

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.

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**PETITIONERS' APPENDIX
VOLUME 5
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67	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 13 of 18 (FILED UNDER SEAL)	12/24/21	26 27	6200–6317 6318–6418
68	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 14 of 18 (FILED UNDER SEAL)	12/24/21	27 28	6419–6567 6568–6579
69	Supplemental Appendix of Exhibits to	12/24/21	28	6580–6737

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70	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 16 of 18 (FILED UNDER SEAL)	12/24/21	28 29	6738–6817 6818–6854
71	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 17 of 18 (FILED UNDER SEAL)	12/24/21	29	6855–7024
72	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 18 of 18 (FILED UNDER SEAL)	12/24/21	29 30	7025–7067 7068–7160
82	Transcript of Hearing Regarding Unsealing Record (FILED UNDER SEAL)	10/05/22	33	7825–7845
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79	Transcript of Proceedings Re: Motions Hearing (FILED UNDER SEAL)	02/10/22	32	7575–7695
80	Transcript of Proceedings Re: Motions Hearing (FILED UNDER SEAL)	02/16/22	32	7696–7789
83	Transcript of Status Check (FILED UNDER SEAL)	10/06/22	33	7846–7855
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,
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1 database from FAIR Health.

2 Q And does UnitedHealthcare rely on FAIR Health data for any
3 other out-of-network program it offers?

4 A No.

5 Q When did UnitedHealthcare first introduce the physician R&C
6 program?

7 A I don't remember, but I believe it was early 2000s.

8 Q Does UnitedHealthcare still to this day offer clients the
9 physician R&C program?

10 A It is still available.

11 Q And so are there any clients that still choose the physician
12 R&C program today?

13 A I would believe there's still clients.

14 Q Would you characterize this program as a popular program
15 among your clients?

16 A A what?

17 Q Popular?

18 A It is losing popularity.

19 MR. ZAVITSANOS: Your Honor, objection. Foundation.
20 Covering the issue we talked about earlier.

21 THE COURT: Sustained. The objection is sustained.

22 MR. BLALACK: Thank you, Your Honor.

23 MR. ZAVITSANOS: Move to strike, Your Honor.

24 THE COURT: The Court will disregard the last question and
25 answer. Well, the jury will disregard the last question and answer.

1 BY MR. BLALACK:

2 Q Sir, let me ask you this, do you see the column to the right --
3 if you could pull that down -- where it says applies to non-party claims
4 paid at ONN benefit level that did not achieve a discount under shared
5 savings? Do you see that?

6 A I do.

7 Q That ONN benefit level, could you again remind the jury what
8 that is?

9 A So again, my arm's going to get tired, but left-hand side is
10 the in-network benefit level, no choice. Out-of-network benefit level is
11 when you have a choice. You've made a decision to go out-of-network.

12 Q So for purposes of our case we're having a discussion about
13 here, which is out-of-network emergency room client, does the
14 physician, R&C program, ever apply to an out-of-network emergency
15 room client?

16 A No, it did not.

17 Q So all of the questioning that we had with you and Mr.
18 Zavitsanos over the last week relating to the physician R&C program
19 involved a claim that does not apply to out-of-network emergency room
20 services, correct?

21 A That is correct.

22 Q Now, the slide says the physician R&C prices claim using
23 FAIR Health bill charges database that's down in that blue box.

24 A I see that.

25 Q And how does that actually work? How does it price claim

1 based on the FAIR Health benchmark database?

2 A So we buy subscription from FAIR Health, much like our
3 competitors; they give us the charge database file, and then that's loaded
4 into our system for administration.

5 Q And you say a charged database, and that's what it says
6 down at the bottom, FAIR Health that is charged base. What are you
7 trying -- what is the company you maintain that sets FAIR that is charged
8 base?

9 A It's what the provider sets as their bill charges.

10 Q So going back to the Data iSight methodology and program
11 you use for outlier cost management, is that also a charge base data
12 source?

13 A It is not.

14 Q What is it based on?

15 A It's based on, as MultiPlan is presented to us, kind of a cost
16 plus database based on geographic location. So they'll look at the cost,
17 like in a certain market, maybe costs are more expensive than many --

18 Q Does it use charges?

19 A No, it does not.

20 Q Does it rely on claims -- paid claims as opposed to charges?

21 A It looks -- paid claims is one of the components, yes.

22 Q Okay. So is that the difference between the FAIR Health data
23 source and the Data iSight database?

24 A Yes.

25 MR. ZAVITSANOS: Objection, Your Honor. Again,

1 foundation. I think he --

2 THE COURT: Can you lay some more foundation for that?

3 BY MR. BLALACK:

4 Q Are you familiar, sir, based on operating these two programs
5 with the data sources of the two vendors that you utilized for these two
6 programs?

7 A Yes, I am.

8 Q How did you become familiar with it?

9 A I do -- I have a contract with both.

10 Q And have you received briefing from both on what the data
11 sources they use for the program?

12 A Yes, I do.

13 Q Are they presented to you on that?

14 A Yes, they do, and I talk -- I have talked to them during --

15 Q Is that something about what you have personal knowledge?

16 A Yes.

17 MR. BLALACK: Your Honor, I think I've laid sufficient
18 foundation.

19 MR. ZAVITSANOS: Your Honor, permission to voir dire on
20 how Data iSight works, which I think is what the question is.

21 MR. BLALACK: Your Honor, he just spent a week voir diring.

22 THE COURT: I'm going to overrule that. You can address it
23 on your redirect.

24 BY MR. BLALACK:

25 Q So, sir, do you know if the physician R&C program -- well,

1 strike that. Let me back up. Have you heard -- I think you saw reference
2 to some of the documents you were shown by Mr. Zavitsanos to a
3 percentile benchmark associated with FAIR Health?

4 A Yes, I am.

5 Q And do you recall what percentile he was directing you to in
6 this question?

7 A I believe the 80th.

8 Q Okay. Is the -- and first of all, so the jury understands, there's
9 probably some folks on there who know this all too well, but do you
10 know what the difference is between a percentile and a percentage?

11 A So percentage, and don't get confused because I continue to
12 work on it, but percentage is much like we were doing before, like you
13 take a ten percent off of 1,000 it's 100 hours, right. Percentiles, think
14 about it as kind of tranches, right. You know, if you're in the -- you
15 remember like SAT scores; I've got kids in college, if you're in that 80th
16 percentile, right, you're in the top ten. That's the way to think about it.

17 Q Is another way of saying if you're in the 80th percentile,
18 you're -- whatever your datapoint is, is at or less than 80 percent of the
19 other datapoints in the [indiscernible]?

20 A If you're in the 80th percentile, you're charging more than the
21 ones below you.

22 Q Now, does FAIR Health's -- excuse me, does physician R&C
23 always apply in that program, always apply the same FAIR Health
24 benchmark when it is used to price out, out-of-network funding?

25 A The same percentile?

1 Q In other words, when this program applies always only using
2 the 80 percentile? Or are there sometimes other percentiles?

3 A No, the clients will go up or down. Mostly, they'll go up to
4 80th to 75th or --

5 MR. ZAVITSANOS: Objection, Your Honor. Foundation. The
6 same issue we covered before.

7 THE COURT: Objection sustained on the foundation issue.
8 BY MR. BLALACK:

9 Q Mr. Haben, are you familiar with which options are available
10 for clients in terms of the percentiles within the physician R&C program
11 based on your running the program?

12 A I am.

13 Q And are you familiar with which percentiles United
14 Healthcare's clients, who choose the physician in the reasonable and
15 customary program?

16 MR. ZAVITSANOS: Same objection, Your Honor. I -- it's the
17 foundation, and it's the issue we discussed outside the presence of the
18 jury.

19 THE COURT: Overruled.
20 BY MR. BLALACK:

21 Q You are familiar, sir?

22 A Yes, I am.

23 Q Okay. So just to restate my question to your personal
24 knowledge, to give the jury a sense of which percentiles clients might
25 choose in your implementation of the reasonable and customary

1 physician charges?

2 A Clients could choose any percentile that they would like.
3 They have chosen 80th. They have moved down to 50th.

4 Q Now, it says in that blue box under physician R&C, it says no
5 client fee. Do you see that?

6 A I do.

7 Q Okay. Is that what I -- it appears to be? There's no
8 administrative fee charged by United Healthcare?

9 A Yes. Clients are not charged for this service.

10 Q Sir, I'd like to show you -- and I think we can --

11 MR. BLALACK: I'll show this exhibit, Your Honor, then I think
12 we can break after this.

13 BY MR. BLALACK:

14 Q But I'd like to show a document previously submitted as
15 Plaintiff's Exhibit 363.

16 MR. ZAVITSANOS: I'm sorry, did you say 363?

17 MR. BLALACK: 363 is what I have.

18 MR. ZAVITSANOS: Okay.

19 MR. BLALACK: And I believe that's in, as opposed to
20 conditional, but --

21 BY MR. BLALACK:

22 Q All right. It should be in the binder in front of you, Plaintiffs'
23 Exhibit 363.

24 A Okay.

25 MR. ZAVITSANOS: Hey, Lee, that's in.

1 MR. BLALACK: That's admitted?

2 MR. ZAVITSANOS: Yeah.

3 BY MR. BLALACK:

4 Q All right. Sir, while you're finding that, I'll just orient the jury.
5 This is a website from UnitedHealthcare that was presented to you the
6 other day by Mr. Zavitsanos. Do you recall that?

7 A I do.

8 Q All right. And I want to just go back through this website to
9 show the jury some passages that Mr. Zavitsanos did not show them, to
10 make sure they have a full picture of what it is. So we'll start with the
11 very first paragraph. And, sir, you'll see a -- you see where it says
12 certain healthcare benefit plans?

13 A I do.

14 Q So I'll just read this out loud and then I'll ask you a few
15 questions. It says, "certain healthcare benefit plans administered or
16 assured by affiliates of United Health Group, Incorporated, provide out-
17 of-network medical and searchable benefits for members. With the out-
18 of-network benefits, members may be entitled to pay for covered
19 services if they use doctors and other healthcare professionals outside of
20 the United Health network. It says the member or healthcare
21 professional, depending on whether or not the member has assigned in
22 their claim. They send the claim for professional services to be paid by
23 United Health Group affiliate." Do you see that?

24 A I do.

25 Q Does that kind of generally describe the kind of claims

1 administration process that you've described for different out-of-network
2 claims in this case?

3 A Yes, it does.

4 Q Okay. Now, below that, it says, quote, "United Health Group
5 Affiliate will pay based on the terms of the member's healthcare benefit
6 plan, that in many cases, provides for a payment for a balance that are
7 the lower of either," and then it has two bullet points. Do you see that?

8 A I do.

9 Q Those two bullet points, they were the providers' actual
10 charge billed to the member, or -- and then it has a number of phrases,
11 the reasonable and customary amount, usual, customary, and
12 reasonable amount, prevailing rate. And it says, "For other similar terms
13 and based dependent on what other healthcare professionals in the
14 geographic area charge for their services." Do you see that, sir?

15 A I do.

16 Q So when the -- when the sentence says that payment will be
17 "based on the terms of the member's health plan", what does that mean?

18 A So the out-of-network program that applies is defined in the
19 member's benefit plan.

20 Q And how is that relevant to your role in the out-of-network
21 program's group, determining how to price a claim?

22 A It dictates how -- what program we would apply.

23 Q Now, then it says -- when it's referring to those phrases
24 there, the reasonable and customary, usual, customary, and reasonable,
25 are those terms that would actually be found in the health benefit plan

1 itself?

2 A I believe so.

3 Q So this website, is it discussing circumstances a health plan
4 would actually have one of these terms in the benefit plan?

5 A Yes.

6 Q Now, under the next heading it reads, "What do these terms
7 mean?" It says, "The terms, the reasonable and customary amount, the
8 usual, customary, and reasonable amount, and the prevailing rate are
9 among the standards that various healthcare benefit plans may use to
10 pay out-of-network benefits." Do you see that?

11 A I do.

12 Q When it says, "Among the standards that various healthcare
13 benefit plans may use", what does that mean?

14 A There could be other standards in the benefit plan.

15 Q So when it says that healthcare benefit plans may use these
16 standards -- may, does that mean that the standards are not always used
17 in United Healthcare's benefit plan?

18 A That's correct.

19 Q In fact, if you look at the next paragraph under -- see where it
20 says these?

21 A Yes, I do.

22 Q So read along with me, sir. It says, "These standards do not
23 apply to plans where reimbursement is determined using Medicare
24 rates." Do you see that?

25 A I do.

1 Q Would the ER override be an example of a reimbursement
2 that might be based on the Medicare rate?

3 A Yes, it could be.

4 Q And could ENRP be a program that could base
5 reimbursement on the Medicare?

6 A It could be. Yes.

7 Q So would the standards, reasonable and customary amount
8 or usual, customary, and reasonable amount apply to any health benefit
9 plan that ties out-of-network benefits to a Medicare rate?

10 MR. ZAVITSANOS: Calling for a legal conclusion, Your
11 Honor. It invades the providence of the jury.

12 MR. BLALACK: Your Honor, if could respond?

13 THE COURT: You may.

14 MR. BLALACK: I'm not asking him what the law says. I'm
15 asking him as a matter of the practice of the company, what programs
16 apply to what benefits.

17 THE COURT: You may clarify your question.

18 MR. BLALACK: Thank you, Your Honor.

19 BY MR. BLALACK:

20 Q So I -- so I want to be clear. I'm not asking you to render a
21 legal opinion. You're not a lawyer.

22 A I understand.

23 Q That's the job of the jury and the judge.

24 A Understood.

25 Q I'm asking just in terms of how you sat up your program.

1 You understand the question I'm asking?

2 A I do understand.

3 Q So my question is just with respect to how the programs are
4 created relative to the benefit plan language. With the standards
5 reasonable and customary amount or usual, customary, and reasonable
6 amount, apply to any health benefit plan that ties out-of-network benefits
7 to a Medicare rating?

8 A No.

9 MR. ZAVITSANOS: Excuse me, Your Honor. That's the same
10 question. Invades the province of the jury. That -- that is the ultimate
11 issue I believe here in this case.

12 MR. BLALACK: It's not, Your Honor. I'm not asking him to
13 decide what the State of Nevada requires for reimbursement. He's
14 already established, and I will agree, that the Plaintiffs in this case are
15 not part of this agreement. The question is what is the way the program
16 is set up and runs? I'm going to show this witness and the jury benefit
17 language that's tied to Medicare rates and establish that this standard
18 doesn't apply. That's all I'm really --

19 THE COURT: Reask again but clarify.

20 MR. BLALACK: Okay.

21 BY MR. BLALACK:

22 Q I want to be clear. I am not asking in any way, shape, or form
23 for any legal views, do you understand?

24 A Crystal clear.

25 Q I'm only asking how your programs apply standards that are

1 described in this exhibit, Plaintiffs' Exhibit 363, to benefit plans that don't
2 have the reasonable and customary language, but base reimbursed tied
3 to a Medicare rating. Do you understand the question I'm asking?

4 A I understand that.

5 Q My question is, would these standards apply to those kind of
6 benefits?

7 A No, they would not.

8 Q Now, in that same paragraph it also says, "Also, member's
9 healthcare benefit plan may define these standards differently, or
10 contain additional standards." And it is the language of the member's
11 healthcare benefit plan, or the plan's interpretation of such language that
12 is controlled." Do you see that?

13 A I do see that.

14 Q When it says, "A member's healthcare benefit plan may
15 define these standards differently, what does that statement mean?

16 A That means that we would need to refer to the benefit plan
17 for the determination on the allowed amount.

18 Q Okay. Now, if you'd look down underneath there, there's a
19 header that reads, "How does this affect members?" Do you see that?

20 A I see that.

21 Q I'm going to read that first sentence, and it's going to carry
22 over to the next page. It says, "If a healthcare benefit plan requires
23 payment using the term reasonable and customary, or some of the
24 language mentioned above with respect to medical or surgical
25 procedures that have been billed by healthcare professionals or

1 healthcare professional group practices, then affiliates of United Health
2 Group, most commonly referred to as schedule of charges completed by
3 FAIR Health team to determine the amount of the payment." Do you see
4 that?

5 A I do see that.

6 Q Does this mean that UnitedHealthcare would use the FAIR
7 Health database if the healthcare benefit plan views it as a reasonable
8 and customary or similar grade?

9 A Yes, it does.

10 Q What if the health plan -- health benefit plan does not use
11 one of those phrases or standards to define out-of-network
12 reimbursement?

13 A Then we will not refer to the FAIR Health handbooks.

14 Q In fact, if you go page -- I guess it's 5. I think it's 5. You'll
15 see, "I haven't agreed to important exclusions at the top. Bubble that
16 whole thing out for me.

17 Q All right. Let me read this to the jury. "The UnitedHealth
18 Group affiliates will not use the FAIR Health benchmarking databases to
19 determine out-of-network benefits for professional services is a
20 member's healthcare benefits plan does not require payment under
21 standards such as, "a reasonable and customary amount, the prevailing
22 rate, or similar terms. For example, if a member's plan provides for
23 payment based upon Medicare rates, UnitedHealth Group affiliates will
24 not use the FAIR Health benchmarking databases as a resource for
25 determining the payment amounts." Do you see that, sir?

1 A I do.

2 Q What's that paragraph mean?

3 A It basically means that if the benefit plan does not have their
4 FAIR Health -- I'm sorry, reasonable and customary, usual and customary
5 prevailing rate, we will not use their health --

6 Q And does that indicate --

7 THE COURT: And I'm going to ask you to wrap it up soon.

8 MR. BLALACK: Oh, yes, Your Honor. In fact, why don't we
9 just -- if you want to now, Your Honor, we can break, and I'll tie this off
10 when we come back.

11 THE COURT: Good enough. Thank you.

12 All right. So this is a long recess today, so the admonition is
13 even more important. Don't talk with each other or anyone else on any
14 subject connected with the trial. During our recess, don't read, watch, or
15 listen to any report of or commentary on the trial. Don't discuss this
16 case with anyone connected to it by any medium of information,
17 including without limitation, newspapers, television, radio, internets, or
18 texting.

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

24 Most importantly, do not form or express any opinion on any
25 subject connected with the trial until the matter is submitted to the jury.

1 Thank you for your kind attention this morning. Have a great lunch.
2 We'll see you at 1:10.

3 THE MARSHAL: All rise for the jury.

4 [Jury out at 11:51 a.m.]

5 [Outside the presence of the jury]

6 THE COURT: Okay. Looks like the room is now clear. Mr.
7 Blalack, I knew I was interrupting you --

8 MR. BLALACK: No. That was perfect, Your Honor.

9 THE COURT: -- right in the middle of your flow.

10 MR. BLALACK: That works fine. Thank you.

11 THE COURT: So I apologize.

12 MR. BLALACK: No. No problem at all. Anything to put on
13 the record, Plaintiff?

14 MR. ZAVITSANOS: No, Your Honor.

15 THE COURT: Defendant?

16 MR. BLALACK: Not from me, Your Honor.

17 THE COURT: Have a good lunch, guys. See you at 1:10.

18 [Recess taken from 11:52 a.m. to 1:13 p.m.]

19 [Outside the presence of the jury]

20 THE COURT: Thanks, everyone. Please remain seated.

21 Are we ready to bring in the jury?

22 MR. BLALACK: Mr. Roberts has one point, Your Honor, he
23 wanted to raise before I get started.

24 THE COURT: Okay. So, Andrew, I'll give you the high sign.

25 THE MARSHAL: Yes, ma'am.

1 THE COURT: Yes, Mr. Roberts.

2 MR. ROBERTS: Thank you, Your Honor. And I'll try to be
3 brief on this. But I did want to raise with the Court something that has
4 just come to our attention. And that is that exhibits that have been
5 admitted into evidence, to the point in the trial are being posted on the
6 public website of Team Health and are available to the public. And we
7 have been discussing, you know, at the bench a procedure where we
8 would have an opportunity to seek to redact and seal --

9 THE COURT: Are any of them AOE?

10 MR. BLALACK: Yeah, there are --

11 THE COURT: AEO.

12 MR. BLALACK: -- some that are AEO.

13 THE COURT: Yeah.

14 MR. ROBERTS: And so, I just wanted to alert the Court to the
15 fact that we would be filing a formal motion to seal under Rule 3 of the
16 Supreme Court Rules for sealing and redacting court documents. We
17 can move to seal an exhibit even after it has been admitted into
18 evidence. And I think that -- you know, we thought we would have an
19 opportunity to do that, because these exhibits are not yet available to the
20 public. But now --

21 THE COURT: You know, the case is locked during trial.

22 MR. ROBERTS: Right. But now we've got admitted exhibits
23 being posted to the -- for free public access to their website before we've
24 had an opportunity to seek to seal and redact specific portions of it.

25 THE COURT: I got it. All right. Mr. Zavitsanos, are you --

1 MR. ZAVITSANOS: Your Honor, so this is --

2 THE COURT: -- falling on the sword right now?

3 MR. ZAVITSANOS: No, Your Honor. I don't -- this is the first
4 I'm hearing of it. I've not -- I have not conferred with counsel. I would be
5 very surprised if AEO documents were put up on a website. I mean
6 that -- I would be very surprised. And I'd like to know exactly what --

7 THE COURT: I want a -- I will need a full report on the next
8 break. Take them down. Take them all down right now.

9 MR. ZAVITSANOS: Okay.

10 THE COURT: The case is locked during trial.

11 MR. ZAVITSANOS: Okay. I understand, Your Honor.

12 THE COURT: So take them down and give me a full report.

13 MR. ZAVITSANOS: Yes, Your Honor. May I go make a
14 phone call?

15 THE COURT: Yes, absolutely.

16 MR. ZAVITSANOS: Actually, Mr. Fineberg will do it.

17 THE COURT: All right. So, Andrew --

18 MR. BLALACK: Would you like me to put Mr. Haben on the
19 stand, Your Honor?

20 THE COURT: Yes, please. We can bring in the jury now.

21 [Pause]

22 THE MARSHAL: All rise for the jury.

23 [Jury in at 1:16 p.m.]

24 THE COURT: Thank you. Please be seated. We all hope you
25 had a nice lunch and are ready to work this afternoon.

1 All right. Please continue.

2 MR. BLALACK: Thank you, Your Honor.

3 BY MR. BLALACK:

4 Q Welcome back, Mr. Haben.

5 A Thank you.

6 Q I thought we could pick up with the jury where we left off,
7 which was discussing a website that is off -- well, it was a website
8 [indiscernible] it's Plaintiffs' Exhibit 363. We walked through with the
9 jury some of the language on that website regarding when the FAIR
10 Health data benchmarks would be used as a reference for determining
11 out-of-network reimbursement. And we discussed the various types of
12 language that would need to be in a health benefit plan for that to occur.
13 And we discussed the phrases that are up on the screen at the moment,
14 reasonable and customary, usual, customary and reasonable. So let's
15 just pick up there, tie that off, and move on to the next topic.

16 So again, just to summarize, Mr. Haben, would you explain to the
17 jury what this paragraph explains that's on the screen?

18 A Basically, what it says here is that United Health Group will
19 not use fair health to determine out of network services reimbursement if
20 the payment standards or their reference to reasonable customary, usual
21 customary, or prevailing rate are not in the benefit plan.

22 Q Now I want to talk about how the fair health benchmarks are
23 used in those cases where this language is present in the benefit plan.
24 Okay. And so, I'm going to direct you to page 3 of Plaintiffs' Exhibit 353.
25 You'll see a chart. And underneath that chart there's a paragraph that

1 says affiliates of United Healthcare frequently used the 80th percentile
2 FAIR Health benchmark database to calculate how much to pay for out-
3 of-network services of healthcare professional. Then there's a but.

4 But plan designers and administrators of particular
5 healthcare benefit plans may choose a different percentile for use with
6 applicable healthcare benefit plans. Do you see that, sir?

7 A I do.

8 Q Could you explain to the jury what that sentence means?

9 A So those that design the benefit plan, it could be the
10 employer group or if it's self-funded or the administrators aren't tied to
11 the 80th. They can pick a percentile as they desire.

12 Q Okay. Now I think we referred earlier to the 80th percentile in
13 discussing the FAIR health benchmarks. Do you recall that?

14 A Yes, I do.

15 Q And again, just to remind the jury, what is the 80th
16 percentile?

17 A Again, think about it as kind of like an SAT score. You're in
18 the top 20 percent. So 80 percent or below you, you're billing at, you
19 know, the 80th percentile or the top 20.

20 Q Okay. And so, you look in the example that's provided on
21 the website. It has a number of different percentiles, right, from 50th all
22 the way up to 95th.

23 A I do see that.

24 Q And, yeah, I take it that that sentence means that even for
25 those health plans that utilize the language that ties to the FAIR health

1 benchmark that those different percentiles might be used to set the
2 reference for determining out-of-network [indiscernible]?

3 MR. ZAVITSANOS: Excuse me, Your Honor. I know a little
4 leeway is in order, but leading.

5 MR. BLALACK: I'll rephrase.

6 MR. ZAVITSANOS: Pretty repeatedly.

7 THE COURT: Rephrase, please.

8 BY MR. BLALACK:

9 Q How does -- how do the different percentiles that are
10 reflected there apply or not apply depending on benefit plan language?

11 A So if the benefit plan language has reference to those terms
12 that we discussed before, usual customary, reasonable customary,
13 points it to FAIR health, and then inside the benefit plan it's going to say
14 the out-of-network benefits are being paid at -- or will be allowed at the
15 50th percentile, the 60th percentile, as an example. I believe these are
16 examples at the top.

17 Q Now does UnitedHealthcare represent in this website that it
18 will always use FAIR health to calculate the proper reimbursement for all
19 out-of-network services?

20 A No.

21 Q Does United Healthcare represent in this website that if a
22 client decides to use FAIR health to calculate the proper reimbursement,
23 UnitedHealthcare will always use the 80th percentile of the benchmark
24 [indiscernible]?

25 A No.

1 Q Does this website, based on the description of what's
2 involved, discuss in any way --

3 MR. BLALACK: Strike that. Let me rephrase.

4 BY MR. BLALACK:

5 Q Does this website discuss -- have a payment of out-of-
6 network services for emergency or non-emergency services?

7 A Non-emergency services.

8 Q How do you know that?

9 A Fair health is not being used for emergency services.

10 Q Now, Mr. Haben, we discussed the various out-of-network
11 programs that UnitedHealthcare offered the client in the last decade or
12 so. But before moving on, I want to make sure the jury is clear about
13 which of the programs apply or don't apply to the emergency room
14 services, which is what's at issue in this case. And so, what I'd like to do
15 is walk through those programs again, have you tell me which of these
16 programs relate to emergency services and which do not.

17 So what I'm going to do is I'm going to start by saying -- I'm going
18 to list off the program, and then you tell me which of these relate -- will
19 apply to an out of network emergency room service by profession. Do
20 you understand the question?

21 A I believe so.

22 Q Okay. I'm going to ask about -- I'm going to start ENRP.

23 A Yes.

24 MR. BLALACK: [Indiscernible]

25 BY MR. BLALACK:

1 Q So I believe you said ENRP does relate to emergency room
2 services.

3 A Yes, it could.

4 Q And does it relate also to non-emergency room services?

5 A It could periodically.

6 Q Okay. What about the shared savings program?

7 A Yes, it could.

8 Q And so, if I use the acronym SSP, will you recognize that as
9 the shared savings program?

10 A Yes, I do.

11 Q What about the outlier cost management program?

12 A Yes, it could.

13 Q If I use the acronym OCM, will you recognize that as the
14 outlier cost management program?

15 A Yes, I will.

16 Q And I believe you've already testified that the tool utilizing
17 OCM is Data iSight?

18 A Yes, it is.

19 Q And just to associate with this program I will put DIS, which I
20 think Mr. Zavitsanos discussed with you as being associated with OCM,
21 correct?

22 A Correct.

23 Q So, so far I've ENRP, shared savings program, OCM Data
24 iSight. Is that all accurate as emergency room service?

25 A Those three are accurate, yes.

1 Q Okay. And then what about the physician RMC FAIR Health
2 program?

3 A No, it does not.

4 Q Okay. Now I'll add on the final one is shared savings
5 program enhanced. Was it customary emergency room services?

6 A Yes, it would.

7 Q So before we move on, is my description there of which
8 programs involve emergency services and which programs do not; is
9 that accurate?

10 A Yes.

11 Q Okay.

12 MR. BLALACK: If you could toggle back to this one.

13 BY MR. BLALACK:

14 Q Now, Mr. Haben, I think you may have pointed this out
15 already, but just to make sure I'm clear, when an out-of-network provider
16 submits a claim to UnitedHealthcare or a member submits a claim for an
17 out of network service to UnitedHealthcare, how does UnitedHealthcare
18 determine which of these out of network programs will apply to
19 reimburse the claim?

20 A It's based on the benefit plan of the client.

21 Q So you would need to go look at the benefit plan or the
22 computer [indiscernible] tied to the benefit plan?

23 A The system is set up to identify the benefit plan requirement.

24 Q Okay. I'd like to show you a document, sir, and we're going
25 to -- because I don't think it's an exhibit yet -- in evidence yet. It's

1 Defense Exhibit 5502. So we're not going to publish it to the jury. If
2 you'd find that, and I'll ask you a few questions.

3 [Pause]

4 MR. ZAVITSANOS: And, counsel, if you'd give me just one
5 minute, please.

6 MR. BLALACK: Sure, absolutely.

7 MR. ZAVITSANOS: Thank you.

8 MR. BLALACK: I guess I'm going to lay a foundation and
9 then I'll move it into evidence.

10 BY MR. BLALACK:

11 Q You ready, sir?

12 A Yes, I am.

13 Q Okay. Sir, the document that's marked for identification is
14 Defense Exhibit 5502. Have you had a chance to look at that?

15 A Yes, I have.

16 Q And what is that document?

17 A It appears to be the Walmart summary plan description for
18 their 401(k) plan.

19 Q And was Walmart one of UnitedHealthcare's clients during
20 the period at issue in this case?

21 A Yes, they were.

22 Q And how do you know that this exhibit is a summary plan
23 description for Walmart?

24 A On the --

25 Q What do we look to?

1 A On the first page, it says summary plan description. It has
2 reference to Walmart. It's -- they have reference to I think their
3 information on their 401(k) plan.

4 Q And in fact, sir, if you turn to page 6 in the upper left-hand
5 corner, you'll see a heading that reads associates health and welfare
6 plan.

7 A I do see that.

8 Q And if you would, just review that to yourself and tell me --
9 kind of describe if this document is related to the health and welfare
10 benefit plan for employees at Walmart.

11 A Yes, it is.

12 Q Now, sir, during the course of your role as the head of out-of-
13 network programs, have you reviewed summary plan descriptions
14 before?

15 A I have seen them before.

16 Q Are you generally familiar with what they look like?

17 A Yes, I am.

18 Q And does this exhibit, Plaintiff's -- Defense Exhibit 5502,
19 appear to be similar in form and content to the summary plan
20 descriptions you've seen under the UnitedHealthcare plan?

21 A Yes, they are.

22 Q And, sir, do the summary plan descriptions typically contain
23 information about the out of network benefits or out of programs offered
24 under the plan?

25 A They talk about out of network benefits.

1 Q Okay. Now if you turn, sir, to 59 -- page 59, referring to the
2 number that's tied to the exhibit in the lower right-hand corner. You'll
3 see a description under header maximum allowable charge. Do you see
4 that?

5 A Yes, I do.

6 Q And underneath that, do you see a discussion of the out-of-
7 network benefits available under this plan?

8 A I do.

9 Q And do you see a discussion in the upper column for
10 UnitedHealthcare for what the out-of-network benefit and programs are
11 for this plan?

12 A I do.

13 Q And is one of those programs the shared savings program?

14 A Yes, it is.

15 MR. BLALACK: At this time, Your Honor, I'd move Defense
16 Exhibit 5502 into evidence.

17 THE COURT: Any objection?

18 MR. ZAVITSANOS: No, Your Honor.

19 THE COURT: Exhibit 5502 will be admitted.

20 [Defendants' Exhibit 5502 admitted into evidence]

21 MR. BLALACK: So at this point, I'd like to bring that up and
22 publish it to the jury. And so, what I'm showing the jury right now is the
23 first page of the Walmart plan and summary benefits program, which is
24 their summary plan description for their employees that was in place for
25 employees during the period at issue.

1 BY MR. BLALACK:

2 Q And I'm going to direct the jury now and publish to the jury
3 the page I was just discussing with you, Shane, it's on page 59. We'll
4 walk through that and explain that to them.

5 A I'm sorry. I couldn't hear you. What'd you say?

6 Q Page 59.

7 A Yes.

8 Q Do you have that in front of you?

9 A I do.

10 Q Okay. Do you see the header that reads maximum allowable
11 charge?

12 A I do.

13 MR. BLALACK: And could you blow up that first paragraph
14 under that heading?

15 BY MR. BLALACK:

16 Q It says maximum allowable charge, MAC. The maximum
17 amount the plan will cover and pay premium healthcare services,
18 medical services, equipment, supplies or benefits covered by the plan.
19 And then it says MAC -- the MAC applies to both in network and out of
20 network services; is that right, sir?

21 A That is correct.

22 Q Now if you look down below that paragraph, do you see a
23 reference where it talks about in network and out of network services?

24 A I do.

25 Q I'm going to focus on the out of network services since that's

1 what at issue in this case. It's that third paragraph in. We'll just read
2 that with -- to the jury. It says for covered out of network services; the
3 MAC is determined by each TPA as described below. In certain
4 circumstances, network benefits may be paid for out of network services
5 as described later in this section, under when network benefits are paid
6 for out of network expenses. Did I read that correctly, sir?

7 A Yes, you did.

8 Q Now, first of all, remind the jury. What's a TPA?

9 A A third-party administrator.

10 Q Now was United Healthcare a TPA for the Walmart plan?

11 A Yes, we were.

12 Q Were you the only TPA for the Walmart plan?

13 A No, we were not.

14 Q So this is a scenario where the client has more than one TPA;
15 is that right?

16 A It appears so.

17 Q Okay. How do we know that that's true?

18 A Inside the summary plan description, underneath that
19 description you have highlighted here, you'll see Aetna, and then there's
20 also reference to UnitedHealthcare. You'll see reference to
21 HealthSCOPE, and then you'll see a reference to Blue Advantage
22 Administrators of Arkansas.

23 Q Which is the blue plan?

24 A Yes, it is.

25 Q All right. So let's talk about UnitedHealthcare, first. So with

1 respect to UnitedHealthcare, if you go up onto the upper right-hand
2 corner --

3 MR. BLALACK: Blow that up, Shane.

4 BY MR. BLALACK:

5 Q It says UnitedHealthcare, that is 125 percent of Medicare's
6 maximum allowable charge for voluntary out-of-network services. Now
7 let me stop on that, "voluntary out-of-network services." What does that
8 mean to you? What is your understanding of "voluntary out-of-network
9 services"?

10 A It's another term for choice and no choice. So they have --
11 on the right-hand side of our prior grid, it's a no -- it is a choice, the
12 example that I gave before.

13 Q Would that be equivalent to what we referred to as the out-
14 of-network benefit program?

15 A Yes.

16 Q And then next it says, "for involuntary out-of-network
17 services," and that also is 125 percent of Medicare's maximum allowable
18 charge, unless the provider is in UnitedHealthcare's share savings
19 program." Did I read that right, sir?

20 A Yes, you did.

21 Q So with respect to that first clause, "for involuntary out-of-
22 network services," what do you understand that to mean?

23 A So that would be that you have no choice.

24 Q Would that be consistent with what you called "in-network
25 benefit level," earlier?

1 A Yes.

2 Q And would that include, what you would understand to be an
3 emergency room out-of-network services?

4 A Yes.

5 Q So it says, for involuntary out-of-network services the cost is
6 125 percent of Medicare's maximum allowable charge. Let's stop on that
7 first. When they refer to Medicare's maximum allowable charge, what
8 do you understand that to mean?

9 A Medicare's rate.

10 Q So that would be a benefit paying at 125 percent of the
11 Medicare rate?

12 A Yes.

13 Q But then it says, "If the provider is a participant in the
14 UnitedHealthcare's shared savings program, how would that apply if the
15 provider -- how would that apply if the provider is in the shared savings
16 program?

17 A So if there is a shared savings program discount available
18 and United decides to take that discount, then that discount would apply.

19 Q So if a member from Walmart was to go and receive
20 emergency room out-of-network care, would this language in the plan
21 documents be the foundation for determining how to reimburse that, sir?

22 A Yes, it would.

23 Q Now can you review quickly to yourself, similar language for
24 Aetna, HealthSCOPE, and the Blue Advantage plan?

25 A It's --

1 Q Look at it yourself, very quickly.

2 A Yeah. I need a minute.

3 [Witness reviews document]

4 MR. BLALACK: Shane, if you can bring up Aetna, real quick.

5 BY MR. BLALACK:

6 Q So while you're looking at this sir, my question is, how does
7 Aetna's out-of-network program benefits compare to the ones described
8 for UnitedHealthcare?

9 A It's very similar.

10 Q In what way?

11 A They have 125 percent of Medicare for involuntary services,
12 unless there's a provider in the Aetna's National Advantage Program,
13 which I believe was their first health group network.

14 Q So that's a wrap network?

15 A I believe so.

16 Q Okay. All right. Would you look now at the Blue Advantage,
17 the blue plan, in the next column, and just review those yourself, and I'll
18 ask you the same question, which is, how does the blue plan out-of-
19 network programs and benefits compare?

20 [Witness reviews document]

21 THE WITNESS: Sorry, it's a long paragraph.

22 MR. BLALACK: It's okay.

23 BY MR. BLALACK:

24 Q Okay. So my question is, how does the blue out-of-network
25 -- the blue plan out-of-network benefits and programs compare to what

1 UnitedHealthcare offers as a TPA to the Walmart plan members?

2 A It's similar. They have a MAC program; it looks like about
3 125 percent.

4 Q Now, sir, you can put that down, and we'll move on to a new
5 document. So let's look at another example of a plan document. I think
6 this one is not yet in evidence, so let's not publish it. I'll direct you, sir to
7 Defense Exhibit 5503. Do you have that, sir?

8 A Yes.

9 Q Sir, I'm directing you to a document that is entitled
10 "UnitedHealthcare Choice Plus Certificate of Coverage, for [indiscernible]
11 camp or Roseman University of Health Sciences. Do you see that?

12 A I do.

13 Q It has an effective date July 1, 2017. Do you see that?

14 A I do.

15 Q Now can you tell the jury what this document is, what type of
16 document it is?

17 A It's a COC, or certificate of coverage , underwritten by
18 UnitedHealthcare, so it looks like a fully insured plan.

19 Q Okay. So I think you mentioned earlier the certificate of
20 coverage is an insurance contract between the health -- full insurer,
21 health insurer, and the members of an employer benefit plan that
22 sponsors that company?

23 A That's correct.

24 Q And in your role as head of out-of-network programs have
25 you reviewed certificates of coverage, in terms of their form and

1 substance, in the same way you reviewed summary plan descriptions --

2 A Yes.

3 Q -- and administrative services?

4 A Yes, I have.

5 MR. ZAVITSANOS: Excuse me, Your Honor. My apologies.

6 Just to speed things up, I don't know if counsel is laying a

7 foundation to admit the exhibit. I would just invite him to ask first --

8 MR. BLALACK: That's right.

9 MR. ZAVITSANOS: We don't have an objection to this, so --

10 MR. BLALACK: Well, we're going to look at that, we just

11 saved some time. Thank you, sir.

12 THE COURT: And what's the number again, please?

13 MR. BLALACK: It is Defense Exhibit 5503.

14 THE COURT: 5503 will be admitted.

15 [Defendants' Exhibit 5503 admitted into evidence]

16 MR. BLALACK: Thank you. Thank you, counsel.

17 BY MR. BLALACK:

18 Q All right. Can you tell me, sir, I'm going to direct to a specific

19 page, first of all, page

20 THE COURT: So on the break talk to the clerk, she didn't

21 have that on your exhibit list.

22 MR. BLALACK: Okay. Well, at the break we'll do that.

23 THE COURT: Yeah. At the break.

24 BY MR. BLALACK:

25 Q So, sir, page 3 -- or excuse me, 7, in this exhibit, is schedule

1 of benefits. Do you see that?

2 A I do.

3 Q And underneath that it says [indiscernible] benefits.

4 A Yes, I do.

5 Q And it says, "You can choose to receive network benefits, or
6 non-network benefits. Do you see that?

7 A I do see that.

8 Q Do you know what the term "network benefits" and "non-
9 network" benefits refers to?

10 A Yes. In-network benefits are participating -- per participating
11 providers, or in the situation we talk about, are non-network, non par.

12 Q Okay. And so that would be the difference between the out-
13 of-network benefit level, and the in-network benefit level?

14 A Yes.

15 Q Okay. And I'm going to go the section of the certificate of
16 coverage that discusses the out of network benefit partner. And this is
17 on page 31 of this document. And if you look --

18 MR. ZAVITSANOS: And, counsel, you're referring to the trial
19 director number?

20 MR. BLALACK: I am, sir, yes.

21 MR. ZAVITSANOS: Thank you.

22 MR. BLALACK: This would be 25 of the actual document and 31 of
23 exhibit number.

24 BY MR. BLALACK:

25 Q Now, sir, can you see, at the header at the bottom it reads:

1 "For emergency health services provided by non-network provider"?

2 A I do.

3 Q And you understand that in this case what we are focused on
4 are non-network providers rendering emergency room professional
5 services?

6 A Yes, they do.

7 Q Would this be the portion of the certificate of coverage where
8 UnitedHealthcare will look to determine what the appropriate benefit is,
9 for reimbursement of such a plan?

10 A Yes.

11 Q And if you look under that section it says, "For emergency
12 health services provided by the non-network provider, the eligible
13 expense is a rate agreed upon by the non-network provider or
14 determined based upon the higher of the median amount negotiated
15 with network providers for the same service, 125 percent of the publish
16 rates allowed by the centers for Medicare and Medicaid services, for the
17 same or similar service. It would indicate [indiscernible]. Do you see
18 that?

19 A Yes, I do.

20 Q All right. Just to make sure I understand how this works, so
21 the first basis for reimbursement is if there was a negotiated
22 understanding, agreed rate with the beyond the network provider?

23 A Yes, for that service.

24 Q And that -- for example, if there was a perspective
25 negotiation under the shared savings program, would that qualify as a

1 negotiating agreement?

2 A If United was using that, yes.

3 Q If there was a negotiation after the initial reimbursement was
4 made, and a provider agreed to accept some amount, as part of the one-
5 off negotiation, would that be captured within the understanding agreed
6 upon by the non-network provider?

7 A Yes, it would.

8 Q Then if that circumstance doesn't apply, so there's no
9 agreement, what does the plan benefit tell you to do in terms of looking
10 at how to reimburse the plan?

11 A You would determine what the par median is for the
12 negotiated services with other providers in the market, or 125 percent of
13 CMS.

14 Q And once you found those two values what would you do?

15 A You would apply the greater of -- you know, we'll look at
16 either one, and you would apply the greater one.

17 Q So if the par median amount negotiated with network
18 providers for the same service was less than 125 percent of the Medicare
19 rate, which of those two outcomes would you use?

20 A You would use the 125 percent of Medicare.

21 Q The [indiscernible] use in the median amount for negotiating
22 the [indiscernible]?

23 A Yes. The par median amount.

24 Q Now here's what I want to --we looked at two different
25 formulas, and I just want to make sure the jury understands how that

1 works in daily life in an emergency room. So let me ask a hypothetical
2 this way, sir. Well, let me put it this way. Is it fair to say that each of
3 these two clients, one is Walmart, and one is Roseman University, had
4 chosen different out-of-network benefits for their employees?

5 A Yes.

6 Q So if two patients saw the same doctor, on the same day, for
7 the same emergency services, could that ER physician be reimbursed at
8 different amount, under these two plans that I've just shown you and the
9 jury; if one of those patients worked at Walmart and the patient worked
10 at Roseman University?

11 A Yes, they could.

12 Q And how is that possible? Explain how that could be true.

13 A Let's say in the Roseman University example, the claims we
14 priced in the par median is greater than 120 percent, 25 percent of
15 Medicare, then the par median rate would apply. If it was a Walmart
16 employee and there was no wrap network discount that was accessed,
17 then it could be paid at 125 percent of Medicare.

18 Q So when UnitedHealthcare, working as a TPA in one instance
19 and a fully insured insurance provider in another, adjudicated those
20 claims under the contracts it had with its clients, it would pay one of
21 those claims in the hypothetical you just used, at 125 percent Medicare
22 and the other higher par median rate?

23 A That's correct.

24 Q So the same ER provider gets -- provides the same service,
25 the same day, two people could get paid at a slightly different rate, or at

1 a substantial rate?

2 A That is correct.

3 Q That's a function of the benefit plan?

4 A Yes, it is.

5 MR. ZAVITSANOS: Your Honor, I'm sorry. Constant
6 leading.

7 MR. BLALACK: I'll withdraw.

8 BY MR. BLALACK:

9 Q Now --

10 THE COURT: You will have to refrain, or I'll assist in the
11 objections.

12 MR. BLALACK: I'll withdraw -- I'll rephrase.

13 BY MR. BLALACK:

14 Q Mr. Haben, how does the benefit plan impact the
15 hypotheticals that you just explained?

16 A As I've talked about the benefit plan dictates the
17 reimbursement program applied for that claim. So we will look to the
18 benefit plan. I'll assist and set up for that benefit plan and apply that
19 logic.

20 Q I think you testified earlier that these plan documents are
21 contracts between the employer who sponsors the plan in
22 UnitedHealthcare; is that right?

23 A Yes.

24 Q I think you mentioned to Mr. Zavitsanos yesterday, that the
25 emergency room professionals, or the staffing company, they're not

1 parties to those contracts between UnitedHealthcare and its
2 employer/client?

3 A That is correct.

4 Q Does UnitedHealthcare have a view about whether you can
5 just disregard the language in the benefit plan when determining how to
6 reimburse out of the network plan?

7 MR. ZAVITSANOS: Your Honor, can we approach for one
8 second, I'm sorry.

9 THE COURT: You may.

10 [Sidebar at 1:46:53 p.m., ending at 1:50 p.m. not transcribed]

11 THE COURT: Okay. I've sustained -- I'm sorry. I've overruled
12 an objection. Go ahead.

13 MR. BLALACK: All right. Let's see where we were.

14 BY MR. BLALACK:

15 Q So my question was, sir, in your role as vice president of out-
16 of-network programs, what was your understanding about whether
17 UnitedHealthcare could disregard the terms of the plan documents when
18 reimbursing out-of-network plans?

19 A We cannot.

20 Q Now, we've looked now at a summary plan description and a
21 certificate of coverage. I think you mentioned there is another type of
22 health benefit plan document called an ASA or administrative services
23 agreement?

24 A Correct.

25 Q I'm showing you what's marked, sir, which is Defense Exhibit

1 5499, which is a ASA for Love's Travel Stops & Country Stores, any
2 objection?

3 MR. ZAVITSANOS: I'm sorry, which one is it?

4 MR. BLALACK: It's 5499. It's the one, I think we were alerted
5 to yesterday.

6 MR. ZAVITSANOS: I'm sorry, Counsel. One more time, I'm
7 sorry.

8 MR. BLALACK: 5499.

9 MR. ZAVITSANOS: Okay.

10 MR. BLALACK: It's the Love's Travel Stops & Country Stores.

11 MR. ZAVITSANOS: Let me just confer for a second?

12 MR. BLALACK: Sure.

13 [Counsel confer]

14 MR. ZAVITSANOS: Okay. No objection, Your Honor.

15 MR. BLALACK: Thank you.

16 THE COURT: 54 --

17 MR. BLALACK: Your Honor, we would move it into evidence.

18 THE COURT: 5499 will be admitted.

19 [Defendants' Exhibit 5499 admitted into evidence]

20 BY MR. BLALACK:

21 Q All right. So Mr. Haben, I'm showing you Defense Exhibit
22 5499. This is the third type of plan document that you've discussed with
23 the jury today, administrative service agreement. If you could again
24 remind the jury what an administrative services agreement is?

25 A This is the contract between the employer group and

1 UnitedHealthcare administration to perform services on their behalf
2 including network benefits and out-of-network benefits.

3 Q Okay. And who were the parties to this agreement?

4 A It's UnitedHealthcare Services and the employer group,
5 Love's Travel Stops.

6 Q Okay. Now, the date of this amendment is January 1, 2017.
7 And then -- and I'm going to direct you to a later amendment which is
8 attached, which is at page 18, I believe. Sir, do you see on page 18 that
9 there is a renewal and amendment to the Love's Travel Stops & Country
10 Stores ASA?

11 A Yes, I do.

12 Q And what is the effective date of this amendment?

13 A The financial renewal in terms of the amendment is January
14 1 of 2019.

15 Q Which is within the period of dispute in this case?

16 A Yes, it is.

17 Q Now if you'd turn --

18 MR. BLALACK: Go to the next page, Shane, please, it's page
19 19.

20 BY MR. BLALACK:

21 Q -- you'll see a heading that reads "Administrative service
22 agreement is amended as noted below." And then it says, "The
23 amendment will not affect any of the terms, provisions, or conditions of
24 the agreement except as stated herein." Do you see that?

25 A I do.

1 Q If you go down to the bottom of that page, you'll see a
2 header that reads "Section H, Network Services in Exhibit A is amended
3 to include the following services." Do you see that?

4 A I do.

5 Q If you would look under that chart, and you'll see a -- in the
6 left-hand column, a description of an out-of-network program available
7 to members of the Love's Travel Stops [indiscernible]. Do you see that?

8 A I do.

9 Q What, in that first -- to the top left --

10 MR. BLALACK: Top left, please. There you go.

11 BY MR. BLALACK:

12 Q What is the program that's available under this ASA?

13 A That is the outlier cost management program or OCM.

14 Q Okay. It had been (participant had no choice). Do you see
15 that?

16 A I do see that.

17 Q What does that refer to?

18 A That refers to what we talked about before as the no-choice
19 scenario paid at the in-network benefit level for non-par.

20 Q So for an emergency out-of-network service, would you
21 expect that to be -- this would be supplying the methodology for
22 reimbursement?

23 A Yes, it would.

24 Q All right. It says offers of reimbursement methodology
25 applicable to out-of-network claims includes an advocacy component for

1 participants where the participant can access dedicated resources to
2 explain how the claims were adjudicated and/or the dedicated resources
3 can engage with out-of-network providers to explain the reimbursement
4 methodology applied. Do you know what that advocacy component is
5 referring to?

6 A Yes. I believe it's referring to MultiPlan's engagement on
7 their behalf.

8 Q Now, if you go to the next page, at the top you'll see it
9 continues. And it says, "Any reference to shared savings program,
10 facility agrees to a customary charge determination program and the
11 reasonable and customary charge guidelines. Each as applicable to
12 Section H is replaced in their entirety as follows." And then it has a
13 discussion of the shared savings program. Do you see that?

14 A Yes, I do.

15 Q Okay. My question is this, sir. You have talked about a
16 number of different out-of-network programs.

17 MR. ZAVITSANOS: Your Honor, under optional completion,
18 may we read the portion right above this, please?

19 MR. BLALACK: Which point do you want to -- I'll be glad to --

20 MR. ZAVITSANOS: The head -- the heading right above this
21 box. That's it.

22 MR. BLALACK: Isn't that what I just read? I just read that.

23 MR. ZAVITSANOS: The --

24 MR. BLALACK: I just read that.

25 MR. ZAVITSANOS: The -- yes.

1 MR. BLALACK: I just read that.

2 MR. ZAVITSANOS: Okay. Thank you.

3 BY MR. BLALACK:

4 Q Okay. My question to you, sir, is this. When customers are
5 presented with various out-of-network programs to choose -- well, let me
6 back up. Have you heard the term "opt in" and "opt out"?

7 A Yes, I have.

8 Q What does opt in mean to you?

9 A Opt-in means that you have a choice to be in it or not.

10 Q And what does opt out mean?

11 A You're in it unless you choose to opt out of it.

12 Q Okay. Can you tell the jury for the UnitedHealthcare out-of-
13 network programs, are they opt-in programs or opt-out programs?

14 A You have to opt in. You have to make a conscious choice to
15 adopt it.

16 Q Okay. So if a -- if a customer decides they don't wish to have
17 one program any longer, and they wish to have a new one or they wish
18 to modify the program, is that a -- an option they have to affirmatively
19 exercise?

20 A Yes, they.

21 Q And has the approach to opting in or opting out, has that
22 been the case during the entire period that you were in charge of
23 network programming?

24 A Yes, I believe so.

25 Q Now, sir, you've explained that different clients can select

1 different out-of-network programs. And you've demonstrated how the
2 different programs could result in a different set of payments to the
3 same provider for the same service; is that fair?

4 A That is correct.

5 Q Given that, how do you explain which of those payments
6 UnitedHealth, you, as the vice president of out-of-network programs
7 when you were there, considered to be the reasonable value for those
8 out-of-network services?

9 A I'm sorry, can you ask that again?

10 Q Sure. So you've just explained how different clients can
11 select different out-of-network programs?

12 A Yes.

13 Q You've explained how those different out-of-network
14 programs could result in different payments --

15 A Correct.

16 Q -- for the same out-of-network ER provider for the same
17 service?

18 A Correct.

19 Q So which -- how does that, from your perspective as the vice
20 president of out-of-network programs, what is the reasonable value of
21 the service for purposes of evaluating those different payments?

22 MR. ZAVITSANOS: Objection, Your Honor. Not been
23 designated as a lay expert opinion, also invades the providence of the
24 jury.

25 MR. BLALACK: I'm not asking for an opinion, Your Honor.

1 THE COURT: I know.

2 MR. BLALACK: I'm asking for his view as the head of the
3 development [indiscernible].

4 THE COURT: Overruled.

5 THE WITNESS: One more time, please?

6 BY MR. BLALACK:

7 Q Sorry about that.

8 A Maybe just the last part of it.

9 Q Okay. Let me lay the foundation one more time.

10 A Okay.

11 Q You've explained to the jury, and you've shown different out-
12 of-network programs are selected by different customers, correct?

13 A Yes.

14 Q We've shown that because they select different programs,
15 different payments could result for the same service to the same
16 provider, correct?

17 A Correct.

18 Q So my question to is from the perch as the former vice
19 president of out-of-network programs, how do you assess what the
20 reasonable value of the service was when you're paying different rates?
21 Do you understand my question?

22 A It's dependent upon what the employer group would like to
23 pay and what they want in their benefit plans.

24 Q So in a case, for example, for the -- I think you identified the
25 ENRP program as reimbursing a lower level than, for example, the

1 outlier cost management program; is that correct?

2 A That's correct.

3 Q And I think you identified the outlier cost management
4 program would tend to reimburse at a lower level than, say, a shared
5 savings program?

6 A That's correct.

7 Q Would the EN -- the rate reimbursed under the ENRP
8 program, in your view as the vice president of network programs be
9 reasonable?

10 A Yes, it would be.

11 Q Would the outlier cost management rate, which is higher, be
12 reasonable?

13 A Yes. It's reasonable plus even more premium.

14 Q And the same would be true for shared savings?

15 A Even more premium.

16 Q So it can too, for example, if someone flew on an airplane
17 and there was somebody sitting in first class, someone sitting in
18 business class, someone sitting in economy plus, and someone sitting
19 back in the rear. They're all flying in the same direction?

20 A Yes.

21 Q but receiving --

22 MR. ZAVITSANOS: Objection, Your Honor.

23 Q -- premium services?

24 A Yes.

25 MR. ZAVITSANOS: Constant leading.

1 THE COURT: It's leading. Rephrase.

2 BY MR. BLALACK:

3 Q Let me put it this way, sir. Can you explain -- give the jury a
4 sense of a comparison of how your programs are like other services
5 where there are base services and premium services?

6 A I'm a hockey fan, and I think my Minnesota Wild is coming
7 tomorrow. So I'm excited to watch, I think. Think about it this way. You
8 get the lower bowl, you've got the middle tier, you've got the upper, and
9 you've got the box seats or the suites. They're different prices for each.
10 They're all at the hockey game.

11 Q And from -- as the vice president of out-of-network
12 programs, has -- does UnitedHealthcare consider shared savings-type
13 programs to be more premium programs?

14 A Yes.

15 MR. BLALACK: All right. So before we move on, I want to
16 make sure we're clear with the jury on which of these programs do and
17 do not charge a fee.

18 So if I could, I would ask Ms. White to come and turn on the
19 Elmo, and I'll go through this very quickly. So we've been through this
20 once, but I just want to tie it up before we move on to something else.

21 BY MR. BLALACK:

22 Q So first, does ENRP charge a fee?

23 A No, it does not.

24 Q Does shared savings charge a fee?

25 A Yes, it does.

1 Q Does OCM Data iSight charge a fee?

2 A Yes, it does.

3 Q Does a shared savings program enhanced charge a fee?

4 A Yes, it does.

5 Q Does physician reasonable and customary/FAIR Health
6 charge a fee?

7 A I believe it does not.

8 Q Sir, is there a reason why two of these programs don't
9 charge a fee?

10 A Yes.

11 Q But the other three do?

12 A Yes.

13 Q What is that?

14 A It is the advocacy program. So on both ENRP and the
15 physician R&C program, there's no advocacy that's tied to those
16 programs.

17 Q Whereas the three that do, shared savings, OCM, and shared
18 savings program enhanced do have an advocacy department for the
19 member?

20 A Yes, in -- in one shape or form, yes.

21 Q Okay. Thank you, sir.

22 Okay. All right. Now that you've described the various out-of-
23 network programs for the jury, let's talk about how those programs
24 changed over time. Mr. Zavitsanos focused on 2014 as the first point in
25 his time line; do you recall that?

1 A I do.

2 Q So in 2014, what out-of-network programs were already in
3 place and being used for emergency services?

4 A For emergency services, off the top of my head, would be
5 shared savings with fee negotiation prospectively, and ENRP.

6 Q With no fee, right?

7 A With no fee.

8 Q And I think you've already said that physician R&C -- well, let
9 me ask this. Was physician R&C already in place at that time as well?

10 A Yes, it was.

11 Q But did it apply to emergency room services?

12 A No, it did not.

13 Q Now, does UnitedHealthcare still use shared savings and
14 ENRP today?

15 A Yes, we do -- or they do.

16 Q Has the frequency with which your clients have used those
17 two programs changed over time?

18 A Yes, it has.

19 Q What prompted that?

20 A Clients were demanding better controls on medical costs,
21 and they were looking for better solutions.

22 Q Now, and in response to that market information, what did
23 UnitedHealthcare and your team in out-of-network programs do in
24 response?

25 A We reached out to our vendor, MultiPlan, to see if there was

1 another tool available, and asked for their help.

2 Q Now, I want to talk about that process. And I think it's -- I
3 think it's getting a little confused. We've heard the term outlier cost
4 management and we've also heard the term egregious biller program.
5 Do you remember being questioned about both of those?

6 A Yes.

7 Q Is there is a difference between those two things?

8 A Yes.

9 Q Could you explain what that is?

10 A The egregious biller program was put into place for fully
11 insured business, and that's where there was observation that ER
12 services were being paid at a very high level. There was no program to
13 address it, and those expenses were going up. And so we had to
14 establish a program to address that.

15 Q And what was the threshold that the original egregious biller
16 program targeted for?

17 A I believe we started at 500 percent.

18 Q 500 percent of what?

19 A I'm sorry, 500 percent of Medicare.

20 Q So the only services that would have been targeted by the
21 egregious biller program would have been those out-of-network services
22 being charged at above 500 percent of Medicare?

23 A Yes.

24 Q And then how does the egregious billers program relate, if at
25 all, to what we now know about the outlier cost management program

1 that's been discussed with the jury?

2 A It -- the original egregious biller program did -- does not
3 relate to the MultiPlan OCM Data iSight programs.

4 Q Okay. So what prompted the creation of the OCM or outlier
5 cost management program?

6 A So there were situations where, like, in the wrap network
7 agreements the percentage -- the contractual agreement resulted in a
8 very high reimbursement, typically, like a percentage of billed charges,
9 with no cap on how much they could increase their billed charges. So it
10 was not addressing the escalating costs. The other component is there
11 might not have been an agreement. And so we needed something kind
12 of through the funnel at the end to be able to at least address the billed
13 charges that were being paid.

14 Q Okay. Now, your discussions with MultiPlan, can you tell us
15 who the individuals were at MultiPlan with whom you had the
16 discussions regarding creation of the outlier cost management program
17 and the use of Data iSight. Who were the key people?

18 A It was Jacqueline Kienzle, Dale White, and I believe, Emma
19 Johnson.

20 Q All right. Sir, I am going to now ask you to look at an exhibit
21 which, I believe, is already in evidence. Well, actually, it's not in
22 evidence, but it's not been objected to. It's Defense Exhibit 4569.

23 MR. BLALACK: So I'll ask whether there's any objection to it.

24 MR. ZAVITSANOS: Give me one second, Counsel.

25 MR. BLALACK: Sure.

1 MR. ZAVITSANOS: Sorry. I'm a little technically challenged
2 here. 4569?

3 MR. BLALACK: Yes, sir, 4569.

4 MR. ZAVITSANOS: No objection, Your Honor.

5 MR. BLALACK: Thank you.

6 Your Honor, I move 4569 into evidence.

7 THE COURT: 4569 will be admitted.

8 [Defendants' Exhibit 4569 admitted into evidence]

9 MR. BLALACK: Shane, could you bring that up, please?

10 BY MR. BLALACK:

11 Q And if you just -- you'll see an email, sir, from Dale White to
12 you and Rebecca Paradise dated February 27th, 2016. Do you see that in
13 the middle?

14 A I do.

15 MR. BLALACK: Can you blow that up, please, Shane?

16 Just take a second and review that to yourself, Mr. Haben. And
17 then I'll direct a few questions to you about it.

18 [Witness reviews document]

19 THE WITNESS: Okay. We can get started.

20 BY MR. BLALACK:

21 Q Okay. So sir, you mentioned that sometime in this 2015/2016
22 period, you had communications with the representatives of MultiPlan
23 about trying to improve your out-of-network program offerings; is that
24 right?

25 A That is correct.

1 Q And two of the people you mentioned were Dale White and
2 Jacqueline Kienzle of MultiPlan who were two of the people listed on this
3 email, correct?

4 A That is correct.

5 Q And in the first sentence, it says, "John" and that's addressed
6 to you, correct?

7 A That is correct.

8 Q "John, thanks for taking the time to meet with Jacqueline and
9 me. We appreciated the opportunity to walk through the proposed
10 savings initiatives for your fully insured ASO, et cetera. Do you see that?

11 A I do.

12 Q So when you were thinking a moment ago, and describing to
13 the jury those early conversations with MultiPlan about how to improve
14 your out-of-network program offerings, is this the time period you were
15 thinking of or was it a different time period?

16 A Yes, this was.

17 Q Now, he says in the next sentence, "We believe the
18 implementation of these initiatives in 2016 will go a long way to bringing
19 United back into alignment with its primary competitor group on
20 managing out-of-network program costs; do you see that?

21 A Yes, I do.

22 Q Do you know what Mr. White was referring to there when he
23 told you that these initiatives would go a long way to bringing United
24 back into alignment with its primary competitor groups?

25 MR. ZAVITSANOS: Speculation. Calls for hearsay.

1 THE COURT: Overruled.

2 THE WITNESS: Yes, I do.

3 MR. ZAVITSANOS: I sorry, Your Honor?

4 MR. BLALACK: Okay.

5 THE COURT: Overruled.

6 MR. ZAVITSANOS: I'm sorry. Thank you.

7 BY MR. BLALACK:

8 Q Please explain to the jury.

9 A So we were getting feedback that we were uncompetitive.

10 We approached MultiPlan for solutions. There was a problem out there
11 related to costs that were getting paid at -- or claims getting paid at billed
12 charges not being addressed. And we asked MultiPlan if there were
13 solutions that we could look at together.

14 Q When you referred to the primary competitor group on
15 managing out-of-network claims costs, do you have a general sense of
16 what that refers to?

17 A I don't know who that would be. We lovingly called each
18 other BUCA, Blues, United, Cigna, Aetna.

19 Q What was it called?

20 A BUCA, B-U-C-A.

21 Q Okay.

22 A That -- that's just a -- it could be one of those competitors
23 other than us.

24 Q Now, you've, I think, testified in response to questions from
25 Mr. Zavitsanos over the last week that during this period of 2014, 2015,

1 2016, it was your view that UnitedHealthcare's out-of-network programs
2 were not as competitive as they needed to be. Did you give that
3 testimony?

4 A Yes.

5 Q What was that based on?

6 A That was based on feedback from clients, consultants --

7 MR. ZAVITSANOS: Objection, Your Honor. Again, hearsay,
8 foundation, and speculation.

9 MR. BLALACK: Your Honor, it's not --

10 THE COURT: I think it was foundational.

11 MR. BLALACK: -- offered for the truth of the matter --

12 THE COURT: It was --

13 MR. BLALACK: -- for certain.

14 THE COURT: Yeah. Overruled.

15 MR. BLALACK: It's offered for his state of mind.

16 THE COURT: Overruled.

17 BY MR. BLALACK:

18 Q Now, a little farther down, you'll see a reference to UMR. Do
19 you see that?

20 A Yes, I do.

21 Q And he says, "There's been forward progress", he said, "with
22 UMR's launch."

23 MR. BLALACK: Just pick up with UMR, Shane.

24 BY MR. BLALACK:

25 Q "With UMR's launch later this summer with Data iSight.

1 They have responded to market pressure from the consultant community
2 to bring Data iSight into their standard product offering for out-of-
3 network plan cost management." Do you see that?

4 A Yes, I do.

5 Q So were you involved at all in UMR's decision to utilize Data
6 iSight?

7 A No, I was not.

8 Q So that was a decision made by a separate group of people
9 at UMR, a separate company?

10 A Yes, it was.

11 Q But apparently, you learned about it sometime in 2016?

12 A Yes, I did.

13 Q Do you see his reference there to "They have responded to
14 market pressure from the consultant community"?

15 A I do.

16 Q What is the consultant community?

17 A As we've talked before, it could be Aon, Will -- Towers Willis,
18 consultants network on behalf of clients.

19 Q We haven't really covered this, and I think the jury needs to
20 understand what this is. When you say there is consultants that work on
21 behalf of the clients, what do you mean by that?

22 A So I mean, I think if you go back and look at the Walmart
23 benefit plan, I think that's a really good example because they're a very
24 big and complex company. They don't have the time to go out and kind
25 of shop and look at all the offerings that all the health plans have. So

1 they'll use a consultant that might already have information about what
2 competitors do. And so they use that consultant to determine what
3 would be the best fit for them and for their employees. And they might
4 develop the benefit plans with them.

5 Q Does the consultant community, is that community Aon --
6 what's the other?

7 A Willis Towers Watson.

8 Q Okay. So those consultants you named, is their feedback to
9 TPAs and health insurance companies important?

10 A Yes, it is.

11 Q Why is that?

12 A Sorry. I believe the consultants will provide advice to the
13 employer groups about what they see for the effectiveness of medical
14 cost management and what their employer group may need for their
15 services and what they ask. And that consultant will provide them
16 guidance to say it might be a better fit to go here or a better fit to have
17 multiple options. They're almost like an agent for the client.

18 Q So if UnitedHealthcare or UMR or any other company
19 receives negative feedback during a bidding process from a consultant,
20 is that a challenge for the company?

21 A I view that as an opportunity to get better.

22 Q Okay. Okay. That's another way to look at it.

23 A Yes.

24 Q An opportunity to get better. So in this sentence, what was
25 Mr. White communicating to you about UMR's launch later this summer

1 of Data iSight having responded to market pressure from the consultant
2 community?

3 A My understanding of it would be is that UMR has addressed
4 the feedback that they've gotten from clients and the consultant
5 community and have put things into place to address that business need.
6 And that he is also saying that there's a benefit there, we should move
7 forward.

8 MR. ZAVITSANOS: Objection, Your Honor. Again,
9 speculation. Hearsay.

10 THE COURT: I'm going to ask you to ask follow-up questions
11 rather than having a narrative on this.

12 MR. BLALACK: Okay.

13 THE COURT: And be specific.

14 BY MR. BLALACK:

15 Q When Mr. White told you that UMR's launch later this --
16 referring to UMR's launch later in the summer of Data iSight -- that they
17 have responded to market pressure from the consultant community, with
18 -- specific to that phrase, what did you understand him to be
19 communicating to you in his email to you?

20 A That UMR is moving forward with that change. It would be
21 in support of -- you know, we would be in line if we move forward to.

22 Q And that he -- they were doing so in response to pressure
23 from the consultants?

24 A Yes.

25 MR. ZAVITSANOS: Objection. Leading. Also speculation.

1 THE COURT: It was leading.

2 BY MR. BLALACK:

3 Q Okay. Why was he -- according to Mr. White, why was UMR
4 moving forward?

5 A Because they had pressure from the consultant community.
6 That's what's in the email.

7 Q Now, was it -- and I think Mr. Zavitsanos asked you about this
8 a couple times. Was it unusual in your experience to get feedback from
9 a vendor like Mr. White and MultiPlan about what others in the market
10 were doing? Competitors, whether it's the primary competitor group,
11 BUCA or whatever it's called, or UMR; was that unusual?

12 A No.

13 Q Was that anything inappropriate in your view about that?

14 A No.

15 Q Okay. Did you have a belief and understanding that your
16 consultants shared market intelligence about your operation?

17 A Yes.

18 Q All right. Now, I want to show you another document.

19 MR. BLALACK: And Counsel, this is Defense Exhibit 4570,
20 which according to my records, you all have not objected to.

21 [Counsel confer]

22 MR. ZAVITSANOS: No objection, Your Honor.

23 MR. BLALACK: Thank you.

24 THE COURT: Okay. Did --

25 MR. BLALACK: I move that into evidence, Your Honor.

1 THE COURT: I need the number again.

2 MR. BLALACK: Defense Exhibit 4570.

3 THE COURT: 4570 will be admitted.

4 [Defendants' Exhibit 4570 admitted into evidence]

5 BY MR. BLALACK:

6 Q Now, sir, what I am showing you is an email dated
7 September 8th, 2016, from yourself to a woman by the name of, I
8 believe, Laurie Paidosh?

9 A Yes.

10 Q Is that how to pronounce it?

11 A Yes.

12 Q Who is Ms. Paidosh?

13 A Laurie Paidosh, I believe at that time, was chief of staff for
14 Dan Rosenthal.

15 Q So Mr. Rosenthal, my memory serves, was your boss at that
16 time?

17 A Yes.

18 Q So she was his chief of staff?

19 A Yes.

20 Q Okay. And the subject line of this is "Talking points for OCM
21 DIS". Do you see that?

22 A I do see that.

23 Q Okay. So if you'd look at the email, just take a second and
24 review that to yourself.

25 A Okay.

1 [Witness reviews document]

2 THE WITNESS: Okay.

3 BY MR. BLALACK:

4 Q Now, sir, I am going to just summarize the -- some key
5 language here, and then I am going to ask you a few questions about it
6 for the jury. So in your email to Ms. Paidosh, you write, "Food for
7 thought: MultiPlan's tool, Data iSight, a/k/a DIS, is being proposed for
8 use as part of the shared savings process and outlier cost management.
9 I believe that is a fancy term for egregious for ASO clients." And then it
10 says, DIS is a cost-plus reasonable margin database to determine an
11 initial payment to non-par providers.

12 The amount of reimbursement is primarily impacted by geography
13 and service type (reimbursement amount as a comparison to a
14 percentage of CMS by state, provider type, is available from MultiPlan).
15 Fee negotiation services apply on the back end if the provider does not
16 accept the reimbursement amount and is performed by MultiPlan.
17 Approximately 90 percent to 95 percent of the time, the amount is
18 accepted, according to MultiPlan. MultiPlan said seven of our top ten
19 competitors use the tool today."

20 Now, if you go down a little farther to the last bullet, sir, you'll see
21 it says, "We believe". See that?

22 A Yes.

23 Q We believe BCBS is even more aggressive and is accessing
24 the option of moving DIS up even higher to have IPR/OPR (R&C
25 repricing)(which is option 3 in [indiscernible]). Do you see that, sir?

1 A I do.

2 Q All right. I want to ask you just a few points. But first of all,
3 what was the purpose of this email to Ms. Paidosh?

4 A I don't totally remember. But you know, knowing Laurie's
5 role and my work with Laurie in -- in this role, she's chief of staff for Dan.
6 It's a summary of bullets for Dan to be informed of what's going on.

7 Q Okay. Was this -- was one of the purposes of this email to
8 begin the process of recommending the use of Data iSight as part of
9 your outlier cost management program?

10 A Yes.

11 Q And when you discussed fee negotiation services apply on
12 the back end, that third bullet, is that referring to the retrospective
13 negotiation services you described to the jury earlier?

14 A Yes, it is.

15 Q Now, when you said approximately 90 to 95 percent of the
16 time, the amount of accepted according to MultiPlan, what were you
17 referring to there?

18 A 90 to 95 percent of the time, there are no inquiries coming
19 into United or really, at that point, MultiPlan. But MultiPlan was
20 informing me that they would accept --

21 MR. ZAVITSANOS: Objection, Your Honor. Hearsay.

22 MR. BLALACK: It's being offered not for the truth of the
23 matter asserted but for his state of mind.

24 MR. ZAVITSANOS: Your Honor --

25 THE COURT: No. You're going to have to redirect your

1 questioning. And we can't have the narratives. You have to answer only
2 the question.

3 THE WITNESS: I'm sorry.

4 BY MR. BLALACK:

5 Q My question, sir, is, what did you understand that 90 to 95
6 percent of the time, the amount is accepted according to MultiPlan?

7 That's all I am asking. What did you understand that to refer to?

8 A That MultiPlan did not get inquiries on more than five to ten
9 percent of the time on the payment.

10 Q And by inquiries, you mean inquiries on the rate of
11 reimbursement?

12 MR. ZAVITSANOS: Objection. Leading.

13 THE COURT: Well --

14 MR. BLALACK: Strike that. I'll restate, Your Honor.

15 BY MR. BLALACK:

16 Q What was the inquiry you were referring to there?

17 A Any inquiry on the OCM amount that went out to the
18 provider initially.

19 Q Now, the next bullet refers to MultiPlan. "Seven of our top
20 ten competitors use the tool today." Do you see that?

21 A I do.

22 Q What were you referring to when you wrote that?

23 A Like I said, the BUCAs, so there would be other competitors
24 that are out there.

25 Q Why were you relating those two points that are described in

1 those -- in this email to Ms. Paidosh? Why was that important to you to
2 share with her?

3 A I think it was important to demonstrate that we are behind
4 our competitors. That would be that seven out of ten. And that we
5 should move forward. And that the bullet above is the reimbursement
6 rate that initially goes out to the provider would be accepted.

7 Q Okay. Did the information that MultiPlan shared with you to
8 be passed along to Ms. Paidosh play any role in your views about
9 whether you would be comfortable using this product?

10 A In my role, my goal of informing her, from what I remember,
11 is to inform the organization we are going to move forward with
12 MultiPlan, and just giving them the heads up of our progress.

13 Q Now, why did you refer in the last bullet, specifically, to Blue
14 Cross Blue Shield being even more aggressive?

15 A It was my impression that they were big, you know, what I
16 call the BUCAs, that are moving even further up in the chain. So there
17 were different levels, I think I quoted options. And I got the impression
18 that one of the bigger entities was going to be moving up quicker.

19 Q Okay. And did UnitedHealthcare after this, openly decide --
20 well, strike that. You already said they did. When did UnitedHealthcare -
21 - how long after this did you all decide to implement Data iSight as part
22 of outlier cost management?

23 A I don't remember the specific date, but it was after 2017.

24 Q As was it introduced to both fully insured and ASO at the
25 same time or was that done in phases?

1 A I don't remember exactly off the top of my head, but I think it
2 was more focused on the ASO side.

3 Q Now, I would like to show another document. This is from
4 Plaintiff's Exhibit list. This is Plaintiff's Exhibit 73.

5 THE COURT: Are you transitioning to a new subject?
6 Because this might be a good time.

7 MR. BLALACK: This would -- I'm open whenever you're
8 ready for a break, Your Honor.

9 THE COURT: All right. Let's -- it's 2:25 and we started at
10 1:10. So let's take a recess until 2:40.

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

17 Don't conduct any research on any issue relating to this case.
18 You can't consult dictionaries, use the internet, or use reference
19 materials. You are not to talk, post social media, text, tweet, Google
20 issues, or conduct any other type of book or computer research with
21 regard to any issue, party, witness, or attorney involved in the case.

22 Most importantly, do not form or express any opinion on any
23 subject connected with the trial until the jury deliberates. Thank you for
24 your attention after lunch. See you at 2:40.

25 THE MARSHAL: All rise for the jury.

1 [Jury out at 2:26 p.m.]

2 [Outside the presence of the jury]

3 THE WITNESS: May I step down?

4 THE COURT: Yes, you may.

5 THE WITNESS: Thank you.

6 THE COURT: And as soon as the room is clear, I will ask if
7 you have anything to put on the record.

8 MR. BLALACK: Not from me, Your Honor.

9 MR. LEE: There was one question the Court had that I did get
10 an answer to from my team. Seventeen of the documents posted to the
11 website were marked "attorneys' eyes only". And I don't think it's
12 necessary to give a list right now, but I can give those numbers to the
13 Court if you desire.

14 THE COURT: Can the Plaintiff confirm that they've been
15 taken down?

16 MR. ZAVITSANOS: Yes, Your Honor. They've been taken
17 down, and I was -- I was advised that there was no big deal about these.
18 But they're down.

19 THE COURT: Good enough.

20 All right. Anything to put on the record before we take a
21 break?

22 MR. ZAVITSANOS: Not at this time, Your Honor.

23 THE COURT: Very good. Thanks and have a good recess.

24 MR. BLALACK: Thank you, Your Honor.

25 MR. ZAVITSANOS: Thank you, Your Honor.

1 [Recess from 2:27 p.m. to 2:42 p.m.]

2 THE MARSHAL: Court is back in session.

3 THE COURT: Thanks, everyone. Please remain seated.

4 Are we ready to bring in the jury?

5 MR. BLALACK: We are, Your Honor.

6 MR. ZAVTISANOS: Yes, Your Honor.

7 THE COURT: Thank you.

8 MR. ZAVTISANOS: Oh, Your Honor, one thing. So the Court
9 had suggested maybe some alternatives for the schedule. Can we -- I
10 think I made this clear, but for whatever it's worth. We have no
11 opposition to starting an early day, so. In fact, we prefer it. So whatever
12 the Court's election --

13 MR. BLALACK: Available when you are, Your Honor.

14 THE COURT: Let's start that Monday because I am going to
15 the game tomorrow night.

16 THE MARSHAL: All rise for the jury.

17 [Jury in at 2:43 p.m.]

18 THE COURT: Thank you. Please be seated. Go ahead,
19 please.

20 MR. BLALACK: Thank you, Your Honor.

21 Q Mr. Haben, we were talking about the process during 2016
22 and 2017 when your group was evaluating whether to proceed with a
23 recommendation to utilize outlier cost management. And I said, do you
24 recall that?

25 A Yes, I do.

1 Q I want to show you another document that I understand is in
2 evidence already, Plaintiffs' Exhibit 73. And I believe, actually, it was
3 shown to you by Mr. Zavitsanos earlier this week. This document is
4 entitled, "Customer Impact Advisory Brief." Do you recognize that
5 document, sir?

6 A I do.

7 Q Now, I'm going to show you on page 9 -- if you would go to
8 page 9. And I'm referring to the exhibit number page 9. You'll see a
9 heading that reads, "Outlier Cost Management Optimization". And then
10 on that page, you can read it to yourself, and the jury can read it later,
11 it's got a number of questions. Do you see that?

12 A Yes, I do.

13 Q So it has, how does this -- how will this program impact their
14 net promoter score, and then there's a series of other questions with
15 responses; do you see that?

16 A I do.

17 Q Now, the question that -- well, let me back up. Do you know
18 what the purpose of this document is and how it's used in
19 [indiscernible]?

20 A In general, what I understand this to be is they will go -- the
21 team will go out and talk to sales organizations about customers and the
22 impact, and answer questions. So through the sales organization.

23 Q So would this be part of a due diligence exercise to decide
24 whether --

25 MR. ZAVTISANOS: Objection. Leading.

1 BY MR. BLALACK:

2 Q What would be the purpose of this document?

3 A It would inform them of the potential of the programs that
4 are -- or the program available, in this case, outlier cost management.
5 Try to preaddress any questions they may have such as net promoter
6 score, which is like, is the client going to be happy? Is the member going
7 to be happy about this; yes or no? And they get feedback and answers
8 questions.

9 Q I'm interested in that second question there down. It says,
10 "What is the competitive landscape?" Do you see that?

11 A Yes, I do.

12 Q And it says, "Is UHC the leader? Or are we behind others in
13 our approach? Please include all competitor's information available".

14 Then the response reads, "UHC is utilizing Data iSight, owned by
15 MultiPlan, to administer the FI OCM Program. 90 other payers
16 nationwide use this methodology in a similar manner"; do you see that?

17 A I do.

18 Q What did you understand the question about the competitive
19 landscape [indiscernible]?

20 A It's to anticipate, hey, are we going to be the first ones using
21 this or others using this and we're going to be in line with our
22 competitors.

23 Q For purposes of completing this survey, what was your
24 understanding of the state of Data iSight in the market?

25 A It was well out in the marketplace.

1 Q And did your [indiscernible] Data iSight?

2 A I'm sorry. You -- I couldn't hear you.

3 Q Sorry. Did your self-funded clients ultimately adopt Data
4 iSight to some degree?

5 A Yes.

6 Q Over what period of time would you say that adoption
7 occurred?

8 A Obviously, it's continuing. But it's a -- once it was put into
9 place. So I think as 2017, 2018 to current.

10 Q Now, are there self-funding clients today who do not get
11 [indiscernible]?

12 A I believe they still were when I left.

13 Q Now, during this period 2017 to 2019, was there any other
14 suggestions that you recall MultiPlan making to UnitedHealthcare to
15 improve the competitiveness of its out of network program?

16 MR. ZAVTISANOS: Hearsay, Your Honor.

17 MR. BLALACK: I'm offering it for the truth of the matter
18 asserted, Your Honor.

19 MR. ZAVTISANOS: Then I would ask for limine instruction,
20 Your Honor.

21 THE COURT: I think the question was fine, so objection's
22 overruled.

23 THE WITNESS: Can you ask it again, please?

24 BY MR. BLALACK:

25 Q During this period you were there, 2017 through the period at

1 issue here, January 2020, were there other suggestions that MultiPlan
2 made to UnitedHealthcare's out of network program team to improve the
3 competitiveness of its out of network programs?

4 A Yes.

5 Q Can you give me an example?

6 A It could improvements to Data iSight, the level for
7 benchmarking inside Data iSight. It could be improvements to fee
8 negotiation and other components.

9 Q Do you ever recall an initiative called Benchmark Pricing?

10 A Yes.

11 Q Was that one of the suggestions from MultiPlan?

12 A Yes, it was.

13 Q Now, I'm going to show you a document, sir. Which I believe
14 is in evidence. Plaintiffs' Exhibit 96. I believe Mr. Zavitsanos used this
15 with you this week.

16 MR. BLALACK: Could you please pull that up, Shane?

17 BY MR. BLALACK:

18 Q You'll see it's an email from you, dated April 20th, 2017 to a
19 number of people. Subject of which is "OCM - MultiPlan Benchmark
20 Pricing Overview"; do you see that?

21 A Yes, I do.

22 Q Do you remember being questioned about this document
23 earlier?

24 A Let me just take a peek. Yes, I do.

25 Q Now, if you turn to the attachment. "Overview benchmark

1 pricing April 18, 2017"; do you see that?

2 A Yes, I do.

3 Q And I believe you testified in response to questions from Mr.
4 Zavitsanos that you prepared this presentation?

5 A Yes, I did.

6 Q If you go to the next page, which would be page 3 of the
7 exhibit, you'll see an overview. And it says, "Recommendation:
8 [indiscernible] benchmark pricing over the shared savings program
9 when outlier cost management [indiscernible] Data iSight [indiscernible]
10 July 20, 2017". Do you see that?

11 A Yes, I do.

12 Q Now, could you remind the jury? They have to discuss this.
13 What was benchmark pricing and how did it work?

14 A Think about it as a bar to achieve. So if there's a wrap
15 network discount available -- so if a provider has an agreement with
16 MultiPlan, and that agreement's available for a payer like United or
17 anybody else to use. If United decides to use that -- if they look at that
18 agreement, and the price of that reimbursement rate is at a threshold
19 that, let's say, is above a benchmark. I believe we started at 500 percent
20 of Medicare. I think in this, it says move to 350.

21 But let's just say if it was at 500 percent of Medicare and it was
22 lower than that -- equal to or lower than, we would use that wrap network
23 discount. If that agreement with that provider was above 500 percent of
24 Medicare, we would say that's too expensive, it's not good enough. And
25 then we would move down into the hierarchy.

1 Q So just so that I'm clear about this. If you have a benchmark
2 price, does that mean that an out-of-network claim always must be
3 priced at that selected benchmark price?

4 A No.

5 Q Why not?

6 A If it didn't achieve or didn't meet that threshold of that
7 benchmark, then it would go next into the hierarchy of the out of
8 network program for that benefit plan.

9 Q So it would be fair to say that benchmark pricing ensured
10 that it would be priced above the benchmark?

11 A Yes.

12 Q But it could be priced for lower?

13 A Yes.

14 Q All right. Thank you. You just mentioned something that I
15 wanted to ask about. In fact, you can just see it's on the next page.

16 MR. BLALACK: Let's turn the page, Shane.

17 BY MR. BLALACK:

18 Q Do you see where it says, "competition and [indiscernible]
19 steps"?

20 A Yes.

21 Q I believe, again, Mr. Zavitsanos asked you about this. I want
22 to talk about a couple of points here. First of all, in the first paragraph, it
23 says, "Today, our major competitors have some sort of outlier cost
24 management; they use Data iSight. United will be implementing July 1,
25 2017". Do you see that?

1 A Yes, I do.

2 Q Does that refresh your memory about when Data iSight was
3 implemented?

4 A Yes, it does.

5 Q And this presentation was dated April 2017. So this would
6 have been a presentation about benchmark pricing that predated the
7 actual implementation of Data iSight?

8 A That's correct.

9 Q So why were you reporting to your colleagues that "Today,
10 our major competitors have some sort of outlier cost management; they
11 use Data iSight"?

12 A Because I think it was important for them to understand that
13 if we needed to be in line with our competitors that we need to move
14 forward with this. And it's an offering, right? It's an offering to clients.

15 Q And what do you mean "to be in line with our competitors"?

16 A To be competitive with them.

17 Q So can you -- and when you say, "to be in line with them",
18 are you referring benchmark pricing or Data iSight in that sense?

19 A In that sense, it would be Outlier Cost Management with
20 benchmark pricing.

21 Q Now, then you say, "One major competitor uses benchmark
22 pricing, described in prior slide". And then it says, "By implementing
23 Outlier Cost Management as currently planned, United catches up to the
24 pack, but not leading". Do you see that?

25 A I do see that.

1 Q And then it says, "If we implement benchmark pricing as
2 described, with the intent to reduce the threshold to 350 percent CMS,
3 United would be leading the pack along with a major competitor". Do
4 you see that?

5 A Yes, I do.

6 Q Just a few terms. When we say, "threshold to 350 percent
7 CMS", what does 350 percent stand for?

8 A That would be a recommended benchmark pricing.

9 Q CMS means what?

10 A I'm sorry. Medicare.

11 Q Now, did in fact when United -- well, first of all, did
12 UnitedHealthcare eventually adopt benchmark pricing?

13 A Yes, we did.

14 Q Did you adopt it at the recommended 350 percent?

15 A I don't believe so. I think we initially rolled out with 500
16 percent of Medicare.

17 Q And at some point in time, did you reduce the initial
18 benchmark price of 500 percent to something less?

19 A Yes, we did.

20 Q And what was that?

21 A I believe it was 400 percent.

22 Q So at any point in time, has the benchmark pricing that
23 United had used for its out of network programs been at 350 percent?

24 A I don't believe so.

25 Q Now, when you were referring to "implementing Outlier Cost

1 Management as currently planned, United catches up to the pack, but
2 not leading", what did you mean by that?

3 A What I meant by that is the pack is in terms of our
4 competitors, and that we were more expensive in terms of medical cost
5 reimbursement for employer groups. And that if we implemented
6 Outlier Cost Management, then we would be as competitive as they are,
7 and not behind.

8 Q But if you wanted to be a leader, what was it you were going
9 to need to do?

10 A We would need to be lower for the benchmark pricing.

11 Q So separate and apart from Outlier Cost Management. To be
12 a leader, you would need to adopt benchmark pricing and at that
13 threshold?

14 A Yes.

15 MR. ZAVTISANOS: Objection, Your Honor. Leading
16 constantly.

17 MR. BLALACK: I'll withdraw.

18 BY MR. BLALACK:

19 Q To be a leader, what was necessary for you to do?

20 A Well, it's -- and I'm sorry. I skipped step. You got to have
21 benchmark -- I'm sorry -- outlier cost management available, have
22 benchmark pricing then available, and then present to the clients that
23 that's available to them if they wanted to adopt it.

24 Q That would -- if you did all of those things, would you be a
25 leader then?

1 A We would be in the middle of the pack.

2 Q Did you eventually do all of those? Did you do all of those
3 things that you just described in the middle of 2017?

4 A Yes.

5 Q Did you adopt it at 350?

6 A No.

7 Q So when you -- where you ultimately settled out, was
8 it -- was Outlier Cost Management adopted?

9 A Outlier cost management was now available at that time.

10 Q Benchmark pricing was eventually adopted?

11 A Yes.

12 Q At what threshold?

13 A It started at 500 percent of Medicare.

14 Q So once you did that, where in relative to your competition
15 did you understand you were?

16 A We were with the pack.

17 Q And had you not implemented those plans, where would you
18 understand and expect you to be relative to your competition?

19 A We would be uncompetitive, and they would be
20 disappointed.

21 Q Now, just so that we can unpack this. You've referenced 350
22 percent of CMS here, and we've talked about conducting benchmark
23 pricing at 500 that was reduced to 400. We've separately talked about
24 350 percent of Medicare and 250 percent of Medicare; do you recall?
25 Because you've been testifying about programs that were tied to those

1 thresholds.

2 A Yes.

3 Q What were you referring to when you were describing 350
4 percent of Medicare and 250 percent of Medicare?

5 A So that was the methodology that was in line for the floor
6 related to the ER services.

7 Q Is that the ER [indiscernible]?

8 A Yes, it is.

9 Q Why did you all not follow through and go with the 350
10 percent of CMS benchmark that was originally [indiscernible]?

11 A Just because I think that would be just a very quick move.
12 And we wanted to show our clients the value of the program. At that
13 point -- I mean, clients could decide if they wanted to move that down,
14 but we wanted to get it implemented.

15 Q Okay. And do you remember when UnitedHealthcare
16 implemented benchmark pricing for its out of network program?

17 A I believe it was available in July of 2017.

18 Q All right.

19 MR. BLALACK: Counsel, can we approach the bench?

20 MR. ZAVTISANOS: Yes.

21 MR. BLALACK: Before I move into the next statement.

22 [Sidebar at 2:58 p.m., ending at 3:09 p.m., not transcribed]

23 THE COURT: Thank you, everyone for your courtesy.

24 BY MR. BLALACK:

25 Q Now, Mr. Haben, let's pick up with a different topic. I believe

1 you were asked by Mr. Zavitsanos if you understood that one of the
2 claims in this case was that the Plaintiff had an implied contract with the
3 Defendants in this case. Do you recall that?

4 A Yes.

5 MR. ZAVTISANOS: Counsel, I did not hear your question.

6 MR. BLALACK: I said -- I asked him whether he recalled
7 being asked in your examination that one of the allegations in this case
8 were that the Plaintiffs in this case had an implied contract with the
9 Defendants. That that's one of the issues.

10 THE WITNESS: Yes, I do.

11 BY MR. BLALACK:

12 Q Okay. In your role with UnitedHealthcare, in addition to
13 being a vice president of out-of-network programs, did you have a role
14 for provider contracting?

15 A Yes, I did.

16 Q What was that?

17 A I had a role with -- I'm trying to kind of skinny this down
18 because it was a broad role. I contracted with national hospitals. Am I
19 free to say who they were?

20 Q I think it's just enough to describe generally what your role
21 was without getting into different discussions. With any provider or with
22 the Plaintiffs.

23 A Fair enough. Very large national hospital relationships
24 across the country. So I did provider agreements with them. Very large
25 national -- the largest national labs, I did contracts with them. I did

1 national ancillary. So very large national ancillary, which are like DMA
2 providers. I did contracts with them, as well.

3 Q Now, I want to ask you about UnitedHealthcare's approach to
4 provider contracting with out-of-network providers. Based on your years
5 of experience, as a matter of policy, would UnitedHealthcare ever agree
6 to pay millions of dollars to health benefit claims without recording an
7 agreement in a written contract?

8 MR. ZAVTISANOS: Your Honor, objection. Invades the
9 province of the jury. And also, 403.

10 MR. BLALACK: This is just asking --

11 MR. ZAVTISANOS: And this --

12 MR. BLALACK: This is asking about the foundational
13 element of them proving the claim, Your Honor. That's all. I'm asking
14 about the policy of the company.

15 MR. ZAVTISANOS: And Your Honor, that's a --

16 THE COURT: Rephrase it. Rephrase.

17 MR. ZAVTISANOS: Excuse me. I'm sorry. That's 48.035
18 under the Nevada Statutes. I believe this -- we do not have an expressed
19 contract claim. We have an implied contract claim.

20 MR. BLALACK: And I'm going to ask --

21 MR. ZAVTISANOS: We believe the -- I'm sorry, Counsel.

22 MR. BLALACK: Go on.

23 MR. ZAVTISANOS: We believe the elements are different.
24 And this -- this directly invades the province of the jury. And more
25 importantly, the Court.

1 MR. BLALACK: Your Honor, I am not invading the province
2 of either the Court or the jury. I'm asking about my client's policies and
3 practice with respect to contracting, which is probative of the elements
4 of the claim.

5 THE COURT: Then rephrase with regard to the policies.

6 BY MR. BLALACK:

7 Q Mr. Haben, could you tell me during your time as a leader in
8 provider contracting for UnitedHealthcare, as a matter of the
9 UnitedHealthcare policies -- that's what I'm asking -- were those policy --
10 did those policies contemplate that UnitedHealthcare would agree to a
11 provider contract that was not in writing?

12 MR. ZAVTISANOS: Objection, Your Honor. Again, invades
13 the province of the Court.

14 THE COURT: That's an objectionable question.

15 BY MR. BLALACK:

16 Q Well, let me ask it this way. Mr. Haben, could you explain to
17 the jury what the policies of UnitedHealthcare were with respect to
18 contract? That's all I'm asking.

19 A Yes. Contracting needed to be in writing on contractual
20 paper that was drafted by our attorneys and approved and used and
21 available through a database.

22 Q And was there any policy with respect to the term, like was it
23 permissible to have a contract without an end date?

24 MR. ZAVTISANOS: Your Honor, again, invades the province
25 of the Court. And -- can I approach, Your Honor?

1 THE COURT: Yes.

2 [Sidebar at 3:13 p.m., ending at 3:15 p.m., not transcribed]

3 THE COURT: All right. For the record, I've sustained an
4 objection.

5 BY MR. BLALACK:

6 Q All right. Okay. Now, let's talk about some other topics, Mr.
7 Haben. And I want to talk about specifically now some issues that were
8 discreetly covered with you by Mr. Zavitsanos. And when he questioned
9 you, there were a number of topics. When he would ask you a question
10 and you would say you disagreed or you thought it was a
11 mischaracterization, you would ask to explain, and you did not -- were
12 not given that opportunity.

13 MR. ZAVTISANOS: Excuse me, Your Honor. The rules
14 permit on cross-examination to ask leading questions. And explanations
15 are offered during direct examination, as counsel is doing now.

16 THE COURT: So --

17 MR. ZAVTISANOS: I would object to the -- to the argument
18 and to the -- to the attack on counsel.

19 THE COURT: You'll have to -- you'll have to break it down.

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

21 BY MR. BLALACK:

22 Q What I'm going to do now, sir, is I'm going to give you the
23 opportunity to explain those answers. And so what I want to do is I'm
24 going to show the jury, and I'm going to ask Ms. White if she could turn
25 on the ELMO for me. And you'll see here, I've written down our

1 summary. And obviously, Mr. Zavitsanos can stand up during this
2 examination to tell me I've got it wrong. But these are our
3 understanding of what the assertions in his examination were to you,
4 Mr. Haben. And I want to go through each of these and start with what
5 you were questioned and the answers that you gave and give you a
6 chance to explain.

7 MR. ZAVTISANOS: Your Honor, I'm sorry. So counsel do
8 not make assertions during examination. They ask questions. And I'm
9 looking at just the first one. I was asking questions about that. Now, if
10 he wants to -- if he wants to ask the witness whether he agrees with this
11 or not. But to represent that these were my assertions of what they are
12 saying, I was asking questions. And in fact, I think this gentleman
13 disagreed with the first one that's up. So I -- this is a mischaracterization.
14 And it's also attempting to inject me into the examination.

15 MR. BLALACK: Your Honor, I am not characterizing this as
16 argument. I am going to go through each of these questions and Mr.
17 Haben's responses and allow him to explain the information he did not
18 provide in cross-examination.

19 THE COURT: You have to present it in a more neutral way.

20 MR. ZAVTISANOS: Your Honor -- I'm sorry.

21 BY MR. BLALACK:

22 Q All right. Now, let me ask you this, Mr. Haben. On the first
23 one, I'm going to show you some testimony -- some questions and
24 answers from your examination with Mr. Zavitsanos. And I want you to
25 kind of start there and go through and discuss those topics, okay?

1 A Yes.

2 MR. BLALACK: All right. So can I have Shane bring up the
3 first of those excerpts, please?

4 MR. GODFREY: Which exhibit are you referring to?

5 MR. BLALACK: This is 11/2/21, the date of the transcript,
6 12475.

7 MR. GODFREY: What page?

8 MR. BLALACK: Page --

9 MR. ZAVTISANOS: Your Honor, I'm sorry. I'm not really
10 sure what we're doing here. I -- there's a process for impeachment. He's
11 putting up -- he's putting up trial testimony when there is not --

12 THE COURT: All right. Meet me in the hall, please.

13 [Sidebar at 3:18 p.m., ending at 3:22 p.m., not transcribed]

14 THE COURT: Thanks, everyone. For the record, I overruled
15 an objection.

16 BY MR. BLALACK:

17 Q All right. So what I'm going to do is quickly show you the
18 sequence from your examination just to orient us on where we are and
19 the topic that we're going to be discussing. So the first one I want to
20 show is page 124, lines 7 to 15 from the transcript of November 2nd.

21 MR. BLALACK: Do you have that, Shane?

22 MR. ZAVTISANOS: November?

23 MR. BLALACK: November 2nd.

24 MR. ZAVTISANOS: Thank you.

25 BY MR. BLALACK:

1 Q All right. So -- "are you telling this jury," let's find that.
2 There you go. "Are you telling this jury that saving someone's life who's
3 been shot, that this amount -- this charge amount is egregious?" Mr.
4 Haben answered, "I'd tell you and I'd tell the jury when the claim is
5 submitted, there's a lot of medical records that are involved that can
6 justify reasonable amount.

7 So the CPT code is typically one line item. I would assume if
8 someone got shot, that that's one line item making up the claim. 1,400
9 to save someone's life? I would think it would be a lot more expensive
10 than just what I see."

11 And then 130, line 20, skipping to the end. Line 20,
12 "Yes, but he says I want to be respectful, yes or no for 99285. The
13 most severe code we have is [indiscernible] egregious. And so I'm trying
14 not to be difficult, so I don't -- yes or no. I'm trying to recall it.

15 Question, "If you want to say I can't answer that, that's fine, too."

16 "I can't answer that."

17 "Okay." "I'd need to reference other items. Thank you."

18 Do you see that, sir?

19 A Yes, I do.

20 Q Okay. So I want to -- that's what I want to talk -- I want to
21 discuss, where I want to pick up. Now, Mr. Haben, have you reviewed
22 that testimony? Do you remember Mr. Zavitsanos asking you if \$1,400
23 was egregiously high to reimburse a CPT code 99285 claim related to a
24 gunshot?

25 A Yes, I do.

1 Q Do you recall him asking you if \$254 was egregiously low to
2 reimburse that same claim for that same kind of code related to a
3 gunshot wound?

4 A Yes, I do.

5 Q Now, you testified, and I just showed it, that a CPT code is
6 typically one line item. So you said, "I would assume if somebody got
7 shot, that's one item of a large claim." What did you mean by that?

8 A I think the way it was represented is it's a gunshot stated
9 here. I think that's a pretty severe wound issue. And -- or a problem. I
10 mean, it's just horrible. And I can't imagine that a claim for one item
11 would be sent in for a patient that had a gunshot wound.

12 Q I'm not sure the jury knows what you mean by one item.
13 What do you mean when you say one item?

14 A So CPT -- as I stated before, CPT codes -- I'm not a coding
15 expert. But claims come in with CPT codes that represent the services
16 that have been performed.

17 MR. ZAVTISANOS: Your Honor, then in that case, we object
18 to everything from this point forward. Speculation.

19 MR. BLALACK: Your Honor, the witness is not testifying as
20 an expert on CPT codes. He knows how the CPT claims come in because
21 they're billed out on a claim form.

22 MR. ZAVTISANOS: He literally just said the opposite.

23 THE COURT: He said, I'm not an expert. But he could
24 explain it. Objection's overruled.

25 BY MR. BLALACK:

1 Q Please continue.

2 A Yes. As I see claims through our out-of-network programs,
3 they come in with multiple claim lines or CPT codes. Those are codes for
4 services that were performed on a patient.

5 Q And so if a claim -- can a claim have more than one CPT code
6 on it?

7 A Yes, it can.

8 Q And what is -- what does each CPT code on a claim line --
9 claim represent?

10 A A service that was performed on that patient.

11 Q So if there were five CPT codes on a claim, how many
12 services would be reported on the claim?

13 A Five services.

14 Q And when United adjudicates those claims to price them or
15 determine if they're covered, does it do so by each claim line or just in
16 the aggregate?

17 MR. ZAVTISANOS: Your Honor, I'm sorry. I think this
18 touches on a limine point. And I'm sorry to interrupt, but I think I
19 understand what counsel's doing.

20 MR. BLALACK: I'm just trying to establish whether they're
21 evaluated individually. That's all.

22 MR. ZAVTISANOS: Well, I --

23 THE COURT: Why don't you approach. Let's see if we can
24 handle it up here.

25 [Sidebar at 3:26 p.m., ending at 3:27 p.m., not transcribed]

1 BY MR. BLALACK:

2 Q Okay. My question was, when a claim comes in with
3 multiple claim lines on them, are they each reviewed and evaluated
4 distinctly?

5 A Yes.

6 Q Now Mr. Zavitsanos I think told you on the first day of your
7 examination that his clients dispute over 11,000 claims in this case. Do
8 you recall something like that?

9 A Yes, I do.

10 Q And when he -- did he show you any of those actual claims?

11 A I don't believe he did.

12 Q And when he wrote up on the white board a number, he
13 wrote a number something like \$1,100 -- let's see whatever the amount
14 was, I think it was \$1,400 and then he wrote 254. Did you -- did you see
15 that?

16 A I believe it was 1,428.

17 Q Do you know what those numbers represent?

18 A I have no idea what he was trying to represent.

19 Q Now I believe you said, and the testimony would show that
20 you could not say if \$254 is a low payment for a CPT code 99285 because
21 you would "need to reference other items." Do you remember that?

22 A Yes, I do.

23 Q What other information would you need to look at to
24 determine if that payment was reasonable?

25 A Usually medical records are needed to be looked at.

1 Q What about other data about the rates for payment?

2 A In terms of geographic location, type of service, what
3 providers accept.

4 Q Was any of that information provided to you in connection
5 with these examples?

6 A No, they were not.

7 Q Now I want to show you a few examples of disputed claims
8 in this case from the disputed claims list. And this is Plaintiffs' Exhibit
9 473, which I believe is stipulated as admissible; is that right?

10 MR. ZAVITSANOS: Yes.

11 THE COURT: 473 is in.

12 BY MR. BLALACK:

13 Q Now, sir, what I want to do is just pull out a couple of the
14 illustrations from their claims list, just to show you and the jury the type
15 of information that we have.

16 A I don't have it. I have 471 and 476.

17 Q Okay. Why don't we -- I'll do it electronically and see if you
18 can follow along.

19 A That would be better. Thank you.

20 Q I'm not sure if you'd be able to make sense of that even if
21 you had a hard copy.

22 A All right.

23 Q I'm going to ask Shane here to bring out the claim line that
24 I've identified -- I've identified by name. First of all I'm going to show
25 you the problems. You'll see there is a reference to -- can you see what

1 those columns say, sir, at the top?

2 A Yes, I can.

3 Q Can you read those out loud?

4 A The first column on the left is entity. Then the next column
5 is facility. The next column is facility -- I'm assuming that's facility
6 county. DOS typically means the date of service. The account number.
7 The billed provider. The billed CPT code (bundled).

8 Q Okay. Now -- and then to the right do you see a column that
9 says charges?

10 A I do.

11 Q And you see the next column says allowed.

12 A Yes, I do.

13 Q And then a little farther there's another row. Do you see one
14 that says employer?

15 A Yes, I do.

16 Q All right. So let's just -- I want -- the one that's highlighted,
17 let's use that one as an illustration. So who is the entity listed for that
18 particular code?

19 A It says Ruby Crest Emergent -- I'm assuming that means
20 Emergency.

21 Q Do you know if that's one of the Plaintiffs in this case, sir?

22 A I believe so.

23 Q And then there's a date of service. Can you tell what that
24 date of service is?

25 A May 29th, 2018.

1 Q And then under the billed CPTs, can you tell what CPT codes
2 are reported on this claim?

3 A I believe it's 99285; 2777 -- I'm sorry, 27788; and 99152.

4 Q Okay. Can you tell me the allowed amount for that claim?

5 A The allowed amount is \$1,781.91.

6 Q Can you tell what the billed charges on the claim?

7 A The billed charges were \$2,477.

8 Q Okay. And can you tell what the employer group was for that
9 particular member?

10 A It's Major Drilling America, Incorporated.

11 Q Now sir, I'm going to ask my colleague Shane to bring up a
12 demonstrative that I prepared based on this claim. And what I'm going
13 to ask you to do is just confirm that the information related to the entity,
14 county, date of service, employer charges allowed, the CPT codes are the
15 same that you just read off on the claim.

16 A It's Ruby Crest, Elko County. Date of service is the same.
17 The company and the employer is the same. And the charges and the
18 allowed look the same.

19 Q Okay. Now, sir, the codes there, can you tell if those are the
20 same codes?

21 A Yes.

22 Q Now what I added in the right hand column is the
23 description. And I'll represent to you that's the description for each of
24 those codes in the CPT manual. That's the manual those codes are
25 generated in. And sir, when you testified -- well, let me back up. Can

1 you tell from looking at the description, the nature of the event that was
2 captured in this billing?

3 A The description's got a detailed information about the code.

4 Q Is there reference to a distal fibula fracture?

5 A Yes, me just take a look at it. Yes, thank you.

6 Q Okay. And that code up at the top, 99285, is that the same
7 highest intensity code that Mr. Zavitsanos continued to call the most
8 severe code?

9 A Yes, I believe so.

10 Q Okay. So and do you see a reference to surgical care?

11 A Yes, down in the middle there.

12 Q So my question to you, sir, when you talked about the kind of
13 -- the kind of claim you would typically associate with [indiscernible].
14 You mentioned you would typically file more than one claim on it; is that
15 right?

16 A That is correct.

17 Q Is this the type of claim that is more consistent with your
18 expectations [indiscernible]?

19 A Yes.

20 MR. ZAVITSANOS: Your Honor, I'm sorry. We're getting
21 into expert issues. This is an undisclosed lay expert. We do have
22 experts that are going to be testifying about these issues. So we object
23 to this line of inquiry, Your Honor.

24 MR. BLALACK: Your Honor, I'm not asking for any expert
25 opinion. I'm trying to show to the jury the basis for the prior testimony

1 he gave in response to questions by Mr. Zavitsanos about why the
2 example he was providing was inconsistent with his own expectations
3 and understanding about how that high intensity [indiscernible].

4 THE COURT: If you get into this in great detail with this
5 witness, I won't allow another witness to go the same place.

6 MR. BLALACK: Okay. That's fine, Your Honor. I'm not -- I'm
7 just not sure I'm following in terms of what specific issue.

8 THE COURT: Well, you can't have two witnesses on the
9 same issue. So if you have expert testimony coming in on this issue,
10 then you need to rely on the expert rather than --

11 MR. BLALACK: Well, we definitely have testimony, Your
12 Honor, on a host of issues, but not on the question of what Mr. Haben's
13 expectations were about what a claim associated with an emergency
14 event would look like associated with that kind of dollar --

15 MR. ZAVITSANOS: Your Honor, I'm sorry --

16 THE COURT: You're getting close to getting cut off now.
17 Getting cut off on that. But I'll overrule the objection for now.

18 BY MR. BLALACK:

19 Q Well, let me go to the top there then Mr. Haben. In this event
20 the total charges for this -- these codes were what?

21 A \$2,477.

22 Q And the total allowed was what?

23 A \$1,781.91.

24 Q And you -- I know your accounting maybe is not what you
25 want it to be. Can you give me a rough sense of what the total percent

1 of the charges were that were allowed on this?

2 A I would need help with a calculator. If somebody could --

3 MR. BLALACK: Mr. Killingsworth [indiscernible] and save me
4 right now.

5 BY MR. BLALACK:

6 Q Let me try and tell me if my math is right. I have 71.9
7 percent. Does that sound right?

8 A I was going to say about 75 percent, yes.

9 Q So sitting here today, sir, do you have enough information to
10 render any kind of informed judgment about whether the amount
11 allowed on the hypothetical Mr. Zavitsanos provided you is reasonable?

12 A I have no ability to do that.

13 Q All right. Now let's look at the next issue that Mr. Zavitsanos
14 raised with you, and that relates to the suggestion that in 2016 the
15 shared savings program was a win, win, win. But United Health moved
16 its clients off of shared savings to drive its own fee revenue. Do you
17 recall the questions and answers around that topic?

18 A Yes, I do.

19 Q Let me show you the exchange that I want to focus on. This
20 is November 3rd, 2021, page 45.

21 MR. ZAVITSANOS: What line?

22 MR. BLALACK: Line 45 -- page 45, line 21.

23 BY MR. BLALACK:

24 Q The question was, "Ninety-five percent of the out-of-network
25 doctors were happy to discount their bill charge. No balance billing.

1 You get a fee. The employer has clarity. It's a win, win, win, win all the
2 way around in 2016, right?"

3 "A Can I clarify what you said?

4 "Q No, sir."

5 Now my question, sir, there was an exhibit referenced in that
6 exchange, which was Plaintiffs' Exhibit 25.

7 MR. BLALACK: So let's bring that up and show that to the
8 jury as well.

9 BY MR. BLALACK:

10 Q Do you remember Mr. Zavitsanos asking you about this
11 document, sir?

12 A Yes, I do.

13 Q If you could go to page 2, this was a chart. And I think in the
14 upper right hand column it says "client eligibility and it had ASO 95
15 percent of membership has SSP." Do you see that?

16 A Yes.

17 Q And just to be clear, this was a little confusing. When you
18 heard the 95 percent of the membership is that referring to human
19 beings or is it referring to customers or clients?

20 A It is not referring to clients. It's referring to the human
21 beings when you add up all of the members underneath those clients.

22 Q All right. Now having looked at this exchange you had with
23 Mr. Haben [sic], you indicated that you could clarify.

24 A I'm sorry with who?

25 Q I mean, excuse me, Mr. Zavitsanos. Do you agree with his

1 framing that it was a win, win, win?

2 A Can you pull up my testimony?

3 Q Sure. Can you go back in?

4 A Can you ask your question again?

5 Q Sure. My question is do you agree that it was a win, win,
6 win, all the way around?

7 A No, I don't. I was trying to clarify I think he misstated the
8 percentage of what it was related to.

9 Q And why didn't shared savings solve all of the problems?
10 What was the problem that needed to be addressed with shared
11 savings?

12 A So our clients, as I stated before, when we looked at all
13 outlier cost management and our work with the vendor, there was a
14 concern that we weren't in the pack, and we were behind.

15 MR. ZAVITSANOS: Objection, Your Honor.

16 THE WITNESS: And so it wasn't a win for our clients.

17 MR. ZAVITSANOS: Excuse me. Hearsay, foundation, and
18 the issues we discussed at the bench. No ability to -- I'm not -- I don't
19 want to make a speaking objection, Your Honor. Foundation and
20 hearsay.

21 THE COURT: All right. Let's take our afternoon recess. I
22 would have taken it at 3:30, but you're afternoon's been a little bit
23 chopped up.

24 So during the recess don't talk with anyone else or each
25 other about any subject connected with the trial. Don't read, watch, or

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

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

10 Most importantly do not form or express any opinion on any
11 subject connected with the trial until the jury deliberates. It is 3:42. Let's
12 be ready at 4:00. We'll go for 45 minutes. And we thank you for your
13 courtesy.

14 THE MARSHAL: All rise for the jury.

15 [Jury out at 3:42 p.m.]

16 [Outside the presence of the jury]

17 THE COURT: Do you guys want to take a break and then put
18 it on the record, or put it on the record now?

19 MR. ZAVITSANOS: Whatever is the Court's pleasure, Your
20 Honor.

21 THE COURT: I'd rather do it while its fresh in everybody's
22 mind.

23 MR. ZAVITSANOS: So Your Honor, here's the issue. So
24 here's the issue. So counsel has selectively chosen a handful of the
25 SPD's that contain varying language. Some of the ones that he showed

1 do not contend reasonable and customary. We don't have all the SPDs
2 for all the clients associated with these claims and the amendments. But
3 the bigger issue now, and really the fundamental issue to me in this
4 case, is whether these changes -- this migration that they've mentioned,
5 whether that was client driven or whether that was United driven.

6 Now I have to say, Your Honor, it defies logic, it absolutely
7 defies logic, that a company as sophisticated as UnitedHealthcare with
8 the kind of infrastructure that they have has been unable to produce one
9 piece of paper from any client indicating that they were the initiating
10 force behind these changes.

11 And for this man, who -- and he did this multiple times
12 during my examination, to suggest that this was client driven, it literally
13 -- there is no way for me to be able to examine him on this point. And so
14 I'm left with -- the only thing that I'm left with is whether the jury finds
15 him palatable or not. Whether they find him credible or not, based on
16 his -- based on his oral word.

17 So I don't think it's appropriate to ask him whether this was
18 driven by the Plaintiff. Certainly if this was recommended -- if this was
19 driven by consultants, there's no consultant that I know and look we
20 work with a lot of clients that work with consultants, none of that's been
21 produced. None of these letters from these clients have been produced.
22 There's nothing. And there are -- there are some documents in evidence
23 where United is saying that the clients want it. He can use those. I mean
24 those are in evidence. That's fine. But to go further with what he's
25 saying here, I just -- it really puts us in a box.

1 MR. BLALACK: Your Honor, I disagree with that
2 characterization. We produced a half a million pieces of paper, which is
3 littered with communications about client pressures, client
4 competitiveness, lack of competitiveness, being behind the pack. I've
5 shown a handful of those today. He showed some of them in his
6 examination. And so I just think it is fundamentally factual and correct
7 that there isn't a substantial record in this massive document collection
8 about the basis for UnitedHealthcare's view that it was behind the pack
9 and that these programs at all were responsive. I've shown three today.

10 Mr. Zavitsanos' passively fair game to teach him and say you
11 know what, that's not true. This is what you're doing. You weren't really
12 behind the pack. In fact, within the last week, he showed him four or five
13 different documents, the purpose was to suggest to the jury that they
14 were leading the market. You may remember there were a couple of
15 them about how you're leading the market, and I forget the phrase,,
16 beating the doors off or something like that.

17 So there's evidence that both sides have available to argue to
18 the jury their respective position [indiscernible] but it's not from lack of
19 documentation.

20 On the claim document issue, they introduced three claim
21 documents in their exhibit. They did the Walmart plan; they did the
22 AT&T plan, and I'm trying to think of what the third one is, but I know at
23 least those two. And so I went and pulled out the Walmart plan myself.
24 So the notion that we're cherry-picking plan documents when they're
25 using plan documents that they want, and we made a production of

1 200,000 administrative records with the relevant plan language in there,
2 it's just baseless.

3 MR. ZAVITSANOS: A brief reply, Your Honor. I'm not taking
4 issue with counsel's right and privilege to select whatever documents
5 they want from the production and try to admit those in evidence. That's
6 not the issue. That's not my complaint. My complaint is there are no
7 documents, zero, zero, produced from third parties outside of United that
8 indicate that this is client driven. Zero. I mean literally zero.

9 And the second complaint that I have, Your Honor, is that not
10 all the plan documents were produced. Now the second concern I've
11 raised with the Court before, that's a little bit -- I'm more concerned
12 about it, but it's the first one that I'm particularly concerned about,
13 because look, that to me just feels a lot weightier in terms of the kind of
14 evidence that a jury would put stock in. Whether this was United being
15 motivated by greed or whether this was United trying to be kind of a
16 good corporate citizen and try to save their clients' money at their
17 request. That's a very material issue on the issue of what a reasonable
18 rate is. And so I'm just -- I've got one arm tied behind my back here.

19 MS. LUNDVALL: And Your Honor, what Mr. Zavitsanos is
20 doing is he's laying the foundation for the request in for the jury
21 instruction dealing with the adverse inference.

22 THE COURT: I understand.

23 MS. LUNDVALL: There was a sanction that was imposed as
24 far -- back in April. The documents that are being referenced fall within
25 the scope of that adverse inference and this witness has indicated

1 repeatedly that in fact there were conversations with clients, and then he
2 pivoted to conversations with consultants. And that there was
3 documentation from these third parties that were driving this. And that
4 is the documentation that we do not have.

5 THE COURT: I'm going to overrule the Plaintiffs' objection.
6 However, after I hear the cross-exam, or the -- when I hear your redirect
7 we'll resolve the issue of jury instructions.

8 MR. ZAVITSANOS: Thank you, Your Honor.

9 MR. BLALACK: Thank you, Your Honor.

10 THE COURT: Thank you both.

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

12 THE COURT: Ready to bring in the jury?

13 MR. BLALACK: We're ready, Your Honor.

14 THE COURT: The jurors are asking about a schedule for next
15 week. So I will do that -- I'll have it for them Friday. And we'll have
16 letters for their employers on Friday.

17 MR. ZAVITSANOS: And Your Honor, you -- I gather that
18 means Your Honor will make a decision on whether we start earlier or
19 not by Friday?

20 THE COURT: I will. I'm thinking between 8 and 8:30. And --

21 THE MARSHAL: All rise for the jury.

22 THE COURT: -- short lunches.

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

24 THE COURT: Thank you. Please be seated. So to the
25 members of the jury, you know that you guys need a schedule for next

1 week. We're off tomorrow for the holiday. And for anyone who's a
2 veteran, thank you for your service. But Friday, we'll start again. Let's --
3 start at 9 Friday instead of 9:30. That'll give us a half hour. And more
4 than likely, next week we'll have longer days. I will also have a schedule
5 for you Friday and letters for your employers on Friday. Thank you.

6 Please proceed.

7 MR. BLALACK: Thank you, Your Honor.

8 BY MR. BLALACK:

9 Q Mr. Haben, when we broke, we were discussing the
10 suggestion that the shared savings program was a win-win. Do you
11 remember that?

12 A Yes, I do.

13 Q I think you had explained why while it offered a lot of good
14 benefits, it also had some drawbacks. Do you remember that testimony?

15 A Yes, I do.

16 Q Typically -- let's just remind the jury. The primary
17 component of the shared savings program is out-of-network?

18 A That is correct.

19 Q Typically, what are the nature of the agreements that the
20 third-party, like MultiPlan has in an out-of-network with those providers
21 that participate?

22 A Typically, they're a percentage off of billed charges. So
23 whatever the provider bills, it's a percent reduction off of that.

24 Q And has that methodology contributed in any way to the
25 shortcomings of the program?

1 A Yes.

2 Q Why?

3 A Because there was no limit to what the provider could do for
4 increasing their billed charges. So if it was a percentage off of that, if -- if
5 those bill charge amounts increase, which is really the chargemaster of
6 that specific provider. If that continues to go up, and goes up at a certain
7 point, the value of what that discount was prior could've been erased.

8 Q Let's just make sure the jury understands what you're talking
9 about there. I'm going to ask Ms. White to turn on her Elmo real quick.
10 So I'm going to just try to illustrate [indiscernible] over time. Sir, I've laid
11 out year one, year two, year three. Okay?

12 A Okay.

13 Q You see that?

14 A Yes.

15 Q Now, let's assume that the wrap agreement between
16 MultiPlan [indiscernible] and an out-of-network provider offered a 20
17 percent discount. Well, actually, something simple. A ten percent
18 discount for bill charges, okay?

19 A That's fine. Can I -- I'm going to be picky on how you put
20 that. It's not of bill charges.

21 Q Yeah.

22 A It's off of.

23 Q I'm sorry.

24 A That's very important.

25 Q Appreciate it. Sorry for that bad grammar. Okay. So in year

1 one, if the RAP agreement had an agreement ten percent off of build
2 charges, and the chargemaster or bill charged for a service under that
3 agreement was \$1,000 --

4 A Okay.

5 Q -- that's the assumption, what would be the rate that
6 UnitedHealthcare could access under the shared savings program for
7 that provider in this program?

8 A So it would be \$900. Ten percent reduction off of 1,000.

9 Q So is that description in year one capture it properly?

10 A Yes.

11 Q Okay. Now, let's assume for a hypothetical that the bill
12 charge for that provider has increased by ten percent in year two.

13 A Okay.

14 Q What would that bill charge be? Would that be \$1,100?

15 A Yes.

16 Q So with that same RAP agreement in place, what would be
17 the rate that UnitedHealthcare could access to reimburse a claim from
18 that same provider in year two?

19 A So it would be a ten percent reduction. So it'd be a \$110
20 reduction.

21 Q So that would be \$990?

22 A \$990. Yes.

23 Q All right. Now, let's assume in year three the provider's
24 charge is increased by \$100. So now that would be \$1,200 for the billed
25 charge in year three. So using the same RAP network agreement that

1 was in place on year one, what would be the rate that the
2 UnitedHealthcare plan could access under the shared savings program?

3 A So that'd be a ten percent reduction. So a reduction of \$120.
4 And that would be 1,080.

5 Q That's what I've got. 1,080 would be the rate under the
6 shared savings program. Does that look right, sir?

7 A Yes.

8 Q The following year, let's assume that the provider this time
9 only increases the charge by \$50. So now it's 1,250 in year four. Okay?

10 A Okay.

11 Q Under that same RAP agreement, with that ten percent
12 discount, what is the amount or the rate that UnitedHealthcare could
13 access for that provider for a member in year four?

14 A So that's a ten percent reduction. So that would be \$125
15 reduction. And I believe the math is 1,125.

16 Q So if I -- does that all apply, sir?

17 A Yes, it does, sir.

18 Q So same rate wrap agreement, same rate, same provider,
19 everything's the same. The only thing that changes is that the charge
20 increases year over year, correct?

21 A The chargemaster for that provider has increased.

22 Q And over that time, the rate the member -- the benefit plan is
23 paying using the shared savings program is increasing from year one at
24 \$900, in year four to 1,125?

25 A That is correct.

1 Q And does that -- like, is that hypothetical I'm describing here
2 typical of the experience that UnitedHealthcare observed in the market
3 during the period that you were questioned about by Mr. Zavitsanos?

4 A Yes.

5 MR. ZAVITSANOS: Excuse me, Your Honor. Objection. Lack
6 of specificity. And also, speaking as a corporate rep. So --

7 THE COURT: Overruled.

8 BY MR. BLALACK:

9 Q So as a result, did the dynamic that's illustrated in the
10 example we just walked through with the jury, was that a factor that
11 contributed to UnitedHealthcare's recommendations to clients about out-
12 of-network programs over the course of the period at issue in this case?

13 A Yes, it was.

14 Q Now, let's move on to a new topic. So I want to talk about
15 the suggestion that UnitedHealthcare's goal was to move clients off of
16 the reasonable and customary FAIR health program to shared savings
17 program enhanced to cut reimbursements and make more money.
18 Okay. That's what I'm going to focus on.

19 A Understand.

20 Q I'm going to show you the exchange that you had on this
21 question with Mr. Zavitsanos. This is page 57 of the transcript from
22 November 3rd. Okay. If you'd look at line 7 through 16, you'll see an
23 exchange that reads,

24 "Q So this document is in 2018. We've got -- it's two years after
25 the one we just looked at. We're getting these -- we're getting these

1 fees, these percentage fees. Now the goal is to get clients off of
2 reasonable and customary care health.

3 Can you underline that, Michelle?

4 "Q United's goal on this internal only document is to get clients
5 off of this so your salesforce can earn a fee, right?"

6 You responded, "That is misrepresented. I can explain."

7 "Q No, sir."

8 And then he proceeds. Is that correct?

9 A That is correct.

10 Q All right. Does that refresh your recollection of the issue I'm
11 going to be talking to you about now?

12 A Yes, it does.

13 Q You were also shown an example --

14 MR. ZAVITSANOS: Your Honor, under optional completion,
15 can we read the rest of the Q and A on that page, please?

16 MR. BLALACK: Sure.

17 THE COURT: You may.

18 MR. ZAVITSANOS: Including the Court's instruction.

19 MR. BLALACK: Sure.

20 THE COURT: You may.

21 BY MR. BLALACK:

22 Q All right. So the document I want to show you is referenced
23 in that exchange, sir. It's Plaintiff's Exhibit 368.

24 MR. BLALACK: So Shane, could you bring that up?

25 BY MR. BLALACK:

1 Q This is the document to which you -- about which you were
2 being questioned. Sir, do you remember being questioned about this
3 document?

4 A Yes, I believe so.

5 Q If you'd go to page 7. The first -- under the first sentence,
6 under the sales strategy of keeping counts it says, "The goal is to provide
7 value and advocacy for consumers and plan sponsors." Do you see that?

8 A Yes, I do.

9 Q Okay. What does that mean?

10 A What that means is clients demand value. And our goal was
11 to make sure that they are satisfied with what we provide.

12 Q Uh-huh.

13 A And that we were doing an advocacy component for the
14 program for the consumer. So that means the employees or the patients
15 and the plan sponsors to take the members out of the middle, if we need
16 to.

17 Q Now, underneath that, the very first bullet says, "Clients are
18 not obligated to change their out-of-network program. But you are
19 obligated to review the options and inform your clients as appropriate."
20 Do you see that?

21 A Yes, I do.

22 Q What was that -- what did that mean?

23 A Just you can't make a client change, but you need to make
24 sure that they understand what's available for them.

25 Q And earlier, we talked about whether United has programs

1 that were opt-in programs or opt-out programs, do you remember that?

2 A That's correct.

3 Q How does United's approach to that question relate to this
4 kind of stuff here?

5 A It's an opt-in concept.

6 Q Now, just to remind the jury, when we're talking about this
7 physician reasonable and customary, does that even apply to
8 [indiscernible], sir?

9 A It does not.

10 Q And with respect to the physician refund customary
11 program, what was United's goal in terms of dealing with its clients on
12 that program?

13 A Our goal was to inform them of the options that they had to
14 help address medical expense and to make sure that they understood
15 that, and what the fees were for that if they wanted to choose it so that
16 they could make a decision.

17 Q Now, you've described earlier with the shared savings
18 program some of its benefits and some of its drawbacks. Do you recall
19 that?

20 A Yes.

21 Q Were there any drawbacks to your -- on your time when you
22 were meeting out on that program with the physician reasonable and
23 customary agreement?

24 A I believe that there was the exposure to balance billing,
25 although fairly rare.

1 Q Okay. And the benchmarks that were used to price claims
2 under that program, what were they based on?

3 A They were based on what should providers submit for billed
4 charges.

5 Q So the same kind of concerns that were presented with the
6 shared savings program, were they present for the reasonable --
7 physician reasonable and customary program?

8 A Yes, they were.

9 Q In what way?

10 A Again, the same issue. There was no control. The providers
11 could do whatever they want for their bill charge amounts. And again, to
12 be very specific, it's their specific chargemaster, what they would submit
13 for a claim.

14 Q We've now covered that topic. Let's go on to the next one,
15 which is the information that was discussed with you, Mr. Haben,
16 regarding UnitedHealthcare allegedly making over \$1 billion in shared
17 savings fees for doing nothing and double dipping by getting PMP and
18 fees. Do you have questions around that topic?

19 A Yes, I do.

20 Q I'd like to show you the exchange just to orient the jury on
21 what we're talking about.

22 MR. BLALACK: Shane, this would be November 3rd
23 transcript, page 65, and line 3, please.

24 BY MR. BLALACK:

25 Q I'll just -- I'm not going to read it all. I'll just let the jury and

1 you, Mr. Haben, scan it. Down to line 25. At the end, you were asked
2 about the Bellagio Hotel and about how it's got bricks and mortar,
3 pictures of the room. And then the question is you were getting a \$1
4 billion every year for doing nothing other than just cutting the rate. You
5 then stated that was incorrect, I can provide context if you want. "No,
6 sir. Let's move on." Do you see that?

7 A Yes, I do.

8 Q Okay. What was the context you wanted to provide and
9 respond to?

10 A There are many things that United does to support the out-
11 of-network programs and shared savings. That includes FTEs that we
12 have to hire to support the program. There is claims administration in
13 terms of sending the claims out to a vendor. Obviously, HIPAA, which is
14 security for medical records is required. There's many other things
15 associated with the program itself.

16 Q And I believe for the shared savings program, that has a
17 member advocacy component, correct?

18 A For shared savings on the fee negotiation component, yes,
19 there is an advocacy piece.

20 Q So in other words, if an out-of-network provider is not a
21 participate in a RAP network, there could be a perspective negotiation as
22 part of that program to try to resolve a dispute, so the member is not
23 balance billed?

24 A That is correct.

25 Q And to the extent shared savings would incorporate shared

1 savings enhanced, which is the OCN program, is there an advocacy
2 component with that program?

3 A Yes, there is.

4 Q Is that a service for which United is seeking to be
5 compensated?

6 A Yes, we are.

7 Q Now, does United seek to be compensated in the form of a
8 fee from programs where it doesn't utilize an advocacy and offer an
9 advocacy component?

10 A No. A program like ENRP, where there's no advocacy, that's
11 free for the client.

12 Q Now, I was going to go through the -- how the shared
13 savings fee is calculated, but I think we've done that. I think the jury fully
14 understands. So I'm not going to go back to it. But I do want to try to
15 address this notion that you're being compensated -- UnitedHealthcare is
16 being compensated for doing nothing. I think you identified that there
17 are different percentages of shared savings fees; is that correct?

18 A Yes, there is.

19 Q Right. And correct me if I'm wrong, I believe you told Mr.
20 Zavitsanos, typically, somewhere in the neighborhood of 30 percent.

21 A Yes, it is.

22 Q So using that just as a guide for this question, if that's the
23 average administrative fee charge for the shared savings program that
24 produced the \$1 million in fees about which you were questioned by Mr.
25 Zavitsanos, can you tell the jury roughly how much that represents in

1 medical costs that health plan clients and their employees did not incur?

2 A What's -- rough math is about \$3 billion.

3 Q So does United Healthcare consider that a value that you
4 provide your clients?

5 A Yes.

6 Q Now Mr. Zavitsanos also asked you about a PMPM fee that
7 United Healthcare from its self-funded clients. So it's different from the
8 shared savings fee. Do you recall this question?

9 A Yes, I do.

10 Q Just to remind the jury, what does PMPM stand for?

11 A Per member per month.

12 Q What is that fee for?

13 A It's the administration of the health plan. Includes benefit or
14 claims administration that's both -- that's in our network. Could be ID
15 card generation. It could be health plan document generation. It could
16 be a number of things.

17 Q Would it include, you know, creating and managing a
18 network?

19 A Yes, it could.

20 Q So are those kinds of services that are typically covered by
21 PMPM fee the kinds of services that are covered by a shared savings fee?

22 A No, they're not.

23 Q So is the shared savings fee different from the PMPM fee?

24 A Yes, it is.

25 Q So for those health plans that have a PMPM fee but who

1 choose an out of network plan like shared savings where United
2 Healthcare charges made as separate against an administrative fee, why
3 does United Healthcare also receive that additional fee on top of the
4 PMPM fee?

5 A In terms of the shared savings fee?

6 Q Yes.

7 A It's for the cost of administering the service and the value of
8 the program.

9 Q Now Mr. Zavitsanos asked you a lot of questions about the
10 amount of the margins, the revenue you make, whether United
11 generated a lot of revenue over the years. Do you think it was unfair for
12 United Healthcare to be paid these administrative fees for an out of
13 network program?

14 A No, I do not.

15 Q Why not?

16 A The clients were well aware of the value of the programs that
17 could be provided. The percentages and the fees were very clear.
18 There's bills that they get on a regular basis. It's all transparent.

19 Q Are you ashamed of trying to make money with a business
20 [indiscernible]?

21 A No. And I -- you know, I will take -- tell you that the shared
22 savings and what it does for the member and the value that it provides
23 as well as the employer group, it helps them out.

24 Q As the guy who ran the out-of-network program for close to
25 20 years before you retired --

1 A Yes.

2 Q -- how do you feel about the work you did, are you proud of
3 it?

4 A Very proud. And you know, the staff that we have that have
5 been with me for -- some have been there for 20 years. They enjoy the
6 work that they do and the help that they provide people. We get
7 engaged with people. We help employer groups. It's -- I view -- I'm very
8 proud of what we did.

9 Q All right. Now I want to move on to the next document, sir,
10 which is the suggestion that the claim I made in opening statement
11 regarding bill charges realized between -- and I'm talking about in the
12 state between 2019 and 2020 -- is contradicted by a United Healthcare
13 email. Do you remember questions around that topic?

14 A I believe so.

15 Q Okay. Now we're going to offer evidence in this case on
16 what the data shows. So that'll get resolved for the jury one way or the
17 other, and they'll know who was being forthright and who wasn't. But I
18 want to talk about the questioning you received in the cross-examination
19 from Mr. Zavitsanos. So that's --

20 MR. BLALACK: Shane, that's November 3, 2021, page 11 out
21 of 17. I think if you -- yeah.

22 BY MR. BLALACK:

23 Q So this is, I think, quoting from my statements in the opening
24 statement. Yeah. Here we go. We have a transcript of counsel's
25 opening. It says:

1 "Q The evidence is going to show that FAIR health 80th
2 percentile, those charges grew, grew, grew, dropped out a bit, and t hen
3 skyrocketed. Did you hear that?" That's Mr. Zavitsanos asking you that.

4 You then responded, "I did not."

5 "Q In support of that, he put up a statistic showing a graph with
6 the charges going through the roof. Did you see that? "

7 "A I did not.

8 Then he said,

9 "Q "Well, that's my friend, Mr. Leyendecker, back there. He got
10 very excited when he heard that because the reality is you all
11 manipulated these numbers, right?"

12 I object.

13 And then you answer, "I disagree."

14 A little further on page 15, this is where it kind of wraps up. Going
15 on for a while. Page 15, line 17.

16 "Q Well, we got your lawyer telling the jury charges were
17 skyrocketing, but in real time, it says the opposite. Which one should the
18 jury put more stock in?

19 "A I think you're misrepresenting it. So which is

20 "Q Which one should they put more stock in, sir, the document
21 or what your counsel said? That's my question."

22 You answer,

23 "A Bill charges went down because we brought providers into
24 the network. That doesn't reflect what a specific provider would charge.

25 And then Mr. Zavitsanos objected. The answer is

1 nonresponsive.

2 And you said,

3 "A Those are two different statements between --

4 Now here's -- the document he's referring to is an email.

5 Plaintiff's Exhibit 37. And I'll show you that and show the jury that. And

6 this is [indiscernible] -- and you can look at this [indiscernible]. It's an

7 email from Ms. Paradise. I don't think you're copied on this, actually.

8 MR. BLALACK: So we can go on down to the second page.

9 MR. ZAVITSANOS: I'm sorry. What exhibit is this?

10 MR. BLALACK: This is Plaintiff's Exhibit 370.

11 MR. ZAVITSANOS: Thank you.

12 [Counsel confer]

13 MR. BLALACK: 370. There we go.

14 [Counsel confer]

15 BY MR. BLALACK:

16 Q Okay. So let's go over this again. This is Mr. Weinstock

17 [indiscernible]. And I do think there's actually a copy of this

18 [indiscernible] in 26 is that one. But the one that you were questioned

19 about is two days earlier, the middle on the second page. So it should

20 be June 24. Yeah. There we go. Now if you go down, there should be

21 some bullet points.

22 MR. BLALACK: [Indiscernible] keep going. There we go.

23 BY MR. BLALACK:

24 Q And it says in the last paragraph after bullet point listed, it

25 says -- let's see where it says this. I lost the [indiscernible].

1 MR. BLALACK: Is that page 2?

2 MR. GODFREY: That was 3.

3 MR. BLALACK: There we go. Oh, okay.

4 BY MR. BLALACK:

5 Q Okay. So he says as we discussed, even though we are
6 seeing increased savings year over year, we're experiencing continued
7 reduction, non-par charges [indiscernible]. That has been the case since
8 year 2016. Do you see that?

9 A Yes, I do.

10 Q Now when you were questioned about this, the suggestion
11 that this wasn't consistent with my representation to the jury about
12 whether charges were not [indiscernible] initially. You contested that the
13 statement I made was incorrect. And you said that -- you tried to explain
14 what this referred to. Do you remember that?

15 A Yes, I do.

16 Q Would you please explain to the jury what you were saying?

17 A So what I was trying to provide clarification on, this is
18 referring to kind of an overall pooling of all the non-par charges. We
19 brought a provider in, which is a contract that I did, Quest, into the
20 United relationship. And that brings the pool dollars down.

21 The other -- that's completely different than when you think about
22 an individual provider's charge master, like what they submit for a
23 charge. So you could bring the entire -- you could reduce the pool of all
24 the non-par provider billed charges by bringing somebody in. That
25 provider now is considered in network. That pool of dollars drops. But

1 still, the providers in that pool of non-part charges, if you look at them
2 individually, they have their own individual charges, their charge master,
3 what they would submit for a claim.

4 So what I'm clarify is even though maybe you brought somebody
5 in because they came in network, an individual provider's billed charges
6 in that pool still could be going up. That was my point.

7 Q Okay. So let's try to unpack that a little bit. So first of all,
8 what's a charge master?

9 A I viewed it as this is what they submit, kind of the value -- the
10 dollar amounts that they put towards the services of the claims that they
11 would submit. So --

12 Q Is it like a price list?

13 A It's like a price list. Thank you.

14 Q And that's what -- when we think of charges, do you think of
15 what's the price listed on the charge master?

16 A Yes.

17 Q Okay. Now when you refer to removing providers from the
18 pool of charges, the out of network charges, bill charges, and then
19 coming in, what do you mean by coming in? Coming in to what?

20 A So they became a par provider. Quest is a very large
21 national lab. And their dollars came -- became a participating provider,
22 because we have a written agreement with them. And so, they are no
23 longer non-participating provider. So the value of -- or whatever they
24 had for their bill charges in there moved over to an in network bucket.

25 Q So just for example, if Quest had been out of network prior to

1 this email, those dollars would have been reflected in the pool of bill
2 charges being evaluated; is that correct?

3 A Correct.

4 MR. ZAVITSANOS: Objection, Your Honor. Leading.

5 THE COURT: It is leading. Rephrase.

6 MR. BLALACK: I'll withdraw.

7 BY MR. BLALACK:

8 Q So walk me through the -- take the Quest as an example.
9 Walk the jury through how the metric would be evaluated when Quest
10 was out of network and then what would happen to the analysis once
11 they came in.

12 A Let's think about the -- so Quest, very large national lab.
13 Prior to having an agreement, they were being viewed as an out-of-
14 network or non-par provider. They're one of, you know -- I think the
15 example was we had five percent of the claims come in as non-par.
16 They would have been in that consideration of a non-par provider.

17 Once we got a contract with Quest, they're not -- the out of network
18 program is not applicable, because they're part of United's network, and
19 those pool of dollars now is being viewed as in network, and our
20 programs would not apply.

21 Q So if the jury later hears evidence in this case that the bill
22 charges or charge master [indiscernible] went up every year, and if they
23 later hear evidence that the FAIR health data on which they're relying
24 shows that the charges in the state of Nevada went out every year and it
25 showed how much, is there anything inconsistent with that evidence and

1 the statement that's -- was quoted to you from Ms. Paradise in this
2 email?

3 A No.

4 Q Why?

5 A You got to think about the individual charges for that
6 provider. If they continue to go up, they're ones that would contribute to
7 the overall billed charges of an account of an administrator like us. But if
8 you bring somebody in network, those charges go down. So you still
9 could have somebody that has individually high charges but, overall, in
10 aggregate, your overall charges could go down, because you're
11 contracting with somebody and bringing them in network.

12 Q All right. I'm going to move on to one more issue before we
13 break for the day.

14 MR. BLALACK: And, Shane, I'm going to skip ahead to
15 something. One second, Your Honor. Court's indulgence.

16 BY MR. BLALACK:

17 Q All right. Now the thing that I want to talk about is some
18 questioning you received regard the AT&T benefit plan. I think that may
19 have happened yesterday. And the suggestion was that there was an
20 AT&T benefit plan that required United Healthcare to reimburse a claim
21 at the reasonable and customary rate but that United Healthcare ignored
22 that benefit plan and paid the claim at the Data iSight rate instead. Do
23 you remember that question?

24 A Yes, I do so.

25 Q Okay.

1 A I believe so.

2 Q So let me show you the transcript. It's page -- November 9th,
3 transcript page 38, line 17 down at the bottom. You took this claim -- the
4 question was

5 "Q You took this claim, and you applied one of your alleged
6 programs to it when the plan says you're supposed to use reasonable
7 and customary so that you can make a fee, right?

8 "A That's incorrect. I don't know if this plan document goes
9 with this EOB. AT&T has got multiple policy numbers. So if you want to
10 show me the SPD from the group number, I can see if that's the same
11 one."

12 Do you see that, sir?

13 A I do.

14 Q Okay. Now I want to go back over those documents and see
15 if we can figure this out. Now the first point I want to ask, sir, is you
16 remember that you were shown that EOB. And that's Plaintiff's Exhibit
17 444.

18 MR. BLALACK: Bring that up.

19 BY MR. BLALACK:

20 Q Do you recognize this as the document that Mr. Zavitsanos
21 showed you?

22 A Yes. Yes, I do.

23 Q Now do you remember, on the top of page 1, where it says
24 member patient information?

25 A Yes.

1 Q And if one wanted to know what specific plan was connected
2 to this patient and this claim, what information in that box would be
3 helpful to track that down?

4 A The group number would be the most specific.

5 Q Okay. Now the group name there is AT&T Mobility, correct?

6 A That's correct.

7 Q Okay. And I think you testified yesterday that AT&T is a
8 client of United Healthcare?

9 A Yes.

10 Q And do you know if AT&T has more than one plan with
11 United Healthcare?

12 A I believe they do.

13 Q Now are all of those plans exactly the same?

14 A I do not believe they are.

15 Q Now under group number there, you'll see a number. Can
16 you tell the jury what that number is?

17 A 0712670.

18 MR. BLALACK: Now I'm going to ask everyone to remember
19 that, and I will pull it up right now. Group number 0712670.

20 BY MR. BLALACK:

21 Q Now I'm going to ask Shane to pull up Plaintiff's Exhibit 290,
22 which I believe was the certificate of coverage that you were shown for
23 the AT&T client. Do you see that, sir?

24 A Yes, I do.

25 Q So it was offered into evidence yesterday and shown to you

1 [indiscernible]. Do you remember that?

2 A Yes, I do.

3 Q Okay. Now if you look on page 2 of that certificate of
4 coverage, I think you'll see a group number. See a group number?

5 A Yes, I do.

6 Q What's that number?

7 A 730247.

8 Q Okay.

9 MR. BLALACK: I'm going to Ms. White if she can
10 [indiscernible] over to the Elmo real quick.

11 BY MR. BLALACK:

12 Q Sir, I wrote down those two numbers. Would you agree with
13 me that the group number from the EOB that you were shown is
14 different from the group number from the certificate of coverage that
15 you were shown?

16 A Yes, it is.

17 Q What does that tell you?

18 A That EOB is not associated with that certificate of coverage.

19 Q And if you remember, is that certificate of coverage is the
20 coverage that suggested that the reimbursement for a claim for a
21 member under that policy should be in a reasonable and customary
22 range?

23 MR. ZAVITSANOS: Your Honor, may we approach for a
24 second, please?

25 THE COURT: You may.

1 [Sidebar at 4:38 p.m., ending at 4:40 p.m., not transcribed]

2 BY MR. BLALACK:

3 Q All right. So let's wrap this up now sir. Now let's go back to
4 Plaintiffs' Exhibit 444. Now on 444, you'll see a claim number. Do you
5 see that, sir, on page 1?

6 A Yes.

7 Q Okay. And what is that claim number?

8 A That's the unique claim number that is in our unit platform.

9 Q Would it be possible to read that, sir?

10 A I'll try. I believe it says AV6833167501.

11 Q Okay. I've either got AV6833167561 or AV66316751, but we'll
12 keep that [indiscernible].

13 MR. ZAVITSANOS: What exhibit is this, please?

14 MR. BLALACK: This is Plaintiffs'[Exhibit 444. And then I
15 would like to bring up Plaintiffs' Exhibit 470 and also show that to you.

16 MR. ZAVITSANOS: Hold on. Is this the one that was
17 refused?

18 MR. BLALACK: This is -- these are all the ones you've used
19 with him, yeah.

20 MR. ZAVITSANOS: Well, wait a minute. No, I don't think it
21 is.

22 [Counsel confer]

23 MR. ZAVITSANOS: Your Honor, may I just check something
24 real quick, please? Because we had that issue with the --

25 THE COURT: Right.

1 MR. ZAVITSANOS: -- with the wrong claim. Your Honor, I'm
2 sorry for the interruption. May I ask counsel to please -- whatever
3 number he just referenced, the identifier number, can I just have him
4 show me --

5 MR. BLALACK: Is it the claim number you're asking for --

6 MR. ZAVITSANOS: I just need to know what reference
7 number. May I just confer with him, please?

8 THE COURT: Yes.

9 [Counsel confer]

10 MR. ZAVITSANOS: Got it. Thank you.

11 MR. BLALACK: All right. And would you now [indiscernible]
12 Plaintiff's Exhibit 470. All right. This is another document Plaintiffs'
13 counsel showed you, Mr. Haben, called an online reading summary or an
14 online reading history. Do you recall that?

15 A Yes, I do.

16 Q And you see that about four lines down, there's an entry
17 entitled Claim FC Number?

18 A Yes, I do.

19 Q Do you know what a Claim FC Number is?

20 A I believe that's the claim number.

21 Q And can you tell us what that claim number is?

22 A That's more clear, it's AY15596070.

23 Q Okay. So is the claim number in Plaintiffs' Exhibit 470
24 different from the claim number on Plaintiffs' Exhibit 444?

25 A Yes, it is.

1 Q So from your review, is there any reason to believe that the
2 claim that's associated with Plaintiffs' Exhibit 470 relates in any way to
3 the claim described in Plaintiffs' Exhibit 444?

4 A No.

5 Q Do you believe these two documents are discussing different
6 claims?

7 A Yes.

8 Q So when Mr. Zavitsanos suggested yesterday that United
9 Healthcare disregarded the AT&T health claim language, requiring
10 payment using the physician usual and customary program and instead
11 paid the claim using the outline cost management program, do you see
12 anything in these documents that suggest that's true?

13 A No.

14 MR. ZAVITSANOS: Same objection as we discussed at the
15 bench, Your Honor.

16 THE COURT: So noted.

17 MR. BLALACK: Your Honor, at this time, I think I can -- we
18 can call it for the night and let the jury go home.

19 THE COURT: All right. Thanks everyone. So during the
20 recess -- we're in recess until Friday at 9:00 a.m.

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

1 internet, cellphones or texting.

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

3 Don't consult dictionaries, use the internet or use reference materials.

4 Do not post social media about the trial. Also do not talk or text with
5 others, Tweet, Google issues, or conduct any other type of book or
6 computer research with regard to any issue, party, witness or attorney
7 involved in this case.

8 Most importantly do not form or express any opinion on any
9 subject until the case is submitted to the jury. Have a great day
10 tomorrow. See you Friday at 9:00.

11 THE MARSHAL: All rise for the jury.

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

13 [Outside the presence of the jury]

14 THE COURT: All right. Plaintiff I assume you are going to
15 want to put something on the record.

16 MR. ZAVITSANOS: Your Honor, the only thing I would add,
17 Your Honor --

18 THE COURT: The room is clear.

19 MR. ZAVITSANOS: Your Honor, my short term memory is
20 affecting, and I don't remember whether I put this on the record or not.

21 MR. BLALACK: I'm positive he did, Your Honor.

22 THE COURT: After three weeks of trial, you know, you guys
23 are working your butts off, I can tell.

24 MR. ZAVITSANOS: Yeah.

25 THE COURT: And you're not -- and you're not even rusty, so.

1 MR. ZAVITSANOS: So out of an abundance of caution, Your
2 Honor, if I've already done this, my apologies to the Court and my
3 apologies to counsel. So we just got done with an exchange with Mr.
4 Haben regarding the AT&T summary plan description with the
5 suggestion being that the -- that the claim, the EOB, which I think was
6 Exhibit 444, that it was processed correctly according to the -- to the
7 dictates of the plan. Especially after the witness said they always follow
8 the plan language. Counsel used Exhibit 290 --

9 MR. BLALACK: 290.

10 MR. ZAVITSANOS: -- which counsel represented is a
11 different plan than the plan referenced in the EOB and therefore it
12 doesn't apply. The problem with that is the one that allegedly does
13 apply, has never been produced, and I don't have it. And I have a good
14 faith reason to believe -- I don't want to tip my hand here. I have a good
15 faith reason to believe that that reasonable and customary language is in
16 everything AT&T does. And so, you know, that's -- as we say where I'm
17 from, that's going to kick as hard as it chews, when I get him back on
18 recross.

19 But I'm at a little bit of a disadvantage here because I don't
20 have that -- I don't have the documents in which counsel was suggesting
21 indicates a different methodology.

22 THE COURT: And --

23 MR. BLALACK: I disagree with that factual assertion, and we
24 can certainly litigate that question in due time, when it's appropriate, but
25 I do agree that the benefit plan language that relates to the claims that

1 are in dispute that have not been produced because we produced the
2 administrative records for this. So at an appropriate time, they can move
3 to [indiscernible] it, but we think they're wrong with that.

4 THE COURT: Good enough. All right. And I had indicated at
5 the bench you would have to address it on your redirect.

6 MR. ZAVITSANOS: Yes, Your Honor, yes.

7 THE COURT: All right. Just to give you guys, we only had 41
8 people today on BlueJeans and one was the law clerk. Well, so
9 anyway --

10 MR. BLALACK: I'm much less exciting than Mr. Zavitsanos,
11 Your Honor.

12 THE COURT: You guys are great -- you're all great lawyers.

13 MR. ZAVITSANOS: Well, he's quality, I'm quantity.

14 THE COURT: No, you're all great lawyers. Have a good day
15 off tomorrow. I have a feeling you'll be working all day.

16 MR. ROBERTS: And I do want to request that the Court
17 allocate five or ten minutes before Court on Friday for me to raise an
18 additional issue.

19 THE COURT: Happy to do it.

20 MR. ROBERTS: I did want to thank Mr. Zavitsanos who has
21 confirmed that the materials that we objected to were taken down from
22 the website including some video. But this may cause us to look further
23 into the video issue, because the Court granted a media access request
24 for a communications company, but the video was posted on their
25 website which indicated an investigative company. And it appears that

1 this communication company is actually a licensed private investigator
2 who advertised that he works for lawyers and parties to do publicity in
3 conjunction with trials. And this person who represented he was a news
4 reporter has posted YouTube videos to the website mixing in courtroom
5 video with video taken of a witness on the stand outside the courtroom,
6 and he asked questions with Geppetto heads on counsel for United.
7 Disparaging counsel. And if this is an agent of a party doing this --

8 THE COURT: You better do some research into it and bring it
9 back to my attention in a way that I can act on it.

10 MR. ZAVITSANOS: So let me -- Your Honor, I just thought --
11 if I could briefly address this. This gentleman does not -- I did not hire
12 him. In fact, Your Honor, he is a -- he's actually done investigations on
13 me, Your Honor. If you go on his website he did a whole big piece on
14 me on a case that I was involved with. He is -- he is not someone that I
15 particularly care for. I don't have -- I don't have a relationship with him.

16 THE COURT: It's not that you know he was --

17 MR. ZAVITSANOS: He is -- he is a shock journalist.

18 THE COURT: He was on the escalator ahead of us coming up
19 this morning and tried to talk to me. We had to shut that down. Just so
20 you know.

21 MR. ZAVITSANOS: Yeah.

22 THE COURT: You know, if there are grounds to rescind the
23 media request, I'll consider that. But I want to hear it after you've
24 developed the ideas and talked to each other.

25 MR. ROBERTS: I will, Your Honor.

1 THE COURT: You know.

2 MR. ZAVITSANOS: And I would like an opportunity -- I mean
3 Mr. Roberts and I get along very well. This is the first I'm hearing of this
4 and so I would -- you know.

5 THE COURT: Good enough. Yeah, flush it out. You've got a
6 whole day tomorrow. When you're not doing everything else you're
7 doing.

8 MR. ROBERTS: Thank you. I assume nothing else is going
9 to be posted until we can get this issue --

10 MR. ZAVITSANOS: I can't control what he does, Your Honor.
11 Believe me.

12 MR. ROBERTS: No, no, no, I'm talking about your client on
13 the TeamHealth website.

14 MR. ZAVITSANOS: Oh, yeah, I mean of course, of course.

15 MR. ROBERTS: Okay. Thank you.

16 MR. ZAVITSANOS: Thank you.

17 MR. ROBERTS: I appreciate it. Thank you, so much, Your
18 Honor.

19 THE COURT: Thank you both.

20 MR. MCMANIS: Your Honor, with respect to deposition
21 designations, we did get just a short while ago the objections from the
22 other side to the additional portion of the parts that have been pulled
23 out, because of the possibility they may be played on Friday.

24 THE COURT: Friday.

25 MR. MCMANIS: I don't know if there's a way that we can get

1 that to you tomorrow with everything compiled.

2 THE COURT: You can. I'm not planning on coming to the
3 office tomorrow. But I can. I have appointments I've made, you know,
4 whatever. So I will be home probably by 4:00 p.m. So if you email it to
5 the Law Clerk, I'll ask him to forward it to me, and I can do it for you
6 before Friday morning.

7 MR. MCMANIS: Thank you, Your Honor.

8 THE COURT: Thanks. All right. Everybody, take care.

9 MR. BLALACK: Thank you, Your Honor.

10 [Proceedings adjourned at 4:52 p.m.]

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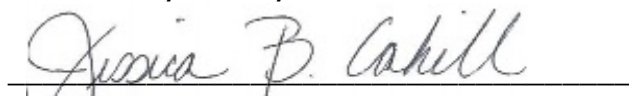
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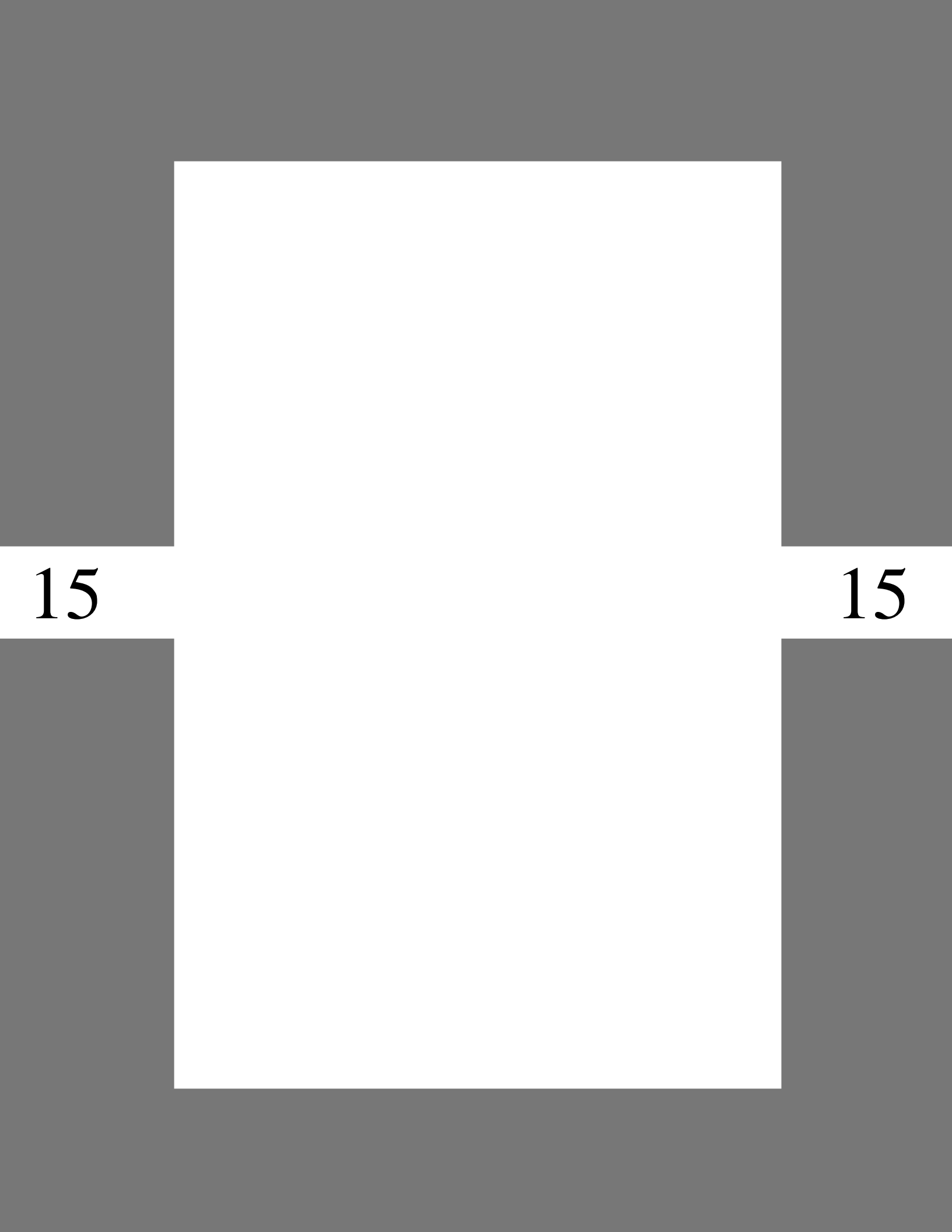
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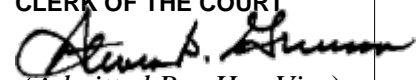
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

CHAMBERS HEARING REQUESTED

**DEFENDANTS' MOTION FOR LEAVE
TO FILE DEFENDANTS'
PRELIMINARY MOTION TO SEAL
ATTORNEYS' EYES ONLY
DOCUMENTS USED AT TRIAL
UNDER SEAL**



1 UNITED HEALTHCARE INSURANCE
 2 COMPANY, a Connecticut corporation; UNITED
 3 HEALTH CARE SERVICES INC., dba
 4 UNITEDHEALTHCARE, a Minnesota
 5 corporation; UMR, INC., dba UNITED
 6 MEDICAL RESOURCES, a Delaware
 7 corporation; SIERRA HEALTH AND LIFE
 8 INSURANCE COMPANY, INC., a Nevada
 9 corporation; HEALTH PLAN OF NEVADA,
 10 INC., a Nevada corporation,

11 Defendants.

12 Defendants UnitedHealthcare Insurance Company (“UHIC”), United HealthCare
 13 Services, Inc. (“UHS”), UMR, Inc. (“UMR”), Sierra Health and Life Insurance Co., Inc. (“SHL”),
 14 and Health Plan of Nevada, Inc. (“HPN”) (collectively “Defendants”), by and through their
 15 attorneys, hereby move to seal, pursuant to Rule 3(1) of the Nevada Supreme Court Rules
 16 Governing Sealing and Redacting of Court Records (“SRCR”), Defendants’ Preliminary Motion
 17 to Seal Attorneys’ Eyes Only Documents Used at Trial Under Seal (the “Motion”).

18 This Motion is made and based upon the papers and pleadings on file herein, the
 19 Declaration of Colby Balkenbush and the following memorandum of points and authorities.

20 Dated this 12th day of November, 2021.

21 /s/ Colby L. Balkenbush

22 D. Lee Roberts, Jr., Esq.
 23 Colby L. Balkenbush, Esq.
 24 Brittany M. Llewellyn, Esq.
 25 Phillip N. Smith, Jr., Esq.
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WEINBERG WHEELER
HUDGINS GUNN & DIAL



001138

**DECLARATION OF COLBY BALKENBUSH IN SUPPORT DEFENDANTS' MOTION
FOR LEAVE TO FILE DEFENDANTS' PRELIMINARY MOTION TO SEAL
ATTORNEYS' EYES ONLY DOCUMENTS USED AT TRIAL UNDER SEAL**

1. I am an attorney licensed to practice law in the State of Nevada, a partner at Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, counsel for Defendants in the above-captioned matter.

2. This Declaration is submitted in support of Motion to Seal Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at Trial Under Seal ("the Motion").

3. I have personal knowledge of the matters set forth herein and, unless otherwise stated, am competent to testify to the same if called upon to do so.

4. The Motion contains references to and summaries of materials which have been designated Attorneys' Eyes Only under the Stipulated Confidentiality and Protective Order (the "Confidential Material"). The documents were designated as such as they contain highly competitive and/or commercially sensitive proprietary and non-public information that would significantly harm the business advantages of Defendants if made public, including internal strategy discussions and business plans. In addition, some of the exhibits to Defendants' Motion reference or discuss materials which have been designated as "Attorneys' Eyes Only" under the Protective Order.

5. The Protective Order sets forth that documents designated as "Attorneys' Eyes Only" must be filed under seal.

6. Defendants file the instant Motion to Seal in accordance with SRCR 3(1), as there are sufficient grounds to seal the Confidential Material under SRCR 3(4).

7. I declare that the foregoing is true and correct under the penalty of perjury under the laws of the state of Nevada.

DATED: November 12, 2021.

/s/ Colby L. Balkenbush
Colby L. Balkenbush



MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants move this Court to allow the filing of their Motion under seal, pursuant to Rule 3(1) of the Nevada Supreme Court Rules Governing Sealing and Redacting of Court Records (“SRCR”). The Motion contains information from documents which have been designated as “Attorneys’ Eyes Only” under the parties’ Stipulated Confidentiality and Protective Order (“Protective Order”), and further includes exhibits that are designated the same (collectively, the “Confidential Material”). The documents were designated Attorneys Eyes’ Only as they include highly competitive and/or commercially sensitive proprietary and non-public information that would significantly harm the business advantages of Defendants if made public, including internal strategy discussions and business plans.

There will be no prejudice to Plaintiffs because the parties’ Protective Order mandates that documents designated as “Attorneys’ Eyes Only” or summarizing Attorneys’ Eyes Only information must be filed under seal, and Plaintiffs’ counsel has full access to the Motion and any Confidential Material therein. Defendants respectfully request that the Court permit the filing of the Confidential Material under seal.

II. LEGAL ARGUMENT

Rule 3.4 of the Nevada Rules for Sealing and Redacting Court Records (“SRCR”) provides in pertinent part that:

The court may order the court files and records, or any part thereof, in a civil action to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record. The parties’ agreement alone does not constitute a sufficient basis for the court to seal or redact court records. The public interest in privacy or safety interests that outweigh the public interest in open court records include findings that:

- (a) The sealing or redaction is permitted or required by federal or state law;
- (b) The sealing or redaction furthers an order entered under NRCP 12(f) or JCRCP 12(f) or a protective order entered under NRCP 26(c) or JCRCP 26(c);



1 (f) The sealing or redaction includes medical, mental
2 health, or tax records;

3 *****

4 (h) The sealing or redaction is justified or required by another identified
5 compelling circumstance.

6 SRCR 3.4.

7 On June 24, 2020, pursuant to a stipulation by and between the parties, this Court entered
8 the Protective Order. The Protective Order provides that a party may designate a document as
9 “Attorneys’ Eyes Only” if any portion of it contains material, testimony, or information that the
10 party “reasonably and in good faith believes contains trade secrets or is such highly competitive
11 or commercially sensitive proprietary and non-public information that would significantly harm
12 business advantages of [the Party]...and that disclosure of such information could reasonably be
13 expected to be detrimental to the [Party’s] interests.” Prot. Ord. at 2-3.

14 The Protective Order further provides that the parties will file a motion to have
15 confidential / sensitive discovery material filed under seal, including any portion of a court paper
16 that discloses confidential / sensitive discovery material. *Id.* at 20. The Confidential Material at
17 issue here contains highly competitive and/or commercially sensitive proprietary and non-public
18 information that would significantly harm the business advantages of Defendants if made public,
19 including internal strategy discussions and business plans.

20 Consistent with the parties’ agreement contained in the Protective Order, Defendants
21 move to file the Motion under seal. The Motion contains information from documents which
22 have been designated as “Attorneys’ Eyes Only” under the Protective Order, and further includes
23 exhibits attached that are designated the same.

24 Based on the Protective Order and the confidential nature of these documents, SRCR 3(4)
25 provides a sufficient basis to order sealing the Motion and Confidential Exhibits thereto. The
26 Motion has thus been filed temporarily under seal and should remain under seal until such time
27 as this Court has had an opportunity to rule on the instant Motion, and in perpetuity unless this
28 Court finds otherwise.



III. RELIEF REQUESTED

For the foregoing reasons, Defendants respectfully request that the Court enter an Order sealing Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at Trial Under Seal and any other Confidential Material. Defendants further request that the Confidential Material remain under seal until such time as this Court has had an opportunity to rule on the instant Motion, and in perpetuity unless this Court finds otherwise.

Dated this 12th day of November, 2021.

/s/ Colby L. Balkenbush

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of November, 2021, a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR LEAVE TO FILE DEFENDANTS' PRELIMINARY MOTION TO SEAL ATTORNEYS' EYES ONLY DOCUMENTS USED AT TRIAL UNDER SEAL** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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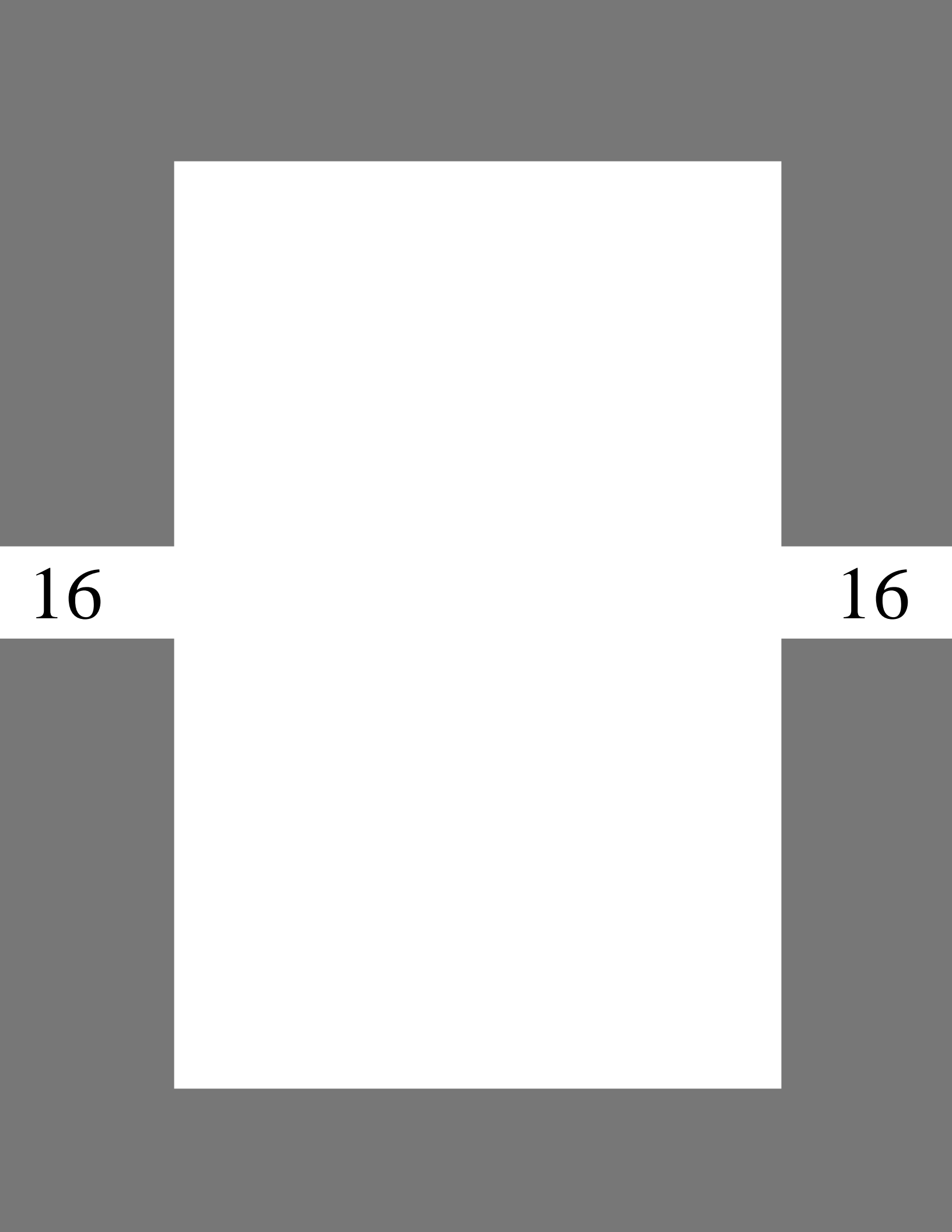
6 *Attorneys for Plaintiffs*

7 /s/ Cynthia S. Bowman

8 An employee of WEINBERG, WHEELER, HUDGINS
9 GUNN & DIAL, LLC
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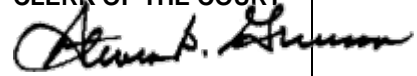
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HUDGINS GUNN & DIAL





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1 RTRAN

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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

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

9 Plaintiffs,

10 vs.

11 UNITED HEALTHCARE
12 INSURANCE COMPANY, ET AL.,

13 Defendants.

CASE#: A-19-792978-B

DEPT. XXVII

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

16 RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 12

17 APPEARANCES:

18 For the Plaintiffs:

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JOHN ZAVITSANOS, ESQ.
20 JASON S. MCMANIS, ESQ.
JOSEPH Y. AHMAD, ESQ.
KEVIN LEYENDECKER, ESQ.

21 For the Defendants:

22 D. LEE ROBERTS, JR., ESQ.
K. LEE BLALACK, ESQ.
JEFFREY E. GORDON, ESQ.
23 NADIA L. FARJOD, ESQ.

24
25 RECORDED BY: BRYNN WHITE, COURT RECORDER

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1 Las Vegas, Nevada, Monday, November 15, 2021

2

3 [Case called at 8:33 a.m.]

4 [Outside the presence of the jury]

5 THE MARSHAL: -- in session. The Honorable Judge Alf
6 presiding.

7 THE COURT: Thanks everyone. Please be seated.

8 MR. ZAVITSANOS: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. BLALACK: Good morning, Your Honor.

11 THE COURT: So I'm calling the case of Fremont v. United.
12 Let's do appearances real quick.

13 MR. AHMAD: Yes, Your Honor. Joe Ahmad for the Plaintiff
14 healthcare providers.

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

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

19 MR. LEYENDECKER: Good morning, Your Honor. Kevin
20 Leyendecker.

21 THE COURT: Thanks everyone. For the Defense, please?

22 MR. BLALACK: Good morning, Your Honor. Lee Blalack on
23 behalf of the Defendants.

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

1 MS. FARJOOD: Good morning, Your Honor. Nadia Farjood
2 on behalf of the Defendants.

3 MR. GORDON: Morning, Your Honor. Jeff Gordon on behalf
4 of the Defendants.

5 THE COURT: Okay. Thank you.

6 MR. ZAVITSANOS: And, Your Honor, we missed one. Mr.
7 McManis also on behalf of the healthcare providers.

8 THE COURT: Very good. All right, so Juror Number 4,
9 Dereck -- I'm sorry, Zerrick Walker, called in this morning. He's tested
10 positive for COVID. He will not be here. So another one bites the dust.

11 What do we need to take up before we bring in the jury?

12 MR. BLALACK: Your Honor, we -- in response to your
13 request at the end of the day Friday, the parties did confer on how are
14 we going to get this trial done before the deadline issue. We've
15 exchanged lists of what we think are the most likely witnesses and time
16 allocations. There are areas of agreement. There are areas of
17 disagreement. We've submitted a -- we exchanged a chart, which we
18 attached to a filing we just made this morning that's responsive to
19 request for our view on this issue. I think there will be a need to argue
20 how this gets resolved to avoid a mistrial.

21 My preference would be, just on behalf of the Defense, that
22 we do it at a break so -- because every second from here until 4:45 on the
23 22nd is going to be precious. So that would be in our request, but I think
24 if the Court wants to entertain that now we will.

25 THE COURT: Not now. I want to do it later because I need to

1 read your brief. And also, we have an hour of overtime after 4:45 today.
2 So let's do it at break, and we'll bring in the jury as soon as I see the
3 marshal's face.

4 MR. BLALACK: Thank you. Should I put Ms. Paradise on the
5 stand, Your Honor?

6 THE COURT: Please.

7 MR. ZAVITSANOS: And, Judge, we agree. We don't want to
8 take up jury time, so.

9 THE COURT: Thank you.

10 MR. MCMANIS: And, Your Honor, just to preview one thing
11 while we're getting it ready right now. There are some deposition
12 objections for a video that we may play today, so we'll try to handle that
13 at a break this morning.

14 THE COURT: Very good. Thank you.

15 [Pause]

16 THE MARSHAL: All rise for the jury.

17 [Jury in at 8:36 a.m.]

18 THE COURT: Thank you. Please be seated. Good morning,
19 everyone. Happy Monday. Unfortunately, we have lost Juror Number 4,
20 Mr. Walker, due to a health test that he took over the weekend. So we'll
21 be going forward with you guys. And everybody stay safe and healthy
22 please.

23 Ms. Paradise, you are under the same oath you previously
24 took. There's no reason to re-swear you.

25 THE WITNESS: Okay.

1 REBECCA PARADISE, PLAINTIFFS' WITNESS, PREVIOUSLY
2 SWORN

3 THE COURT: Thank you. Go ahead, please.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. AHMAD:

6 Q Thank you, Your Honor. Good morning, Ms. Paradise. How
7 are you?

8 A Good morning. I'm great.

9 Q Earlier we were talking -- I think Friday we were talking about
10 MultiPlan, and I think we saw a little bit about how they might pay less
11 than the plan requires. My question for you is, have you ever seen a
12 situation where MultiPlan bragged about paying more than the plan
13 required?

14 A Well I believe when we were talking Friday, there was a
15 bullet that suggested paying something different than the benefit plan. I
16 believe I stated that United would not pay something different than the
17 benefit plan required. I don't know if I would characterize that as
18 bragging.

19 Q o my question is, does MultiPlan ever brag or indicate that
20 they're going to pay more than the plan required?

21 A No. MultiPlan does not brag about their payments period.

22 Q Well did they ever indicate that they will pay more than the
23 plan required?

24 A There are certain circumstances where you may pay more to
25 comply with either the benefit plan or client direction on a specific claim.

1 Q Well that's my question. I'm saying do they ever indicate
2 that they will pay more than the plan requires as opposed to less?

3 A MultiPlan may pay more given a certain situation either per
4 the benefit plan direction or direction from the client to do so.

5 Q Okay. Let me just ask you. Have you ever seen any
6 presentations by them where they say they'll pay more?

7 A The point of the presentations typically are explaining their
8 offerings, what the methodologies are. The presentations typically aren't
9 about, or I haven't seen a presentation where they're bragging about
10 paying more or less than the benefit plan.

11 Q Okay. Well we saw something Friday indicating that they
12 would pay less.

13 A I understand that document. There was a bullet on a
14 presentation. Simply because MultiPlan put something in writing on a
15 presentation, does not mean that that was executed. I can say
16 confidently, United would not implement something that did not align
17 with our client's instructions on the benefit plan.

18 Q How does that work, right? Because MultiPlan would pride
19 something through Data iSight, right? And they would come up with
20 that as the allowed amount, right?

21 A When we use MultiPlan for services, they provide
22 recommendation. That price or that recommendation is sent back to
23 United. The claim goes on for further claim adjudication. So to be clear,
24 MultiPlan isn't specifically pricing or adjudicating our clients.

25 Q Well, but does MultiPlan tell the member what they're going

1 to pay?

2 A No. That's a function of United Healthcare and the benefit
3 plan.

4 Q Okay. So -- and by the way, if a member had an issue,
5 whether it comes from MultiPlan or whoever, if they have an issue with
6 how much is being paid on a claim, is that something you get involved
7 in?

8 A I don't personally get involved in, but the member would call
9 their benefit plan and speak to somebody within United Healthcare to
10 understand their benefit coverage and how that claim was adjudicated.

11 Q And -- but typically, you don't get involved in that?

12 A I very rarely will get involved in a particular dispute. What I
13 will be clear about is my team does not engage directly with members or
14 providers. We are administering programs. Our frontline provider or
15 member services would be speaking directly to external constituents.

16 Q Okay. Can you look at Exhibit 218?

17 A Do you mind if get up and --

18 Q And we can take it down for that.

19 A Do you mind if I get up?

20 Q Yes, of course.

21 THE COURT: What was the number?

22 MR. AHMAD: I beg your pardon, Your Honor?

23 THE COURT: What was the number?

24 MR. AHMAD: 218, Your Honor.

25 THE COURT: Thank you.

1 MR. AHMAD: Plaintiff's Exhibit 218. Is there any objection?

2 MR. BLALACK: No objection.

3 MR. AHMAD: Your Honor, I'll move for the admission.

4 THE COURT: Exhibit 218 will be admitted.

5 [Plaintiffs' Exhibit 218 admitted into evidence]

6 BY MR. AHMAD:

7 Q Now if -- I guess we can put it up now. Now at the top, and I
8 know this is the last email in the bunch, I see an email from Jolene
9 Bradley. She's part of your team, right?

10 A Jolene is part of my team.

11 Q And she's sending an email to you, "Important. Hi. Giving
12 you the status of what appears to be a claimed specific experience of an
13 internal employee." Is that right?

14 A That's accurate.

15 Q And if we look back at the first email, it's on page 3, actually
16 the second to the last email, if we look under -- towards the bottom of
17 that, middle to the bottom, it looks like this member -- first of all, a
18 member was actually calling in, right?

19 A Yes. I remember this situation. One of our internal
20 employees, a family member, did call into member services to get some
21 information about an EOB and a balance bill that they had received.

22 Q Yes. They had been balance billed because Data iSight had
23 priced something and sent to the member an explanation of benefits that
24 was lower than the billed charged, correct?

25 A That's inaccurate. MultiPlan does not send out EOB's. That's

1 a function of the benefit plan. So United Healthcare would have sent the
2 explanation of benefits. It's the provider who chose to balance bill the
3 member and send the bill to the member.

4 Q Well, but that's because you all, using Data iSight, paid less
5 than the bill charge, right?

6 A We do not believe bill charges are -- I can affirm. Bill charges
7 aren't what's owed.

8 Q Ms. Paradise, I'm just asking because you paid less than the
9 bill charged?

10 A We are playing -- sorry. We are paying per the plan benefits
11 period. So we're administering the benefit plan as it's written. It's the
12 provider who's choosing to balance bill for the difference.

13 Q Did I just hear you say you're paying for the plan benefits
14 period? Is that what you said?

15 A We administer the plan benefits, so the initial payment would
16 have reflected the Data iSight rate.

17 Q Well didn't you have to remove the Data iSight rates because
18 you were paying less than what the plan benefits allowed?

19 A That's not why that was removed. We had a member who
20 was continuing to be harassed and balance billed by a provider. Our
21 organization had MultiPlan outreach to that provider in an attempt to
22 negotiate something different. So we have instructions from the client to
23 try to resolve the issue by potentially paying slightly more than the
24 benefit plan. That provider refused to negotiate to help resolve that
25 issue, continued to harass our member, and ultimately the client made

1 the decision to remove that discount.

2 Q Now this just -- and I'll get to that, but this wasn't just any
3 member, right? Because you got a call.

4 A It -- well, it is a member. This one happened to come to me
5 based on the fact that it was an internal employee.

6 Q Well can we look at the top of page 2? And if we look at the
7 email from again, one of your team members Jolene Bradley to a
8 Tammy Klinger, asking Tammy to check on where they're at with these
9 employee claims because it's a senior executive, from Optum's,
10 husband. Do you see that?

11 A Yes, I do. That's right.

12 Q And Optum is a United company, correct?

13 A It is.

14 Q And it says you're following very closely, right?

15 A Yes.

16 Q Not something you typically do?

17 A I believe my testimony earlier was it's not something I
18 typically do, but from time to time I may get involved in an escalated
19 dispute.

20 Q Now is it fair to say that the plan benefits allowed billed
21 charges in this instance?

22 A No. I would not characterize it that way.

23 Q Okay. Well let's look at the first page. And it's the bottom,
24 mid to bottom email, from Tammy Klinger to Jolene Bradley. And it
25 says, "Hi Jolene. Here are the details." And if we look below, we can just

1 highlight kind of the mid-section there. And blow that up because I can't
2 even see it. Okay. And it says on this one, and we can look at the next
3 one. It's the same thing. But claim was adjusted to remove Data iSight
4 rates. Do you see that?

5 A I see that.

6 Q And processed at plan benefits. Does it say that?

7 A I see where it says that.

8 Q Following -- allowing rather, bill charges. Do you see that?

9 A I see that sentence.

10 Q It says that plan benefits allow bill charges.

11 A I think it's a mischaracterization by our operational people. It
12 -- technically, we're paying at the client's direction. The client gave us
13 direction because our member was being consistently harassed by a
14 provider choosing to balance bill them aggressively, that they were
15 willing to pay bill charge in that instance to resolve the issue for the
16 matter.

17 Q Well the client was you essentially, United.

18 A Well I understand the client was us. We're probably our
19 toughest client. So we treat UnitedHealth Group as the client as any
20 other ASO client. And if they give us direction to deviate from what's in
21 the actual SPD, that is their discretion. And it's our duty as the plan
22 administrator to execute what our client is telling us to do.

23 Q Okay. Well this seems to suggest -- and by the way, you call
24 it a mischaracterization. Is it a mischaracterization in this email?

25 A I believe it is.

1 Q Okay. And then my next question I guess is, when you say at
2 client direction and you treat everybody else the same, have you ever
3 personally gotten involved to make sure that somebody got paid the full
4 bill charges?

5 A You're mischaracterizing my involvement. Typically, when I
6 get involved, it's just ensuring that the appropriate action is being
7 executed in a timely fashion. I-- not every instance have I been directed
8 to pay bill charges in those situations. I think the key element in this
9 scenario was the provider was not operating in good faith and was
10 demanding bill charges. This is one of the biggest challenges we're
11 facing in healthcare today. This, I believe, was an ambulance situation.
12 But hospital-based providers, ambulance providers, have been
13 aggressively balance billing.

14 MR. AHMAD: Your Honor, I'm going to object to the
15 nonresponsive part. It's nothing about this.

16 THE COURT: Move on.

17 MR. AHMAD: I'm sorry.

18 THE COURT: You can move on. The answer was not
19 responsive.

20 BY MR. AHMAD:

21 Q Ms. Paradise, you've never gotten involved and directed for
22 any other member for them to be paid at the full bill charge?

23 A That's not true, and it wasn't my direction to pay bill charge.
24 The direction came from the client. It was not at my direction.

25 Q Okay. And who was it specifically at the client that directed

1 you to do this, because I don't see this here?

2 A That conversation happened offline. It's not contained in that
3 email. I did not specifically speak to someone at the client. There were a
4 number of other folks talking to our account management team that
5 manages that relationship.

6 Q Okay. Now when we talk about OCM, and OCM uses Data
7 iSight, correct?

8 A Yes.

9 Q You were the champion, and we can go to -- don't put it up.
10 If you can go to page 288. Excuse me, Exhibit 288.

11 A Okay, I'm there.

12 Q Okay. And do you have that presentation in front of you?

13 A I do.

14 Q It's entitled value creation?

15 A Yes.

16 MR. AHMAD: Do you all have an objection to 288?

17 MR. BLALACK: No objection to admission. We know this an
18 AEO document pursuant to our procedures, so just be aware of that.

19 MR. AHMAD: Sure. Your Honor, we move for admission of
20 288.

21 THE COURT: Exhibit 288 will be admitted.

22 [Plaintiffs' Exhibit 288 admitted into evidence]

23 BY MR. AHMAD:

24 Q Now if we go to page 70 of 288 --

25 MR. AHMAD: and we can put that up now.

1 BY MR. AHMAD:

2 Q Under problem --

3 MR. AHMAD: Yeah. If you scroll down you'll see problem, I
4 believe. Or actually -- yeah. Scroll up on page 70. Okay.

5 BY MR. AHMAD:

6 Q And this talks about OCM rate reduction. And I believe this is
7 for an ER facility, correct?

8 A Oh. The document states ER facility, and I believe bullet two
9 is professional ER facility.

10 Q And you're the champion of that? You're listed as the
11 champion of that?

12 A Yes.

13 Q And reduction is from 350 to 250 percent for fully insured
14 and ASO business. Is that correct?

15 A That's correct.

16 Q Okay. And if we go to page 176, also look under problem.
17 This one pertains to emergency room, right?

18 A Yes, that's right.

19 Q Okay. And you're also -- it looks like you're lowering OCM
20 ER professional from 350 to 250, correct?

21 A That's correct.

22 Q CMS is Medicare?

23 A Correct.

24 Q And that is something that you actually did in March of 2019?

25 A Well, on this document, I -- there were some staggered

1 implementations, but March was one of the dates.

2 Q March of 2019?

3 A Correct.

4 Q Okay. And you reduced it from 350 -- the reimbursement
5 rate from 350 percent Medicare to 250 percent Medicare, correct?

6 A That's correct.

7 Q All right. If we look at Exhibit 444, which I believe has been
8 admitted -- and first of all, tell us what something like 444 is.

9 A Do you mind if I get the actual document?

10 Q Oh, of course.

11 A This document is a member explanation of benefits or
12 otherwise known as an EOB.

13 Q Okay. And the member or patient gets one of these
14 explaining how United arrives at the allowed amount for a provider
15 charge?

16 A That's accurate.

17 Q And does something like this go to the provider as well?

18 A The EOB doesn't go directly to the provider. There's a
19 documented called a PRA or a provider remittance advice that would be
20 sent to the provider.

21 Q Yeah. And it has a similar explanation, does it not?

22 A It will have similar information.

23 Q And if we look at page 2 of this exhibit, Exhibit 444, and at
24 the top, under -- I can barely see it, but I'm going to approach, just so
25 that I can. Under IS member at the top. Okay. See a little bit better.

1 And it indicates that this member is -- excuse me -- this member charges
2 were reimbursed and you're saying you paid the provider according to
3 your benefits and data provided by Data iSight. Is that right?

4 A That's what it says.

5 Q Okay. Is that accurate?

6 A Yes, it's accurate.

7 Q Well, if we look at the actual reimbursement rate for this
8 charge, if you go to the bottom of page 1, now we can see that this plan
9 was paid -- the allowed amount was 435.20. Do you see that?

10 A I see that dollar amount.

11 Q Okay. And if I represent to you that the Medicare rate for
12 this, which is a Code 99285, is \$174.08, you would see that it comes out
13 to exactly 250 percent of the Medicare rate. Is that a coincidence?

14 A Well, it's not a coincidence, if the ER rate was set at 250
15 percent of CMS. Then this benefit -- or this EOB is demonstrating that
16 the allowed amount was based on 200 percent -- 250 percent of CMS.

17 Q And they're all like that after March of 2019, right? Because
18 you all have reduced the rate from 350 to 250, correct?

19 A When we reduced the rate, yes. The EOB should represent
20 then how the claim was paid given the ER rate at the time.

21 Q Now, you all chose that rate for override. You chose 350 and
22 you chose 250, correct?

23 A United does instruct MultiPlan on the level of the override,
24 yes.

25 Q And so that's a United choice, not a Data iSight selection?

1 A Well, when we implemented -- well, it is the client's choice.
2 The rate is determined by various analytics we're doing internally and
3 the key piece that we have set up with our Data iSight rates is the logic
4 within Data iSight. We'll still calculate a Data iSight rate for that
5 particular service and it will compare it to our override, so we'll always
6 pay the greater of those two amounts. So if the Data iSight rate is
7 greater, we would pay that. If not, the override, which at the time was
8 250 percent would be paid.

9 Q Well in fact, if we look at all of these, it's always paid
10 according to the override that United, not Data iSight has selected,
11 correct?

12 A I'm not -- well, I haven't seen all the data in this case. If
13 that -- you know, I'll assume that that's an accurate statement. And that
14 would just show that our greater of methodology to ensure that we've
15 got a floor on how we're paying to comply with the Affordable Care Act.

16 Q Well, let me just ask you this. You don't mention anything in
17 there about 350 or 250. This would be 250. In the explanation to the
18 member on how you got to the allowed amounts, you don't tell them it's
19 just multiplied by 250, do you?

20 A Well no, we don't state the specific amount being calculated
21 in the EOB.

22 Q I mean, in fact, the allowed amount has nothing to do with
23 Data iSight, because it's 250, the number you chose.

24 A Well, I disagree, because we have the compare logic built in
25 Data iSight to ensure we've got a floor to comply with the Affordable

1 Care Act.

2 Q Well, let me just ask you this. I mean, if all of these charges
3 that are allegedly using Data iSight is just 250 percent Medicare, I mean,
4 I could do that, right?

5 A I'm not going to answer if you could do the calculation
6 yourself or not.

7 Q Could you do it?

8 A I could, but it would be untenable to manually price millions
9 of claims.

10 Q Well, a computer could do it, right?

11 A A computer could do it, but clients have purchased that
12 program and that's the tool that's -- is the underlying support for the
13 program.

14 Q Well, but I mean, the whole process is automated, right?
15 Data iSight is an automated process, correct?

16 A The process to adjudicate claims typically is automated and
17 our transferring data back and forth to MultiPlan is automated and how
18 they price the claim is automated. It has to be. We're passing millions of
19 claims back and forth between our organization and Multiplan.

20 Q But instead of saying it was processed using data from Data
21 iSight, you could tell them it's actually based on 250 percent. You could
22 say that, right?

23 A The do -- well, the EOB is disclosing we're using Data iSight.
24 We are using Data iSight. The override is loaded in Data iSight and is
25 always compared to the actual Data iSight rate.

1 Q Okay. You agree with me that unless I notice that it just
2 happens to be two and a half or 250 percent, the member has no idea
3 how you got to that number.

4 A Well, the member is going to understand that the plan paid
5 per their benefit plan. Obviously, if they have questions, they can call
6 our vendor or they can call United Healthcare, if they need to understand
7 the specific reimbursement level.

8 Q Well, the plan doesn't say anything about 250 percent, does
9 it?

10 MR. BLALACK: Objection. Foundation.

11 THE COURT: Objection sustained.

12 BY MR. AHMAD:

13 Q Well, are you aware of whether the plan says anything about
14 250?

15 MR. AHMAD: And Your Honor, I'm asking, because she
16 claimed that it was pursuant to plan.

17 THE COURT: All right..

18 BY MR. AHMAD:

19 Q And so I'll ask you. Do you know whether 250 percent is
20 anywhere in the plan?

21 A Benefit plan language isn't always going to give a specific
22 rate. Because we're using the Data iSight tool and/or override, that rate
23 can vary, based on the data in the Data iSight tool and so it would be --
24 you wouldn't be able to list the precise rate for each and every code in
25 each and every EOB or in the benefit plan.

1 Q You could say, though, that there's override rate of 250
2 percent.

3 A Putting -- well, our benefit plan language is written to
4 describe the program that the client has chosen. If a member needs or
5 wants additional detail, that's what our member services team is for, that
6 they can look at that specific claim and give them the specific
7 information about that specific claim.

8 Q Okay. I'm just asking since you put down the 250 percent
9 override.

10 A Given the fact we administer, you know, thousands of benefit
11 plans, our benefit plan language, it gets challenging to be super
12 prescriptive, because you would literally have to be writing down rate
13 that can change, due to data updates. Or if we change the override, we
14 could be changing those rates and you would have to fix those benefit
15 plans the code and the rate change. That would be untenable.

16 Q Well, but it's been at 250 percent since March of 2019, right?

17 A Right. That's five CPT codes out of thousands that could be
18 billed and paid under the benefit plan.

19 Q Well, except that it's always 250 percent of the Medicare rate
20 for that CPT code. You could say that.

21 A Well, specifically for the plans and the clients who have
22 purchased this program, for those five codes, typically there are going to
23 be multiple other CPT codes that are billed, so you would have to then
24 list in the benefit plan every code and the rates associated with what
25 you're requesting.

1 Q You can't just say generally you apply a 250 percent
2 override? You can't say that?

3 A Well, if we said that, we'd have to be prescriptive about what
4 codes are with that. Again, as I stated, those E&M codes that are specific
5 to ER. There's five codes. Typically there are going to be additional CPT
6 codes that are going to bill -- be billed along with that code. So what
7 you're asking is put a specific rate in related to five codes. There's
8 thousands of other codes that could also be billed. You then would have
9 to put all of those details into benefit plan language, which would just be
10 really impossible to make sure that you're keeping that up to date.

11 Q Well, I'm just asking about, for example, ER, right? The plan
12 has specific language about emergency room benefits, correct?

13 A It does have language around emergency room benefits.

14 Q And you all are applying a 250 percent override on ER
15 benefits.

16 A Well, the 250 percent override, again, is for five E&M codes.
17 When you're in the emergency room, you're likely having multiple other
18 things potentially done in that visit that would not be one of those or
19 would be in addition to those five ER-specific E&M codes.

20 Q Well. I understand, but you can't say 250 as applied to each
21 of these codes individually --

22 MR. BLALACK: Object to --

23 THE WITNESS: We would have to --

24 MR. BLALACK: -- one second.

25 THE WITNESS: -- say 250 --

1 MR. BLALACK: We object --

2 THE WITNESS: -- 250 percent.

3 MR. BLALACK: -- to form. A question's been asked.

4 THE COURT: Over --

5 MR. BLALACK: That question's been asked and answered --

6 THE COURT: It has been --

7 MR. BLALACK: -- and asked and answered.

8 THE COURT: -- asked and answered, but overruled. But you
9 need to move on, Mr. Ahmad.

10 MR. AHMAD: Okay.

11 BY MR. AHMAD:

12 Q Did you finish your answer?

13 A Well, my answer is, as I've stated, to be prescriptive about
14 those five codes, you then have to be prescriptive about the various
15 other codes that could be billed. A benefit plan document already can be
16 in the hundreds of pages, and it would really be impossible to administer
17 for thou -- you know, thousands of clients that may have this program,
18 what the specific rate is for five codes along with the other thousands of
19 codes, could be there could be multiple combinations that would go
20 along with those five E&M codes.

21 Q Does United, in fact, in order to incentivize its options of its
22 lower discount programs or high discount programs, rather, does it
23 suggest plan language, so that you can move people to the higher
24 discount rates?

25 A For all of our programs, our clients are given proposed

1 language. Ultimately, the clients make the decision on what language
2 ends up in their SPD. So some clients will take the language we've
3 provided them. They expect us to propose language for them that is,
4 you know, complies with any state or federal regulations and represents
5 those programs, since we are the experts in how those programs work.
6 Ultimately, though, the client makes the decision on what specific
7 language ends up in their SPD.

8 Q Do you try to sell them on that language?

9 A We don't sell them the language. We would present the
10 language. If they chose to adopt a program, we would provide the
11 suggestion on what updates to their benefit plan would need to occur
12 and they would be making the decision to tell us to go ahead and insert
13 that language or they potentially with their benefits representatives, if
14 they're using a consultant, their legal team might review that language
15 and provide suggested adjustments.

16 Q Well, would you agree with me that the plan language was
17 preventing United from moving to higher discount programs?

18 A I don't agree with that statement. Each of our programs has
19 specific language. So when we're introducing or developing a new
20 program, there typically is new or different benefit language that has to
21 be developed to support that program. So it isn't a forced migration.
22 We're providing solutions for our clients. They make a choice and then
23 as a result, when we're reviewing the program that they've chosen, we
24 will provide to them suggested language that helps support that
25 program. Ultimately, it's their decision to have us put that in their SPD

1 or not on their behalf.

2 Q Okay. Let's go to Exhibit 268.

3 MR. BLALACK: Joe, I think this is already in.

4 MR. AHMAD: It is, Your Honor.

5 MR. BLALACK: It is -- it's AEO though.

6 THE COURT: I show it is admitted.

7 MR. BLALACK: Okay.

8 BY MR. AHMAD:

9 Q Go to page 7. And if we go at the top of -- where it says the
10 opportunity -- it talks about how you're going to move ASO non-par.
11 That's out-of-network, right?

12 A Non-par is out-of-network.

13 Q Reimbursement from low discount to high discount
14 programs using a four-year phased approach. Do you see that?

15 A I see that language.

16 Q And then it says 70 percent of non-par plan dollars are not
17 eligible for high discount programs, due to plain -- benefit plan language.
18 Is that right?

19 A That statistic's accurate and that was in reference to both the
20 in-network benefit level and the out-of-network benefit level.

21 Q Well, non-par is out-of-network, right? That's
22 nonparticipating.

23 A It's nonparticipating spent across in-network benefit level,
24 which are ER services, as an example, and the out-of-network benefit
25 level, which are situations where a member is making a choice to go out-

1 of-network. So it was the whole universe of non-par claims.

2 Q Well, but nonparticipating is out-of-network. I think we just
3 established that, right?

4 A It is out-of-network.

5 Q Okay. So given the plan language won't let you move to
6 these high discount programs, you then try to come up with plan
7 language that would, right?

8 A We develop plan language to support our programs. And I
9 believe my testimony just a few minutes ago -- we present solutions to
10 our clients to help them provide affordable benefits for their members.
11 When they choose one of those programs, we're going to provide the
12 suggested language. Ultimately, it's their choice to make that change.

13 Q Well --

14 A To apply a program, the benefit plan, the language needs to
15 exist, so it's not a forced migration, it's a conversation with the client.

16 Q Well, let's talk about that conversation. Can you look at
17 Exhibit 144?

18 A Okay. I'm there.

19 Q Okay. And this is shared savings program enhanced talking
20 points, an FAQ, correct?

21 A That's what the document says.

22 Q Yes. And this is the conversations you're having with the
23 clients, your talking points with the clients about your SSPE Program,
24 correct?

25 A Well, these are the talking points and FAQ's that we provide

1 to our sales organizations to support them when they're providing an --
2 providing a solution option to their clients.

3 Q Okay. And for example, on page 6, if you go to the bottom?
4 Or actually, we can go to page 7, and then we could just go directly to
5 page 7. And then to number 10. And it says at the top, "SSPE requires
6 update, updated SPD language." Says, "Fully support implementation of
7 program to strengthen UHC's ability to negotiate on accessibility." Do
8 you see that?

9 A I see that.

10 Q And you all are providing that SSPD language, or excuse me,
11 SPD language?

12 A Yes, as I stated before, we had language drafted and would
13 propose clients use that.

14 Q Okay. And you even have talking points, if we go to page 11?
15 Or excuse me, point number 11 on page 8? Number 11 is, "What if a
16 client is not going to use the new SPD language." You see that?

17 A I see that.

18 Q And then on the next one, point 12, just down below, "How
19 should I have conversations with my clients about SSPE," talked about in
20 the first bullet point, "by having conversations, comply, use the internal
21 SSPE talking points, client, hand out elevator pitch to highlight program
22 benefits and importance of updated SPD language." Do you see that?

23 A Yes, I see those two bullets, and it reaffirms that we're not
24 going to administer a program if the client isn't going to appropriately
25 update their benefit plan language to support the program.

1 Q And it seems like your sales organization is trying to talk the
2 client into the updated SPD language?

3 A I disagree with that characterization. Our sales people are
4 always bringing a variety of solutions to our clients. This document is to
5 help them explain our particular out-of-network programs as our sales
6 folks are talking to our clients about multiple offerings for United, so it is
7 helpful for our sales folks to understand particular programs that we're
8 wanting to propose to our clients.

9 Q Okay. So when it says elevator pitch, that's not a sales pitch?

10 A It's not a sales pitch. I -- it's basically helping them
11 understand how the program works and being able to talk about it in
12 simple terms and explain the value of the program.

13 Q Okay. And let me talk to you about the next phase. If we go
14 to Exhibit 329

15 A Okay.

16 Q If we go to page 44 of Exhibit 329? You see at the top where
17 it says, "For the unit platform non-participating dollars are heavily
18 weighted to low discount plans."

19 A I'm sorry. Page 24, did you say?

20 Q 44.

21 A Oh, sorry. Yes, I see that.

22 Q And it says, "With the four plan shift," or excuse me, "four-
23 year plan to shift majority of dollars to at least OCM." Do you see that?

24 A I see that.

25 Q Okay. And that would be under your domain, correct?

1 A Well --

2 MR. BLALACK: Objection. Vague.

3 THE WITNESS: -- we --

4 THE COURT: Overruled.

5 THE WITNESS: We developed the programs. Our sales folks
6 are actually having the conversations with the client.

7 BY MR. AHMAD:

8 Q Okay. For example, if we look on this and it talks about an
9 R&C program; do you see that?

10 A I see that.

11 Q And then it -- the next phase looks like OCM; correct?

12 A Yes, that's accurate.

13 Q And then the next phase after that is MNRP and ENRP. Do
14 you see that?

15 A Correct.

16 Q And those are all out-of-network programs, correct?

17 A Those are all out-of-network programs.

18 Q And those are ones that you oversee?

19 A Yes, that's accurate.

20 Q Okay.

21 MR. AHMAD: Your Honor, I don't know if there's an
22 objection to 329. I'd move the admission of Exhibit 329.

23 MR. BLALACK: Object to the foundation of the document,
24 Your Honor. She didn't write it or receive it.

25 MR. AHMAD: Well, you -- if I may ask one more question?

1 BY MR. AHMAD:

2 Q You have certainly seen this document, page 44 as it pertains
3 to the out-of-network programs; have you not?

4 A Page 44, yes.

5 Q Okay.

6 MR. AHMAD: And if I have to, Your Honor, I'm happy to
7 admit just page 44.

8 MR. BLALACK: No objection to that, Your Honor.

9 THE COURT: All right. We can admit page 44 of 329.

10 [Plaintiffs' Exhibit 329, page 44 admitted into evidence]

11 BY MR. AHMAD:

12 Q Okay. And if I'm -- if we could pull up page 44? Is it fair to
13 say that there is a plan to shift the out-of-network programs from lower
14 discount to higher discount?

15 A There was a plan to work with our sales organization to have
16 conversations with their clients about our out-of-network spend, and,
17 you know, billing practices we were seeing out there, and helping them
18 be aware of other solutions that we had available.

19 Q Okay. And on the far left, which is the latest in time, 2021 to
20 2022, we see MNRP and ENRP? You see that?

21 A Yes, I see that.

22 Q And the one that would pertain to emergency room is
23 actually ENRP, correct?

24 A That's accurate.

25 Q And those are the biggest discounts if we go back and look at

1 44. Those are the biggest discounts. Those have 70 to 79 percent
2 discounts, correct?

3 A Yes, those are discounts, and they're discounts off billed
4 charge.

5 Q Correct. And that's greater than R&C and OCM discounts,
6 correct?

7 A Those discounts are greater than R&C which is based on
8 billed charge, and they are slightly higher than OCM.

9 Q Okay. And if we look -- we looked at Exhibit 450?

10 A Okay.

11 Q This document is entitled, "Out-of-Debt Work or OO double
12 down"?

13 A That's what the document says.

14 Q Okay. And I noticed that where it says, "levels for discussion
15 consideration, 1B, for people on point it," says, "you/John Haben." Is
16 that right?

17 A That's accurate.

18 Q Okay. And you -- I take it you've seen this document before?

19 A I do recall I've seen this document.

20 Q Okay.

21 MR. AHMAD: Your Honor, I -- doesn't appear there's an
22 objection, I move for the admission of Plaintiffs' Exhibit 450.

23 MR. BLALACK: No objection to the document, Your Honor,
24 to its admission. It is a -- yeah.

25 THE COURT: Exhibit 450 will be admitted.

1 [Plaintiffs' Exhibit 450 admitted into evidence]

2 BY MR. AHMAD:

3 Q Okay. And if we just pull up now under Levers for discussion
4 consideration, number 1? And it says, "move remaining FI," that's fully
5 insured; is that correct?

6 A Yes, that's accurate.

7 Q "Off OCM to MNRP or ENRP, meaning from 65 percent
8 discount to 80 percent discount." And then it says, " maybe about 50
9 million." Do you see that?

10 A I see that bullet.

11 Q And actually, if we just scroll up just a tad, I think we can see,
12 put a little bit more context on it. Where above that point it says -- right
13 above levers for discussion, consideration, it says, "total addressable
14 opportunity". Is that the potential revenue that United can make by
15 doing this?

16 A Well, that's the additional medical cost savings.

17 Q Okay. And it says, "may be about 50 million"?

18 A That was a slag, but yes, it says about 50 million.

19 Q And so when we say medical cost, let's be very clear, that's
20 the cost to United because it's fully insured, correct?

21 A Medical cost for a fully insured plan are the pairs, cost.

22 Q Yes, and you are the payer in a fully insured situation?

23 A That's accurate.

24 Q And so again, the less you pay, the higher the discount,
25 right? The higher the discount, the less you pay?

1 A Well, the higher the discount, the function of the discount is
2 the bill charge, so as bill charges are escalating, when you do the math
3 to calculate the discount, as bill charges are higher, it's going to make
4 the percent off the billed increase.

5 Q Well, but here it says you guys are going to make 50 million,
6 right?

7 A Well, it doesn't say we're going to make 50 million, it's
8 stating the potential additional medical expense savings is 50 million.
9 What actually ends up being United's profit is a little more complicated
10 than that on a fully insured plan.

11 Q Okay. Well, let me just ask you overall, has anybody
12 calculated what this -- what these programs cost the providers?

13 A I'm not sure I understand the question.

14 Q Well, let me just back up for a second. When we are talking
15 about the SPD language, right? This is a conversation that United is
16 having with the client, correct?

17 A Yes.

18 Q And you are saying you have to follow the plan language?

19 A That's accurate.

20 Q Okay. And so -- but that discussion is only between you and
21 the employer group, correct?

22 A That's not accurate. All of our fully insured plans have to be
23 filed and approved in the state.

24 Q Okay. But that's when you're negotiating the SPD language,
25 that is a conversation between you and the client?

1 A An SPD is an ASO document, and yes, that conversation
2 would be between United and the client.

3 Q And we, the provider, we're not at the table during that
4 discussion, are we?

5 A No, the provider doesn't have a role in developing benefit
6 plan language, and providers are choosing to stay out-of-network and
7 subject to those network program -- out-of-network programs.

8 Q Well, we're not part of this discussion, correct?

9 MR. BLALACK: Objection. Asked and answered.

10 MR. AHMAD: I'll move on, Your Honor.

11 BY MR. AHMAD:

12 Q You agree with me that the provider never necessarily agrees
13 with the SPD language, correct?

14 A The SPD language is a client choice on the benefits they're
15 trying to offer their members. And out-of-network provider, no, it does
16 not have a say in the benefits that a client is choosing to provide their
17 members. They're making a choice to be out-of-network, and that
18 they're there for subject to the provisions of the various benefit plans
19 that offer out-of-network programs.

20 Q Well, you say we're making a choice to be out-of-network,
21 but it obviously takes two to tango, you have to get both sides to agree,
22 right?

23 A Both parties need to agree to enter into a network
24 agreement.

25 Q Okay. But I'm really focused on the SPD because I have

1 heard you all say, I think I heard you say that we can't do anything other
2 than what's in the SPD. Right?

3 A The SPD outlines all of the provisions for the benefit plan and
4 is what we administer and follow.

5 Q But we're not bound, you understand the providers are not
6 bound by the SPD?

7 MR. BLALACK: Object to form. Asked and answered
8 previously.

9 MR. AHMAD: I didn't ask that.

10 THE COURT: Overruled.

11 THE WITNESS: I -- the benefit plan is providing the
12 provisions for the benefit plan.

13 BY MR. AHMAD:

14 Q But we, the provider, is not bound by that?

15 A A provider does not get involved in drafting benefit plan
16 language that outlines what a plan is covering no.

17 Q Can we agree that we, the providers, should be paid a
18 reasonable value for our services?

19 A I agree providers should be paid a reasonable value.

20 Q And who is responsible in this discussion between you and
21 the client on the SPD language? Who is responsible for making sure that
22 we get paid the reasonable value of our services?

23 A Well, ultimately, the client is going to make a choice, first of
24 all, if they're going to offer an out-of-network benefit, and second, what
25 reimbursement methodology they're going to choose to reimburse both

1 claims.

2 Q Are you saying it's the client's responsibility to make sure
3 we're paid a reasonable value?

4 A I am saying the client will evaluate the programs, and they
5 will determine what they feel is the right reimbursement level or
6 reasonable value for that service, but it's a client choice. We are
7 developing programs, a variety of programs and solutions based on
8 those client needs and desires.

9 Q Well, but let's be very clear, the client in the ASO context is
10 the one paying the bills, right?

11 A That's an accurate statement.

12 Q And I think you have said that the client sometimes has an
13 interest in paying less, fair?

14 A Yes, the client has an interest in paying out-of-network
15 claims, yes.

16 Q Okay. And you all in the ASO context, at least with respect to
17 OCM, you all can receive a percentage of any savings that you save for
18 your client?

19 A That's accurate, if we derive savings, we may take a fee on
20 that.

21 Q Okay. And you know, for example, with respect to some of
22 the providers, such as a TeamHealth, it can cause millions of dollars, its
23 OCM program can cause millions of dollars in reductions in
24 reimbursement, right?

25 MR. BLALACK: Objection. Foundation.

1 THE COURT: Overruled.

2 BY MR. AHMAD:

3 Q Well, let's look at Exhibit 289.

4 MR. BLALACK: Your Honor, can we approach?

5 THE COURT: You may.

6 [Sidebar at 9:36 a.m., ending at 9:37 a.m., not transcribed]

7 THE COURT: Okay. This is a good time for our first break of
8 the day. During this recess do not talk with each other or anyone else on
9 any subject connected with the trial. Don't read, watch, or listen to any
10 report of or commentary on the trial. Don't discuss this case with
11 anyone connected to by any medium of information, including with that
12 limitation newspapers, television, radio, internet, cellphones, or texting.

13 Don't conduct any research on your own relating to the case.
14 Don't consult dictionaries, use the internet, or use reference materials.
15 During the recess don't post any -- or during the trial. Don't post any
16 social media about the trial. Don't talk, text, Tweet, Google issues, or
17 conduct any other type of book or computer research with regard to any
18 issue, party, witness, or attorney involved in the case.

19 Most importantly, do not form or express any opinion on any
20 subject connected with the trial until the matter is submitted to you.

21 It's 9:38. Let's be back sharp at 9:50. I realize that's a shorter
22 break than usual.

23 THE MARSHAL: All rise for the jury.

24 THE COURT: And Ms. Paradise, you may step down during
25 the recess.

1 [Jury out at 9:39 a.m.]

2 [Outside the presence of the jury]

3 THE COURT: You guys want to take this up at 9:45?

4 MR. AHMAD: That would be fine with us, Your Honor.

5 THE COURT: So be back at 9:45. Have a good recess.

6 IN UNISON: Thank you, Your Honor.

7 [Recess taken from 9:39 a.m. to 9:46 a.m.]

8 [Outside the presence of the Jury]

9 THE COURT: -- session now?

10 MR. AHMAD: Yes, Your Honor. I --

11 THE COURT: But let me ask Mr. Blalack to bring the issue --

12 MR. BLALACK: Thank you, Your Honor. This is --

13 THE COURT: -- and then I'll ask for your response.

14 MR. BLALACK: If I could just look at this just real quick. The
15 email in question is a -- this is Plaintiff's Exhibit 289. It's dated January
16 29, 2019, and from a man named Greg Dosedel, who was a deponent in
17 this litigation, and Ms. Paradise, subject line, TeamHealth, and then he
18 proceeds to refer to analysis of impact to decline in various out-of-
19 network programs through TeamHealth, non-par providers. And then it
20 goes through an analysis, financial analysis, and then it says, "Based on
21 these assumptions, with the existing TeamHealth our providers will
22 experience," and then it talks about effects on reimbursement.

23 We think Mr. Dosedel was one person. He's not involved in
24 the out-of-network programs at all. He's not involved in this. He never
25 worked as part of Mr. Haben's crew, Ms. Paradise. He's a contract

1 negotiator. He was on point for the network -- national network
2 negotiations between TeamHealth and UnitedHealthcare that was
3 transferred basically from early 2018 through the middle of 2019, that
4 resulted also in this lawsuit and other lawsuits and other terminations.

5 This analysis is discussing -- is in the context of a back and
6 forth regarding the application of the various programs both with respect
7 to this statement of the jurisdictions that ultimately led to contract
8 terminations when the negotiations were not successful. And so these
9 are basically two parts from the organization sharing information with
10 each other in connection with Mr. Dosedel's negotiation strategy.

11 So my view on this, Your Honor, is if they're going to get in
12 to be able to talk about -- and just to be clear, the reason he said
13 nonteam health, non-par providers is because at that point there were
14 still lots and lots of participating TeamHealth providers at that point,
15 right? And so the question was are they going to remain, you know,
16 TeamHealth participating providers or they going to be become non-par,
17 and that's this setup and financial analysis was in service with that.

18 Again, I don't have any problem with the document being
19 used. It's fine with me. But once it's used, then I need to go in and
20 explain who Mr. Dosedel was, what the context of this was, the fact that
21 there's these negotiations, and everything that goes with it. You know,
22 that they had -- what the prior rates were and all that goes with that and
23 where it ultimately ended up. So that's the issue for me.

24 MR. AHMAD: Your Honor, if I may hand Your Honor the
25 document because I think, you know, that is a long explanation for what

1 is a fairly short document? And the only relevant part, which I'm happy
2 to -- the top part I don't think has anything to do with negotiations. But
3 the bottom part --

4 THE COURT: You already have in evidence that there was a
5 \$50 million savings.

6 MR. AHMAD: Yes.

7 THE COURT: So why does is needed?

8 MR. AHMAD: Just the impact to us. That's all, Your Honor.

9 THE COURT: I'm afraid it would open the door. I-- so I'm
10 going to caution you that I won't admit.

11 MR. AHMAD: Thank you, Your Honor.

12 THE COURT: All right. You've all -- did you guys get a
13 break?

14 MR. BLALACK: We're ready. I'm -- I want to hit the target,
15 Your Honor. So I think --

16 THE COURT: Right.

17 MR. BLALACK: -- we're ready to go when you are.

18 THE COURT: Well, as soon as the --

19 MR. BLALACK: So can we bring Ms. Paradise in?

20 THE COURT: Please.

21 [Pause]

22 THE COURT: Just waiting for the marshal to give me the
23 high sign.

24 THE MARSHAL: All rise for the jury, please.

25 [Jury in at 9:51 a.m.]

1 THE COURT: Thank you. Please be seated. And thanks,
2 everyone, for being right on time. I appreciate it.

3 Mr. Ahmad, go ahead, please.

4 MR. AHMAD: Thank you, Your Honor.

5 BY MR. AHMAD:

6 Q Ms. Paradise, if we can have you look at Exhibit 423. It's not
7 in -- it's not in yet, but if you can look at 423?

8 A 423.

9 [Pause]

10 THE WITNESS: Okay.

11 MR. AHMAD: Okay. Let me know when you're there.

12 THE WITNESS: Yep, I'm there.

13 BY MR. AHMAD:

14 Q Okay. And that is a presentation that you did, correct?

15 A This was a presentation that Deborah Drinkwater, who is a
16 VP in the market, and I consulted on. She actually drafted the document.
17 I provided some input.

18 Q Okay. It has your name and her name as the presenters,
19 correct?

20 A Correct. We were both present for the presentation.

21 Q And it concerns out-of-network issues?

22 A Yes. It's specific about the out-of-network issues in the West
23 region.

24 Q Okay.

25 MR. AHMAD: Your Honor, I'd move for the admission of

1 Exhibit 423.

2 MR. BLALACK: No objection to admissibility, Your Honor,
3 though this isn't a --

4 THE COURT: Good enough. 423 will be admitted.

5 [Plaintiffs' Exhibit 423 admitted into evidence]

6 MR. AHMAD: Okay. And if we could put up page 2. And I
7 think midway down, key areas of opportunities.

8 MR. AHMAD: Oh, I'm sorry. It's the next section up. There
9 we go.

10 BY MR. AHMAD:

11 Q And I assume this is something that you're aware of in terms
12 of the key areas of opportunities; is that right?

13 A Yes.

14 Q All right. And I notice the third bullet point says, "Optimize
15 out-of-network programs." Do you see that?

16 A Yes, I see that --

17 Q What is --

18 A -- bullet.

19 Q -- meant by the term optimize?

20 A So optimize out-of-network programs is just a terminology
21 we're using to talk about management of the existing programs. So it
22 could be -- a simple example is a new CPT code is published and we're
23 ensuring that our program's appropriately priced per that program's
24 methodology for any new codes, would be an example.

25 Q Okay. Does it have anything with the adoption of high

1 discount programs?

2 A That bullet does not. I believe there's a bullet above that
3 talks about adoption.

4 Q Yes. Because the key area of opportunity, at least the first
5 bullet point, is advancing client adoption, correct, of high discount
6 programs?

7 A Correct.

8 Q And then if we go down a little bit, we see those programs
9 again. ENRP [sic] and ENRP, correct?

10 A I see MNRP and ENRP listed, yes.

11 Q Okay.

12 MR. AHMAD: If we can go down below and go to top five
13 strategies.

14 BY MR. AHMAD:

15 Q And, again, we see client adoption of high discount
16 programs, correct?

17 A That is the bullet, yes.

18 Q And then it says, "Reduce OON networks to less than par
19 levels," correct?

20 A The bullet is less than or equal to par levels.

21 Q Okay. So you're trying -- in this one it says you're trying to
22 reduce those that are out-of-network to that that is below in-network or
23 equal to it, right?

24 A We were evaluating opportunities to pay at or below par
25 levels. I'm unaware of a rule that states we should be paying out-of-

1 network providers more than our in-network providers.

2 Q Well, you'd agree with me that the rule is you should pay
3 reasonable value for services --

4 A We should be --

5 Q -- correct?

6 A -- paying a reasonable value that does not equate to billed
7 charge.

8 Q All right. Well, you agree though that this issue is all about
9 reasonable value?

10 MR. BLALACK: Objection. Vague.

11 THE COURT: Overruled.

12 BY MR. AHMAD:

13 Q Correct?

14 A Reasonable value is how we should be paying our claims.
15 We define that as Medicare plus a small margin.

16 Q Now, if we go to Exhibit 239, specifically page 2, and you see
17 the bottom right, I believe, where it talks about action with urgency and
18 acceleration?

19 A Yes, I see that section.

20 Q And the second bullet point, which talks about improve OON
21 network reimbursement levels to 80 percent of par rates, do you see
22 that?

23 A I see that bullet.

24 Q And that would actually be less, obviously, only 80 percent of
25 the in-network prices, correct?

1 A That would be 80 percent of the par rates, and it was a
2 suggestion.

3 Q Okay. Now, earlier I think you said you define reasonable
4 value as a percentage of Medicare plus? Did you say that?

5 A I did say that.

6 Q Now, have you seen any of the services that we have
7 provided in the ER room?

8 A Are you asking me if I've seen specific claims when you say
9 services? What --

10 Q No. The actual services. Have you been to any of our
11 facilities?

12 A No. Fortunately I haven't had to visit an ER.

13 Q Okay. Do you understand that emergency room doctors
14 have some unique characteristics?

15 A I understand ER docs, yes, have unique characteristics.

16 Q I mean you understand that unlike other doctors, we have to
17 treat everybody? We have to give the same high quality emergency
18 room care to every single person, correct?

19 A I understand that, yes.

20 Q We don't get to pick them?

21 A The doctors do not get to pick the patients.

22 Q You understand that that's going to bring a fair amount of
23 uninsured patients, correct?

24 A I understand that, yes.

25 Q Have you done any analysis on how many uninsured or even

1 Medicare insured, Medicaid insured that any of our facilities treat?

2 A I don't have those statistics. It's not something I would
3 commonly look at.

4 Q Can you imagine that it can vary from place to place, even
5 state to state, city to city?

6 A I would imagine there could be a wide variability.

7 Q When you -- when you think about reasonable value, did you
8 factor in any of these unique characteristics for emergency room
9 doctors?

10 A There are characteristics that are evaluated or considered in
11 development of those reimbursement levels, depending on the
12 methodology that's used.

13 Q Okay. But you have no idea how many of our patients are
14 uninsured, or Medicare insured, or Medicaid insured as opposed to have
15 commercial insurance?

16 A I personally do not know those statistics, no.

17 Q Do you think that matters when evaluating reasonable value?

18 A If that matters, then you're making the assumption that the
19 commercial business needs to fund Medicare and Medicaid.

20 Q But you understand we have to treat everybody regardless?

21 A I understand you have to treat everybody.

22 MR. AHMAD: I'll pass the witness, Your Honor.

23 THE COURT: All right. Cross-examination, please,
24 Mr. Blalack.

25 MR. BLALACK: You're way ahead of us. My apologize,

1 Ms. Paradise, it's taking me so long to get all suited up here.

2 THE WITNESS: No worries.

3 MR. BLALACK: By the way, Counsel, the exhibits that I
4 provided to you all, do you all have any objection to the admission of
5 any of them?

6 MR. AHMAD: I think we do to some, yeah?

7 UNIDENTIFIED SPEAKER: No. No objection.

8 MR. AHMAD: No. No objection, Your Honor.

9 MR. BLALACK: Your Honor, real quick before the
10 examination, I'm going to move for admission of Defendants' Exhibit
11 4048, Defendants' Exhibit 4478, Defendants' Exhibit 4529, Defendant's
12 Exhibit 4531, Defendants' Exhibit 4573, Defendants' Exhibit 5505,
13 Defendants' Exhibit 5506, and lastly, Defendants' Exhibit 5507.

14 MR. AHMAD: And no objection, Your Honor.

15 THE COURT: All right. Exhibits 4048, 4478, 4529, 4531, 4573,
16 5505, 5506, and 5507 will be admitted.

17 [Defendants' Exhibit 4048, 4478, 4529, 4531, 4573, 5505, 5506, and
18 5507 admitted into evidence]

19 MR. BLALACK: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. BLALACK:

22 Q Good morning, Ms. Paradise.

23 A Good morning.

24 Q I'd like to cover a few points about your background before
25 we talk about some of the questions that Mr. Ahmad had asked you here

1 in just a little bit -- not long ago. And let's introduce you a little bit to the
2 jury. Where do you live, ma'am?

3 A I live in Victoria, Minnesota.

4 Q And are you married?

5 A I am.

6 Q How long have you been married?

7 A 22 years.

8 Q Do you have any children?

9 A I have two daughters.

10 Q How old are your daughters?

11 A 18 and 17.

12 Q Are they in college now?

13 A One just started her freshman year.

14 Q Okay. And the other, is she in high school?

15 A The other is a senior this year.

16 Q What about you, did you attend college?

17 A I did attend college.

18 Q Did you receive a degree?

19 A I received my bachelor of science degree.

20 Q And from where?

21 A Ball State University in Muncie, Indiana.

22 Q What academic discipline did you earn a degree in?

23 A My degree was a double major in business administration
24 and finance.

25 Q Did you later attend any further formal education like

1 graduate school or something like that?

2 A I did. I attended graduate school.

3 Q And where did you attend graduate school?

4 A At St. Thomas University, which is in Minneapolis,
5 Minnesota.

6 Q Did you earn a degree?

7 A I did. I earned my MBA.

8 Q And after completing graduate school, did you go into the
9 workforce immediately?

10 A I was working at United while I was obtaining my master's.

11 Q Okay. That was what I was getting at. Did you start working
12 at UnitedHealthcare after completing your undergraduate degree?

13 A I started shortly after I completed my undergrad.

14 Q Okay. What year did you start working for UnitedHealthcare?

15 A I started in 1996.

16 Q And have you worked for UnitedHealthcare continuously
17 since then to today?

18 A I've worked for UnitedHealth Group. I had -- I spent some of
19 my time in our Optum entity, but primarily have been in the
20 UnitedHealthcare organization.

21 Q So within one United company or another, how long have
22 you been with the company roughly?

23 A 25 years.

24 Q And what was your first position at UnitedHealthcare?

25 A My very first role was an associate accountant in our

1 UnitedHealthcare health plan accounting organization.

2 Q And when did you first join UnitedHealthcare's out-of-
3 network programs team?

4 A That was in 2015.

5 Q What was your position when you joined the out-of-network team?

6 A When I joined that team, I was Senior Director for out-of-network.

7 Q Did your job title change between 2015 and now?

8 A It did.

9 Q How did it change?

10 A I was promoted twice during that time period, and ultimately have
11 my title now, Vice President of Payment -- Out-of-Network Payment
12 Strategy.

13 Q And when did you assume the current role that you have?

14 A That would have been in early 2019.

15 Q And have your job duties within the out-of-network program
16 changed over the course of time since you joined in 2015 up until the
17 present?

18 A They have.

19 Q How?

20 A When I first joined the organization, I had oversight primarily
21 for just the operations of the out-of-network programs. That meant care
22 and feeding of our existing programs. We have a operational team that
23 handles member [sic] and helps the organization respond to provider
24 and member disputes and also manages the work back and forth with
25 our vendor. And then, upon my promotion, I took on additional

1 accountabilities, which included development and management of our
2 out-of-network strategies.

3 Q Now, for the period from 2015 when you joined the out-of-
4 network program team up until this year, to whom did you report?

5 A I reported to John Haben.

6 Q And did you report to John Haben continuously from 2015
7 until the present?

8 A I did, up until August of this year.

9 Q And what happened in August of this year?

10 A Mr. Haben retired.

11 Q And who do you report to now?

12 A I report to a Victoria Bogatyrenko.

13 Q Did your job responsibilities change once you stopped
14 reporting to Mr. Haben?

15 A They did.

16 Q In what way?

17 A John and I would divvy up some of the strategic components
18 of our job. And in his departure, I have full oversight now of our
19 programs.

20 Q Okay. So how would you describe your current job
21 responsibilities within the out-of-network program team, just at a high
22 level?

23 A So there's a couple chief components. So I have oversight of
24 our vendor relationships with MultiPlan and CareHealth, and that
25 includes oversight of the contract, relations, engaging with them, other

1 program implementations. I also have oversight to ensure that all of our
2 programs are operating effectively. We have -- my team has oversight of
3 helping the organization respond to provider and member disputes. We
4 have oversight to work within the organization to ensure we're retaining
5 any legal and regulatory evaluation input to our programs. And then
6 ultimately, I have oversight for development of any new out-of-network
7 programs or new initiatives in response to client needs or market plans.

8 Q Great. I wanted to explain a little bit more to the jury about
9 how you -- your job does or does not relate to the final Defendants that
10 are in this case, okay? That's what I'm going to do now.

11 A Okay.

12 Q So I'm just -- what company do you currently work for in
13 your role?

14 A So I am a part of our UnitedHealth Networks organization.

15 Q And ma'am, I'll represent to you that the five Defendants in
16 this case UnitedHealthcare Insurance Company, UnitedHealthcare
17 Services, UMR, which is an acronym for United Medical Resources,
18 Sierra Health and Life, and Health Plan of Nevada. Okay? Those are the
19 five Defendants.

20 A Okay.

21 Q Are you an employee at any of these five Defendants?

22 A I'm an employee of UnitedHealthcare Services.

23 Q Through your role at UnitedHealth Network?

24 A Through my role at UnitedHealth Networks.

25 Q Have you ever worked for Sierra Health and Life Insurance

1 Company?

2 A I have not.

3 Q Have you ever worked for Health Plan of Nevada?

4 A I have not.

5 Q Have you ever worked for UMR?

6 A I have not.

7 Q Have you ever had responsibility for the out-of-network
8 program for Sierra Health?

9 A I have not.

10 Q Have you ever had responsibility for the out-of-network
11 programs for Health Plan of Nevada?

12 A I have not.

13 Q Have you ever had responsibility for out-of-network
14 programs for UMR?

15 A No.

16 Q Now, during -- in your role on the out-of-network team for
17 UnitedHealthcare, do you ever engage with people at those companies
18 about their out-of-network programs and communicate with them at all?

19 A From time to time, we'll engage primarily with UMR.

20 Q Okay. Do you know if UMR, Sierra, and Health Plan of
21 Nevada used out-of-network programs that were different from the
22 programs that you manage for UnitedHealthcare?

23 A I believe they do use different programs.

24 Q Now, I want to talk about some of those subjects that have
25 come up in the course of the trial before the jury, some of the topics

1 about which you were questioned. And the first issue I would like to
2 discuss relates to whether billed charges for out-of-network providers
3 have increased during the period in dispute in this case that's the subject
4 of it. Okay?

5 A Okay.

6 Q Now, I will represent to you, ma'am, that the period of
7 dispute in this case is July 1, 2017, to January 31, 2020. Okay?

8 A Okay.

9 Q Ma'am, have you ever heard of something called a
10 chargemaster?

11 A I have.

12 Q What is a chargemaster?

13 A A chargemaster is the provider's fee schedule, for lack of a
14 better word.

15 Q Is it fair to call a chargemaster a price list for a healthcare
16 service?

17 A It is their price list.

18 Q Okay. Now, during the period in dispute, do you have an
19 understanding of whether the billed charges of out-of-network providers
20 as reported on those providers' chargemasters have gone up, have gone
21 down, have basically stayed the same?

22 A We did see the chargemasters and those billed charges
23 increasing.

24 Q Okay. Now, do you know whether any particular types of
25 out-of-network providers during this period, 2016 to 2019, reported

1 significant increases in the billed charges as noted on their
2 chargemasters?

3 A We were seeing significant increases in -- by hospital-based
4 providers.

5 Q When you refer to a hospital-based provider, can you give
6 the jury an example of what are hospital-based providers?

7 A Sure. They're the RAPL providers, so that would be
8 anesthesiology, ER physicians, lab, pathologists.

9 Q Now, during your time managing UnitedHealthcare's out-of-
10 network programs, have you observed any trends that contributed to this
11 outcome of increases in the chargemasters of those hospital-based
12 providers?

13 A We did review metrics that were demonstrating that there
14 was an increase in those provider types, billed charges increasing.

15 Q And how did that trend impact your work within out-of-
16 network programs?

17 A So that impacted our work with programs that historically
18 were based on billed charge. The costs associated with those programs
19 were arbitrarily increasing as the result of those provider billing tactics of
20 increasing their billed charges.

21 Q And did you, in your role on the out-of-network programs
22 team, play personally a role in responding to that trend?

23 A Our team did play a role in responding to that as we were
24 identifying those trends.

25 Q Let me ask Shane to bring up Defendant's Exhibit 4048,

1 which I believe is in evidence, so I can show that to you, Ms. Paradise,
2 and also show it to the jury.

3 A Okay. Is that in this?

4 Q You can find that. There should be a binder --

5 A Four zero eight?

6 Q -- of documents right there, 4048.

7 MR. BLALACK: May I approach, Your Honor?

8 THE COURT: You may.

9 THE WITNESS: Four zero -- sorry.

10 MR. BLALACK: I'll help you find this binder.

11 THE WITNESS: Oh, is it in this one?

12 MR. BLALACK: I think that might actually be it.

13 THE WITNESS: Okay. Sorry. Okay.

14 BY MR. BLALACK:

15 Q Would you find 4048 --

16 A Yes.

17 Q -- 4048, and just take a look at it and tell me if you've ever
18 seen this document -- whether you've seen it before.

19 A Yes, I believe I've seen this or a version of it.

20 Q Now, is it fair, ma'am, to say that this Exhibit 4048 provides
21 background information on UnitedHealthcare's out-of-network program?

22 A Yes. This document appears to be a member flyer that
23 provides information for members about our out-of-network programs.

24 Q Now, let's turn to page 11 of the document. Ma'am, I'm
25 referring to the -- you'll see an EX number at the bottom, and then it'll

1 have a point, and then it'll have 000 on the page. That's what I'm talking
2 about, that page 11. And ma'am, I'm showing the jury and you that page
3 of the document now that is entitled "Professional, Reasonable, and
4 Customary: Rising Cost Trends." Do you see that?

5 MR. AHMAD: If I may, I'm sorry, what exhibit is this?

6 MR. BLALACK: This is 4048, I believe. Is that what you've
7 got?

8 MR. ZAVITSANOS: Is this the cover of the one you just
9 showed, or is this --

10 MR. BLALACK: This is part of that exhibit.

11 MR. AHMAD: Is this -- my question, I guess, from the first
12 page is, is this about pain management?

13 MR. BLALACK: No.

14 MR. AHMAD: With that representation.

15 MR. BLALACK: It says that the -- can you go back to the
16 front -- first page?

17 MR. ZAVITSANOS: Up at the top.

18 MR. BLALACK: Yeah. See, it says, "Know your -- know more
19 before choosing out-of-network provider plan management."

20 MR. AHMAD: Okay.

21 MR. BLALACK: Not pain management, plan management.

22 MR. AHMAD: Got it.

23 MR. BLALACK: If you go to page 11, please?

24 MR. ZAVITSANOS: Believe that's why we have these.

25 MR. BLALACK: It may involve pain management as well, but

1 it's mostly focused on plan management.

2 BY MR. BLALACK:

3 Q All right. So let's look back at the title of this. It says
4 "Professional, Reasonable, and Customary: Rising Cost Trends." Do you
5 see that, ma'am?

6 A I do.

7 Q And I think you've discussed with Mr. Ahmad the term
8 reasonable and customary. Do you recall that?

9 A I do.

10 Q When the out-of-network program team refers to reasonable
11 and customary charges, to what are you typically referring?

12 A Reasonable and customary charges were usually referring to
13 our facility and physician reasonable and customary programs. And our
14 physician reasonable and customary program will use a fair health bill
15 benchmark as a reimbursement component of that program.

16 Q Okay. And have you had a chance to look at page 11?

17 MR. AHMAD: Excuse me. Your Honor, I probably need to
18 approach on this.

19 THE COURT: Come on up. Come on up, guys.

20 [Sidebar at 10:16 a.m., ending at 10:19 a.m., not transcribed]

21 THE COURT: Okay. We got some direction on how the
22 examination will go. Go ahead, please.

23 MR. BLALACK: So Shane, bring that up and move up the
24 page. See underneath the chart thing? I don't need the chart. It's
25 underneath the chart. Down there below, yeah, where it says -- there

1 you go.

2 BY MR. BLALACK:

3 Q Now, ma'am, the information that's reflected on this page of
4 the document, Exhibit 4048, where is it coming from and what's it based
5 on?

6 A The information that was used to put together this chart was
7 taken from the FAIR Health Bill Benchmarks at the 80th percentile.

8 Q And explain to the jury, what is the FAIR Health Bill Charge
9 Benchmarks? Let's start there first.

10 A So FAIR Health is an independent third-party organization
11 that compiles healthcare data. And they publish benchmarks that array
12 that data into what are called percentiles. So this particular graph is
13 portraying --

14 Q Ma'am, I'm just going to ask you to focus on the three- to
15 five-year period that's reflected here on this -- on the portion of the slide
16 being shown to the jury.

17 A Okay. So that three- to five-year period, it's arraying the rate
18 at which billed charges were escalating over that period of time for out-
19 of-network providers.

20 Q And when you say the rate at which they were escalating
21 based on the 80th percentile of those benchmarks?

22 A Correct. So the 80th, this chart is tracking the 80th percentile
23 over time. So that period is demonstrating that that 80th percentile was
24 increasing as a result of bill charges increasing.

25 Q Now, just to remind the jury, Ms. Paradise -- I think you may

1 have said this even earlier in response to my question -- does
2 UnitedHealthcare rely on FAIR Health for any out-of-network programs?

3 A We do rely on FAIR Health Billed Benchmarks to support our
4 physician reasonable and customary program, which does not apply to
5 ER services but applies to the out-of-network benefit level for physician
6 services.

7 Q Okay. I want to discuss that more in a moment, but let's
8 focus on the information on this page first. Now, based on the data that
9 was reflected from the FAIR Health database here, can you explain to the
10 jury what UnitedHealthcare was seeing in the FAIR Health data at the
11 80th percentile during the three- to five-year period reflected in this
12 slide?

13 A So United was seeing the billed charge by out-of-network
14 providers escalate. In this chart, to demonstrate that escalation, was
15 translating those charges into a CMS equivalent, which is a benchmark
16 that more easily portrays what the true cost of those services are. And
17 so this is demonstrating over that time period the percent of CMS was
18 increasing at a rapid rate with respect to physician bill charges. So that
19 80th percentile was arbitrarily increasing as a result of those billing
20 practices.

21 Q Yeah. Now, this bullet point says, "The last three-five years.
22 It looks like steep growth in usual, customary, and reasonable levels in
23 the 80th percentile reasonable and customary (R&C) for comparison."
24 So again, to orient the jury, this document was dated what time period?

25 A I believe this is 2018.

1 Q So that three- to five-year period would have been
2 somewhere between 2013 and 2015?

3 A That's accurate.

4 Q Now, the second bullet says, "This trend contributes to
5 increasing the number of employer claim costs." Do you see that?

6 A I do see that bullet.

7 Q What does that mean?

8 A So as billed charges are increasing, any program that uses
9 billed charges as a basis, by virtue, that reimbursement is going to
10 increase arbitrarily. And typically, member cost share is going to be a
11 percent of what we pay. So if you've got a program that's paying a
12 percent of billed charge or is paying billed charge, that member percent
13 is going to increase along with the increase in the billed charge, as well
14 as for the client or for the plan. If they're using a methodology that's
15 based on billed, as that arbitrarily increases, the cost of the plan as well
16 is going to increase arbitrarily as a result.

17 MR. BLALACK: I want to see if we can illustrate that dynamic
18 for the jury's benefit, so they really understand what you mean. And I'm
19 going to ask Mr. White if I could turn on the ELMO real quick.

20 BY MR. BLALACK:

21 Q Okay. So I've written down four years, 2017, 2018, 2019, and
22 2020, Ms. Paradise. So I just want to use a hypothetical. So a claim -- an
23 out-of-network claim is adjudicated using the physician reasonable and
24 customary program. That's the hypothetical I'm using, okay?

25 A Okay.

1 Q And you've been through this already, but which benefit
2 level is the physician reasonable and customary program associated
3 with?

4 A So that program only applies to the out-of-network benefit
5 level.

6 Q So -- and are emergency room claims adjudicated on the out-
7 of-network benefit level?

8 A No, they are not.

9 Q So it would the physician reasonable and customary
10 program be used to adjudicate out-of-network emergency room
11 professional claims?

12 A That program would not apply to ER services.

13 Q All right. Now, I want to -- let's assume for the sake of this
14 hypothetical that an out-of-network ER service could apply to be
15 adjudicated using a physician R&C, just for the illustration of this
16 exercise, okay?

17 A Okay.

18 Q So in a world where the plan contemplated the claim would
19 be adjudicated and priced at the 80th percentile of FAIR Health, okay?
20 I'm going to use that as an assumption; you follow me?

21 A Okay. Yep.

22 Q All right. Now, I'm just going to assume for the sake of
23 argument that the 80th percentile of FAIR Health is \$1,000. Okay?

24 A Okay.

25 Q So if you have, in 2017, a plan document that contemplated

1 reimbursement using the physician reasonable and customary program
2 tied to the 80th percentile of FAIR Health and a claim came in with a
3 \$1200 charge on it. Would the allowed amount for that claim be \$1,000?

4 A If that was the rate, for the 80 percentile for that service, yes,
5 the \$1,000 would apply.

6 Q Okay. Now let's say we're in the next year, same scenario
7 plays out. But in the next year, the 80th percentile of the FAIR Health
8 benchmark has gone up 10 percent. Do you understand the scenario I'm
9 assuming?

10 A Yes, I do.

11 Q So now you get bill charge. And we'll keep it simple. We'll
12 keep the bill charge the same for this one provider. But the claim comes
13 in and is now being reimbursed at the 80th percentile, which we said
14 was gone up 10 percent, and that would be \$1,100 at the 80th percent; is
15 that right?

16 A Yes.

17 Q So the same program, same size, same bill charge. But
18 because the charges in the FAIR Health benchmark data have increased
19 at the 80th percentile by 10 percent, the allowed amount has gone up for
20 the plan from 1,000 to \$1100; is that right?

21 A That's accurate.

22 Q All right. Now let's go to 2019. We'll keep the same \$1200
23 bill charge. Let's assume that the FAIR Health benchmark in 2019 goes
24 up another -- let's say it goes up 5 percent this time. So it goes up a little
25 bit, but not as much as before. What would that generate for the new

1 allowed amount at the 80th percentile of FAIR Health? Do you want me
2 to get my calculator?

3 A Yeah, probably.

4 Q So according to my math, and probably people on the jury
5 already know the answer to this question. So 5 percent, it would be
6 another \$55 according to my math, which would mean now the allowed
7 amount is \$155. So is that -- assuming my math is right, is that how it
8 would change between 2018 and 2019, if the 80th percentile FAIR Health
9 benchmark increased between 2018 and 2019 of 5 percent?

10 A That's an accurate representation.

11 Q All right. Same thing. \$1200 bill charge. The last year for
12 the same service. Reimbursing at the same program at the FAIR Health
13 benchmark at 80th percentile. And this time let's assume it goes up 10
14 percent. Now we've got $1155 \times .1$ that adds another, let me do my math
15 on it. That takes us to \$1270.50. Would that be the allowed amount
16 using the 80th percentile for FAIR Health database?

17 A That would be the result of the FAIR Health calculation.

18 Q But in this case, would that be paid, or would a different
19 number be paid?

20 A A different number would be paid. Our claim system will
21 never pay more than bill charge, so it will cap it at least at bill charge if
22 the reasonable and customary rate comes back at a higher level.

23 Q So for a provider to have kept their charge the same all four
24 years, the allowed amount reimbursement would increase every year to
25 the point that it ultimately exceeded the charge, simply because the

1 providers in that region reporting their charges to FAIR Health, had their
2 charges increased over that time?

3 MR. AHMAD: Your Honor, I would object to the leading
4 nature of the question.

5 MR. BLALACK: I'll withdraw it.

6 THE COURT: It is leading.

7 BY MR. BLALACK:

8 Q Explain how you could get to a point , ma'am, where the
9 allowed amount could increase in this fashion over four years, when the
10 charge has never changed?

11 A So this is the challenge with basing reimbursement
12 methodologies on bill charges. FAIR Health collects data and arrays
13 those bill charges into what they call percentiles. So as those bill
14 charges are escalating, those percentiles are simply arraying and
15 presenting what's happening with those bill charges. So the 80th
16 percentile, basically means, at that level, 80 percent of the providers are
17 billing something less, the other 20 percent are billing something more.
18 As those bill charges increase, that 80th percentile, if you're using that as
19 a reimbursement, your reimbursement level is increasing, just by virtue
20 of the practices of those providers in the data.

21 Q So in this case, the only variable that changed over that four
22 year period is the rates being reported to FAIR Health at the 80th
23 percentile by providers in the region, correct?

24 A That's accurate.

25 Q Now if you go back to Exhibit 4048. Let's go to page 9.

1 Ma'am, the title of this slide is, "A Strong United Healthcare Network."
2 And it says the breadth of UnitedHealthcare's provider network insures
3 today up to 95 percent of member medical claims with contracted
4 providers. That means means that healthcare costs should really take
5 members by surprise. The number of healthcare providers in the
6 network, and it has it in the right hand column with the figure 90-95
7 percent of the claims captured in the network." Do you see that?

8 A I do.

9 Q What does that refer to?

10 A So that's a statistic to demonstrate that United does offer a
11 wide network, and that most of our -- most of our charges are running
12 through our network. And there's a small portion that is an actual out-of-
13 network provider.

14 Q So when you're talking about out-of-network claims, which is
15 what's in dispute in this case, that would fall in the portion that's not
16 captured there, which is the five or ten percent of claims that are not
17 reimbursed within the network?

18 A That's accurate.

19 Q Now --

20 MR. BLALACK: Thank you. You can pull that down, Shane.
21 And I want to go to another document, which is -- oh, I'm sorry no,
22 actually -- keep that up, Shane. My apologies. And go to page 42.

23 BY MR. BLALACK:

24 Q And you'll see a summary page that says out-of-network
25 programs overview. Do you see that?

1 A Yes, I do.

2 Q Down at the second paragraph it says out-of-network
3 programs utilize several different reimbursement methodologies that
4 may apply based upon the benefit level. And then it says, (in-network
5 benefit level vs. out-of-network benefit level). Do you see that?

6 A I do see that.

7 Q I think there's been some confusion, and I understand why,
8 by the terminology. Benefit level. You've heard of the out-of-network
9 providers, out-of-network claims, in-network providers, in-network
10 claims. But I'm asking about the benefit level. Do you understand those
11 are different?

12 A I do understand those are different.

13 Q Okay. What is a -- could you explain to the jury the
14 difference between a network or in-network benefit level and an out-of-
15 network benefit level?

16 A Yes, so an in-network benefit level claim, and there are some
17 examples listed here in the document, are things like an emergency
18 room visit, a hospital based provider that's non-par or out-of-network but
19 is practicing at an in-network facility. For those situations, the benefit
20 plans will cover those services -- will cover those services. And the
21 member cost share will be the same as if they saw an in-network
22 provider.

23 So an example would be if you go to an in-network provider, your
24 cost share is 20 percent of what the plan pays. Even when you're out-of-
25 network, that same cost share will apply when that claim is subject to the

1 in-network benefit level. So we're not punishing the member for
2 unknowingly seeing an out-of-network provider, as example in an
3 emergency situation.

4 On the contrary, an out-of-network benefit level, those are
5 scenarios and there's a couple of examples here, seeing a specialist.
6 Members are making a choice to see that out-of-network provider. And
7 as a result their cost share may be different. In those scenarios, you
8 know maybe there's a 60 percent cost share for the member by choosing
9 to go to an out-of-network provider.

10 Q And you use the term choice. Does the notion of member
11 choice play a role in what's in the in-network benefit level or the out-of-
12 network benefit level?

13 A Member choice comes in to play at the out-of-network
14 benefit level. The member is choosing to see an out-of-network
15 provider.

16 Q And in this example, you've listed, as you noted, services
17 that are associated with the in-network benefit level and services that are
18 associated with the out-of-network benefit level. And I see a reference to
19 emergency under the in-network benefit level, and I see a reference to
20 non-emergent under the out-of-network benefit level. Could you explain
21 to the jury those two terms and how they're relate to the benefit level?

22 A Sure. So emergency services, you know, a visit to an ER
23 room, those services are going to be covered at the in-network benefit
24 level. Again, same member cost share as if they were at an in-network
25 doctor. Non-emergent below on the out-of-network is basically -- it's not

1 an emergency situation, so you're seeing a specialist, maybe a
2 dermatologist, and you're choosing to see someone that's out-of-
3 network.

4 Q Does -- with the benefit level that's been utilized, impact
5 which out-of-network program UnitedHealthcare will use to reimburse a
6 claim?

7 A Yes, the benefit level can determine which program will
8 apply.

9 Q All right. So let's turn to page 43 through -- start at 43. And
10 you'll see a summary of programs. I'm just going to scan them. First we
11 see NRP; is that right?

12 A Yes, that's the first program listed.

13 MR. BLALACK: Go down a little bit farther, Shane.

14 BY MR. BLALACK:

15 Q And you'll see MNRP; is that right?

16 A Yes.

17 Q Keep going down. Then you see shared savings program
18 enhanced.

19 A Correct.

20 Q All right. You see shared savings program, the old legacy
21 program; is that right?

22 A Yes.

23 Q Then you see facility reasonable and customary; Facility R
24 and C. Do you see that?

25 A Yes.

1 Q Then you see physician reasonable and customary, Physician
2 R and C?

3 A Yes.

4 Q And finally outlier cost management. Do you see that?

5 A Yes.

6 Q Okay. Does that listing that's in this Exhibit 4048 summarize
7 the range of out-of-network programs your team manage and offered for
8 clients during this period at issue we have in this case?

9 A Yes, it does.

10 Q Now I want to focus -- turn to page 45 of that list. And if you
11 go down to the bottom, physician reasonable and customary. We were
12 just discussing this. If you look at the program description, it says
13 Physician R and C provides savings on non-contracted claims, when the
14 member had a choice and knowingly received care from an out-of-
15 network provider. Do you see that?

16 A I see that section.

17 Q When you're referring there to member had a choice, what
18 are you talking about?

19 A So that's a member is choosing to seek care from a provider.
20 Again I'll use a dermatologist as an example. The member understands
21 that they're out-of-network and they still choose to use that provider to --
22 for their services.

23 Q Is that associated with emergency non-care or a non-
24 emergent service?

25 A That's going to be a non-emergent situation, not an

1 emergency situation.

2 Q And then on the reimbursement methodology, it says claims
3 are repriced using FAIR Health bill benchmark; do you see that?

4 A Yes.

5 Q Is that referring to the FAIR Health data we referred to
6 earlier?

7 A Yes. That's referring to the FAIR Health bill benchmark data.

8 Q And then under benefit level, what does it explain about the
9 benefit level for that program?

10 A That section describes that the benefit level of this program
11 only applies in non-emergent situations and only applies in that out-of-
12 network benefit level when a member is making a choice to see an out-
13 of-network provider, and it would not apply in emergency services.

14 Q All right. Finally the facility, because I think this came up last
15 Friday, and I want to make sure the record is clear. For the facility
16 reasonable and customary program, does that ever apply to professional
17 out-of-network emergency services?

18 A No, it does not.

19 Q That would not apply to professional ER claims?

20 A It would not apply to professional ER claims.

21 Q Okay. Now I would like to show you Plaintiffs' Exhibit 370,
22 which I believe is already marked. If you turn to page 2.

23 MR. BLALACK: Blow up that email from Ms. Paradise dated
24 June 24th, 2019.

25 BY MR. BLALACK:

1 Q And if you look at the bottom, ma'am, it's discussing -- the
2 subject line is SSP. Do you see that?

3 A I see that.

4 Q And at the bottom there's a paragraph that says, "As we've
5 discussed, even though we're seeing increasing savings, we're
6 experiencing continued reduction in non-par bill charges that I believe
7 that has been the case since 2016." Do you see that?

8 A I do see that.

9 Q Okay. And the -- I'll represent to you that the Team Health
10 Plaintiffs have suggested in this trial that your statement in this
11 document means that the bill charges for out-of-network services were
12 going down, not up, as stated in the prior exhibit we saw, Exhibit 4048.
13 Do you agree with the Plaintiffs characterization of your statement in this
14 email?

15 A No, I do not.

16 Q How is it possible that you observed a reduction in non-par
17 bill charges from 2016 through 2019 as reflected in this exhibit --
18 Plaintiffs exhibit, and at the same time you also observed bill charges for
19 out-of-network providers increasing?

20 A So in the statement what I'm trying to describe is our overall
21 aggregate pool of non-par charges. Non-par bill charges was going
22 down in aggregate. We still, though, were seeing as we looked at that
23 FAIR Health trend, the level of providers that were billing, though, was
24 increasing. So this is simply referring to aggregate pool of dollars that
25 were reducing coming into our programs.

1 Q Remember when I showed you a moment ago the slide that
2 referred to the volume of claims that are processed through your in-
3 network system? They refer to 90-95 percent?

4 A Oh, yes.

5 Q So that would have meant that would have been 10 -- 5 to 10
6 percent of the claims that were being processed, as out-of-network
7 claims?

8 A Correct.

9 Q Would the accrual of non-par bill charges go up or go down
10 if the percentage of claims that were being processed within your
11 network went up to 99 percent?

12 A So the pool of non-par out-of-network dollars is going to be
13 lower or will reduce as more charges are running through our network.

14 Q Now so with regard to -- in looking back at that FAIR Health
15 data we saw, for those providers who were still out-of-network,
16 submitting claims that were not processing through your network
17 program, for that group of providers who were in that pool were you
18 observing that their chagemasters were going up, going down or
19 staying the same during that period?

20 A So we were observing that their chagemasters were
21 increasing over that period of time.

22 Q And is that what was reflected in the FAIR Health data we
23 showed you a little while ago during the same period?

24 A Yes, that was the trend chart that we reviewed.

25 Q Is there anything inconsistent with your statement here in

1 Plaintiffs' Exhibit 370, and the FAIR Health benchmark data that we
2 showed the jury that's referenced in Defendant's Exhibit 4048?

3 A No.

4 Q Now I want to talk about the impact of those charges -- bill
5 chagemasters increasing during this time. But to understand that I want
6 to ask you a few questions about UnitedHealthcare's competitive
7 position with out-of-network solutions, when you joined the team in
8 2015, okay? That's the topic I'm asking about.

9 A Okay.

10 Q Now when you joined that team, how would you describe
11 your observation of the UnitedHealthcare's competitive position with
12 respect to out-of-network programs in 2015?

13 A So when I joined the team in 2015, there was, you know,
14 knowledge that we were behind the market in our program offerings.

15 Q And I want to show you a document -- well, we'll mark it as
16 Plaintiffs' -- actually I think this is already in evidence. We just admitted
17 it, Defense Exhibit 5506. And I think -- take a look at it and see if your
18 name is referenced as a key team member associated with this
19 document.

20 A It is.

21 Q Have you seen this document before, ma'am?

22 A I have seen this document.

23 Q I'd like to direct your attention to the box on the right hand
24 side of the document with the header "problems". Do you see that?

25 A I see that section.

1 MR. BLALACK: Can you pull that up, Shane?

2 BY MR. BLALACK:

3 Q And it says under problem, quote, "ASO clients have seen
4 their out-of-network costs increase putting a financial strain on both
5 Plaintiffs' sponsors and the insurers. Non-par providers are able to bill
6 what they want for their services." Do you see that?

7 A I see that sentence.

8 Q Is that statement consistent with your understanding of the
9 out-of-network market in January of 2018, when this document was
10 written?

11 A Yes, it is.

12 Q Let's turn to the last sentence of that chart where it says,
13 quote, "Our inability to reduce these claims payments threatens our
14 competitiveness in the market." Do you see that?

15 A I see that sentence.

16 Q When it says that your inability to reduce these claims
17 payments, quote, "threatens our competitiveness in the market," to what
18 are you referring here?

19 A So United is responsible for providing cost-effective
20 solutions for our clients. If we're unable to provide cost-effective
21 solutions, obviously, that's put that -- puts us at risk for losing existing
22 clients and puts us in a noncompetitive situation for obtaining new
23 business.

24 Q Okay. If you look at the box on the left-hand side?

25 MR. BLALACK: Show the other side, Shane.

1 BY MR. BLALACK:

2 Q And the last sentence in the first paragraph reads, quote,
3 "Our client's costs have continued to rise at alarming rates, and one of
4 the main concerns our clients raised to their account teams." Do you see
5 that?

6 A I see that sentence.

7 Q What's being described there? What is that sentence
8 describing, ma'am?

9 A So that's describing the feedback we were obtaining from
10 parts of the organization, that we're hearing from our clients that they
11 were concerned about the rising medical costs they were seeing, and
12 their ability to provide affordable benefits for their employees.

13 Q Now, Ms. Paradise, I want to shift to a --

14 MR. BLALACK: You can bring that down, Shane.

15 BY MR. BLALACK:

16 Q I want to shift to a different topic which is the Data iSight
17 tool. You were asked a number of questions by Mr. Ahmad about that
18 tool; do you recall that?

19 A Yes.

20 Q In this case, the team of Plaintiff's have asserted that the Data
21 iSight tool is a -- I believe a phrase that was used as, quote, "garbage",
22 unquote, and like the Wizard of Oz. You think that's an accurate, fair
23 statement?

24 A I don't agree with that statement.

25 Q Why not?

1 A Well, the Data iSight tool does compile millions of -- millions
2 and millions of claim data, and evaluates the cost, and develops a rate,
3 so there's a sound amount of methodology behind it, it isn't an arbitrary
4 methodology.

5 Q Now, ma'am, do you know whether any of your competitors
6 also used the Data iSight tool?

7 A It's my understanding that that tool is broadly used by our
8 major competitors.

9 Q Do you know whether UnitedHealthcare was the first of the
10 major health insurers to adopt and started using the Data iSight tool?

11 A United was not the first.

12 Q When UnitedHealthcare decided to use that eyesight back in -
13 - well, let me back up. When did -- when did you all first introduce that
14 eyesight to your clients?

15 A Data iSight began to be used for our fully insured business in
16 2016, and then introduced to our ASO clients, I believe, in 2018.

17 Q Okay. When UnitedHealthcare decided to use that eyesight,
18 did you have any understanding at the time of whether the payment
19 rates recommended by that tool were broadly accepted by the providers
20 in the market?

21 A So it was -- it was our understanding based on information
22 provided by MultiPlan, that they were seeing a high acceptance rate of
23 the -- of the rates out of the Data iSight tool.

24 Q Let's make sure before we get into the details of how this
25 thing works, that the jury understands which of your out-of-network

1 programs touch the Data iSight tool and which do not. Okay? And is it
2 accurate to say, ma'am, that some of your out-of-network programs
3 never are involved with Data iSight?

4 A That's accurate.

5 Q Okay. Now let's go through the list. Is Data iSight used for
6 the Legacy, the original shared savings program?

7 A No, it is not.

8 Q Is Data iSight used for the physician reasonable and
9 customary program?

10 A No, it is not.

11 Q Is Data iSight used for the ENRP Program?

12 A No, it is not.

13 Q So Data iSight never places a claim for ENRP?

14 A Never.

15 Q Is Data iSight used for the Outlier cost management
16 program?

17 A It is used to support our outlier cost management program.

18 Q Is Data iSight every used as part of shared savings in any
19 way?

20 A It is used when a client purchases a program called SSPE or
21 shared savings program enhanced. That, in essence, layers our shared
22 savings program which has access to wrap network agreements, a fee
23 negotiation component, and then the outlier cost management program
24 would be at the end of that hierarchy.

25 Q So other than shared savings program enhanced and outlier

1 cost management, is that asset used for any other out-of-network
2 programs at UnitedHealthcare?

3 A No, it is not.

4 Q Have you ever discussed with MultiPlan, ma'am -- strike that.
5 Ma'am, have you ever discussed with MultiPlan how the Data iSight tool
6 works?

7 A Yes, we've had conversations about the methodology.

8 Q Okay. And when did you have those discussions?

9 A Most discussions would have started in earnest prior to us
10 implementing that tool for a fully-insured business in 2016.

11 Q Okay. And ma'am, do you consider yourself a technical
12 expert on that iSight?

13 A I am not a technical expert, no.

14 Q But do you, based on the discussion you had, do you have --
15 consider yourself to have a general working knowledge of how it
16 operates?

17 A I do.

18 Q Now -- and you said that that asset was initially adopted for a
19 fully-insured business in 2016; is that right?

20 A That's a yes.

21 Q And then for a self-funded business in 2018?

22 A Yes.

23 Q Okay. Did your out-of-network team have a role in
24 operationalizing that asset?

25 A Yes, we did.

1 Q And I think you said you had discussed this; did you receive a
2 briefing? How did you learn about the product?

3 A MultiPlan, as they do, would have proposed a new solution
4 that they had. We would have reviewed that at a high level, and then we
5 would be obtaining and asking for other information to do proper due
6 diligence on the program before we would ever proceed implementing
7 that.

8 Q Okay. Do you have an understanding -- I'm focusing on,
9 ma'am, on physician claims, not facility claims; do you have a general
10 understanding what payment data is utilized by MultiPlan's Data iSight
11 tool to evaluate and recommend rates?

12 A Yes, I have a general understanding.

13 Q What is that general understanding?

14 A So MultiPlan is using published claim payments or claim
15 information across the industry.

16 Q And in terms of the information on a claim that's in that data,
17 are they using the billed charge or are they using the allowed amount, or
18 are they using something different?

19 A Data iSight, the Data iSight methodology, it is a cost-plus
20 tool, so they're going to be starting with the allowed amounts, so those
21 are the amounts generally accepted by providers in the industry.

22 Q Now before UnitedHealthcare decided to use the Data iSight
23 tool to reimburse out-of-network claims for some of the programs, did it
24 do any vetting of the tool with MultiPlan to understand how the service
25 operate?

1 A So we would have been provided information about how
2 that underlying methodology works. I do believe we were provided a
3 document that outlined that methodology, and we would have had a
4 variety of individuals with very expertise review that information to do
5 our due diligence.

6 Q Let me show you a document that's been admitted into
7 evidence, Defendant's Exhibit 4478. You'll see a reference to a UNET
8 outlier cost management SSPE high-level overview. Do you see that?

9 A I see that.

10 Q And there's a woman's name underneath that, Jolene
11 Bradley; do you see her?

12 A I do.

13 Q Do you know Jolene Bradley?

14 A I know a Jolene Bradley. She works for me.

15 Q So she reports up to you?

16 A Yes.

17 Q Okay. Now have you seen this document before, ma'am?

18 A I believe I have seen this.

19 Q Okay. Let's turn to page 2 of this document, and you'll see a
20 header that reads, "Outlier Cost Management Methodology." Do you see
21 that?

22 A Yes, I do.

23 Q And underneath that you'll see a reference in the, I guess,
24 third bullet. It says -- it's talking about the Data iSight methodology, and
25 using publicly made available data to evaluate claims, directly made

1 reductions from a cost-up rather than a charge-down approach. Do you
2 see that?

3 A I do.

4 Q Okay. And I'm focused on professional claims, ma'am,
5 because -- well, let me back up. Does the Data iSight tool offer both a
6 physician module and a facility module?

7 A Yes, it does.

8 Q And are those different?

9 A Yes.

10 Q Okay. So if we wanted to talk and learn about the product
11 and how it worked, you'd need to focus on the physician module as
12 opposed to the facility module?

13 A Yes.

14 Q Okay. Now underneath professional claims, it says, "Based
15 upon stand relative value units, where applicable, the CPT picks a code,
16 multiplied by a conversion factor, Data iSight is not Medicare-based. It
17 does not use the CMS conversion factor. The conversion factors based
18 on the median accepted reimbursement amounts by physicians,
19 healthcare providers nationwide for each code. All reimbursements are
20 adjusted based on the provided geographic location, and for daily labor
21 cost therein." Do you see that?

22 A I do.

23 Q Is that description of how the method -- the physician
24 methodology were consistent with the information that was shared to
25 you by MultiPlan back when the program was being implemented?

1 A Yes, it is.

2 Q And when it refers to the reimbursement being based on the
3 median accepted reimbursement amounts by code, what do you
4 understand that to mean?

5 A So we mentioned that MultiPlan obtains industry, and that
6 basically is saying they're looking at the allowed amounts, and they're
7 arraying them and choosing the median which is going to be in the
8 middle of all the rates that are allowed and will calculate the factor based
9 on that meeting.

10 Q So the recommended rate will -- the factor, conversion factor
11 would be tied to the 50-yard line essentially, where they're half of the
12 values are above and half or below?

13 A That's accurate.

14 MR. AHMAD: Your Honor, I would object to the leading
15 nature.

16 MR. BLALACK: Well, let's get this over.

17 THE COURT: You were leading.

18 MR. BLALACK: I'll withdraw it, Your Honor.

19 BY MR. BLALACK:

20 Q Do you understand what a median is?

21 A Yes.

22 Q What is a median?

23 A A median, you're going to array your values, and you're
24 going to count down until you get to the middle value, so there's equal
25 numbers above and equal numbers below.

1 Q Now this document refers to the methodology having a
2 proprietary -- being a proprietary methodology. What is your
3 understanding of what it means from the MultiPlan characterizes this
4 methodology as a proprietary methodology?

5 A That means to me that MultiPlan has developed that median
6 methodology, and it also states they're leveraging geographic and
7 prevailing labor information to ultimately develop a rate.

8 Q Okay. Now does United has access to the proprietary data
9 and information that MultiPlan is relying on?

10 A No, we do not.

11 Q So how did you -- what did you do to become comfortable,
12 that you could rely on this tool to give recommended prices for out-of-
13 network claims if some of the information on which it was based was
14 proprietary?

15 A So MultiPlan would have provided a number of pieces of
16 information for us. One was, you know, the knowledge that most of our
17 other competitors were already using this tool. We also understood that
18 it was widely accepted, so they provided data and statistics related to the
19 acceptance rate by providers of this tool, and also they provided
20 information that our, you know, for example, healthcare economics
21 people would have evaluated, reimbursement levels are the outcome of
22 the tool, to validate that there was a sound methodology.

23 Q Okay. Let's go to Defense Exhibit --

24 MR. BLALACK: Thank you. You can bring that down, Shane.
25 Let's look at Defendants' Exhibit 4529. It is in evidence.

1 BY MR. BLALACK:

2 Q This is a presentation from MultiPlan referring to Data iSight.
3 Can you take a look at that second, ma'am, and look at it and can you tell
4 the jury if you've seen it before?

5 A Yes, I've seen this document.

6 Q And if you go to page 2, see at the top, it says, "Data iSight,
7 patented highly defensible." Do you see that?

8 A I do.

9 Q So when it refers to defensible, what were you -- what was
10 your understanding of what MultiPlan identified was representing this
11 was defensible methodology?

12 MR. AHMAD: Judge, I'm going to object. I think it's calling
13 for hearsay from MultiPlan.

14 MR. BLALACK: This is being offered for her state of mind,
15 Your Honor, not to prove the truth of the matter.

16 THE COURT: Overruled. Overruled.

17 BY MR. BLALACK:

18 Q What was your understanding of what they were
19 communicating to you about this defensibility of the methodology?

20 A Defensibility. That, to me, means that they're able to defend
21 the rate and that providers are widely accepting this rate.

22 Q And underneath the -- there's an orange bullet, when it
23 references physicians, and it references facilities. With respect to the
24 physician, again, it says based on median reimbursement levels; do you
25 see that?

1 A I do.

2 Q What is that referring to?

3 A So as we discussed the calculation before, the conversion
4 factor, they're contemplating the median values across the industry that
5 providers are accepting as reimbursement.

6 Q If you go to page 3 of this document, you'll see it says this is
7 what MultiPlan was representing to you all at UnitedHealthcare. It said
8 methodologies reviewed and confirmed that R.R. Siskin, Ph.D. --
9 confirmed by Dr. Siskin and specifically found using proper statistical
10 data collection, editing estimation methodology constitutes a reasonable
11 methodology that is transparent to all parties. Do you see that?

12 A I do.

13 Q Do you recall MultiPlan advising you and the other network
14 program team about this review by Dr. Siskin?

15 A Yes, I do.

16 Q Now let's go to page 6, and you'll see a reference to high
17 acceptance rates with options for protecting member; do you see that?

18 A I do.

19 Q Okay. First green arrow there, it says provider acceptance
20 rate, 93, 99 percent; do you see that?

21 A I do.

22 Q What did you understand MultiPlan to be telling you in this
23 presentation?

24 A So that was telling me that across their clients that were
25 currently leveraging the Data iSight tool, that providers were accepting

1 those rates at very high levels.

2 Q And did that information play any role in the
3 UnitedHealthcare's out-of-network program team's decision-making
4 about whether this might be a useful methodology to adopt for some of
5 your programs?

6 A Absolutely.

7 Q And why is that?

8 A The high provider acceptance rate means that, you know, the
9 industry is accepting these rates and, therefore, they're widely accepted,
10 and so it is a defensible good methodology.

11 Q And the second green arrow says Data iSight inquiry line
12 receives and handles provider appeals and different inquiries, and then
13 right underneath it --

14 MR. BLALACK: If you go back to that prior page, Shane, that
15 we were just on? There you go. Pull up those first three bullets. There
16 we go. First three. There you go. There. Perfect.

17 BY MR. BLALACK:

18 Q And it says we already talked about providers setting this
19 rate, first, the Data iSight inquiry line receives and handles provider
20 appeals, there were inquiries, and then it refers to an optional patient
21 advocacy program, helps educate members and reduces or eliminates
22 members financial obligations to providers. Do you see that?

23 A I do.

24 Q All right. What are -- what is MultiPlan describing there
25 when it refers to the Data iSight inquiry line and the optional patient

1 advocacy program?

2 A So MultiPlan is -- or describing that in addition to providing a
3 pricing service to the Data iSight tool, they will support and handle any
4 provider disputes about that reimbursement level, and they will also
5 handle any situations, or they will intake a call from a member should
6 they be getting balance-billed with respect to a claim that was paid with
7 Data iSight. The optional patient advocacy program, again, is just an
8 additional service that MultiPlan will provide, where they will take those
9 provider disputes or member disputes, and they will then take that
10 information and engage with the specific providers that's either downs-
11 billing our member, or it's disputing the reimbursement level, and will
12 attempt to work with them to educate, explain how the methodology
13 works, and in some instances they may attempt to negotiate with that
14 provider to resolve the balance billing issue for the member.

15 Q And were these services that MultiPlan was offering back
16 when the program was being introduced, important to
17 UnitedHealthcare's decision on whether to adopt the program?

18 A Absolutely.

19 Q Why?

20 A Obviously, we are trying to ensure that we're providing cost-
21 effective solutions, but we do understand from time to time a provider's
22 going to dispute the rate, and potentially might try to chase one of our
23 members for additional charges, so it's important for us that we've got a
24 service that will help our members, certainly work through those
25 scenarios, and provide support for them, as well as working with the

1 provider who has a dispute and helping explain our methodologies, and
2 again, ultimately come to a resolution.

3 Q So ma'am, I want to show you another document. This is
4 Defense Exhibit --

5 THE COURT: Is this a good time for a recess?

6 MR. BLALACK: Sure, take your time.

7 THE COURT: I think you're transitioning. All right. So let's
8 take our second recess. It is 11:03. We'll go to 11:15, and work a little bit
9 past noon, probably 'till 12:15.

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

15
16 Don't conduct any research on your own. You can't consult
17 dictionaries, use the internet, or use reference materials. During the
18 recess, don't post on social media. Don't post on social media about the
19 trial until it's over. But during the recess, don't talk, text, Tweet, Google,
20 or conduct any other type of book or computer research with regard to
21 any party, witness, or attorney involved in the case.

22 Most importantly, do not form or express any opinion on any
23 subject connected with the trial until the matter is submitted to the jury.
24 Have a good recess. We'll see you at 11:15.

25 THE MARSHAL: All rise for the jury.

1 [Jury out at 11:05 a.m.]

2 [Outside the presence of the jury]

3 THE COURT: Okay. The room's clear. Plaintiff, do you have
4 anything for the record?

5 MR. AHMAD: Nothing, Your Honor.

6 THE COURT: Did you want to put that issue about the graph?

7 MR. AHMAD: Yes, Your Honor. Yeah. That -- well, that
8 issue, yes. Yeah, forgot we were supposed to put that on the record,
9 Your Honor. I think we resolved it in terms of how he did it, but we did
10 have -- what exhibit was that?

11 THE COURT: 44 --

12 THE CLERK: 4408.

13 THE COURT: -- 08, yeah.

14 MR. AHMAD: 4408.

15 THE COURT: 4048.

16 UNIDENTIFIED SPEAKER: 4040.

17 MR. AHMAD: 4048, Your Honor, has a chart with data going
18 back to 2003. Obviously, that is the time of their -- the Ingenics case,
19 which was resolved, finding, of course, that they had engaged in
20 depressing those rates. We have been precluded from going into that
21 lawsuit to explain the data going back to 2003. I do understand that they
22 took the chart down after we raised the issue, but that would be -- that
23 would be our objection, Your Honor.

24 THE COURT: Thank you.

25 MR. AHMAD: And we would, you know, we would still ask to

1 be able to go into the Ingenics lawsuit to explain all of this data. It goes
2 back into the early 2000's, the time period under with the Ingenics
3 lawsuit.

4 MR. BLALACK: And my response, Your Honor, is I don't
5 believe there's anything in that data, which is the FAIR Health data, not
6 anything else that could conceivably open the door, but even if there was
7 by virtue of how I conducted the examination, the issue is moot, and so
8 that's our position, Your Honor.

9 THE COURT: All right. And the ruling was that I did not think
10 that putting the prior data up starting in 2003, the FAIR Health 8
11 percentile opened the door for the Plaintiff to get into the Ingenics
12 lawsuit.

13 MR. AHMAD: And if I may respond, Your Honor?

14 THE COURT: Yes, of course.

15 MR. AHMAD: Their health data, of course, is it's based upon
16 the data that was artificially deflated.

17 THE COURT: Got it.

18 MR. AHMAD: That's the problem.

19 MR. BLALACK: That's obviously a disputed fact --

20 THE COURT: Well, and you --

21 MR. BLALACK: -- that we don't believe did.

22 THE COURT: -- you pivoted, took down the graph, and then
23 went down to the bullet points.

24 MR. BLALACK: I did because I don't need to, and I just
25 removed the issue.

1 THE COURT: Good enough. Have a good break, guys. See
2 you at 11:15.

3 [Recess taken from 11:07 a.m. to 11:17 a.m.]

4 THE COURT: Let me know when everybody in your team is
5 here.

6 MR. BLALACK: We're ready, Your Honor.

7 THE COURT: Thank you. Do you need Mr. Zavitsanos? Let's
8 bring in the jury. Let's bring in the jury. So just to let you guys know --

9 THE MARSHAL: All rise for the jury.

10 THE COURT: I'll give you the update after, on the next break.

11 MR. AHMAD: Okay. Good.

12 [Jury in at 11:18 a.m.]

13 THE COURT: Thank you. Please be seated. Mr. Blalack, go
14 ahead, please.

15 MR. BLALACK: Thank you, Your Honor.

16 BY MR. BLALACK:

17 Q More or less I just want to pick up where we left off. I believe
18 we were about to move to a new document, and we were discussing the
19 process -- we were discussing UnitedHealthcare's communication with
20 MultiPlan back in 2015, 2016, 2017 time frame as the company was
21 contemplating adopting Data iSight as a tool for one of its out-of-
22 network programs. Do you recall that's where we were?

23 A Yes, I do.

24 Q Okay. I want to show you another document. This is
25 Defendants' Exhibit 4531. This is in the -- you can see, ma'am, that the

1 cover page of this document is a Data iSight document reads Data iSight
2 product and methodology [indiscernible] module. Do you see that?

3 A I do.

4 Q What's the date of this document?

5 A June 2016.

6 Q And were you part of the out-of-network programs team at
7 that time?

8 A I was.

9 Q Have you seen this document before, ma'am?

10 A I've not seen this document.

11 Q And was this document provided to UnitedHealthcare by
12 Data iSight?

13 A Yes, it was.

14 Q Do you know why MultiPlan gave this document to
15 UnitedHealthcare?

16 A They provided this document for -- to help with our due
17 diligence in evaluating the Data iSight tool and its methodology.

18 Q Now, let's turn to page 2. If you go to the top left-hand
19 column, you'll see a paragraph that reads "Data iSight's physician
20 module is available to address out-of-network physician and other
21 medical healthcare professional claims for payments made utilizing a
22 unique proprietary methodology that's applied consistently to all
23 professional claims for a particular client." Do you see that?

24 A I do.

25 Q When it says methodology that is applied consistently, what

1 did you understand that to be saying?

2 A So I understand that to mean that they -- the tool completes
3 the calculation that we discussed earlier across the services and the
4 calculation is applied to the appropriate services. So there isn't a unique
5 or special calculation specific to one provider type or certain claim type.

6 Q Okay. Is it fair to say that you understood based on what
7 Multiplan told you that Data iSight was aligned -- in terms of its
8 recommended price, aligned as to the service that was being provided
9 for the provider?

10 MR. AHMAD: Your Honor, I will object to leading. And
11 again, all of this I assume is not for the truth of the matter but for state of
12 mind.

13 MR. BLALACK: That's correct. The purpose of this question,
14 Your Honor, is to explore what UnitedHealthcare understood about the
15 product at the time it was assessing the --

16 THE COURT: Good enough. Just watch the leading.

17 MR. BLALACK: Thank you, Your Honor.

18 BY MR. BLALACK:

19 Q So ma'am, again, what was the relevance of applied
20 consistently to all professional claims?

21 A Well that just to me and to our organization, that helped us
22 understand that that calculation and methodology is consistent. They're
23 going to be neutral as far as what the provider type is or the services.
24 It's going to execute the calculation and there's no intervention in that
25 calculation.

1 Q And the next paragraph near the bottom, the last clause
2 reads, "The physician module is based on the amounts generally
3 accepted by the provider as payment in full for services." Do you see
4 that?

5 A I do see that.

6 Q What did you understand Multiplan to be telling you there?

7 A So Multiplan is describing there that part of their
8 methodology is looking at allowed amounts across the industry and in
9 their experience as well as with that tool, that the outcome of their Data
10 iSight tool is broadly accepted.

11 Q And if you go to the 4th page of this document, ma'am, you'll
12 see a header that reads robust source data. Do you see that?

13 A I see that section.

14 Q And then it refers to the physician module utilizing the most
15 recently available national, private, and professional claims data
16 representing, and it says in excess of 80 pairs across the country,
17 millions of covered lives, hundreds of millions of healthcare transactions;
18 do you see that?

19 A I see that.

20 Q What did you understand Multiplan was representing about
21 the source data that was being used for its methodology?

22 A So they're -- this is demonstrating that they're leveraging a
23 wide variety and a wide swath of claim data as the source data for their
24 methodologies.

25 Q Now, based on this description of the data on the Data iSight

1 tool was to provide, was the UnitedHealthcare out-of-network team that
2 you were a part of comfortable that the data was sufficiently robust for
3 purposes of pricing out-of-network claims?

4 A We did feel the data was wide enough. Yeah.

5 Q Now, let's look at page 5 of this document. And you'll see in
6 the right-hand column a text that starts with the word "finally"?

7 A Yes, I see that.

8 Q It says, "Finally, the client can specify a high or low override
9 carve out codes they require for their contracts. For example, a
10 Medicare override could be applied or applied only for specific codes."
11 Do you see that?

12 A I see that section.

13 Q What do you understand an override to mean?

14 A So an override is a discretion the client of Multiplan would
15 have to provide additional information on how they want to leverage the
16 Data iSight reimbursement amount.

17 Q Okay. Has United Healthcare ever used an override in
18 connection with Data iSight?

19 A We have used an override for ER services.

20 Q And I believe in response to questions from Mr. Ahmad, you
21 discussed the ER override in answering his questions; is that right?

22 A That's right.

23 Q So when we're talking about the ER override, is that this
24 sentence referring to something like that?

25 A Yes.

1 Q Okay. Now, let's just make sure that the jury -- just
2 remember [indiscernible] both of us, make sure we're clear on what the
3 ER override is and how it works. So if you could just generally walk the
4 jury through how the mechanics of the ER override works?

5 A Sure. The ER override is in place and is set up as a greater of
6 comparison. So for the ER service codes, the Data iSight rate will be
7 reviewed against our ER override, and we will pay the greater of those
8 two rates. And the override really is put in place to help ensure that we
9 are compliant with the Affordable Care Act requirements around ER
10 services.

11 Q Is the -- you say the ER override, I mean, does that mean
12 literally that this override that you're describing is only applicable to an
13 ER service?

14 A That ER override is only applicable to ER. It is not across the
15 various other services that the Data iSight tool would price.

16 Q And is that because of this Affordable Care Act requirement?

17 A Yes.

18 MR. AHMAD: Judge -- Your Honor, I'm going to object to -- I
19 mean, it's come out a few times, but if she's going to be opining on the
20 law, I'd have to object. She's not a legal expert.

21 MR. BLALACK: Your Honor, she's not opining on the law.
22 She's simply explaining that that's why --

23 THE COURT: Just clarifying the questions.

24 BY MR. BLALACK:

25 Q Yeah. Ma'am, I'm not asking you whether the override -- you

1 were successful with your override in complying with the Affordable
2 Care Act. I'm asking was the reason for the override an attempt to
3 comply with the Affordable Care Act?

4 A Yes, it was.

5 Q Now --

6 MR. AHMAD: Your Honor, can we approach for one
7 moment?

8 THE COURT: You may.

9 [Sidebar at 11:26 a.m., ending at 11:30 a.m., not transcribed]

10 THE COURT: Thank you all for your professional courtesy.

11 MR. BLALACK: Should we proceed, Your Honor?

12 THE COURT: Please.

13 MR. BLALACK: Okay.

14 BY MR. BLALACK:

15 Q So Ms. Paradise, I just want to make sure the jury is clear,
16 this override was put in place by the out-of-network program team as
17 part of an effort to be compliant with rules, correct?

18 A That's correct.

19 Q Okay. You understand that in this case, the question is the
20 reasonable value of the services under Nevada law, correct?

21 A Yes.

22 Q Okay. Now, let's talk about this override. I want to just make
23 sure the jury is clear on the interplay here. If the Data iSight rate was
24 higher than the override, which allowed amount would be used to
25 [indiscernible] the final?

1 A If the Data iSight rate is higher than the override, the Data
2 iSight rate would be used.

3 Q Okay. If the Data iSight rate was lower than the override,
4 which one would you use?

5 A If the Data iSight rate is lower, then the override would apply.

6 Q Okay. So this methodology, which was I think you said
7 limited to these ER claims only, were just to ensure there was always the
8 higher of those two rates was always paid?

9 A That's accurate.

10 Q Since it worked as a floor?

11 A Yes.

12 Q Now, in response to questions from Mr. Ahmad -- well, back
13 up. I think you testified that at one point the ER override was set at 350
14 percent of Medicare; is that right?

15 A Yes, that's accurate.

16 Q And then it was dropped to what?

17 A 250 percent of CMS.

18 Q Of the Medicare fee schedule rate?

19 A Yes.

20 Q Okay. And I think Mr. Ahmad suggested to you that this
21 override never really worked in such a way that the Data iSight rate
22 would ever be paid, that it only paid the Medicare rate -- the override
23 rate; do you know that to be true?

24 A I don't know that to be true.

25 Q Let's, for the sake of argument, let's say Mr. Ahmad is right

1 and every single time the allowed amount was calculated using Data
2 iSight for an ER service, it was paid at the override rate. That's my
3 hypothetical, okay?

4 A Okay.

5 Q Consistent with what Mr. Ahmad was asking. What would
6 that say about what the recommended rate was from Data iSight for
7 those services?

8 A Well, that would mean the Data iSight rate was lower than
9 that override threshold.

10 Q And UnitedHealthcare chose the higher rate?

11 A And UnitedHealthcare is choosing the higher rate.

12 Q Now, did Mr. Ahmad show you any evidence indicating that
13 every single one of the claims reimbursed using the Data iSight tool for
14 emergency services where the override applied always, and every time
15 pay the override rather than Data iSight rate?

16 A I have not seen those statistics.

17 Q Now, I want to show you a document he showed you, which
18 is Plaintiffs' Exhibit 444. Do you recall this as an explanation of benefits?
19 Do you remember that?

20 A Yes. Can I get the document?

21 Q You absolutely can get it. I just want to focus on the remark
22 codes that he showed you, ma'am, on the second page.

23 A Okay.

24 MR. BLALACK: Bring that up, Shane, and under the IS -- no,
25 you're right. Keep going right there. See where it says IS [indiscernible]

1 right there. Perfect.

2 BY MR. BLALACK:

3 Q Now, ma'am, in the circumstances where an out-of-network
4 emergency room claim was priced using the ER override, does United
5 Healthcare believe that Data iSight is still being used to adjudicate those
6 kind of claims?

7 A The Data iSight tool is being used to administer the override
8 and as part of paying the override, there is a compare function that
9 happens within that tool.

10 Q So when a claim is run through Data iSight, is eligible for
11 Data iSight, is the claim being reimbursed using Data iSight whether it's
12 reimbursed using the Data iSight rate or reimbursed using the ER
13 override?

14 A Yes, that tool is being applied.

15 Q Okay. Now, I just want to make sure the jury is clear about
16 disclosures in the summary plan description. You -- how many ER
17 claims --

18 MR. BLALACK: Strike that.

19 BY MR. BLALACK:

20 Q -- how many CPT codes for ER services are, to your
21 knowledge, subject to this override?

22 A There are five CPT codes.

23 Q How many ERs --

24 MR. BLALACK: I mean, strike that.

25 BY MR. BLALACK:

1 Q How many codes, CPT codes, representing individual
2 discreet services and procedures, are out there in the main role, that are
3 being reported by doctors every day?

4 A Tens of thousands.

5 Q And does the ER override those other codes?

6 A No, it does not.

7 Q So you were talking about it being very -- it would be very
8 descriptive to try and calculate the actual, and of course the actual
9 reimbursement rate in the summary plan description for every single
10 Data iSight rate under every circumstance. Do you remember that
11 testimony?

12 A Yes, I do.

13 Q Why is that?

14 A Typically when you're visiting an ER, yes, there will be the ER
15 code, that's the evaluation, but there likely are many other services that
16 could be provided to you in that instance, and those services, you know,
17 would be priced, using that data iSight rate.

18 Q And the ER override would be irrelevant?

19 A The ER override would be irrelevant to those none code
20 services.

21 MR. BLALACK: So you can bring that down, Shane.

22 BY MR. BLALACK:

23 Q So just to tie this off, at the time that UnitedHealthcare was
24 vetting that iSight tool for introduction into some of its out-of-network
25 programs, is the information -- did the information that Multiplan

1 provide make you comfortable with going forward with the product or
2 not?

3 A It did make us comfortable.

4 Q What information that they provided you with, was most
5 important to the company's decision to proceed?

6 A I think it was a combination of things. The fact that it was
7 widely used by our competitors. The fact that it was widely accepted by
8 providers, and they provided, also, information with respect to the
9 methodology that we were able evaluate and do our due diligence.

10 Q Let's move to a different topic now, and I think Mr. Ahmad
11 asked you about this, and I know the jury heard a lot about it from Mr.
12 Haben, it's called total cost of care. Do you remember that phrase that
13 you were questioned about?

14 A Yes, I do.

15 Q There's been a suggestion in this case, ma'am, that
16 UnitedHealthcare was receiving complaints from clients about the
17 shared savings fee for some of its the programs, and that it came up with
18 a new out-of-network program called total cost for care, that would
19 replace shared savings. In other words they have -- my colleagues on
20 this side have suggested that total cost of care, you knew exactly what
21 the shared savings program does, it just had a different name and a
22 different keystroke. Is that -- is any of that statement consistent with
23 your understanding of the term, total cost of care?

24 A No, it is not.

25 Q All right. First of all, explain to the jury what does total cost

1 of care mean, as it was used within UnitedHealthcare?

2 A Total cost of care was terminology that the organization was
3 developed to talk about all of the variety of programs and services we
4 provide to our clients, to drive value for them. So it could be related all
5 payment integrity, waste and abuse added. It could be our out-of-
6 network programs, it could also -- or did also include such things as
7 clinical programs and medical necessity type services we can provide.

8 Q And what was the objective of the total cost of care concept?

9 A The concept was trying coalesce the organization around all
10 the things we do to bring our clients value, to ensure that we were, you
11 know, managing and evaluating, and creating additional value for our
12 clients, and then provided at least the idea of potentially we could
13 develop a new way, or a new program for our clients, that would
14 collectively bundle all of those services together, and charge a fee for all
15 the services, versus a sort of list of different services that you'd pay one-
16 off fees for.

17 Q So would it be fair to characterize total cost of care as
18 bundling all of your service offerings into a single package, and charging
19 a single fee, as opposed to an la carte pricing?

20 MR. AHMAD: Your Honor, I'll object to the leading.

21 MR. BLALACK: I'll withdraw.

22 BY MR. BLALACK:

23 Q How would the pricing suggest that it was partly undertaken
24 at the time, the total cost of care, which was all types of care, for the
25 proposed total cost of care, how did those compare?

1 A The concept was to collectively pull together all of the value
2 we were providing, and to develop a fee that would reflect all of that
3 value.

4 Q Whereas, for example, for the shared savings program, when
5 there's a savings fee charged, or administrative fee for that program was
6 that programming charged separately from the PMPM administrative
7 fee?

8 A Yes, that's accurate.

9 Q Would it be accurate to characterize the savings fee as an ala
10 carte service?

11 MR. AHMAD: Your Honor, I'm going to object, again, it's
12 leading.

13 MR. BLALACK: I'm asking, would it be accurate?

14 THE COURT: Just rephrase.

15 BY MR. BLALACK:

16 Q Ma'am, have you heard the term "a la carte"?

17 A Yes.

18 Q How would you describe "a la carte" in relationship to the
19 administrative fee used for the shared savings program?

20 A A la carte would mean there's additional services. A client
21 could choose, in addition, that there would be a separate charge for, in
22 addition to their base administration fee they pay the organization.

23 Q And was one of the goals of the total cost of care initiative to
24 do away with that kind of [indiscernible]?

25 A That was the concept at the time, yes.