Case No. _____

In the Supreme Court of Nevada

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

Petitioners,

vs.

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

Respondents,

and

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

Real Parties in Interest.

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

CERTIFICATE OF SERVICE

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

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

The Honorable Nancy L. Allf
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/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

Q Okay. Is it accurate to characterize the total cost of care concept as an out-of-network program to design and control out-of-network costs?

A No. It was not specific to out-of-network.

Q So if anyone suggested to this jury that total cost of care was simply synonymous with providing an out-of-network program solution, would that person be wrong?

A They would be inaccurate, yes.

Q As the total cost of care, single group concept, that UnitedHealthcare was discussing several years ago, ever been rolled out to clients?

A It has not at this time.

Q I want to talk about the shared savings fees which you were asked about and had come up again in this trial. There's been suggestion by the TeamHealth Plaintiffs that there isn't much involved in administering the shared savings program, and that therefore UnitedHealthcare is earning a windfall from that program. Do you believe that's an accurate characterization of the program?

A It is not accurate.

Q Why does UnitedHealthcare care charge the shared savings fee?

A The shared savings fee offsets a variety of expenses the organization incurs to develop, maintain, and support these out-of-network programs.

Q And what are the administrative expenses that you all incur

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that the fee is designed to cover?

A So there's a variety of things. One is a -- there's significant infrastructure built into our various claim adjudication systems, that have to have all of the various claim processing logic. There are some programs that United, itself, supports on its own, so there's a lot of technology involved in that.

It's also providing, you know, offsetting costs related to a routing to the vendor. There's a very complicated electronic data interchange. There's also fees associated with our various vendors. There is an infrastructure around managing the programs, helping support provider disputes, so my entire team is solely focused in this space, so there's costs for my team.

Our member and provider services teams also will field calls specific to these programs. There's also legal regulatory assessments and evaluations that have to be undertaken. There's operations around setting up these benefit plans, maintaining language in SPDs, et cetera. So it's quite of a large infrastructure.

Q Okay. Now the jury has heard a term in the trial called an FTE. Have you ever heard the term FTE?

A Yes.

Q What does an FTE mean to you?

A An FTE is a full-time equivalent. It's another term we use to describe employees of the company.

Q Was their plan for an employee -- one employee and one full-time equivalent?

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A One full-time equivalent is translating that FTE into the number of hours they work, so one FTE translates to a 40-hour work week.

Q So you could have an employee -- one employee that works 40 hours a week, or you might have ten FTEs that work 40 hours a week, four hours each, or some combination?

A Correct.

Q Now it's been suggested to the jury in this trial, that for the entire shared savings program, it was administered by 12 FTEs. Would that be inaccurate?

A That's not an accurate statement.

Q Can you give the jury a sense, based on your leadership of the program, possibly how many FTEs are involved in the support of the insurance industry?

A Sure. My team alone is roughly 70/80 FTEs, and there are hundreds of FTEs across the enterprise that support our programs.

Q Does United Healthcare earn a shared savings fee if its clients do not also save money on medical costs?

A Where United is charging a client on a percent of savings, we do not obtain a fee if we do not drive savings for them.

Q So if the allowed amount and the bill charges are the same, is there any saving?

A No.

Q Is there any fee?

A There's no fee.

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Q Now, based on your years of running this program for UnitedHealthcare, what is your understanding of what clients are willing to pay for a shared savings?

A Clients are willing to pay for these services. They want to provide robust medical benefit offerings for their clients, and oftentimes will provide for an out-of-network benefit. So these programs provide value to the clients, to provide cost effective solutions for their members. These programs help reduce their medical costs, so they can continue to provide those offerings.

Q And what about the extent to which the clients are seeking advocacy and protection for their employees, who are subject to [indiscernible]?

A And that's another important component of our program is that our ASO clients demand, that we are engaging and protecting their members with our program. So it's a key component.

Q It's my understanding that the shared savings fee can be different based on the client; is that correct?

A That fee can vary, yes.

Q Is there a typical number, in your experience, that a fee usually hovers around?

A When it's a percent of saving, it's typically in the 30 to 35 percent range.

Q And have you ever heard of a fee cap?

A I have heard of fee cap.

Q What is a fee cap?

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A So a fee cap is a dollar amount that is put in place. So if a particular claim drives savings greater than that dollar amount, the fee for that claim will only be calculated on that dollar amount.

Q Is that part of the fee structure for some ASO clients?

A That is part of the structure for some, yes.

Q So just to get a sense of the relationship between savings and your fees that you earned, there's been evidence in the case that they were years, in which UnitedHealthcare earned across the whole United States, all clients, all members, something along the order of a million dollars in shared savings fees. Is that consistent with your memory

A Yes. That's my understanding, yes.

Q So using just this general 30 percent as a typical fee, if that's what was the average fee, can you give the jury a sense of what the savings, the value to clients and the members were to earn that fee?

A So the total savings that would have been driven to drive that fee would have been in the neighborhood of four to $5 billion of medical cost savings.

Q Ma'am, are you proud about you've done, leading out-of-network program team in the last four or five years?

A Yeah. I'm very proud.

Q Why is that?

A We are helping solve problems for our clients. We are addressing egregious billing behavior in the market, and we're providing a very valuable product for our clients, and I think most importantly

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we're helping protect our members from balance billing tactics.

Q Thank you, for time, ma'am.

MR. BLALACK: I'll pass her back to Mr. Ahmad.

THE COURT: Redirect.

MR. AHMAD: Thank you.

REDIRECT EXAMINATION

BY MR. AHMAD:

Q Ms. Paradise, I just want to make sure I'm clear, you are familiar with the revenue numbers of shared savings; is that right?

A Yes, I am.

Q And you know that the whole shared savings program added, is it 12 employees?

A I'm not sure where the 12 FTEs is coming from.

Q Well, if we look at Exhibit 76 -- and I'm talking about added.

MR. AHMAD: You can put up Exhibit 76, at page 21.

BY MR. AHMAD:

Q Do you have that page in front of you?

A Which page are you directing me to?

Q 21.

A Yes. I see the page.

Q Okay. And do you see -- we don't have it up yet. And by the way, can you tell by looking at that page 76 -- excuse me, page 21 of Exhibit 76, the additional employees listed there?

A Yeah. So this outlines incremental FTEs that were required.

Q And that incremental, i.e., additional number of employees,

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is 12?

A For this particular implementation there were an incremental 12 on my team specifically.

Q Okay. Well, do you know how many employees total, were incremental to the shared savings OCM program?

A So from this document I know what was added to my team. There was another out-of-network affordability team at the time that added five. So there were 17 within network. There was additional staff that was added in our member and provider services organization. I don't know those numbers.

Q Okay. So 17, that you know of?

A Seventeen that were specifically in our out-of-network space.

Q And to be clear, you are over the out-of-network programs, correct?

A Yes, I am.

Q Okay. And you talked about other things that went into the support for the shared savings program you mentioned phones, right? Legal claims processing, infrastructure, all of those you would have had in place before shared savings, right?

A Well, that's not entirely accurate. We did have to make technology changes. There are always technology changes when we're implementing a new program. There's, you know, standard processing procedures that have to be updated, it's a fairly large undertaking.

Q I mean, you didn't add any lawyers, as a result of it?

A I don't recall that we added any lawyers, but it was

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additional work on the existing lawyers.

Q Now you were asked, also, about the switch to total cost of care. To be clear were you all switching to total cost of care, because clients were complaining about the large fees they were paying on shared savings, and you were looking for something to retain that revenue?

A I wouldn't entirely characterize it that way. As I stated in my prior testimony today, the concept of total cost of care was about bundling all of our value together and charging a fee for it. It wasn't in specifically due to any client complaints about their out-of-network fees.

Q But let's be clear, there were complaints, right, the shared savings fees are making United uncompetitive, right?

A There were. It's an industry practice to share -- I'm sorry, charge percent of savings, and we were hearing from some clients, about their fees, yes.

Q That it was making United uncompetitive though, shared savings fees, right?

A That terminology may have been used in the organization, yes.

Q May have been used? Well, we can look at Exhibit 342, page 2.

MR. AHMAD: We can just pull up that summary.

BY MR. AHMAD:

Q And I think it's the first bullet point. "Shared Savings are making United" -- "UHC uncompetitive causing earnings squeeze," that's

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United's earnings, right?

A I see that bullet, yes.

Q Okay. And then the purpose of switching over to TCOC or Naviguard was part of that, right?

A Naviguard was one component that was under concept during the total cost of care. It wasn't a direct result of the total cost of care initiative.

Q The idea behind Naviguard was to retain earnings from Shared Savings, correct?

A The idea of Naviguard, yes, was to develop an additional solution for our clients and contemplate a different way to charge our clients for those solutions.

Q In other words, you were trying to retain your earnings from Shared Savings by going to Naviguard and TCOC --

A Yes.

Q -- correct?

A We were trying to retain the fees that we earn that offset the cost of our programs.

Q Yes. I mean we can look at this on page 5. It talks about, first line, "Retaining revenue holds customers, holds customers harmless," right?

A That's what it says.

Q Now, if we go to Exhibit 236 and page 11, I think it talks about how Naviguard is going to retain those earnings. And the TCOC model, right? And if we look at the far right box --

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MR. AHMAD: Going down. If you could pull up that box.
BY MR. AHMAD:
Q And it says at the bottom, right, it says, "Well, objective. Thank you for that. Create UAC as ACO model to contract the clients on TCOC and extract economics through admin fee," right?
A That's what it states. And as I've explained before, total cost of care was broader than Naviguard. Naviguard was well under the way in conceptual design prior to TCOC. But as the organization was talking about, all the value we were driving, it was put under that umbrella to capture all the value beyond out-of-network programs. So when we talk about an admin fee related to total cost of care, that that admin fee would have been for all the value. It was not specific to out-of-network programs.
Q But the admin fee, and you say in the next bullet point, is targeted ultimately to be able to replace all of those out-of-network, that one billion in shared savings economics over time, right?
A Yes. As I was explaining, the concept of TL -- TCOC and creating an admin fee, that admin fee would be replacing all of our a la carte. It was not specific to out-of-network.
Q Well, this says you're trying to replace your out-of-network shared savings economics, right?
A This was an out-of-network specific presentation. So, yes, it was focused on out-of-network. But the TCOC concept was not specific to out-of-network.
Q Yes. Now, you were also asked -- I'm going to switch to

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another topic. I think you were also asked about whether emergency room claims ever had to be paid reasonable and customary or usual and customary. Do you remember that?

A I do.

Q Is it your testimony that emergency room claims never had to be paid in usual and customary?

A My testimony has been our physician reasonable and customary program does not apply to ER services.

Q Did you all ever have to pay ER claims at usual and customary?

A I am unaware of a specific situation. What I can state is the actual program is not built to administer on ER services.

Q Okay. The program is not built to administer that?

A The physician R&C program only applies to out-of-network benefit level claims. It --

Q And I don't want to get caught up in semantics. Let's talk about usual and customary. Did you all ever pay ER claims at usual and customary?

MR. BLALACK: Object to form. Vague as to term.

THE COURT: Well, just define the time frame.

BY MR. AHMAD:

Q Well, ever, to your knowledge?

MR. BLALACK: Your Honor -- Your Honor, my objection is vague, because I don't know what he's referring to as usual and customary in this question.

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BY MR. AHMAD:

Q Well, I'll just -- I'll just show you an exhibit and --

THE COURT: We've had a lot of testimony on that. Overruled.

MR. BLALACK: I just don't know if she knows what he's referring to.

MR. AHMAD: Sure.

BY MR. AHMAD:

Q Well, let's look at Exhibit 146 at page 42. And, by the way, if you're not aware of paying ER claims at usual and customary, just let me know.

A I'm sorry. What page are we looking at.

Q Page 42 of Exhibit 146.

A Okay.

Q Does that look like you're paying emergency room, and it says at the higher of usual, reasonable and customary?

A Well, the terminology here is not referencing our physician R&C program. And I believe -- I'm sure there's been testimony this week that the terms usual, reasonable, and customary get used many, many different ways. What I can state is to physician R&C, reasonable and customary, program would not have applied in this situation.

Q Well, this says -- and I'm just -- the language itself says, "Emergency health services provided by a non-network provider," right?

A That's what the sentence states.

Q A physician is a provider, right?

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A Correct.
Q So this would apply?
A Well, what would apply is the greater of those three things. I don't see a definition of what usual, reasonable, and customary means.
Q Okay. But using this language it says that usual, reasonable, and customary amounts?
A Well, it specifically says the greater of. And if usual and customary and reasonable is not defined, I'm unsure what that prong would suggest as the price.
Q I agree with that. It says the higher of the amount. And I'm pretty sure it will be the higher of the amount. But be that as it may, this is the language that applies for the emergency room physician, right?
A In this benefit plan, it is suggesting usual, reasonable, and customary is one of the three prongs. It -- I don't see a definition on this page of what that means. And I know for a fact our physician reasonable and customary specific program does not apply in ER services.
Q Well, you have to follow this, right?
A Well, of course we have to follow it.
Q Okay. Let's look at Exhibit 363. Do you see at the top those terms, reasonable and customary, usual, customary, and reasonable amount? Do you see that?
A I see those terms.
Q 363, by the way, is United's website?
A Was that --
Q Is that right?

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A Was that a question?
Q Yes.
A Yes. This is off of an old version off our website, yes.
Q And how old?
A I believe this was first put out there, I don't know, early 2010s. I believe it's been updated in the last year or two years.
Q Well, it's -- my one has a copy, it says 2019, right?
A Correct. This information has been on the website for a period of time.
Q Yes. And you understand that the claims at issue here are 2018, 2019?
A I understand that. And this site is specific to payment for out-of-network benefits. The out-of-network benefit level.
Q Yes. And it says -- in this instance, it says, "The lower of the bill charge for reasonable and customary, usual, customary, and reasonable," correct?
A It does make that statement in that connection.
Q Okay. And United would follow this if the benefit plan has that language, right?
A United administers what the benefit plan language states.
Q Okay. Now, I saw earlier -- I think you were asked by Mr. Blalack -- there was some United pieces and United communications similar to the talking points about how billed charges were going up. Do you remember that?
A Yes, I do.

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Q And it talked about percentages were just going up. Have you actually seen the data on that?

A Well, I'm not an expert on the data. We have a healthcare economics team that compiles that information. So the FAIR Health chart that we reviewed that demonstrated that ten -- trend was put together by our healthcare economic actuaries based on the FAIR Health data.

Q Well, but what I didn't see is that information coming from somebody besides United, and then we'll get to another one, by a MultiPlan, okay, not from FAIR Health, right?

A That's not accurate. So we license the FAIR Health bench marks, and that trend chart used the actual billed benchmark data that we and many other payers license from FAIR Health. So the underlying data was FAIR Health data.

Q Ms. Paradise, there's not one document from FAIR Health in this case saying that.

MR. BLALACK: Object to foundation of the question. The witness is not a lawyer.

THE COURT: Overruled.

THE WITNESS: I believe the chart stated that we used the FAIR Health, that trend chart used the FAIR Health 80th percentile of billed charge data to compile that CMS equivalent chart.

BY MR. AHMAD:

Q That was a United document. I'm asking you is there a FAIR Health document that has that data in this case?

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A I'm unaware of all the documents that were produced in this case. I've not seen the exhibit list.

Q Okay. Now, when we get to MultiPlan, I think you mentioned that they have a lot of metrics that they use to come up with the allowed amount, right?

A Well, they have methodologies they use to develop their allowed amounts that support their programs.

Q Okay. And do you have any idea on any given code -- I mean we have, as you know, five or six codes for emergency room, right? Do you have any idea what those numbers are, how MultiPlan or Data iSight comes up with the numbers for any of those codes?

A Are you asking me if I understand the Data iSight methodology?

Q Well, let's start with that.

A Okay. Well, I believe we just reviewed the physician methodology earlier, that they're going to use relative value units and apply a conversion factor that's based on the par median accepted rates by providers in the industry. So that would apply for those codes as well.

Q Anything else?

A Then I believe in the calculation they also apply that geographic and labor index.

Q Anything else?

A I'm not an expert in the methodology. That's my high-level understanding of how that calculation works.

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Q And I -- and fair enough. I know you're not an expert. And I'm just trying to understand everything that goes into that methodology so that we can figure out how Data iSight arrives at a number for any of these codes. Can you tell us what that number is for any of the codes in this case?

A The specific Data iSight number, no, I do not know it for a specific code because it's going to vary by code by geographic locality.

Q Okay. Have you seen any document in this case that actually gives us a Data iSight -- I don't expect you to memorize. But have you actually ever seen any document which gives you the Data iSight rate as reflected by this methodology?

A In preparation for this trial, I don't recall seeing that document. I'm not sure if that exists in the exhibits.

Q Well, I know you were asked, you know, did I show you 11,000 claims to demonstrate or 1,000 claims, however many Data iSight did, to demonstrate that their methodology and their result is never shown, it's just the 250 or 350?

A I -- can you --

Q Do you remember being asked that?

A I remember being asked that.

Q And the truth is in all of your preparation, all of your preparation from depositions in this case in the summer, you still haven't seen one claim where the allowed amount was anything other than 250 or 350?

A I believe my testimony was I am not reviewing any claim. I

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didn't review any of the thousands of claims that are at -- at issue in this case. So I can't be certain whether or not the Data iSight rate was actually used.

Q To your knowledge, has anyone checked?

A I am sure there's data on that. I don't recall that right now.

Q Well, let me go back. You were asked also about Exhibit 444.

MR. AHMAD: Put that up. And if we go to the top of page 2 -- yeah, the top part of page 2. And I just want to make sure that this is right. It says, "The member that was paid provided by out-of-network provider." And it says, "We paid the provider according to your benefits and data provided by Data iSight." What data did Data iSight provide to pay this claim at 250 percent of Medicare?

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A Well, there would've been the compare where they would've laid out what the Data iSight rate was. They compared it to the override, and they would've returned the higher value back to us.

Q It says, "We paid it." They just paid it according to the override, right?

A If they used the override, that's because the override was higher than the Data iSight rate, and the Data iSight tool would actually calculate the dollar amount, the 250 percent times CMS. So they're going to price that and return it to United for a claim payment.

Q Okay. And to be clear, to your knowledge, you haven't seen one yet where the Data iSight number is actually revealed in that comparison, right?

A The actual comparison is an automated process, so if they're

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going to return the recommended price to us. Certainly, if we would ask for a detailed summary on a claim-by-claim basis, they would be able to provide that.

Q Okay. Have you ever seen that in any of these claims?

A At the claims at issue in this trial?

Q Sure.

A I have not reviewed every document that's been produced, so I can't be certain if something like that exists.

Q And have you ever seen a -- and it says, "also, according to your benefit." Have you ever seen a benefit plan that listed the 350 or 250?

A I think we talked about that earlier. It would be very difficult to develop benefit plan language that would specifically list a rate that only applied to certain codes. Data iSight is used for thousands of other codes, and all of those rates vary based on the underlying data.

Q Well, I understand, but let's be very clear. There are six codes for ER and the 250 is going to apply to all the ER, and you're telling me that language that lasts 100 pages, you can't put under ER that there is an override of 250 percent as it pertains to ER codes?

A Well, those rates -- again, the 250 percent of CMS is going to end up being a different result. It is very complicated to list specific rates in a benefit plan because of the length of the document, so if we have to put it in there for ER, then the next provider type would ask us to be listing discreetly what the rates are for those thousands of other codes.

Q But you do list out by specialty, right?

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A The provision in the SPD that's calling out ER, I believe, is due to some requirements about how we treat ER and ensuring our members understand how those services are covered and paid.

Q Got it. Is there any other override, by the way, that applies to other doctors other than the 350, 250?

A There might be one other scenario where there's an override, out of all of the provider types that are paid through this tool.

Q Just one other one?

A Yes.

Q Okay. So you don't have to go listing a whole bunch of different override numbers, because there's only one other one, right?

A Understood, but then if we're listing the override rates specific to services, what it -- you know, we should then be listing all of the rates for all services. It's just not -- we wouldn't be able to administer that.

Q Yeah, but I mean -- now, providers don't necessarily have the SPD, right? I mean, because there could be SPDs for, you know -- well, it could be everybody's different, right? You could have an employee that comes on one plan, the next employee comes on another plan, and I haven't even gotten to the uninsured and Medicare, and it's not like they go through these benefit plans.

A Understood, but lots of providers use billing companies or have administration arms that are setting their billing practices. They're also calling in to determine eligibility for providing services and are able to ask for and obtain either on our portal or via our provider's services

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line information about the benefit plan language.

Q Okay. In any event, you've never seen this override in here?

A The override is not specifically listed in a plan document.

Q Okay. Now, let's talk about -- I think you were shown some documents, and it may be Exhibit 4048, if we can go to that. And I believe -- I'm not sure which page it is, but there's a page indicating that 90 percent of providers are in-network; is that right? Do you remember seeing that document?

A I believe that document says 90 to 95 percent of our doctors are in-network, yes.

Q And that's a United document, correct?

A Well, yes, it's a United document. They manage the network for UnitedHealthcare.

Q That's for all -- I think we're about ready. I think we had it on the screen briefly. But in any event, that's not for ER doctors, right?

A No.

Q That's for all --

A And --

Q -- providers?

A And I don't believe this slide is representing that it is. It's stating about our entire network.

Q Do you have any idea what the rate is for ER doctors being in-network?

A I do not know that stat.

Q It's a lot less than that; isn't it?

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A I don't have any data in front of me to show me if it is or it isn't.

Q Now, I know you were provided a lot of mathematical calculations, showing how fair health has gone up, using assumptions. Do you remember going through that, ma'am?

A Yes, I do.

Q Now, again, we have six codes in this case. Have you seen the data with respect to these codes; 99281 through 99285, and 99291? Have you seen any of the FAIR Health data on those codes?

A In this trial, no, but during my normal work, yes.

Q And have you seen that those rates in Nevada have gone up?

A Yes.

Q And how much have they gone up?

A I don't recall the specific percentage, but it is a trend we're seeing across hospital-based providers. Specifically, staffing company hospital-based provider types.

Q Well, now let's be very clear and talk about, again, TeamHealth. You know that our bills and the ER bills have largely remained stable in the last several years --

A Team --

Q -- isn't that right, for our codes?

A TeamHealth across the nation?

Q TeamHealth in Nevada. And I'm specifically using that because those are the Plaintiffs in this case. And I want to stick to the Plaintiffs in this case.

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A So I've seen, broadly, TeamHealth bill rates that are accelerated. I haven't seen something specific to Nevada, but broadly, staffing companies, like TeamHealth, especially TeamHealth, we do see increasing charges.

Q You haven't seen that in Fremont?

A Specifically, in preparation for this trial, I don't believe I've seen that document.

Q Well, even if it's not in preparation for this trial.

A Well, sir, when I'm evaluating things, I typically am not looking provider by provider. We are looking broadly across the category because our solutions are rolled out at a national level. They may be a provider type specific, but typically, they're not provider specific.

Q Well, this is not provider specific. I'm talking about an entire entity that has 40 positions and many more nurse practitioners and PAs, and that is the subject of this case. Fremont, along with Team Physicians, along with Ruby Crest.

A I think you just stated you're asking me to answer that question about a specific provider, and I stated, typically, when I'm reviewing those types of trends, we're looking at a macro level because our programs are rolled out on a national level, and they're not geared at a specific provider. We're looking across a provider type to understand the trends and the practices that we're seeing for that provider type to evaluate solutions.

Q Now, you were the corporate representative of United in this

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case during depositions, right?

A Yes, I was.

Q And by the way, you said that the rates for ER doctors in Nevada have risen, and you don't know how much. Have you seen any evidence in this case demonstrating what that increase has been like in the last five, eight years?

A In preparing for this trial, I don't recall seeing a specific document.

Q Do you remember seeing something indicating that Nevada ER reimbursement rates are some of the lowest in this country?

A I don't recall seeing a document like that, sir. I've reviewed a number of documents. I don't recall.

Q Well, let me ask you this. You're familiar with Medicare rates, right?

A I'm aware of Medicare rates. I don't have them memorized for these specific E&M codes.

Q Well, generally speaking, you know that they don't go up, right?

A Well, there may be changes to Medicare rates from time to time, I believe.

Q Well, they're pretty stable year after year. Are they not?

A I can't -- I don't review Medicare rates in detail on a typical basis, right? We have a healthcare economics team that crunches the numbers for us and helps us understand those rates.

Q Well, would you be surprised that between 2016 and 2019 for

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the 99281 through 85, they essentially either didn't go up at all or went down?

A Well, I think that probably reflects that Medicare is a better estimate of what the cost of those services are, and they don't change significantly, unlike staffing companies ramping up their bill charges in an attempt to get paid more.

Q Well, I know you keep saying that, and I know that's part of the talking points, but I keep waiting to hear where Fremont, Ruby Crest, or Team Physicians has done that, or any evidence of that in this case, because I keep hearing about it. Do you have that data?

A I personally don't have that data at my fingerprints. There were thousands of documents produced as part of this case, and I did not review every single one.

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Q Well, the one thing we do know is that you have taken Medicare, which is largely flat, and gone from 350 percent to 250 percent.

MR. BLALACK: Object to form. Counsel is testifying about Medicare.

THE COURT: Overruled.

BY MR. AHMAD:

Q Well, isn't that what you've done?

A We made an adjustment to the rate, yes.

Q That is a significant decrease; isn't that right?

A I don't think that's a significant decrease as the percentage. We're still paying a multiple of the Medicare rate.

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Q Well, sure, but let me be very clear. That is a significant decrease in the reimbursements to the healthcare providers; is it not?

A I believe you stated earlier the Medicare rate for one of the codes was $170, so instead of three and a half times, it was two and a half times, so it's $150.

Q I'm just asking, is it a significant decrease?

A I don't believe we feel like that's a significant decrease. There are plenty of providers who are accepting below the 250 percent of CMS.

Q You don't think that has a significant impact on the physicians, and the healthcare providers, and the Plaintiffs in this case?

A I don't think it's the physicians who are specifically developing the fee schedules. I think it's their administrative companies or staffing companies that are developing their chargemasters.

Q You don't think it has an impact?

A What do you mean by impact?

MR. BLALACK: Impact on who, Your Honor?

THE COURT: Yeah, clarify.

BY MR. AHMAD:

Q Impact on the Plaintiffs?

A Well, the Plaintiffs is a staffing company. It's not the actual ER docs providing the services.

Q But you know -- and I heard -- and you know, we'll fix this later. I heard some testimony about how the ER doctors were independent contractors, but in fact, you know, those ER doctors are

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employees. That's who we are, right? You know that?

A Well, the staffing companies, I believe, are the ones who are developing the chargemasters. It's not the ER docs. The ER docs are providing valuable services. No doubt.

Q And their rate of reimbursement, the Plaintiffs rate of reimbursement, has gone down significantly; has it not?

A We've had to adjust our reimbursement levels due to the billing practices of staffing companies who are ramping up their charges. And specifically, in relation to the efforts they make to go after our clients and our members for full bill charges.

Q Well, let me just -- let me see if I've got this right. You've decreased the rate from 350 to 250 because bill charges were going up? Is that what you just said?

A You're providing an additional reimbursement action for our clients. We adjusted the rate to appropriately reflect what was being accepted in the market, and that suggested we change the reimbursement level from 350 percent of CMS to 250 percent of CMS.

Q Did you decrease the rate because what you were seeing, bill charges, were increasing?

A We continued to see providers leveraging their bill charge to go after our members and balance bill, send them to collections. We saw a variety of behaviors that were resulting in continued high payments, so we reduced the rate then.

Q I mean, you say that -- and again, more talking points, but Fremont Emergency Physicians, Team Physicians, Ruby Crest. They

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have a balance billed on any of these 11,000 charges, right?

A I don't know that because I haven't seen every single claim, and I'm unsure what the administrative record is, so I can't say for certain. That's you making that statement.

Q Well, you heard that there was a public statement that they wouldn't balance bill? You did hear that?

A I understand, TeamHealth, broadly -- the staffing company -- made a statement to the public that they would not balance bill, but I have seen TeamHealth Physicians, maybe not Fremont Health, but the variety -- some of their other businesses that are balance billing our members.

Q None of the ones here?

A I'm certain if it's anyone -- any of the ones here that are 11,000 claims at issue. I have not reviewed all 11,000 claims.

Q Okay. Well, let me just go back to this point. If a provider goes from 1,000, right -- and let's just say they double it to 2,000, right? And if the Medicare rate is, let's say, $600, which is 350, or three and a half times, you're saying because this is going to this, you're going to go lower? Is that what you're saying?

A That's not what I'm saying. Providers were increasing their bill charge, so there was a bigger differential so they could go after our members and/or our clients and continue to try to attempt to collect the differential. So either 400 or now 1400 if they went up to 2,000.

Q Okay. So when you went from, let's say, 600 to, I don't know, 400 and something here, that doesn't have anything to do with

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this, right? You're just decreasing it, no matter what they do, right?

A No, I wouldn't characterize it that way.

Q Really. So you did this 350 to 250 across the board to all providers.

A That's not an accurate statement. The change was for ER physicians only.

Q Well, yes. ER physicians only. You did that to all of them, right?

A For those specific codes it was not -- remember the ER override does not apply to any of the other services that are typically billed on those claims when you're visiting an ER. So it was for, you know --

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Q Yes.

A -- the handful of codes. And it's only a code that's the evaluation of the situation. It's not the code that gets billed to represent all of the interventions that were made on that patient.

Q Ma'am, you did this for all ER physicians. It didn't matter whether they increased their bills or decreased their bills, right?

A We were evaluating our reimbursements for ER, and we did drop the rate. And we dropped the rate again, to more reasonably reflect the rates being accepted in the market. There were plenty of providers accepting lower rates, as we've stated. If the Data iSight rate was lower, we were paying the higher rate. Other payors are using that solution and using the Data iSight rate, which is lower than our override.

Q Do you remember what my question was?

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A You asked me if we lowered the rate.

Q I asked --

A Yes, we lowered the rate.

Q -- you if you lowered the rate no matter how much the physician's providers charges went up and down.

A Well, again, as I stated, the provider bill charges, we did lower the rate, yes. Provider bill charges were still escalating and the providers -- well, the administrative groups, not the providers specifically, were continuing to go after our clients or our members for that differential.

Q So it didn't matter whether the provider's charges went up or down, you were still going lower?

A Well, the Data iSight tool is only used for our outlier cost management program. I don't believe that a good portion of the claims in this case, I think it's a small portion, used the Data iSight tool. So it was for one program for a handful of codes.

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

MR. BLALACK: Your Honor, I have just one question. One follow-up and then I think we can let the witness go.

RECROSS-EXAMINATION

BY MR. BLALACK:

Q Can you bring up Plaintiff's Exhibit 146?

A 146?

Q I believe it's 146. This was the certificate of coverage for [indiscernible] that Mr. Ahmad just showed you dated January 1st, 2020.

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And that's why you're getting that [indiscernible] to refresh the jury recollection of what is a certificate of coverage?

A What is a certificate of coverage? A certificate of coverage is the benefit plan document for a fully insured plan, that's filed and approved in a state.

Q And could you look at that document, ma'am, and just give the jury a sense of how long it is [indiscernible].

A This document is 183 pages.

Q And I think Mr. Ahmad showed you page 40.

MR. BLALACK: Shane can we get page 40 put up?

BY MR. BLALACK:

Q I think there was discussion about expenses at the bottom [indiscernible].

MR. BLALACK: No, that's actually not what I wanted to show. Could you pull out a little bit [indiscernible]?

MR. AHMAD: It's on page 42.

MR. BLALACK: 42?

MR. AHMAD: Yes.

MR. BLALACK: Thank you very much.

BY MR. BLALACK:

Q All right. So here's the reference that Mr. Ahmad showed you when he directed you to the usual and reasonable and customary. Do you recall that?

A Yes.

Q Okay. And I think -- and tell me if I'm wrong, but in trying to

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answer this question, you were having trouble with determining what would have been the appropriate program to apply, given this language?

A That's accurate.

Q Would you have had to look at other language, either in this document or maybe in another plan document to answer that question with confidence?

A Yes, I would.

Q Okay. Let me -- I don't -- I have not looked at every single page of this document, but let me show you a passage on page 40, which is where we started, and this under eligible expenses. There's a header for network benefits and for non-network benefits. Do you see that?

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A I see that section.

Q Read that to yourself, ma'am. And tell me is -- would this information be relevant at all in determining what programs might be used to determine how to reimburse an out-of-network emergency service?

A Yes, it would.

Q In what way?

A Well, under the network benefits section, eligible expenses, bullet number 2, outlines that when services are received from a non-network provider, the eligible expenses will be an amount negotiated by us or an amount permitted by law. And then, you know, the last bullet, we will not pay excessive charges or amounts you're not legally obligated to pay.

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Q Okay. Why would that language potentially be informative in assessing a circumstance when you're reimbursing based upon an out-of-network emergency?

MR. AHMAD: Your Honor, I think we're trying to get into a contractual interpretation of the document. That's evidence of that. Use the document itself.

THE COURT: You can rephrase the question.

BY MR. BLALACK:

Q My question, ma'am, is why did this information become relevant to you in deciding how to answer Mr. Ahmad's question?

A Well, this information's informative because it helps explain, or that language helps indicate to me what programs might be set up on this benefit plan.

Q Okay. And why is that?

A The language that's there that talks about how the eligible expense will be determined, as well as not paying excessive charges.

Q And how does the language that Mr. Ahmad showed you, with respect to the three prongs for out-of-network emergency -- why is that connected to this in some --

MR. AHMAD: Your Honor, we're now interpreting a contractual legal document.

THE COURT: You can rephrase.

MR. BLALACK: All right. Your Honor, just to be clear, Mr. Ahmad showed her language out of a plan document and asked her to interpret it. I'm trying to have the jury have the full understanding is all

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I'm trying to do.

MR. AHMAD: Your Honor, I did not ask this witness to interpret it. I was just mentioning that this is what the document said.

THE COURT: All right. So rephrase.

BY MR. BLALACK:

Q Okay. I'll ask it this way, ma'am. Is there -- having seen this language plus the language that Mr. Ahmad showed you, is there anything that you see here that suggests to you that the physician reasonable and customary program established by FAIR Health would be used to reimburse and out-of-network emergency service under this plan?

A No.

MR. BLALACK: Okay, that's all I've got.

THE COURT: All right. Any redirect?

MR. AHMAD: Nothing further, Your Honor.

THE COURT: Thank you. Does the jury have any questions for Ms. Paradise? If so, please reduce those to writing now. I don't see anybody writing. Do we have one? Thank you, Mr. Cabrelas. Counsel, please approach.

[Sidebar at 12:37 p.m., ending at 12:40 p.m., not transcribed]

THE COURT: All right. So thank you for the question, and I get to ask the question.

When adjudicating a claim, what other "certain circumstances or other factors would be considered when deviating from payments suggested by/indicated by benefit plan, other than client

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request?

THE WITNESS: That's a great question. There are other edits or reviews that our organization might undertake in evaluating a claim. Those could be additional, what we would call waste and abuse editing. It may be looking at coding or codes. Typically codes may be bundled. Is there an attempt to unbundle those codes? Are there any special processing instructions, you know, for additional clinical editing? So there are additional reviews that can occur that determine whether or not that claim will be paid.

THE COURT: Thank you. Follow up questions based on the juror's question?

MR. AHMAD: None here, Your Honor.

MR. BLALACK: Just one, Your Honor.

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FURTHER RECROSS-EXAMINATION

BY MR. BLALACK:

Q The things you just described, ma'am, did they relate to the rate or price that they pay on the claim, or whether the claim would be covered at all?

A They could determine if the claim is going to be paid. They could also provide additional information on whether or not that claim line would be paid. If there was an issue with re-evaluating the claim lines, that claim would actually be resent to price again, and then attempted to adjudicate again.

Q But is that different than the sort of things we've been talking about today with the jury about pricing?

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A Yes. That happens post -- that initial pricing. And back at United, and its claim adjudicating system.

MR. BLALACK: Thank you.

THE COURT: Anything on redirect?

MR. AHMAD: Nothing further, Your Honor.

THE COURT: All right. So Ms. Paradise, you may step down. You are not excused from being recalled as a witness later, but you may now step down from the stand.

THE WITNESS: Okay. Thank you.

THE COURT: All right. So let me give you an admonishment so you can get a well-deserved lunch.

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

Don't conduct any research on your own relating to the case. Don't consult the dictionary, use the internet, or use reference materials. Don't do any social media with regard to the trial. Don't talk, text, tweet, Google, or conduct any other type of research with regard to any issue, party, witness, or attorney involved in this case.

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

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Thank you for a great morning. And it is -- we'll see you at 1:15.

THE MARSHAL: All rise for the jury.

[Jury out at 12:44 p.m.]

[Outside the presence of the jury]

THE COURT: All right. So I would like to take a break. Why don't you guys come back at 1:10?

MR. AHMAD: Yes, Your Honor.

MR. BLALACK: 1:10, Your Honor?

THE COURT: 1:10. And just for the record, at the bench here I told you that some of the parking passes didn't work Friday for the jurors. We're looking into it with jury services. We have 26 people on Blue Jeans. The Chief Judge will take my calendar Wednesday and Thursday to give you full days. And you're going to get deposition designations to me.

MR. MCMANIS: I have them right here, Your Honor.

THE COURT: Wonderful. Thank you. And then we'll make a record on your objection to the question. Any other thing that we need to make a record on?

MR. ZAVITSANOS: I'm not going to make an objection on the question, Your Honor.

THE COURT: Okay. It's okay.

MR. ZAVITSANOS: No, no, it's fine. I think Mr. --

THE COURT: All right.

MR. ZAVITSANOS: I think Mr. Blalack cleared it up, so --

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THE COURT: Thanks guys.

MR. MCMANIS: And Your Honor, the flags and the highlights are just where there are objections.

THE COURT: Got it. Thank you.

[Recess taken from 12:45 p.m. to 1:17 p.m.]

[Outside the presence of the jury]

THE COURT: All right. So calling the case of Fremont Emergency v. UnitedHealth Group. Plaintiff, please call your next witness.

MR. AHMAD: Your Honor, at this time we would call Dr. Scott Scherr.

THE COURT: Okay. And then there is an issue, Mr. Roberts, that you would like to address?

MR. ROBERTS: Yes. Thank you, Your Honor. I'll be handling the cross of Dr. Scherr. And it's our contention that the door has been opened to information, which was originally excluded about the tort, both with Mr. Haben and with Ms. Paradise, they asked both of the witnesses, did you set 350 percent of Medicare as a rate that you were paying at first in order to slash reimbursement, and then you slashed it again to 250 percent of Medicare. And both those witnesses were asked that question, and the implication was raised that United was cutting rates to get to 350 and then to 250. And that was impacting Fremont.

Dr. Scherr, I took his deposition on his own correspondence, and he knows that Fremont was being paid and had agreed to accept 170 percent of Medicare, less than 350, less than 250. And that when

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Fremont terminated its network contract with United, they actually got increased reimbursements of 1.1 million over a certain period of time. So I think I am now entitled to rebut their contention --

THE COURT: But all of that was related to the negotiations, right?

MR. ZAVITSANOS: Yes.

MR. AHMAD: Yes, Your Honor.

MR. ROBERTS: Your Honor, it was related to the fact that they terminated the contract. They were submitting as an out-of-network provider, and then they were getting paid more than they were receiving in-network. But the point is is regardless of whether you leave that network or not -- and I don't need to talk about networks. I will need to talk about the fact there was a network agreement. But the fact is they've left an impression with this jury that Fremont's rates were being continuously cut over this period of time by United when in fact, they were going up during this period of time and the reimbursements were going up over $1.1 million.

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THE COURT: Thank you.

MR. AHMAD: And if I may say this, Your Honor, when I tried to even suggest what the impact was on TeamHealth, Your Honor, I believe at the end of the day yesterday, you said that I could not because it would open the door. I did not.

MR. ZAVITSANOS: And Your Honor, the only other thing that I'll say because I don't want to keep the jury waiting is we had a bench conference and we talked about the ACA on this issue of 350 and

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250. And I approached the bench to raise this issue because I thought they were opening the door on this. They backed off and so we backed off. This -- there's no way the door has been opened, Your Honor. It's ridiculous.

THE COURT: Yeah. I'm going to overrule your request because it would fly in the face of my ruling on the negotiations. I just don't think the door has been opened. I think you've made a sufficient record, but if you'd like to respond.

MR. ROBERTS: No, Your Honor. I don't need to respond. Thank you very much.

THE COURT: Good enough. Then as soon as I get the high sign from the marshal -- yep. Okay.

MR. ROBERTS: Your Honor, I do have one question.

THE COURT: Yes.

MR. ROBERTS: Would it be acceptable to simply say you were here at the table; you heard the allegation that --

THE MARSHAL: All rise for the jury.

THE COURT: We'll take it up.

MR. ROBERTS: Okay.

[Jury in at 1:21 p.m.]

MR. ZAVITSANOS: Your Honor, may I be excused for one second? You don't need to wait on me. Mr. Ahmad is doing --

THE COURT: Yes, of course. Thank you. Please be seated. Plaintiff, please call your next witness.

MR. AHMAD: Your Honor, at this time, we would call Dr.

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Scott Scherr.

THE COURT: Thank you.

DR. SCOTT SCHERR, PLAINTIFFS' WITNESS, SWORN

THE CLERK: If you could please state and spell your first and last name for the record.

THE WITNESS: Scott Scherr, S-C-H-E-R-R.

THE COURT: And if you'll spell that, please?

THE WITNESS: First name, S-C-O-T-T, last name is S-C-H-E-R-R.

THE COURT: Thank you. You can go ahead, please.

MR. AHMAD: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. AHMAD:

Q Doctor, tell us a little bit, first of all, about yourself, starting maybe with some of your educational background.

A Sure. Again, my name is Scott Scherr. I moved to Las Vegas in the early '90s, actually, to play baseball at UNLV. And I've been out there -- here ever since. I went to medical school at University of Nevada. Left for a brief period of time for medical training at Emory University in Atlanta, Georgia, and then moved back in 2010.

Q And why did you move back?

A My wife, who I met in college here, is born and raised here. And she had finished her training around the same time I did. She's also a physician. And we decided to move back to be closer to family.

Q Okay. You said your wife is a physician. Is she emergency

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room, as well? Or is one enough in the --

A One is definitely enough. She's a pediatric gastroenterologist and a professor at UNLV School of Medicine.

Q Great. And tell us about your job right now. How are you employed right now?

A So I am the regional medical director for TeamHealth and Fremont Emergency Services. I manage, between southern Nevada and northern Nevada, northern California, southern California, 14 emergency contracts as well as hospital medicine contracts.

Q And do you see patients?

A Yes. I work around 8 to 10 medical shifts a month here in -- in Las Vegas.

Q And where do you work those shifts?

A Primarily at the HCA hospital. So Sunrise, MountainView, ER at the Lakes, ER at Aliante, Southern Hills.

Q Okay. I may be having a hard time hearing. Maybe if you slow down or speak up.

A Sure. Sure.

Q Or both. And how long have you held this job as regional medical director?

A I believe since 2016. Prior to that, I was the facility medical director at Sunrise as well as Southern Hills Hospital.

Q Okay. And by the way, who is the medical director at Sunrise right now?

A I have some of my medical directors here in the courthouse.

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Dr. Jaime Primerano. She is the medical director at Sunrise. And then Dr. Clarence Dunagan. He's the medical director of MountainView. And also Dr. Crystal Sturgis. Dr. Dunagan has been here for 18 years and Primerano has been here in the valley for 12 years.

Q And Dr. Primerano, is she the one that replaced you as medical director at Sunrise?

A She did.

Q Okay. And did you see patients when you were the medical director at Sunrise?

A Yes.

Q And prior to that, how were you employed?

A Prior to that, I was with Fremont Emergency Services. But I was the medical director at Sunrise from 2011 until 2018.

Q Okay. And then, like I said, ever since then, you've been regional director?

A Yes.

Q And who are you employed by?

A Employed by Fremont Emergency Services and TeamHealth.

Q Okay. I'll show you the -- United said something in opening statement, if I could put it up. And they said -- and by the way, you have been here the entire time, have you not?

A Yes.

Q I'm sure it's been an educational experience.

A It's a much different pace than the normal job.

Q I can imagine. I apologize to the extent that I'm responsible

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for that. And so, in the opening, I think they talked about how the TeamHealth --

[Counsel confer]

BY MR. AHMAD:

Q Well, I'll just quote it for now. Do you remember United saying that the proof will show that the TeamHealth Plaintiffs hired ER doctors as independent contractors, not employees?

A Yeah, I remember that claim.

Q Are you an employee?

A I am an employee.

Q Do you get benefits?

A Yes.

Q What about the other physicians, let's say at Sunrise?

A All of my physicians and nurse practitioners and physician's assistants here in Las Vegas are all employees that receive benefits.

Q Okay. And now, you have responsibility, I think you said, for the Fremont facilities. Do you have responsibility over Ruby Crest or TeamHealth as well?

A Just Ruby Crest. Northeastern Nevada Regional Hospital reports to me.

Q Okay. And between the ones you have responsibility for, Ruby Crest and Fremont, how many physicians are we talking about?

A It's about 90 physicians.

Q And how many of them are employees?

A A little over 80.

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Q And how about the other healthcare providers? Do you have physician's assistants?

A Yeah. All of -- all of the physician's assistants and nurse practitioners are all employees.

Q Let me just ask you what does a physician's assistant mean in terms of what they do?

A So it's what we call them, advanced practice clinicians. And the physician's assistants and nurse practitioners kind of roll up into that. They help the physicians on a day-to-day basis in the ERs.

Q And what about nurse practitioners?

A It's the same thing. It's a registered nurse who had additional schooling and training that acts as an advanced practice clinician to help us in the emergency department.

Q Do nurse practitioners actually do nurse duties on the floor?

A Sometimes. The hospitals have been, you know, have asked us to provide additional help using our nurse practitioners when they're short nurses.

Q Okay. Tell us a little bit -- and I know you and I went by there. But tell us a -- tell the jury, at least, a little bit about what it's like to work in an emergency room.

A Yeah.

Q Starting off with can you give us a variety of the different types of conditions or situations that you would see?

A Yeah. So obviously --

Q And start from --

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A Yeah.
Q -- fundamentally no understanding of how it works.
A Right. So --
MR. ROBERTS: Objection, Your Honor, 48th out of the 25.
THE COURT: And? You'll have to explain that for me.
MR. ROBERTS: Yes. May we approach, Your Honor?
THE COURT: You may.
MR. ROBERTS: Thank you.
[Sidebar at 1:30 p.m., ending at 1:31 p.m., not transcribed]
THE COURT: Okay. I've sustained the objection. I'm sorry, whoa. Overruled the objection. Oh, it's Monday. Sorry.
MR. ROBERTS: Thank you, Your Honor.
THE COURT: As hard as you guys are working and as hard as they are, we're all tired at this point. So my apologies.
MR. AHMAD: Well, I'll try to be even quicker, Your Honor.
BY MR. AHMAD:
Q So tell us about some of the things that you'd see in the emergency room.
A So first, I mean -- can you guys hear me okay? The emergency department in most communities, especially in our community, it's, you know, we consider it a safety net in the community. ER docs work 24 hours a day, 7 days a week, holidays, weekends, nights, available for every emergency that comes through the door.
We treat patients regardless of their ability to pay, and we take care of some of the most severe things that we have to act really fast on, such

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as, like, heart attacks, gun shots, drownings, here in the valley, you know, snake bites, chest pain, abdominal pain, aortic injuries. Some of the things that we need to -- as a profession, we need to recognize fast and make fast decisions and treatment outcomes for those patients.

Q I seem to think, and I obviously don't know, that you would get a lot of car crashes?

A Yes.

Q What about fire?

A Car crashes, you know. Sunrise is one of the only two burn centers here in Las Vegas, so we get burns. Emergency medicine is unlike any other practice because in our training, we have to know a lot of stuff, you know, because we're taking care of pediatric patients to geriatric patients to trauma to medical emergencies to toxicology emergency. That's actually pretty important here in Las Vegas.

Q Are you talking about overdoses?

A Overdoses and --

Q Do you get some of those?

A Yeah. Yeah. And now, the drug depends on the weekend, too, so.

Q And speaking of that, do you tend to see any patterns depending on what day or even time of night it is?

A Yeah. Las Vegas is actually kind of unique. Especially Sunrise is typically Mondays are the busiest days in the emergency department. However, Friday and Saturday night, as you can guess, at Sunrise are busier. And then, we track, you know, basically from time of

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day, day of week, month to month what our arrival patterns look like so we can staff appropriately. Sunrise is the busiest ER in the State of Nevada and one of the busiest emergency departments in the country. And they see, on average, about 150 ambulances per day.

Q Okay. So about how many -- well, what's the most you've ever seen in an hour period? I mean, can you see 20, 30 an hour?

A Thirty to forty in an hour.

Q Okay. How many people staff the ER at one given time?

A Are you talking about nurses or physicians or?

Q Either one.

A Sure. At Sunrise, we have a little over 90 hours of physician coverage and around 50 to 60 hours of nurse practitioner and physician's assistant coverage.

Q And I think you mentioned you treat everybody. I know going to the doctor sometimes, people are asked -- the first question they're asked is about insurance. Do you all do that?

A No, we don't. We -- in fact, by law, the EMTALA law, we have to provide rapid medical evaluation, medical stabilization, prior to anybody asking for insurance information. And it wouldn't be us providers that ask for insurance information. It's the registrars at the hospital.

Q Now, as part of your responsibilities, do you recruit physicians, PAs, nurse practitioners for Fremont, Ruby Crest?

A Yes.

MR. ROBERTS: Objection. Relevance.

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MR. AHMAD: I mean, I'm just going to ask him the characteristics of a good ER doctor.

THE COURT: I'm inclined to sustain that objection.

MR. AHMAD: Okay.

BY MR. AHMAD:

Q And then I may go just to the question of what makes a good ER doctor, what characteristics do you have to have? So I'll ask you that. What characteristics do you need to have to be a good emergency room physician?

A You know, I kind of have three attributes when I do my recruiting is smart, fast, and nice. You know, you have to be fast and be able to work and think on your feet and make rapid decisions. Part of that, you have to be smart because you have to be able to identify those life-threatening illnesses in a rapid fashion. And then you have to be nice. I mean, I think, you know, everybody in healthcare, especially, you know, my providers, emergency medicine providers, I always ask them to treat the patients just like they would treat their friends and family.

Q And do you have to know a little bit about everything?

A Yeah. Our residency is comprised of rotations in ENT, and obstetrics, and trauma, and ICU, pediatrics. You know, we -- you know, we don't know what's going to come through the door. So I mean, every day in the emergency department is completely different. And so we have to be ready for any type of an emergency that could come through the doors.

Q Tell me a little bit about the pressure or stress in the

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emergency room.

A There -- you know, in my industry, there's a lot of burnout, as you can imagine. It -- you know, being kind of on and being available nights, weekends, holidays, you know, away from family, and understanding that if we make the wrong decision at the wrong time, it could affect somebody's life.

Q Now, some of your charges, Doctor, as a provider when you were seeing patients are at issue in this case. Are you aware of that?

A Yes. And I'm still seeing patients.

Q I'm sorry?

A And I'm still seeing patients.

Q And -- yes, thank you. Do you have any idea how many of your charges are at issue in this case?

A I think you mentioned around 200.

Q Okay.

MR. ROBERTS: Objection. Hearsay. Move to strike.

MR. AHMAD: I'll ask another question.

THE COURT: Yeah.

BY MR. AHMAD:

Q Do you -- have you seen any --

THE COURT: Sustained. New question.

BY MR. AHMAD:

Q Yeah. Have you seen any records of your billed charges?

A Yes. I've seen the list.

Q Okay. I'm not going to ask you to count the number, but

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obviously it was more than a dozen?

A Yes.

Q Tell us a little bit about the coding. First of all, do you know the various codes that the emergency room will put down depending upon the nature of the treatment?

A Yeah. I know the visit codes. So when you talk about the 99285, I know what those codes are. I don't know, of course, all of the procedural codes.

Q Well, let me talk about the visit codes 99281 through 99285. Can you walk us through that starting with 99285?

A Sure. So 99285 is a code for our most critical patients or possibly the most critical patients. So this would include, you know, chest pain, gunshot, burns, things like that. So the -- that's the, you know, high complexity type of patient. 99284 could be abdominal pain, vomiting, GI illness, you know, things of that nature. It could still be a significant injury or a significant disease process, but it's considered less complicated. And then it kind of bats its way down to -- all the way to the 99281.

Q And going down to 99281, what would you -- what would that typically be?

A So 99281 is a very low acute patient. That's important for us here in the State of Nevada. You know, we're 48th in the -- in the United States in primary care physicians per capita. So we do see quite a few patients that don't have the ability to follow up with their primary care physician. So this would be, you know, a blood pressure check,

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nosebleed, et cetera.

Q And so 99281 would be the least severe, 99285, the most?

A Yes.

Q Is that a fair way of saying it?

A Yeah, that's correct.

Q What about a code 99291?

A So 99291 is an additional code that we call critical care. So if we have a patient that is severely unstable and we're providing direct bedside resuscitation on the patient, we can bill for that time that we stand at the bedside. And it's in increments of, like, 30 minutes.

Q Okay. Now, I think you heard some examples in this trial where you can have one code, a visit code, along with a 99291. Do you remember that?

A Yeah. I think it was 99285 or 99291.

Q Correct. Yes, I'm sorry. That's what I meant to say. And does that happen?

A Yeah. You know, so in the case of a 99285, which would be like a chest pain, so you know, a heart attack, a pulmonary emboli, a blood clot in the lung, you know, an aortic injury, a collapsed lung. So let's just say if the patient came in with chest pain and it ended up being a collapsed lung, or a tension pneumothorax, to where we needed to perform a chest thoracostomy tube, that would be an additional procedure code. And the importance of that procedure is that type of tension pneumothorax causes cardiovascular collapse and we -- and if we don't do that, the patient could die.

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Q Okay. Well, you may be over my head a little bit. But let me ask you this: are there serious situations, and I'll just use the layperson's term, for example, a heart attack, where you just bill for the visit code and not that additional 99291?

A Yeah. You know, a lot of times with a heart attack, we wouldn't add the 99291. Or chest pain, we wouldn't add the 99291 because the 99285 in and of itself, when we're working up a patient with chest pain to make sure that they don't have a heart attack or a blood clot in their lungs or those causes of chest pain that can kill you, includes an EKG, a chest X-ray, blood work, multiple reevaluations, and medical decision-making. And that kind of is encompassed in the 99285.

Q Okay. So there could be serious situations where you just get one billing code?

A Yes.

Q And that's all you guys get for that?

A That's correct.

Q Now, let me talk specifically about billing. And we've heard a little bit about TeamHealth. And tell us what TeamHealth is.

A So TeamHealth, I guess I would consider TeamHealth as our parent company. They provide a lot of support, administrative support, educational support, process improvement support for us to do our jobs effectively as emergency physicians.

Q And how about billing?

A They control all the billing.

Q And do you do the billing?

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A No.
Q What do you focus on?
A I focus on patient care and process improvement and quality matters in the emergency department.
Q In addition to being able to focus not on billing issues, do they help out on quality of care?
A Yes, they do.
Q And how do they do that?
A So there's multiple areas within TeamHealth. One, you know, including what we call a PIC team. So performance improvement council. They help us with things of improving sepsis care, improving STEMI care, trauma care, and also throughput in the emergency department. TeamHealth is a -- is a large organization that has a lot of benefits to help improve the quality and the patient experience in the ED.
Q Well, I'm going to ask you about a demonstrative that I -- that we've made. And --
THE COURT: Has that been shown to your opposing counsel?
MR. AHMAD: Here it is. It's just a dashboard.
BY MR. AHMAD:
Q Okay. Do you recognize this?
A Yeah. This is what we call the ED master view at my Las Vegas sites. And this is Sunrise Hospital's master view at one point in time.
Q Okay. And how does this relate to the quality of care?

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A So this is basically a snapshot of what -- what's going on in the emergency department. It helps us kind of see, you know, pressure points, any barriers to care. It helps us identify any critical lab values. Also, it helps us create a good flow model and make sure that we're practicing efficiently in the emergency department.

Q And where is this shown? This is a snapshot, obviously. Where is this shown?

A It's virtually everywhere in the emergency department. It's -- most of our providers have split screens, so they have usually this running on one side and their -- and their electronic health record running on the other side. There's flatscreen TVs all over the place, so everybody can kind of see what is going on and kind of help follow the flow of the emergency department and understand where we need to allocate resources.

Q Okay. And by the way, what involvement did you have in developing this dashboard?

A Myself and some IT folks, as well as one of my nursing directors, they took our clinical brain and put it into a computer thought process. And I helped develop this in 2014 when we changed over from a different electronic health record to the current electronic health record that we have now in order to improve patient safety, so we didn't miss anything. It actually won a Patient Safety Award for HCA in 2014.

Q Okay. Now, I'm going to talk about or ask you to talk about some of these numbers. But fair to say these numbers and these colors change?

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A Yes. So --

Q And this is just a snapshot of one given point in time.

A That's correct.

Q Okay. Well, starting with this. And you probably can't see it, but it says "Door to Greet" at the top. What does this mean?

A So we have a goal with all of our emergency departments here in Nevada to greet patients, which means the time that they set foot in our emergency department to the time they get seen by an emergency provider in less than ten minutes. And that's the dashboard showing that and kind of what our results are.

So on the bottom right of that column, where it says 86, that's the number of -- that's the number of patients that are currently in the emergency department. So quite a few folks in the emergency department during that point in time. And then, zero to -- I believe it's six minutes or seven minutes. And then the next one is seven to ten, I believe. And the other one is 11-plus.

So that tells us that of those 86 patients, that we've greeted 35 of them within less than 7 minutes. And then the yellow, because, you know, yellow is close to red. We want to make sure we avoid that. That's why that style is that -- is there. And then, 29 patients were greeted after 11 minutes. And I'd like to say that, I mean, it doesn't show you kind of --

Q The average?

A -- how we perform on average. On average, all of our emergency departments in Las Vegas see patients in less than ten

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minutes.

Q And how many, again, physicians do you have at any given time?

A At -- you know, when it's -- when it's the busiest four or five physicians and three nurse practitioners or PAs.

Q Okay. And is there somebody in a -- there's, like, an emergency room bay, I guess. Sometimes people come in by ambulance, right?

A Yes.

Q Is there anybody at the bay to receive the gurney from the ambulance?

A Yeah. And all of my hospitals here in Las Vegas, we have physicians that are stationed at the EMS bay. It will -- if we talk about Sunrise, Sunrise sees about 25 percent of the market share of all ambulance traffic in the valley. And the reason why we were able to --

Q And I'm sorry. You may be going a little too fast for me.

A Sure. Sure.

Q How much?

A Twenty-five percent of all ambulance deliveries in the valley per day. So it's quite a bit. So that's why I said we see about 150 ambulances a day. And you've got 150 ambulances a day, and Dr. Primerano has created a really good process to where we have rotating physicians at the ambulance bay at all times.

Q Okay. And so can you tell us what's going on to the right over here, that's still at the top?

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A Yes, so the one with the bottom, you know, the red ten on the left, that, that kind of shows us, you know --

Q This here or there?

A It's on -- yeah, where you just pointed, yup.

Q Okay.

A So that kind of shows us kind of where our opportunities or our log jams are in the department. It also flashes if somebody in our department has critical lab values, so we can address those critical lab values, and so that what that red ten is. So there's ten people currently in the emergency department during that time that have critical lab values.

And then it goes through, you know, CT scans, radiology orders, so let's just say you -- that CT scan order went up to 15 or 20, that gives us the ability to identify that we have opportunity to either open up another scanner, to call in a new tech, to get resources over to radiology during that time, and the same thing with the labs, etcetera, in that, in that -- in that continuum. It just -- it helps us be more efficient.

Q Okay. And what are the different categories here, because I see ultrasound?

A Yup.

Q And I actually can't read the -- I see labs are --

A Yeah, so that's lab orders, and I believe the next one's radiology orders. RT orders, that's respiratory therapy orders. CT orders is the 12. Is that EKG? Yeah. So the EKG, the reason why that's high is our EKG machine doesn't interface with this, it just shows the number of

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EKG's that we've done since midnight. Ultrasound orders, and I can't see what that one on the bottom right is. And then urinalysis. I mean, urinalysis is something that's, you know, important driver of the efficiencies in the emergency department. So it just kind of shows us what's pending and what needs to be -- where we need to put resources in the ED.

Q Okay. Anything on the remainder on the top there? I see registration.

A Yeah, a lot of that is just administrative, administrative tiles, so this, this is meant to be used by all parties in the emergency department, you know, so that's why you see registration there, etcetera.

Q Okay. And what else do you use down here as an overview for patient safety or --

A Yup.

Q -- patient duration?

A So we track number of admitted patients in the emergency department, and those are patients --

Q Right here?

A Yeah, Right there, because those are patients that have met the disposition of being admitted to the hospital but are waiting for a bed upstairs. In Las Vegas, you know, we have a tremendous ER overcrowding due to our population and limited resources, so we track that so we know that 29 of the patients that are currently in the emergency department, 29 of 86 are admitted to the floor, so creatively, we can come up with ways to take care of the patients that are not

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admitted, because those are usually your next sickest patients, are the ones that you don't know about, and you haven't been able to process them.

Q Okay. Anything else on the remainder of this chart?

A Yeah, we aggressively track discharge length of stay, so the amount of time a patient --

Q And which one is that?

A That's going to be right above the 136, in the middle.

Q Okay. Up here? Oh.

A Yeah.

Q And that's a time number, I mean, I can see it's -- said one -- I don't know if it's one minute and 54 seconds, or one hour and 54 minutes?

A I wish it was one minute and 54 seconds. It's one hour and 54 minutes, and the reason why we track this number, the discharge length of stay as well as what we call the low acuity length of stay is the more efficiently we can see patients that are not critically ill, it creates more capacity in the emergency department. So if we're more efficient getting those folks out that need to go home in a more rapid fashion, then it creates more space for us to take care of the more critically ill patients.

Q Okay. And what else?

A And then in the bottom is just kind of the patient numbers by, I guess you would call it pod, you know, since, you know, Sunrise Hospital's about the size of two football fields, so it just lets us know

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where the patients are at.

Q So this is the number of patients you have in each pod?

A Yes.

Q Okay. So I -- and I think you said this is pretty much visible no matter where you are?

A It is.

Q Throughout the ER?

A It is. And I think the most important thing on the pods is we -- in Las Vegas, we have a pretty disastrous mental health issue here and we've got a large behavioral health which is -- which is mental health emergencies, and we're able to see how many mental health emergencies we have in the ED at a given.

Q Is that the psychiatric ward?

A Yes. It's a place where we medically clear them. If they're a danger to self or others, we medically clear them, and then they, hopefully over time, go to a psych -- acute psychiatric facility.

Q And, I mean, I noticed we talked about how long people are here and wanting, you know, think of low acuity, you know, to treat them, and I think that's 1:54, or one hour, 54 minutes. How would a person in the psychiatric ward compare to that kind of duration?

A Yeah. They typically are in our emergency department for up to two to four days before they find a facility that will accept them, just because there's not that many facilities here in Las Vegas, and there's a high number of uninsured or underinsured psychiatric emergencies.

Q Okay. Thank you for that, Doctor. Anything else you want to

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point out before I take it down?

A No, I think this was probably 9:00 in the morning, so that 136 is the number of patients we have seen since midnight, and as Dr. Primerano will attest, we kind of look at that just to kind of see what the day looks like. It usually grows pretty fast.

Q During the day?

A Yup.

Q Now I take it some of the resources that we just saw -- well, let me just ask you; how do you get support from TeamHealth regarding some of these issues and the quality of care?

A Yeah, it --

MR. ROBERTS: Objection. Relevance.

THE COURT: And your response, please?

MR. AHMAD: Well, I mean, I suppose I don't need to go into it if they're not going to be talking about TeamHealth. If they're not, I won't go into it, but if they are, I obviously want to talk about what they do.

THE COURT: Do you -- are you going to go there?

MR. ROBERTS: Obviously, everyone's already talked about TeamHealth, Your Honor.

THE COURT: All right. So overruled.

BY MR. AHMAD:

Q Go ahead.

A It's -- so as you could see what that -- with that dashboard, it's all about process, improvement, and flow. TeamHealth gives us

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support in best practices in order to kind of reach those goals of the hospital, improve the quality and the flow of the patient through the emergency department. One of the things that we use especially in a very busy, very complex emergency department is a software called Cognition, and that Cognition software looks at the arrival pattern and the level of acuity or how sick the patients are on a given day of the week, given hour, given month, and we look at patterns, and we try to match our, what we call our demand to capacity model, based not only on number of patients that we're going to be seeing per hour, but the complexity of those patients, and that's something that we're able to look at on a -- on a somewhat weekly to monthly level.

Q And how do you feel that the level of patience care, and I'll just ask about Fremont, since you've, you know, you were there I think since 2011 as a medical director?

A Yes.

Q How do you think the medical care -- how much has it improved since, say 2015 or 2016?

A Well, we have a lot more resources available to us, you know, things like that Cognition, you know, folks that are industry leaders on how to set up and stand up a low acuity area your hospital, industry leaders on improving STEMI, stroke, trauma care. Just an example, we use a website called Zenith, that's kind of like our communication tool, and there's over 300,000 hours of what we call CME, Continuous Medical Education in there, to things as, you know, like, like trauma, mass casualty, incident preparedness, et cetera.

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Q And who provides all that?

A TeamHealth does.

Q Last question I have for you, you know, we talked about some facilities like Sunrise, can you tell us about some of the other facilities here in Las Vegas --

A Sure.

Q -- that are a part of Fremont Emergency Services?

A Yeah, so Mountainview Hospital is part of Fremont Emergency Services. That's actually where our graduate medical education is. You know, three-plus years ago we started an emergency medicine training program there which is -- I mean, as I told you before, you know, we just continue to get busier and busier here in Vegas, so we're now up to 11 residents per year, and some of them actually work for us now. They see anywhere between 70 to 80,000 visits per year, all age groups, around the valley.

Then you have Southern Hills Hospital which is kind of up in the Summerlin area. They see between 40 and 45,000 visits per year, and that's where we help with graduate medical education and neurology residents, family practice residents, transitional residents. And we've talked about Sunrise, but Sunrise sees about 120,000 visits per year, adult only, level two trauma center, burn center.

And then the other sites are what we call our freestanding emergency departments which is ER at the Lakes, ER Aliante, ER at Sky Canyon, and ER at the South Las Vegas Boulevard.

Q Okay. And you mentioned Mountainview?

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A Yes, Mountainview.

Q Okay. And what about for Ruby Crest? What are some of the facilities up there?

A Well, it's in Elko, Nevada, Elko County, so there' only one hospital; it's Northeastern Nevada Regional Hospital. It's pretty -- area's pretty remote. It's about a little over a four-hour drive from both Salt Lake City and Reno, Nevada. A lot of the patients that need to be transferred out there for a higher level of acuity actually have to go by fixed wing or airplane, so it's a pretty rural site.

Q Is it the major facility for ER in Elko?

A It's the only facility for ER in Elko.

Q Okay. Thank you, Doctor.

MR. AHMAD: I'll pass the witness.

THE COURT: Okay. Cross examination.

MR. ROBERTS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ROBERTS:

Q You just listed a number of departments that were staffed by TeamHealth in Las Vegas?

A Yes, sir.

Q Were you here in voir dire when your counsel, I was talking to the jury about staffing contracts at Dignity Health, including Siena Campus, San Martin, and Rose de Lima?

A Yes, we used to have those contracts.

Q Okay. And you no longer have those contracts; is that

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correct?

A That's correct. We no longer have those.

Q And why is that?

A You know, it's part of our industry. Things change. Sometimes, hospital administration wants to go in a different direction, and you know, it's not uncommon for contracts to take place.

MR. AHMAD: Judge, I'll object. I mean, I don't mind his answer, but I'll object to the relevance of this in terms of the -- any type of contract negotiations of hospitals.

MR. ROBERTS: I'll move on, Your Honor.

THE COURT: All right. So objection's sustained.

BY MR. ROBERTS:

Q Are you familiar with a gentleman by the name of Kent Bristow?

A I've heard his name before. I don't -- I'm not sure exactly what he does.

Q Is he a part of the TeamHealth organization?

A I believe so.

Q Do you know if he's above you in the hierarchy of the company?

A I don't believe he's a physician.

Q Do you know whether Mr. Bristow has previously testified that the emergency room physicians employed by TeamHealth are typically independent contractors?

MR. AHMAD: Your Honor, I'm going to object. He can't

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really comment on what another witness said.

THE COURT: Overruled.

THE WITNESS: Could you repeat that question?

BY MR. ROBERTS:

Q Yes. You have any knowledge of whether he's previously testified under oath that emergency room physicians employed by TeamHealth are independent contractors?

MR. AHMAD: And Judge, I will also object to the relevance because we're talking about Fremont, Ruby Crest, and Team Physicians, and particularly testimony and trying to impeach with that testimony isn't relevant.

THE COURT: Overruled.

MR. ROBERTS: Counsel called out --

THE COURT: Overruled.

MR. ROBERTS: Thank you, Your Honor.

THE WITNESS: I'm not aware.

BY MR. ROBERTS:

Q Okay. Do you think it would be reasonable for us to rely on his testimony under oath in regard to that relationship?

A I can't answer that.

Q Let me ask you a little bit about some of the things you were telling the jury about. You mentioned saving lives, heart attacks, gunshots, drownings, car crashes, fires?

A Yes.

Q Now when you said you've looked at some of these claims

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that are before the jury, right?

A Just the numbers.

Q Right. And is the jury going to be able to tell by looking at those numbers which one is a gunshot, which one is a crash, which one saved someone's life, and which one didn't?

A No, it just shows the CPT code.

Q Let me ask you a hypothetical. Someone comes into the emergency room department with a gunshot wound. They are triaged by the nurse, the emergency doctor sees them, says he needs surgery, let's admit him and get him up to the surgeon.

A Yes.

Q Is that a plausible scenario?

A Yes, it can be.

Q And would that be coded as a 99285?

A Yes.

Q And would that bill for 99285 include the charges of the surgeon?

A No.

Q The anesthesiologist?

A No.

Q The facility?

A No.

Q I'm not going to ask to put it up again, but I believe that was demonstrative marked Trial Exhibit 508 that was up here, the flow chart?

A Yes.

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Q And you told the jury that that demonstrative was of a software program that you developed; is that correct?
A I helped develop it, yes.
Q With IT--
A Yes.
Q -- engineers --
A Uh-huh.
Q -- software guys?
A Yeah. People that understand computers, yes.
Q And you've testified you did that in 2014, correct?
A Yes.
Q So it'd be fair to say that you developed that flow chart and that procedure, you spent all that time going through the jury with, before TeamHealth had anything to do with Fremont?
A It was -- it was developed at 2014, but I can attest that it has evolved, and it continues to evolve, almost on a monthly basis.
Q But it was developed by you before TeamHealth bought Fremont, correct?
A Yes.
Q And you didn't need Fremont to come up with that idea, correct?
A No, it was --
Q I'm sorry. You didn't need TeamHealth to come up with that; you came up with it yourself?
A It was collaborative with the nursing director and others that

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came up with it.

Q What is the current full name of the entity that we've just been talking about as Fremont Emergency Services?

A Fremont Emergency Services, and I believe it now states my last name.

Q And are you the president, director, and secretary that Fremont Emergency Services share?

A No.

Q Have you ever looked at the secretary of state website and see who the registered president of that company is?

A I have not.

MR. AHMAD: Your Honor, I think there's a limine on corporate structure here, and I can't tell where we're going, so I'll object.

THE COURT: Objection sustained.

BY MR. ROBERTS:

Q You mentioned that there were over 12 but there were quite a number of charges in the claims that are being submitted to the jury that you worked on, right?

A Yes.

Q Do you know how much you billed for each of those charges?

A I believe it was on there, but I can't remember.

Q Okay. Do you remember when I took your deposition under oath back in May of 2021?

A Yes.

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Q At that time, did you know how much had been billed for any of the services that you had performed that's on that chart?

A No.

Q At that time, did you know how much United Health Care or any of the other defendants that are over here that I represent had paid on those, for those services?

A No.

Q Did you have any opinion about whether the amount we paid was reasonable?

A At during the time of our deposition?

Q Yes.

A I want to say I've learned quite a bit over the last couple of months, but at that time, no.

Q At that time, no. And that was two years after the lawsuit was filed, right?

A Yes.

Q And your name was on the company both -- were you even asked whether or not you thought this lawsuit should be filed before it was filed?

A No.

MR. ROBERTS: Thank you, Your Honor. That's all I have.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. AHMAD:

Q Well, Dr. Scherr, you were just asked if you agreed with this

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lawsuit when it was filed; how about now?

A Hundred percent, I agree.

Q Has the quality of care, including the dashboard, improved since the time of TeamHealth?

A Yes.

MR. AHMAD: That's all I have, Your Honor.

THE COURT: Okay. Any recross?

MR. ROBERTS: Nothing further, Your Honor.

THE COURT: All right. Does the jury have any questions from Dr. Scherr? If so, this would be your chance. If anybody has a question, give me a high sign. Ms. Landau, you're writing; is it a question?

JUROR LANDAU: Oh, no, it's not a question.

THE COURT: Good enough. All right. So may we excuse the witness?

MR. AHMAD: Yes, Your Honor.

THE COURT: You may step down. And Plaintiff, please call your next witness.

MR. MCMANIS: Yes, Your Honor. We call Mr. Scott Ziemer.

MR. BLALACK: Your Honor, I thought we were playing the video deps.

MR. MCMANIS: The video's not ready yet because we just got you all's objections this morning. Sorry.

MR. BLALACK: Your Honor, I'm going to need a few minutes to get Mr. Ziemer from across the street.

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THE COURT: Let's take a very short recess, and you may step out to make a call.

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

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

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Most importantly, do not form or express any opinion on any subject connected with the trial until the jury deliberates. It's 2:11. Let's try to be back at 2:25. Thanks, everybody.

THE MARSHAL: All rise.

[Jury out at 2:11 p.m.]

[Outside the presence of the jury]

THE COURT: All right. The room is clear. Plaintiff, do you have anything for the record?

MR. AHMAD: Nothing, Your Honor.

THE COURT: Okay. And Defendant, anything for the record?

MR. BLALACK: No, Your Honor, and I've called over to have him brought over.

THE COURT: Very good.

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MR. BLALACK: Maybe Mr. Roberts does.

THE COURT: Mr. Roberts?

MR. ROBERTS: I just wanted to say, Your Honor, that I understand that you're -- what your preliminary ruling was on corporate structure, but we've obviously gone through this whole trial and we've talked about the fact that TeamHealth owns Fremont, that Blackstone owns TeamHealth, and we got into that, and Mr. -- Dr. Scherr is listed as the president of Fremont on the Secretary of State website, and the fact that the -- a witness is on the stand, and I can't even ask him whether he's an officer.

I understand he apparently doesn't know, but I believe the Court sustained my objection, and it seems that if a witness is on the stand and testifies on behalf of the company, testifying that he's a medical director is relevant to the -- for the jury to know that he's also an officer and a director of that organization.

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THE COURT: All right.

MR. AHMAD: Two things, Your Honor. This goes into the corporate practice of medicine, but having said that, before I could object, he actually answered that he didn't know. So the answer came out.

THE COURT: Good enough. Have a good break everybody.

MR. BLALACK: Thank you, Your Honor.

[Recess taken from 2:12 p.m. to 2:24 p.m.]

THE COURT: Thanks, everyone. Please, everyone, be seated. Are we ready?

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MR. ZAVITSANOS: Yeah, we're ready.
THE COURT: Okay.
MR. ROBERTS: Yes, Your Honor. We're ready.
THE COURT: Let's bring in Mr. Ziemer, please. Why don't you just have a seat until I call you, sir?
[Pause]
THE MARSHAL: All rise for the jury.
[Jury in at 2:26 p.m.]
THE COURT: Thank you. Please be seated. Plaintiff, your next witness, please.
MR. MCMANIS: Your Honor, the Plaintiffs call Mr. Scott Ziemer.
THE MARSHAL: Sir, watch your step, please. Step up to the stand.
THE CLERK: Please raise your right hand.
SCOTT ZIEMER, PLAINTIFFS' WITNESS, SWORN
THE CLERK: If you could, please state and spell your first and last name for the record.
THE WITNESS: Scott Ziemer, S-C-O-T-T, Z-I-E-M-E-R.
THE CLERK: Thank you. Have a seat.
THE WITNESS: Thank you.
THE COURT: Go ahead, please.
MR. MCMANIS: May I proceed, Your Honor?
THE COURT: Please.
DIRECT EXAMINATION

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BY MR. MCMANIS:

Q Good afternoon, Mr. Ziemer. How are you today?

A I'm well. How are you?

Q Doing well. My name is Jason McManis. You and I have not met before, have we?

A No, I don't believe so.

Q Okay. And I understand from your counsel that you are the person in this case who is going to tell UMR's story; is that right?

A I am an employee of UMR, yes.

Q Okay. And you're the only witness who is going to testify on behalf of UMR?

MR. GORDON: Objection, Your Honor.

THE COURT: Grounds?

MR. GORDON: He's a witness. He's not an attorney. He's not a lawyer. I understand he is one of the witnesses for our case.

THE COURT: Well, I think it's -- is it just foundational?

MR. MCMANIS: It's just foundational, Your Honor.

THE COURT: Then I'll overrule it.

THE WITNESS: I'm sorry. What's your question?

BY MR. MCMANIS:

Q Well, I'll just ask, do you know whether there are any other witnesses who are going to be testifying on behalf of UMR in this case?

A I am not aware.

Q You are the Vice President of Customer Solutions at UMR; is that right?

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A Yeah. I'm the Vice President in our customer solutions area. I'm responsible for ancillary, our pharmacy, and our network solutions.

Q Okay. And network solutions, that includes out-of-network reimbursements, correct?

A Correct.

Q All right. And as the Vice President, you're the head of that department?

A Correct.

Q Okay. You've been in that position since about 2016?

A Yes, sir.

Q Okay.

A In 2016, I took on some additional responsibilities, I think, related to pharmacy, and then I think in 2018, I probably took on some additional -- or in 2019, took on the ancillary solutions.

Q Okay. Well, for the purpose of my questions, I'm just going to be asking you about the out-of-network reimbursements, all right? Do you understand?

A I understand.

Q Okay. Now, UMR is what's referred to as a third-party administrator or a TPA; is that right?

A Yeah. UMR is a third-party administrator, so what that means is that our clients are employer groups, and they wish to self-fund their benefit plan. So what that means --

UNIDENTIFIED SPEAKER: Are you hearing, Sam [phonetic]?

THE COURT: Okay. There's someone on the phone --

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UNIDENTIFIED SPEAKER: Are you hearing, Sam?

THE COURT: Okay. There's someone on the phone who needs to mute themselves. Who's looking for Sam?

UNIDENTIFIED SPEAKER: I have audio, but no -- video, but no audio.

THE COURT: All right. So you'll have to mute yourself, because we can hear you in the courtroom. Thank you. Mr. McManis, sorry for that. I know that Brynn can try to mute them.

MR. MCMANIS: Thank you, Your Honor. May I continue?

THE COURT: Go ahead, please.

BY MR. MCMANIS:

Q So Mr. Ziemer -- and I can kind of walk you through this --

MR. GORDON: Objection, Your Honor.

THE WITNESS: Can I --

MR. GORDON: He was in the middle of finishing an answer.

THE COURT: Yeah. Go ahead.

MR. GORDON: Let him finish answering his question before he goes onto the next one.

MR. MCMANIS: I'm not sure if his answer was responsive, but that's okay.

THE WITNESS: So UMR is a third-party administrator. I think you asked if we were a third-party administrator, so we are. And what that means is that our clients are employer groups who want to self-fund their benefit plan. And what self-funding means is that they are actually the -- the employer is actually the one that pays the claims, right.

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When your benefit plan pays out 80 percent, it's not an insurance company, it's actually your employer that's paying those claims. So what UMR does is we administer the benefits that the -- that that employer group provides to us.

BY MR. MCMANIS:

Q All right. Mr. Ziemer, you understand how this process works. I have an opportunity to ask you questions right now, right?

A Yes, sir.

Q Okay. And then when I'm finished asking questions, your counsel, he'll have the opportunity to ask you questions, as well, right?

A Yes, sir.

Q Okay. So for the purpose of keeping this on schedule, making sure that we move quickly, can we agree that when I'm asking questions, you answer my questions? Can we agree on that?

A Absolutely. I thought I was.

Q Okay. And when your counsel has the opportunity to ask you questions, you can explain and do whatever you'd like to do; is that all right?

A Sounds good.

Q Okay. So as a TPA, UMR does not actually have any fully insured business where UMR is accepting the premiums and taking the risk; is that correct?

A Yes. We focus primarily on -- we focus on ASO business or self-funded business.

Q All right. So when a client comes to you, let's say Caesar's,

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for example, they come to UMR so that UMR can administer health insurance, where Caesar's is going to take the risk, right?

A Uh-huh.

Q Is that correct?

A I didn't know there was a -- yes. We have customers like Caesar's who will come to us and want us to administer their benefits.

Q Okay, because just generally, I mean, Caesar's is not an insurance company. They don't have the expertise in paying claims, right?

A I would expect that employers are coming to us because they want our claims administration, correct.

Q Because UMR, as an insurance TPA, you all have the expertise to ensure that claims are paid properly, right?

A We work with our clients to identify the benefits that they want us to administer. We work with them to identify how they want those benefits, what their intent is, and then, yes, we administer their claims.

Q Okay. And do you agree with me that it's one of UMR's jobs to ensure that claims are being correctly?

A It's one our primary responsibilities is to ensure that we're paying claims according to their benefit plan and according to their intent.

Q Okay. All right. So one of UMR's jobs is to ensure claims are paid correctly, right?

A Yes, sir.

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Q All right. And that includes claims for emergency room services, correct?

A Yes, sir.

Q Okay. You understand that this case relates to a dispute over the amount of reimbursement for out-of-network emergency room services, right?

A That's my understanding.

Q Okay. And for those out-of-network emergency room services, when UMR is acting as a TPA, you're administrating a claim on behalf of one of your ASO clients, UMR takes a fee off the savings that it achieves for its ASO claims; is that right?

MR. GORDON: Objection, Your Honor.

THE COURT: Grounds, please?

MR. GORDON: Foundation.

THE COURT: Okay. Can you lay a little bit of additional foundation?

BY MR. MCMANIS:

Q Mr. Ziemer, you're the Vice President of the Customer Solutions; is that right?

A Yes, I am.

Q Okay. And in that role, you oversee the methods by which UMR pays and reimburses out-of-network claims, including out-of-network emergency room claims, correct?

A That is correct.

Q And you are familiar with the ASO clients and the

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relationships that UMR has with its ASO clients, right?

A I'm -- at a high level, yes, I'm aware of some of --

Q You were designated to testify --

A -- our relationships.

Q I'm sorry.

A Yes. At a high level, yeah, I'm aware of our relationships; yes.

Q All right. And you were designated to testify on behalf of UMR as a corporate representative in your deposition about those relationships, right?

A I was asked to testify about specific topics related to my work.

Q Okay. You're familiar with, generally, the structure of how UMR makes a revenue for processing claims on behalf of its ASO clients?

A I'm aware of --

MR. GORDON: Objection. Vague.

THE COURT: Overruled.

THE WITNESS: I am aware of how we charge our clients, correct.

BY MR. MCMANIS:

Q Okay. And one of those ways that you charge your clients is by taking a fee on the savings between the bill charge and whatever UMR reimburses an out-of-network claimant, right?

A We have programs that a client can elect to offer, and one of

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the ways that we charge for those programs is a percentage of savings.

Q Right, and we'll get to those programs in just a little bit, but right now, I just want to focus on that savings. And when we're talking about making a fee off the savings, what we're talking about is the difference between the provider's bill charge and whatever the reimbursement rate is that UMR pays to the provider, right, or allows to provider.

A I'm sorry, what's your question?

Q When we're talking about the fee --

A Yeah.

Q -- when UMR takes a fee on the savings, all right, the savings in that formula is the difference between the provider's bill charge and the allowed amount that UMR allows for the provider?

A When we charge a percentage of savings for an out-of-network program, the claim has to be eligible, right, so it's something that's reimbursable under the benefit plan, and then if it's an out-of-network claim, then we do charge based on the charge that the provider submits that, you know, providers can charge whatever they want, and then the allowable, which is under the benefit plan.

Q Okay. So is that a yes? The savings is the difference between the bill charge and the allowed amount?

A Yes.

Q Okay, thank you. Now, when you're doing that calculation of the savings, the greater the difference between the bill charge and the allowed amount, the greater your fee, as UMR as the ASO?

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MR. GORDON: Objection. Foundation.

THE COURT: Overruled.

BY MR. MCMANIS:

Q Is that right?

A The -- just to restate your question, the -- if the savings -- if we're able to save our customers more than we get, then our percentage of that would be greater.

Q Well, my question is just a little bit different. So the greater the amount of savings on any particular claim, if you're taking a percentage of those savings, the greater that fee will be to UMR, right? Just simple math.

A Yes, you're correct. There's two ways that -- there's two ways, right? Provider -- we don't control what a provider can charge, but what we can control is what -- or what clients can control, really, is what they're going to allow under their benefit plan.

Q Certainly -- well, so I want to sort of ask you about what you said there. I think you said what clients can control is the amount that's allowed; is that right?

A Right. Clients -- what are clients going to allow under their benefit plan.

Q Okay, all right. Well, I'll ask about that in just a little bit, but right now, I want to talk about the emergency room services. You're familiar at a high level with the five CPT codes for emergency room services that are at issue?

A I'm aware that there are CPT codes for emergency services.

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I'm not familiar with those. I don't write the codes.

Q Okay. Well, do you understand that as you go from the 99281 down to the 99285, that's an increase in the level of severity?

MR. GORDON: Objection. Foundation.

MR. MCMANIS: I'm just asking if he understands, Your Honor.

THE COURT: Overruled.

THE WITNESS: I'm aware that with certain codes, right, there is an increase in severity.

BY MR. MCMANIS:

Q Okay. And the ER doctors, the ER providers, the Plaintiffs in this case, their job is to treat patients and save lives; do you agree with that?

MR. GORDON: Objection, Your Honor. Vague.

THE COURT: Overruled.

THE WITNESS: I think that emergency providers are there to help members, help them get healthier.

BY MR. MCMANIS:

Q They're there to treat patients --

A Help save lives.

Q -- and save lives, right?

A Absolutely. They're there to help people and save lives, yes.

Q All right. So as between the ER doctors, whose job it is to treat patients and save lives, and UMR, whose job it is to ensure claims are paid correctly, who do you think should be paid more for an

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emergency room visit for a 99285, the most serious code?

A Quite honestly, I think that, you know, it's a very difficult comparison, right? I think that in the marketplace, you're going to, you know, the market will bear what it will, but if somebody is saving somebody's life, that's an -- you know, there's no higher cost.

Q So is it your testimony, sir, to the jury, that there are some circumstances where UMR, whose job is to ensure claims are paid directly, deserves to make more on a given emergency room visit than the ER doctors, whose job is to treat patients and save lives? Is that your testimony, sir?

A No. My testimony --

MR. GORDON: Objection. Argumentative, misstates testimony.

THE COURT: Overruled.

THE WITNESS: My testimony is that we agree with our employer, with our customers, what we're going to charge for our services. Just like the provider of emergency services, right, they have -- you know, they can charge whatever they want for their services. I'm not exactly sure that there is a comparison. We don't do the analysis to say, oh, well, we should pay -- we should make sure that our fees are in line. Do I think that the -- in line with what any type of medical provider would pay, but we don't actually control what an emergency room provider actually charges.

BY MR. MCMANIS:

Q Sir, I'm not asking you about what an emergency room

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charges, okay? Let's set charges aside. Are you with me?

A I understand.

Q Okay. I'm just talking about the amount of money that is paid to either UMR, for ensuring claims are paid directly --

A Uh-huh.

Q -- correctly, excuse me, or the ER doctors, whose job is to treat patients and save lives. The amount of money that's paid to them. Who do you think deserves more for an emergency room visit on a 99285?

MR. GORDON: Objection. Asked and answered.

THE COURT: Overruled.

THE WITNESS: I honestly don't know how to answer your question.

MR. MCMANIS: All right. The --

THE WITNESS: A customer is asking us to administer their benefit plan and everything that goes into that. We do that over a period of a year, right? And we agree on those particular fees.

MR. MCMANIS: Sir, I'm not asking about --

THE WITNESS: How that compares to --

THE COURT: Hold on. Let him --

THE WITNESS: -- one emergency room visit; I honestly don't know.

MR. MCMANIS: Okay.

BY MR. MCMANIS:

Q I don't know. Is that your answer?

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A That's not my answer.
Q Well, let's take a look at how it actually works in practice, okay?
A Okay.
Q All right.
MR. MCMANIS: Michelle, could you pull up Plaintiff's Exhibit 473?
BY MR. MCMANIS:
Q All right. Now, Mr. Ziemer, I'm not going to ask you about every entry on this spreadsheet. I know this is a long document --
A Is there somewhere --
Q -- but at any point you want to look at hard copy, I --
MR. GORDON: Hold on, counsel. Is this document in evidence already?
MR. MCMANIS: Yes. It's stipulated and your counsel used it a couple days ago.
MR. GORDON: All right. My apologies, Judge.
MR. MCMANIS: All right.
BY MR. MCMANIS:
Q Mr. Ziemer, I'm not going to walk you thought it. This is a really long PDF that contains a whole bunch of claims, but what I'll represent to you is that Plaintiffs' Exhibit 473 contains all of the disputes claims at issue in this case, including the ones from UMR, all right?
A Uh-huh.
Q And what I want to do is I've got a demonstrative where I'm

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going to pull out some of the claims so we can actually see them on screen, okay?

A Is there somewhere where I can -- you mentioned that there's a hard copy somewhere?

Q There are hard copy binders behind you, but I think this one may still be too hard to read. I'm going to pull up the demonstrative on the screen.

THE WITNESS: Where would I find that?

MR. MCMANIS: So Michelle, if you could flip over to the PowerPoint, please? Well, Mr. Ziemer, I'm about to switch to a different document here that you might be able to see a little bit better.

[Pause]

MR. MCMANIS: Little technical difficulty I think but we'll get it up there for you.

THE WITNESS: Yes, you're correct; the paper copy is not going to -- not going to work.

MR. MCMANIS: All right. Let's do it -- we'll do it the old-fashioned way, all right. They teach you to always be prepared. Could I switch to the document [indiscernible] please?

BY MR. MCMANIS:

Q All right. Is that a little bit easier to read, Mr. Ziemer?

A Yes, sir. Thank you.

Q Okay. And so this is an excerpt from that larger PDF that I just pulled up and what I've done here is I've narrowed this down, you see that it's just CPT codes 99285?

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A I see it's 99285, yes.
Q Okay. And you see the dates of service here are all in the year of 2019?
A Yes, sir. I see that.
Q All right. And then do you also see that over on the far right side, you've got the same employer and the same group number? Do you see that?
A I see that same employer. The group number is cut off, but it looks like the same group number, yes.
Q Okay. Well, from what we can see, all these group numbers match; do you agree with that?
A Yes, sir.
Q Okay. Now, the ASO customer in this excerpt is Lowe's Companies, right?
A Yes, that's the employer name, Lowe's Companies.
Q Okay. And do you happen to know if Lowe's, as part of their administrative services agreement actually has a 35 percent savings fee as opposed to a 30 percent or a 20 percent?
A I do not specifically know what percentage of savings Lowe's is being charged for their out-of-network programs.
Q Okay. Now, 30 percent, is that kind of an average for you guys at UMR?
A At UMR we have a -- we have a number of different programs -- out-of-network programs. Some we charge 30 percent of savings; some we charge 22 percent of savings and some we charge 25

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percent of savings. It's just dependent upon the program.

Q And some are higher than 30, right?

A As a standard access fee, or a standard fee for our out-of-network programs, it's those numbers. However, when an underwriter takes a look at any one case, they're going to underwrite the entire case.

Q Sir, my question is just some are higher than 30 percent, right?

A I thought your question was is do we have programs that were higher?

Q That was my question -- some of the fees are higher than 30 percent; is that right?

A Sometimes there are fees higher than 30 percent.

Q Okay.

MR. MCMANIS: Could we go back to the computer, and I'd like to look -- don't pull it up yet. You don't have an objection to Exhibit 159?

All right. Your Honor, we move for admission of Plaintiffs' Exhibit 159.

THE COURT: Objection?

MR. GORDON: No objection, Your Honor.

THE COURT: Exhibit 159 will be admitted.

[Plaintiffs' Exhibit 159 admitted into evidence]

[Counsel confer]

BY MR. MCMANIS:

Q All right. Sir, while we're waiting for that, do you have a

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hard copy of Exhibit 159 in front of you?

A Yes. It says Lowe's confidential master professional services agreement?

Q Okay. And if we take a look at page 4, do you see in the top paragraph that this is agreement between Lowe's Companies and UMR, Inc? I'm sorry, it's page 5.

A Yes, I see that the master professional services agreement was made and entered into as January 4th -- or I'm sorry, January 1st, 2018 by Lowe's Companies, a North Carolina Corporation and UMR, Inc.

MR. MCMANIS: All right. Then if we could just go to page 31, Michelle, and pull the signatures.

BY MR. MCMANIS:

Q All right. Do you see -- you may be able to see it on your screen as well, sir, that this was signed by UMR and by Lowe's Companies?

A Yes, sir. I see it was signed by Marsha S. Bar, Regional Contract Manager and Lowe's Gregor Touche [phonetic], Vice President.

Q So I want to jump ahead then to page 54.

MR. MCMANIS: And Michelle, just pull out the very top of page 54, just the heading.

BY MR. MCMANIS:

Q All right. Do you see that starting on page 54, we have the schedule of fees for the Lowe's agreement with UMR?

A I'm sorry. What page are you on?

Q So if I say page 54, do you see on the very bottom right-hand

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number of your document --

MR. MCMANIS: May I approach?

THE COURT: You may.

THE WITNESS: Yes, sir.

MR. MCMANIS: So if I say 54, I'm referring to that number --

THE WITNESS: Oh, thank you.

MR. MCMANIS: right there.

BY MR. MCMANIS:

Q And again, it's up on your screen if that's easier for you.

A Thank you.

Q Okay. All right. So you see that we have the schedule of fees for the Lowe's agreement with UMR?

A Yes, sir.

Q All right. And if we look on the next page, 55, as part of the schedule of fees, if you pull out about one-third of the way up from the bottom where it says service code 9938, cost reduction and savings program. Do you see that?

A Yes, sir, I see that.

Q All right. That is a service that you guys have to reduce the amount paid on out-of-network claims including ER services, right?

A Correct. We have -- we have a variety of programs under our cost reduction and savings programs that are designed to help our clients control costs. Correct.

Q All right. And just jumping back now to page 54 then, if you look at the last B item on page 54, see that contains the fees for the cost

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reduction and savings program?

A Yes, sir. I see that.

Q All right. And what is the amount in the Lowe's agreement for the cost reduction and savings program; what's the fee that UMR takes?

A 35 percent of savings.

Q Okay. So if we want to look at the claims for Lowe's that are part of this case, and we want to figure out how much UMR made on those claims, we would take the amount of savings, and we'd look what's 35 percent of that savings, correct?

A You're correct. The only -- the only thing I would say is that again, the basis of the program is that the claims have to eligible under the benefit plan --

Q Sure --

A -- so as long as they're eligible under the benefit plan, then the difference that we would charge on the savings, which would be the difference between the bill charge and what was allowed.

Q Okay. And the fee would be 35 percent, right?

A Correct.

Q Okay. So let's go back if we can to the demonstrative that we had, and I can just do it up here. That's fine. Got it? All right. All right. So can you see that on your screen, Mr. Ziemer?

A Yes, sir.

Q All right. And again, this is the excerpt from Plaintiffs' Exhibit 473, and like we said, these are all 99285s here at Fremont, Clark

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County, 2019, right?

A 2019 dates of service, yes.

Q Okay. And go ahead and do me a favor. Take a quick look at the first page of Exhibit 159 there, and tell me what year that plan is? Try page 5.

A This master professional services agreement is made and entered into as of January 1st, 2018.

Q 2018?

A Yes, sir.

Q Okay. Do you know whether it was amended after that at any point?

A I do not know.

Q Okay. If it were amended, that would be something that UMR had in its records, right?

A Yes, that would have.

Q Okay. So I want to take a look now -- do you see that in column letter M as in Mary, we have the charges for each of these claims; do you see that?

A I see that.

Q All right. And then we have next to that, we have the amount that UMR allowed for each of these 99285 claims, right?

A That's what line M seems to indicate, yes.

Q All right. So if I want to take the savings -- if I want to get the savings, I want to take these charges and subtract the allowed amount, right?

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A That's correct.
Q All right. And so I've gone ahead, I've done that. And if we look at the savings on each of these claims, do you see it's about $1100 savings on each claim?
A It looks like in column AR the savings is between $1,044 and $1,012 --
Q Okay.
A -- roughly.
Q And does anything about that math jump out to you as incorrect based on the numbers you can see on the screen?
A No, this looks appropriate.
Q Okay. Now, if I want to calculate UMR's fee, I'm going to take that 35 percent number that we saw in Exhibit 159, and I'm going to multiply it by the savings we have in column AR, right?
A That is correct.
Q All right. So, if we take a look at UMR's fees on these claims, these 99285s from 2019, it looks like we're about just under $390 per claim to UMR, right?
A That's what's in column AS, correct.
Q All right. So each and every one of these claims that we see for 2019 for Lowe's, UMR is making close to $75 more per claim than the ER doctors who are actually treating the patients; is that right?
A That is correct.
Q Is that reasonable?
A Is it reasonable that we save the client and the member --

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Q No, sir --
A -- $1100?
Q No, sir. Is it reasonable for UMR to make 75 more dollars per 99285 visit than the ER doctors who are treating the patients; is that reasonable?
MR. GORDON: Objection, Your Honor. Argumentative.
THE COURT: Overruled.
THE WITNESS: What we don't control is what -- how much the provider actually charges.
BY MR. MCMANIS:
Q Sir, I'm not asking about charges --
A -- and so we reimbursed a reasonable charge.
Q Sir, I'm going to ask my question one more time. We see here in the excerpt from Plaintiffs' Exhibit 473, UMR is making almost $75 more per claim than the ER doctors who are actually treating the patients who are coming in with the most severe code. That's what this shows, right?
A You have explained that 99285 is the most severe code, correct.
Q And $75 more per claim to UMR than to the ER doctors, right?
A And based on -- based on this, yes. There's $75 more going to UMR.
Q And my question to you, sir, is just is that reasonable --
A I can't --

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Q -- for UMR to make more money on a 99285 patient who comes in than the ER doctor who actually treats the patient? Is that reasonable --

MR. GORDON: Objection. Asked and answered and vague.

THE WITNESS: I can't answer --

THE COURT: Overruled.

THE WITNESS: -- the question. If I had control over how much somebody charged, then I could answer the question. But I don't control a big part of the math. What I've done is -- or what UMR has done is we've agreed for a certain program that we are going to charge a percentage of savings. And we offer them -- we offer our customers different programs. Sometimes customers choose their own program that they want us to administer and when we administer it on a percentage of savings, and we come up with a reasonable amount, there are certain -- there are certain circumstances where this is going to happen. We saved the client and the member a considerable amount of money.

BY MR. MCMANIS:

Q Sir, are you proud of the fact that UMR made more money than the ER doctors who treated the patients for these 99285s that we see on the screen right here?

A I'm proud that we saved our client and our members $1100.

Q I'm asking whether you're proud that you made more than the doctors? Does that make you feel good inside?

MR. GORDON: Objection, Your Honor. Argumentative.

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THE COURT: Objection is sustained. You don't have to answer that. Move on.

BY MR. MCMANIS:

Q All right. You mentioned your programs, so I want to talk about those a little bit.

MR. MCMANIS: Let me just ask, do you all have an objection to Plaintiffs' Exhibit 256?

MR. GORDON: 256?

MR. MCMANIS: Yes.

MR. GORDON: Yes on foundation.

BY MR. MCMANIS:

Q All right. Mr. Ziemer, if you could just find Exhibit 256 and let me know when you've got it? All right. Mr. Ziemer, do you have Exhibit 256 now?

A Yes, sir. Thank you.

Q All right. And do you see from the top third of the --

MR. GORDON: Excuse me, Your Honor. No objection.

THE COURT: All right. So Exhibit 256 will be admitted.

[Plaintiffs' Exhibit 256 admitted into evidence]

MR. MCMANIS: All right. And Michelle, would you just pull out the to/from to start, please, and that middle email near the top right there?

BY MR. MCMANIS:

Q All right. And Mr. Ziemer, do you see this is an email that you wrote on November 19th of 2018?

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A Yes, I see that.

Q All right. And the subject of this is UMR OON, that's out-of-network offerings?

A The subject is new UMR out-of-network offerings.

MR. MCMANIS: Okay. And, Michelle, let's pull that out, and I just wanted the section key notes. Just key notes, the top four bullets.

BY MR. MCMANIS:

Q All right. Now, it looks like here, you've written a brief description of some of the programs that UMR was looking to offer as a continuum of out-of-network solutions, right?

A Yes. I have -- I have outlined three programs.

Q Okay. And I'm going to start at the bottom here with CRS, least aggressive. Do you see that?

A I see that.

Q All right. And CRS, is that short for cost reduction and savings?

A It is, sir.

Q All right. And the CRS when you say -- well, CRS is one of the methods for out-of-network reimbursement at UMR, right?

A We call our different out-of-network programs cost reduction and savings programs.

Q And one of those CRS, is the least aggressive, and it's a secured savings. Do you see that?

A I see that, yes.

Q All right. And what is secured savings?

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A So secured savings is when either -- when we have a contract with a provider either through a network or through fee negotiation. You know, with our CRS product, it relied -- or it relies on networks, it relies on fee negotiation, and in 2018 we were using some non-contracted, or unsecured savings for certain types of claims.

Q Okay. So on the secured savings there's something like, an agreement with a wrap network for example, to accept a certain discount, right?

A Secured savings would be either a contract with a provider, or a negotiation with a provider, where there's no possibility that a paying member could be balance billed.

Q And that's exactly where I'm going. So when you have secured savings, that means no balance billing, right?

A That is -- that is correct.

Q Okay. And CRS in this least aggressive solution that you all offer, that's all secured savings, according to the email that you wrote in 2018, right?

A It relies -- it relies heavily on secured savings. It does not rely entirely on secured savings.

Q Fair enough, okay. So let's talk about the next one, CRS benchmark. Now you describe that as aggressive, right?

A We -- I described these programs in terms of aggressiveness, you can also look at that as what is driving more savings for the member and for the client as well. So --

Q The --

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A -- the most aggressive savings -- or most aggressive would be the -- there would be a lot of savings available to the member and to the customer.

Q And we'll get to that, but right now I'm just asking about CRS benchmark, and the words you wrote was "aggressive," correct?

A I wrote aggressive, yes.

Q Okay. And benchmark is kind of a ceiling that you place so if something doesn't price below the benchmark, it keeps cycling through a few different options until it gets lower and lower, right?

A Our CRS benchmark program uses Multiplan, and it uses Multiplan's network, as well as their fee negotiation services. And so what we ask Multiplan to do is, before they agree, we agree to use the network, or their negotiation, they have to -- they have to agree to a rate that's below a certain Medicare benchmark, otherwise the claim gets priced by Data iSight.

Q Okay. And eventually, if you cycle through the secured options, and you can't get below the benchmark, that's how you end up in the Data iSight world, right?

A That is correct, sir.

Q Okay. And in the Data iSight world, UMR is relying on Multiplan and Data iSight to come up with a reasonable amount for reimbursement; is that right?

A That is correct. We would rely on Multiplan to use their tool, Data iSight, to come up with a reasonable, allowable amount.

Q Okay. And then when you're talking about -- well, let's see,

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you're on the CRS benchmark, we actually introduced non-secured savings with patient advocacy; do you see that?

A I see that, yes.

Q All right. And non-secured savings, if I'm understanding you, means that there's a risk of balance billing; is that right?

A There is a risk of balance building on non-secured savings?

Q Okay. And then that's why you guys have that patient advocacy element?

A When a -- if a claim would be priced by Data iSight, it's not secured savings. So we ask Multiplan to advocate on behalf of the member, if the writer disagrees with the reimbursement that we provided.

Q Balance billing, that's something that you guys want to avoid, right?

A I think that it depends on the customer. We have other programs where out-of-network -- where the client is okay with their members being balance billed, but as it relates to emergency services, right, we know that we need to keep the member from being balance billed.

Q So for emergency services, it's a benefit when your patients are not balance billed?

A It's a benefit when our patients are not being balance billed.

Q Okay. Now the advocacy part here, that's all done by MultiPlan, right?

A MultiPlan provides the advocacy.

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Q Okay.

A They're in the best position to support their product, why they believe it's reasonable to providers that are -- that are not questioning it.

Q And as far as UMR is concerned, when UMR is using Data iSight, UMR doesn't provide Data iSight with a minimum price, or anything like that?

A Can you --

MR. GORDON: Objection. Vague.

THE COURT: Overruled.

THE WITNESS: I'm not sure what you mean by "a minimum price."

BY MR. MCMANIS:

Q Well, for example UMR doesn't tell Data iSight that if we -- if you're going to run the Data iSight program, you've got to come in at or above a floor, UMR doesn't give that kind of instruction; did it, sir?

A Not that I'm aware of. We don't give that type of instruction.

Q All right. And do you happen to know, generally, the --

A If we were to compare Data iSight to a percentage of Medicare for example, do you happen to know, generally, where Data iSight comes in?

MR. GORDON: Objection. Foundation.

THE COURT: Overruled.

THE WITNESS: For just in general, I want to say it's somewhere between, I would be speculating, but my speculation would

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be somewhere around 250 percent of Medicare.
BY MR. MCMANIS:
Q Okay.
A In general.
Q All right. You guys don't have any instruction to Data iSight, that if it comes in below that, that they have to pay up at that 250 percent amount, correct?
A We -- to my knowledge we have not told MultiPlan or Data iSight to bring up a reimbursement. We rely on their tool. They use publicly available information. They have their own algorithm to determine their reasonable amount.
Q All right. Let's come back here to 256, and let's take a look at this last program here. NPC^2, is short for non-par cost containment?
A Yes, it is.
Q All right. Is that also referred to as NPC squared?
A Yes, it is.
Q All right. And in the email that you wrote here in Exhibit 256, you describe NPC squared as the most aggressive of the three programs that you outlined, right?
A Yes, I did.
Q All right. The description here --
[Court and court recorder confer]
THE COURT: Go ahead, please, Mr. McManis.
MR. MCMANIS: Thank you, Your Honor.
BY MR. MCMANIS:

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Q All right. So Mr. Ziemer, we just talked about NPC[2], it's the most aggressive. And here it says, "non-secured savings with minimal patient advocacy." Do you see that?

A I see that.

Q All right. And so by the time you get to non-par cost containment, we've dropped out the secured savings, right?

A Actually, that's not correct.

Q And so even though you wrote here --

A The --

Q -- "non-secured savings," what you meant was that there are secured savings as well?

A Correct.

Q Okay. And we've got minimal patient advocacy, right? Is that what you wrote?

A I wrote "minimal patient advocacy." We provide advocacy for the claims that rarely run through our benchmark product, our CRS benchmark product.

Q All right. And so if we wanted to just put these on a continuum, we've got least aggressive at the top, most aggressive at the bottom, right?

A I think in our continuum we talk about what is going to drive the most savings, and then we also talk about what the potential is for balance billing --

Q Well --

A -- and so that's how we have continuum, it's another way to

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look at it.

Q I'm just talking about, and the words that you used in real time, in November of 2018, you used least aggressive, aggressive, most aggressive; those were your words, right, sir?

A Those are my words on the paper.

Q Okay. And I organized those correctly on this chart, in order from least aggressive to most aggressive, using your words?

A You've organized those on the chart, based on what's in this email, correct.

Q Okay. And now you mentioned in terms of savings to the customer, but when we're looking at the least aggressive secure savings here, just regular CRS, okay, we want to compare that to the most aggressive, non-par cost containment, non-secured savings. It's true, isn't it, that the amount of reimbursement to the doctors will be less down here, than it is up here?

A The amount of savings to the customer increases, the amount of reimbursement to the physician or to the facility would decrease.

Q Okay. So if I want to organize this from least money to the doctors, most money to doctors, it never goes the other way, right?

MR. GORDON: Objection, Your Honor. It calls for speculation.

THE COURT: overruled.

THE WITNESS: I think in terms of any one claim, it's difficult to make that assertation. If you take a look at the entire program, then

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based on the savings, the overall savings for the program, the more savings that we would generate the less we would pay to an out-of-network physician or facility.

Q Okay. And when you say "most aggressive" that's what you mean, you mean most savings, right?

A Most savings, most stability that contain costs for our client and the member, yes.

Q And least money to the doctors, right?

A At least -- correct. We would save more, and that would go to the members and the clients, it would not go to the physicians, or the facilities.

Q Okay. And I want to take a look now at the next bullet right underneath this, which talks about your strategy at this point in time, in 2018, okay? Right there. All right. And what this says, is we are going to use CRS benchmark and non-par cost containment programs, at standard offerings, starting in Q2, 2019, do you see that?

A I see that.

Q In other words, the standard offerings by second quarter of 2019 are going to be the two more aggressive options, right?

A What that means is that we were leading with CRS benchmark and non-par cost containment programs, yes.

Q And CRS, this secured savings with no risk of balance billing, that was going to be default only if the customer required it, right?

A Correct. CRS to be used as a default, if the customer requires that solution.

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Q Now, sir, are you aware, one way or the other, whether, for any of the UMR claims that are part of this case, whether there's even a single patient who received a balance bill, from any one of the Plaintiffs?

A Can you restate your question?

Q For any of the UMR claims that are part of this case; are you with me?

A Yes.

Q All right. For any one of those claims are you aware of even a single balance bill that one of those patients received from the Plaintiffs?

A I'm not aware.

Q All right. I want to talk a little bit about the plans that UMR has with its ASO customers, okay.

A What do you mean by "the plans"?

Q Well, as a TPA, UMR administers summary plan descriptions, or SPDs, right?

A Correct.

Q And it's those SPDs that contain the language that tells UMR how to pay, for example, an out-of-network emergency room provider, right?

A The plan document governs how UMR processes the benefits. I'm not familiar if they get into specifics to that detail, about how to process the out-of-network claims -- or I'm sorry the emergency claims I think was yours, other than to say, yeah, we need to pay it at, you know, deductible co-insurance.

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Q Sure. And I just mean, you know, at a high level, it's the plan that determines how UMR is going to administer the claim, right?

A That is correct.

Q All right. And within those SPDs, who chooses the reasonable rate for the doctor services, is the client, or is UMR?

A The client -- the client determines how they -- how they view usual and customary.

Q All right. So if the plan document says for out-of-network emergency room services, we're only going to reimburse $27. Did UMR allow more than that?

MR. GORDON: Objection. Calls for speculation.

THE COURT: Overruled.

THE WITNESS: I think that that would be very unlikely, but if that's what the plan document, and that's what the benefit was, we would -- we would follow the plan document.

BY MR. MCMANIS:

Q And so whatever the plan says, that's what's reasonable?

A Correct.

Q And UMR has to follow that plan for every single claim, right?

A UMR uses the plan document. We also sit with the client when we implement the benefit plan, so we understand their intent. A plan document isn't a -- you know, it's a very broad document, so we want to understand their intent. We give them choices as to how they want their benefits processed, then that's how we set up our system so

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that we can administer not only their benefit plan, but their intent that they talk to us about, as part of that implementation.

Q Right. And you set up sophisticated systems to ensure that each claim is processed appropriately, right?

A Our goal is to process claims accurately.

Q All right. And you do that -- is it computerized?

A We have a claim processing system that we utilize, yes.

Q Right. In other words, there's not somebody sitting at a desk, filing through each claim and saying, okay, this one gets paid this way, and this one gets paid that way. It's run through a computer system to make sure it gets everything right?

A We have a claim processing system. We try to automate as many -- as much of the benefit as we possibly can, but there are always going to be things, right, that you need to have somebody take a look at, to make sure that they're administering the appropriate benefit. You know, we try to do our best to process claims correctly, it doesn't happen all the time, but when we make mistakes, then we -- then we fix them.

Q Okay. So if I could get the document camera here. I want to take a look at a slide that was used by your counsel during opening statements, okay? And if we were just going to sort of change this be a UMR slide, you know, we'd say, plan A over here, let's call this non par cost containment, provider reimbursed $200. Do you see that? These are just hypothetical numbers.

A Okay.

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Q Right. And plan B over here, let's say this is CRS, and I think what's being illustrated here is that if you have a plan that calls for non-par cost containment, for example, compared to a plan that calls for CRS, you may have different reimbursements even though it's the same doctor, around the same doctor for the same code; is that generally accurate?

A An employer group -- I'm just seeing this for the first time. An employer group can choose a different -- you know, they can choose whatever out-of-network program they want. In the situation of an emergency provider, right, with NPC squared, there's the possibility that we would take a MultiPlan network rate. There would be a chance that MultiPlan could fee negotiate it or there's a chance that we would have Data iSight.

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With CRS, our CRS program, we use three different networks. We use First Health, we use MultiPlan, we use Change Healthcare. In a situation -- again, one claim, sir, we would reimburse exactly the same thing because it's a MultiPlan contract that beats our threshold, or there could be situations where the reimbursement is different.

Q Okay, fair enough. So it could be different, but depending on the plan, there might be some overlap here and there?

A Depending upon the program that the plan is selected, there could be overlap.

Q All right. So if we are -- if we're going to change this. Let's say this time, it's CRS Benchmark, all right? And we make this one CRS benchmark. Are you with me?

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A I understand what you've written.

Q Okay. And then if we've got the same plan for the same type of claim, the same time frame, we should get the same reimbursement amount, right? It should be -- if it's CRS Benchmark, it's setting the reimbursement, and it's the same provider, then we should have 200 on the left and 200 on the right; do you agree with that?

A If a -- if a client chose the CRS -- if two clients chose the CRS Benchmark Program, they both had the same -- the same claim happen with the same provider on the same day, and they both have that same out-of-network program, then one would expect that the reimbursement would be -- would be the same.

Q Okay. So can I put $200 here?

A Sure.

Q Okay. And I just want to see if we kind of agree on the basic principle. All right. And so if you've got the same type of claim, plus the same plan. I don't even mean -- I don't even mean two companies with different plans, but one company, one group, okay? Same plan. You've got same type of claim and the same plan, then it should be the same reimbursement level, right?

A So your scenario is two members under the same plan. They both go to see an emergency room physician. They perform the exact same services, right? So the claim is exactly alike. They do it on the same day. And would we expect that the -- that the reimbursement would be the same?

Q Yes.

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A Under those conditions, we would expect the reimbursement to be the same.

Q Okay. So now, you put something -- you put something in your answer there that I want to -- I want in on, which is "the same day". But even if it's not the exact same day, as long as it's still within the same plan year and the same benefit, then we should still expect to see the same level of reimbursement, right, because the terms of the plan haven't changed?

A I don't know how to answer your question. If we're talking about a contracted rate or a negotiated rate, right? Those don't run based on the plan's year. That's based on, you know, the agreement between the provider and the contracting entity. That can change. And, you know, with other types of services like Data iSight, I can't say for certain how often they update their information.

If they do that more often than on a yearly basis, but they could update their information, and that could cause something to change based on the date of the claim. So I think there's a variety of different scenarios that could happen where, you know, if you have a different time period or date of service when the claim took place, you could wind up with different reimbursements.

Q All right. But we can at least agree that if the same plan is in place, that the same reimbursement, whether it's CRS Benchmark, non-par cost containment, whatever it is. As along as the same plan is in place, it's going to be run through the same solution, right?

A The --

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MR. GORDON: Objection. Asked and answered.

THE COURT: Overruled.

THE WITNESS: The plan chooses the out-of-network program that they want to have administered or they tell us what out-of-network program they want to have administered for their particular plan. Unless we make changes, meaning the client directs us to make a change midyear, then we would expect to run through the same out-of-network process.

BY MR. MCMANIS:

Q All right. So what I want to do is I want to take a look again at some of the data from Plaintiffs' Exhibit 473 and see how this plays out on actual claims that are in this case, okay?

A Okay.

MR. MCMANIS: All right. So can we go back to the PowerPoint?

BY MR. MCMANIS:

Q All right. So I've got another example here out of Plaintiffs' Exhibit 473. And I've filtered this down to 99285 codes. Do you see that? This is a 99285.

A 99285. Yes, I see that.

Q Okay. And the employer, do you see, that's Las Vegas Sands?

A I see that.

Q Okay. And is Las Vegas Sands an ASO client of UMR?

A I couldn't tell you one way or the other.

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MR. MCMANIS: Do you have an objection to 296?
MR. GORDON: No objection.
MR. MCMANIS: Your Honor, I move to admit Exhibit 296.
THE COURT: Exhibit 296 will be admitted.
[Plaintiffs' Exhibit 296 admitted into evidence]
BY MR. MCMANIS:
Q And to save you the trouble of looking, I'm just going to hand you a copy, okay?
A Thank you.
Q All right. And if you take a look there on -- it looks like we're on page 2. Do you see that this is a summary plan description for Las Vegas Sands Corp?
A I see that. Thank you.
Q And do you see that there is a -- well, this is a UMR plan, right?
A This is Las Vegas Sands, Las Vegas, Nevada, administered by UMR, correct.
Q Okay. And that means that Las Vegas Sands is an ASO client of UMR's under this plan, this SPD?
A Yes, sir. That's what that means.
Q Okay. And this is the January 1st, 2019 version, right?
A It says that it was restated January 1st, 2019. Yes.
Q Okay. And these SPDs; they may be updated annually or biannually depending on the client?
A The client -- the client controls when they want to update

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their plan document.

Q Okay. And do you see there's a number right there under the summary health benefits summary plan description?

A Yes, I see that.

Q All right. And would that be the group number?

A I believe that that's actually the plan number.

Q Okay. Well, let's just take down there -- because I don't want to forget it. Just write it here in the bottom. The last six -- can you just read the last six digits for me?

A 410018.

Q All right. I just want to make sure that we get that up there. So let's actually -- let's go back to the PowerPoint. All right. And it's a -- it might be a little hard to see on your screen. All right. So do you see the group number there?

A Yes, I see the group number.

Q And I'll just hand you a printed copy. Can you verify that those last six numbers match this 410018?

A Yes, they match.

Q Okay. And the employer there is Las Vegas Sands, like the exhibit we just looked at, right?

A Correct.

Q Okay. And let's -- so we've got the employer and the group number there over in -- on W and X. Can you see that on your screen, sir?

A I do.

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Q All right. And then we've got the bill CPT there as a 99285, right?

A Correct.

Q Okay. You see the charges are there in column M again?

A Correct.

Q All right. And then we have the allowed amount here in row N, right?

A Allowed amount is in row N.

Q All right. And what's the allowed amount under the Las Vegas Sands plan ending in 410018 for this claim on May 6- -- from May 16th, 2019?

A So that's the group number. And I'm not, again, familiar with Las Vegas Sands. But Las Vegas Sands can have a number of different plans, right? So I believe in the document that you gave me, like the zero, zero were first the actual plan. There could be a 01, a 02, 03. So just want to --

Q Okay.

A I just want to make sure that we're talking about the same thing.

Q Sir, do you know who John Haben is?

A I know who John Haben is.

Q Pretty smart guy, right?

MR. GORDON: Objection, Your Honor.

THE COURT: Objection sustained.

BY MR. MCMANIS:

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Q He's pretty -- he was pretty high up at United; do you recall that?

A I know --

MR. GORDON: Objection, Your Honor. Vague.

THE COURT: Overruled.

THE WITNESS: I know that -- I know that John was responsible for United's out-of-network programs.

BY MR. MCMANIS:

Q Okay. And I'll just tell you he was here testifying for four or five days, okay?

MR. MCMANIS: And Michelle, I want to pull up day 10, page 210, lines 1 through 4.

MS. RIVERS: I'm sorry. What's the page?

MR. MCMANIS: Page 210, lines 1 through 4.

BY MR. MCMANIS:

Q All right. And what Mr. Haben said under oath from the same chair that you're in when he was asked by his counsel was that, "If you want to know what specific plan was connected to this patient and this claim, what information would be helpful to track that down?"

And his answer was group number --

MR. GORDON: Objection, Your Honor. We have foundation, different entities.

THE COURT: Overruled.

MR. MCMANIS: Thank you.

BY MR. MCMANIS:

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Q And his answer was, "The group number would be the most specific." Do you see that?

A I see that.

Q Okay. So we're just going by what Mr. Haben said, okay? We've got the group number, and it matches. 410018, right?

A I believe that Mr. --

MR. MCMANIS: Can we go back to the PowerPoint?

THE WITNESS: I believe that Mr. Haben was talking about UnitedHealthcare, and we're here to talk about UMR.

BY MR. MCMANIS:

Q UMR is part of the UnitedHealth Group, right?

A UMR is part of the UnitedHealth Group.

Q Right. In fact, while you were there, you actually worked with Mr. Haben and with Ms. Rebecca Paradise, right?

A We collaborate with our partners at UnitedHealthcare.

Q Yeah, that's right. You collaborate and you want to work and make sure that the production programs that we looked at, the three programs, that you have similar offerings to what UnitedHealthcare has. That's something you did, right?

MR. GORDON: Objection, Your Honor. No foundation.

THE WITNESS: We want to -- we want to make --

THE COURT: Overruled. Hang on. You have to give me a chance to rule on the --

THE WITNESS: I apologize.

THE COURT: Okay. Overruled. And don't interrupt.

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THE WITNESS: Oh, I'm sorry.

THE COURT: It wasn't you. It was him.

MR. MCMANIS: I'll take the blame.

THE COURT: All right. So you can answer the question now.

THE WITNESS: Can someone read the question back, please?

BY MR. MCMANIS:

Q Oh, I'll just ask the question again. While you were -- while Mr. Haben was at United, and in your role at UMR, you had occasion to work together and collaborate with Mr. Haben or Ms. Paradise about the types of plans that you all were offering to ensure that you had similar types of offerings, right?

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A UMR is a subsidiary of UnitedHealthcare. We can learn a lot form each other. We can actually learn a lot from our competitors. And then we also learn a lot from our customers and what it is that is concerning them. So yes, we work together. We work together with our vendor partners, right.

Some of the partners that we work with at UMR are similar or the same as the ones that United works with. Some of them are different. And then we come up with our solutions. Those solutions are going to be similar in some ways, but in some ways, they're also going to be different because we have different systems, we have different vendors, we have different capabilities.

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Q All right. Well --

THE COURT: Mr. McManis, I'm going to ask to take our

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afternoon recess. We've gone about 80 minutes, and it's 3:45.

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

Don't conduct any research on your own relating to the case. You may not consult dictionaries, use the internet or use reference materials. During the recess, don't post any social media about the trial. Don't talk, text, tweet, Google issues or conduct any other type of research with regard to any issue, party, witness or attorney involved in the case.

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

It's 3:46. Please be ready at 4 p.m. It will be our last break for the day.

THE MARSHAL: All rise for the jury.

THE COURT: Sir, you may step down during the recess.

THE WITNESS: Okay. Thank you.

[Jury out at 3:46 p.m.]

[Outside the presence of the jury]

THE WITNESS: Judge, am I -- do I have any restrictions?

THE COURT: The lawyers will tell you if they do. They won't talk to you about the case pursuant to our Local Rules. I have no concern

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about that.

THE WITNESS: Okay. All right, thank you.

THE MARSHAL: Jury is clear, Your Honor.

THE COURT: The witness is still in the room, but thank you.

MR. ZAVITSANOS: Your Honor, I do have one matter to bring up, but I'll wait until this witness is out of the room.

THE COURT: Mr. Ziemer, if you'll please be outside? The room is clear. Mr. Zavitsanos?

MR. ZAVITSANOS: Your Honor, I'll be very brief. I know we are going to take up the issue of scheduling at the end of the day. Your Honor, I'm sitting there watching this; it is so painfully obvious to me what's going on here with this witness. I counted four times that he answered one of Mr. McManis' questions directly, and the same was true with Ms. Paradise, but particularly, this gentleman here.

And Mr. McManis has -- I think he's more courteous than I am. He has not -- he has not tried to kind of reign it in or whatever, but we should not be penalized for what is obviously stalling.

THE COURT: Would the Defendant like to put something on the record in response?

MR. BLALACK: I'm going to let Mr. Gordon handle this one because he's not my witness, Your Honor. And I think best that I'm not engaged.

THE COURT: And just stand so that I can make eye contact with you, please.

MR. GORDON: Is this better, Your Honor?

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THE COURT: Yes, thank you.

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

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

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

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

THE MARSHAL: All rise for the judge.

THE COURT: Thank you.

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

THE COURT: Are we ready for the jury?

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MR. MCMANIS: Ready from the Plaintiffs, Your Honor.
MR. BLALACK: Yes.
THE COURT: Thank you. Mr. Gordon.
MR. GORDON: Yes, Your Honor. I apologize.
THE COURT: Good enough.
THE MARSHAL: All rise for the jury.
[Jury in at 4:03 p.m.]
THE COURT: Thank you. Please be seated. Mr. McManis, please proceed.
MR. MCMANIS: Thank you, Your Honor.
BY MR. MCMANIS:
Q All right, Mr. Ziemer, I want to pick up where we left off. And I want you to assume with me that for this proof number ending in 410018, that that's all one Las Vegas Sands plan. Can you assume that with me?
A Sure.
Q Okay. And for the year 2019, are you aware of whether there are any other Las Vegas Sands plans in evidence in this case?
A I'm not aware.
Q Okay. All right. So we have a Las Vegas Sands plan. The Group number ending with 410018. The allowed amount on a 99285 of $230.30, right?
A That's what the -- that's what's on the screen, yes.
Q Okay. Now I want to take a look at what happens with the next 99285, under the same Las Vegas Sands plan. What's the allowed

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amount there?

A The allowed man is $315.25.

Q All right. Same CPT Code, right?

A Same CPT Code.

Q Same employer and Group number?

A Same Group number. Same employer.

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

A That is correct.

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

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

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

A Entity is the same, Fremont.

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

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

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

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

A I'm not aware --

MR. GORDON: Objection. Asked and answered.

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

THE COURT: Overruled.

BY MR. MCMANIS:

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

MR. GORDON: Objection. Calls for speculation.

THE COURT: Overruled.

THE WITNESS: I don't know.

BY MR. MCMANIS:

Q $253. Do you see that?

A I see that.

Q Still at 99285, right?

A I see that.

Q Still Las Vegas Sands.

A Still the same group, yes.

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

A Yes.

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

MR. GORDON: Objection. Foundation.

THE COURT: Overruled.

THE WITNESS: Can you restate your question?

BY MR. MCMANIS:

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

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

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Q Sir.

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

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

Q Sir, do you remember what my question was?

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A No. What's your question?
Q All right. If we have another 99285 under the Las Vegas Sands plan in 2019, what do you think that one's going to be?
MR. GORDON: Objection --
THE WITNESS: If we had another --
MR. GORDON: -- calls for speculation.
THE WITNESS: -- plan.
THE COURT: That's sustained. You have to redo the form.
BY MR. MCMANIS:
Q Let's just take a look at the next 99285 in Clark County for Fremont under the Las Vegas Sands Group 410018. Back down again to $230, right?
A Correct.
Q All right. Now you've got the Las Vegas Sands plan 2019 that we have in Exhibit 296. You have that in front of you, right, sir?
A I do, sir.
Q Okay. And you're not aware of even a single other Las Vegas Sands Plan for 2019 that's been produced and is evidence in this case; are you, sir?
MR. GORDON: Objection. Asked and answered.
THE COURT: Overruled.
THE WITNESS: I have not looked through this entire document to see what's in it. I do not know the Las Vegas Sands plan or plans. That's my testimony.
BY MR. MCMANIS:

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Q Well, your testimony is that UMR follows the plan, right?
A UMR follows the plan document in the intent that we work through with our customers, correct.
Q All right. If Exhibit 296 is the only Las Vegas Sands plan that we have, can you tell me what in Exhibit 296 allows UMR to just change the allowed amount all in the same claim year? Can you tell me what from Exhibit 296, you've got it right in front of you, allows UMR to change the amount?
MR. GORDON: Objection. Mischaracterizes his testimony.
THE COURT: Overruled.
THE WITNESS: I'm not a plan document person. I would need to work my way through this entire document.
BY MR. MCMANIS:
Q This --
A But we have -- but we have --
MR. GORDON: Your Honor, if could you allow counsel to let the witness answer his question?
THE COURT: Yeah, don't interrupt him.
MR. MCMANIS: I apologize, Your Honor.
THE WITNESS: But when we implement a group, we sit down with them, and we walk through their benefits. What do you expect us to administer. Part of that discussion is also about the out-of-network plan or the out-of-network program that they want us to administer on their behalf. Or they can actually choose to administer -- you know, they have a custom plan that they want us to administer. And

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

BY MR. MCMANIS:

Q Are you finished with your answer?

A Yes, sir.

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

A I believe so, yes.

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

A I'm not familiar with the document.

Q So is that a no?

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

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

THE COURT: Any objection?

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

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

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MR. MCMANIS: Okay. Thank you, Your Honor.
BY MR. MCMANIS:
Q All right. Now Mr. Ziemer, I heard you mention a little bit, maybe there's another plan out there, maybe it has different terms. Something like that right?
A I have --
Q Las Vegas Sands?
A Correct.
Q Okay. Well, I want to take a look at another excerpt from Plaintiffs' Exhibit 473. And I'm not going to read the name, but can you see that on this excerpt there's a patient name, sir?
A I see it. There's a patient name.
Q Okay. And I'm not going to ask you to read it out loud because I want to make sure that we don't put that in the record. But do you see this is another 99285 claim with a date of service in August of 2019?
A I see the date of service is August of 2019.
Q And the employer is Medical Transportation Management, Inc. Do you see that?
A I see a portion of that name, yes.
Q All right. Do you know whether that's the UMR/ASO customer?
A I do not know if that's the UMR customer off the top of my head.
Q All right. Well, I'll represent to you that in the data we have,

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

A Okay.

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

A I see that.

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

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

Q Okay. Same patient, right?

A Same patient, different date of service.

Q Same county?

A Facility county is Clark County, correct.

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

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

THE COURT: Overruled.

THE WITNESS: Can you restate?

BY MR. MCMANIS:

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

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

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

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

MR. GORDON: Objection. Calls for speculation.

THE COURT: Overruled.

THE WITNESS: I don't know.

BY MR. MCMANIS:

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

A UMR follows the plan.

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

MR. GORDON: Objection. Asked and answered.

THE COURT: Overruled.

THE WITNESS: UMR follows the plan.

BY MR. MCMANIS:

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

A I saw how big the spreadsheet was.

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

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the same types of claims on the same plans?

A I don't know.

MR. MCMANIS: Pass the witness.

THE COURT: Okay. Cross -examination, please.

CROSS-EXAMINATION

BY MR. GORDON:

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

A Yes.

Q Where do you live Mr. Ziemer?

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

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

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

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

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

Q Did you earn a degree from Madison?

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

Q And do you have any advance degrees?

A I do not have any advance degrees.

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

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

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

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

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

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

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

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

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

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

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

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

A At UMR or at Wausau Benefits?

Q At UMR.

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

Q And what is your current position?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q Are you employed by Sierra Health and Life?

A I am not employed by Sierra.

Q Have you heard of Health Plan of Nevada?

A I'm sorry?

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Q Have you heard of Health Plan of Nevada?

A I have heard of the Health Plan of Nevada.

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

A I am not employed by Health Plan of Nevada.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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So there's different vendors that are involved.

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

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

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

Q And what about Change Healthcare?

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

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

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

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

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

Q And then lastly for Cirrus?

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

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

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

THE COURT: We are. Thank you.

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

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

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

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

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

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

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

[Outside the presence of the jury]

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

THE WITNESS: Thank you.

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

THE WITNESS: Yes, ma'am.

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

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

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

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

MR. ZAVITSANOS: Thank you.

MR. BLALACK: Thank you, Your Honor.

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

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

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

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THE COURT: Thanks, guys.

MR. ZAVITSANOS: Sure.

THE COURT: That's what --

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

THE COURT: Yeah. That's great.

MR. ZAVITSANOS: Is that all right?

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

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

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

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

THE COURT: Just the start.

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

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

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

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

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

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

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

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

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

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

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

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

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

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THE COURT: Thank you.

MR. MCMANIS: May I respond, Your Honor?

THE COURT: You may.

MR. MCMANIS: So --

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

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

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

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

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

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

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

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

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

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

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time allocation issue the Defendant has.

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

THE COURT: Yeah, I --

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

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

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

THE COURT: I'm just pulling it up.

MR. BLALACK: There's only one.

MR. ZAVITSANOS: Oh. Yeah.

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

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

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

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

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

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

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

MR. BLALACK: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. BLALACK: We --

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

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

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coming into today.

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

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

THE COURT: I understand.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Schumacher?

MR. ZAVITSANOS: Schumacher is a video.

THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

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agreement on your close?

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

MR. ZAVITSANOS: Yeah.

THE COURT: Two hours each?

MR. BLALACK: That's fine.

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

MR. BLALACK: What --

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

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

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

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

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

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

THE COURT: Okay.

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

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

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

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

THE COURT: Good enough.

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

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

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

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yet, so it feels a little premature.

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

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

THE COURT: We can do it.

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

THE COURT: Got it.

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

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

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

THE COURT: Yeah.

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

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

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

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

THE COURT: I know.

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

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

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

THE COURT: I know.

MS. LUNDVALL: We agreed on --

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

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

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

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

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

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

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

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

THE COURT: Okay.

MS. LUNDVALL: -- last night.

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

MS. LUNDVALL: Yes.

THE COURT: In Word?

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

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

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

THE COURT: Yeah.

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

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file those in PDF.

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

MS. LUNDVALL: Fair enough.

THE COURT: It's an ex parte contact.

UNIDENTIFIED SPEAKER: That makes good sense, Your Honor.

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

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

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

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

MR. GORDON: Yes, Your Honor.

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

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

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

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

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

THE COURT: And when do you get back Sunday?

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

THE COURT: All right. So --

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

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

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

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

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

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

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

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

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

MR. BLALACK: Thank you, Your Honor.

MS. LUNDVALL: Thank you, Your Honor.

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

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

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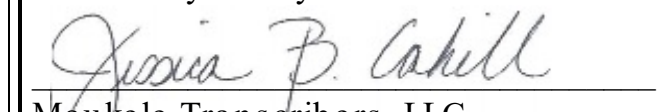
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



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Jessica B. Cahill, Transcriber, CER/CET-708

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 13

APPEARANCES:

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

For the Defendants: D. LEE ROBERTS, JR., ESQ.
K. LEE BLALACK, ESQ.
JEFFREY E. GORDON, ESQ.
DANIEL F. POLSENBERG, ESQ.
LAUREN KENNEY, ESQ.

RECORDED BY: BRYNN WHITE, MARIA GARIBAY COURT RECORDERS

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WITNESSES FOR THE PLAINTIFFS

DAVID LEATHERS

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Las Vegas, Nevada, November 16, 2021

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

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

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

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

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

THE COURT: Yes.

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

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

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

THE COURT: Thank you.

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

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

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

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

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

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

[Pause]

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

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

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

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

THE COURT: And do you have an objection?

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

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

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

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MR. MCMANIS: Thank you, Your Honor.

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

THE WITNESS: Yes, ma'am.

SCOTT ZIEMER, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

THE COURT: And go ahead please Mr. McManis.

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

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

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

THE COURT: Any objection?

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

THE COURT: Good enough.

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

THE COURT: 4006 will be conditionally admitted.

[Defendants' Exhibit 4006 admitted into evidence]

THE COURT: Go ahead, please.

CROSS-EXAMINATION CONTINUED

BY MR. GORDON:

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Q Morning, Mr. Ziemer. How are you?

A I'm well. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Objection is sustained. You can rephrase.

BY MR. GORDON:

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

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

MR. MCMANIS: Objection, Your Honor. Hearsay.

THE COURT: Objection sustained.

BY MR. GORDON:

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

A Okay.

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

A Okay. CRS benchmark has the most membership.

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

A Yes, sir.

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

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

A Yes. I recall that.

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

A Yes, I recall.

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

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

BY MR. GORDON:

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

A Yes. I believe that this is the exhibit.

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

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

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

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

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

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

A That is correct.

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

A No, sir.

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

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

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

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

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

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

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Q Same question for the group number information.
A I don't know whether or not it represents the information that's in UMR's system.
Q Okay Shane, take that down. So after showing you Exhibit 473, Mr. McManis then showed you what he called two summary exhibits, Exhibit 473-A and 473-B. Do you remember that?
A I believe so, yes.
Q Shane, can you please pull up 473-A, please? Can you take a look at that please, Mr. Ziemer?
A Yes, I remember this.
Q And do you -- so you remember that as a document he showed you yesterday. And do you recall that Mr. McManis represented to you yesterday that this document summarized four claims that UMR administered for ER services and provided to members of the Las Vegas Sands health plan? Do you remember that?
A Yes, that's what I remember.
Q And then Mr. McManis further represented with this document that the claims that are the data -- claims that have been summarized in this exhibit, is for ER services CPT code with a 99285 provided in Clark County. Do you remember that?
A Yes, I remember that.
Q And you can see from the sheet that that's data for 99285 of -- right in between dates of service. Looks like May and December of 2019. Do you see that?
A Yes, sir. I see that.

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

A Yes, sir. I remember that.

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

A Yes, sir. I see that.

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

A I would agree with that. Yes.

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

A Yes, sir. I remember going through that.

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

A No. I have never seen this.

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

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

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

A Yes. I recall seeing this exhibit.

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

A Yes. I recall that.

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

A Yes. I recall that.

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

A Yes. I recall going through that.

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

A No. I have not seen this exhibit before.

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

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

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

A That is correct.

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

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

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

BY MR. GORDON:

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

A Yes. I recognize this.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BY MR. GORDON:

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

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

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

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

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

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

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

THE COURT: Any objection? Any objection to 4006?

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

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

[Defendants' Exhibit 4006 admitted into evidence]

MR. MCMANIS: Thank you.

REDIRECT EXAMINATION

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BY MR. MCMANIS:

Q Good morning, Mr. Ziemer.

A Good morning, sir.

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

A Yes, sir.

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

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

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

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

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

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

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

A I did not review any claims file.

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

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

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Q All right. But you didn't?
A Correct.
Q Okay. Did you go back into the claim's file -- UMR's claims' file, to see whether or not there were any different plan numbers for any of these claims, is that something that you looked at last night, sir?
A I did not.
Q Do you recall talking about how these different amounts, might be because -- well, there could be different plans, you're not really sure; do you recall that?
A I believe that that was what we talked about yesterday, yes.
Q Okay. But you didn't bother to look at that last night, sir?
A No, sir.
Q And you haven't gone back to to compare, line by line, whether these claims here, in 473A, are the same as what exists in your claims' file; have you, sir?
A No, sir. I have not.
Q So you're not telling the jury, just to be clear, it is not your testimony to the jury that Plaintiffs' Exhibit 473 is wrong; is it, sir?
A My testimony is, is I do not know whether it's accurate, or I -- and I don't know whether it's inaccurate.
Q Because you didn't check?
A Correct. I did not. I did not.
Q You haven't provided any reason for the jury to accept UMR's claims' file, as opposed to the Plaintiff's claim file, have you, sir?
MR. GORDON: Objection. Your Honor.

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THE COURT: Grounds?

MR. GORDON: Foundation. Mischaracterized testimony.

THE COURT: Overruled.

THE WITNESS: Can you repeat the question, please?

BY MR. MCMANIS:

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

A Uh-huh.

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

A Yes, sir.

Q You said this is UMR's claim file?

A Correct.

Q This is UMR's data, correct?

A Correct.

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

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

THE COURT: Overruled.

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

BY MR. MCMANIS:

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Q And did you pull the data, sir.
A No, sir. I did not.
Q Who pulled the data?
A I don't know the person who pulled the data.
Q Do you know when they pulled the data?
A I do not know exactly when they pulled the data, sir.
Q Okay. So you don't know anything about that file, other than it's UMR's file?
A I know that it is UMR's file.
Q Just take UMR's word for it, not the Plaintiff's right?
MR. GORDON: Objection, Your Honor. Argumentative.
THE COURT: Objection sustained.
BY MR. MCMANIS:
Q Sir, if we go through the claims' file, line by line, for 99285 codes, the jury does that, and they find 54 different allowed amounts for the claims period, is it your testimony that every single one of those different amounts is reasonable?
A I would need to go back through and understand how all of those different things were arrived at. But, yes, I mean, we go through a process to determine what we think is reasonable, based on the plan that the -- that the customer is asking us to administer.
Q Every single different amount, no matter what it is, sir, is reasonable?
MR. GORDON: Objection. Argumentative.
THE COURT: Overruled. You can answer.

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

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

THE COURT: Recross.

RECROSS-EXAMINATION

BY MR. GORDON:

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

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

MR. GORDON: Thank you, Mr. Ziemer.

THE COURT: Any redirect based upon that?

MR. MCMANIS: One question, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. MCMANIS:

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

A Not to my knowledge.

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

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

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

MR. MCMANIS: Yes, Your Honor.

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

THE WITNESS: Thank you, Your Honor.

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

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

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

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

THE COURT: Any objection?

MR. ROBERTS: No objection, Your Honor.

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

MR. MCMANIS: Thank you, Your Honor.

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

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

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

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

THE COURT: Good enough. All right.

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

DIRECT EXAMINATION

BY MR. FINEBERG:

Q Good morning, Mr. Schumacher.

A Good morning.

Q Will you please state your name for the record?

A Daniel J. Schumacher.

Q And Mr. Schumacher, are you currently employed?

A I am.

Q Who is your employer?

A My employer is UnitedHealth Group.

Q What is your current position with UnitedHealth Group?

A I'm the Chief Strategy and Growth Officer.

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

A April, 2021.

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

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

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

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

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staffing company.

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

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

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

A Yes.

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

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

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

A Yes, I was aware.

Q And why were you aware of that, sir?

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

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Q Were you aware of that as a source of revenues to United?
A Yes, I was.
Q And it's fair to say that when United receives a bill from a provider, and let's focus on professional bills as what is at issue on this case, that United receives the provider's bill charges on that bill; is that fair?
A Billed charges are generally part of that bill, I believe.
Q And are you aware, sir, that in certain instances, United adjudicates the claim at the provider's full billed charges; are you aware of that?
A I'm assuming at some point we had paid billed charges.
Q Let's put up a different document. We'll mark this as Exhibit 6 to your deposition. Do you see on this page, the title is, "Polishing our reputation, leading with integrity, relationships, and compassion?" You see that?
A I do see that now.
Q And below that it says, "The strategic approach to lower a medical expense and create leverage with a subset of providers in on target with our shared growth goal." You see that?
A I do see that.
Q What does it mean in your executive council that when it says that the strategic approach would create leverage with a subset of providers?
A I did not author this document.
Q When the document, the executive council materials say that

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

A That providers could have a range of responses.

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

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

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

A I do.

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

A No.

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

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

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Q Yes, sir.

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

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

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

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

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

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

A Yes, I do.

[redacted]

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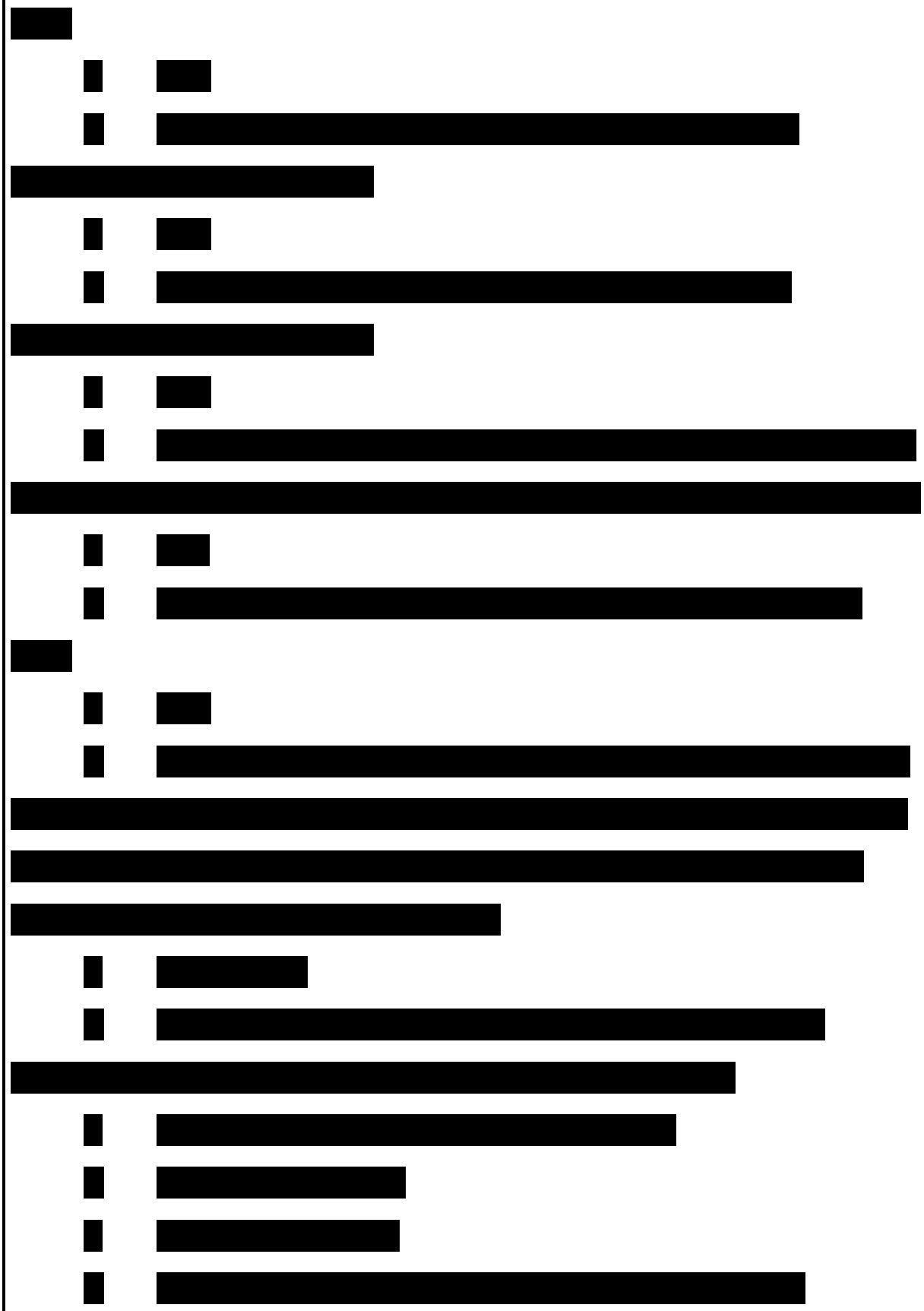

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[redacted]

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

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

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

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

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

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

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Q A produced document by United, right?
A Yes.
[Video paused at 9:21 a.m.]
MR. MCMANIS: That completes the Plaintiffs' video, Your Honor
THE COURT: Thank you.
[Video resumed at 9:21 a.m.]
BY UNIDENTIFIED SPEAKER:
Q And you understand, sir, that providers submit bills to United Health?
A Yes, I do.
Q And are you familiar with the term of a provider chargemaster? Do you know what a chargemaster is?
A Yes, I do.
Q What is your understanding of a chargemaster?
A A chargemaster is their -- the listed charge rate for particular services, and they increase them at their discretion, and with varying frequencies.
Q With varying frequencies; is that what you [indiscernible]?
A Varying frequencies, varying amounts, at their discretion.
Q And then you mentioned that at some point the programs evolved, shared savings programs evolved to incorporate elements of reference pricing Data iSight? So can you describe fore me what you mean by the incorporation of the elements as the referenced base price?
A Perhaps reference is the wrong word, but I would -- Data

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

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

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

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

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

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

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

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

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

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is effectively puts a cap on, on egregious billing.

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

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

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

A Depending on the plan documents.

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

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

Q Yes, yes.

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

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

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

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

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

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

A I believe it was an opt-in program.

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

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program?

A I believe clients selected the program.

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

A I believe so.

Q Was that the benchmark?

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

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

UNIDENTIFIED SPEAKER: You could answer.

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

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

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

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

A It was --

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

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

BY MR. FEINBERG:

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

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

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

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

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

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

A No.

UNIDENTIFIED SPEAKER: Object.

BY MR. FEINBERG:

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

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

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

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

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

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

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

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

THE COURT: That would --

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

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

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

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

THE MARSHAL: All rise for the jury.

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

[Outside the presence of the jury]

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

MR. ZAVITSANOS: No, Your Honor.

THE COURT: Defendant?

MR. BLALACK: No, Your Honor.

THE COURT: Have a good recess.

MR. BLALACK: Thank you, Your Honor.

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MR. ROBERTS: Your Honor?
THE COURT: Yes.
MR. ROBERTS: Is Mr. Murphy the next witness?
MR. ZAVITSANOS: Yes.
MR. ROBERTS: I do have a couple issues I wanted to clear with the Court before he takes the stand out of the presence of the jury.
THE COURT: Okay.
MR. ROBERTS: So if it would be possible, I could do it now or I could do it when we get back.
THE COURT: Let's do it right now, unless you want a moment to prepare?
MR. ROBERTS: No, Your Honor. I'm ready to go.
THE COURT: Okay.
MR. ROBERTS: The -- and we had a bench conference. I'm just not sure who's going to be taking him and just wanted to confirm some discussions we had up at the bench. When we were determining the scope of Mr. Haben's testimony, Plaintiffs confirmed that they weren't going to bring up the fact that United was targeting TeamHealth with out-of-network programs, that contract negotiations are out, therefore no associated terminations by United of TeamHealth entities in other states and no referring to alleged statement, because we can, with respect to a reduction in rates.
THE COURT: Is there a response?
MR. ZAVITSANOS: Yes, Your Honor. That is all correct. We don't intend to do any of that. With respect to the targeting, there is

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

THE COURT: Good enough. Your response, please?

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

THE COURT: Can you pinpoint that for us?

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

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

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

MR. ZAVITSANOS: Correct.

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

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

THE COURT: I thought that I had --

MR. ZAVITSANOS: You had --

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

MR. ZAVITSANOS: Correct.

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

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

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

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

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

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

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

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THE COURT: I understand.

MR. ROBERTS: And I understand that was --

THE COURT: But they don't publicly report their revenue. And there is a difference between the gross dollars in and what the profitability is, so --

MR. ROBERTS: Right.

THE COURT: And that's not publicly --

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

THE COURT: That's hearsay, so --

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

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

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with Mr. Murphy.

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

THE COURT: That's only --

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

THE COURT: Does it matter either way?

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

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

MR. ROBERTS: Okay.

THE COURT: See how --

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

THE COURT: Well --

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

THE COURT: -- if --

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

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

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

THE COURT: No. No. Go.

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

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

MR. ROBERTS: I will, Your Honor.

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

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

THE COURT: Please remain seated.

MR. ZAVITSANOS: Thank you, Your Honor.

THE COURT: Is everyone ready?

MR. ZAVITSANOS: Yes, Your Honor.

MR. BLALACK: Defense is ready, Your Honor.

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

[Pause]

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

THE COURT: Any objection to taking the deposition up?

MR. BLALACK: What's that?

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

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

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

[Pause]

THE MARSHAL: All rise for the jury.

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

THE COURT: Thank you. Please be seated.

Plaintiff, please call your next witness.

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

THE COURT: Any objection?

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

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

[Plaintiffs' Exhibit 361 admitted into evidence]

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

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

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

THE CLERK: Please raise your right hand.

LEIF MURPHY, PLAINTIFFS' WITNESS, SWORN

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

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

THE CLERK: Thank you.

THE COURT: Go ahead, please.

MR. ZAVITSANOS: Okay.

DIRECT EXAMINATION

BY MR. ZAVITSANOS:

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

A I'm well. Good morning.

Q Okay. All right. Who are you?

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

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

A Yes, I am.

Q Okay. So the buck stops with you?

A It does.

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

A Yes, I am.

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Q Children?
A Three.
Q Okay. And where are you from originally?
A Originally from Athens, Georgia. And I currently reside in Nashville, Tennessee, where I've been for over 20 years.
Q Okay. Is that where TeamHealth is headquartered?
A We have a large office there in Nashville. And headquarters is officially in Knoxville, Tennessee.
Q Okay. Where the World's Fair was years ago?
A Yes.
Q Okay. All right. And tell me briefly, what did your parents do when you were growing up?
A My mother was a flight attendant, and my father was in law enforcement.
Q Okay. All right. So why did you come here?
A I'm here because it's a big deal. I'm here because it's important to all of our clinicians. I'm here because we need to collect the unpaid balance for United's claims. And I think it sets a precedent for insurance across the United States.
MR. ROBERTS: Objection and move to strike to the extent he commented on a greater purpose for the lawsuit.
THE COURT: That was -- the last part of his testimony was improper. Disregard the last sentence. Thank you.
BY MR. ZAVITSANOS:
Q Who was the person ultimately that pulled the trigger on

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filing this lawsuit?

A Oh, that'd be me.

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

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

Q 43 years ago?

A Yes, sir.

Q Okay. Is Dr. Massengill still alive?

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

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

A We do.

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

A That would be Dr. Massingale.

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

A So --

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

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

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corporations that are affiliated to essentially provide emergency medicine.

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

A Groups. Yes, sir.

Q So would that be like Fremont?

A That would be like Fremont.

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

A I do. Very well.

Q Okay. All right. Good man?

A He's a fantastic man.

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

A So we're about --

Q -- across the country?

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

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

A That's right.

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

A So we are essentially the physician practices that staff the

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

Q Okay.

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

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

A SVP. Sorry. Senior vice presidents.

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Q Okay.

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

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

A I do.

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

MR. ROBERTS: Objection. Relevance.

THE WITNESS: So --

THE COURT: The objection is sustained.

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

BY MR. ZAVITSANOS:

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

A Yes, we are.

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

A We do it frequently.

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

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

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

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

A Yes, there are.

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

A Yes, there are.

Q Why? Why one versus the other?

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

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

Q Okay. And sometimes it's a little hard to understand because of the masks.

A Sorry. It's hard to --

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Q No, no, no, no. I'm taking the blame here. Can you tell us what the word attrition means?

A Turnover.

Q Okay. So back in an envelope kind of ballpark, what kind of attrition does TeamHealth have, say during the relevant time period we're talking about here, which I think is '17 to January of '20? Let's use that as kind of the endzones. What kind of attrition was TeamHealth having among its doctors?

A We -- plus or minus a couple of percentage points. It's always going to be around 10 percent.

Q Okay. Now, do some of the TeamHealth doctors burn out?

A Unfortunately, yes.

Q Why?

A It is an extremely difficult, high-intensity role in healthcare. Burnout is probably the highest in emergency medicine over any other specialty. You're standing ready at all hours of the day for a patient to arrive with a completely unknown condition. It could be trauma. It could be a heart attack. It could be any number of different things. And you have got be on your game and ready to take care of that patient.

Q Do we have doctors that have been with us 20 plus years?

A Yes, we do.

Q Okay. So tell us a little bit about what kind of support you provide to the doctors and to the nurse practitioners in this practice groups.

A So our -- so under our TeamHealth brand, you know, our

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goal is to -- you know, to essentially, you know, make practice perfect. So allow our clinicians to focus on the practice of medicine, to be able to engage with their patients, and focus on the day-to-day medical aspects of what they do. So TeamHealth through our National Support Center and through our administrative structures provides a lot of support. All the things I talked about before.

So recruiting, onboarding, enrollment, credentialing, everything revenue cycle. So you know, the billing, the collection, the manage care contracting, et cetera. We provide that centralized support in the event of an emergency. So responding in a scenario like the hurricane I described. And you'll know, we've move -- we will move -- we will move, as you reference before clinicians around different geographies to support a crisis. So you know, a hurricane hits, and we'll move clinicians from Austin, from Dallas, from even Las Vegas down into Houston.

Q Okay. So let me ask you this. Let's get the billing people on the equation for a second. Okay. I'm going to ask you about billing in just a minute. If we take Billy out of the occasion, how many employees does TeamHealth have that are not kind of practicing physicians or people like that for shield. In other words, it enters sort of the lungs.

A It was about 2,200.

Q Okay. Okay. So now let's talk about billing. So does TeamHealth provide a billing service?

A We do.

Q All right. Is that unusual for somebody other than the doctor to do the billing in the industry?

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A Not at all.
Q Okay. Explain.
A So it's complex. Here's a lot involved. We're -- you know, we are, you know, collecting small dollar amounts. And sometimes for my primary payer. A secondary payer, and a tertiary payer. And so we removed.
A Tertiary.
Q Tertiary, so a third -- a third payer.
A Okay. And so as a function of that, we removed that responsibility and that distraction from the physician so they can focus on the practice of medicine.
Q Okay. The other physician groups that are not ER and are not part of TeamHealth, do those kind of groups use third-party building companies, as well?
A Yes. Very frequently.
Q Now, who sets the charges that are billed by the doctors and nurse practitioners here in Nevada? For the -- for the folks at the -- I have spent too long here.
A Our national support center.
Q Meaning TeamHealth?
A Yes.
Q Okay. Good. Do you know a man named Kent Bristow?
A I do.
Q Okay. Is he -- is he closer to the ground on this issue, the billing issue than you are?

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A He is.

Q Okay. So I'm going to just ask you kind of at a high level. Okay. Do you have a general understanding of how charges are set?

A I do.

Q Okay. So tell us how charges are set. And if you can -- and the jury has heard a little bit about this company called FAIR Health. So tell us your understanding generally as the CEO of TeamHealth, how charges are set?

A So charges need to be competitive in every market. FAIR Health that you referenced is a -- I believe it's the largest independent not-for-profit database of charges across the United States. They probably have, you know, over 35 billion transactions in their -- inside of their database. So we rely on FAIR Health as essentially an independent source of what market intelligence looks like.

MR. ROBERTS: Your Honor, I apologize for interrupting. Could we approach?

THE COURT: You may.

[Sidebar at 10:11 a.m., ending at 10:13 a.m., not transcribed]

THE COURT: Okay. Please proceed.

BY MR. ZAVITSANOS:

Q Okay. So, now, in terms of -- do you personally set the goal charges, or are there other folks that do that?

A Other people do that.

Q Okay. And let me just ask this, and then I'm going to move on, do you know whether FAIR Health is one of the tools that's used in

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setting goal charges?

A Yes, it is.

Q Okay. Okay. Now, why is it -- I'm going to move the lens back even further now. And why is it that TeamHealth sets the bill charges as opposed to the doctors?

A Again, it's we are taking that, you know, burden of administrative responsibility off of the physicians at the front line. And so our -- our healthcare financial services entity will essentially study the market rates and identify what's appropriate inside of that geography.

Q Okay. Now -- thank you, sir. All right. Now, I want to talk about something else that's come up in the course of the case. Are you familiar with a company called Blackstone?

A I am.

Q Okay. Does -- is Blackstone the ultimate parent of TeamHealth?

A No, they are a shareholder.

Q They're a shareholder, okay. So -- and what -- and who or what is Blackstone?

A Blackstone is an investment company. They own companies all across the world. They own TeamHealth, they own Spanx. They own, you know, ancestry.com. They own the Bellagio. They own the -- the Cosmopolitan. I think they own the area, so that could --

Q Okay.

A -- be a sense of just the scale.

Q All right. Mr. Murphy, does Blackstone play any operational

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role in TeamHealth?

A They serve on the board of directors. They represent three of the ten seats on the board of directors.

Q Three of ten?

A Three of ten.

Q Okay. My question is a little narrower. Okay. What's the difference between what the board does and what the operations people did?

A So the board provides an oversight. They're responsible for vision and mission and management is execution, and planning and the operational side.

Q Okay. So kind of the big picture? The big picture and direction of the company?

A That's right.

Q Okay. And what do the operational folks do?

A We formulate a plan. We have our -- we have -- we execute on the vision. We ensure that the things that are important to us is a -- is a leading physician organization, our -- since they're laid out as goals, that we target and then execute toward achieving.

Q Okay. Does Blackstone play a role in that, in the operational side of the company?

A So they review our plans. They ensure that they're consistent with the overall mission and vision. You know, they evaluate the capital needs that are going to be required in the execution of that plan. But no, they are not involved in the direct decision making or the

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execution.

Q Okay. Thank you, sir. Now these other companies that you mentioned that Blackstone owns, does TeamHealth have any direct control over any of those companies?

A So I would doubt it. You know, I assume they operate the same as they would with us, as a -- as an investor and shareholder and --

Q I mean, do you have any control over it?

A Oh, we have none, no.

Q That's what I'm asking.

A None, whatsoever.

Q Okay. So -- all right. Now, before this lawsuit was filed, did United act -- actually, is TeamHealth, are they a self-insured entity? In other words, do you all carry the risk of -- of being kind of your own insurance company for your employees?

A For health insurance?

Q Yes.

A Yes, we do.

Q Okay. Did you use a -- or do you use a third-party administrator for those clients?

A We always have, yes.

Q Okay. At one point, was United the third-party administrator for TeamHealth?

A Yes, they were.

Q Okay. And off the top of your head, do you know what your plan obligated out-of-network emergency room charges to be paid on?

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A We paid 100 percent of bill charges.

Q Okay. Now, again, generally -- we're going to get into more detail with other TeamHealth folks on -- other TeamHealth folks on this, but do you know whether TeamHealth has entered into any wrap agreements with a company called MultiPlan?

A Yes, I do.

Q Okay.

A And, yes, we have.

Q All right. Now, the jury heard a lot about wrap agreements, and give us, very briefly, your understanding of what a wrap agreement is.

A It -- so it is that agreement with MultiPlan is essentially an agreement to where we have agreed to discount our billed charges. We discount them by ten percent, and different insurance companies will leverage that rental network, essentially, to get the benefit of that ten percent discount. For us, we provide the discount because it protects, like patients, and it ensures we get paid.

Q Okay. Does it -- does the wrap agreement -- do you know what impact it has on your ability to balance bill members for that discount, that ten percent discount?

A It puts -- it prevents any balance billing, that's right.

Q All right. Now, did TeamHealth terminate United Healthcare as its third-party administrator?

A We did.

Q Why?

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A We didn't like the -- we had issues with our overall relationship with United. They were underpaying our claims.

MR. ROBERTS: Objection, Your Honor. This is subject to motion in limine.

MR. ZAVITSANOS: I don't believe it is, Your Honor.

THE COURT: Can you approach?

[Sidebar at 10:20 a.m., ending at 10:20 a.m., not transcribed]

THE COURT: Okay. Objections been overruled. Go ahead, please.

MR. ZAVITSANOS: Thank you, Your Honor.

BY MR. ZAVITSANOS:

Q Okay. Sir, did you all terminate United as your third-party administrator?

A You did.

Q Okay. Now, you're a witness in the case and you haven't -- have you see any of the proceedings in this case, or the BlueJeans link?

A No, I have not.

Q Okay. So you don't know what evidence has come into this case, right?

A No idea.

Q Okay. Sir, now, do you understand that the Plaintiff's in this case, the three groups, Team Physicians, Ruby Crest, and Fremont are seeking to recover their bill charges in this lawsuit?

A Yes.

Q Now, you had a wrap agreement with MultiPlan that calls for

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a discount off of your bill charges, right?

A That's correct.

Q Okay. And -- and I think we heard in opening from Defense counsel, that the Plaintiffs in this case, very infrequent that they get bill charges; I'm going to represent that to you, okay?

A Okay.

Q So from where you sit, why should these three Plaintiffs be awarded their bill charges, sir?

A We perform the service. We took care of the patients, and our bill charges are fair.

Q Okay. Why wouldn't you just accept the wrap -- the wrap arrangement?

MR. ROBERTS: Objection. Calls for a narrative.

THE WITNESS: We wouldn't have accepted the wrap arrangement.

BY MR. ZAVITSANOS:

Q I'm talking about in this case. Why would you not accept the wrap arrangement, and you're asking for billed charges?

A Well, at this point, we have expended incredible time and energy and resource just to collect the unpaid balance, so the wrap arrangement was available at the front end at the time of, you know, of first bill.

Q Okay. Well, so if United had access to the wrap agreement with MultiPlan for the -- I'll represent to you there's like 11,500 or so claims in this case, okay? If United had access to that wrap agreement,

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would we be here?

A We would not.

Q Okay. All right. Now, let's talk about balance billing, okay?

A Okay.

Q All right. Do you know what that is?

A I do.

Q Okay. So --

MR. ZAVITSANOS: Your Honor, may I ask counsel if he has any opposition to Plaintiffs' 424?

MR. ROBERTS: It's in.

MR. ZAVITSANOS: It's what?

MR. ROBERTS: It's in.

MR. ZAVITSANOS: Oh, it's in?

MR. ROBERTS: Yes.

MR. ZAVITSANOS: Okay. So can we bring up 424, please?

THE COURT: It is, Attorney -- it is -- thank you.

BY MR. ZAVITSANOS:

Q Okay. So Mr. Murphy --

MR. ZAVITSANOS: Michelle, can you pull out the -- the --

BY MR. ZAVITSANOS:

Q Is this a -- is this a TeamHealth policy?

A Let me just take a minute here.

Q Sure.

MR. ZAVITSANOS: Michelle, can you scroll down a little bit? Keep going. Oh, stop.

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THE WITNESS: It is -- it is a TeamHealth policy, yes.
BY MR. ZAVITSANOS:
Q Okay. And is -- just describe very generally what that policy is on that -- it's in evidence, the jury can read it on their time; tell us what that is.
A Let me just give it a quick --
Q Sure.
A -- quick read here.
MR. ZAVITSANOS: And let's go, Michelle, please, to page 2. Pull out section 8, please. Is -- right there, Michelle.
BY MR. ZAVITSANOS:
Q That's a lot of gobble -- what does that mean?
A Oh, I'll just give it a read here.
Q Sure.
A So it essentially means that you are not going to balance bill our patients.
Q Okay. And is this kind of the directive to, I guess, some kind of computer thing to make sure that you make sure that doesn't happen?
A Yes.
Q Okay. So Mr. Murphy, are you aware --
MR. ZAVITSANOS: You can take it down, Michelle.
BY MR. ZAVITSANOS:
Q Are you aware of whether, for the approximately 11,500 claims at issue in this case, did TeamHealth balance bill any of those patients or United members?

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A We would not have, no.
Q Okay. So do other companies balance bill patients?
A I believe that some do, yes.
Q Anything fundamentally wrong with that?
A There is not.
Q Okay. Why did TeamHealth decide not to balance bill patients?
A It's been a longstanding policy for us on not balance billing patients, and there -- there are a variety of reasons. One is patients can't afford it. It's very difficult to go and bill another 11,500 claims for balance bills to use the number that you stated. And quite frankly, United collected the premiums from these patients and they underpaid the bill, so we're here to collect that balance.
Q Given the choice between balance billing 11,500 patients, or proceeding against United, which one did you guys select?
A Proceeding against United.
Q All right. Now -- okay. Now, let's look, please --
MR. ZAVITSANOS: Your Honor, can we approach for one more second?
THE COURT: Yeah.
[Sidebar at 10:27 a.m., ending at 10:28 a.m., not transcribed]
MR. ZAVITSANOS: Okay. So Your Honor, I -- it looks like they're a step ahead of me. That's already been done, so we offer 313, the one that was most recently provided to Defendants.
MR. ROBERTS: And objection, Your Honor. Incomplete

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document. Improper redactions. Foundation, and 48 [indiscernible].

THE COURT: You'll have to lay foundation.

BY MR. ZAVITSANOS:

Q Sir, you have a set of binders behind you. Would you, please -- would you please pull out the binder that has Exhibit 313 in it, Mr. Murphy. It's behind you, sir.

A Okay. I knew there was one other in this one, so --

MR. ZAVITSANOS: And Mr. Killingsworth will just check and see if that's the one that's being offered. Your Honor, there's one additional redaction that needs to be made. I don't intend to go into that, okay? If somebody -- if we can pull up the rest of it if I can?

THE COURT: Yeah.

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BY MR. ZAVITSANOS:

Q Okay. Mr. Murphy, who is Rena Harris?

A A senior contract manager at TeamHealth.

Q Okay. Now, does this document at the very top of the document, relate to this issue of balance billing?

A It appears to, yes.

Q Does this appear to be a TeamHealth -- a TeamHealth email?

A It is a TeamHealth email directed to a United person, yes.

Q Okay. Any reason to doubt its authenticity?

A No.

Q Okay. And does this document confirm the document we just looked at, Plaintiff's 424, concerning balance billing?

A It says we will not balance --

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Q No. No. No. Don't -- don't say what it says.
A Yes, it confirm it.
Q Does this document confirm what we just looked at, at 424, sir?
A Yes.
MR. ZAVITSANOS: Your Honor, at this point, we move for the admission of 313, with the only additional redaction being the subject line, Your Honor.
MR. ROBERTS: Objection, Your Honor. May we approach?
THE COURT: You may.
MR. ROBERTS: Thank you.
[Sidebar at 10:32 a.m., ending at 10:33 a.m., not transcribed]
MR. ZAVITSANOS: Okay. May I proceed?
THE COURT: No. I have to let the jury know that I overruled an objection. Go ahead, please.
MR. ZAVITSANOS: Your Honor, at this point, with the additional redaction that needs to be done, we move for the admission of Plaintiff's 313.
THE COURT: And there will be an additional redaction?
MR. ZAVITSANOS: Yes, Your Honor, the -- yes, the one we discussed before.
THE COURT: All right. So 313 will be admitted.
[Plaintiffs' Exhibit 313 admitted into evidence]
MR. ZAVITSANOS: Okay. Michelle, what I'd like you to do is, if you can, I need you to pull out two [indiscernible]. This one and this

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one, okay.

[Counsel confer]

MR. ZAVITSANOS: Just that. Nothing else. Not the front two.

MR. ZAVITSANOS: Just that one line, Michelle.

BY MR. ZAVITSANOS:

Q Okay. Now --

MR. ZAVITSANOS: May I proceed, Your Honor?

THE COURT: Yes.

MR. ZAVITSANOS: Okay.

BY MR. ZAVITSANOS:

Q Mr. Murphy, does this appear to be an exchange between somebody on the Defendant's side of the -- this business exchange and someone on the TeamHealth side?

A Yes.

Q Okay. And what did the person on behalf of the Defendants -- what was the question that they asked? Would you just please read that out loud?

A Will you please confirm that it is not TeamHealth's intent to balance bill our members?

Q Okay. And what was the response from the TeamHealth person?

A We will not balance bill the member.

Q Okay.

MR. ZAVITSANOS: Michelle, take that down.

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BY MR. ZAVITSANOS:

Q Now, Mr. Murphy, in fairness, this was about one particular member, correct? It said the member, right? Single.

A No, it's members.

Q Okay. Do you know why the Defendants keep bringing up this balance billing issue in connection with the claims at issue in this case?

A Why?

Q Do you know why the Defendant, United entities over here, they keep talking about balance billing in this trial when there was no balance billing for any of these claims, sir?

A Yeah.

Q Do you know?

A I believe -- I can speculate, but I do not know absolutely.

Q I don't want you to speculate. Okay. Thank you, sir. Now -- all right. Before the lawsuit was filed, did you know that United was taking a percentage of the quote/unquote, savings that it -- through these what they're calling programs, that they were taking a cut?

A I did.

Q Okay. What did you know about it?

A Before this trial or before --

Q I'm sorry. Before the lawsuit was filed, were you aware they were taking a percentage of the savings?

A I was.

Q Okay. Let's look at -- I want to look at the Plaintiff's Exhibit

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MR. ZAVITSANOS: Michelle, will you please pull up Plaintiff's Exhibit 10. And let's go to page 2.

BY MR. ZAVITSANOS:

Q Now this is -- Mr. Murphy, we're almost done.

MR. ZAVITSANOS: Pull up the top.

THE COURT: Now I show this was conditionally admitted; is that correct?

MR. ZAVITSANOS: Your Honor, I think -- I believe the Defendant moved for unconditional admission. This was used during Mr. Blalack's examination.

MR. BLALACK: I think this is in evidence, Your Honor.

THE COURT: It is. All right. I apologize for the interruption.

MR. ZAVITSANOS: No, no.

THE COURT: Please go ahead.

MR. ZAVITSANOS: I -- my apologies.

BY MR. ZAVITSANOS:

Q Okay. All right. So, sir, I'm going to represent to you this was covered earlier. Now let's get one thing straight. You're not on this document, right?

A I don't -- no.

Q Okay.

A It's not an agreement with TeamHealth.

Q Okay. So this is an agreement it looks like between United Healthcare and Walmart. See that?

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A I do.
Q Okay. All right. Do you know a gentleman by the name of John Haben?
A By name, yes.
Q Okay. You've never met him?
A I've not met him personally, no.
Q Okay. Now here's what I want to do. Oh. Now let's go to page 60 of this --
MR. ZAVITSANOS: Michelle, will you pull out the shared savings program, please, all the way across. Now, Michelle, follow me here. Highlight from here, the word means, that would have been payable to a healthcare provider. Okay.
BY MR. ZAVITSANOS:
Q Mr. Murphy, you took English in high school, right? Right, sir?
A I did. Yes.
Q Okay. All right. So I'll represent to you that Mr. Haben told the jury that what I've highlighted here does not mean that this is the amount that would have been payable to the healthcare provider. It simply means it's a formula to calculate shared savings. Okay. You with me? Does that make any sense to you?
MR. BLALACK: Objection, Your Honor. Improper request to give an opinion about the credibility of another witness and request for expert opinion and a matter within --
MR. ZAVITSANOS: This is a --

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MR. BLALACK: -- the province of the jury.
THE COURT: You'll have to lay more foundation.
MR. ZAVITSANOS: Yeah.
THE COURT: And you'll have to clarify.
MR. ZAVITSANOS: Yes.
BY MR. ZAVITSANOS:
Q Let me ask you this, sir. Just reading that, what does that indicate to you about what would have been payable to a healthcare provider according to this plan document?
A Our bill charge.
MR. BLALACK: Objection. Foundation. TeamHealth is not a party to this agreement. He has no foundation to testify as to what the intent of the parties was.
MR. ZAVITSANOS: This is the exact --
THE COURT: Overruled. He's only being asked with regard to his own impressions.
BY MR. ZAVITSANOS:
Q What -- sir, let me ask it again. What does this indicate to you, just using basic English, as to what amount would have been owed under this plan?
A The amount that we were entitled to, which would have been the bill charge.
Q Do you know whether this language is in every single shared savings box in the ASO plans that aren't in evidence? Do you know one way or another, sir?

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A I do not.
Q Okay. Does it make sense to you that what is highlighted means something other than the amount that would have been payable to a healthcare provider?
A It does not, no.
Q Okay. All right.
MR. ZAVITSANOS: Take it down, Michelle.
BY MR. ZAVITSANOS:
Q Okay. Finally, I'm going to bring up Defendants' 5504. And my esteemed opposing counsel is going to have some questions for you.
MR. ZAVITSANOS: Okay. So let's pull this out.
BY MR. ZAVITSANOS:
Q Do you have any crazy third cousins?
A Probably.
Q Okay. All right.
MR. ZAVITSANOS: So let's pull out these companies here.
BY MR. ZAVITSANOS:
Q Okay. Do you recognize some of those companies?
A I do. I even mentioned a couple.
Q Okay.
MR. ZAVITSANOS: Now, Michelle, close it out. Can you -- Michelle, can you see if -- ah, here we go. Let's go all the way across, Michelle. All the way down. Right there. Okay. Now, Michelle, will you -- oh, I need the heading, Michelle, please, up at the top here. Yeah. Let's go from right here and here to here. Right there. Okay.

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And, Michelle, will you please start highlighting every time it says 50 percent. No, just the 50 percent, Michelle. Just the 50 percent. Just under SSPE, please. Just start highlighting. Okay.

BY MR. ZAVITSANOS:

Q Mr. Murphy, how many crazy third cousins does TeamHealth have?

A Everyone on this page is a third cousin. I can't tell you any of them is crazy.

Q Okay. Well, you see that 50 percent.

A That would make them crazy.

Q Why do you say that?

A To essentially pay 50 percent of the shared savings in a -- that's discounted off of the otherwise payable amount of the bill charge would be -- that would be crazy.

Q Would you ever agree to that, sir?

A I would not. And we did not.

Q Now you see TeamHealth --

MR. ZAVITSANOS: Now, Michelle, highlight that all the way across.

BY MR. ZAVITSANOS:

Q Okay. Now what do you think about that? Do you see it says zero?

A What do I think about that?

Q Yeah.

A Yeah. I think it's we anticipated that, you know, that would

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be crazy to pay a shared savings plan like that, especially for emergency medicine where we insist that we pay bill charge on any out-of-network visit.

Q Last question, Mr. Murphy. Do you know these big ASO plans with all this fine print and all this legal jargon? Do you know whether these companies knew that 50 percent was the charge?

A So I would imagine that they knew the 50 percent that they agreed to, but I don't believe that they would have thought that was 50 percent of the bill charge.

Q Fifty percent reduction.

A In fact, I think highlighting this amount was embarrassing for the Blackstone team.

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MR. ZAVITSANOS: I'll pass, Your Honor.

THE COURT: Cross-examination, please.

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

CROSS-EXAMINATION

BY MR. ROBERTS:

Q Good morning, Mr. Murphy.

A Good morning.

Q Answer to my first question is a number, only a number. Do you know this -- first of all, for context, you know that this case is about services provided in Nevada, right?

A I do.

Q How many hurricanes has TeamHealth helped Nevada with? Just a number.

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MR. ZAVITSANOS: Your Honor, the barn door is creeped open.

MR. ROBERTS: I'll move on, Your Honor.

BY MR. ZAVITSANOS:

Q You mentioned physicians employed by TeamHealth for 20 years. Is that what you testified to earlier?

A I'm sorry. Can you give me the context?

Q Yes. In the context we're talking about, attrition, you did mention that includes maybe 10 percent of physicians a year, but that you did have physicians that were employed by TeamHealth for 20 years.

A That's correct.

Q But not in Nevada, correct?

A That have been a part of historical pieces that we acquired in Nevada, but that's correct. We acquired our position in Nevada more recently.

Q So, therefore, no physician in Nevada would have been employed or contracted with by TeamHealth for more than about six years, right?

A If you were not going to count their employment with their Legacy practice, that's correct.

Q Is the name of the Legacy practice now different than the one that you acquired for Fremont?

A Likely.

Q Who changes the name, the local entity or TeamHealth?

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