the emergency room out of network. The physicians were paid reasonable and customary charges. And they moved on, right?

A They were being paid what's called the UCR rate.

Q Usual, reasonable, and customary, correct?

A That was the acronym. Yes.

Q Yeah. And then when you started cutting the rate dramatically, you cut it by -- it ended up at 80 percent. It started at 10 percent reduction. And over five years, it ended in an 80 percent reduction. Down like a double black in --

A A double what?

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Q Double black. Are you a skater?
A No, I am not.
Q Okay. It ended up at over 80 percent below the bill charged, right?
A Okay.
Q And under these programs that provided this 35 percent, the more you cut, the bigger the difference between the bill charged and what you pay, the more you made, leading to over a billion dollars a year, right, sir?
A In addition to that, the providers and what they bill. If the providers increase their charges, yes, that's more. And to clarify, too, the migration, clients are sold this. They're not forced this program.
Q Oh, hold on.
A They ask us to mitigate their spend. And the target --
MR. BLALACK: Well, objection. Hearsay, Your Honor.
THE WITNESS: Sorry. They do. I've been involved.
THE COURT: Hang on.
MR. BLALACK: Objection. Hearsay.
THE COURT: He answered the question.
THE WITNESS: Okay.
BY MR. ZAVITSANOS:
Q Is any client going to come in here and testify?
MR. BLALACK: Objection. Foundation.
THE COURT: Overruled.
BY MR. ZAVITSANOS:

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Q Do you know if any client's going to come in here and back up what you just aid?

A I don't know.

Q Do you know if there's anything that either side written by the client says, I need these rates cut, I need the member exposed. Do we have that?

A The benefit plans outlined the out of network program.

Q No, no. Do you know whether on your company's exhibit list there's even one shred of paper that backs up what you just said, from a client, sir?

A I don't know.

Q Okay. So back to my question. The more you cut, the less we get paid, and the more you make?

A And our clients are satisfied. They've asked us to do this.

MR. ZAVITSANOS: Objection.

MR. BLALACK: Your Honor --

MR. ZAVITSANOS: Speculation.

THE COURT: He can't testify as to what someone else thinks. So the jury needs to --

MR. ZAVITSANOS: And nonresponsive.

THE COURT: -- disregard that last answer because he can't testify about what someone else thinks.

BY MR. ZAVITSANOS:

Q I don't want you speaking for someone else. I want you speaking for John Haben, okay? Are you with me?

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A I'm sorry, can I --

Q No, sir. You may not. Let me try this again. Look at me, not him.

A I'm trying to clarify -- I'm speaking for John Haben.

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?

A If that's what the client is signed up for. Yes.

Q And your company was leaping a score card of you, of how successful this migration was.?

A That score card was not of me.

Q What?

A That score card was not of me.

Q Who was it?

A That score card was a list of clients to go approach and ask, do you want to move? I owned the score card in terms of reporting it.

Q You were the owner, right?

A I was responsible for sales to ask them, can you give me the list of clients that have R&C, so that you can approach them.

Q Okay. So at any point while you're hanged up at 80 to 85 percent cuts, did you ever tell anybody, hey, man, you can't be doing this, this is egregious? Did you ever do that, sir? Did you ever push back even one time on any of these cuts? Were you not as motivated to essentially double up?

A I would say to the contrary. We have clients that have asked

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us, our spend is too high, can you help me?

MR. BLALACK: Your Honor, that's not -- he's not getting hairspray. He's responding to a question about his own motivations and state of mind.

THE COURT: I'm going to overrule that. The only thing that stays is his impressions.

BY MR. ZAVITSANOS:

Q Okay. So let me be real quick. I'm not asking you what someone told you, okay, because I need to be able to verify. I mean, you know -- you know who we are, right? You know where we are here? You know what this is?

A Yeah. It's a courtroom.

Q It's the Cathedral of Truth, right? Not the newspapers, not the media, not the little Yale study, which we're going to talk about in just a minute. Here, it's all about the truth. Okay. And so in order to get to the truth, we need to be able to hear from people directly. So I want to hear from you directly. And then when the other witnesses get on, we'll hear from them directly.

A Fair enough.

Q Fair enough?

A Yup.

Q Okay. Now, let me continue. Now, I got sidetracked a little bit. And I want to go back to your background. All right. So can you -- would you do me a favor, you're going to get very behind the binders. Would you go to -- pull out the one that has 268? And if you could

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please take a moment to look real quick. And I said, I'm sorry, I didn't realize you were still on. Okay. Is this a -- the -- what is EHCV?

A That's healthcare. Okay. What is EHCV?

A I believe -- I've been out of the game for a little bit.

Q That's okay.

A I believe it's employer healthcare value.

Q Okay.

A I'm sorry if it mumbled. I think it says value. Yeah.

Q Mr. Haben, it's okay. It's okay.

Q Okay. On the second page, does it identify you and Ms. Paradise as being in charge of the out of network initiatives?

A It does.

Q Okay. Is this during the relevant time period, sir?

A It says January of '19 -- 2019. So I assume it is.

Q Okay. So it's within the end zones, right?

A I believe so.

Q Okay. All right. And this is addressing some of the programs we're going to talk about, right?

A Yes.

Q I'm sorry, I didn't hear you.

A Yeah.

Q My apologies. This is addressing some of the programs we're going to talk about?

A I believe so.

MR. ZAVITSANOS: Okay. Your Honor, I move for the

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admission of 268.

THE COURT: Any objection?

MS. SALES: There's no objection.

THE COURT: 268 will be admitted.

[Plaintiff's Exhibit 268 admitted into evidence]

MR. ZAVITSANOS: Okay. Michelle, let's put up page 1, and let's -- hold on. Okay. Actually, let's go to the second page, Michelle. There's a lot of other stuff on here I'm not going to ask you about. So let's pull out the title and pull out the top part where it says transformational strategies. Kind of the top -- and the top, Michelle. Maybe you can get it bigger. Okay. That's good.

BY MR. ZAVITSANOS:

Q Okay. So this is -- appears to be a chart of what United is calling transformational strategies, right?

A Yes.

Q Okay. Transformational strategy means that you were doing things a certain way, but now you're going to go in a different direction, right? You're going to transform what you've been doing?

A I would assume so. Yeah. I didn't --

Q Okay. And it has a column that says, owner. You see that?

A Yup.

Q Okay. And that's one thing that United does. You know Harry Truman, right, the buck stops here, he had that little thing on his desk.

A I'm -- that's the responsible party.

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Q Yes, sir.
A Yes.
Q And United holds its leadership accountable, right?
A Correct.
Q Okay.
MR. ZAVITSANOS: Michelle, let's go to the bottom. And let's see who the owners are identified down at the bottom out of network, because that's what this case is about.
BY MR. ZAVITSANOS:
Q Okay. All right. John Haben, Becky Paradise?
A I do.
Q Okay. Ms. Paradise reports to -- she reports to you -- or she reported to you, excuse me?
A Correct.
Q And I think you said you had about 80 people in your organization?
A About that. Yes.
Q But she was the only direct report to you, right?
A Throughout the network, correct.
Q Yes. Now, there's an interesting thing here. Oh, by the way, there's a --
MR. ZAVITSANOS: Michelle, close this out for a second. Oh, can you pull out the top part, please, so we get the columns across, and then the bottom? Can you do that Michelle, top and the bottom?
BY MR. ZAVITSANOS:

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Q Now, so the owners are Haben and Paradise, right?
A Yup.
Q And we see a 2019 T. That's a target, right?
A Correct.
Q That target does not -- does not include PMPM, right?
A That target is what we're trying to save our clients.
Q That target does not include PMPM, right?
A That target is not a fee to us. That's what we're trying to see, our clients.
Q Let me ask you again. That Target does not include PMPM? You're already getting that, right?
A It's entirely separate. It's not a fee.
Q Yup. Okay. Yes, sir. Now, and the target is to cut by 800 million, of which you would get 35 percent for doing nothing, right?
A That's not correct.
Q You're just cutting the rates. You're already servicing the client. You're not doing a thing for that 35 percent, other than member advocacy, right?
A That 800 million represents other programs, other than the programs we charge fees for.
Q Okay. Now, here's what I'm going to ask you about. Socialization presentations, can we highlight that? You know there are these people -- do you have kids?
A Yes.
Q Okay. Are they on your social media?

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A I would assume so. Yeah.

Q Okay. So my kids tell me, Dad, I don't know what it is, but on Instagram, people that are on Instagram, there are some people that actually get paid to just post nonsense. You heard this?

A Yup.

Q Okay. And these are people that are influencers. They try to influence society, right?

A Okay.

Q Okay. And no doubt about it, in 2014, United set on a path to change the public narrative, socialization, presentation, so that people would start buying the message, right?

A We were educating on provider reimbursements. Yes.

Q Yeah. Because you knew -- when you did this, you knew this day was coming, and you knew that people would end up in a jury, and if you got to them five years before, and you blitzed enough media, the narrative would be viewed through your lens, rather than the cathedral of truth, right?

MR. BLALACK: Objection. Vague and ambiguous.

THE COURT: Overruled.

BY MR. ZAVITSANOS:

Q Right, sir?

A I try --

Q That's what that is?

A Can I answer?

Q No. Is that what that is?

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A No. I trust people are smart, and they can understand what they're being told.

Q Oh, I do, too. Okay. So socialization presentations are efforts designed to educate the public about excessive healthcare and egregious billers and balance billing and surprised billing and rising costs. All this stuff we heard in opening, which we going to go through slide by slide, and see if there's truth in any of that stuff. Okay.

A Good.

Q Socialization is designed to change the public narrative, right? And you began that in 2014?

A It's to educate.

Q Right. Okay. And you've been very successful because the Wall Street Journal, The New York Times, the Washington Post, CNBC. I mean, I think we got the most important. I mean, you've been successful in putting the bullseye on the back of Team Health over the last five years to justify these targets of which you're going to get 35 percent. You've been very successful with that, right?

A We don't get 35 percent in all of that.

Q Well, you get enough that you make over a billion dollars a year, on top of the PMPM, right?

A We make fees off of our programs. Yes.

Q You got up to 1.3 billion, right?

A I believe so.

Q Yeah. Okay. So would you -- the same binder, look at exhibit -- I think it's the same binder. I'm not sure, sir. Exhibit 294. Look

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at that.

A That might be in a different binder.

Q Oh, it might be, so just grab it and let me know when you're ready. Okay. And I'll just tell you again as I did the last time, I'm looking at 1 -- pages 1 and pages 3 I'm going to ask you about.

MR. ZAVITSANOS: Your Honor, may I ask counsel if he has an objection before I go through the steps.

THE COURT: Yes, of course. And just a polite reminder, we will stop at 4:45.

MR. BLALACK: I think if you lay the foundation I won't, but I think you need to lay the foundation. It's not evident from the document.

MR. ZAVITSANOS: Okay. All right. We'll go again.

BY MR. ZAVITSANOS:

Q All right, Mr. Haben. Now Exhibit 294, does this identify you and Ms. Paradise on page 3? At the bottom -- bottom of --

A Yes, it does.

Q Bottom box.

A Yep.

Q And does this deal with the out-of-network initiatives that United had during the relevant time period which appeared on the first page as 2019?

A Yes, this is February 2019.

MR. ZAVITSANOS: Your Honor, I move for the admission of 294.

MR. BLALACK: No objection.

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THE COURT: Exhibit 294 will be admitted.

[Plaintiffs' Exhibit 294 admitted into evidence]

BY MR. ZAVITSANOS:

Q Okay. Now let's see what we got here. Okay. Now I'm jumping around a little bit here, because what I'm going to do tomorrow, Mr. Haben is we're going to start in 2000 -- we're going to start in 2014.

A Okay.

Q And we're going to see whether or not you all tried to influence the narrative for the purpose of getting to what we're about to look at. That's what we're going to do tomorrow.

A Okay.

Q Okay.

A Yeah.

Q Now for right now I want to look at this document. And this is something called an executive summary, right?

A Yeah.

Q All right. Okay. So will you please pull out at the bottom of -- yeah, long term transformation. Now what we know is, sir, that this is sent downhill. It's not stopping. It's going to continue unless a jury says stop. We know that, right? Because it is --

MR. BLALACK: Objection.

THE COURT: Hang on.

MR. BLALACK: Argumentative.

MR. ZAVITSANOS: Let me rephrase. I'll rephrase, Your Honor.

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THE COURT: Yeah, objection sustained.

MR. ZAVITSANOS: Let me rephrase, Your Honor.

BY MR. ZAVITSANOS:

Q Okay. Long term transformation; do you see that?

A I do.

Q Okay. By 2023, you want to continue cutting out-of-network reimbursements by $3 billion, right?

A Correct.

Q Okay. And we're going to talk about that minimal impact to numbers tomorrow, I promise. Is whether there's a minimal impact to members. Fair enough.

A Fair enough.

Q All right. Now let's go to page 3.

MR. ZAVITSANOS: Now top third Michelle. Well, actually let's go to the bottom, please. Success Metrix. And all the way to the bottom.

BY MR. ZAVITSANOS:

Q Okay. Do this is a business plan talking about projections going forward, right? Right, sir?

A It's metrics going forward. Not -- it's not a business plan.

Q Here's -- and there's you, John Haben.

A Yeah.

Q Right?

A Yeah.

Q Okay.

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MR. ZAVITSANOS: Now Michelle, will you please pull out the top third.

BY MR. ZAVITSANOS:

Q Now in opening, Mr. Blalack told the jury that there was a problem with the way billing was done. Uncontrolled, no reference, you can pick whatever number you want. Did you hear the opening?

A Faintly. I was in the room, but could barely --

Q Okay.

A -- hear him.

Q But internally, the way United talks about what was happening, was not that it was a problem, it's an opportunity. Do you see that? Problem opportunity statement, right?

A Correct.

Q Okay. And you want to systematically drive 75 percent from 22 percent of ASO reimbursement payments to ENRP or OCN payment methods. Do you see that?

A I do.

Q Okay. Those are much deeper than usual, customary and reasonable, right?

A They are.

Q And here's the thing, sir. United is the largest single insurer in the United States, right?

A I believe so.

Q Yeah. And the thing about the insurance industry like the airlines and others is you follow the leader. You all kind of follow each

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other, right? And so when United does this, driving 75 percent to these 80-85 percent reductions. The others do as well, leading to less member protection and higher exposure.

MR. BLALACK: Object to the form of the question, Your Honor. It's compound.

THE COURT: It is compound. You can break it down.

MR. ZAVITSANOS: I'm going to rephrase.

BY MR. ZAVITSANOS:

Q Actually you know what, I'm going to get to this tomorrow because we need to talk about what ENRP is and what OCM is. We're going to do that tomorrow. But let me -- let me move on Mr. Haben, okay. Okay, now -- okay. A couple of other -- let's identify a couple of other -- couple of other terms here the jury may see in these documents, okay. All right, so we've got this term here. INN, right. That stands for in-network, right? Correct?

A Related to like a benefit level, yes.

Q Okay. And another way to call this is to say PAR. That's the same.

A No. No, it's not.

Q If it's a PAR reimbursement, that means you're paying a doctor who is in-network.

A INN is in reference to the benefit level in a benefit plan. It's not synonymous for a provider in the network.

Q Fair enough. Then I'll get to this tomorrow. Thank you for clarifying that.

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A Yeah.
Q PAR is in-network, right?
A Correct.
Q And then we have OON. We'll see that a lot in the documents. And that's out-of-network, right?
A Correct.
Q Okay. Now -- all right. And this case is about this, right?
A Yes.
Q And this case involves claims that are here, fully insured --
A Okay.
Q -- right?
A Okay.
Q And it involves claims here, right?
A Okay.
Q Right?
A Yes.
Q And you understand that these clients of yours, these employers, they are not parties to this case. You understand it's the United entities that are the parties, right?
A I understand that, yes.
Q Okay. All right. Okay. Now another term that the jury will see is TPA. And that stands for third party administrator, right?
A Correct.
Q And that's what United does when it has ASO clients, right?
A You can infer that, yes.

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Q Okay. Now another thing we're going to hear is these providers that are in network, that are PAR, these are people that have a contract with United, right?

A Correct.

Q And these are providers like cardiologists and radio -- or cardiologists and gynecologists, and family practice, et cetera. You get the book, and it has the listing of the doctors. All those doctors are in network, right?

A I believe. Yeah, I hope you go online and not look at a book, but yes.

Q Yeah, you want to go online.

A All right.

Q But the out-of-network doctors are not on those lists, right?

A To be --

Q The out-of-network and emergency room doctors are not on those lists?

A It depends on the client because they might have access to a wrap network and see.

Q I'm going to get to the wrap in a minute.

A Okay, but as a PAR provider, they're not indicated as a PAR provider in that directory.

Q Okay.

A Okay.

Q Now let's talk about wrap networks. You just brought that up.

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A Okay.
Q Okay. A wrap network is still out of network, right?
A Yes.
Q Technically, okay.
A Technically.
Q Okay, so let's -- it's also called a rental network, right?
A Yeah.
Q Same thing, right?
A Yep. Yep.
Q Okay. Now let's talk about what that is. Okay. And let's be crystal clear about this. Wrap and rental are out-of-network, right?
A Yes, that's why I tried to clarify that.
Q So there are companies - we heard some discussion about a company called MultiPlan, okay. You with me?
A Yep.
Q And MultiPlan -- is there an objection to Exhibit 3?
MR. BLALACK: One second, Your Honor. Court's indulgence. No objection.
MR. ZAVITSANOS: Move for the admission of Exhibit 3.
THE COURT: Exhibit 3 will be admitted.
[Plaintiff's Exhibit 3 admitted into evidence]
THE COURT: And we've got two minutes.
BY MR. ZAVITSANOS:
Q Okay. Let me see if I can do this real fast. Okay, so a wrap rental agreement, sometimes you have out-of-network doctors that may

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cut a deal, not with the insurance company, but with a third-party like MultiPlan. And they -- and the deal they cut is if you can get us say like 90 percent of our bill charges and you go to the insurance company, I already have, we'll take it, right?

A That's a good characterization of it.

Q Okay, and the thing about wrap rental agreements, like the one we're looking at here, this one is between -- this one is between United and MultiPlan. Do you see that?

A I see that. I'm assuming because of the time -- I don't --

Q Okay.

A I want to look at the whole document, but I can stipulate on the -- I do. Is it in Exhibit 3 over here?

Q Let me do it this way, sir.

A Okay.

Q The thing about these wrap rental agreements is that a lot of out-of-network doctors will do a deal with a company like MultiPlan and then if we -- if an emergency room doctor services a United patient, and that emergency room doctor, or doctor group, is out-of-network, United can go to MultiPlan and say, okay, give us a little bit of a discount under this wrap agreement, even though they're out-of-network, right?

A Yeah.

Q Okay. And the thing about wrap agreements, is in order for the doctor to accept a little bit less, they have to agree that they are not going to balance bill the member, right?

A Correct.

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THE COURT: That's a good stopping point for today. All right, you guys, we're going to take our recess.

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

Don't conduct any research on your own relating to the case, such as consulting dictionaries, use of the internet, or use any reference materials. If anyone tries to talk to you about the case, let us know first thing in the morning.

Do not talk, text, tweet, use social media, Google or conduct any type of book or computer research with regard to any issue, party, witness, or attorney involved in the case. Most importantly, do not form or express any opinion on any subject connected with the trial until the jury deliberates. Thank you again for another great day. See you tomorrow at 9:30.

THE MARSHAL: All rise for the jury.

THE COURT: And again, if you have any dietary issues, please talk to the Marshal.

[Jury out at 4:47 p.m.]

[Outside the presence of the jury]

THE COURT: The room is clear. Defendant do you have anything for the record?

MR. BLALACK: One thing, Your Honor that I want to -- I

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spoke too soon. Mr. Roberts said something I wasn't aware of.

THE COURT: Make sure I can see you all.

MR. BLALACK: The first thing, I want to give a preview to the Court, and I'll speak to opposing counsel afterwards and then maybe we can address it either by agreement or I can ask for [indiscernible] tomorrow. Yesterday counsel advised Mr. Haben -- does Mr. Haben need to be in the room, if not he may be excused.

THE COURT: Oh, you'll be excused for this.

THE WITNESS: Thank you.

THE COURT: Sorry, I thought he had left. I looked for him in the back.

MR. BLALACK: He's hiding by the T.V. Yesterday and today -- do you intend to still go three days with Mr. Haben? You can obviously have some time [indiscernible]. Given the amount of time that is being devoted to Mr. Haben, I have real concerns about the pace that we're going to be in to finish this trial [indiscernible]. Or, the alternative is going to be Plaintiffs are going use 80 to 90 percent of the available time, and I'm not going to have the time [indiscernible].

So I'm going to -- after the break I will speak to opposing counsel. But I am going to be proposing a time allocation between the parties [indiscernible] and we've got [indiscernible] the trial, but I suspect opposing counsel is going to be [indiscernible]. And we used our time [indiscernible] on direct and on cross, and vice versa on [indiscernible].

I mean, we've got to get the trial done on the time we told the jury it has to be done. And so we have to have some time

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[indiscernible]. So we can't be -- you know, if we're going to -- right now I think we have something in the order of 12 or 14 witnesses where we have 30 or 40 [indiscernible] just from them on that, not counting the live witnesses. Ms. Paradise is still coming, we've got experts. So I'm just previewing -- I'm not asking the Court to resolve it. I know it's past time, but I'm going to speak with counsel after this. If we can get an agreement, I'll propose it [indiscernible].

MR. ZAVITSANOS: Would you like a brief reply, Your Honor?

THE COURT: Please be brief.

MR. ZAVITSANOS: So, your Honor, we're going to finish on time. And the time limits would severely prejudice us because this is new. I hear this in every case. I do this in every case. I start the first witness --

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THE COURT: All right, you guys.

MR. ZAVITSANOS: -- the first witness is always the longest and Your Honor, I promise you once this witness gets off the stand we're going to be moving lightning speed.

THE COURT: Good enough.

MR. ZAVITSANOS: So now, the other thing is, Your Honor, he's being very evasive, and it's taking a lot longer than it should. Okay. I only got to page 2 of what I -- and I have a lot of pages. So because ethe time limit thing actually penalizes us because if he keeps going the way he's going, you know --

THE COURT: Okay. Guys --

MR. ZAVITSANOS: -- so I will visit with counsel.

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THE COURT: Talk about it and let me know tomorrow.

MR. ZAVITSANOS: Okay.

THE COURT: Mr. Roberts, you had an issue.

MR. ROBERTS: Yes, and I'll be very brief, Your Honor. Obviously, there are a lot to inquire of a witness, whether we paid his travel expenses and how much it was worth. That's not the basis for our objection. The question was when you travel was your airplane ticket more or less than the reimbursement you gave the doctor for emergency services. That is a prejudicial comparison. It's not probative. It's not relevant. Whatever you take to the airline ticket, the airlines are losing money. They're making money on 245. It's just an improper comparison and that's why we objected because it was argumentative.

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THE COURT: Thank you. Was there a response?

MR. ZAVITSANOS: No, Your Honor. The Court had ruled. I'm happy to give a response.

THE COURT: No, it's not necessary. Now I had to set something tomorrow at 9:00 on a TRO, but you can come in the room and get set up, even if we're in court. Okay.

MR. ROBERTS: Thank you, Your Honor. So is the plan to start at 9:30?

THE COURT: Yeah.

MR. ROBERTS: All right.

THE COURT: Yeah.

MR. ZAVITSANOS: Thank you, Your Honor.

THE COURT: Have a good night, everybody.

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MR. ZAVITSANOS: Thank you, Your Honor.

MR. BLALACK: Thank you, Your Honor.

MR. ROBERTS: Thank you, Your Honor.

[Proceedings adjourned at 4:51 p.m.]

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

Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES (MANDAVIS) LTD., ET AL., Plaintiffs, vs. UNITED HEALTHCARE INSURANCE COMPANY, ET AL., Defendants.	CASE#: A-19-792978-B DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
WEDNESDAY, NOVEMBER 3, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 7

APPEARANCES:

For the Plaintiffs: PATRICIA K. LUNDVALL, ESQ.
JOHN ZAVITSANOS, ESQ.
JASON S. MCMANIS, ESQ.
JOSEPH Y. AHMAD, ESQ.

For the Defendants: D. LEE ROBERTS, JR., ESQ.
K. LEE BLALACK, ESQ.
JEFFREY E. GORDON, ESQ.
ADAM G. LEVINE, ESQ.
NADIA L. FARJOOD, ESQ.
DANIEL F. POLSENBERG, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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INDEX OF EXHIBITS

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266		104
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FOR THE DEFENDANTS	MARKED	RECEIVED
None		

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Las Vegas, Nevada, Wednesday, November 3, 2021

[Case called at 9:41 a.m.]

[Outside the presence of the jury]

THE COURT: Okay. So are we having a technical issue?

UNIDENTIFIED SPEAKER: Yeah.

THE COURT: This way you won't wait for me.

MR. BLALACK: Your Honor, we have two, just housekeeping things I wanted to raise.

THE COURT: Thank you.

MR. BLALACK: One is we propose that the parties mark for the record, the demonstratives that were presented to the jury yesterday. I don't know if the Plaintiffs have an objection to that, but that's our proposal.

THE COURT: Any response, please?

MR. ZAVITSANOS: We're indifferent, Your Honor. It's not evidence, so --

MR. BLALACK: Yeah. Just for the record, Your Honor, that happened --

MR. ROBERTS: This is a Court's exhibit, Your Honor.

THE COURT: That's fine. And I agree to that.

MR. BLALACK: Okay. Thank you, Your Honor. The final housekeeping issue, Your Honor, pursuant to the argument we had a few days ago -- I think it was Monday, or maybe last week, regarding the protective order for AEO material and for media access. We went

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through Plaintiffs' exhibit list, which is 400, or 450 exhibits to identify. Just the narrow group of exhibits that contain pricing formulas and numbers of that nature, that present, you know, our most significant AEO concerns.

We have redacted those exhibits to allow the entire exhibit to be used and offered into evidence, but with the redaction of just those discrete portions, and we've shared it with opposing counsel this morning. I think their view is that they're not willing to consent to those redactions. I'll let them explain if that's true and why. But your motion, Your Honor, would be that for the record -- the exhibit -- those exhibits, if they're going to be offered and entered into evidence, that the redacted version be the one that's entered into the record. And if they're going to actually show and publish the portion of the exhibit that would contain the AEO material that's redacted, that they're -- the media access be -- the public access be turned off for that limited; that's our request.

THE COURT: And the response?

MR. ZAVITSANOS: So this is a little bit involved. So let me -- let me start with -- let me frame the issue. So here's what counsel said in opening statement yesterday, and this is discussing these programs. He said -- to justify what the programs are. And so he said, so what the employer getting out of this was the comfort of knowing that the employee wouldn't be harassed with collections. That's what the fee was for, and he just started talking percentages.

So here's what I think the evidence is going to show today. They began with this PMPM fee. This 35 percent was added. And what

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happened was, contrary to what we heard in opening statement, what the Court is going to see today, that there were multiple complaints from clients about why these changes were being made. And in particular, the complaint was about this fee and how much money they were making off this.

So United surreptitiously, internally, decides what they're going to do. They're going to stop charging the fee and they're going to bake it into the PMPM fee. And so they go from a margin on PMPM of this much, to this much. Eight times above what their competitors are doing.

Now, what they have marked as AEO, and what they -- and what they don't want the jury to see, or the -- or the courtroom, including documents from 2007. 2007, none of this is confidential. These fees, these PMPM fees, which they're trying to omit, are their competitive bids to these customers who solicit multiple insurance companies; these customers do not sign confidentiality agreements about what those fees are. They are out in public. In fact, in some of these documents, they are comparing to the penny what they are charging, versus what their competitors are charging.

So I need to be able to show that progression about where these fees started. The 35 percent, the complaints, which is the exact opposite of what we heard in opening, and then where it ended up. And I -- and finally, Your Honor, I feel like I got a little sandbagged here because this is an issue we've been talking about for a while. I have invited them to share with me, so I can look at it. Instead, they hand us

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an envelope this morning.

Now, if they knew that this was going to be an issue, you know, I wish I would have gotten this a couple weeks ago. Finally, I am told, and I don't know this, but I'm told these documents are not being displayed on the -- on the BlueJeans link, okay.

Now, we are adamantly opposed to any kind of confidentiality regarding these documents because like I said, there's a much bigger forces at play here. And they have bashed us in the media over and over and over for the last ten years, as you'll see today. And the real agenda, 100 percent of why they did what they did is what I'm describing right now.

And so for that reason, Your Honor, we maintain that this should -- that these documents should not be redacted and that we should be able to proceed. And on this point, two other things, I have concerns that -- I don't know if Your Honor's a college basketball fan, but --

THE COURT: I'm from Kentucky. Come on.

MR. ZAVITSANOS: Okay. So one of your big nemeses' is Dean Smith when he had a lead, he would -- you know, he put his -- he put his fist up -- put his hand up like this, right, before corner stall he deliberately tried to delay against.

Now, I'm a little concerned that the way this witness was answering yesterday, and with these objections to exhibits, where we're trying to kind of slow down the trial, coupled with this request for time limits, you know, I'm just -- I'm not assigning any --

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THE COURT: You guys are using up your time. We can do this over the lunch hour.

MR. ZAVITSANOS: Anyway --

THE COURT: Briefly, a response?

MR. BLALACK: Yes, Your Honor. Quite simply, nothing about my proposal prevents my colleagues on the other side from doing everything that Mr. Zavitsanos just said he wants to do. Nothing. Making sure every one of these exhibits, in unredacted form to the witness. They can publish the unredacted versions to the jury. They can examine the witness. That's all fair game in my proposal.

What I -- what we're proposing -- and they don't have to -- if they want to do that, they can. If they want to show the fee numbers, they can. That's all fair. What I'm asking is if they're going to do that, they're going to actually go beyond -- show the entire document, publish it, and show the exact figures that are at issue, that the figures themselves be redacted for the record, and that for the testimony about the figures, that they're -- the media access be limited in the way Your Honor addressed in the hearing.

THE COURT: But I ruled on this yesterday. I'm not going to redact anything that goes into evidence. I'm not going to redact anything that the jury reviewed. If it's an AEO issue, we'll clear the courtroom of the press.

MR. BLALACK: Okay. And that solves the problem.

THE COURT: Yeah. And then the transcript may be redacted later.

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MR. BLALACK: That -- and that would address my concern, Your Honor.

THE COURT: Well, we dealt with this yesterday.

MR. BLALACK: Well, I think there was an objection to this on the other side. So that -- so if they're going to use an exhibit that -- there's 19 out of 400 we identified with this screen redactions on the individual exhibits. If they, when they get to those, want to show those figures, and the Court is going to clear the room for the testimony about that exhibit and that figure, then we're fine with that; it solves our concern.

THE COURT: We have used 20 minutes of your trial time. Let's bring in the jury.

MR. BLALACK: Thank you.

THE COURT: We can't do this every day, guys. Every 20 minutes, is -- they're going to be --

MR. ZAVITSANOS: I understand, Your Honor. My apologies, Your Honor.

THE COURT: Is Mr. Haben out in the hall?

MR. ZAVITSANOS: He's ready when you all are ready, Your Honor. I'll go get him.

THE COURT: Let's go ahead and have him come in right after the jury to save some time.

MR. ZAVITSANOS: Okay, Your Honor.

THE MARSHAL: All rise for the jury.

[Jury in at 9:51 a.m.]

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THE COURT: Thank you. Please be seated. Good morning, everyone. Welcome to Wednesday.

Mr. Habens -- let's bring Mr. Habens in.

MR. ZAVITSANOS: Your Honor, they went to get him.

THE COURT: Thank you. So we just have to tell the members of the jury, we don't all live in the courtroom. We actually come and go, because every time you walk in, we're already here.

Mr. Haben, you're under the same oath that you previously swore. There is no reason to reswear you in.

JOHN HABEN, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

THE WITNESS: Okay.

THE COURT: Plaintiff.

MR. ZAVITSANOS: Thank you, Your Honor. May we please the Court, counsel? May I have a seat, Your Honor?

THE COURT: Please.

MR. ZAVITSANOS: And before I start, Your Honor, we have a new representative here. Will you stand up? This is Ashley Pratt. She is an employee and a nurse practitioner over in our group here. Thank you.

DIRECT EXAMINATION CONTINUED

BY MR. ZAVITSANOS:

Q Okay. Mr. Haben, did you take history in college?

A I don't believe I did.

Q Okay. Do you know who Benjamin Disraeli is?

A I do not.

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Q He was one of the prime ministers of the United Kingdom in the late 1800s. It was during a time of big change in the world. And he had a real famous saying that there are three kinds of lies. There's lies, damn lies, and statistics. Have you heard that term?

A I have not.

MR. BLALACK: Object to form. Argumentative, Your Honor.

THE COURT: Overruled.

BY MR. ZAVITSANOS:

Q Okay. You know that numbers can be manipulated, right? That was the point of what Prime Minister Disraeli was saying, and you know this, right?

A I have no opinion to that.

Q You don't?

A No.

Q Well, we have a transcript of counsel's opening from yesterday, and we're going to be using this a lot, okay? Let me start with one of the things that was said to the jury yesterday. The evidence is going to show that FAIR Health, 80th percentile of those charges grew, grew, grew, dropped out a bit, and then skyrocketed. Did you hear that?

A I did not.

Q In support of that, he put up a statistic showing a graph with the charges going through the roof. Did you see that?

A I did not.

Q Well, that's my friend, Mr. Leyendecker back there, he got very excited when he heard that because the reality is you all

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