

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.

Electronically Filed
Nov 17 2022 10:57 AM
Elizabeth A. Brown
Clerk of Supreme Court

**PETITIONERS' APPENDIX
VOLUME 7
PAGES 1501-1750**

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CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
1	Notice of Entry of Stipulated Confidentiality and Protective Order	06/24/20	1	1–24
2	Second Amended Complaint	10/07/21	1	25–43
3	Defendants’ Answer to Plaintiffs’ Second Amended Complaint	10/08/21	1	44–51
4	Media Request and Order Allowing Camera Access to Court Proceedings (Legal Newslane)	10/18/21	1	52–56
5	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	1	57–62
6	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	1	63–68
7	Defendants’ Objection to Media Requests	10/28/21	1	69–83
8	Supplement to Defendants’ Objection to Media Requests	10/31/21	1	84–104
9	Plaintiffs’ Response to Defendants’ Objection to Media Requests	11/01/21	1	105–115
10	Recorder’s Transcript of Jury Trial – Day 5	11/01/21	1 2	116–250 251–317
11	Recorder’s Transcript of Jury Trial – Day 6	11/02/21	2	318–489
12	Recorder’s Transcript of Jury Trial – Day 7	11/03/21	2 3	490–500 501–706
13	Recorder’s Transcript of Jury Trial – Day 9	11/09/21	3 4	707–750 751–915
14	Recorder’s Transcript of Jury Trial – Day 10	11/10/21	4 5	916–1000 1001–1135

15	Defendants' Motion for Leave to File Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at Trial Under Seal	11/12/21	5	1136–1144
16	Recorder's Transcript of Jury Trial – Day 12	11/15/21	5 6	1145–1250 1251–1421
17	Recorder's Transcript of Jury Trial – Day 13	11/16/21	6 7	1422–1500 1501–1717
18	Recorder's Transcript of Jury Trial – Day 14	11/17/21	7 8 9	1718–1750 1751–2000 2001–2021
19	Recorder's Transcript of Jury Trial – Day 15	11/18/21	9 10	2022–2250 2251–2344
20	Recorder's Transcript of Jury Trial – Day 17	11/22/21	10 11	2345–2500 2501–2665
21	Recorder's Transcript of Jury Trial – Day 18	11/23/21	11 12	2666–2750 2751–2940
22	Special Verdict Form	11/29/21	12	2941–2952
23	Special Verdict Form	12/07/21	12	2953–2955
24	Motion to Seal Defendants' Motion to Seal Certain Confidential Trial Exhibits	12/15/21	12	2956–2964
25	Motion to Seal Defendants' Supplement to Motion to Seal Certain Confidential Trial Exhibits	12/15/21	12	2965–2973
26	Notice of Entry of Order Granting Defendants' Motion for Leave to File Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at Trial Under Seal	12/27/21	12	2974–2984
27	Plaintiffs' Opposition to United's Motion to Seal	12/29/21	12 13	2985–3000 3001–3003
28	Motion to Seal Defendants' Reply in Support of Motion to Seal Certain	01/10/22	13	3004–3012

	Confidential Trial Exhibits			
29	Motion to Seal Defendants’ Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits	01/10/22	13	3013–3021
30	Defendants’ Motion to Seal Courtroom During January 12, 2022 Hearing on Defendants’ Motion to Seal Certain Confidential Trial Exhibits on Order Shortening Time	01/11/22	13	3022–3033
31	Plaintiffs’ Opposition to Defendants’ Motion to Seal Courtroom During January 12, 2022 Hearing	01/12/22	13	3034–3037
32	Notice of Entry of Order Granting Plaintiffs’ Proposed Schedule for Submission of Final Redactions	01/31/22	13	3038–3048
33	Notice of Entry of Stipulation and Order Regarding Schedule for Submission of Redactions	02/08/22	13	3049–3065
34	Notice of Entry of Order Shortening Time for Hearing Re: Plaintiffs’ Motion to Unlock Certain Admitted Trial Exhibits	02/14/22	13	3066–3083
35	Defendants’ Response to Plaintiffs’ Motion to Unlock Certain Admitted Trial Exhibits on Order Shortening Time	02/15/22	13	3084–3090
36	Defendants’ Index of Trial Exhibit Redactions in Dispute	02/16/22	13	3091–3101
37	Notice of Entry of Stipulation and Order Regarding Certain Admitted Trial Exhibits	02/17/22	13	3102–3125
38	Notice of Entry of Judgment	03/09/22	13	3126–3136
39	Notice of Posting <i>Supersedeas</i> Bond	04/29/22	13	3137–3144
40	Limited Objection to “Order Unsealing Trial Transcripts and Restoring Public Access to	10/06/22	13	3145–3150

	Docket”			
41	Defendants’ Motion to Redact Portions of Trial Transcript	10/06/22	13	3151–3161
42	Plaintiffs’ Opposition to Defendants’ Motion to Redact Portions of Trial Transcript	10/07/22	13	3162–3165
43	Notice of Entry of Order Unsealing Trial Transcripts and Restoring Public Access to Docket	10/12/22	13	3166–3176
44	Notice of Appeal	10/12/22	13 14 15	3177–3250 3251–3500 3501–3518
45	Case Appeal Statement	10/12/22	15	3519–3649
46	Notice of Entry of Order Denying “Motion to Redact Portions of Trial Transcript”	10/13/22	15	3650–3659
47	Notice of Entry of Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits	10/18/22	15 16	3660–3750 3751–3806
48	Notice of Entry of Stipulation and Order Regarding Expiration of Temporary Stay for Sealed Redacted Transcripts	10/25/22	16	3807–3817
48A	Order Granting Temporary Stay, filed in Case No. 85525	11/10/22	16	3817A–3817B

Filed Under Seal

Tab	Document	Date	Vol.	Pages
49	Excerpts of Recorder’s Transcript of Jury Trial – Day 9	11/09/21	17	3818–3823
50	Preliminary Motion to Seal Attorneys’ Eyes Documents Used at Trial	11/11/21	17	3824–3875
51	Excerpts of Recorder’s Transcript of Jury Trial – Day 13	11/16/21	17	3876–3882

52	Motion to Seal Certain Confidential Trial Exhibits	12/05/21	17	3883–3977
53	Supplement to Defendants’ Motion to Seal Certain Confidential Trial Exhibits	12/08/21	17	3978–3995
54	Motion to Seal Certain Confidential Trial Exhibits	12/13/21	17 18	3996–4067 4068–4090
55	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 1 of 18	12/24/21	18	4091–4192
56	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 2 of 18	12/24/21	18 19	4193–4317 4318–4386
57	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 3 of 18	12/24/21	19 20	4387–4567 4568–4644
58	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 4 of 18	12/24/21	20 21	4645–4817 4818–4840
59	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 5 of 18	12/24/21	21	4841–4986
60	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 6 of 18	12/24/21	21 22	4987–5067 5068–5121
61	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 7 of 18	12/24/21	22	5122–5286
62	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 8 of 18	12/24/21	22 23	5287–5317 5318–5429
63	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 9 of 18	12/24/21	23 24	5430–5567 5568–5629

64	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 10 of 18	12/24/21	24	5630–5809
65	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 11 of 18	12/24/21	24 25	5810–5817 5818–5953
66	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 12 of 18	12/24/21	25 26	5954–6067 6068–6199
67	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 13 of 18	12/24/21	26 27	6200–6317 6318–6418
68	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 14 of 18	12/24/21	27 28	6419–6567 6568–6579
69	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 15 of 18	12/24/21	28	6580–6737
70	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 16 of 18	12/24/21	28 29	6738–6817 6818–6854
71	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 17 of 18	12/24/21	29	6855–7024
72	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 18 of 18	12/24/21	29 30	7025–7067 7068–7160
73	Defendants’ Reply in Support of Motion to Seal Certain Confidential Trial Exhibits	01/05/22	30	7161–7210
74	Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits	01/05/22	30 31	7211–7317 7318–7402
75	Transcript of Proceedings Re: Motions	01/12/22	31	7403–7498

76	Transcript of Proceedings Re: Motions	01/20/22	31	7499–7552
77	Transcript of Proceedings Re: Motions	01/27/22	31	7553–7563
78	Defendants’ Index of Trial Exhibit Redactions in Dispute	02/10/22	31 32	7564–7567 7568–7574
79	Transcript of Proceedings Re: Motions Hearing	02/10/22	32	7575–7695
80	Transcript of Proceedings Re: Motions Hearing	02/16/22	32	7696–7789
81	Joint Status Report and Table Identifying the Redactions to Trial Exhibits That Remain in Dispute	03/04/22	32 33	7790–7817 7818–7824
82	Transcript of Hearing Regarding Unsealing Record	10/05/22	33	7825–7845
83	Transcript of Status Check	10/06/22	33	7846–7855
84	Appendix B to Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits (Volume 1)	10/07/22	33 34	7856–8067 8068–8109
85	Appendix B to Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits (Volume 2)	10/07/22	34 35	8110–8317 8318–8378
86	Appendix B to Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits (Volume 3)	10/07/22	35 36	8379–8567 8568–8653
87	Appendix B to Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits (Volume 4)	10/07/22	36 37	8654–8817 8818–8918
88	Appendix B to Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits (Volume	10/07/22	37 38	8919–9067 9068–9203

	5)			
89	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 6)	10/07/22	38 39	9204–9317 9318–9431
90	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 7)	10/07/22	39 40	9432–9567 9568–9742
91	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 8)	10/07/22	40 41	9743–9817 9818–10,011
92	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 9)	10/07/22	41 42	10,012–10,067 10,068–10,279
93	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 10)	10/07/22	42 43 44	10,280–10,317 10,318–10,567 10,568–10,570
94	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 11)	10/07/22	44	10,571–10,809
95	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 12)	10/07/22	44 45	10,810–10,817 10,818–11,064
96	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 13)	10/07/22	45 46	11,065–11,067 11,068–11,144
97	Exhibits P473_NEW, 4002, 4003, 4005,	10/07/22	46	11,145–11,149

	4006, 4166, 4168, 4455, 4457, 4774, and 5322 to “Appendix B to Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits” (Tabs 98, 106, 107, 108, 109, 111, 112, 113, 114, 118, and 119)			
98	Transcript of Status Check	10/11/22	46	11,150–11,160
99	Recorder’s Transcript of Hearing	10/13/22	46	11,161–11,165

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
84	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 1) (FILED UNDER SEAL)	10/07/22	33 34	7856–8067 8068–8109
85	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 2) (FILED UNDER SEAL)	10/07/22	34 35	8110–8317 8318–8378
86	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 3) (FILED UNDER SEAL)	10/07/22	35 36	8379–8567 8568–8653
87	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 4) (FILED UNDER SEAL)	10/07/22	36 37	8654–8817 8818–8918
88	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 5) (FILED UNDER SEAL)	10/07/22	37 38	8919–9067 9068–9203
89	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 6) (FILED UNDER SEAL)	10/07/22	38 39	9204–9317 9318–9431
90	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 7) (FILED UNDER SEAL)	10/07/22	39 40	9432–9567 9568–9742
91	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits	10/07/22	40 41	9743–9817 9818–10,011

	(Volume 8) (FILED UNDER SEAL)			
92	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 9) (FILED UNDER SEAL)	10/07/22	41 42	10,012–10,067 10,068–10,279
93	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 10) (FILED UNDER SEAL)	10/07/22	42 43 44	10,280–10,317 10,318–10,567 10,568–10,570
94	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 11) (FILED UNDER SEAL)	10/07/22	44	10,571–10,809
95	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 12) (FILED UNDER SEAL)	10/07/22	44 45	10,810–10,817 10,818–11,064
96	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 13) (FILED UNDER SEAL)	10/07/22	45 46	11,065–11,067 11,068–11,144
45	Case Appeal Statement	10/12/22	15	3519–3649
3	Defendants' Answer to Plaintiffs' Second Amended Complaint	10/08/21	1	44–51
36	Defendants' Index of Trial Exhibit Redactions in Dispute	02/16/22	13	3091–3101
78	Defendants' Index of Trial Exhibit Redactions in Dispute (FILED UNDER SEAL)	02/10/22	31 32	7564–7567 7568–7574
15	Defendants' Motion for Leave to File Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at Trial Under Seal	11/12/21	5	1136–1144

41	Defendants' Motion to Redact Portions of Trial Transcript	10/06/22	13	3151–3161
30	Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing on Defendants' Motion to Seal Certain Confidential Trial Exhibits on Order Shortening Time	01/11/22	13	3022–3033
7	Defendants' Objection to Media Requests	10/28/21	1	69–83
73	Defendants' Reply in Support of Motion to Seal Certain Confidential Trial Exhibits (FILED UNDER SEAL)	01/05/22	30	7161–7210
35	Defendants' Response to Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits on Order Shortening Time	02/15/22	13	3084–3090
51	Excerpts of Recorder's Transcript of Jury Trial – Day 13 (FILED UNDER SEAL)	11/16/21	17	3876–3882
49	Excerpts of Recorder's Transcript of Jury Trial – Day 9 (FILED UNDER SEAL)	11/09/21	17	3818–3823
97	Exhibits P473_NEW, 4002, 4003, 4005, 4006, 4166, 4168, 4455, 4457, 4774, and 5322 to “Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits” (Tabs 98, 106, 107, 108, 109, 111, 112, 113, 114, 118, and 119) (FILED UNDER SEAL)	10/07/22	46	11,145–11,149
81	Joint Status Report and Table Identifying the Redactions to Trial Exhibits That Remain in Dispute (FILED UNDER SEAL)	03/04/22	32 33	7790–7817 7818–7824
40	Limited Objection to “Order Unsealing Trial Transcripts and Restoring Public Access to Docket”	10/06/22	13	3145–3150
4	Media Request and Order Allowing Camera Access to Court Proceedings (Legal	10/18/21	1	52–56

	Newsline)			
5	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	1	57–62
6	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	1	63–68
52	Motion to Seal Certain Confidential Trial Exhibits (FILED UNDER SEAL)	12/05/21	17	3883–3977
54	Motion to Seal Certain Confidential Trial Exhibits (FILED UNDER SEAL)	12/13/21	17 18	3996–4067 4068–4090
24	Motion to Seal Defendants’ Motion to Seal Certain Confidential Trial Exhibits	12/15/21	12	2956–2964
28	Motion to Seal Defendants’ Reply in Support of Motion to Seal Certain Confidential Trial Exhibits	01/10/22	13	3004–3012
29	Motion to Seal Defendants’ Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits	01/10/22	13	3013–3021
25	Motion to Seal Defendants’ Supplement to Motion to Seal Certain Confidential Trial Exhibits	12/15/21	12	2965–2973
44	Notice of Appeal	10/12/22	13 14 15	3177–3250 3251–3500 3501–3518
38	Notice of Entry of Judgment	03/09/22	13	3126–3136
46	Notice of Entry of Order Denying “Motion to Redact Portions of Trial Transcript”	10/13/22	15	3650–3659
26	Notice of Entry of Order Granting Defendants’ Motion for Leave to File Defendants’ Preliminary Motion to Seal Attorneys’ Eyes Only Documents Used at	12/27/21	12	2974–2984

	Trial Under Seal			
47	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits	10/18/22	15 16	3660–3750 3751–3806
32	Notice of Entry of Order Granting Plaintiffs' Proposed Schedule for Submission of Final Redactions	01/31/22	13	3038–3048
34	Notice of Entry of Order Shortening Time for Hearing Re: Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits	02/14/22	13	3066–3083
43	Notice of Entry of Order Unsealing Trial Transcripts and Restoring Public Access to Docket	10/12/22	13	3166–3176
1	Notice of Entry of Stipulated Confidentiality and Protective Order	06/24/20	1	1–24
37	Notice of Entry of Stipulation and Order Regarding Certain Admitted Trial Exhibits	02/17/22	13	3102–3125
48	Notice of Entry of Stipulation and Order Regarding Expiration of Temporary Stay for Sealed Redacted Transcripts	10/25/22	16	3807–3817
33	Notice of Entry of Stipulation and Order Regarding Schedule for Submission of Redactions	02/08/22	13	3049–3065
39	Notice of Posting <i>Supersedeas</i> Bond	04/29/22	13	3137–3144
48A	Order Granting Temporary Stay, filed in Case No. 85525	11/10/22	16	3817A–3817B
42	Plaintiffs' Opposition to Defendants' Motion to Redact Portions of Trial Transcript	10/07/22	13	3162–3165
31	Plaintiffs' Opposition to Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing	01/12/22	13	3034–3037

27	Plaintiffs' Opposition to United's Motion to Seal	12/29/21	12 13	2985–3000 3001–3003
9	Plaintiffs' Response to Defendants' Objection to Media Requests	11/01/21	1	105–115
50	Preliminary Motion to Seal Attorneys' Eyes Documents Used at Trial (FILED UNDER SEAL)	11/11/21	17	3824–3875
99	Recorder's Transcript of Hearing (FILED UNDER SEAL)	10/13/22	46	11,161–11,165
14	Recorder's Transcript of Jury Trial – Day 10	11/10/21	4 5	916–1000 1001–1135
16	Recorder's Transcript of Jury Trial – Day 12	11/15/21	5 6	1145–1250 1251–1421
17	Recorder's Transcript of Jury Trial – Day 13	11/16/21	6 7	1422–1500 1501–1717
18	Recorder's Transcript of Jury Trial – Day 14	11/17/21	7 8 9	1718–1750 1751–2000 2001–2021
19	Recorder's Transcript of Jury Trial – Day 15	11/18/21	9 10	2022–2250 2251–2344
20	Recorder's Transcript of Jury Trial – Day 17	11/22/21	10 11	2345–2500 2501–2665
21	Recorder's Transcript of Jury Trial – Day 18	11/23/21	11 12	2666–2750 2751–2940
10	Recorder's Transcript of Jury Trial – Day 5	11/01/21	1 2	116–250 251–317
11	Recorder's Transcript of Jury Trial – Day 6	11/02/21	2	318–489
12	Recorder's Transcript of Jury Trial – Day 7	11/03/21	2 3	490–500 501–706
13	Recorder's Transcript of Jury Trial – Day 9	11/09/21	3 4	707–750 751–915
2	Second Amended Complaint	10/07/21	1	25–43

74	Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits (FILED UNDER SEAL)	01/05/22	30 31	7211–7317 7318–7402
22	Special Verdict Form	11/29/21	12	2941–2952
23	Special Verdict Form	12/07/21	12	2953–2955
53	Supplement to Defendants’ Motion to Seal Certain Confidential Trial Exhibits (FILED UNDER SEAL)	12/08/21	17	3978–3995
8	Supplement to Defendants’ Objection to Media Requests	10/31/21	1	84–104
55	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 1 of 18 (FILED UNDER SEAL)	12/24/21	18	4091–4192
56	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 2 of 18 (FILED UNDER SEAL)	12/24/21	18 19	4193–4317 4318–4386
57	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 3 of 18 (FILED UNDER SEAL)	12/24/21	19 20	4387–4567 4568–4644
58	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 4 of 18 (FILED UNDER SEAL)	12/24/21	20 21	4645–4817 4818–4840
59	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 5 of 18 (FILED UNDER SEAL)	12/24/21	21	4841–4986
60	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 6 of 18 (FILED UNDER	12/24/21	21 22	4987–5067 5068–5121

	SEAL)			
61	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 7 of 18 (FILED UNDER SEAL)	12/24/21	22	5122–5286
62	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 8 of 18 (FILED UNDER SEAL)	12/24/21	22 23	5287–5317 5318–5429
63	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 9 of 18 (FILED UNDER SEAL)	12/24/21	23 24	5430–5567 5568–5629
64	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 10 of 18 (FILED UNDER SEAL)	12/24/21	24	5630–5809
65	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 11 of 18 (FILED UNDER SEAL)	12/24/21	24 25	5810–5817 5818–5953
66	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 12 of 18 (FILED UNDER SEAL)	12/24/21	25 26	5954–6067 6068–6199
67	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 13 of 18 (FILED UNDER SEAL)	12/24/21	26 27	6200–6317 6318–6418
68	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 14 of 18 (FILED UNDER SEAL)	12/24/21	27 28	6419–6567 6568–6579
69	Supplemental Appendix of Exhibits to	12/24/21	28	6580–6737

	Motion to Seal Certain Confidential Trial Exhibits – Volume 15 of 18 (FILED UNDER SEAL)			
70	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 16 of 18 (FILED UNDER SEAL)	12/24/21	28 29	6738–6817 6818–6854
71	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 17 of 18 (FILED UNDER SEAL)	12/24/21	29	6855–7024
72	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 18 of 18 (FILED UNDER SEAL)	12/24/21	29 30	7025–7067 7068–7160
82	Transcript of Hearing Regarding Unsealing Record (FILED UNDER SEAL)	10/05/22	33	7825–7845
75	Transcript of Proceedings Re: Motions (FILED UNDER SEAL)	01/12/22	31	7403–7498
76	Transcript of Proceedings Re: Motions (FILED UNDER SEAL)	01/20/22	31	7499–7552
77	Transcript of Proceedings Re: Motions (FILED UNDER SEAL)	01/27/22	31	7553–7563
79	Transcript of Proceedings Re: Motions Hearing (FILED UNDER SEAL)	02/10/22	32	7575–7695
80	Transcript of Proceedings Re: Motions Hearing (FILED UNDER SEAL)	02/16/22	32	7696–7789
83	Transcript of Status Check (FILED UNDER SEAL)	10/06/22	33	7846–7855
98	Transcript of Status Check (FILED UNDER SEAL)	10/11/22	46	11,150–11,160

CERTIFICATE OF SERVICE

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

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I further certify that I served a copy of this document by mailing a
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1 MR. ZAVITSANOS: Relevance, Your Honor. Appropriate
2 practice of medicine issue.

3 THE COURT: How is that relevant?

4 MR. ROBERTS: He brought up the fact that physicians were
5 employed by Legacy entities, but this particular entity that is suing
6 didn't even exist for more than a couple years.

7 THE COURT: The name is irrelevant. Objection is sustained.
8 BY MR. ROBERTS:

9 Q Would you agree that the entity that Dr. Scherr testified to,
10 Fremont Emergency Services share has only existed for a few years?

11 MR. ZAVITSANOS: Same question, Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: Honestly, I don't know if that entity was
14 essentially assumed and just the name changed or if that was a new
15 entity formed at the time of the acquisition.

16 BY MR. ROBERTS:

17 Q We told the jury that TeamHealth was involved in revenue
18 cycle, correct?

19 A Yes.

20 Q Billing, correct?

21 A That's correct.

22 Q Collections, correct?

23 A That's correct.

24 Q Setting charges, correct?

25 A That's correct.

1 Q Coding, correct?

2 A That's right.

3 Q So in other words, one of the things TeamHealth does is try
4 to maximize the profits of these physician groups. Is that fair?

5 A What we try to do is ensure that we get paid fairly for the
6 service we provide.

7 Q You aren't telling the jury that you don't try to maximize
8 profits, are you, sir?

9 A Maximizing profits would compromise patient safety. It
10 would compromise clinical quality, et cetera. No, we don't maximize
11 profit. We ensure that we deliver the highest level of care and that we
12 deliver outpatients excellence.

13 Q You told the jury that it was common in the industry for
14 physician practices to hire someone else to do the billing. It's common
15 in the industry. Is that your testimony?

16 A It is.

17 Q Is it common in the industry for the biller to charge the same
18 way you do?

19 A I'm not sure I understand the question.

20 Q You mentioned that billers -- that physician groups
21 commonly use billing services, billing companies.

22 A That's correct.

23 Q How do those companies typically charge? What's the
24 predominant way they charge?

25 A So we capture everything that occurred at the point of care.

1 We code it into a claim. And we submit it for reimbursement to an
2 insurance company, all a part of our complex process. Charges are set
3 for us based upon what we believe to be a competitive rate. And we do
4 that with the use of Fair Health as, you know, the largest database for
5 determination. I can't tell you how our competitors do it. I can tell you
6 that they're reflected in the Fair Health database.

7 Q Is your portion of your amount collected calculated the same
8 way that an outside billing company's would be? That's just yes or no. I
9 don't want to get into any specifics.

10 MR. ZAVITSANOS: Speculation, Your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: Sorry. I don't understand the question.

13 BY MR. ROBERTS:

14 Q The amount of the money that's collected, is what you keep
15 the same or different than the way standard billing companies charge
16 fees in the industry?

17 MR. ZAVITSANOS: That one is a limine issue, Your Honor,
18 terms of -- in terms of what you keep.

19 MR. ROBERTS: They opened the door. They brought up --

20 MR. ZAVITSANOS: No.

21 MR. ROBERTS: -- that they did it the same way as other
22 billing companies, Your Honor.

23 THE COURT: I'll sustain the objection.

24 BY MR. ROBERTS:

25 Q Let's move to the discussion of chargemasters. You told the

1 jury a little bit about how TeamHealth goes about setting the
2 chargemasters for the physician groups in Nevada, correct?

3 A That's correct.

4 Q And the chargemasters is the amount of billed charges.

5 That's what is used to determine the amount of billed charges that goes
6 on the claim filed with an insurance company; am I correct?

7 A The billed charge is the price associated with each level of
8 acuity that we submit on a claim. That's correct.

9 Q Which is drawn from the chargemaster?

10 A The chargemaster is a price list. Yes.

11 Q And did you mention that you weren't as familiar with that
12 process as others in the company might be?

13 A I'm familiar with the process. I don't set the charges myself I
14 think was the question.

15 Q And you told the jury about the some of the factors that go
16 into the setting of the chargemaster. Are Medicare rates considered at
17 all in setting the chargemaster?

18 A They are not.

19 Q Is the cost of providing services factors into the setting of the
20 chargemaster?

21 MR. ZAVITSANOS: Your Honor, limine.

22 THE COURT: Objection sustained.

23 BY MR. ROBERTS:

24 Q Are charges set by the chargemaster, how often are they
25 increased?

1 A They are evaluated annually, in general. And they're
2 increased, typically, with the medical cost of inflation with reflection back
3 on, you know, the Fair Health database to ensure they remain consist
4 with that 80th percentile.

5 Q Are they ever set higher than the 80th percentile?

6 A Yes. Some vary higher. Some vary lower. But, you know, if
7 you look at it, it's anchored around that 80th percentile.

8 Q So you don't use the 80th percentile as the set price. It's
9 simply one factor you consider. Is that fair?

10 A So the database is a reflection of, like you said, all of the
11 competitors inside of the market. So it fluctuates. We don't want our
12 prices to fluctuate randomly with that number. So we ensure that we are
13 close to that 80th percentile, but we don't chase it with the smallest
14 penny.

15 Q Do the chargemaster charges, have they ever increased more
16 than once a year?

17 A In Nevada, I don't know.

18 Q In other markets?

19 A Honestly, I can't think of any where I have firsthand
20 knowledge of it. No.

21 Q Let's move to balance billing.

22 MR. ROBERTS: And, Shane, are you able to put Exhibit 424
23 up for me. And highlight the top third of the page.

24 BY MR. ROBERTS:

25 Q You previously identified this as a TeamHealth policy and

1 procedure, correct?

2 A That's correct.

3 Q And this policy and procedure indicates that you do not
4 balance bill patients. Is that fair to say?

5 A That's correct.

6 Q What was the date of this policy?

7 A The last review was on October 17 of 2019.

8 Q That's after this lawsuit was filed, right, with this policy in
9 writing?

10 A Yes.

11 Q And what about the 2016 version of this policy? Did it have
12 the language in it that patients would not be balance billed as policy?

13 A I don't know if it was in this specific policy. It looks like this
14 one was revised in '18, '11, '08, '07, '06. I would assume it was.

15 Q Do you know if it was, sir?

16 A I know that it was a policy for TeamHealth. I don't know if
17 this specific policy had it.

18 Q So it's not your testimony under oath that TeamHealth had
19 not sued patients for balance billing amounts claimed owed in 2016, is
20 it?

21 MR. ZAVITSANOS: Your Honor, to the extent this asks
22 about -- well, there's a limine issue, Your Honor, with that question right
23 there.

24 THE COURT: Why don't you --

25 MR. ZAVITSANOS: And it's not balance --

1 THE COURT: Why don't you approach?

2 [Sidebar at 10:56 a.m., ending at 10:57 a.m., not transcribed]

3 THE COURT: Okay. The question will be rephrased for you.

4 MR. ROBERTS: Thank you.

5 Can you put that back up, Michelle?

6 BY MR. ROBERTS:

7 Q And you just mentioned these dates from '06 to 2019. And
8 just to make sure I understand your testimony, you're telling the jury that
9 it's been the national policy of TeamHealth not to balance bill patients
10 since 2006, and this policy's never changed on that point from '06 to '19?

11 A So we have a book of policies that's very significant. We
12 have had a policy of not balance billing patients. That has stood for that
13 entire time frame, that's correct --

14 Q So --

15 A -- whether in this one or whether in another one.

16 Q So you're testifying under oath that from 2006 to 2019,
17 TeamHealth never balance billed an ER patient?

18 A Unless it was an error on misinterpretation of remit advice
19 that came from the insurance company, that's correct.

20 Q You looked at a shared savings document and told the jury
21 what your review of the amount payable was. And that's the amount
22 that you say you're entitled to billed charge, correct?

23 A That's correct.

24 Q If that's the amount that's payable, if that's the amount
25 you're owed, why does TeamHealth only get it six percent of the time?

1 A Our charge is fair. Our -- our charge is set based upon the
2 FAIR Health 80th percentile. If we are underpaid for a claim, we pursue
3 the payment of the unpaid balance. Unfortunately, you know, on a
4 claim-by-claim basis, it can be expensive to pursue. And unless it
5 amounts to a size of claims, like 11,500, it's hard to pursue it in litigation.

6 MR. ROBERTS: Shane, could you put up Exhibit 5504,
7 page 1?

8 BY MR. ROBERTS:

9 Q Now, we've talked a lot about the share savings program,
10 whether it's fair for United to earn a fee that it does under that program.
11 Can a provider like TeamHealth completely eliminate any shared savings
12 revenue to United simply by lowering its billed charges to the amount
13 that the insurance company's willing to pay?

14 A So since they reduced our charge to zero and provide free
15 service, yes, we could eliminate shared savings.

16 Q And you could eliminate shared savings during the large
17 portion of this time by reducing then 350 percent of Medicare, right?

18 A There's any arbitrary number we could reduce it to, but we'd
19 need to collect a reasonable and fair charge.

20 Q And the higher and the more unreasonable the billed
21 charges, the more savings goes to the insurance company when they cut
22 it, correct?

23 A So it depends on how that calculation is made.

24 Q And you're aware that when you're talking about a shared
25 savings program, you're talking about ASO clients, right, administrative

1 services only?

2 A That's correct.

3 Q And if United had not cut that charge and reduced the
4 amount it paid, then the other money -- the other money from the billed
5 charge would have come from the employers and the other ASO clients,
6 right?

7 A That's right. They would have paid a reasonable rate for the
8 service that was provided.

9 Q And you keep saying that, "We don't do anything for that
10 charge." But are you suing MGM in this case?

11 MR. ZAVITSANOS: Your Honor, he -- he didn't say it. I did.

12 THE WITNESS: I --

13 MR. ZAVITSANOS: And so I'm going to object to the
14 argumentative nature of that.

15 THE COURT: I'm going to overrule that because he speaks
16 for TeamHealth.

17 BY MR. ROBERTS:

18 Q Are you suing MGM? Are you trying to get that difference
19 from them that would originally come under their fund if United paid the
20 full billed charge?

21 A We don't have a contract with MGM. We have -- we are
22 suing United where we treated United's member who paid premiums to
23 pay for that healthcare.

24 Q And you're not doing the Metropolitan Police Department,
25 right?

1 A No. We're suing United.

2 Q That's right. Our ASO clients save the money, and we're the
3 ones getting sued, right? Don't you think that's providing a service to
4 our ASO clients?

5 A I -- I think that United, as I reference -- as I look at that
6 document, actually said the amount otherwise payable was the billed
7 charge. You should have remitted the billed charge on behalf of the
8 client.

9 Q So our clients should have paid their portion, 10.5 million,
10 and they should be out the money, not us?

11 A They should have been all along.

12 Q We've got this chart that you referred to where you said that
13 some of your sister companies were crazy cousins because they agreed
14 to pay 50 percent shared savings, right?

15 A That's -- to use Mr. Zavitsanos' term, yes, those are the crazy
16 third cousins.

17 Q So let's assume a bill charge -- and the jury's seen some of
18 these. It's \$14,000, right?

19 A No. We don't -- we don't have a charge that's higher than
20 1,800.

21 Q Read what I wrote, not what I said. I've got -- it's \$1,400.
22 Okay. So 1,400, assume that's the billed charge. Right?

23 A Okay.

24 Q And assume that United pays 400. Would you agree that
25 under the document you just read and your interpretation you gave to

1 the jury, that \$1,000 would be the savings, as calculated by that
2 document?

3 A Yes.

4 Q And you're saying that 50 percent is unreasonable. So
5 United would take a fee of \$500, right?

6 A More than we get paid.

7 Q And the client would save \$500. Now, let's go back to your
8 crazy-cousin analogy.

9 A Now, the client would have paid \$900. They only paid 500 to
10 United and 400 to us.

11 Q 400 to the provider and 500 to us. \$900.

12 A So that \$1,400 is for a level 5 high acuity emergency room
13 visit that --

14 Q Which --

15 A -- Dr. Scherr would have provided, you know, in the
16 emergency room at any time a night. So that \$400 is less than you're
17 going to collect for underpaying our billed charge. That's what you're
18 saying.

19 Q And this could also be for looking at a patient, say he's in
20 crisis, take him up in the ER, the doctor spent five minutes and did
21 nothing but admit him to the hospital, and that would also --

22 A No.

23 Q -- be --

24 A No, sir.

25 Q -- \$1,400?

1 A That would have been a level 1 or a level 2 claim. And that
2 would have been, you know, much lower than \$1,400. You're picking the
3 highest acuity claim right there.

4 Q And if it's a gunshot wound and the patient is in crisis, no
5 matter how long that ER physician spend with him, it's 1,400, correct?

6 A No. It could move into critical care --

7 Q Okay.

8 A -- and it could move up to 1,800.

9 Q But that would be in a different code, right?

10 A That's right.

11 Q And that would be an additional charge, right?

12 A But you picked a gunshot code, and United's collected more
13 than we have.

14 Q So let me get back to my question. Which is crazier for an
15 ASO client to do, pay 900 total to us and the provider or to pay \$1,400,
16 500 more, is this crazier than agreeing to 50 percent shared savings?

17 A So my crazy cousins, when they reviewed it, were absolutely
18 embarrassed that they paid more to United than they paid to the
19 emergency room physician. And no one objected to \$1,400 for a board
20 certified physician in emergency medicine to take care of a gunshot
21 victim.

22 Q So you told the jury that you fired United as your claim
23 administrator, correct?

24 A That's correct. Because we would have paid the 1,400.

25 Q Oh. No, you wouldn't.

1 A Yes, we would.

2 Q Under your current contract, sir, you don't pay billed
3 charges, do you?

4 A Out-of-network, we pay 100 percent of billed charge to
5 emergency medicine.

6 Q That's your testimony?

7 A Yes.

8 Q Under your current contract?

9 A No. This -- you referenced our United contract.

10 Q No. But you canceled with us. You went with a different
11 company. And under that new contract, you do not pay billed charges,
12 do you, sir?

13 A I actually believe that we did, but I haven't looked at that
14 contract recently.

15 Q You might want to go check it.

16 MR. ZAVITSANOS: Your Honor, also, we're outside the
17 relevant time period, Your Honor. And I move to strike that.

18 THE COURT: I think he's moving on to the next subject, so.

19 MR. ZAVITSANOS: Okay.

20 BY MR. ROBERTS:

21 Q So I'm going to ask you, sir, just to -- to get out 313. Do you
22 still have that in front of you, Exhibit 313?

23 A I do.

24 Q And counsel asked you to confirm that we were only talking
25 about a single member here that you were saying you would not balance

1 bill. You insisted that it was multiple members. And I'm not asking
2 about the question. I'm asking about the answer.

3 THE COURT: Hang on a second. Shane, did you add that
4 redaction?

5 MR. ROBERTS: Oh, I'm sorry. I didn't mean to put that up.
6 That's why I just asked him -- sorry.

7 MR. ZAVITSANOS: And, Your Honor, to the last question, I
8 didn't limit it to the answer. I think --

9 THE COURT: You can do that --

10 MR. ZAVITSANOS: Okay.

11 THE COURT: -- on your redirect.

12 MR. ZAVITSANOS: Okay. Yes, Your Honor. My apology.

13 BY MR. ROBERTS:

14 Q So I'm looking right at the top of the page right under, "Hi
15 JC." Does that answer, saying that you will not balance bill, talk about
16 multiple members or this single member?

17 A Well, the -- the question didn't refer to a single member. So I
18 think the intent was to answer the question, which referred to our
19 members, plural.

20 Q You didn't write this email, did you?

21 A No, but I can read it.

22 Q Did Ms. Harris consult with you before she wrote the single
23 word member?

24 A She did not.

25 Q And when she responded, she said, "We will not balance bill

1 this member," correct?

2 A No. She said, "the member."

3 Q The member. And this email was from 2019, after that new
4 policy -- that new revision of the policy was put out, correct?

5 A That's correct.

6 Q And do you know why this member was concerned about
7 being balance billed?

8 A Sir, I don't see a reference to an individual member. I see a
9 question about the members. Which seems United's more concerned
10 that all of the members are going to be balance billed when they
11 underpay our claim.

12 Q Have you ever seen an unredacted copy of this email?

13 A I don't believe I have, no.

14 Q And redaction is when the lawyers take and white out or
15 cover up --

16 A Oh, is it?

17 Q -- parts of the original --

18 A I didn't realize this was redacted.

19 MR. ZAVITSANOS: Your Honor, we're getting into an issue
20 covered by the limine. I limited my inquiry to the question and answer
21 that I -- that was up on the screen.

22 THE COURT: And --

23 MR. ROBERTS: I'll approach, Your Honor, to make sure I
24 don't run afoul to anything.

25 THE COURT: Come on up.

1 [Sidebar at 11:09 a.m., ending at 11:10 a.m., not transcribed]

2 THE COURT: All right. I've sustained an objection.

3 BY MR. ROBERTS:

4 Q Going back to 313, sir, the -- do you see the subject line?

5 MR. ZAVITSANOS: Judge, that is also redacted.

6 THE COURT: Yeah. Objection sustained.

7 MR. ROBERTS: Your Honor, what -- it's not redacted. I've
8 got the exhibit right in front of me.

9 MR. ZAVITSANOS: Your Honor --

10 MR. ROBERTS: It's still there.

11 MR. ZAVITSANOS: -- that is the point that I made when I
12 offered it. I said, that is the additional item that needs to be redacted,
13 Your Honor.

14 MR. ROBERTS: I'm not going to refer to anything that's
15 excluded.

16 MR. ZAVITSANOS: Your Honor --

17 THE COURT: You know, let's take our -- let's take a recess.
18 It's -- if -- we started at 9:50. I try to do it every hour.

19 So during the recess, don't talk with each other or anyone
20 else on any subject connected with the trial; don't read, watch, or listen
21 to any report of or commentary on the trial; don't discuss this case with
22 anyone connected to it by any medium of information, including, without
23 limitation, newspapers, television, radio, Internet, cell phones, or texting;
24 don't conduct any research on your own relating to the case; don't
25 consult dictionaries, use the Internet, or use reference materials.

1 During the recess, do not post on public media about being
2 in a jury trial. Don't talk, text, Tweet, Google issues or conduct any other
3 type of book or computer research with regard to any issue, party,
4 witness or attorney involved in the case.

5 Most importantly, do not form or express any opinion on any
6 subject connected with the trial until the matter is submitted to the jury.
7 It's 11:12. Let's be back at 11:25.

8 THE MARSHAL: All rise for the jury.

9 THE COURT: And I'll ask you to step out of the room so
10 that --

11 THE WITNESS: Okay.

12 THE COURT: -- we can discuss this matter.

13 [Jury out at 11:12 a.m.]

14 [Outside the presence of the Jury]

15 THE COURT: Okay. The room is clear. Mr. Roberts, would
16 you like a short recess, or are you ready to go?

17 MR. ROBERTS: No. I'm ready, Your Honor, if -- if -- but I'd be
18 happy to give one --

19 THE COURT: I'm good.

20 MR. ROBERTS: -- to the Court or counsel with its comfort.

21 THE COURT: I -- let's go.

22 THE MARSHAL: Two of the jurors.

23 [Court and Marshal confer]

24 MR. ROBERTS: So the -- this goes to Exhibit 313. And at the
25 bench, I had previously objected to its admission as an incomplete

1 document and improper redactions, and suggested at the bench after
2 that, that even with the redactions being proper, that it took all the
3 context away from the email other than basically the date. The jury
4 knows nothing except their statement on the balance billed to member
5 and the date.

6 The bottom of the email chain that has been redacted from
7 the proposed exhibit states, "Since we were not able to come to an
8 agreement for Fremont Emergency Services with Health Plan of Nevada,
9 Sierra Health-Care Options, and Sierra Health and Life, please see
10 attached my termination confirmation letters where the contract shall
11 terminate midnight February 25th, 2019, as stated on your September
12 10, 2018 letter."

13 And I believe that by putting this exhibit in, they're opening
14 the door to me reading the rest of the exhibit. I said you don't get it at all
15 because it's incomplete and improper redactions. But now that they've
16 offered it, I should be able to get that into evidence.

17 But putting that aside, the only thing I wanted to bring up on
18 the subject line is that this only applied to HPN, Sierra Health and Life,
19 and Sierra Health-Care Options. That it only applied to three of the five
20 Defendants. That is the only thing I was going at, which is why I said I'm
21 not going to bring up anything excluded, I'm not going to read the
22 termination confirmation. All I wanted to do is get him to confirm that
23 this letter was only to three out of the five Defendants.

24 MR. ZAVITSANOS: Brief response, Your Honor?

25 THE COURT: Yes. Please.

1 MR. ZAVITSANOS: To the last point, Your Honor, no
2 objection whatsoever. That's perfectly appropriate. I had told the Court
3 that -- and forgive me, Your Honor. We are doing the best we can. It's
4 just there's a lot of documents here, and sometimes something slips by.
5 There's a -- in the subject line, I think in parenthetical, it says, "Contract
6 Termination." We missed that. I didn't ask about that. And we want to
7 redact that. But for what counsel just said, that is -- that's fair game.
8 That's fair game.

9 THE COURT: All right. So --

10 MR. ROBERTS: And --

11 THE COURT: Go ahead, please.

12 MR. ROBERTS: Okay. Just -- just before I forget about it, the
13 other point I wanted to put on the record is the Court prevented me from
14 then asking the witness if TeamHealth costs were one of the factors
15 considered in setting the chargemaster. We were prohibited from doing
16 a Folsom [phonetic] discovery into the chargemaster and how it's set.

17 But I objected to him going into the setting of the
18 chargemaster when he was on direct examination. He went forward,
19 and he told the jury the things that were considered, and he left out the
20 things he did not want the jury to hear. And now the jury has a
21 misconception because they have an incomplete story about what goes
22 into setting those chargemaster charges. And if they wanted to just stick
23 with the Court's ruling and says, "The master is what it is, you can't
24 dispute it, they get to set the charges, they provided the services," that
25 would have been fine. But they opened the door because we cannot let

1 the jury have an incomplete story about how that chargemaster is set.

2 Thank you, Your Honor.

3 MR. ZAVITSANOS: Would you like a response, Your Honor?

4 THE COURT: Please.

5 MR. ZAVITSANOS: Yeah. So, Your Honor, after the bench
6 conference, I think the Court probably noticed, my question was whether
7 FAIR Health was a variable that the company used in setting billed
8 charges. That was it. I didn't ask about anything else.

9 Now, FAIR Health has been discussed ad nauseam during the
10 course of this case. I mean sometimes repetitively by me. Okay? So it --
11 and by opposing counsel. And it has been discussed extensively. I
12 didn't ask him about anything other than that. And so I -- we did not --
13 and for what it's worth, Your Honor, cost is not -- I don't believe cost is
14 an issue without a -- come up to a fair market rate. But the Court's
15 already ruled on this. So I don't -- I don't believe I opened the door on
16 anything, Your Honor.

17 MS. LUNDVALL: Well, moreover, this exact exchange
18 occurred during the course of our hearing on motions in limine. We told
19 the Court what it is that we intended to proffer. The Court said that that
20 was acceptable and that that did not then breach or open a door then
21 dealing with the issue of cost.

22 THE COURT: Thank you. Any reply, please?

23 MR. ROBERTS: No. No reply, Your Honor.

24 THE COURT: All right. So 313, the door was not opened in
25 the presentation on direct. The fact that the termination only applied to

1 three Defendants is fair game. And the chargemaster, the door has not
2 been opened. So --

3 MR. ZAVITSANOS: And, Your Honor, if I could just ask
4 counsel please if he's going to use the exhibit, fine, if they could just -- I
5 know they've got a very savvy technical person here that could just --

6 THE COURT: Well, there's an additional redaction. So --

7 MR. ZAVITSANOS: Yeah, the additional redaction.

8 THE COURT: -- you two need to confer.

9 MR. ROBERTS: That's why I didn't want to have him put it
10 up.

11 THE COURT: Yeah. It --

12 MR. ZAVITSANOS: I mean you -- if your fellow can white it
13 out --

14 THE COURT: Good enough. Why don't --

15 MR. ZAVITSANOS: -- you can put it up.

16 THE COURT: -- the two of you confer on that. It's 11:18. You
17 still have seven minutes.

18 MR. ZAVITSANOS: Thank you, Your Honor.

19 MR. ROBERTS: Thank you, Your Honor.

20 THE COURT: Yeah.

21 [Recess taken from 11:19 a.m. to 11:26 a.m.]

22 [Outside the presence of the jury]

23 MR. ROBERTS: Your Honor, in an abundance of caution, I
24 need to run one more question by you in judge conference.

25 MR. ZAVITSANOS: Yes, Your Honor.

1 MR. ROBERTS: No, you're good. So I've just redacted an
2 email. It's in the same style as we've done to 313. And this is an email
3 from Mr. Murphy where he gives his personal definition of usual,
4 customary, and reasonable --

5 MR. ZAVITSANOS: Your Honor --

6 MR. ROBERTS: --which has come up over and over in this
7 case, their argument about reasonable -- usual, customary and
8 reasonable, claiming that it's the bill charge. And in this document, in
9 connection with a different dispute, Mr. Murphy defined that in a way
10 inconsistent with the way they are arguing this case.

11 MR. ZAVITSANOS: So Your Honor. A couple of things on
12 this. First of all, this touches on a limine point we had --

13 THE COURT: Which was?

14 MR. ZAVITSANOS: Which was in-network rates.

15 THE COURT: Oh.

16 MR. ZAVITSANOS: Okay? Second, Your Honor, Mr. Murphy
17 has not been -- I did not ask him what the definition of UCR is. He's not
18 been identified as a lay expert witness.

19 THE COURT: It's just not relevant --

20 MR. ROBERTS: We'll redact it, Your Honor.

21 THE COURT: -- if it's in-network.

22 MR. ROBERTS: The CEO of TeamHealth has given the
23 definition of UCR. And it's not just that. He says, UCR is ultimately
24 defined by our in-network rates with the same payor, rates from other
25 payors, and rates from the defendant to other providers. He's giving the

1 same definition we would like to argue in this case.

2 MR. ZAVITSANOS: So Your Honor --

3 MR. ROBERTS: The CEO of the company and it's not about
4 his network agreement. It's about a dispute because they don't have an
5 agreement.

6 THE COURT: I understand.

7 MR. ZAVITSANOS: Your Honor, I would say that it's the
8 same issue.

9 MR. ROBERTS: And we'll redact anything. We'll redact
10 everything except Mr. Murphy's name.

11 THE COURT: I'm going to sustain the objection. Would you
12 like to make a further record?

13 MR. ROBERTS: Yes. That I am being prevented from putting
14 in evidence an admission against interest by the top official in the
15 country where he admits that usual, customary, and reasonable is
16 ultimately defined by a different standard than they are seeking to have
17 the jury implement in this case

18 MR. ZAVITSANOS: Your Honor --

19 MR. ROBERTS: This is an admission by the top man of the
20 company, Your Honor.

21 MR. ZAVITSANOS: Your Honor, one unrelated thing that's
22 not repetitive. I just noticed this is an exchange between Mr. Murphy
23 and the general counsel of the company. This was inadvertently
24 produced. This is a privileged document. And Your Honor, we request
25 that this be snapped back.

1 THE COURT: Mr. Blalack?

2 MR. BLALACK: It's a little late for that, Your Honor. This
3 document was produced eight months ago. It's been used in about ten
4 different depositions, from the lawyers from TeamHealth over and over
5 and over and over again. And now if there's going to be a claim of
6 privilege on this, if they're go to assert that, we're going to want to brief
7 that substantially because --

8 THE COURT: The way I understand it, it's an apples and
9 oranges situation. It doesn't really apply in this case because we're only
10 talking about in-network here.

11 MR. ZAVITSANOS: That's right.

12 MR. ROBERTS: This is not a network agreement. If it was a
13 network agreement, why did Mr. Murphy say it's set by our in-network
14 rates with other providers?

15 MR. ZAVITSANOS: This is --

16 MR. ROBERTS: Rather than an in-network rate review? And
17 UCR is the exact term that this gentleman has used over and over in this
18 case. And he wants to put payable in our document up there and tell the
19 jury that it means something that we intended when we wrote it.

20 But I'm not allowed to put his document in front of him and
21 let the jury decide if that's what he intended when he wrote it. And if
22 they want to get the whole document in, that's fine with me, Your Honor.
23 This idea that you can take one sentence out of an email was his idea,
24 not mine.

25 THE COURT: So is your next line of inquiry with regard to

1 usual and customary?

2 MR. ROBERTS: Yes, my next line of inquiry was with regard
3 to getting him to make that indicia, yes.

4 THE COURT: So you can still go into that without getting
5 into this email.

6 MR. ROBERTS: He's -- I took his deposition. He's not going
7 to admit it. He's changed his mind about the definition since this lawsuit
8 was filed.

9 MR. ZAVITSANOS: This is about in-network rates, Your
10 Honor.

11 MR. ROBERTS: I've got five pages where he tries to waffle
12 around.

13 MR. BLALACK: Your Honor?

14 THE COURT: Yes. Go ahead.

15 MR. BLALACK: I want to address this because I've deposed
16 Mr. Bristow, the corporate representative, on all of these things including
17 this document. This is definitely not a statement about the in-network
18 negotiated rates, okay? I took the witness' testimony and can forward
19 that to you.

20 THE COURT: If you get there with Bristow, I'll consider it.

21 MR. BLALACK: Okay. Just to be clear, and I want the record
22 really clear on this in terms of what this document says. This is the CEO
23 of TeamHealth reporting to others in his organization. In the course of
24 that discussion, stating what his understanding of a usual and customary
25 rate is with out-of-network reimbursement. That's what the statement is.

1 This is the CEO of the company saying his understanding of what usual
2 and customary, usual and reasonable reimbursement is for out-of-
3 network services, and he's defining how that's done.

4 Now I showed that document to Mr. Bristow who is the
5 corporate representative of the plaintiff. He disagreed. He didn't dispute
6 that Mr. Murphy had that view. He disagreed with Mr. Murphy's view.

7 So we have a situation with the CEO of the company has one
8 view, and we can't be permitted to explore that with the jury. And the
9 corporate representative is going to take the stand for his testimony,
10 disagreeing with this -- with the statement by the CEO.

11 So not only do we think it's corroborative of our view of what
12 the standard is, one. But two, we have inconsistent positions taken by
13 the CEO and the corporate representative. That's why it's --

14 MR. ZAVITSANOS: Your Honor, brief reply in rebuttal. We
15 have done absolutely nothing, zero, to open the door to any kind of issue
16 like we're hearing about right now. Nothing.

17 We had extensive -- we had an extensive hearing before Your
18 Honor on this very point about in-network rates. And the Court was
19 clear, we had -- I think that hearing lasted well over an hour. And Your
20 Honor, and there's the -- and conveniently omitted from anything we've
21 heard is anything that I asked this gentleman that even comes within a
22 country mile of opening the door to in-network rates. I didn't do it.

23 THE COURT: You get the last word.

24 MR. BLALACK: We're not arguing he opened the door.

25 THE COURT: And you're arguing a credibility issue.

1 MR. BLALACK: Correct.

2 THE COURT: And I'm listening.

3 MR. BLALACK: I'm not arguing that he asked Mr. Murphy
4 something that makes this relevant. That's not the issue.

5 Now he has spoken endlessly with other witnesses about
6 what they think UCR is. He's asked Mr. Haben. He's asked Mr. Paradise.
7 They have asked [indiscernible] United thinks UCR means and how it's
8 defined over and over again.

9 This is the flip side of that. But I just want to be clear that
10 there's no argument we're making that Mr. Roberts should be able to ask
11 that question of Dr. Murphy, and have this document used if Dr. Murphy
12 needs is memory refreshed. There's nothing about that argument that's
13 attempting to open the door. This is just a straight out -- this is a central
14 issue on how do you define what is an out-of-network reimbursement
15 standard. And it impeaches the position advanced by the plaintiffs in the
16 case. But it's not -- we're not arguing they opened the door.

17 THE COURT: I understand. All right. Let's bring in the jury.

18 MR. ROBERTS: Your Honor, could I mark the redacted copy
19 of Exhibit 4918, Page 1 as a Court's Exhibit?

20 THE COURT: I assume there's no objection to that.

21 MR. ZAVITSANOS: No, no, Your Honor. Thank you.

22 THE COURT: Okay. So that'd be a Court's exhibit. Thank
23 you, Michelle.

24 [Court's Exhibit 4918 marked for identification]

25 MR. ZAVITSANOS: Hey Lee, how much longer do you have?

1 MR. ROBERTS: About 10, 15 minutes. Probably 10.

2 MR. ZAVITSANOS: Okay. And Your Honor, if -- just very
3 briefly, if they intend to bring that document on again-- up again, the
4 Court needs to see the full contents because it's all about the
5 negotiations.

6 THE COURT: If we do, we will.

7 MR. ZAVITSANOS: Yeah.

8 THE COURT: Okay. Come on up, Mr. Murphy.

9 THE MARSHAL: All rise for the jury.

10 [Jury in at 11:35 a.m.]

11 THE COURT: Thank you. Please be seated. And go ahead,
12 please.

13 MR. ROBERTS: Thank you, Your Honor.

14 BY MR. ROBERTS:

15 Q Okay, Mr. Murphy, just a few questions left. I'll get you out
16 of here before lunch.

17 A Thank you.

18 Q At least on my end. To go back up -- what you told the jury
19 when you were first testifying, you mentioned that TeamHealth was
20 owned by the Blackstone Group, correct?

21 A That's correct.

22 Q And that the Blackstone Group had people on your board of
23 directors. Is that correct?

24 A That's correct.

25 Q And was that three that you testified to?

1 A That's right.

2 Q And that's out of how many directors?

3 A Ten.

4 Q And the Blackstone is the largest or at least one of the largest
5 private equity groups in the country, correct?

6 A I believe so, yes.

7 Q And ultimately it was your decision to bring this lawsuit that
8 we're litigating today, correct?

9 A That's correct.

10 Q But isn't it correct that before you could file this lawsuit, you
11 were required to go to the board of directors for TeamHealth including
12 the three members from Blackstone to get approved?

13 A I reported our strategy and how we believed we had to go to
14 Court to collect the unpaid balance. And I don't know that we actually
15 had a formal approval, but I had the full support of the board.

16 Q Do you have your deposition there in front of you, sir, and
17 your reading glasses?

18 A I do.

19 Q If I could get you to turn to Page 108 of your deposition,
20 beginning at Line 14, and then onto Page 109, Line 25. And if you could
21 just read that silently to yourself.

22 A From 108 to 114?

23 Q I'm sorry.

24 MR. ZAVITSANOS: Your Honor, this is not inconsistent.

25 MR. ROBERTS: 108 to 109.

1 THE COURT: Objection's overruled.

2 MR. ZAVITSANOS: I'm sorry, Your Honor. This is improper
3 impeachment. It's not inconsistent.

4 MR. ROBERTS: It doesn't need to be impeachment for a
5 corporate officer, Your Honor.

6 THE COURT: Objection's overruled.

7 BY MR. ROBERTS:

8 Q So my question after reading page 109 is did the board of
9 directors encourage you to file this lawsuit?

10 A So it's very consistent with what I said. I recommended that
11 we file these lawsuits, and our board of directors was supportive is how I
12 phrased it.

13 Q Thank you, sir. Do you know who the president of Fremont
14 Emergency Services is, in Nevada?

15 A Yes.

16 Q Okay. And who is that?

17 A Scott Scherr.

18 Q Did you go to Dr. Scherr, the president of the entity actually
19 filing suit, and get his approval to file the lawsuit before you filed it in his
20 name?

21 A I did not. Did not think I needed to. Scott, as well as every
22 physician at TeamHealth, was very aware of our approach to trying to
23 collect underpayments. I've been very open in letters, town halls, in our
24 national medical meeting with all of our leaders, at which Scott attended
25 all of them. And I never heard any objection to filing lawsuits to collect

1 unpaid claims.

2 Q Isn't it true that Dr. Scherr didn't see this lawsuit until after it
3 had already been filed?

4 A I don't know the answer to that, but it would not surprise me.

5 Q You mentioned that one of the reasons you filed a lawsuit
6 was for the clinicians. Did I hear that correctly?

7 A That's correct.

8 Q And by clinicians, do you mean the physicians staffing the
9 emergency rooms here?

10 A For all of our clinicians.

11 Q Okay. Do you have employment agreements with your
12 clinicians?

13 MR. ZAVITSANOS: Relevance, Your Honor.

14 MR. ROBERTS: Your Honor, he said--

15 THE COURT: Overruled.

16 MR. ROBERTS: Thank you. Do you have employment
17 agreements with your clinicians?

18 THE WITNESS: We do.

19 BY MR. ROBERTS:

20 Q And do you have employment agreements or contracts with
21 the clinicians who are independent contractors?

22 A We do.

23 Q And do those contracts or employment agreements require
24 any of the money --

25 MR. ZAVITSANOS: Your Honor, limine, please.

1 THE COURT: Please approach.

2 MR. ROBERTS: He said he filed it for the clinicians, Your
3 Honor.

4 THE COURT: Objection sustained, and I'm enforcing the
5 motion in limine.

6 MR. ROBERTS: I have nothing further, Your Honor.

7 THE COURT: All right. Redirect?

8 MR. ZAVITSANOS: Nothing, Your Honor.

9 THE COURT: Does the jury have any questions of
10 Mr. Murphy? Thank you, Ms. Herzog. And it looks as though the only
11 nights this week we can work late would be the 18th and 19th. So let me
12 pull up my calendar. I think that's this Thursday and Friday, we can work
13 until late on Thursday and Friday.

14 And counsel, please approach.

15 [Sidebar at 11:41 a.m., ending at 11:42 a.m., not transcribed]

16 THE COURT: We all thank you for the question. And I get to
17 ask the questions.

18 Mr. Murphy, in what year did TeamHealth terminate United
19 Health as their company health insurance plan administrator?

20 THE WITNESS: Oh, I believe it would have been in 2000 --
21 effective in 2019.

22 THE COURT: Any follow up questions from the lawyers
23 based upon the jury question?

24 MR. ZAVITSANOS: Not from the plaintiffs, Your Honor.

25 MR. ROBERTS: One question, Your Honor.

1 FURTHER RECROSS-EXAMINATION

2 BY MR. ROBERTS:

3 Q Who is the new administrator, sir?

4 A Aetna.

5 Q Thank you.

6 THE COURT: Okay. Thank you all. We're going to take lunch
7 now, and it is 11:43 so I'll ask you to be back at 12:15.

8 During the recess -- last question. May we excuse the
9 witness?

10 MR. ZAVITSANOS: Yes, Your Honor.

11 THE COURT: All right. You'll be excused.

12 THE WITNESS: Thank you very much.

13 THE COURT: We'll take the recess.

14 MR. ROBERTS: Your Honor, I would request to ask the
15 witness just a couple questions for an offer of proof outside the presence
16 of the jury.

17 THE COURT: Good enough. So you're not quite excused
18 yet, Mr. Murphy.

19 THE WITNESS: Okay.

20 THE COURT: All right. So during the recess, don't talk with
21 each other or anyone else on any subject connected with the trial. Don't
22 read, watch or listen to any report or commentary on the trial. Don't
23 discuss this case with anyone connected to it, by any medium of
24 information, including without limitation, newspapers, television, radio,
25 internet, cell phones or texting. Don't conduct any research relating to

1 the case. Don't consult dictionaries, use the internet or use reference
2 materials.

3 Don't talk, text, tweet, use social media, google issues, or
4 conduct any other type of book or computer research with regard to any
5 issue, party, witness or attorney involved in the case. Do not form or
6 express any opinion on any subject connected with the trial until the
7 matter is submitted to you.

8 Thank you. We've had kind of a choppy morning but if you'll
9 please be ready at 12:15.

10 THE MARSHAL: All rise for the jury.

11 [Jury out at 11:44 a.m.]

12 [Outside the presence of the jury]

13 THE COURT: And Mr. Roberts, do you want a moment to
14 confer with your co-counsel?

15 [Counsel confer]

16 THE COURT: Everybody may be seated while they have a
17 moment to confer. Do you want a short recess to confer with your team?

18 MR. BLALACK: About five minutes, Your Honor. We just
19 need to get a couple documents.

20 MR. ROBERTS: Or if the witness is coming back, I could do it
21 right at the beginning of the break after lunch. I can get ready in five
22 minutes. The problem is I just didn't have the unredacted version.

23 THE COURT: Good enough. So --

24 MR. ROBERTS: -- which would be for the Court exhibit.

25 THE COURT: Let's be back at 12:15, and I'll ask the marshal

1 to tell them they're going to have an extra five minutes. I know that
2 delays your departure.

3 THE WITNESS: That's okay.

4 MR. ROBERTS: Is that okay, sir?

5 THE WITNESS: Yeah. Absolutely.

6 THE COURT: I have to tell you guys, all these references to
7 the South. I grew up in a little town in Kentucky called London. It's
8 halfway between Lexington and Knoxville.

9 THE WITNESS: Georgetown Community Hospital.

10 THE COURT: Yep. So I'll let you know. And Mr. Blalack, I
11 think is from Tennessee.

12 MR. ROBERTS: Mr. Murphy went to University of Virginia.

13 THE WITNESS: William and Mary.

14 MR. ROBERTS: Oh that's right.

15 THE WITNESS: Yes.

16 MR. ROBERTS: Oh my gosh, I had my wrong alma mater.
17 Thank you. I knew it was one of them. Thank you.

18 THE COURT: My mother is a direct descendant of the person
19 who donated --

20 [Recess from 11:46 a.m., to 12:17 p.m.]

21 THE COURT: All right. So this is next year's law clerk, Mayli
22 Alarcon. These are the lawyers. All right, so Mr. Roberts are you ready?

23 MR. ROBERTS: I am, Your Honor.

24 THE COURT: Please proceed. And just for the record, this is
25 an offer of proof with regard to testimony that I sustained an objection

1 to.

2 MR. ZAVITSANOS: Yes, Your Honor.

3 MR. ROBERTS: Thank you, Your Honor.

4 BY MR. ROBERTS:

5 Q Mr. Murphy --

6 MR. ZAVITSANOS: Do we have a copy of that for the
7 witness?

8 MR. ROBERTS: When I get to it, I'll get him a copy.

9 MR. ZAVITSANOS: Okay, okay, thank you. Thank you, Mr.
10 Roberts.

11 FURTHER RECROSS-EXAMINATION

12 BY MR. ROBERTS:

13 Q I was just going back to a question I asked in front of the jury.
14 The judge sustained the objection. You testified that one of the reasons
15 you filed this lawsuit was for the clinicians and that included the
16 physicians staffing the emergency rooms, correct?

17 A That's correct.

18 Q Under the physicians' various employment contracts and
19 independent contractor agreements, is there a provision entitling them
20 to a portion of the amount the jury awards in this case?

21 A In these particular contracts, I don't believe so.

22 MR. ROBERTS: Your Honor, if I could just give the witness a
23 copy of 4918? Actually you can kind of look at it and hand it to her. And
24 then we'll mark that copy as the Court's exhibit.

25 MR. ZAVITSANOS: And Mr. Roberts, can I just ask you what

1 you all redacted here.

2 MR. ROBERTS: That was your redactions in the original
3 production.

4 MR. ZAVITSANOS: Oh, okay.

5 THE COURT: Is it 4918?

6 MR. ROBERTS: 4918.

7 THE COURT: Thank you.

8 MR. ZAVITSANOS: And this is the one the Court sustained
9 the objection.

10 MR. ROBERTS: And I believe the redactions were made by
11 TeamHealth in the original document productions.

12 MR. ZAVITSANOS: Thank you.

13 BY MR. ROBERTS:

14 Q And sir, you recognize this as an email which you wrote to
15 other employees an officers at TeamHealth?

16 A I do.

17 Q And are there attorneys included on that list?

18 A Yes, there is.

19 Q Does this email summarize a meeting that you had with Dan
20 Schumacher of UHG or United Health Group?

21 A Yes, it does.

22 Q So looking at that first bullet point, brief and productions by
23 Dr. Galvin who turned it over to me. Who is Dr. Galvin?

24 A Bob Galvin is a member of our Board of Directors. And he is
25 the CEO of Equity Healthcare.

1 Q And -- and is that a part of the Blackstone Group?

2 A It is a -- yes, it is a benefit management organization affiliate
3 with the Blackstone Group.

4 Q Thank you. And is he the one who set up this meeting with
5 Professor Schumacher?

6 A He is.

7 Q Second bullet point I said that I assumed Dan wouldn't know
8 from initial of emergency department E.D. And took him through the
9 basics. 150 average cost per encounter. Is that TeamHealth's average
10 cost of an emergency department encounter?

11 A Across all encounters. It was at the time, yes.

12 Q And the time was 2019 -- April 2019.

13 A That's correct.

14 Q And even though this is addressed in part to your lawyers,
15 the \$150 average cost per encounter was something you communicated
16 to Mr. Schumacher at the meeting, correct?

17 A That's correct.

18 Q Going down to the bullet point, the beginning we don't
19 balance bill. Does it say we don't balance bill, but we pursue litigation as
20 a strategy. Zero suits in 16/17, suits by '18, 2. Zero suits in 2016/17
21 suits by '18. Settled 4 in first quarter on eve of trial, that were 475
22 percent of the MCR with inflators. Did I read that correctly?

23 A That's correct.

24 Q What is MCR?

25 A Medicare.

1 Q Continuing UCR ultimately defined by our in-network rates
2 with the same payor. Rates from other payors and rates from the
3 Defendant to other providers. Did I read that correctly?

4 A You did.

5 Q What does UCR stand for?

6 A Usual and customary reimbursement.

7 Q And the dispute which you're referring to, which is the
8 subject of this lawsuit, was this a lawsuit to recover for out-of-network
9 services?

10 A Yes.

11 Q And in that prior litigation, or at least in the settlement of that
12 prior litigation, you defined UCR by your in-network rates with that same
13 payor; the one you sued, right?

14 A So what -- what this is -- going to be careful not to conflate
15 two things. This is the resolution of these lawsuits that came in-network
16 rates that were targeted at these same payors of the contract, et cetera.
17 Those became the benchmarks that we negotiated in-network
18 reimbursement.

19 This lawsuit today, is about out-of-network reimbursement and
20 what UCR is for out-of-network reimbursement. They're two different
21 things.

22 Q Sir, was that lawsuit to recover for out-of-network services?

23 A When we brought the lawsuit it was. My comment was we
24 settled it. And upon settlement the prospective rate was based upon in-
25 network parameters.

1 Q And is there a different UCR for in-network and out-of-
2 network? Does that somehow vary according to who you're billing and
3 whether you have a contract with them?

4 A Yes.

5 Q Or is the UCR the UCR?

6 A This is a shorthand description of my discussion with Dan
7 Schumacher, which was I relayed to him that we had been successful in
8 litigation defining in-network contract rates. I used UCR as that
9 benchmark. So I could have just as easily said in-network
10 reimbursement rates were ultimately defined. So that was not intended
11 to say what is the usual and customary rate that went into this litigation
12 and what we were entitled to prior to settlement.

13 Q And at this same meeting, did you threaten to sue the
14 employers that United had contracts with?

15 A Where do you see that, Lee?

16 Q Let's look at the next page under my response, which I
17 assume is yours.

18 A That's right.

19 Q Fifth bullet point, last two sentences. Or second to the last
20 two sentences. And I'm referring to we have helped employers
21 understand why we need to bring them as parties to the lawsuits.

22 A Yeah, let me just -- if it's okay, I'll read the whole paragraph.

23 Q Sure.

24 A To help with context.

25 [Witness reviews document]

1 A Okay, I've read it. Can you -- do you mind repeating the
2 question or the reference?

3 Q Sure. And I'm going to draw attention to the sentence. My
4 expectation is that we will have at least five lawsuits with UHG's largest
5 employer customers by the end of 2019. You're telling United at this
6 meeting, if you don't agree to our rates, we're going to start suing your
7 customers directly, right?

8 A That's -- my expectation was based upon our lawyers
9 advising me that there was culpability on the employer side, that we
10 would also be including them in the lawsuits.

11 Q You also referred like you're starting direct contracting
12 discussions with employers. And in fact, you actually entered into direct
13 contracts after this with man of the largest employer groups that United
14 had contracts with; isn't that correct?

15 A I believe that's correct.

16 Q Right. People like MGM?

17 A I believe that's correct.

18 Q And -- and you agreed to rates for those direct contracts at a
19 fraction of the rate you were telling UHG they would have to pay if they
20 entered into a network agreement with you directly, correct?

21 A I don't recall that.

22 Q Do you recall that they were lower than the rates you were
23 offering UHG?

24 A I honestly don't.

25 MR. ROBERTS: Your Honor, I'd ask to mark Exhibit 4918 as

1 Court's exhibit.

2 THE COURT: We have previously --

3 MR. ROBERTS: Next one.

4 THE COURT: -- we have previously done that.

5 MR. ROBERTS: I had only marked a redacted version. And
6 this is the unredacted version, just to clarify, Your Honor.

7 THE COURT: Good enough. Any objection?

8 MR. ZAVITSANOS: It's just an offer of proof, Your Honor, so
9 I don't know that I have a basis for an objection, so --

10 THE COURT: So the unredacted 4918 will be admitted as the
11 Court's exhibit.

12 [Court's Exhibit 4918 admitted into evidence]

13 MR. ROBERTS: And I just have one more, Your Honor. I'll
14 give you your copy --

15 THE COURT: Okay.

16 MR. ROBERTS: -- as soon as your counsel checks and makes
17 sure it's okay with them.

18 MR. ZAVITSANOS: And, Your Honor, I know -- I'm sorry, I
19 know -- I know counsel is doing an offer of proof, and I don't really have
20 a basis to object, but I believe this is --

21 THE COURT: It's AEO.

22 MR. ZAVITSANOS: This is -- this is a document that centers
23 around legislative issues and lobbying, and I did not -- it's obvious from
24 the record I did not ask any questions around that to this witness, so I
25 just want that noted for the record, so --

1 MR. ROBERTS: And this offer of proof would be what we
2 intend to offer in our case if we were to go into this, Your Honor.

3 BY MR. ROBERTS:

4 Q So I've handed you a document that's been marked as
5 Proposed Exhibit 4643. Do you recognize this document as a PowerPoint
6 with your name on it?

7 A Yes, I do.

8 Q Is this a PowerPoint prepared for whom? It says United
9 Healthcare developing a collaborative national solution to address the
10 process.

11 A This was shared with Dan Schumacher.

12 Q Okay. So all the information in this document was revealed
13 to United Healthcare?

14 A It was.

15 Q And it's got your name on the front. If you'd look at the last
16 page, page 19. Does this indicate, for any questions about this
17 document, contact you?

18 A I'm sorry, look -- oh, look at page 19.

19 Q Page 19. It's the very last one in the stack.

20 A Yeah.

21 Q For questions or additional information, contact Leif Murphy,
22 right? So just a couple of things I want to get in the record quickly, Your
23 Honor, and then I'll be done. If you could turn to page 7, sir. The slide is
24 entitled "Despite its complexity."

25 A Okay.

1 Q Does this confirm the same thing in your email that you told
2 United Healthcare that the average cost to provide clinicians in an
3 emergency department is \$150 per encounter?

4 A That's correct.

5 Q And does this also go through and talk about your average
6 collection per encounter?

7 A It does.

8 Q And is it correct that you told United that your average
9 collection amount per commercial insured encounter was \$350 per
10 encounter?

11 A That's right. Net cash after any losses on co-payment,
12 deductible or unpaid claim.

13 Q Right. So if the insurance company allowed 350 and wrote a
14 check for 350, that would be here. But it would also include any amount
15 you got from other sources, like co-pays from the insured network?

16 A No, it would -- yeah, so essentially if we had unpaid self-pay
17 balances for a co-pay or deductible, those unpaid balances would
18 increase the amount that we were entitled, but United would shift the
19 burden of that payment over to the patient and so they were
20 uncollectible.

21 Q I've got it. So this doesn't have anything to do with the
22 amounts that were payable to you. This is just the average amount you
23 collected.

24 A That's right.

25 Q And that is from all commercial insurers, including United?

1 A Yes, that's right.

2 Q If you could turn to page 10, sir, slide starting "Balance
3 billing. Not a source of revenue, but rather a contract leveraging pool."
4 Does this indicate that in 2017, TeamHealth balance billed \$27,550 to
5 patients?

6 A That's correct. .08 percent of our encounters.

7 Q If you could turn to page 12, sir, slide entitled "Out-of-
8 network reimbursement is declining."

9 A Page -- I'm sorry, page 12, okay.

10 Q And right in the middle is a chart. Multi-year trend of
11 allowables. And this is the amount allowed by insurance companies,
12 correct?

13 A This is correct.

14 Q So for -- I'd just like to focus on the years at issue here, 2016,
15 '17 and '18. Is it correct that in 2016, your average allowed by Blue Cross
16 Blue Shield of in and out-of-network was 176 percent of Medicare?

17 A That's correct.

18 Q And then that gradually went up, correct?

19 A That's correct.

20 Q But it -- even in 2018 it was only 192 percent of Medicare,
21 correct?

22 A That's correct.

23 Q And that amount is substantially lower than the both, 35
24 percent of Medicare and 250 percent of Medicare, which TeamHealth
25 objects to in this current litigation, correct?

1 A It is -- Blue Cross Blue Shield has broken out on its own line
2 because of the relative scale that they bring, just compared to United.
3 But that is correct.

4 Q So let's ignore Blue Cross Blue Shield. All out-of-network
5 commercial reimbursements, non-Blue Cross Blue Shield in 2018 was
6 306 percent of Medicare, correct?

7 A That's correct.

8 Q And that's the adjudicated allowed amount, not the actual
9 amount remitted to TeamHealth, right?

10 A Let me just review the footnote to be sure.

11 [Witness reviews document]

12 A That's correct. Now remember this is a very small out-of-
13 network percentage of our patients. And you can see in that out-of-
14 network commercial, those are also a number of the ones, that are going
15 through the lawsuits to essentially bring them in-network at reasonable
16 rates of reimbursement.

17 Q If I could finally, sir, have you turn to page 14. Slide entitled
18 "Out-of-network reimbursement is unilaterally driven, arbitrary and
19 consistent." Let me have you look at page 2018 -- excuse me, year 2018
20 in the chart.

21 A Okay.

22 Q And we -- we have a column -- first column is percentage of
23 Medicare. Last column is the year. So am I reading this chart correctly
24 that in 2018, 45 percent of your out-of-network claims were paid between
25 100 and 199 percent of Medicare?

1 A That's correct.

2 Q And that's even lower than the amounts that were
3 adjudicated by United in this litigation, isn't it?

4 A And similarly likely disputed by us and being pursued.
5 Hence the 18 lawsuits.

6 MR. ROBERTS: That's all I have, Your Honor. I ask to mark
7 Exhibit -- proposed Exhibit 4643 as Court's Exhibit next in line.

8 [Court's Exhibit 4643 marked for identification]

9 THE COURT: It will be marked as a Court's Exhibit --

10 [Court's Exhibit 4643 admitted into evidence]

11 MR. ZAVITSANOS: Your Honor, may I have 60 seconds to
12 just ask two contextual questions?

13 THE COURT: You may.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. ZAVITSANOS:

16 Q Mr. Murphy, was the document about which you were just
17 asked prepared in connection with negotiations for in-network rates with
18 United? With -- in your conversation with Mr. Schumacher?

19 A It was originally prepared as a part of the lobbying in
20 Washington over how out-of-network billing should be used, and then
21 was subsequently used in those negotiations with Dan Schumacher for
22 the contracts.

23 Q Last question. During those negotiations, did Mr.
24 Schumacher make any comments reflecting United's attitude about
25 closing hospitals or the effect it would have on physicians?

1 A So from the prior email that we reviewed that talked about
2 the growing number of lawsuits and the escalation in underpayments in
3 out-of-network, I was very clear with Mr. Schumacher that reductions in
4 payment were ultimately going to reduce the pay that went to physicians
5 and that it would also be impossible for rural and smaller hospitals to be
6 able to subsidize physician pay given their payer mechs.12:38:43

7 Q And what was his response?

8 A That many hospitals in his mind needed to close and
9 physician pay needed to come down.

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

11 THE COURT: Okay.

12 MR. ROBERTS: One follow-up, Your Honor.

13 FURTHER RECROSS-EXAMINATION

14 BY MR. ROBERTS:

15 Q I know you said they were prepared int context of
16 presentation to Congress and then given to United. Since these
17 numbers were originally prepared for Congress, you did your best to
18 ensure they were absolutely accurate, correct?

19 A Actually, I think that would be an overstatement. We had to
20 respond very quickly to a fast-moving legislative process, so we did the
21 best we could with the information.

22 MR. ROBERTS: Thank you, sir. Nothing further, Your Honor.

23 THE COURT: May we now excuse Mr. Murphy?

24 MR. ZAVITSANOS: From the Plaintiff, yes, Your Honor.

25 THE COURT: Yes?

1 MR. ROBERTS: Your Honor, you mean in front of the jury?

2 THE COURT: Yeah. May we excuse him?

3 MR. ROBERTS: Unless the Court is going to let me go into
4 any of that?

5 THE COURT: I'm not. I'm not. But you've made a record.

6 MR. ROBERTS: I did have one request, though, just to make
7 sure we have an understanding. The document for 313 is -- was not yet
8 redacted. In the reference line, it has the word "termination".

9 MR. ZAVITSANOS: Yeah, we're going to fix that.

10 MR. ROBERTS: But can we just redact termination --

11 MR. ZAVITSANOS: Yes.

12 MR. ROBERTS: -- so at least we show that the --

13 MR. ZAVITSANOS: Yes.

14 MR. ROBERTS: -- who it's related to?

15 MR. ZAVITSANOS: Yes.

16 THE COURT: Make sure --

17 MR. ROBERTS: Then nothing further and no problem.

18 THE COURT: Make sure you agree on that and make sure
19 you work with the clerk because that's a hard job. I don't want to put her
20 on the spot. She's a fill-in today.

21 MR. ROBERTS: Yeah. We'll --

22 THE COURT: And she's a supervisor, so -- yeah.

23 MR. ROBERTS: Thank you.

24 MR. ZAVITSANOS: Yeah. We'll get it corrected, Your Honor.

25 THE COURT: Good enough. All right. So as soon as I see

1 the marshal, I'll give him the high sign to bring in the jury.

2 MS. LUNDVALL: Your Honor?

3 THE COURT: Yes?

4 MS. LUNDVALL: One issue, but I don't like to do bench
5 conferences in front of the jury. And so we had an issue over the
6 admission and the redactions associated with 313.

7 THE COURT: Right.

8 MS. LUNDVALL: There are four digital exhibits that we've
9 given to them that have been redacted to comport them with the Court's
10 motions in limine. And what I'm trying to do is to avoid a bench
11 conference. And so what I'd like to do is to find out if there's any
12 objections to the redacted versions of 295, 325, 314, and 348.

13 THE COURT: Let's give them a moment.

14 MR. ROBERTS: And these were proposed for use with Ms.
15 Hare?

16 MS. LUNDVALL: Yes.

17 MR. GORDON: Your Honor, that relates to a larger point that
18 we're looking at with the next witness, Hare. It would be pretty
19 impossible for her to testify to any question in this case. As the Plaintiffs
20 know and what is opposed there is the way that Sierra and HPN
21 reimburses their out-of-network claims is the greatest [indiscernible]
22 which is based on [indiscernible] which is in-network rates, Medicare,
23 and EME. So I don't know any question that she could answer, including
24 these documents which are redacted. All these documents relate to
25 communications between the parties after Fremont terminated the

1 agreement.

2 So Sierra and HPN, this is the first time there's been a
3 provider group that terminated from in-network to out-of-network that
4 Sierra dealt with. So the communications deal with the termination and
5 any answer she gives would be based on the network rates, Medicare.
6 So I don't know how this examination can go forward.

7 MS. LUNDVALL: Your Honor, I have no intention of going
8 anywhere near in-network rates.

9 THE COURT: I know.

10 MR. GORDON: Well, then what would she talk about?

11 MS. LUNDVALL: So I --

12 MR. GORDON: We know these programs are totally different
13 than United. There is no MultiPlan. There's no shared savings, as we
14 know from the deposition. So any answer that Ms. Hare is going to give,
15 any answer, is going to be based on in-network rates, Medicare, and
16 that's it. So I don't know what she intends to ask, and I don't know what
17 she thinks she can get from this witness other than -- if it's not going to
18 be based on that.

19 THE COURT: Well, let's find out. Let me --

20 MR. GORDON: Yeah, but if there's really no --

21 MR. ROBERTS: It's fine if they want to do, just as long as we
22 can --

23 MR. GORDON: If it has nothing to do with the network,
24 aren't you just opening the door, or as Mr. Zavitsanos said, we're kicking
25 the barn door open. So if that's where they want to go, that's fine.

1 MS. LUNDVALL: Well, I have no intention of kicking the barn
2 door open, let alone me getting my shoe underneath the crack
3 underneath the door.

4 MR. GORDON: Nice shoe.

5 THE COURT: Good enough.

6 MS. LUNDVALL: Thank you, Your Honor.

7 THE COURT: So when the marshal comes in, we'll excuse
8 Mr. Murphy?

9 MR. ZAVITSANOS: Yes, Your Honor.

10 THE COURT: Good enough.

11 MR. GORDON: And I'll look at those exhibits.

12 THE COURT: So you guys can be at ease until I see the
13 marshal.

14 MS. LUNDVALL: Okay. Thank you. I was just trying to avoid
15 a bench conference and trying not to further delay.

16 [Pause]

17 THE MARSHAL: All rise for the jury.

18 [Jury in at 12:45 p.m.]

19 THE COURT: Thank you. Please be seated. And Plaintiff, am
20 I correct that we can excuse Mr. Murphy?

21 MR. MCMANIS: Yes, Your Honor.

22 THE COURT: Defendant, may we excuse Mr. Murphy?

23 MR. ROBERTS: Yes, we may, Your Honor. Thank you.

24 THE COURT: Very good. Thank you, sir. You may step
25 down and you're excused. Plaintiff, please call your next witness.

1 MS. LUNDVALL: We would call Leslie Hare.

2 LESLIE HARE, PLAINTIFFS' WITNESS, SWORN

3 THE COURT: Please proceed.

4 THE CLERK: Ma'am, can you state your first and last name
5 for the record, please, and spell them both?

6 THE WITNESS: Yes. My name is Leslie Hare.

7 THE COURT: Please spell.

8 MS. LUNDVALL: Ms. Hare, after you orient yourself, in the
9 corner of the witness box is a copy of your deposition transcript in the
10 event that it's needed, okay?

11 THE WITNESS: Yes, thank you.

12 THE COURT: And you can all see her? Thank you.

13 THE CLERK: Can we get the spelling of your name, please?

14 THE WITNESS: Sure. L-E-S-L-I-E, last name is H-A-R-E.

15 THE COURT: Go ahead.

16 DIRECT EXAMINATION

17 BY MS. LUNDVALL:

18 Q Ms. Hare, could you introduce yourself to the jury and
19 identify your place of residence?

20 A Sure. My name is Leslie Hare, and I live here in Las Vegas,
21 Nevada.

22 Q You're associated with Sierra Health and Life, the company;
23 is that correct?

24 A Yes. I work for Health Plan of Nevada, but I also am
25 accountable for Sierra Health and Life.

1 Q So you are associated both with Sierra Health and Life as
2 well as Health Plan of Nevada, correct?

3 A Yes. I'm accountable for both Health Plan of Nevada and
4 Sierra Health and Life business.

5 Q And you're actually the vice president of claims operations
6 for those two organizations?

7 A Yes, that's my current title.

8 Q And you understand that those two companies are two of the
9 Defendants in this action?

10 A Yes. I understand that Sierra Health and Life and Health Plan
11 of Nevada are both named as Defendants.

12 Q In other words, they are being sued in this action, correct?

13 A Yes. I understand that.

14 Q And you are aware that this action was filed in April of 2019,
15 correct?

16 A I'm not sure I know what exact date it's filed.

17 Q You don't have any reason to disagree with me, though, that
18 the complaint was filed in April of 2019?

19 A No, I don't have any other reason to disagree with you for
20 that date.

21 Q Now, previously, during the course of this case and after it
22 was filed in April of 2019, you had your deposition taken, did you not?

23 A Yes, I was deposed.

24 Q And you testified in a capacity as a corporate representative
25 for both Sierra Health and Life as well as Health Plan of Nevada on

1 certain topics, did you not?

2 A Yes. That was my capacity for the deposition.

3 Q And you understood your testimony, given the capacity in
4 which that you testified, bound the two companies that you were
5 testifying on behalf of?

6 A Could you repeat that question, please?

7 Q You understood during the course of your deposition that
8 your testimony bound the two companies that you had agreed to testify
9 on behalf of?

10 A I'm not sure I have a understanding of the term bound. I do
11 know that I testified on behalf as the corporate representative for Sierra
12 Health and Life and Health Plan of Nevada.

13 Q Now, currently and during the time of your deposition, you
14 testified -- when you testified, you were the vice president of claims
15 operations for those two companies; is that right?

16 A Yes, that was my title then, too.

17 Q And has your title changed since that point in time?

18 A No. It's remained consistent for Health Plan of Nevada and
19 Sierra Health and Life.

20 Q And across what period of time, then, have you been the vice
21 president of claims operations for those two companies?

22 A I've been in my role since about 2010.

23 Q And prior to 2010, you had an association with one or both of
24 those companies, correct?

25 A Yes.

1 Q And as a matter of fact, you've been associated with them for
2 over 25 years; is that right?

3 A Yes. I've been an employee of, at first, Sierra Health
4 Services, and since the acquisition, Health Plan of Nevada, Sierra Health
5 and Life, for -- it will be 26 years in January.

6 Q Now, in the capacity as vice president of claims operations,
7 you knew how your companies were reimbursing the Plaintiffs in this
8 action during the relevant time frame, correct?

9 A Yes. I'm responsible for and aware of how Health Plan of
10 Nevada and Sierra Health and Life were reimbursing Fremont from
11 February 2019 forward.

12 Q And did any of those claims then involve Ruby Crest?

13 A I believe that there were some Ruby Crest claims in some of
14 the deposition files.

15 Q And what about Team Physicians? Some of the claims
16 included Team Physicians, too; is that correct?

17 A I believe there might have been some Team Physicians
18 claims in there. I don't recall. It was a -- it was a pretty big file.

19 Q Now, you know that there are three Plaintiffs that are
20 bringing this action, correct?

21 A Yes, I believe I'm aware that there's three Plaintiffs.

22 Q All right. Now, you and I haven't spoken before, correct?

23 A Yes, that's correct.

24 Q And so that I can understand how much of a foundation that I
25 need to lay for my questions, since we're trying to move things along

1 here in the trial, what I'm going to ask you is a couple questions to find
2 out what preparation that you've done to testify here to the jury. All
3 right?

4 It's traditional for attorneys to gather all of the emails or
5 documents that may have been authored by a witness and give them an
6 opportunity to review them that have been produced in the case. Did
7 you have that opportunity?

8 A We reviewed --

9 MR. GORDON: Objection, Your Honor. To the extent this
10 gets into the attorney-client privilege area. I instruct the witness not to
11 answer.

12 THE COURT: Clarify your question, please.

13 BY MS. LUNDVALL:

14 Q I'm just simply asking if you had the opportunity to review
15 emails that you authored or documents that you may have authored.

16 A I don't recall reviewing any documents or emails I authored.

17 Q All right. So you don't have any recollection as part of your
18 preparation to review any of your emails or any of the documents that
19 you may have authored?

20 MR. GORDON: Your Honor, may we approach?

21 THE COURT: You may.

22 [Sidebar at 12:53 p.m., ending at 12:54 p.m., not transcribed]

23 THE COURT: Okay. An objection has been overruled. It
24 means you can answer the question.

25 THE WITNESS: Okay. Would you mind asking me that

1 question once more, please?

2 BY MS. LUNDVALL:

3 Q I will, because what I don't want to do is to confuse you in
4 any fashion, okay?

5 A Sure.

6 Q Now, you had the opportunity to review any of the emails or
7 documents that you may have authored that have been produced during
8 the course of this case, correct? Before you came to this courtroom to
9 testify to this jury, you had an opportunity to prepare, correct?

10 A Yes. I prepared with my attorneys.

11 Q All right. And part of that preparation allowed you an
12 opportunity to review documents that you authored, emails that you
13 may have authored, correct?

14 A I don't recall as a part of our preparation reviewing any
15 documents that I would have authored.

16 MR. GORDON: I mean, Your Honor, I mean, again I think
17 we're get into the approaching attorney/client privilege, which we're
18 trying to avoid.

19 THE COURT: She didn't step over the line either in the
20 question or the answer so far. Overruled.

21 BY MS. LUNDVALL:

22 Q What about documents that may have been authored by
23 other individuals within the department that you had responsibility for
24 supervision? Did you have the opportunity to review those?

25 A We reviewed several documents in my sessions with the

1 attorneys.

2 Q And the documents that you had the opportunity to review
3 before you came to testify here, did they include documents that were
4 authored by others that were under your supervision?

5 A I don't recall all of the documents that were reviewed. If
6 there's one that you specifically want me to take a look at, I'd be happy
7 to.

8 Q Okay. And did you have the opportunity to review a
9 document that related to Health Plan of Nevada in the context of their
10 reimbursement then of the claims that are at issue in this litigation?

11 A I reviewed some of our evidence of coverage and some of
12 our other benefit plan documents that would specifically outline how we
13 paid emergency services for nonplan providers.

14 Q And did that also include documents that had been authored
15 by those in your department and the department that touched upon
16 Health Plan of Nevada as well as Sierra Health and Life?

17 A Well, in general -- that's a pretty broad question, so in
18 general, I would say that the benefit plan documents aren't specifically
19 written by folks in my department, but they're used by the people in my
20 departments who configure our systems. And we -- I reviewed those
21 documents as a part of preparation today. And they were written by
22 others with HPN and SHL.

23 Q And now, the counsel that you did your preparation to testify
24 with today, they're the attorneys that are on this side of the courtroom
25 generally?

1 A Yes. That's correct.

2 Q And there's not separate counsel for Sierra Health and Life or
3 separate counsel for Health Plan of Nevada from the counsel that is also
4 representing United. Is that correct?

5 A I worked with the attorneys that you pointed out over on this
6 side of the room and we specifically worked on the material that I'm
7 accountable for, which is Health Plan of Nevada and Sierra Health and
8 Life.

9 Q But did you understand those attorneys to represent Sierra
10 Health and Life and Health Plan of Nevada and United?

11 A I didn't -- I don't know that I have any knowledge of that one
12 way or the other. I know that the extent of my preparation is what I have
13 personal knowledge of in my role, specifically for Health Plan of Nevada
14 and Sierra Health and Life.

15 Q Did your preparation also include information about court
16 orders that have been put in place by the judge in this case and with
17 instructions that you needed to obey those court orders?

18 A I don't recall getting that sort of instruction in that context.

19 Q Well, you would understand that you do have a duty to obey
20 the Court's orders, correct?

21 MR. GORDON: Objection, Your Honor.

22 THE COURT: Grounds?

23 MR. GORDON: Foundation.

24 THE COURT: Lay more foundation.

25 BY MS. LUNDVALL:

1 Q You do understand in general that you have duty to obey the
2 Court's orders as it relates to any restriction on your testimony to this
3 jury, correct?

4 A I think I could understand that, yes, absolutely.

5 Q And were you informed of court orders that have been put in
6 place by the Court that place restrictions upon your testimony?

7 A I don't recall being given language like court orders or any
8 restrictions, per se, as a part of the preparation.

9 Q Well then we may have to proceed a little bit more gently to
10 ensure that you do not violate of the court orders, okay?

11 A Okay.

12 Q All right. Let's turn to Health Plan of Nevada and Sierra
13 Health and Life. Now, neither of those companies offer TPA services. Is
14 that correct?

15 A Yes, that's correct.

16 Q They are a -- they offer fully insured products?

17 A Yes. Health Plan of Nevada and Sierra Health and Life offer
18 fully insured products to our members here in Nevada.

19 Q And under those fully ensured products, then, it is Health
20 Plan of Nevada and Sierra Health and Life that is taking the risk of
21 coverage for the plans or for the contract then that they've issued. Is that
22 correct?

23 A Yes, that's my general understanding of fully insured. In
24 terms of my day to day working knowledge in my capacity in claims
25 operations, I understand that we have various products that we support

1 for Health Plan of Nevada and Sierra Health and Life that are fully
2 insured.

3 Q Now, for those fully insured products, you used a
4 computerized platform then to adjudicate or to process the claims that
5 are submitted to Sierra Health and Life as well as Health Plan of Nevada;
6 is that correct?

7 A Yes. We have a claim platform.

8 Q And the claim platform is FASIS?

9 A Yes. Our adjudication platform is called FASIS.

10 Q And you use FASIS then as a claims processing platform
11 from start to finish?

12 A Yes. Claim -- claims are loaded into FASIS and they are
13 processed against benefit plans and plan provisions as well as eligibility
14 and provider contracts, other benefit constructs, in order to process
15 those claims through to completion.

16 Q And you do not have any other claims process platform other
17 than FASIS; Is that right?

18 A That's correct. Under my accountability for HPN and SHL,
19 those fully insured products are on FASIS and FASIS only.

20 Q And from your perspective, it's important to load accurate
21 information into FASIS so that you get an accurate adjudication of the
22 claim being processed. Is that correct?

23 A Yes. We put a high value on ensuring that we configure our
24 products and our members in a way within FASIS so that we can process
25 our claims accurately and efficiently, so that we can pay the claims

1 correctly the first time that we get them.

2 Q So -- and it underscores the old axiom that you have to make
3 sure that you put the proper information to get the proper result, correct?

4 A Yes. That's correct. We need to have an understanding of
5 what we are receiving and what processing against, so that we can
6 process it efficiently and correctly.

7 Q And part of that load into FASIS also is insuring that you
8 comply with all legal and regulatory requirements, correct?

9 A That is correct. We abide by our plan ben --

10 Q All I want to know is whether or not that when you load into
11 FASIS that you ensure that you're abiding then by all legal and
12 regulatory requirements, correct?

13 MR. GORDON: Objection, Your Honor. If you could allow
14 the witness to finish her answer.

15 MS. LUNDVALL: What I'm trying to do is be protective of the
16 witness.

17 THE COURT: I think it was just being -- just clarifying. So
18 overruled.

19 THE WITNESS: So we do abide by legal and regulatory
20 requirements that are outlined by a variety of different sources. Some of
21 those are in our plan benefit documents. Some of them are in federal
22 and state regulatory guidance.

23 BY MS. LUNDVALL:

24 Q All right. Now, on behalf of Sierra and Health Plan of
25 Nevada, is it your position that providers who are not in-network, then it

1 is the plan or the contract documents then that dictate how providers are
2 to be reimbursed?

3 A For providers that are not in-network?

4 Q Yes.

5 A It's the plan benefit documents that dictate reimbursement,
6 specifically for emergency services.

7 Q Or it is the contract -- the insuring contract under your fully
8 insured product then that dictates then how benefits are going to be
9 paid?

10 A Yes. I commonly refer to that as our plan benefit documents.

11 Q And those agreements are between Sierra Health and Health
12 Plan of Nevada and their clients, correct?

13 A Yes. Those are the documents. Those plan benefit
14 documents are the ones that when either an individual -- either on or off
15 the exchange or like an employer group or a union that purchases
16 coverage on behalf of their members or their employees. When they
17 purchase one of our plans, whether it be Health Plan of Nevada or Sierra
18 Health and Life. We issue those plan benefit documents to the members
19 and to whoever is purchasing the coverage and that is what outlines the
20 type of coverage they get and in the case of emergency services for
21 nonplan providers, it also specifically outlines how reimbursement is
22 calculated.

23 Q And just to make sure that we're not confusing the jury here.
24 The products that your two companies adjudicate are fully insured
25 products, whereby Sierra and Health Plan is taking the risk under the

1 insuring contract, correct?

2 A Yes. Health Plan of Nevada and Sierra Health and Life offer
3 fully insured -- a wide variety of different products. Sometimes they're
4 referred to as either PPO or point of service or HMO products. Often,
5 they're identified by that benefit schedule that outlines various cost
6 shares. But behind that is also a variety of different plan benefit
7 documents that outline with specificity how members are covered and
8 what covered services are and other plan provisions and specifically,
9 how emergency services for nonplan providers are reimbursed for those
10 fully insured products.

11 Q Now, neither Health Plan of Nevada or Sierra Health and Life
12 seek input from providers concerning the level of benefit to put into
13 those contracts, correct?

14 MR. GORDON: Objection. Vague.

15 THE COURT: Overruled.

16 THE WITNESS: Our plan benefit documents are written in
17 conjunction with state and federal regulations and also in a way that
18 we're putting the benefits together for our customers.

19 BY MS. LUNDVALL:

20 Q Ms. Hare, I'm going to go back to my question. My question
21 was whether or not that you sought input from providers before
22 reaching the agreement then between Health Plan of Nevada and
23 whatever clients then that agree to purchase your product.

24 MR. GORDON: Objection. Compound.

25 THE COURT: It is compound. You can break it down.

1 BY MS. LUNDVALL:

2 Q Health Plan of Nevada issue -- negotiates and issues a
3 contract with its clients, correct?

4 A By clients, you mean our employer groups, unions and
5 individuals --

6 Q Right.

7 A -- yes.

8 Q Okay. And you don't seek input from providers as to either
9 language or rates or amounts or anything of that nature then into those
10 documents, correct?

11 A Well, those are sort of two -- I'm struggling to answer your
12 question, because those are two separate issues. We prepare our plan
13 benefit documents to be sold to our customers and it's based upon the
14 existence of contracts with providers, so our contracted providers are
15 aware of the various plan benefit documents --

16 MS. LUNDVALL: Your Honor, I'm going to -- as far as to
17 interrupt the witness at this point in time and ask to move to strike,
18 because she's now referring to something different that is -- falls within
19 the scope of Court's order.

20 MR. GORDON: Your Honor, she's answering the question.
21 It's responsive to her question. She's cut her off a few time answering
22 the question. Here, is directly responsive to her question. She's allowed
23 to complete her answer.

24 THE COURT: I found it was nonresponsive, so I will strike the
25 last testimony. You can disregard it and you can ask again.

1 MS. LUNDVALL: Thank you.

2 BY MS. LUNDVALL:

3 Q I'm trying to make sure that I focus your attention under
4 contract that's at issue. Health Plan of Nevada negotiates a contract
5 them with the client, like the employer, the union groups for a fully
6 insured product, correct?

7 A Uh-huh. That's correct.

8 Q And you don't go knock on the door to the provider groups
9 and say what rate are you using, what rate should I put in here, how
10 much should I put into this plan, correct?

11 A I apologize. I'm attempting to answer your question, but
12 those -- your question is phrased in a way that those two activities
13 don't necessarily go together like that. So we're building products with
14 benefits, and it's based on the existence of a contracted network, so that
15 sequence of events that you're describing in your question doesn't
16 necessarily exist.

17 Q We're talking about two separate concepts, right?

18 A You are talking about two separate concepts in a line of
19 events that doesn't necessarily happen.

20 Q And what I'm trying to focus your attention upon -- all right --
21 solely upon Health Plan of Nevada going to, let's say, Union A. They
22 want to buy a fully insured product from you. You sell them a fully
23 insured product. You write a contract with them. You have a plan with
24 them as to how you're going to pay claims for someone who has
25 coverage under that plan, correct?

1 A Yes.

2 Q In that circumstance, that circumstance, you don't go to any
3 out-of-network provider and say hey, what is your rate?

4 A So that's still a pretty broad hypothetical. And it could -- that
5 could be any number of different circumstances.

6 Q All right. Then let me ask the same question then for Sierra
7 Health and Life. Same circumstances. Sierra Health and Life wants to
8 sell a fully insured product. Now Union B. You negotiate a contract; you
9 draft a plan for the administration of that fully insured plan. You're not
10 going to the out-of-network providers and saying what are your rates
11 before you draft that plan, correct?

12 A Again, that's describing a sequence of events that doesn't
13 really exist in our world. If we want to talk specifically about, let's say
14 emergency services, we can talk about what happens within our plan
15 benefits documents about -- that describe how we reimburse emergency
16 services. Perhaps --

17 Q Well, let's turn your attention, then, to emergency services.
18 Now, neither Health Plan of Nevada or Sierra ever pay full bill charges,
19 correct?

20 A We have language in our plan benefit documents that
21 describe how we reimburse nonplan providers for emergency services.
22 And it's based in the language that comes from the Affordable Care Act.
23 It is rare that we pay bill charges. I can think of just once instance where
24 we pay bill charges, and it was based upon a specific instruction from
25 one specific group, and that's the Federal Employees Health Benefit Plan,

1 and the Federal Employees Health Benefit Plan, the federal government
2 specifically told us to pay billed charges, and that's the only instance I
3 can think of.

4 And in that case, the way I would answer your question is Health
5 Plan of Nevada and Sierra Health and Life was not driving the decision to
6 pay billed charges. We were paying, in accordance with our planned
7 benefit documents, it just so happens in that case that the Federal
8 Employees Health Benefit Plan was telling us to pay billed charges

9 Q And so under the other plans that were -- other than the
10 single plan that you just described?

11 A Uh-huh.

12 Q Your system is not set up ever to pay full billed charges,
13 correct?

14 A For nonplanned emergency services we pay, we have
15 configured our system to pay those claims according to the language in
16 our plan benefit documents, and that language is what we call the
17 greater of three. We've configured our system to pay that greater of
18 three rate.

19 Q Well, the greater of three rate, and you said that it is based
20 upon the Affordable Care Act, the Affordable Care Act puts a floor, puts a
21 minimum, has a minimum wage in it, correct?

22 A I'm not familiar with that term "minimum wage: What I am
23 familiar with is -- in my role, is that the Affordable Care Act specifically
24 described for us as a payor and all payers three rates that we should be
25 comparing to determine what the reimbursement rate is for nonplanned

1 emergency services.

2 Q And we'll get to the Affordable Care Act, but generally, as
3 you sit here, you understand that the Affordable Care Act puts a floor, a
4 minimum, it's not the ceiling, it's not a cap, it's the floor, correct?

5 MR. GORDON: Objection. Asked and answered.

6 THE COURT: Overruled.

7 THE WITNESS: I wouldn't characterize it in my knowledge as
8 a floor. It specifically describes for us how to set the reimbursements.

9 BY MS. LUNDVALL:

10 Q Now let me take you back then to your FASIS Program?

11 A Uh-huh.

12 Q Your FASIS Program is never set up to pay full billed charges
13 to these plaintiffs, whether under the Health Plan of Nevada products or
14 the Sierra Health and Life products, correct?

15 A That's -- that's correct. We pay in accordance with our health
16 benefit plans, so we pay the greater of three, and the only exception that
17 I know of is the Federal Employees Health Benefit Plan.

18 Q So even if the plaintiff's full billed charges were usual,
19 customary, and reasonable, you were never going to pay those full billed
20 charges, correct?

21 MR. GORDON: Objection. Foundation. Vague.

22 THE COURT: It's overruled.

23 THE WITNESS: Could -- could you repeat that question for
24 me, please?

25 BY MS. LUNDVALL:

1 Q Even if the employer -- or the Plaintiff's out-of-network
2 provider groups submitted billed charges to you?

3 A Uh-huh.

4 Q And even if those billed charges were usual, customary, and
5 reasonable, FASIS was not set up to pay those billed charges, correct?

6 MR. GORDON: Objection. Calls for speculation.

7 THE COURT: Overruled.

8 THE WITNESS: So all providers that submit claims to us
9 submit a data element on the claim called billed charges, and so we take
10 that in and adjust it into our system. I can't make the assumption that
11 the billed charge is usual, customary, and reasonable. That's -- that's not
12 necessarily an assumption that I can make, that it's usual, customary,
13 and reasonable. Plus, at the end of the day, we're going to revert back to
14 our standard, our health benefit plans direct us how to pay, and that's
15 where we get to the greater of three.

16 Q All right. So what I'd like for you to is to pick up your
17 deposition. It's up there in the corner. Now in your -- when you had
18 your deposition taken in this case you raised your hand to tell the truth
19 the same as you did before you took the witness stand here today?

20 A Yes, I did.

21 Q And what you were doing during the course of your
22 deposition was trying to give the best answer that you could at the time?

23 A Yes, I was.

24 Q And you also were given an opportunity to review your
25 deposition transcript after it was completed and after the transcript was

1 prepared and transcribed?

2 A Yes.

3 Q And you were given the opportunity to make changes,
4 correct?

5 A Yes, I was.

6 Q And that would have been so in the event that the court
7 reporter made some type of an error; is that right?

8 A Yes, that's my understanding.

9 Q All right. What I want you to do is to turn to page 73, and I'm
10 going to read aloud the question, and I'm going to go directly to your
11 answer then and that is followed after an objection. And what I want you
12 to do before I do that is to read silently to yourself then beginning at
13 page 73, line 11, and then go to page 74, line 4.

14 Now after reading that silently to yourself, does it continue to
15 be your position that Sierra Health Life and Health Plan of Nevada do not
16 pay full billed charges?

17 MR. GORDON: Objection, Your Honor. Mischaracterizes the
18 testimony.

19 THE COURT: Overruled.

20 THE WITNESS: I believe my testimony in the deposition is
21 consistent with what I just testified a few moments ago which is Health
22 Plan of Nevada and Sierra Health and Life rarely pay billed charges, and
23 the only instance that I can think of where we do is for the Federal
24 Employees Health Benefit Plan, where that sponsor, that plan sponsor
25 specifically told us to pay full billed charges.

1 BY MS. LUNDVALL:

2 Q Now on behalf of Sierra and Health Plan of Nevada, you
3 don't even have usual, customary, and reasonable written into any of the
4 plan documents for any covered service that's at issue in this case; do
5 you?

6 MR. GORDON: Objection to foundation and compound.

7 THE COURT: Overruled.

8 THE WITNESS: So what's at --

9 BY MS. LUNDVALL:

10 Q And that's a yes or no answer, okay?

11 A I --

12 Q You don't have usual, customary, and reasonable written
13 into any plan document for any covered services that's at issue in this
14 case, correct?

15 A We have a different -- we have language in our plan benefit
16 documents that -- that describe the greater of three. We use the term
17 medium par.

18 MS. LUNDVALL: Your Honor, and I'm going to as far as once
19 again interrupt the witness so that I can try to keep within the scope of --

20 MR. GORDON: Your Honor, can we approach on this?

21 MS. LUNDVALL: -- the Court's orders.

22 THE COURT: You may.

23 MR. GORDON: Can we approach please?

24 THE COURT: But let's address -- is it with regard to this
25 issue?

1 MR. GORDON: The issue that she's testifying to? Yes.

2 THE COURT: Yeah, come on up.

3 [Sidebar at 1:23 p.m., ending at 1:23 p.m., not transcribed]

4 BY MS. LUNDVALL:

5 Q Now back to my question to you, Ms. Hare, because the
6 objection was overruled, on behalf of Health Plan of Nevada and Sierra
7 Health, you don't have usual, customary, and reasonable written into any
8 planned document for any covered service that's at issue in this case,
9 correct? It's a yes or no answer.

10 A I don't think I can fully answer the question with just yes or
11 no. I can describe what is written into our plan documents. Am I
12 allowed to do that?

13 Q No. What I want you to do is pick up your deposition once
14 again, and turn to page 75, and on 75 read silently to yourself 15 to 21.

15 A Yes.

16 Q You do not have usual and customary written into any plan
17 document for the covered services that are at issue in this case, correct?
18 Yes or no?

19 A No, we don't use the term "usual and customary," we use the
20 term "eligible medical expenses, a part of our greater of three."

21 Q And I need to stop you right there once again. I'm
22 constrained by the same orders that you are, and so that's why I said this
23 was a yes or no question, okay? You don't have usual and customary
24 written into any of your plan documents, correct?

25 A To the best of my knowledge, I don't believe so.

1 Q And as a matter of fact, that it is your testimony that usual,
2 customary, and reasonable is irrelevant to the calculations of what
3 should be paid, correct?

4 A I'm not sure I understand what your definition is of usual,
5 customary, and reasonable. It's not a term that we necessarily are using
6 to describe reimbursement rates for emergency services. So if there's a
7 definition --

8 Q May I ask you to pick up once again your deposition
9 transcript? I'm going to get you to turn to page 77. At lines 4 and 5, did
10 you give the testimony, "Usual and customary isn't relevant to our plan
11 document"? Yes or no?

12 A Yes, I see that written here in the context of the question
13 being answered, yes.

14 Q And that was your testimony that was given during the
15 course of your deposition, correct?

16 A Yes.

17 Q All right. What I'd like to do is to see if we can't see a little
18 bit, your plan document in action, and so I'm going to show you a
19 demonstrative, walk you through that, and then ask you a few questions
20 if I could, please.

21 MS. LUNDVALL: Michelle, could you bring up the first
22 PowerPoint for me, please? And can you blow that up for me?

23 BY MS. LUNDVALL:

24 Q Ms. Hare, can you see the screen that's in front of you?

25 A Yes, I can.

1 Q This is a summary of some of the claims that are at issue in
2 this case that the jury is going to be asked then to look at and to
3 adjudicate. On the far left-hand column it identifies the entity or who
4 should be being paid, the provider group, that's Fremont, correct?

5 A Yes.

6 Q And then it goes to the facility at which the services were
7 being provided, and then it identifies the county in which those services
8 were performed, and then it gives the date; you see that?

9 A Yes, I see that.

10 Q And then it gives the date of service; do you see that?

11 A I just see one date on mine. It says the DOS which is
12 typically the date of service.

13 Q Date of service, there's a July 3rd, a July 4th, July 4, July 4 of
14 2019, and there's a November 13th on there; do you see that?

15 A Yes, I see those.

16 Q In the far right-hand column, it identifies then who was the
17 payor, and that was Sierra Health and Life Insurance Company; do you
18 see that?

19 A Yes, I see that.

20 Q And then there is a CPT code column. Now the CPT code,
21 you're familiar with, correct?

22 A Yes, I'm familiar with CPT codes.

23 Q And the CPT code there with the level of service, the level of
24 severity of either the injury or the illness by which a patient may present
25 for treatment, correct?

1 A The CPT code is a standardized coding, and it -- across the
2 industry. There's a standardized language with regards to when a 992,
3 99292 versus a 99284 should be used, yes, and it describes amount of
4 time, number of systems, several other factors that go into when those
5 level of codes should be used.

6 Q And typically, the higher the code that the more service, the
7 more care, the -- that needed to be provided to that particular patient,
8 correct?

9 A It's typically indicative of a -- of a more advanced or a higher
10 level of service, yes.

11 Q And the lower numbers then are indicative then of a lower
12 level of care or a lower level of services being done on the patient?

13 A It's typically described in the CPT book, yes, in that way.

14 Q All right. And there's varied CPT codes for these five claims
15 that are at issue; do you see that?

16 A Yes, I see that each line has a different CPT code on it.

17 Q And the charges vary, as well, based upon the different CPT
18 codes, correct?

19 A Yes, I see the various charges on each line item.

20 Q But the amount allowed is all the same; is that right?

21 A Yes, I see the same allowed amount all the way down.

22 Q So the relationship to the amount allowed is not related then
23 to the billed charge, correct?

24 A The allowed amount is set by the language in our plan
25 benefit documents that describes how we pay emergency services for

1 nonplanned providers, specific --

2 Q Let me -- as far as ask you this question, the allowed amount
3 then is not varied based upon the level of service as reflected in the CPT
4 code that the provider provides, correct?

5 A The allowed amount for emergency services for nonplanned
6 providers is calculated by the greater of three, and in this instance, the
7 greater of three --

8 Q And I need to stop you as far as at this point once again.

9 A Okay.

10 Q And I think that -- I'm hoping that at the break you then -- you
11 can speak with your counsel regarding the scope of what you're able to
12 testify to, okay? But what we're seeing as far as this example is that the
13 amount that was allowed did not vary based upon the level of service
14 that was provided by the ER provider, correct?

15 A The allowed amount was established by the -- a global
16 reimbursement. That's the methodology behind the allowed, so it's a
17 blend across the various types of service, and it is not directly correlated
18 to the CPT code.

19 Q You had indicated that in preparing both the plan documents
20 as well as the information that you input into the document that you
21 wanted to ensure that you were complying with the Affordable Care Act,
22 correct?

23 A Yes, that's one of the regulations we comply with.

24 Q And the shorthand term for the Affordable Care Act is ACA; is
25 that right?

1 A Yes, it's commonly referred to as the ACA.

2 Q And while none of your plan documents refer to usual and
3 customary and reasonable, it's your testimony though that they were
4 designed to comply with BACA?

5 A Yes, we have had language in our plan documents since the
6 ACA was passed and became federal regulation that reflects that
7 reimbursement rate methodology for nonplan providers for emergency
8 services.

9 Q I want to confirm with you, some testimony that you gave
10 during the course of your deposition, and that is that Sierra and Health
11 Plan of Nevada are not using cost reduction and savings programs; do
12 you recall that?

13 A I do recall that.

14 Q All right. So let me see if we can't confirm then you are not
15 using -- and that's your testimony then to the jury, correct?

16 A For emergency services here in Nevada, we don't use cost
17 reduction or savings programs. We use the language that's in our plan
18 benefit documents.

19 Q All right. What I want you to do now is go to an exhibit, the
20 binder behind you, because -- in particular, I want you to go to Exhibit
21 295.

22 MS. LUNDVALL: There's no objection and it's been placed in
23 the pretrial memo. From counsel, they have no objection to its
24 admission.

25 MR. GORDON: No objection.

1 THE COURT: All right. Exhibit 295 will be admitted.

2 BY MS. LUNDVALL:

3 Q Now, what I want to do is this, is I want to ask you just very
4 brief, to take a look at the exhibit, that email chain, and confirm that
5 you've seen this before.

6 A Yes, I've seen this.

7 Q This exhibit was used during the course of your deposition;
8 was it not?

9 A I believe it was used, yes.

10 Q And you also have had an opportunity to take a look at it
11 before you came here to testify?

12 A I think we might have looked over it, yes.

13 Q All right. So what I want to do is to start how email chains
14 began, but they're printed off in reverse order. So turn to page 2
15 because the very first one then carries over on the top of page 3. Now,
16 let's start with --

17 MS. LUNDVALL: Michelle, pull up the bottom of page 2 so
18 that we can get from who sent this.

19 BY MS. LUNDVALL:

20 Q This was a message that was sent by Sean Schoener,
21 correct?

22 A Yes, I see that Sean sent this, it appears on February 18th of
23 2019.

24 Q And Mr. Schoener then is the vice president of network
25 development and provider relations for Nevada and Utah; is that right?

1 A Yes, I see that on his tagline on this email.

2 Q And Mr. Schoener is in, what you refer to as provider
3 services for Sierra and for Health Plan of Nevada, correct?

4 A Yes. Shawn was in what we refer to on a daily basis as
5 provider services at that time.

6 Q Okay. So when I see Shaun Schoener, messages from him,
7 then he is from provider services, and provider services then afforded
8 services then to Health Plan of Nevada and Sierra, correct?

9 A Could -- can you ask me that question in a different way,
10 please?

11 Q Mr. Schoener, as the vice president of network development
12 and provider services, he provided information and services in the
13 context of -- well, let me back up this and try and make it simpler. If I see
14 Mr. Schoener, he equals provider services, correct?

15 A In this email, he's representing provider services.

16 Q Thank you. I didn't mean to make it complicated. All right.
17 And he is sending a question to a number of individuals, and you know
18 some of those individuals; do you not?

19 A I actually don't know any of the individuals on this email.

20 Q Well, let me -- as far as those start -- he's asking what he calls
21 a random question. As part of the ACA, or the Affordable Care Act, it
22 stipulates that out-of-network emergency care must be reimbursed at the
23 higher of three rates, and it identifies the three rates, correct?

24 A Yes, I see that he's written three phrases here.

25 Q And usual and customary is the second phrase, correct?

1 A Yes, he's put usual and customary behind number two.

2 Q But usual and customary doesn't appear within any of the
3 planned documents for which that Sierra or Health Plan of Nevada write,
4 correct?

5 A Our plan documents refer to --

6 Q Yes or no was my question. As we've talked about before,
7 usual and customary is not provided within your plan documents,
8 correct?

9 A Usual and customary is not in the emergency services
10 nonplan provider section of our plan documents.

11 Q All right. In an effort to try to make this go quickly, there's
12 also a reference then to -- in the next email up, to John Haben, with
13 United Health, correct?

14 A I'm sorry, I've lost where you're referencing.

15 Q To go up from the message from Shaun on page 2, toward
16 the bottom, and it makes reference to the out-of-network team under
17 John Haben, along with HCE for rate calculations, Rebecca Paradise
18 currently leads the out-of-network portions for UHN; do you see that?

19 A Yes, I see that is written in the email from Benjamin Passwick
20 [phonetic] back to several people.

21 Q Now, the back and forth then up through here is trying to
22 figure out who is -- could answer the question then for purposes of
23 Nevada. And it turns out to be that Katherine got taken off the chain, and
24 this is a Kathy question. Was Kathy a member of your team?

25 A I wasn't on this email at this point, but reading through it

1 right now, I think it's a reference to Cathy Ackerman [phonetic], just
2 based upon the email, and Cathy Ackerman is not on my team.

3 Q But you are familiar with Mr. Schoener and he provided -- he
4 afforded them provider services then to both Sierra as well as to Health
5 Plan of Nevada, correct?

6 A Yes. At that time, Shaun was in a role with provider services
7 for Health Plan of Nevada and Sierra Health and Life.

8 MS. LUNDVALL: Your Honor, I'm at the point where there
9 were three documents that counsel asked me to approach with.

10 THE COURT: Okay. 325, 314, and 348?

11 MS. LUNDVALL: That's correct, Your Honor.

12 THE COURT: Okay.

13 MS. LUNDVALL: He wanted an opportunity to review them.

14 THE COURT: Did you want a brief recess?

15 MR. GORDON: 325, object on foundation. Relevance. And
16 314, relevant and foundation.

17 MS. LUNDVALL: I mean, I -- since we have no -- one
18 additional point, I guess, that we will need a bench conference as far as
19 that.

20 THE COURT: So even though we only -- you guys only came
21 back into the courtroom an hour ago, we were here at 12:15, so it's been
22 an hour-and-a-half since we've had a recess, so we'll take a short recess
23 now.

24 During the recess, do not talk with each other or anyone else
25 on any subject connected with the trial. Don't read, watch, or listen to

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

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

10 Do not form or express any opinion on any subject
11 connected with the trial until the matter is submitted to you. It's 1:44.
12 Please be ready at 2:00 p.m.

13 THE MARSHAL: All rise for the jury.

14 [Jury out at 1:44 p.m.]

15 [Outside the presence of the jury]

16 THE COURT: The room is clear.

17 MS. LUNDVALL: Your Honor, 325, 314, and 348 have all
18 been redacted in the court then with the motions. The orders of the
19 motions in limine. What I don't want to do is to have any objection and
20 somehow the reopening of the door with redactions that we're done.
21 And so that's why I sought a bench conference so that so then there's no
22 allegation that [indiscernible] opening the door.

23 THE COURT: Good enough. And the response, please.

24 MR. GORDON: Exhibit 325, Ms. Hare does not appear at all
25 in this document, which is why I objected to it. And same with 314, and

1 also 314 deals with another, the UMR. She is not at all related to UMR.

2 THE COURT: What about 348?

3 MR. GORDON: I don't know 348 --

4 THE COURT: Because you were responding to a different
5 question --

6 MS. LUNDVALL: Yes.

7 THE COURT: -- asked by Ms. Lundvall. She was talking
8 about not opening the door by referencing these documents with the
9 witness.

10 MS. LUNDVALL: I understand I need to lay additional
11 foundation based upon the objections.

12 THE COURT: All right.

13 MS. LUNDVALL: And I have no comment back. But I just
14 wanted to make sure that if I do lay that foundation, the Court admits
15 them over their objection, then I -- that they then don't contend that
16 somehow that I'm opening the door.

17 THE COURT: Well, and we won't know whether or not the
18 door is opened until we see where the testimony goes.

19 MS. LUNDVALL: And I understand, based on our testimony,
20 I just want to make sure that they are not based upon the proffer of these
21 redacted exhibits.

22 THE COURT: Good enough.

23 MS. LUNDVALL: That's my --

24 THE COURT: Is there --

25 MR. GORDON: And so that's why I have to make an offer of

1 proof for this witness to go through the [indiscernible].

2 THE COURT: That -- we have a motion in limine on that.

3 And all that will do is delay the trial. So come back at 2:00, and we'll get
4 started back with the witness. Thank you.

5 MR. GORDON: Your Honor --

6 THE COURT: Wait. Mr. Gordon, there was one other thing.

7 MR. ZAVITSANOS: I'm sorry.

8 THE COURT: No. No. I want to make sure.

9 MR. ZAVITSANOS: That's the code of federal register, so
10 Your Honor, at this point, the witness has now several times said that
11 they follow the greatest of three and they -- and they reimburse in
12 accordance with the greatest of three. So Your Honor, we're going to
13 ask the Court to take judicial notice under NRS 47140, subpart 1, which
14 includes specifically the code of federal register. I just handed counsel a
15 copy of the code of federal register. For the Court's convenience, I have
16 highlighted --

17 THE COURT: You know, let's not -- I don't want to surprise
18 them with this. Give -- do your argument and then we'll come back early
19 for a response.

20 MR. GORDON: Yes.

21 MR. ZAVITSANOS: So Your Honor, let me hand the Court
22 with --

23 THE COURT: You can just leave it right there.

24 MR. ZAVITSANOS: So what that says, Your Honor, is that
25 the --

1 MR. GORDON: Are we doing this argument now or we're
2 doing it later?

3 THE COURT: We're going to listen to his argument --

4 MR. GORDON: Oh, I'm sorry. Yeah.

5 THE COURT: -- and then I'll give you a chance to respond at
6 the end of the breaks, because they're doing this without any notice to
7 you.

8 MR. GORDON: Understood, Your Honor.

9 MR. ZAVITSANOS: So the greatest of three, Your Honor, is a
10 little bit of a misnomer. It is a minimum wage law that essentially says
11 you cannot go below this level on reimbursement. So -- and I know the
12 Court has heard me say this before, but for the benefit of counsel, is the
13 equivalent of saying if you hire a neurosurgeon, you can't pay him less
14 than \$12 an hour because that's the minimum wage law. That does not
15 mean that is the market rate of the reasonable value.

16 The code of federal register makes clear that it is the -- it is
17 the lowest amount you can pay. It does not mandate that's what you
18 would pay. This witness now, three separate times said that the ACA
19 mandates or requires them to pay in accordance with that. That is -- first
20 of all, that's just verifiably incorrect. And that's why, Your Honor, we
21 would ask that the Court give this -- take judicial notice of this and advise
22 the jury of that.

23 Now, I don't believe that is putting the thumb on the scale
24 because that is not saying that they violated the greatest of three. It is
25 simply correct the erroneous statement that the witness made that the

1 greatest of three requires them to do it this way.

2 THE COURT: Good enough.

3 MR. ZAVITSANOS: It is -- yeah. So --

4 THE COURT: Thanks. All right. It's 1:49. Just be back a
5 couple of minutes early, Mr. Gordon. So see you guys about 1:58.

6 [Recess taken from 1:49 p.m. to 2:01 p.m.]

7 [Outside the presence of the jury]

8 THE COURT: Mr. Gordon, did you fully respond on the
9 record?

10 MR. GORDON: Yes, Your Honor.

11 THE COURT: Thank you.

12 MR. GORDON: My response is to Mr. Zavitsanos is about the
13 greatest of three, it's my recollection that what Ms. Hare testified to was
14 that she's not mandated or required to follow the federal register. Her
15 testimony was pretty clear and pretty consistent to the extent that she
16 could say anything, which was [indiscernible] claims pursuant to the
17 greatest of three, which was defined in the plan. That's her testimony.
18 She got a little bit until she's cut off. She [indiscernible] register is not
19 relevant to this witness. And I disagree with the characterization of how
20 she responded. In the greatest of three had been defined in the
21 [indiscernible] document as EME [indiscernible].

22 MR. ZAVITSANOS: And that's the problem, Your Honor, is
23 they basically changed the law. There is no such thing as EME under the
24 federal register. That's completely fabricated. That would be the subject
25 of cross. That's not the request. The request is that the Court take

1 judicial notice of this [indiscernible].

2 THE COURT: What is the CFR cite for, because I have to -- I'll
3 take it under advisement, because I have to review it.

4 MR. ZAVITSANOS: Yeah. Let me -- can I have the order.
5 Can I take it back?

6 MR. ZAVITSANOS: This is the actual CFR. And I've
7 highlighted the two sections.

8 THE COURT: Yeah.

9 MR. ZAVITSANOS: And I've given him a copy.

10 THE COURT: All right. Thank you. Okay. Just making sure.
11 All right. So that's under advisement. I assume that we'll consider that
12 with jury instructions. I'm not going to instruct them separately on the
13 law.

14 MR. ZAVITSANOS: Yes, Your Honor. Our position
15 [indiscernible] jury, the greatest of three has no application, because
16 that's minimum wage. And if they're paying minimum wage --

17 THE COURT: I understand your argument.

18 MR. ZAVITSANOS: Yeah. yeah.

19 THE COURT: I had to learn a lot of stuff for your trial.

20 THE MARSHAL: All rise for the jury.

21 MR. ZAVITSANOS: We're aware, Your Honor.

22 THE MARSHAL: Jury coming through.

23 [Jury in at 2:03 p.m.]

24 THE COURT: Thank you. Please be seated. Go ahead,
25 please.

1 MS. LUNDVALL: Thank you, Your Honor.

2 DIRECT EXAMINATION CONTINUED

3 BY MS. LUNDVALL:

4 Q Ms. Hare, what I'm going to try to do is see if I can't do this in
5 a very condensed fashion, in a very quick fashion. You know who Jason
6 Jefferson is; do you not?

7 A Yes, I do know JC.

8 Q And who is JC Jefferson?

9 A JC is in provider services as well.

10 Q So between JC Jeffers and Shaun Schoener, they provide
11 provider services then to Sierra Health and to Health Plan of Nevada,
12 correct?

13 A Yes. They represent Health Plan of Nevada and Sierra Health
14 and Life.

15 Q And they communicate information then to Sierra Health and
16 Life for purposes of administering and adjudicating claims; do they not?

17 A From an operational perspective, they would give my
18 department information, so that we can configure our systems and
19 processes, so that we can pay claims.

20 Q All right. And to the extent that you are familiar that Fremont
21 is one of the claimants or the Plaintiffs in this action, correct?

22 A Yes.

23 MS. LUNDVALL: All right. Your Honor, with that foundation,
24 we would offer Exhibit --

25 Is that 325? Okay. That's 325, 314, and 348.

1 MR. GORDON: No objection, Your Honor.

2 THE COURT: Okay. Exhibits 325, 314, and 348 will be
3 admitted.

4 [Plaintiffs' Exhibit 314, 325, and 348 admitted into evidence]

5 BY MS. LUNDVALL:

6 Q All right. What I'd like to do first and foremost is to pull up
7 Exhibit 325.

8 [Counsel confer]

9 THE WITNESS: 325?

10 BY MS. LUNDVALL:

11 Q May I take a look at your document?

12 [Counsel confer]

13 BY MS. LUNDVALL:

14 Q All right. As we go and try to load the proper document and
15 ensure that we're not in violation of any of the Court's orders, I'm going
16 to ask you to take a look at it, so we can make our examination in looking
17 at Exhibit 325, please. It should be a single sheet of paper.

18 [Pause]

19 BY MS. LUNDVALL:

20 Q Have you read it?

21 A I did.

22 Q All right. So beginning at, once again, the bottom. And let
23 me know if it's able to be loaded in time, I'm going to continue reading it
24 into the record. And my question to you then, Ms. Hare, is whether or
25 not I . Okay. I'm looking at the message that is dated February 25, 2019,

1 from JC Jefferson, who you identified was in provider services, correct?

2 A Yes, that's correct.

3 Q And provider services tries to afford services, including
4 regulatory and legal requirements that -- to Sierra Life as well as Health
5 Plan of Nevada, correct?

6 A I wouldn't describe it as providing legal and regulatory
7 services.

8 Q Well, they provide regulatory assistance, correct?

9 A No. I wouldn't describe them as providing regulatory
10 assistance.

11 Q Let's go to the subject line here. The subject line reads
12 Fremont Emergency Services. Do you see that?

13 A Yes, I do see that.

14 Q And there's a sentence that appears on the page where JC is
15 wanting -- I want to make sure that, effective 2/27/19, we are adjudicating
16 claims in accord with the ACA requirement. Did I read that accurately?

17 A It says we are adjudicating claims in accordance with the
18 ACA requirements. Yes, that's correct.

19 Q The sentence reads I want to make sure that, effective
20 2/27/19, we are adjudicating claims in accordance with the ACA
21 requirements. Did I read that correctly?

22 A Yes, you read it correctly.

23 Q Second message. JC Jefferson says -- and it's also in that
24 same email chain regarding Fremont Emergency Services. Once again,
25 he writes: Good morning. Can someone confirm if we are adjudicating

1 claims after 2/26 at the rates outlined below for HPN and SHL? Did I
2 read that correctly?

3 A Yes, you rode -- read that correctly.

4 Q And the initials for HPN and SHL are that of Health Plan of
5 Nevada and Sierra Health and Life, correct?

6 A Yes. We typically use those initials to refer to Health Plan of
7 Nevada and Sierra Health and Life.

8 Q And then the very last message then that appears at the top
9 there is from Coreen Spate. Are you familiar with Ms. Spate?

10 A Yes, I am.

11 Q And relay to the jury then your familiarity with her?

12 A Kareen is within my hierarchy.

13 Q And Ms. Spate then responds: Maury, the claims are not
14 being processed in this manner. The rates would have to be automated
15 for this to occur.

16 Did I read that correctly?

17 A Yes, you did.

18 Q Now the next document I want you to pick up is Exhibit 314.
19 And I have a few questions concerning that. And as you find that
20 document, I just want to confirm. Was your testimony to this jury that
21 your plan documents, your contract documents that -- on your fully
22 insured products, one of the things you have to do is to ensure that they
23 meet the requirements of the Affordable Care Act, correct?

24 A Yes. We've written our Health Plan of Nevada and Sierra
25 Health and Life documents specifically for the emergency services

1 provision for nonplan providers in accordance with what was in -- what
2 is in the ACA regulations.

3 Q All right. So I want to turn your attention then to Exhibit 314.
4 And I've got a few questions then concerning Exhibit 314 if I could. Feel
5 free to spend as much time as you want with it. But what I'm most
6 interested in is the message that starts at the bottom of page 1 and
7 continues onto the top of page 2. The information that I'm most
8 interested in is found at the top of page 2.

9 MS. LUNDVALL: Michelle, can you go to the top of page 2.
10 And the portion that said response from Nancy Minny [phonetic], can
11 you blow that up for me, please. You need to go up a little bit more.
12 Right there. Can you blow that for me, please?

13 Now the paragraph that's above that --

14 May I approach, Your Honor?

15 THE COURT: You may.

16 MS. LUNDVALL: Michelle, take that down for just a second,
17 please.

18 [Pause]

19 MS. LUNDVALL: Michelle, you're okay to put it back up.

20 BY MS. LUNDVALL:

21 Q All right. So what I'm going to do is this. Do you know who
22 Nancy Minny is or is affiliated with, correct?

23 A I'm familiar with Nancy Minny. She, from my knowledge,
24 works with UMR. But she doesn't work with Health Plan of Nevada or
25 Sierra Health and Life.

1 Q But to the extent though that she had the information that
2 was shared with members though of your organization, for example, JC
3 Jefferson, correct?

4 A I wasn't on this email, and I'm not able to read anywhere on
5 this email where JC is copied. So I can't speak to information that might
6 have been shared with JC from Nancy.

7 Q All right. So let me see if I can't help you out here a little bit.
8 Page 1 line 1. JC Jefferson appears on page 1 line 1; does he not?

9 A I don't see JC anywhere on page 1 line 1.

10 Q You're on Exhibit 314?

11 A 314, 001.

12 Q Yes. Line 1. Maybe I owe you an apology. You're right. I
13 do. From this perspective, the portions that reference or that went back
14 and with Mr. Jefferson, those got redacted out. Okay.

15 A Oh, okay.

16 Q But I will represent to you that you're not in violation of court
17 order, that there are -- Mr. Jefferson was on these emails that got
18 redacted, okay?

19 A Okay.

20 Q Accept my representation?

21 A Sure.

22 Q All right. What I want to do is direct your attention then back
23 to page 2, the information that -- from Nancy --

24 A And we're still on 314?

25 Q Yes. Now individuals associated with UHC, they perform

1 legal and regulatory compliance then for Sierra; do they not?

2 A That's a pretty broad question. We have folks here in Las
3 Vegas that write our plan documents and are experts in legal and
4 regulatory matters. And they write plan documents specifically for
5 Health Plan of Nevada and Sierra Health and Life. So I don't know that I
6 can say generically that people at UHC provide legal and regulatory
7 guidance. I would say that we have resources at Health Plan of Nevada
8 and Sierra Health and Life that write our plan documents in accordance
9 with state and federal regulations.

10 Q Turn to your deposition, please. Page 113. I'm going to read
11 aloud. Let me know if I've read it properly.

12 At page 13, line 17:

13 "Q Who performed regulatory and compliance analysis for
14 Sierra?

15 "A We look to UHC legal regulatory and compliance for analysis
16 when we need assistance on various state and federal regulations."

17 Was that your testimony in response to that question?

18 A Yes.

19 Q Now Nancy Minny, she too is affiliated then with compliance
20 for United, correct?

21 A I don't know that that's Nancy's role. I don't believe it is, but
22 I don't know for sure that that's Nancy's role.

23 Q All right. So let's go to your deposition once again. And this
24 time I'm going to turn your attention to page 112. And I'm going to start
25 reading at line 24. And we're talking about Nancy Minny at line 24. Let

1 me know whether or not these questions and this answer were given --
2 posed to you and the answer given to you by -- in your deposition.

3 Line 24: "She is affiliated with United?"

4 "A I believe so.

5 "Q And you understand her to be in the regulatory compliance
6 division in some way?"

7 There's an objection by counsel to form, and your answer
8 is I don't have any personal knowledge of that. Just based upon reading
9 this email, I can see that Julie Pickens says she works with Regulatory
10 and Compliance." Was that your testimony during the course of
11 your deposition?

12 A Yes, I can read that that's my testimony.

13 Q Now what I want to do then is turn your attention there to the
14 message from Nancy Minney [phonetic]. And the paragraph particular --
15 the sentence in particular that I want to focus your attention on is this.
16 "The regulation requires that a reasonable amount be paid before a
17 member is subjected to balance billing for out-of-network claims, not
18 using the cost reduction in savings program, we will use 100 percent of
19 bill charges." Do you see that sentence?

20 A Yes, I see that sentence.

21 Q And we confirmed that Sierra and Health Plan of Nevada do
22 not use a cost reduction in savings plan, correct?

23 A Yes, that's correct.

24 Q And so under this response or under this advice then from
25 Nancy Minney, it indicates that a reasonable amount is 100 percent of

1 bill charges, correct?

2 MR. GORDON: Objection. Form.

3 MS. LUNDVALL: That's what the sentence says.

4 THE COURT: Overruled.

5 BY MS. LUNDVALL:

6 Q Correct.

7 A I can read it, but Julie -- I don't know Julia Pickens. And I can
8 read what Julia Pickens said about Nancy Minney in the email. And
9 that's what I said in my deposition. What I can tell you is that Nancy
10 Minney isn't regulatory or compliance for Health Plan of Nevada or
11 Sierra Health and Life. So what's in this email isn't applicable to our plan
12 benefit documents for Health Plan of Nevada or Sierra Health and Life.

13 Q But what we do know is that for Sierra and for Health Plan of
14 Nevada, they do not use a cost reduction in savings program, correct?

15 A That's correct. For emergency services for non-plan
16 providers, we look to our plan benefit documents.

17 Q And under the language then that is found within this email,
18 that speaks to the Affordable Care Act, it identifies that for no pro rata, it
19 uses cost reduction in savings, you're going to use 100 percent of bill
20 charges. Did I read that accurately?

21 A You read the words on the email accurately, that's correct.
22 But as I said before, both Julia Pickens and Nancy Minney aren't
23 contributing to our regulatory and compliance guidance, or our plan
24 benefit documents for our fully insured business for Health Plan of
25 Nevada or Sierra Health and Life.

1 Q What I want you to do now is to turn to Exhibit 348. Are you
2 at Exhibit 348?

3 A Yes, I am.

4 Q I want to focus your attention only on the first page. The
5 very bottom entry then is J.C. Jefferson, correct?

6 A Yes, I see an email from J.C. Jefferson dated April 30th of
7 2019.

8 Q And the subject line is "Fremont Emergency Services."

9 A Yes, I see that.

10 Q And at that -- the second sentence, he writes, "I have mailed
11 in full of letters indicating we are not ACA client. So the sooner we can
12 get this loaded, the better." Did I read that accurately?

13 A Yes, you did.

14 Q Yet it's your testimony that Sierra Health Plan of Nevada
15 were obligated to be ACA compliance, correct?

16 A Yes, I -- I don't know what these mail bins full of letters were
17 or are even today. So I can't speak to what these letters are or what they
18 might have said.

19 Q Now what I want to do is go to a new topic, but make sure I
20 stay within the parameters of the Court's order. I'm going to turn to a
21 different area. That is dealing with balance billing. You're familiar with
22 the concept, correct?

23 A I understand the term balance billing in our industry.

24 Q All right. And having a provider agree that they will not
25 balance bill is a benefit to Sierra on the health line; is it not?

1 MR. GORDON: Objection to form.

2 THE COURT: Overruled.

3 THE WITNESS: Having a provider not balance bill is a benefit
4 to a member that might be subjected to bill charges.

5 BY MR. GORDON:

6 Q All right. And then it's also a benefit to Sierra Health and Life
7 as well as to Health Plan of Nevada, so that you don't have to deal with
8 customer complaints or the member complaints. Or maybe even some
9 type of a contractual provision, whereby you're obligated to hold
10 harmless the member.

11 MR. GORDON: Objection, compound.

12 MS. LUNDVALL: Right?

13 THE COURT: Break it down.

14 BY MS. LUNDVALL:

15 Q All right, so having a provider agree not to balance bill, as
16 you indicated, isn't that a benefit to the member, correct?

17 A Yes, it's a benefit to the member to not be subjected to a
18 provider's bill charges.

19 Q But it's also a benefit to Sierra as well as to Health Plan of
20 Nevada; isn't that right?

21 A I don't know that I would describe it as a -- as a benefit.
22 Certainly we have the member in mind. We never want them to be
23 subjected to a -- to a provider's bill charges.

24 Q Well, and if a member does get a balance bill a month, the
25 member then will come complain to the insurer who has afforded them

1 the coverage, correct?

2 MR. GORDON: Objection. Calls for speculation.

3 THE COURT: Overruled.

4 THE WITNESS: That -- that area is not necessarily under my
5 daily purview. So while I'm aware that there are complaints from time to
6 time from members that we try to handle, I don't have much more
7 personal knowledge about our processes of handling balance billing
8 complaints.

9 BY MS. LUNDVALL:

10 Q But I want you to use your common sense. If you have to
11 have a department that deals with member complaints. And if some of
12 those members complaints are about balance billing, and you don't have
13 to worry about balance billing from providers, that's a benefit to Sierra
14 and Health Plan; is it not?

15 MR. GORDON: Objection, compound. Argumentative.

16 THE COURT: Overruled.

17 THE WITNESS: I -- I would say that the benefit is again more
18 for the member to not get subjected to the bill charges the provider
19 might want to bill. And as always, Health Plan of Nevada and Sierra
20 Health and Life would prefer to have that provider as a contracted
21 provider so that we can provide that benefit to our members.

22 BY MS. LUNDVALL:

23 Q All right. And if you didn't have to have a complaint
24 department that dealt with balance billing complaints, that would be a
25 benefit to Sierra and to Health Plan of Nevada, would it not?

1 A I guess you could characterize it that way, if you'd like.

2 Q And occasionally, there are contracts that require insurers to
3 hold harmless a member, or hold harmless as far as the union or the
4 employer group or the client, in the event that their member gets
5 balance billed, correct?

6 A Well, typically that's with the contracted provider that we
7 look to the contracted provider to not -- to accept the contracted rate, and
8 to not balance bill the member.

9 Q And you would consider that to be a benefit, correct?

10 A It certainly is a benefit to our members, absolutely.

11 Q And if you've got -- you don't have the hold harmless based
12 upon balance billing that would be a benefit then to both Sierra as well
13 as Health Plan, correct?

14 A I -- I don't know that I have a -- a strong personal opinion
15 about that, other than the one I've expressed, that we would -- we want
16 our members to be protected via our contracts. And we certainly don't
17 want them to be exposed to providers bill charges.

18 Q And if they are exposed to bill charges, and you have a duty
19 or an obligation under the contract to hold harmless then, the client is
20 taking it's [indiscernible] from Sierra or Health Plan of Nevada. That also
21 is a benefit to Sierra and Health Plan of Nevada, correct?

22 MR. GORDON: Objection. Compound, also leading to
23 conclusion.

24 THE COURT: Overruled.

25 THE WITNESS: I don't know that I understand what hold

1 harmless language you might be referring to.

2 BY MS. LUNDVALL:

3 Q All right. Let me just give an example. And I'm going to use
4 very common everyday words. Hold harmless means that if there's a
5 balance bill and the member is subjected to that, then in fact, you have a
6 duty and an obligation to pick up the tab on that balance bill. That is a
7 very simple definition. If in fact there's such a hold harmless clause in
8 your plan and you don't have to exercise that hold harmless, or to make
9 good on that hold harmless, then that's a benefit to Sierra and to Health
10 Plan of Nevada.

11 MR. GORDON: Objection. Assumes facts. Calls for
12 speculation. Compound.

13 THE COURT: Overruled.

14 THE WITNESS: I am not aware off the top of my head, so I
15 can't speculate if we have any language like that in any of our plan
16 benefit documents. So that's my -- I'm struggling to answer your
17 question for that reason. I can't think while I'm sitting here of any plan
18 benefit documents where we might have language like that for
19 emergency services.

20 BY MS. LUNDVALL:

21 Q Assume that that language is in your plan. Assume that it's
22 there. And at no point in time does Sierra or Health Plan have to step in
23 the line and pick up the tab on a balance bill, because the provider has
24 agreed not to balance bill. That is a benefit to Sierra and Health Plan, is
25 that correct?

1 MR. GORDON: Objection, compound, improper hypothetical.

2 THE COURT: Overruled.

3 THE WITNESS: So yes, that's a big assumption and if I
4 follow the line of that assumption, it really leads me to we're talking
5 about a provider that ends up being contracted. So what you're talking
6 about in terms of being a provider that's non-contracted but still holding
7 to some sort of contractual language. I'm struggling to even hypothesize
8 with you, what that might even look like.

9 BY MS. LUNDVALL:

10 Q So you -- as you sit here today, you can't see how there's any
11 sort of a benefit to either Sierra or Health Plan of Nevada?

12 A Well, what I'm saying is from my daily job and to my
13 personal knowledge, that's not necessarily a concept that exists. So
14 it's --it's beyond the scope of our reality or our norm.

15 Q All right. So in the event that the jurors in this case have
16 seen language about hold harmless clauses, with any of their plan
17 benefits, or plan documents on a fully insured product, you're not
18 familiar with that concept in any way, shape or form. That's your
19 testimony; is that right?

20 A As I'm sitting here right now, I can't think of anything where
21 we have it in our Health Plan of Nevada or Sierra Health and Life
22 documents. If -- if you have a document that you'd like me to review, I'd
23 be happy to and -- and try to give a more complete answer.

24 Q My question is simple. You're just saying that you're not
25 familiar at all with the concept. Is that your testimony to this jury?

1 MR. GORDON: Objection. Asked and answered.

2 THE COURT: Overruled.

3 THE WITNESS: It is not something that we operationalize, or
4 we commonly deal with. So it's -- it's not something that's within the
5 scope of -- of my daily job.

6 BY MS. LUNDVALL:

7 Q All right. So what I want to do now is turn to Exhibit Number
8 313, please.

9 MR. GORDON: 313?

10 MS. LUNDVALL: 313. Michelle, pull up the upper half of this
11 document for me, please.

12 BY MS. LUNDVALL:

13 Q All right. The upper half of this document has the subject
14 line, correct?

15 A Yes.

16 Q And that deals with HPN, which is Health Plan of Nevada,
17 correct?

18 A Yes.

19 Q SHL, which is Sierra Health and Life, correct?

20 A Yes.

21 Q SHO, which was Sierra Health Options, correct?

22 A Sierra Healthcare Options.

23 Q All right. And FES. Fremont Emergency Services, correct?

24 A I'll trust you on that. That's not an acronym that I'm familiar
25 with.

1 Q All right. And you see where that last sentence on the very
2 bottom of the page that's being asked by two -- the representatives of
3 TeamHealth, will you please confirm that it is TeamHealth's intent not to
4 balance bill our members? Plural. Do you see that?

5 A Yes, I see that on J.C.'s email to Arena Harris.

6 Q All right.

7 A Yes, I see that.

8 Q And Ms. Harris' affirmation is found at the very top of page
9 on behalf of TeamHealth she said we will not balance bill them, correct?

10 A Yes. I see where it says -- Ms. Harris responded with we will
11 not balance bill the member.

12 Q And this isn't talking about any specific member. This is
13 talking about specifically members of Sierra Health and Life and Health
14 Plan of Nevada, correct?

15 A I don't know. I wasn't on this email. I don't have any context
16 for this email. I've read through it, but I have no history or context for
17 what this is referencing or what they mean in this email.

18 Q All right. I have a few questions that I'm going to kind of like
19 hit and run so to speak on. So if you don't follow me, please ask me to
20 slow down a little bit.

21 A Okay.

22 Q Now Facets is on a platform. It contains information like
23 provider information, tax I.D., the provider group, provider facility, the
24 dates of service, et cetera. Is that correct?

25 A Yes.

1 Q And when you adjudicate such a claim, under facets, you try
2 to make sure that all of the information is matched, correct?

3 A Is mashed?

4 Q Match?

5 A Matched, yes. We match up information that comes in from
6 a claim submitted by a provider, to records within FASIS, whether it be a
7 member, so we understand what that member is eligible for. Or a
8 provider, so we understand who the provider is, and whether they have
9 a contract or not.

10 Q And as it relates to the provider, you don't just simply look at
11 the Tax I.D. number, correct?

12 A No. We typically match a provider both on that individual
13 provider's NPI, it's a -- it's a piece of data. That's the National Provider
14 Identifier. It belongs to the provider. As well as the Tax I.D. number that
15 the provider sends in on the claim. So it indicates to us both who the
16 provider is. That number follows that provider, in essence their whole
17 life. Plus who they're working for.

18 Q As well as location, what the date of service may have been,
19 et cetera, correct?

20 A Those are -- those are also data elements that come in on a
21 claim to indicate the type of service that our member is receiving.

22 Q All right. Next topic. We're going to talk about market share
23 that Sierra and United have in Nevada, particularly here in Clark County.
24 But you're familiar with the term market share, are you not?

25 A I'm familiar with it in a -- in a general business sense.

1 Q All right. And are you aware that there was a market share
2 between Sierra and United here in Clark County at 80 percent during the
3 time frame of this case?

4 MR. GORDON: Objection. Foundation.

5 THE COURT: Overruled.

6 THE WITNESS: No. Actually, as a part of my day-to-day
7 responsibility, I don't -- I don't have personal knowledge as to the
8 percentage of our market share.

9 BY MS. LUNDVALL:

10 Q All right. What I want you to do is to turn to Exhibit 89,
11 please. Particularly, what I wanted you to do is turn to page 58. Now,
12 feel free to familiarize yourself with that information which is found at
13 page 58.

14 [Witness reviews document]

15 Q All right. Now, you indicated that as part of your day-to-day
16 activities that you don't have specific information about what your
17 market share is, correct?

18 A That's correct.

19 Q But generally, you're aware of the concept?

20 A Yes, I am.

21 Q And generally, during the course of your work as the vice
22 president of operations, you get information shared with you about what
23 the percentage of market share may be, particularly here in Clark
24 County?

25 A No, not normally.

1 Q But when you take a look at the information that is found on
2 page 89, does this refresh your recollection as to the amount of market
3 share that would have been shared with you at any point in time during
4 your work on behalf of Sierra or Health Plan of Nevada?

5 MR. GORDON: Objection. Foundation and relevance.

6 THE COURT: Overruled.

7 THE WITNESS: I --

8 BY MS. LUNDVALL:

9 Q And only looking at page 89. I see you thumbing through the
10 book. What I'm trying to do is to be able to focus your attention for the
11 sake of time on page 89.

12 A I appreciate that. I was actually trying to get some context to
13 this. I've never seen this document. I didn't receive it as a part of my
14 day-to-day work. So I was trying to see if perhaps some of the other
15 slides in the document were others that I might have received. But none
16 of this is looking familiar, like something I received as a part of my day-
17 to-day work.

18 Q And I'm not asking you if you received it. I'm asking you
19 about the information that is contained within the document. You have
20 received information concerning the amount of market share that your
21 two companies enjoy here in the southern Nevada market, correct?

22 A No. I don't get market share information in my daily role.

23 Q Not in your daily role. What about from a general
24 standpoint, whether it be on an annual basis or a biannual basis?

25 MR. GORDON: Objection. Asked and answered.

1 THE COURT: Overruled.

2 THE WITNESS: No, that's not normally something that is a
3 part of even my monthly, quarterly, annual tasks.

4 BY MS. LUNDVALL:

5 Q Nobody shares with you how well that Sierra and Health Plan
6 of Nevada are doing here in the southern Nevada market?

7 A In terms of market share? No. That's not something
8 that's -- that is part of what I need in order to be able to do my job.

9 Q Okay. So what about information that you have generated
10 on your own? Have you generated information to know how good a job
11 that you're doing as it relates to how much coverage you're providing
12 here in southern Nevada?

13 A I wouldn't have access to information that would provide me
14 market share information.

15 Q So nothing about how well those two -- your two companies
16 are doing?

17 A They -- yeah. There's nothing that I have that would -- that
18 would provide me information for market share.

19 Q All right. But generally, you know a little bit about how
20 Nevada ranks when it comes to payments to emergency room providers,
21 what the reimbursement rate is compared to other states, correct?

22 A No. I don't have anything that we review with regards to
23 ranking per state.

24 Q But you do know what your average reimbursement rate is
25 paid to emergency room providers, correct?

1 A We have automated in accordance with our plan benefit
2 boundaries.

3 Q And that automation then gives you an opportunity to do a
4 comparison with other states, correct?

5 MR. GORDON: Objection, Your Honor. Relevance.

6 THE COURT: Overruled.

7 THE WITNESS: The vast majority of the business that we
8 run, the plans that we process, are here in Nevada. So really, the data
9 that I have at my disposal in order to perform my job is Nevada-centric.
10 So I don't -- I don't have anything that would be used in a comparison
11 with other states.

12 BY MS. LUNDVALL:

13 Q The vast majority you had indicated was here in Nevada. But
14 it's not the exclusive jurisdiction that Sierra or Health Plan offers its
15 products, correct?

16 A So Health Plan of Nevada and Sierra Health and Life offer
17 products for groups that are sites here in Nevada. And so either the
18 member has to live here, or the employer groups have to be based out of
19 here in Nevada.

20 Q And so in any of the information that you have, are you able
21 to confirm that Nevada's rate of reimbursement to emergency room
22 providers -- out-of-network emergency room providers -- is actually the
23 lowest across our nation?

24 MR. GORDON: Objection. Relevance.

25 THE COURT: Overruled.

1 THE WITNESS: No, I don't have anything that would be used
2 in any sort of comparisons.

3 BY MS. LUNDVALL:

4 Q Would you care?

5 MR. GORDON: Objection. Argumentative.

6 THE COURT: Objection sustained.

7 BY MS. LUNDVALL:

8 Q Now, I'm going to ask you a few questions concerning this
9 litigation. Did you receive a litigation hold at the beginning of this case?

10 A Yes.

11 Q Did you have a new recollection based upon -- or a change in
12 recollection based upon your deposition testimony?

13 A Can you be more specific?

14 Q Can I get you to pick up your deposition and turn to page 199
15 for me, please? Page 199, beginning at line 17. Please confirm that
16 these questions were posed to you and that you gave these answers.

17 [The deposition of Leslie Hare was read into the record as follows:]

18 "Q Ms. Hare, do you know whether there was a document
19 preservation or litigation hold sent out to anyone at Sierra Health and
20 Life, Sierra Health Options, or Health Plan of Nevada with respect to this
21 litigation?

22 "A I don't know if there was a hold sent out.

23 "Q Did you receive a litigation hold?

24 "A I don't recall if I received a litigation hold."

25 [End of reading of deposition of Leslie Hare]

1 BY MS. LUNDVALL:

2 Q Is that testimony given during the course of your deposition?

3 A Yes. I can see it here.

4 Q And at no point in time, you corrected that?

5 A No. That's what I said during the deposition.

6 Q And at no point in time, you corrected that testimony?

7 A No.

8 Q All right. And did you search your emails for any documents
9 to be provided in this litigation?

10 A So I -- I didn't personally have to search my emails. We have
11 systems and processes that do that on our behalf.

12 Q So no one asked you to search for your emails; is that
13 correct?

14 MR. GORDON: Objection. Mischaracterizes testimony.

15 THE COURT: Overruled.

16 BY MS. LUNDVALL:

17 Q Is that a yes?

18 A I -- I did not have to physically go in and search any of my
19 emails. That's all done when a hold is put on our computers and on our
20 systems.

21 Q And no one asked you to gather any documents responsive
22 to any document requests that have been sent in this case, correct?

23 A No. I haven't had to gather any documents.

24 Q But in fact, you know that you did send and receive emails
25 related to the out-of-network providers and their rate of reimbursement

1 for purposes of this case, correct?

2 A I don't specifically remember emails being sent or not.
3 I'm -- I'm sure I might have. If there's a specific email you might want
4 me to review, I'll be happy to.

5 Q Now, and also, there would be plan documents that would
6 be related to the rate of reimbursement to emergency room physicians
7 who are out-of-network, correct?

8 A Yes. We have plan documents for all of our plan benefits,
9 and they have language that describe how we reimburse emergency
10 services for non-plan providers.

11 Q There would be documents that gave evidence of coverage
12 that identified the manner in which that you adjudicated claims from out-
13 of-network emergency room providers, correct?

14 A Yes. We refer to them as either evidence of coverage or
15 certificate of coverage. Depending on the type of products, it might be
16 called an agreement of coverage. Regardless, those documents have the
17 language in it that describe how, in accordance with the ACA, we're to
18 set reimbursement rates for non-plan providers for emergency services.

19 Q And in fact, there will also be internal operational procedures
20 for payment of out-of-network emergency room providers, correct?

21 A Well, for emergency services, what we did is we --

22 Q No. I'm asking if documents would exist on that topic. Yes
23 or no?

24 A I -- I don't know of any specific claim policies that would
25 exist. There -- there could be.

1 Q And fee schedules that may have been used to determine the
2 rate of reimbursement for out-of-network emergency room providers,
3 those would exist, correct?

4 A So that analysis was done outside --

5 Q No. My question is those type of documents would exist; yes
6 or no?

7 A I don't know.

8 Q You don't know?

9 A I don't know.

10 Q You weren't asked to gather those or produce those, correct?

11 A That's correct. I was not asked to produce those.

12 MS. LUNDVALL: I would pass the witness, Your Honor.

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

14 CROSS-EXAMINATION

15 BY MR. GORDON:

16 Q Ms. Hare, if you could turn to your deposition on page 200,
17 please? [Indiscernible] litigation rules; is that correct?

18 A Yes.

19 Q And if you could turn to 200, line 1 and 2. And do those lines
20 indicate that you have received litigation rules?

21 A Yes. That's correct.

22 MR. GORDON: And Shane, if we could pull up Defense
23 Exhibit 5508.

24 BY MR. GORDON:

25 Q Ms. Hare, if you could take a look at this document and

1 explain what the title is of the document.

2 A Sure. This is a -- what I've called a certificate of coverage.
3 This particular one is written under out Sierra Health and Life line of
4 business. And it is for the Clark County School District support staff. It's
5 for that -- that group.

6 Q And is this certificate of coverage the type of document you
7 would maintain in your files?

8 A Yes. These certificates of coverage are available to me and
9 to my group for us to reference as we're doing our job on a daily basis.

10 Q And did you provide a lot of testimony today about how you
11 and your group reimburse out-of-network claims for ERs; is that correct?

12 A Yes.

13 Q And is that process that you call greatest of three, would that
14 be contained in this same document? The greatest of three language.

15 A Yes. That greatest of three language is in a certificate of
16 coverage like this.

17 MR. GORDON: Okay. Can you take that down, Shane? On
18 second. Excuse me, Your Honor. I can't show it to the jury right now, on
19 page -- the Court's indulgence.

20 [Pause]

21 MR. GORDON: On page 52.

22 THE WITNESS: Yes.

23 MS. LUNDVALL: What exhibit, Counsel?

24 MR. GORDON: This is 5508. Defendant's 5508.

25 BY MR. GORDON:

1 Q I'm on page 52. We cannot show this to the jury at this
2 present -- but on page 52 --

3 MS. LUNDVALL: 5508?

4 MR. GORDON: Five five zero eight.

5 MS. LUNDVALL: Okay. Thank you.

6 MR. GORDON: Page five two.

7 BY MR. GORDON:

8 Q Middle of that page, does that contain a certificate of
9 coverage you maintain in your files, does that contain the
10 reimbursement methodology you described or attempted to describe
11 many times to this jury? Is that contained in this document?

12 A Yes. This has the language that I've been referencing that
13 talks about the greater of three methodology that's used.

14 MR. GORDON: Thank you. I'd like to move Exhibit 5508 into
15 evidence.

16 MS. LUNDVALL: Your Honor, we haven't had a chance to
17 take a look at this. This was just recently given to us. At the next break,
18 then, I'll determine whether or not if there is any objection.

19 THE COURT: We'll divert that until the next break.

20 BY MR. GORDON:

21 Q And you do recall, as Ms. Lundvall said, you prepared for
22 your deposition and litigation, you have reviewed other documents,
23 service coverages, emails in your files that have been used in this case;
24 is that correct?

25 A Yes. We've looked at several documents throughout the

1 course of getting ready for the trial.

2 Q And is litigation -- preparing for lawsuits something that you
3 do on a frequent basis -- regular basis?

4 A No. It's not something I do on a regular basis.

5 Q Okay. That's why legal charging getting thrown around can
6 be complicated to a person who doesn't do this all the time. Would you
7 agree with that?

8 A Yes. I would absolutely agree with that.

9 Q Sorry you had to go through this process for so long.

10 MS. LUNDVALL: And I would ask counsel not to editorialize.

11 BY MR. GORDON:

12 Q We touched upon your background. Just give it to us again.
13 Where do you live?

14 A I live here in Las Vegas up in the northwest part of the city.

15 Q And how long have you lived there?

16 A We have been there for 26 years.

17 Q Do you have a big family?

18 A Yes. My husband and I have three children that were all born
19 and raised here. And they're all three at ULNV right now.

20 Q And how about you, where did you attend college?

21 A Sure. I attended for undergraduate Wayland Baptist
22 University. It's a small university in Plainview, Texas. Graduated, and
23 my husband and I made our way out here back in '95, '96 when the town
24 was booming. I found my way to Sierra Health Services in January of
25 '96 and started there at Sierra Health Services. And I've stayed there

1 ever since in a variety of different roles.

2 Q Did you enjoy your experience at Sierra?

3 A I love what I do. I love the people I work with. It's -- it has
4 been a challenge every year. No two years are the same. There's
5 always something new and interesting in the industry. And we're
6 grateful that we've been given opportunities to learn and grow. And our
7 family has grown up here in Las Vegas. I really enjoy the people I work
8 with. There's -- across the valley, there's about 5,000 employees. 2,600
9 of them are clinicians. I get the privilege of working with a couple of
10 hundred of those folks up at the campus. They also impress me that
11 they're up there working hard for our members and our contract
12 provider partners and try to do their very best for their family. They do
13 the best job they can to make sure that we're providing a great service
14 for our customers here in Las Vegas.

15 Q Okay. And your customers are -- to be very clear, are your
16 customers based here in the state?

17 A Yes. So we consider our customers to be those that are
18 purchasing the Health Plan of Nevada and the Sierra Health and Life
19 products. So those products are typically either here in Las Vegas or up
20 in Reno. We provide products to individuals. And so that might be an
21 individual both on and off exchange. It could be an employer sponsored
22 plan for -- that's provided to the employees. It could be a union plan
23 that's provided to its members. So those are the people that we provide
24 our medical products to, provide coverage for. And in terms of the work
25 that we do on a day-to-day basis, we process the claims, we have folks

1 that answer the phones and work on billing and eligibility. And we have
2 folks that are in the appeals and grievance area. We do prior
3 authorizations. All sorts of services across the board.

4 Q Okay. In response to a question from Ms. Lundvall, I think
5 you said you're a vice president of claims operations for Health Plan of
6 Nevada, Sierra?

7 A Yes.

8 Q How long have you been in that role?

9 A I've been in the role with claims operations for about 10 or 11
10 years now.

11 Q Okay. And who do you report to?

12 A I report to Kyle Clingo.

13 Q And do you consider yourself a department head of Sierra
14 HPN?

15 A No.

16 Q And please describe for us your roles and responsibilities
17 today in your position.

18 A Sure. So when we think about claims operations, we really
19 do think about it from the point a claim enters our building, whether it be
20 virtually or on paper. We have folks that open the mail and scan the mail
21 and data enter that information to get it into our core system facets. We
22 have claim processors that actually sit and look at the claims and process
23 those claims through to completion. I have folks that work on doing
24 system configuration so that we can process our claims more efficiently.
25 And so what they're looking at are like these plan benefit documents and

1 provider contracts and benefit schedules. And they're setting up the
2 system so that it can automatically price many of our claims.

3 We have people that audit all of those different steps to make sure
4 that we are processing the claims correctly, setting up the automation
5 correctly. And we check on a daily, weekly, monthly basis to make sure
6 that we continue to process correctly. I also have folks on my team that
7 are nurses. And so they do clinical coding review to make sure that the
8 data that we're getting in on the claims is accurate and complete. So
9 they're doing assessments on medical records and making sure that --
10 that everything we're getting about the claim is complete and accurate.

11 I have folks that are sitting and looking at items like third-party
12 liability. If there's a car accident, they're making sure they're
13 coordinating that on behalf of our members. Making sure that the right
14 entity is paying. That we have coordination of benefits documents. That
15 we're looking for any potential fraud, waste, and abuse.

16 So claims operations runs the gamut from getting the claim in the
17 door, processing it all the way through, and making sure that once we
18 send it out the door, that it's been processed correctly and that the right
19 entity has paid for it.

20 Q Ms. Lundvall showed you a couple of emails from a variety
21 of entities that we're defending in this case, one of which is UMR. Have
22 you ever worked for UMR?

23 A I've worked with UMR as a --

24 Q Have you ever worked for?

25 A Oh, I apologize. No, I have not worked for UMR.

1 Q And have you ever worked for UnitedHealthcare Services?

2 A No. I have not worked for UnitedHealthcare Services.

3 Q And have you ever worked for UnitedHealthcare Insurance
4 Company?

5 A No, I have not.

6 Q And for your position at Sierra Health Plan of Nevada, do we
7 operate independently from the other entities that we just named, UMR
8 and UnitedHealthcare?

9 A Yes. We still operate very independently here in Las Vegas.
10 We've got full operations here. We have our own contracts and benefit
11 plans so that the people up in the northwest side of town at the office are
12 the ones that are answering the phone calls and processing the claims
13 and processing the eligibility. And we're the ones that are accountable
14 for Health Plan of Nevada and Sierra Health and Life business.

15 Q And just to recap, Sierra Health Plan of Nevada, they don't
16 have any shared savings programs; is that correct?

17 A That's correct. We don't have any shared savings programs.

18 Q And do you use MultiPlan?

19 A We do not use MultiPlan.

20 Q And what about Total Data iSight? Have you ever heard of
21 that?

22 A I had never heard of it until I read some of the legal
23 documents here. We don't use it.

24 Q And are you familiar with FAIR Health?

25 A I'm familiar with it. We don't use it.

1 Q Are you familiar with the term Physicians RNC?

2 A No. I am not familiar with that.

3 Q Do you -- does Sierra Health Plan of Nevada have any outlier
4 cost management programs?

5 A No. We don't have any of those.

6 Q And for out-of-network ER services, could you generally
7 describe the methodology that you and your team use to reimburse such
8 a claim?

9 MS. LUNDVALL: Your Honor, this is where I need to make
10 sure that we are well within the scope of the Court's orders.

11 THE COURT: And I'm listening. I think you're right at the
12 door.

13 MR. GORDON: I just need the title that is used to reimburse
14 the program.

15 THE COURT: Okay.

16 MR. GORDON: Not the substance just the description.

17 BY MR. GORDON:

18 Q What is it called?

19 A We use the greater of three methodology that we have in our
20 plan benefit documents.

21 Q And Ms. Lundvall earlier mentioned Ruby Crest. Did you
22 hear that?

23 A I am familiar with Ruby Crest.

24 Q And Team Physicians?

25 A Yes. I'm familiar with Team Physicians.

1 Q And you and your team have processed claims for those; is
2 that correct?

3 A Yes. We have out-of-network claims for those two entities.

4 Q And the reimbursement that you've done for those two
5 entities, would you consider that as being a consistent reimbursement
6 process for those two entities?

7 A Yes. We use the greater of three methodology language
8 that's in the plan benefit documents for those entities as well.

9 Q And have you done that for a number of years for those two
10 entities?

11 A Yes. We've used that for as many years as I can remember.

12 Q Okay. As for Fremont, are you currently processing out-of-
13 network claims for Fremont?

14 A Yes. We are processing out-of-network claims for Fremont.

15 Q And have you and your group done that for as long as you
16 can remember?

17 A No. That was a more recent change to an out-of-network
18 methodology.

19 Q And the rate of reimbursement -- the out-of-network rate of
20 reimbursement for out-of-network services that you would obtain --
21 provide for Fremont, Physicians, and Ruby Crest, do you and your team
22 -- does it have to be a reasonable rate of reimbursement?

23 A Yes. It's reasonable and within the definition of what's in our
24 plan benefit documents.

25 Q Ms. Lundvall asked you to take a look at Plaintiffs' Exhibit

1 325. As you know, we're discussing claim processing, claim adjudication
2 in compliance with the Affordable Care Act. Do you remember that?

3 A Yes, I do.

4 Q And yes or no, was there a reason that the claim processing
5 systems where Sierra was getting the change and automation, which
6 would have affected implementation?

7 A Yes.

8 MR. GORDON: Thank you very much. No further questions.

9 THE COURT: Redirect?

10 MS. LUNDVALL: Very briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. LUNDVALL:

13 Q Now, Ms. Hare, when I asked you questions about the
14 litigation polls and whether or not you've received one, you understood
15 my question to refer to this case, correct?

16 A Yes.

17 Q You've received litigation polls in other cases, correct?

18 A Yeah. So the litigation --

19 Q I'm asking yes or no. Have you received litigation polls --

20 MR. GORDON: Objection, Your Honor.

21 Q -- in other cases?

22 MR. GORDON: Ms. Hare's in the middle of answering a
23 question. This is probably the fifth time she has not been able to answer
24 the question. Can the witness please answer her question.

25 THE COURT: Overruled.

1 BY MS. LUNDVALL:

2 Q Yes or no?

3 A Yes.

4 Q All right. What I want to do is get you to turn your attention
5 to page 200 of your deposition, the very portion that was read to you by
6 your counsel, okay? Did you give this testimony and these answers in
7 response during your deposition?

8 "Q Have you ever received a litigation poll?

9 "A I have received litigation polls.

10 "Q Okay. So you know what I'm asking, right?

11 "A Yes, yes. I'm familiar. And I have received them in the past.
12 I just don't recall if I received one specific to this case."

13 Did you give that testimony in response to those questions, Ms.
14 Hare?

15 A Yes.

16 Q So when Mr. Gordon asked you whether or not you received
17 a litigation poll in this case, this testimony does not reflect that, correct?

18 A I was answering -- I didn't remember specifically receiving
19 the email that said there was a litigation poll for Fremont. That -- that's
20 all. We receive emails that say that our system is under a litigation hold.
21 And then it runs in the background. As an end user, I don't have to
22 necessarily do anything to interact with it. So that's all that was -- I was
23 testifying to today and during my deposition.

24 Q You received it in the past, but you have no recollection of
25 receiving one for this case, that was your testimony, correct? That was

1 your testimony in --

2 MR. GORDON: Objection. Argumentative.

3 Q -- the deposition, correct?

4 THE COURT: All right. So you don't have to reask it. And
5 sustained. Just answer the question.

6 A Yeah. I didn't recall specifically receiving the email for
7 the -- the Fremont case.

8 Q All right. So to the extent that Mr. Gordon asked you some
9 questions about whether or not they were for UMR. And you have not
10 worked for UMR, correct?

11 A That's correct. I have not worked for UMR.

12 Q In other words, you haven't been employed by them?

13 A That's right. And I don't -- I don't interact or run any of their
14 business.

15 Q And nor do you work for UnitedHealthcare, correct?

16 A I don't work for UnitedHealth Services.

17 Q And nor do you work for UnitedHealth Insurance; is that
18 correct?

19 A That's correct.

20 Q But you do work with those entities, correct?

21 A They're -- some of those are my peers. Yes. So I
22 occasionally work with them.

23 Q And you collaborate?

24 A With various folks within the United world. I work with them
25 on a variety of topics.

1 Q Now, on the last question you had indicated that you
2 adjudicated the claims in this case in accord with the greatest of three; is
3 that right?

4 A Yes. That's correct.

5 Q And you understand that that greatest of three has to be
6 compliant with the Affordable Care Act, correct?

7 A The greatest of three language was written in accordance
8 with the Affordable Care Act.

9 Q My question to you is a little bit different. Do you understand
10 that the greatest of three language is required to be in compliance with
11 the Affordable Care Act?

12 A Yes. That's how we wrote our documents and filed them and
13 had them approved by the various regulatory entities.

14 MS. LUNDVALL: No further questions, Your Honor.

15 THE COURT: Any recross?

16 MR. GORDON: Nothing further, Your Honor.

17 THE COURT: All right. So does the jury have any questions
18 for Ms. Hare? If so, let me know and write them down. I see no -- I see
19 no one writing questions.

20 All right. May we excuse the witness?

21 MS. LUNDVALL: Yes, Your Honor.

22 MR. GORDON: Yes, Your Honor.

23 THE COURT: All right. Ms. Hare, you may step down.
24 You're excused.

25 THE WITNESS: Thank you.

1 THE COURT: Plaintiff, your next witness, please.

2 MR. LEYENDECKER: Plaintiffs call David Leathers, Your
3 Honor.

4 THE COURT: Good enough. This is a good time for our
5 afternoon recess. Mr. Leathers can -- will be in the courtroom when you
6 come back from your recess.

7 It is 3:16. So -- all right. During the recess, don't talk with
8 each other or anyone else on any subject connected with the trial. Don't
9 read, watch, or listen to any report of or commentary on the trial. Don't
10 discuss this case with anyone connected to it by any medium of
11 information, including without limitation newspapers, television, radio,
12 internet, cell phone, or texting.

13 Don't conduct any research on your own relating to the case.
14 Don't consult dictionaries, use the internet, or use practice materials.
15 Don't talk, text, Tweet, Google issues, or post on social media. And don't
16 conduct any other type of book or computer research with regard to any
17 issue, party, witness, or attorney involved in this case. Don't express
18 any opinion of any subject connected with the trial until the matter is
19 submitted to you.

20 It's 3:17. Please be ready at 3:30. And I would like for this to
21 be our last break of the day. But if you need one, let me know.

22 THE MARSHAL: All rise for the jury.

23 [Jury out at 3:17 p.m.]

24 [Outside the presence of the jury]

25 THE COURT: Okay. The room is clear. Plaintiff, do you have

1 anything for the record?

2 MR. LEYENDECKER: No, Your Honor. Just the only thing
3 was the -- again, we renew our request for judicial admission.

4 THE COURT: And that's under submission.

5 MR. LEYENDECKER: Yes, Your Honor.

6 THE COURT: Anything for the record?

7 MR. ZAVITSANOS: Nothing for us, Your Honor.

8 THE COURT: All right. Have a good break.

9 MR. ZAVITSANOS: Just so it's clear that --

10 THE COURT: Oh, yes, of course.

11 MR. ZAVITSANOS: -- I think you said we're going 8:45 to 9 to
12 4:45 tomorrow, and 5:30 on Thursday?

13 THE COURT: Because I have overtime authorized, I'm going
14 to extend everything to 5. And I have a new schedule for the JEA, which
15 I hope to bring out after the break. I think I'm going to make them work
16 until 5 because I have to authorize overtime now.

17 MR. ZAVITSANOS: Ms. Robinson asked me if we were going
18 to take up jury instructions today.

19 THE COURT: I hope to do that after 5 p.m. tonight. And I'm
20 going to ask the Plaintiffs proposed that you present them in an order
21 that we can actually talk about things about -- that there's enough
22 evidence in about.

23 MR. ZAVITSANOS: Yes, Your Honor.

24 THE COURT: We start usually with Plaintiff.

25 MR. GORDON: That will be fine, Your Honor.

1 THE COURT: Thanks.

2 [Recess taken from 3:19 p.m. to 3:30 p.m.]

3 [Outside the presence of the jury]

4 THE COURT: Are we ready to bring in the jury?

5 MR. LEYENDECKER: Yes, Your Honor.

6 MR. BLALACK: Yes, Your Honor.

7 THE COURT: So Mr. Ahmad, where have you been?

8 MR. AHMAD: I had to make a brief cameo appearance in a
9 deposition, Your Honor, but I got here as soon as I could, which is what
10 we like to say in Texas.

11 THE COURT: Good enough.

12 MR. ZAVITSANOS: He actually took a deposition this
13 morning in his backyard.

14 THE COURT: In your backyard?

15 MR. AHMAD: Yes.

16 THE COURT: Whatever works.

17 [Pause]

18 THE COURT: I think they've figured out that the schedule is a
19 little bit off.

20 THE MARSHAL: All rise for the jury.

21 [Jury in at 3:32 p.m.]

22 THE COURT: Thank you. Please be seated. Plaintiff, next
23 witness? Mr. Leyendecker?

24 MR. LEYENDECKER: Yes, Your Honor.

25 THE COURT: Please give us the name of your next witness.

1 MR. LEYENDECKER: David Leathers.

2 THE COURT: Thank you.

3 MR. LEYENDECKER: Plaintiffs call David Leathers, Your
4 Honor.

5 THE CLERK: Please raise your right hand.

6 DAVID LEATHERS, PLAINTIFFS' WITNESS, SWORN

7 THE CLERK: Thank you. Please be seated. And state your
8 first and last name. Spell them both for the record.

9 THE WITNESS: David Leathers, D-A-V-I-D L-E-A-T-H-E-R-S.

10 THE COURT: Thank you.

11 THE WITNESS: Uh-huh.

12 THE COURT: Please proceed.

13 MR. LEYENDECKER: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. LEYENDECKER:

16 Q Good afternoon, Mr. Leathers. Do us a favor and introduce
17 yourself to the jury and tell them what you do for a living.

18 A Good afternoon. I'm David Leathers. I am a managing
19 director at a firm called Alvarez & Marsal in Houston, Texas. I work with
20 companies, board to directors, inside/outside counsel, with financial
21 issues that arise during a transaction dispute or investigation.

22 Q Are you what the jury heard, all the way back to voir dire and
23 opening statements, an expert witness?

24 A A part of my work is, yes, in the capacity as an expert
25 witness.

1 Q Let me tell you, Mr. Leathers, what Mr. Blalack said about
2 you in opening statements. He said, "Mr. Leathers is their expert. He
3 was retained by the Plaintiffs, and he is going to come into this case and
4 testify about what he believes the reasonable value of the services are."
5 Is that one of the things we asked you to do?

6 A Yes.

7 Q Okay. Now, I've been sitting over there in the corner, and
8 I've heard a lot of testimony, and there's something on my mind that is
9 out of order from what I was planning on doing with you right off the
10 bat, so I'd like to scratch that itch right now, if that's okay with you.

11 A Sure.

12 Q And it's on the subject that Mr. Blalack told the jury you were
13 going to tell them about -- reasonable value. Among the things you've
14 done, studied the claim files?

15 A Correct.

16 Q All right. Have you been sitting in the courtroom at all?

17 A I have a little today; yes.

18 Q Listening on BlueJeans when you are not here in the
19 courtroom?

20 A Yes, periodically.

21 Q Okay. You understand one of the issues in the case is there
22 are five basic CPT codes, 99281 down through 99285?

23 A Yes.

24 Q And among the things you've done in the case, have you
25 tried to look at the various charges and the various amounts reimbursed

1 on those very CPT codes?

2 A Yes, sir, I have.

3 Q Okay. Tell the jury, again, what you've done, what your basic
4 understanding is from what the 281's mean, coming all the way down to
5 285's, in terms of seriousness of the issue for the patient.

6 A Well, in short, the 281's are the less severe sort of
7 treatments, whereas a 285 is the most critical of those five treatment
8 categories.

9 Q Okay. Were you here when various witnesses have talked
10 about gun shots, heart attacks, strokes, that nature down here at 285?

11 A Yes, sir.

12 Q Okay. Let me tell you what I did. You know what a
13 hypothetical question is, don't you, Mr. Leathers?

14 A I do.

15 Q I want to give you a hypothetical, okay? I'll tell you that I
16 went on and did some research, and a 99282 -- I want you to assume
17 with me that the basic description of a 99282 service involves a patient
18 whose presenting problems are of low to moderate severity. Right? I
19 want you to assume that with me.

20 A Okay.

21 Q I want you also to assume that the basic description of a
22 99285 is a patient whose presenting problems are of high severity and
23 pose an immediate significant threat to life or physiological function.
24 You with me?

25 A Yes, sir.

1 Q Okay. These jurors just heard from a high-ranking executive
2 at Defendant, Health Plan of Nevada and Sierra. Were you in the
3 courtroom during that testimony?

4 A Yes, sir, I was.

5 Q Did you hear her testify that the values that those two entities
6 paid, in her opinion, were reasonable value?

7 A Yes.

8 Q Okay.

9 MR. LEYENDECKER: Michelle, can I have 473-B? Your
10 Honor, actually, I think there's a 473-B already in the record.

11 THE COURT: Okay.

12 MR. LEYENDECKER: I'm going to designate this as 473-B-1.

13 THE COURT: All right, because we have A and B in the
14 record.

15 MR. LEYENDECKER: So I would like this to be summary of
16 473, but the label is 473B1 --

17 THE COURT: Got it.

18 MR. LEYENDECKER: -- to avoid confusion.

19 BY MR. LEYENDECKER:

20 Q All right. Mr. Leathers, did you, as part of your work and
21 study what you study, figure out what buckets various CPT and lab
22 amounts, and charges go into?

23 A Yes, I did.

24 Q 473-B-1 is an exhibit that was shown to Mrs. Hare of five
25 claims in this case, at five different -- excuse me -- three different

1 hospitals, all -- see the CPT codes there?

2 A I do.

3 Q All right. Now, what she just told the jury is that \$185 is
4 reasonable value for the service on November 13th of 2019, \$185. You
5 see that?

6 A I do.

7 Q And what was the reimbursement paid for the 99285 claim
8 on July 4th of that year?

9 MR. BLALACK: Objection to the form. Foundation, Your
10 Honor.

11 THE COURT: Overruled.

12 THE WITNESS: \$185.

13 MR. LEYENDECKER: Okay.

14 BY MR. LEYENDECKER:

15 Q Here's the question. How long have you been doing
16 investigations and analysis and expert kind of work, sir?

17 A A little over 20 years.

18 Q Do you ever come across the idea of reasonable value?

19 A Multiple times.

20 Q When you look at this chart and you assume with me that
21 I've correctly described the nature of a 282 versus the nature of a 285, tell
22 the jury whether you think \$185 represents reasonable value, both for
23 the 282 and the 285.

24 A It does not. There's no relationship, in my opinion, between
25 the charge that was actually occurred or the service that was provided,

1 and you have to have that to have a reasonable value relationship.

2 Q Now, I know you're not a doctor. I understand that. Not a
3 clinician, but sitting there with all the things you've studied in this case,
4 do you think the reasonable value of seeing a patient whose presenting
5 problems are low to moderate severity could ever -- and I mean ever,
6 under any circumstances -- regardless of what somebody puts in their
7 insurance document, could the reasonable value for a 282, low to
8 moderate severity for treating that and taking care of that, ever be the
9 same as the value for a patient who has high severity presenting
10 problems, that pose an immediate, significant threat to their life?

11 A Not from a financial perspective.

12 Q Did you hear it when Ms. Hare said that?

13 A Yes, sir.

14 Q Were you thinking what I was thinking?

15 MR. BLALACK: Object to form.

16 THE COURT: Objection sustained.

17 MR. LEYENDECKER: Okay. Let me try it this way.

18 BY MR. LEYENDECKER:

19 Q Did you wonder how someone could take that stand and say,
20 those same services, every single one of these CPTs, they're all
21 reasonable value? Did that thought cross your mind?

22 A Yes.

23 Q And what were you thinking when you heard it?

24 A I was thinking just what I said. There is no relationship
25 between the amount that was paid, the cost that was incurred or the

1 charges that were incurred, or more importantly, the services that were
2 provided.

3 Q The services that were provided. You think the kind of
4 services that were provides play a role in the fact in determining the
5 reasonable value of those services?

6 A Yes.

7 Q You think saving somebody's life from a stroke, from a
8 gunshot, is more valuable than somebody that's got low to moderate
9 problems, that Dr. Scherr described as perhaps a nosebleed or routine
10 blood pressure check?

11 A Yes, I do. It's intuitive.

12 Q Were you here, Mr. Leathers, when Mr. Ziemer, he was the
13 high-ranking executive for -- I'm drawing a blank here.

14 MR. BLALACK: UMR.

15 MR. AHMAD: It's on the chart.

16 MR. LEYENDECKER: Oh, well that'd be helpful. For UMR.
17 That's the old man eyes. Got me again right there.

18 BY MR. LEYENDECKER:

19 Q Mr. Ziemer, high ranking executive for UMR. ER doctor's job,
20 treat patients and save lives. Can you see the correlation between
21 creating a patient that's got a 99282 versus saving their life there at 285?

22 A Yes.

23 Q Intuitively, I don't care what -- you can come from whatever
24 point you want in your life, and you can think of any logical, rational
25 explanation for why -- just because an insurance company writes it in

1 their plan, all by themselves or with their customer, why they can say
2 saving somebody's life is only worth \$185.

3 A I don't know how they can do that.

4 Q Okay.

5 MR. LEYENDECKER: You can take that down, Michelle. And
6 can I get 350.1, please? Now that I'm calm -- a little exercise there.
7 Plaintiffs - excuse me, 530.1. I apologize. Tell the jury about your
8 background and experience, sir.

9 A Sure. I received a -- starting on the left side of this -- a
10 finance degree. I grew up in Houston, Texas. I received a finance degree
11 from Baylor University from their Hankamer School of Business. I did
12 some post-graduate work at Rice University, and University of Houston
13 is not on here. I left Baylor and I became a banker. I was a banker for
14 about eight and a half years, and then left and went to Price Waterhouse,
15 which is now Price Waterhouse Coopers. It's one of the big four
16 accounting firms.

17 That's essentially when I began. I moved from being a banker to
18 doing similar sorts of work that I do today. Spent a number of years at
19 Price Waterhouse, then went to an economic consulting firm called
20 Charles River Associates. Charles River Associates is a Boston-based
21 economic consulting firm with a global presence. I spent a good portion
22 of my career there doing similar sorts of work that I do today. About six
23 or seven years ago, I went to Alvarez & Marsal where I'm a managing
24 director in Houston. Along the way, I became an accredited senior
25 appraiser, which is the highest designation for those and the valuation

1 financial analysis field. And I also became a certified fraud examiner.

2 Q Let me stop you there. What does it mean to be a certified
3 fraud examiner? How do you get that position or that applead,
4 whatever it is?

5 A Well, there's really two aspects to it. One aspect is years of
6 service. In other words, you have to be acting in the capacity of fraud
7 examination and investigation sorts of work for a period of time. Next,
8 you have to take a series of classes and take a test, essentially, and pass
9 a very large test that includes both written and a questionnaire -- a
10 question and answer sort of piece, and that's basically what you get.

11 Q What kind of things do certified fraud examiners get hired to
12 look at?

13 A We get hired to look at anything that could be an accounting
14 investigation, somebody kind of playing with the county records. We get
15 hired for embezzlement investigations. We get hired for whistleblower
16 investigations, but really, more often than not, it's the skill set that's in
17 those sorts of deep investigation types of work that we really utilize in
18 dispute sorts of work like this or similar sorts of things. It's that kind of
19 investigative and inquisitive sort of training that is applied to, you know,
20 almost all of my projects.

21 Q And how long you been doing this kind of work, Mr.
22 Leathers?

23 A Over 20 years.

24 Q Do you find that in those 20 years, you just get the same kind
25 of case after case, or consulting project after consulting, or do they vary?

1 A They're all different.

2 Q Okay. Now, what's similar about them? Is there anything
3 similar about them?

4 A Well, I think they're all important. They're all important to
5 the parties involved in it, but many of them have very large data sets,
6 like this case, and this case has a tremendous amount of -- there's 11,000
7 claims, but there's really many, many more actual records associated
8 with those claims. CPT codes, patients, providers, what have you. So
9 many of the projects that we're involved in both include complex,
10 important situations, but also involved in managing an analysis of data.

11 Q I see you have on there Alvarez and Marsal. That's the
12 current company you're with?

13 A Yes, sir.

14 MR. LEYENDECKER: Michelle, can I get the next line, please?

15 BY MR. LEYENDECKER:

16 Q I'd like for you to tell us a little bit about those folks.

17 A Sure. So Alvarez and Marsal is a global consulting firm. We
18 help companies that are going through change, companies that are
19 looking to improve their processes and improve their profitability and do
20 a lot of work that I do in helping companies that are involved in a -- with
21 financial issues that are involved in a transaction dispute or
22 investigation. We do that in a variety of areas. We do that in healthcare.
23 This slide happens to be a reference to the disputes and investigations
24 business in healthcare. We do it in the energy market, we do it in media
25 space, a variety of different other industries around the world.

1 Q Let me ask you about this. You have up here commercial
2 payers as part of what A&M does. Have you ever been hired by a
3 commercial payer? By the way, tell the jury, what do you mean by
4 commercial payer?

5 A So we mean like a health insurance company such as the
6 Defendants in this case.

7 Q Okay. Have you, yourself, ever given expert testimony where
8 you were hired by a commercial payer?

9 A I've not provided expert testimony on behalf of a commercial
10 payer.

11 Q Okay. You have colleagues that do that?

12 A Sure, sure. We have a lot of people that do that in that area.
13 You know, I have had projects in that space, but as I mentioned before, a
14 lot of the work that is at issue in this case is similar to other sorts of
15 healthcare and medical projects, or more importantly, other sorts of
16 disputes and investigation related to work that I did.

17 Q One of your other bullets up there is providers. Are those
18 healthcare providers or some other kind of provider?

19 A Those are healthcare providers.

20 Q Now, have you done any consulting or expert work on behalf
21 of a healthcare provider?

22 A I've done consulting work. I haven't done -- I have not done,
23 you know, here in the courtroom on behalf of a provider.

24 Q Okay. Let me ask you, you referenced a few minutes ago a
25 large data set and evaluation or simulation -- I forgot -- it may not have

1 been the word you used, but you were describing the kinds of things you
2 do in a typical engagement. And I'd like you to give me a little more
3 flavor for that.

4 A Okay. So like I said, a lot of it's in the healthcare space, some
5 of it's outside the healthcare space. I just finished a project in the online
6 travel agency space where the providers were providers of hotel rooms.
7 Different industry, but the same sort of issues that are going on here.
8 Instead of reimbursement rates, it's commission rates. Substantial
9 amount of data, multiple different parties, and it's a process of going
10 through and understanding that data, summarizing that data, putting it
11 into readable format to do the calculations that you need to do to assist
12 the jury in making your decision.

13 Q Do you -- let's be fair here. Tell the jury what most of your
14 work is in. What industry is most of your work in?

15 A Well, I live in Houston, so we have a large energy present in
16 Houston, Texas and in Texas, so I do a lot of energy related work, like
17 those that live in Los Angeles do a lot of media related work. But I do
18 other, but that's a lot of my work.

19 Q Okay. Do you only do expert lawsuit work, or do you do
20 other kind of expert work?

21 A Well, I mean, my work can kind of really be looked at as what
22 I may describe as litigation related work and non-litigation related work.
23 So the litigation related work is work that'd related to a dispute. The
24 non-litigation work may be related to a valuation of a business, a
25 negotiation of a contract, an investigational. So it's really the same sort

1 of things that we do, kind of outside of litigation. It's what we bring to
2 the courtroom and the analysis that we do in a case such as this.

3 Q About how much of you work is lawsuit expert work versus
4 consulting work outside the lawsuit arena?

5 A So it depends. You know, in some matters, it just depends
6 on how the phone rings and the work that comes in the door. I would
7 say probably in the last two years, it's been heavily weighted -- I'd say
8 heavily weighted -- 70/30 maybe to dispute related work.

9 Q You mean 70 percent lawsuit work, 30 percent pure
10 consulting non-lawsuit work?

11 A That's exactly right.

12 Q Okay.

13 A That's exactly right.

14 Q Now, Mr. Blalack told the jury during opening that the
15 experts are paid, right?

16 A Yes, sir.

17 Q Okay. So go ahead and tell the jury how much you're being
18 compensated for the work you're doing in this case.

19 A So Alvarez & Marsal gets paid \$650 an hour for the time that
20 I spend on this case. I have others that have helped me on this case that
21 charge at a lower hourly rate. Up until trial, we've probably incurred
22 approximately \$150,000 in fees.

23 Q Now, when you work outside the lawsuit world as a
24 consultant -- and by the way, you've given us as little flavor for what kind
25 of companies they have up here. Government agencies, PBMs and

1 distributors. Sir, I don't know what PBM stands for. PBMs and
2 distributors.

3 A Well, yes. I mean -- so I mean, those are distributors
4 primarily in the pharmaceutical space. Because this particular slide here
5 is, you know, kind of healthcare oriented. But outside litigation could be
6 anything from being hired as a -- as a financial expert to assist a court.

7 It may not be a dispute situation. It could be, like I said, a
8 negotiation of a contract. You know, two sides are negotiating a contract
9 or negotiating a license for some asset or some good or service. They
10 want to have financial advisors to help them in negotiating that contract.

11 Q When you are working as a consultant outside of lawsuit
12 world, is your pay any different?

13 A The -- we still charge the same hourly rates. Sometimes it
14 may be a fixed fee sort of matter. But from just kind of the hourly time
15 we spend, we spend -- it's the -- it's the same fee.

16 Q Let's back out to the big picture here. I'd like you to just, at
17 30,000 feet, tell the jury what you were asked to do in this case.

18 A Well, the simple answer is I've been asked to evaluate the
19 damages, if any, that were suffered by the Plaintiffs in this case.

20 Q Now, you said, "if any". What do you mean by that?

21 A Well, the Plaintiffs have made claims in this case for the
22 losses that they've incurred. And my job is to go in and to evaluate that
23 loss, investigate some of the backout to that, and do that calculation.

24 Q Okay. So how do you -- when you get an assignment like
25 that, what's the first thing you do? One of the first things you do?

1 A Well, the first thing you do is you understand the nature of
2 the case, and then you begin to look at -- well, here's a slide here -- at
3 documents. Look at information that has been provided by both parties.
4 So in this case -- would you like me just to go through this?

5 Q Well, I don't -- we don't have to go chapter and verse.

6 A Okay.

7 Q Let me just skip around here. There's three columns of
8 information; ER providers. And is that a reference to my clients, the
9 healthcare providers, in this case?

10 A It is.

11 Q Okay. And the Defendants' information; that's pretty
12 straightforward, right, sir?

13 A Yes.

14 Q And then you've got another category here, "other
15 information". What's the point of that?

16 A Well, there's information that is provided or comes about
17 during the course of the litigation. It could be court filings, expert
18 reports or deposition testimony. We were here just a moment ago
19 referencing, you know, prior depositions, which are basically interviews
20 of different witnesses. And also look at just market information and
21 things that are going on in -- in the market. Inflation and things like that
22 during a period of time.

23 Q I see there's some common things like deposition transcripts
24 both on my client's side, deposition transcripts on the Defendants' side.
25 Did you review some depositions in this case?

1 A I did.

2 Q Did you -- I said review. Did you read the -- let me try this.
3 Did you read any?

4 A Yes.

5 Q Okay. And how about the documents that tend to go along
6 with those depositions, the exhibits? You look at some of those, too?

7 A Yes.

8 Q All right. Claims data. What did you mean by that, sir?

9 A Well, the claims data is really the essential part of, at least
10 from my perspective, this case. The claims data is the data that is
11 surrounding around the 11,560 some-odd claims that are at issue in this
12 case. So the majority of my work is spent on analyzing that information,
13 organizing it, things to that nature.

14 Q Now, there's also a claims data comment under the
15 Defendants' information; what do you mean by that?

16 A Well, both sides -- I say both sides. Both the Plaintiffs, the
17 providers, and the Defendants had -- have claim data. For example, the
18 Defendants had some -- in their data, they had references to certain
19 savings programs that were not in the providers or the Plaintiffs' data.
20 So I was able to combine the two of that, so I get kind of a full set of
21 understanding, some of the nuances around each of the different claims
22 that are at issue.

23 Q So we looked at the claims that are in dispute in this case.
24 That's the claims data on the Plaintiffs' side, right, sir?

25 A That's right.

1 Q And then the claims data on the Defendants' side. Those are
2 what -- tell us what that is again, please?

3 A Well, I mean, there's two aspects to that -- to that. One, of
4 course, is their information with regards to the claims at issue. But what
5 I also was able to get is information with regards to what other
6 providers, not a party to this case, charged United for their services.
7 And --

8 Q How about was there information in there about what the
9 Defendants paid those other providers?

10 A Yes, sir.

11 Q Okay. And let me ask you. Big picture here. We're going to
12 get to it in a bit. But does the claims data both on their side and our side
13 contain information about what the charges and what the
14 reimbursements are actually occurred during the claim period in the
15 case?

16 A Yes.

17 Q Okay. And I see you've got under the Defendants'
18 information something called "internal presentations". What's that a
19 reference to?

20 A So it's fairly company. Well, in companies, we'll have
21 internal presentations that they make to management, or they make to
22 their project team about the -- what's going on in their business, what's
23 anticipated to go on in the business. And essentially, what you're able to
24 do with that information along with the information you have is to kind
25 of create a story. And that's one of the things that I like to do in the

1 beginning of these engagements, whatever they be in litigation or out of
2 litigation, is to create a timeline and understand kind of the timeline of
3 events that occurred.

4 Q Does looking at one of their internal presentations or
5 deposition transcripts, correspondence -- does that assist you in any way
6 in trying to either put context on or understanding the claims data from
7 the claims that are at issue in this case?

8 A Yes, both of those. So, for example, in this case, the
9 providers and Plaintiffs have claimed that, you know, usual and
10 customary charges. Plaintiffs have claimed bill charges for what should
11 be paid. So I'm able to look at this data amongst other data and see do
12 the documents and the evidence support what their claim is?

13 Q Okay.

14 A For example.

15 Q And you just referenced the bill charges. Tell us a little bit
16 more, how you're using the claims data or -- either on our side of the
17 equation or on the Defendants' side of the equation what they pay other
18 providers. How are you using that data to do the work you're doing?

19 A Well, one of the claims in the case is that the bill charges of
20 the providers in this case are reasonable. What the documents tell me is
21 that that reasonableness is one, looking at FAIR Health. There's also
22 reference to what others bill in the marketplace. So by providing --

23 Or being able to get information or get the data on what other
24 providers in the marketplace bill United and compare that to the
25 providers in this case for the same CPT code, same time of service, I'm

1 able to assess the reasonableness and develop, you know, in part, my
2 own opinion with regards to the reasonableness of the bill charges of the
3 providers.

4 Q Let me see if I can break that down a little bit. Is one of the
5 things you did to look at what my clients typically charge for 99285 and
6 compare that to what all the other ER providers in Nevada, be it here in
7 Clark County or up in the northwest and northeast part of the state, just
8 to make comparisons on A versus B; did you do that?

9 A Yes.

10 Q Okay. The jury's heard a bunch of information about FAIR
11 Health. Did you use any FAIR Health data in the case?

12 A Yes, sir. I did.

13 Q And tell us -- tell the jury what you did with that FAIR Health
14 data as it relates to this charge situation.

15 A So FAIR Health produces a survey of -- of bill charges.
16 Basically, they provide report, and they provide separate data with that
17 report two times a year; in November and in May of every year. So I was
18 able to obtain that information . They provide that information on a CPT
19 by CPT code basis. The reports are done twice a year annually.

20 So I'm able to take that information and categorize it in a -- in a
21 similar way as to the provider's bill charges, as well as the bill charges of
22 those -- of those other non-Plaintiffs in this case -- what they have
23 charged United and do a comparative analysis.

24 Q So you could look -- did you look, for example, at what the
25 typical 99285 charge was for the Plaintiffs, the typical 99285 charge was

1 for all the other ER doctors here in Clark County, and then look at what
2 FAIR Health says for that same kind of data?

3 A Yes.

4 Q That's the kind of analysis you did?

5 A It's a lot more detailed and labor intensive than you've
6 described it. But essentially, at the end of the day, that's what it comes
7 down to.

8 Q Okay. Well, I don't mean to demean you. I'm just trying to
9 work hard to get things as clear and straightforward as I can. I'm not
10 trying to minimize the effort there, Mr. Leathers.

11 A Okay.

12 Q Let me ask you. When did you get hired on the case?

13 A In June, July. About -- probably about a month or so before
14 my initial report.

15 Q Okay. Common or uncommon to be hired -- give the jury an
16 idea. Experts get hired typically one year in advance, one week in
17 advance, six months? Give us your experience there.

18 A You know, it's really all over the map. It could be we just
19 gotten into this dispute, and we need some help getting our arms around
20 it and it's very early stages. You know, it could be I'm, you know, sitting
21 at a streetlight and, you know, check my voicemail. And it's a voicemail
22 from somebody saying, hey, David, we've got a crisis going on here.
23 Can you get on an airplane and come and visit with us and help us work
24 through this issue? So it's not uncommon at all to get a -- kind of a short
25 term fire drill sort of project.

1 Q And where would you rank your work on this case? More
2 fire drill or more lots of time to study up?

3 A Well, I would hate to characterize something as a fire drill --

4 Q Well, I'm just using your words.

5 A -- for the providers in this case. But certainly, this would be
6 on the spectrum of a relatively short term for a significant amount of
7 data.

8 Q And in your 20 years, is that usual or unusual, Mr. Leathers?

9 A It's usual.

10 Q Okay. Now, one of the precise issues, if not perhaps the core
11 issue in the case, is what are the reasonable value of out-of-network
12 emergency room services that my clients provided; do you understand
13 that?

14 A Yes.

15 Q Now, have you ever testified to a jury or been hired as an
16 expert to provide an opinion about what the reasonable value of out-of-
17 network emergency services should be?

18 A No.

19 Q Okay. Do you think that somehow disqualifies you or
20 impairs your skills or credibility to do what you do?

21 A No.

22 Q I don't think we've heard his name yet, but Bruce Deal. Tell
23 the jury who Bruce Deal is.

24 A Mr. Deal is essentially my counterpart who has been retained
25 by UnitedHealthcare to perform similar sorts of financial analysis and

1 assessment of the provider's damagers.

2 Q Did you see Mr. -- or read Mr. Deal's deposition?

3 A No, I don't believe I did.

4 Q Okay. Do you know one way or the other whether Mr. Deal
5 has ever offered expert testimony to a jury on what the reasonable value
6 of out-of-network emergency services are? Do you know one way or the
7 other?

8 A I don't believe that he has.

9 Q Okay. Well, I'll ask him here in a day or so and firm that up.
10 Now, do you think the fact that you hadn't done this before -- is there
11 anything about your experience, your skillset that you think qualifies you
12 to do it or disqualifies you to do it?

13 A Well, no. I think that to say that I haven't done this before;
14 I've done this hundreds of times. The fact that I haven't testified in court
15 about a claims issue I don't think separates it from the hundreds of other
16 projects that I've done that are data intensive include the same sort of
17 analysis that we're doing here.

18 Q Okay. And as I asked you a few minutes ago; were all those
19 the exact same kind of project for the exact same kind of client every
20 time or were they all over the map?

21 A No, every project is different. Every project has a nuance.
22 And that's why you start the project looking at the documents, looking at
23 the information, understanding what's going on in the market whether it
24 be all in the same industry. Every matter in the same industry is
25 different. Or it could be a different industry.

1 Q Can you give the jury a sense of the kind of skillsets that are
2 necessary to do the work that you've done in this case?

3 A Well, I think that you've got to have a -- obviously, you've got
4 to have a financial background, financial analysis background, evaluation
5 related background, certainly a data analysis background. I had a
6 gentleman assist me, who has basically dedicated his career to data
7 analysis in the healthcare space. That's very important to be able to
8 manage high volumes of data with a -- with a high degree of accuracy.

9 Q Okay. Does he use those same skills to handle the data sets
10 in this case?

11 A Absolutely.

12 Q So let's get right into the data set the claim filed. There are
13 11,563 claims where my clients are saying they were underpaid. And
14 what did you do to get your arms around those 11,563 claims?

15 A Well, the first thing I did is spent just a number of hours just
16 looking through it. You know, to get an understanding of -- it was a big
17 Excel file. How many rows? You know, how many -- you know, it's
18 11,000 claims. But, you know, what does that really involve? You know,
19 what's in there? Do I have the bill charge, do I have the amount allowed,
20 do I have the hospital, do I have the company, do I have the CPT code?
21 And one of the things that's in there too is that when we look at the CPT
22 code, we've kind of looked at it in a simple way

23 Really, there are -- there are those five CPT codes, but within there,
24 there could be multiple additional services added to that. So a big part
25 of my work was going through and organizing all of those claims into

1 buckets, if you will, so that they could be reasonably compared to
2 whether it be others in the marketplace, FAIR Health or to different time
3 periods within the data.

4 MR. LEYENDECKER: Let me -- Michelle, can I get 473 -- I
5 think it's F.

6 MR. ZAVITSANOS: F like Frank?

7 MR. LEYENDECKER: F like Frank. Yes, sir.

8 There we go. Okay.

9 BY MR. LEYENDECKER:

10 Q Mr. Leathers, tell the jury what we're looking at right here
11 with 473-F. Where did you get the data that is summarized in Exhibit
12 473-F?

13 A Well, so the claim file that we talked about includes the
14 11,563 claims. It's there at the bottom. What I just mentioned was, you
15 know, that it's -- it was not as simple as just taking the five CPT codes.
16 That those five CPT codes also have those CPT codes bundled with other
17 sorts of services. And so what you see on this slide here is the number
18 of claims. So for example, 99281. In the claims file, there were 16 claims
19 that just were for the services provided in 99281.

20 If you go down to the bottom, you see core plus bundled other
21 CPTs. What's included in those 3,000 claims may be a 99285 or 99281
22 plus another CPT code. In other words, where the doctor performed an
23 emergency service within one of those top fives, but also did another
24 service. And so I needed to separate those because the charges, and
25 oftentimes the amounts allowed on those, are different. So I need to

1 create an apples to apples situation.

2 Q Down there in 99285. How many claims -- of the 11,563
3 claims at issue in the case, how many of those 11,500 claims are 285, Mr.
4 Leathers?

5 A 4,134.

6 Q Are the 99285 claims at issue in this case far and away the
7 single biggest bucket of claims?

8 A They are. As well as the single largest amounts of money.
9 As we -- when we looked at the Sierra chart a moment ago, you can see
10 99285s were all 1,400-dollar per claim amounts. So you have the larger
11 per claim amounts or per billed amounts exactly times 4,000. That's
12 really where the majority of this is occurring.

13 Q This chart here on the flipchart is one of the very first things
14 the jury saw with Mr. Haben. He's a former executive of the United
15 Defendants. Do you recognize this top number 1,428? Does that catch
16 your eye for any reason?

17 A It does. It's the average bill charge for these claims.

18 Q For which claims? The 99285 or which claims?

19 A It's for the -- it's for all of the claims.

20 Q Okay. 254 is an allowed amount; we're going to get to that in
21 a minute.

22 A Okay.

23 Q Let me get you back on 99285. The questioning -- I'll tell you
24 just to clear up. Perhaps you weren't here. This claim, Mr. Leathers, that
25 was discussed with Mr. Haben on the very first day of trial in the first five

1 minutes was an example of a 99285 claim where the charge was \$1,428,
2 and the amount that got paid was \$254.

3 A Okay.

4 Q Okay?

5 A I recall that now. Yes, thank you.

6 Q All right. Straight 99285 claims. And so if we're at 30,000
7 feet and the jury wanted to get in their mind. And we're going to go
8 through all of these details here in a little bit. But the biggest chunk of
9 this case, Mr. Leathers, involves what kind of claims?

10 A Very severe claims that are included in 99285.

11 Q Okay. All right. There's 4,134 -- that we're going to see in a
12 few minutes -- have these kind of attributes. Straight 99285.

13 A Yes, sir.

14 Q Okay. Now, have I heard you say you use the word average?
15 Did you use the word average yet or am I just thinking of my
16 examination of Mr. Deal tomorrow?

17 A I don't think that we have talked about averages or not.

18 Q Okay. How -- staying at a high level. Once you got things
19 broken down into these kinds of codes, into the various core codes or
20 core plus bundle codes, what's the next most significant piece of data
21 you tried to identify?

22 A Well, you have to understand how -- you have to figure out
23 how am I going to summarize it, right? I mean, I can't analyze and
24 understand every single claim. I've got to determine a good and
25 reasonable way to summarize them so I can analyze those. So do I

1 average them and look at what the average charge is? Which is, I think,
2 the 1,400 and the 254. Do I take the median, which is the number that's
3 literally in the middle of 11,000, or do I take the mode? Mode is a -- is
4 basically how many time -- you know, what's the most frequent amount
5 that's in there? And so --

6 Q And in your view, which of those three? Median, average or
7 mode did you -- did you figure out which of those three you thought was
8 most appropriate for looking at charges or reimbursements?

9 A Well, I did not -- I mean, I considered, did not utilize the
10 mode. I focused on the median, and the average, and looked at both of
11 those. At the end of the day, the average was the amount that I used,
12 and I felt was most appropriate for ultimately doing the analysis.

13 Q So you considered the median. Tell the jury why you think n
14 average is the better step for the jury to consider in this case as opposed
15 to the median when, for example, we're looking at what were these
16 average charges?

17 A Well, there's a number of reasons. And the high-level reason
18 is it depends on the -- on the information that you have. But in this
19 particular case, for example, if you were to use a median and that
20 median was higher than the average, you multiply that times the number
21 of claims, you're going to come out with a number that's bigger than
22 what was actually incurred. Or it could be the opposite if you use a
23 median that results in a lower number. Say, instead of 1,400, the median
24 is 1,200. Multiply it times the number of claims. Well, then, you know,
25 you're essentially saying the value is less than what was actually paid or

1 incurred.

2 Q Let me see if I can follow you there. If the median was \$200,
3 right? But the average of what was actually paid is \$250. What are you
4 saying is going to happen if you were to multiple out that median versus
5 multiplying out that average relative to what actually got paid?

6 A Well, you would never get to, in your hypothetical there,
7 what was actually gotten paid if you used the median number.

8 Q Are there some situations that are better suited for using the
9 median number?

10 A Sure.

11 Q Can you give us an idea of one?

12 A I mean, you can say -- if, for example, you're looking at let's
13 say home prices in a neighborhood. And there are 50 homes in a
14 neighborhood, and there's two big mansions. That the value of those
15 mansions are worth four or five times what everything else is. So if you
16 take the average of that, it's going to skew and misrepresent what the
17 average home price is in the neighborhood. So in that case, you may
18 look more at a median, so you eliminate the one or two giant outliers.

19 Q Outliers. So you use the term, outlier. And just -- I mean, in
20 very plain sense, tell us what you mean by an outlier.

21 A Well, in my example, the two mansions are outliers, right?
22 You have a neighborhood of 50 houses. Only two out of 50 that are of
23 very high value, those are outliers.

24 Q Okay. Do you think there are any outliers in the claims that
25 are in dispute, and the claims that the Defendants paid to all of the other

1 ER providers in the State? Did you find any outliers in there?

2 A Actually, did find it. But then -- which really led to separating
3 out the CPT between the bundled and the unbundled CPTs.

4 Q Okay.

5 A So you remove the outliers by categorizing them in the way
6 that I've categorized them.

7 Q So are you saying you compared core CPTs and core CPTs,
8 and core plus bundle to core plus bundle?

9 A That's correct.

10 Q I just realized there's a concept here. When you say core
11 plus bundled other CPTs, does that -- is that a reference to the bundles
12 meaning having one of these four CPTs plus some other CPT codes?

13 A Yes.

14 Q Okay. Now, did you look for any -- how do I say -- trends or
15 kind of connecting the dots, patterns in the way things were paid by the
16 Defendants in this case?

17 A Yes.

18 Q Tell us a little bit about that work.

19 A So I wanted to understand is -- you know, is there a
20 relationship between the amounts that were billed or allowed on a
21 Plaintiff or provider by provider basis, or on a health plan by health plan
22 basis, on a hospital by hospital basis, or on a CPT code by CPT code
23 basis? It's part of kind of, you know, understanding the data so that you
24 can analyze it.

25 Q And did you find any clear obvious trends to why Plaintiffs

1 got paid this or why Plaintiffs got paid that?

2 A I did not.

3 Q Before I look at the next summary exhibit. Your Honor, we
4 would offer 473-F as a summary of voluminous records under 52.115 at
5 this time.

6 MR. BLALACK: Your Honor, I haven't had a chance to very
7 that these numbers are correct, so I would like to have a chance to do
8 that. But we conditionally admit it until I've had that opportunity.

9 THE COURT: Okay. It'll be conditionally admitted, subject to
10 your review.

11 THE COURT: Would you guys please approach real quick?

12 [Sidebar at 4:22 p.m., ending at 4:24 p.m., not transcribed]

13 THE COURT: Thank you. I just needed to provide some
14 direction to counsel.

15 MR. LEYENDECKER: Your Honor, at this time, we'd offer --
16 the Plaintiffs would offer Mr. Leathers as an expert in this case.

17 MR. BLALACK: No objection, Your Honor.

18 THE COURT: The witness may testify.

19 MR. LEYENDECKER: One other housekeeping, Your Honor, I
20 would offer Plaintiffs' 473-B-1, the summary I first showed, in evidence at
21 this time.

22 MR. BLALACK: The same request, Your Honor.

23 THE COURT: Right.

24 MR. BLALACK: We have the opportunity to verify the
25 summary, to make sure it's accurate.

1 THE COURT: So 473-F and 473-B-1 will both be admitted
2 conditionally.

3 MR. LEYENDECKER: Thank you, Your Honor.

4 [Plaintiffs' Exhibit 473-F and 473-B-1 admitted conditionally into
5 evidence]

6 MR. LEYENDECKER: Thank you, Your Honor. Michele, can I
7 get 473-C please.

8 THE WITNESS: Charlie.

9 MR. LEYENDECKER: Charlie, 473-C, Charlie. Okay.

10 BY MR. LEYENDECKER:

11 Q Mr. Leathers, tell us what we're looking at here, this
12 summary that identifies 473-C, Charlie; what are you looking at?

13 A So this is -- this is kind of similar to the analysis that I did, or
14 a similar to the analysis I did. What you see here is you see -- I'm sorry,
15 my glasses were fogging up there. You see the same date of service,
16 October of 2019. You see the same CPT codes, so this is the sort of
17 analysis to say, okay, you know, the charge is going to be the same, on
18 the same date, for the same service.

19 And when you look at that you say, okay, well, you know, is the
20 charge varied by facility, but going, you know, further onto this, you can
21 see the same CPT code, the same charge, but then what you see in the
22 allowed column is you see varying amounts of allowment or
23 reimbursement for those charges.

24 Q Okay. So we have five claims here, you know, based on the
25 Plaintiffs' claim file, the claims that are at dispute in this case?

1 A Yes, sir, they are.

2 Q And do they involve, let's see, 1, 2, 3, 4 of the 5 Defendants
3 here?

4 A Yes, they did.

5 Q Health Plan of Nevada, UnitedHealthcare Services, United
6 Healthcare Insurance Company, and Sierra Health and Life. Do you see
7 that?

8 A I do.

9 Q Are all five of these claims from October 23rd and 2019?

10 A Yes.

11 Q Okay. And is this all for the same 99285, immediate
12 significant threat to life of physiological function; the same CPT?

13 A Yes, sir.

14 Q Well, which one's reasonable, the one for 177, the one for
15 253, the one for 185, the one for 315, or the one for 435, which one is
16 reasonable value? Same day, same service?

17 A In my opinion you can't determine reasonable value based
18 on those numbers there. There is clearly not a relationship between the
19 charges, the service, and what I can tell you in addition to that because
20 you may be asking, is it okay. Well, let's take a look at consistencies
21 amongst facilities and the Defendants on a broader scale, and you don't
22 see any increased consistency.

23 Q I have a more fundamental question. This is the same day of
24 2019 in October, 7:00 to 8:00 for Nevada day, and live segment services
25 177 to 435. Were you here for the Defendants' testimony, where they

1 said, well, you put it in our plan, that's what you've got to pay? Were
2 you here for that?

3 A I've heard some of that, yes.

4 Q Let's just assume for right now that each of these Defendants
5 has got a plan, although I don't know why, United Healthcare Services
6 will be paying 253, on the same day they paid, 435, but let's assume that
7 they all wrote plans and said, hey, we're going to pay whatever we want,
8 177, 315. What does that tell you, if anything, about the reasonable
9 value of these services?

10 A Well, it says that if you can't determine reasonable value by
11 the amount allowed, that these not allowed don't represent reasonable
12 value, and it would suggest to me that the reasonable value would be
13 some amount in excess of that.

14 Q Did you come across any documents in your investigation
15 that talked about random, calculated amounts?

16 A No.

17 Q Okay. If the jury has heard evidence that at some point in
18 time during this claim period, the Defendants were thinking about doing
19 something with Data iSight, for using random calculated amounts,
20 here's my question, do these look like random numbers for the same
21 kind of claim?

22 A They do, yes.

23 Q Okay. Does random equal reasonable?

24 A Not from a financial perspective.

25 Q Well, how about from the live segment services going on

1 here, for these 285 claims?

2 MR. BLALACK: Objection, Your Honor. Argumentative and
3 foundational.

4 THE COURT: Well, rephrase.

5 MR. LEYENDECKER: Okay. I'll move on, Judge. Your Honor,
6 we'd offer 473-C, as a summary of voluminous record.

7 MR. BLALACK: The same request, Your Honor. I haven't
8 seen this data, I'd have to go back and verify it, if it's there.

9 THE COURT: 473-C will be conditionally admitted.

10 [Plaintiffs' Exhibit 473-C conditionally admitted into evidence]

11 MR. LEYENDECKER: Michelle, can I get 473-D, as in David,
12 and zoom in like you did before?

13 BY MR. LEYENDECKER:

14 Q Mr. Leathers, is this another chart that you analyzed to try
15 and figure out whether there are patterns, or similarities, that you could
16 figure out why things are getting paid, as opposed to being paid
17 randomly?

18 A Yes.

19 Q Okay. And on this chart what are we seeing here in terms of
20 facility, and the timing of these dates of service?

21 A So you're seeing that Sunrise Hospital was the facility that
22 the charge that incurred, or the procedure or what have you was
23 incurred. The date of service is all, you know, within 15 plus or minus
24 days, and so --

25 Q February 16th and March 1st of 2019, so call it 15 days?

1 A Right.

2 Q All right. The same hospital?

3 A The same hospital.

4 Q Sunrise here in Las Vegas?

5 A Yes, sir.

6 Q Okay. What about the CPT code?

7 A Again, all 99285.

8 Q More of these, lifesaving immediate significant threat for lack
9 or physiological functions?

10 A Yes.

11 Q Now what about this "allow"? When you see these, allow
12 from 295, 315, 436, 609 -- by the way, are we dealing with four different
13 Defendants in these scenarios here?

14 A We're not.

15 Q One Defendant, same hospital, 15 days, the same 285 claims.
16 Do those look reasonable or random to you, Mr. Leathers?

17 A Random.

18 Q Okay. Do you notice -- you see over here I've got a -- there's
19 a column on the chart here, iSight, DIS or non-DIS. Tell the jury what
20 that means?

21 A It's a representation of a company or a service called Data
22 iSight. Data iSight is essentially a program that was used by the
23 Defendants in this case, or certain of the Defendants in this case, to
24 assist in negotiating or creating a savings, or a lower allowed amount.

25 Q Let me ask you, if the jury has heard evidence that Data

1 iSight is supposed to be an objective third party, neutral, proprietary
2 patented system, to spin out reasonable value, you accept all that. Do
3 you have some explanation for why you denied Healthcare Services,
4 ignored that supposed fair value, with all that fancy programming, and a
5 paid a whole lot less on all these other claims in this 15-day period, with
6 the same CPT?

7 MR. BLALACK: Objection. Form. Assumes facts not in
8 evidence. Argumentative and compound.

9 MR. LEYENDECKER: I'll rephrase.

10 THE COURT: It's sustained.

11 BY MR. LEYENDECKER:

12 Q If the jury has heard evidence -- by the way have you seen
13 evidence in the record about Data iSight is supposed to being
14 proprietary and third party and neutral and all that?

15 A Yes, sir, I have.

16 Q And have you seen evidence in the record where the
17 Defendants are saying, well, that's what's fair. That's not us, that's a
18 third party deciding what's fair?

19 A Yes.

20 Q Well, let's just accept that for the proposition for right now. If
21 that's true, can you think of any reason if \$609 is the fair price for a 285
22 at Sunset Hospital, can you think of any reason why the defendants
23 wouldn't be paying that each and every time, in this time period?

24 A No.

25 Q Random or reasonable, sir?

1 A Random.

2 Q Okay.

3 MR. LEYENDECKER: Your Honor, we offer 473-D as a
4 summary of voluminous records.

5 MR. BLALACK: The same position, Your Honor, I've never
6 seen this before, so we'll have to review it.

7 THE COURT: 473-D will be conditionally admitted.

8 [Plaintiff's Exhibit 473-D conditionally admitted into evidence]

9 MR. LEYENDECKER: Okay. Michelle, 473-E, as in early.
10 BY MR. LEYENDECKER:

11 Q Mr. Leathers, is 473-E another story you put together trying
12 to figure out the patterns, if there were any, and how clients got paid.

13 MR. LEYENDECKER: Michelle, can we get that a little bigger,
14 maybe?

15 THE WITNESS: Yes.

16 BY MR. LEYENDECKER:

17 Q Okay. Let's let this one sink in for a minute, because we've
18 heard a lot of testimony about Walmart, the other day, from I think it's
19 Mr. Ziemer, and how we just got to pay what the plan says. Do you see
20 who the employer is, Mr. Leathers?

21 A I do, yes.

22 Q Okay. What's the CPT code?

23 A 99285.

24 Q Now, to be fair, the data service here is a little more spread
25 out, right?

1 A Yes.

2 Q But are they all in the same year?

3 A Except for the first one.

4 Q 8/4/2018. Okay. So we're looking at maybe 16 months'
5 worth of claims?

6 A Approximately, yes.

7 Q Okay. Would it seem random or reasonable that on
8 August 4th of 2018, under the Walmart plan, \$305 was paid for the last
9 date of services, but about six months later it was now worth \$609, three
10 months later it dropped a full \$135, and then just after Christmas it was
11 under 200. Does that seem reasonable or random to you?

12 A It seems random.

13 MR. LEYENDECKER: Okay. Now, Michelle, I'd like to -- Your
14 Honor, we would offer 473-E as a summary of a voluminous record.
15 Leave that one on the screen, please.

16 MR. BLALACK: Same position, Your Honor, I've never seen
17 this before, so we'll have to review.

18 THE COURT: 473-E is conditionally admitted.

19 [Plaintiffs' Exhibit 473-E admitted conditionally into evidence]

20 MR. LEYENDECKER: Now, Michelle, can I get the transcript --
21 I want to show Mr. Leathers something Mr. Haben told the jury on
22 November 12th, and that's at pages 85, 15 through 24. See if you can
23 blow that up for us, please; the same screen.

24 BY MR. LEYENDECKER:

25 Q Okay. 15 through 24. Did you see or listen to part of

1 Mr. Haben's testimony, Mr. Leathers?

2 A I listened to part of it, yes. I don't know if I did this, I can read
3 it and see.

4 Q Okay.

5 Q Here's my question about my colleague Mr. Zavitsanos. "Mr.
6 Haben this jury is going to be asked to evaluate" --

7 MR. LEYENDECKER: Follow me here, Michelle.

8 BY MR. LEYENDECKER:

9 Q "Mr. Haben, this jury is going to be asked to evaluate a
10 reasonable rate for the out-of-network emergency room services that
11 team physicians, Ruby Crest and Fremont, performed on your members;
12 do you understand that?"

13 "A I understand that.

14 "Q Is it fair when the jury is trying to determine what is
15 reasonable, to use United's definition of what is reasonable; is that fair?"

16 What did he say?

17 A He said, "It is. To determine what is reasonable you'd have
18 to look at what is the benefit plan those employer groups that have
19 coverage for out-of-network services."

20 Q Okay. Here we got Walmart, right? 305, 609, six months
21 later, same CPT, down to 435, three months after that, down to 185 a few
22 months later. I just don't understand, what's the connection between
23 what some insurance company puts in their plan and the reasonable
24 value of my client's services; what's the connect there?

25 MR. BLALACK: Object to the foundation, and the question is

1 compound.

2 THE COURT: Well, lay additional foundation and break it
3 down.

4 MR. LEYENDECKER: Okay. Thank you, Your Honor.

5 BY MR. LEYENDECKER:

6 Q You see Mr. Haben says, "To determine what is reasonable
7 you have to look at what's in the benefit plan." Do you see that, sir?

8 A I do.

9 Q And if we assume these are all Walmart, inside about a year
10 and a half, does it make any sense to you that what's actually going on,
11 is somebody is pursuant to a plan versus some random calculated
12 number? If you look at these numbers with Walmart?

13 A Well, I mean, as we said before, I mean these numbers do
14 look random. I've looked deeper into this, that's number one, to kind
15 of -- it's not just an immediate response to that. The second thing is, is
16 that is I don't see any relationship whatsoever, from a financial
17 perspective or in the documents, that tie reasonable and customary to
18 the plan documents.

19 Q Let's be fair here. Do you think these examples that we've
20 been discussing with the jury -- do you like cherry pie?

21 A I haven't had a while, but it's pretty good. Pardon me, I'm
22 sorry. I --

23 Q Apple pie, or cherry pie kind of guy?

24 A I'm more of an apple pie kind of guy.

25 Q Okay. You've heard of the phrase "cherry picking," right?

1 A Yes.

2 Q What's "cherry picking" mean in the expert world?

3 A Cherry picking in the expert world would say, if somebody
4 looks at a bunch of data and they pull out certain numbers that fits their
5 particular position in a case, or their position in a negotiation.

6 Q Now do you think, I don't want to leave this jury with the
7 wrong impression, on every single claim in this case, when you put them
8 together show this crazy random stuff across the board, is it like that on
9 every single claim?

10 A Maybe not every single one, but what I can tell you is, is you
11 start thinking that you are seeing a relationship and then it just
12 completely changes.

13 Q You --

14 A So it is -- it is what we have seen here, is on a grander scale,
15 and you see no consistency between what you may think an employer,
16 or benefit plan, or facility; that's the bottom line.

17 Q Do feel like there's cherry picking going on in these examples
18 we've been talking about?

19 A No, sir.

20 MR. BLALACK: Objection. Foundation.

21 THE COURT: Overruled.

22 BY MR. LEYENDECKER:

23 Q Do you think these examples are cherry picking, or they're
24 fairly representative of the random nature of how claims got paid to my
25 clients in this case?

1 A No. I don't believe they are cherry picking.

2 MR. LEYENDECKER: Your Honor, this would be a good
3 place, I know we're five minutes early, but I've got a subject matter that
4 may necessitate the Court's attention.

5 THE COURT: Okay. Very good. Let's take a recess. Did both
6 of you look at this calendar or schedule?

7 MR. BLALACK: We did, Your Honor, this is fine.

8 THE COURT: Any objection from the Plaintiffs?

9 MR. LEYENDECKER: Yeah. The calendar is good, Your
10 Honor.

11 THE COURT: Good enough. We've taken your notes into
12 consideration, we're going to lengthen the days a little bit, because we
13 told you we'd have you out of here by Tuesday.

14 So, during the recess don't talk with each other or anyone
15 else on any subject connected with the trial. Don't read, watch or listen
16 to any report of, or commentary on the trial, don't discuss this case with
17 anyone connected to it by any medium of information, including without
18 limitation, newspapers, radio, internet, cell phones, television. Don't
19 conduct any research on your own, relating to the case. Don't consult
20 dictionaries, use the internet, or use reference materials.

21 Don't post on social media about the trial, don't talk, text,
22 Tweet, Google issues, or conduct any other type of book or computer
23 research with regard to any issue, a party, witness, or attorney involved
24 in the case. Most importantly, do not form or express any opinion on
25 any subject connected with the trial until the matter is submitted to the

1 jury.

2 Thank you again, for another great day. See you tomorrow
3 at 8:45.

4 THE MARSHAL: All rise for the jury.

5 THE COURT: 8:45 tomorrow.

6 [Jury out at 4:42 p.m.]

7 [Outside the presence of the jury]

8 THE COURT: And Mr. Leathers, would you please step down
9 during the recess. And if you'll exit the room, we have something to take
10 up.

11 THE WITNESS: Sure.

12 [Pause]

13 THE COURT: Okay. Plaintiff, did you have anything for the
14 record?

15 MR. ZAVITSANOS: I think Mr. Leyendecker does, Your
16 Honor --

17 THE COURT: Yeah.

18 MR. ZAVITSANOS: Can I just ask one housekeeping
19 question?

20 THE COURT: Sure.

21 MR. ZAVITSANOS: Just for opposing counsel. Just for
22 planning purposes Mr. Blalack said he was still thinking about whether
23 he is going to call one or both of the MultiPlan witnesses, and I'm just
24 wondering if any decision on that has been made?

25 MR. BLALACK: It has not.

1 THE COURT: We can take it up again tomorrow.

2 MR. ZAVITSANOS: Well, thank you. Well, then I gather
3 then, Your Honor, I gather he will not be calling them tomorrow.

4 MR. BLALACK: They will definitely not be called tomorrow.
5 I've already told Plaintiffs' counsel who [indiscernible].

6 UNIDENTIFIED SPEAKER: And who are the witnesses for
7 tomorrow?

8 THE COURT: Well, hang on.

9 MR. BLALACK: Bruce Deal.

10 UNIDENTIFIED SPEAKER: Bruce Deal.

11 THE COURT: Let me just clarify. So Plaintiff wanted an hour
12 and a half with Leathers, you have taken 70 minutes. You wanted two
13 hours with him on cross, total. Good enough. I'm just letting you know
14 that I'm keeping time.

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

16 MR. LEYENDECKER: We have an issue -- the reason I broke,
17 Your Honor, Mr. Blalack said he wanted to take up some objections,
18 which he thinks is new work, and I'd like to let him have his peace, and
19 then I will advise the Court of my response.

20 THE COURT: Okay. If you'll frame the issue for us, please,
21 and let's move the -- Marshal Allen, could you please just move that so I
22 can see. I don't want to have to worry about not making eye contact.

23 [Pause]

24 MR. BLALACK: All right. Some background, do we need it
25 here?

1 THE COURT: Thank you.

2 MR. BLALACK: So, if Your Honor [indiscernible] various
3 times to the disputed claims list, which I believe this now is marked as
4 Plaintiffs' Exhibit 473. Just so the Court understands, you're going to
5 hear a lot of testimony about over the next 24 hours.

6 That is a list of claims that Plaintiffs compiled on their own,
7 that they contended were under paid on the basis of their claim for
8 damages in the case. That list has gone through various iterations, from
9 fact discovery through expert witnesses. For purposes of what's relevant
10 to this motion, and this argument there was a list created that was
11 provided to Mr. Leathers, and to, you know, other experts in July of this
12 year. It was used for their affirmative report.

13 So Mr. Leathers confirmed the report with their other expert
14 Mr. Phillips. He did an expert analysis using that list. Then they
15 modified that list and dropped some -- and dropped clients, and they
16 provided a new list in August, to Mr. Leathers and Mr. Phillips. Actually,
17 Mr. Leathers got it in September, you'll remember that's where we had
18 the whole motion about an untimely supplemental report. Mr. Leathers
19 and Mr. Phillips created new reports using those -- the list. And every
20 time, Your Honor, there's a new list, it requires a new set of calculations
21 to produced [indiscernible].

22 So in connection with that process, our expert updated his
23 reports and didn't change any substantive opinions, just changed the
24 numbers to the computation, and then Mr. Leathers did his new report.
25 Subsequent to that list that was generated in August, Plaintiffs had

1 modified the list twice to four times since July. The final list is Plaintiffs'
2 Exhibit 473, which was finalized in the last week. It occurred in the midst
3 of trial.

4 So when we got -- and that was done in a very cooperative
5 way so that we could try to make sure we all had an agreed list. We --
6 you know, we obviously dispute the claims, and there's some of the
7 claims on the list, Defendants think they've never sent us. But we all
8 agreed this is the list they're alleging were underpaid.

9 And once that was done, I have discussed with opposing
10 counsel, that it would be best if we could efficiently have both of our
11 experts update their reports just to change the numbers with the new
12 input. But I'll make clear, we would not offer any of the prior opinions.
13 We wouldn't offer a single new opinion, a single new analysis. We'd
14 simply just, basically print a red line that would show how the
15 calculation changed with the new list. It would be new numbers, claims,
16 new balance.

17 But I made clear my view is we weren't at liberty to create
18 new opinions at that late date and made clear to opposing counsel that if
19 they did that, I would object. In fact, I proposed a stipulation that we'd
20 submit to the Court that would have a process by which we agree to do it
21 that way and agree that we weren't going to offer any new opinions as a
22 way to avoid among just like now. Opposing counsel was willing to
23 enter a stipulation that said this is the list and that the parties will update
24 their report, but was not willing to agree to my proposed language,
25 which said there won't be any new analysis or opinion. And we just

1 agreed to disagree on whether we had a stipulation.

2 So we did our updates. We sent those out this morning and
3 changed no opinions. It just had new numbers. It was literally a red line
4 and a clean version that shows every digit that was changed. But there's
5 not a single new analysis, single new opinion.

6 Mr. Leyendecker forwarded to me on Sunday night an email
7 from Mr. Leathers that attached four new exhibits. And after he had a
8 chance to review those yesterday -- I mean, yesterday, I discovered that
9 there were new opinions and new analysis that are not simply just taking
10 the numbers and updating the calculation. So I sent Mr. Leyendecker an
11 email this morning, advising him that I had no problem with the prior
12 opinions being introduced, and I would even have no problem with the
13 prior numbers being updated, reflecting the list.

14 But I do object to any new calculations or new opinions Mr.
15 Leathers didn't offer in either of his prior reports. So I'll just quickly
16 identify what the four new things are, Your Honor. The first is something
17 Mr. Leather's calls Leather's Report Exhibit 4, trial. And in this report,
18 Mr. Leathers added a new column to a header that's labeled damages.
19 And when she calculated damages, it billed charges, minus total
20 allowed. And you've heard some reference to that already in the
21 [indiscernible] testimony.

22 This analysis was not in his affirmative report, and it was not
23 in his supplemental report. And Mr. Leathers had never used that
24 methodology of subtracting total allowed from total billed in any of his
25 prior reports. That is a brand-new calculation. So that one we object to.

1 Second, in claims at issue with FAIR Health market flags, Mr.
2 Leathers added columns to a prior report, which he never previously
3 used [indiscernible] claims, and in doing so, identified new analysis that
4 we had never seen, and I had never -- I don't know what it means, and
5 I've never had a chance to question Mr. Leathers on.

6 Third, in -- it's entitled DML, which I [indiscernible] Leathers,
7 claims at issue allowed amount comparisons. There's another
8 spreadsheet. Mr. Leathers changed the, quote, "Damages based on AG
9 claims," unquote, root of columns that were originally used
10 [indiscernible] are now out, and he changed that to use a new
11 methodology for Data iSight, which now instead of using his prior Data
12 iSight calculation, uses a completely different methodology based on
13 general damages as bill charges might have allowed. Again, that was
14 not in the prior report.

15 So those three analyses, Your Honor, everything else he did
16 from before he can do, and again, if he wants to take the claim's
17 spreadsheet, run new calculations from the prior reports, give me a red
18 line that shows how the numbers change, I've got no problem with that.
19 But the new content and the new reports that he's identified here, I do
20 object.

21 THE COURT: Thank you. Okay. And the response, please.

22 MR. LEYENDECKER: Yes, Your Honor. There are no new
23 opinions. There may be a little more detailed analysis, but it's the same
24 opinion and the same analysis that were in the original report and the
25 supplemental report. Let me start, points one and two are this is unfair

1 prejudice that Mr. Leathers is going to take a calculation of the bill,
2 minus the allowed, because that's the new methodology.

3 His original report, Your Honor, says in paragraph 37 on
4 page 10, for the claims at issue, this is -- this is what the old number of
5 claims, okay, before we whittled them down. But the claims at issue, the
6 healthcare provider's billed charges were 14 million and change, of
7 which the Defendants only pay allowed 3 million and change. Okay.
8 That's the foundation.

9 He then says, based on the above, it's my opinion, and
10 remember this is back when we had a RICO damage. It's my opinion
11 that the actual damages attributable to the alleged RICO violation, can be
12 measured by the difference between the amount the Defendants knew
13 was owed, that's the bill charge, and the amount that was the product of
14 the alleged fraudulent or deceitful scheme. All he's done, consistent
15 with removing the RICO claim, is to say, okay, I'm not going to identify
16 the RICO damages. The damages are, as set forth in this original report,
17 bill less allowed. There's nothing new about that other than a reduced
18 number of claims and calculations that go along with that. So that's as
19 to items number one and three.

20 As to item number two -- so let me give you a little -- a little
21 more meat on the bone there. In Mr. Leather's supplemental report, in
22 the work chapter that the Defendant's complained was produced late
23 before the deposition. That work paper had a comparison of the
24 Plaintiff's charges to the FAIR Health 80th charges, to the -- at -- all the
25 other ER doctors' charges, had it summary style, okay. He obviously just

1 didn't make those numbers up out of the blue. He had some behind-the-
2 scenes papers that would say, okay, here's how I get the FAIR Health
3 80th. They're not going to be able to challenge that those numbers are
4 askew, or long, or anything like that.

5 The analysis of comparing our charges to FAIR Health 80th,
6 and the other provider's charges were in the supplemental report, which
7 Mr. Blalack questioned him about and told the jury on this question
8 what's reasonable. So if he's doing that as far -- an investigation of what
9 is the -- whether the charges are reasonable.

10 And what Mr. Blalack told the jury is, in opening, Mr.
11 Leathers would testify that the Team Health billed charges are
12 reasonable, and he's going to give you a primary reason because they
13 are what he calls the 80 percentile FAIR Health benchmark.

14 Now, he's a very skillful lawyer, and he chose the word
15 primary for a reason, because he knew from the deposition that Mr.
16 Leather's methodology was to compare our charges to the Fair Health
17 80th, what it says, to the allowed amount. That's what was on that
18 exhibit, the exhibit that he tried to use to get him disqualified.

19 Okay. At that time, it was clear that we were just going to
20 use Mr. Leathers and not Mr. Phillips, and so the whole thing was going
21 to come in through Mr. Leathers. Your Honor invited Mr. Blalack. Okay.
22 If you think you suffered some harm here, once you get the facts redone
23 with the new claim file, take his deposition. I say do that. He said, I don't
24 want to do that, okay.

25 So we have no new methodology. He might have a new

1 worksheet that shows claim-by-claim. I don't know what he's talking
2 about. The methodology's the same. Our charges, versus whatever
3 everybody else's charge, versus FAIR Health. He's known about it since
4 the supplemental report. He took the deposition on that subject. The
5 only thing that's changed are the amounts because the new claims.

6 Let's see, there are other references back on the billed
7 charge, back on the complaint about items one and three, that this is a
8 new methodology bill charge versus the allowed amount. Paragraph 38
9 of the original report. As they claimed above, understand the healthcare
10 providers bill charges represent the amount owed by the payer. There's
11 nothing new about the methodology here, Your Honor. If they wanted
12 another deposition to follow up on the papers after the -- after the same
13 methodology was used, they could have had that, and they chose not to.

14 THE COURT: Did you provide four new exhibits on Sunday?

15 MR. LEYENDECKER: I provided updated work papers with
16 the new calculations of what had been provided originally, just like I got
17 this morning from Mr. Blalack as it relates to Mr. Deals.

18 So where he got updated work papers and the calculations
19 that are in the same form as I gave you before, I gave those to him on
20 Sunday, and Mr. Lezon [phonetic], he'll have them tomorrow. I got Mr.
21 Deal's today, and Mr. -- he told me at lunch, Mr. Deal is going on the
22 witness stand tomorrow. So I've got less than a day. He had two-and-a-
23 half. Bottom line here, there is not a new -- there's no new
24 methodologies. All of it was disclosed before.

25 THE COURT: Okay.

1 MR. BLALACK: May I respond, Your Honor?

2 THE COURT: Please.

3 MR. BLALACK: It is demonstratively a new methodology.

4 And if it wasn't a new methodology, and all they've done is just take the
5 prior report and [indiscernible] and done a new calculation and
6 [indiscernible] because the new claims was produced in the
7 [indiscernible] I would not be standing here. Let me keep it not too
8 technical, but let me explain why there's new methodology, and if Mr.
9 Leathers take the stand, and if the Court would prefer, I can voir dire him
10 out of the presence of the jury, and I will demonstrably show is a new
11 methodology.

12 What Mr. Leathers did is first analysis, the one that Mr.
13 Leyendecker is referring to. He measured damages as the difference
14 between a calculation he called the Data iSight discount allowed and the
15 bill charge -- I mean, and the allowed amount. He didn't take just
16 whatever the bill charge was, you subtract the allowed, and come up
17 with [indiscernible]. That's one way you could arguably measure
18 damages and, in fact, that's what Mr. Leyendecker wants to ask you to
19 do now. That is not what he did.

20 What he did back in his first report is he looked at only the
21 Data iSight claim. Just the Data iSight claims, which is 740 some odd
22 out of 12,000, so less than 60 percent. He looked at just those claims,
23 and he came up with a Data iSight discount, which was the difference for
24 Data iSight claim on a percent of discount from [indiscernible].

25 Then he multiplied that discount by the Data iSight claims,

1 and then he separately multiplied them by the provider. So Ruby Crest
2 Data iSight claims, Fremont Data iSight claims, Team Physicians. Then
3 he took that same percentage from the same Plaintiffs and did it for the
4 non-Data iSight. Then he came up with that calculation and he tabulated
5 them all up. That produced a number that was something like 8- or \$9
6 million, \$10 million, and we subtracted the allowed amount. That was
7 what he claimed was the actual RICO [indiscernible].

8 He never put just the bill charge for the claims and
9 subtracted allowed. That has never been an opinion. There's not a
10 single written report he's ever published that has that word in it -- that
11 language in it or those numbers. The first time he's ever done that, and
12 had a calculation is when I got that email on Sunday. First time ever.

13 So that's the problem. It is a brand-new methodology from
14 him, and to this question of the deposition, I didn't want to depose him,
15 and didn't need to depose him as long as he stayed in the lines of what
16 he had previously done. As long as he did that -- and I told Mr.
17 Leyendecker the same thing, my expert won't go out of the lines; your
18 expert don't go out of the lines. We'll just have fresh reports when we
19 go do this without headache. It depends on what this is. And it's
20 prejudicial, Your Honor.

21 And Mr. Roberts wanted me -- wanted me to pass along the
22 key [indiscernible]. You know, he knows the local verbiage better than I
23 do, and I'll defer to him on this.

24 MR. ROBERTS: And Your Honor, the only thing I wanted to
25 add was, you know, the -- even though Mr. Blalack can demonstrate the

1 methodology is different, that he goes much -- the rule -- our rule in
2 Nevada goes much further than just the same methodology, or the same
3 opinions. 16.1(E)(3)(b) requires that report must contain a complete
4 statement of all opinions be expressed and the basis and reasons
5 therefore, the data and the other information considered by the witness
6 in forming the opinions and any exhibits to be used as summary of or
7 support for the opinions and the qualifications of the witness.

8 And that has to be disclosed by the deadline for the
9 16.1(A)(3), which is 30 days before trial, which is the last time we
10 supplemented. And therefore, new worksheets, new calculations, new
11 data received after the trial started was just simply too late here. Thank
12 you, Your Honor.

13 THE COURT: And Mr. Blalack, you said it's just new work
14 papers with calculations? What's your response to that?

15 MR. BLALACK: Yeah. Now, just to be clear, Your Honor,
16 what was said to me was a sheet with new calculations using a
17 methodology that has never been used before. That's what's
18 [indiscernible]. So yes, he didn't draft up a new report and send in a new
19 report that says here's my new methodology. I just got a spreadsheet
20 that has new calculations, which shows a methodology, which has never
21 been a methodology previously in his report.

22 And I -- again, I can't overstate that I have no problem with
23 a -- updating a prior work papers just to reflect the fact that we have a
24 different target of disputing claims. If that is what has happened, I
25 wouldn't be objecting. What's got me standing up here is I've got, not

1 just a new list of claims, which is fine, but I've gone beyond just a new
2 calculation to a new methodology being handed to me in a spreadsheet
3 two days before the witness takes the stand. That's the issue.

4 THE COURT: All right.

5 MR. LEYENDECKER: May I respond briefly, Your Honor?

6 THE COURT: You can, but he'll get the last word. It's his
7 issue.

8 MR. LEYENDECKER: He says he suffered a prejudice
9 because Mr. Leathers is going to calculate, update the information in his
10 original report. For the claims at issue, the bill charges were 14,657. The
11 allowed amount was 3 million, 105. All he's done is update that. Okay.

12 In evidence is 473. The total -- which will have the total of
13 the charges and the total allowed amount. There's nothing prejudicial
14 about this. He questioned him in his deposition about these RICO
15 damages, which are no longer part of the case. But in the report -- the
16 original report, he describes the amount owed, and he's talking about
17 the bill charge, Your Honor. There, he was deducting the RICO damages.
18 Here, he's subscribing the bullet point above, the difference between the
19 bill charges and the not allowed. All I've done in updated that and
20 displayed what that number is.

21 THE COURT: All right. I have never allowed a witness -- an
22 expert to update a report during trial. I've always ruled no new opinions.

23 MR. LEYENDECKER: The only thing you're updating is the
24 numbers, Your Honor. He -- the data, bill charge and allowed amount
25 was in the original report. The amount owed is referred to in the original

1 report as the bill charge. There's nothing new here other than
2 recalculating the numbers. There's no prejudice.

3 MR. BLALACK: Your Honor, if you have any --

4 THE COURT: And then he's arguing you had it for two days.
5 He's going to get half a day, so he's just another --

6 MR. BLALACK: There is nothing in the -- there's not a single
7 sentence that articulates a new opinion or computation. It simply take --
8 literally, Your Honor, I gave him a red line of the prior document to show
9 how the prior calculations are changed because of the new list. That's it.
10 There's not -- there's not like a new paragraph saying I haven't gotten a
11 new list and now I think this, or now having looked at these numbers,
12 I've gotten a new analysis of this.

13 What we did, and what I specifically proposed in the
14 stipulation and order that they were not interested in, was to take the
15 prior work product, input the new list, and just change the numbers and
16 we could all be fine. And that's not what happened.

17 And Your Honor, if you have any discomfort about this, I am
18 more than willing to take 30 minutes with Mr. Leathers outside of the
19 presence of the jury in the morning and show you what he did and
20 [indiscernible] is not what this is.

21 THE COURT: Well --

22 MR. ZAVITSANOS: Your Honor --

23 THE COURT: -- if we do that though, because we used 30
24 minutes today, which could have been an offer that was -- you know,
25 could have been done --

1 MR. ZAVITSANOS: In writing.

2 THE COURT: -- in writing. If I do that tomorrow, do you still
3 finish on time?

4 MS. LUNDVALL: Well, one additional thing, Mr. Roberts, you
5 know, cited you to the rule with the suggestion that there's no duty, no
6 opportunity, let alone a duty to supplement, and it runs directly contrary
7 to the rule, and the rule that it speaks specifically to expert witnesses
8 who are obligated to supplement their reports then under certain
9 conditions, and that's Rule 26(e), and this falls directly within the scope
10 then with Rule 26(E).

11 MR. BLALACK: Let me suggest a course of action, Your
12 Honor, that will allow us to proceed and not delay the trial at all. Mr.
13 Leathers can give his opinion, and then if I demonstrate on cross-
14 examination that the analysis that I provide on Sunday is different than
15 the analysis I provided in the initial report, the Court can strike the
16 opinion tied to that [indiscernible].

17 THE COURT: All right. Let's -- and I'm going to sleep on that.
18 Do you have a response to that?

19 MR. LEYENDECKER: I'm fine if he wants to take Mr. Leathers
20 voir dire.

21 MR. BLALACK: No, I just -- we won't even have to slow
22 down. Well, you put on your opinion, and I'll examine him. When I
23 examine him, if he acknowledges -- if I demonstrate to the Court's
24 satisfaction that the work product provided me on Sunday has a new
25 opinion or a new analysis that was not in the prior report, then you can

1 destruct.

2 MR. ZAVITSANOS: Your Honor, here's the problem with
3 that, so we've got -- let me simplify this. We had -- we had two claims
4 that had essentially the same damages. We had the RICO claim, and
5 we've got the claims that are remaining. It is impossible for us respond
6 in front of the jury without identifying that this was done, that what Mr.
7 Leyendecker was talking about was done in connection with the RICO --
8 with the RICO claim.

9 I mean, what if they're -- and you'll notice, despite 30
10 minutes of argument, they have not addressed the fundamental point
11 here, which is that what they're complaining about was contained in the
12 RICO report because Mr. Leathers originally was the RICO expert. And
13 then instead of calling two people, we're calling one. But that -- the
14 damages are common to both. The damages are common to both. And
15 so it's not possible for us to respond in front of the jury with this cross-
16 examination taken, without identifying that there was a claim in the case
17 that's no longer there. So I -- so --

18 MR. BLALACK: I --

19 MR. ZAVITSANOS: Hold on. Hold on. So Your Honor, I --
20 this is really -- you know, frankly, I don't -- I -- respectfully, I don't think
21 this is well founded because they had this the entire time. Experts
22 always refine. And what we've done is, not only is there no prejudice
23 that works in our favor. We pulled out the claims, it lowered the damages.
24 It lowered the damages. I mean, if you want to take them at their word,
25 they would want us to present the old damages so that they could then

1 attack them and say those are not in the case. I mean, this is -- I just
2 don't understand.

3 THE COURT: Good enough. And the last word on this.

4 MR. BLALACK: Yeah, I don't think that warrants a response,
5 so you -- I think you know my opinion.

6 THE COURT: All right. So I'm going to sleep on it. Sorry,
7 I'm getting decision-fatigue, so --

8 MR. BLALACK: Understood, Your Honor.

9 THE COURT: And I'd like a ten-minute break before we get
10 ready to do the jury instructions. We did talk about the Plaintiff to do
11 them in an order so that it's more likely the evidence has come in.

12 MR. ZAVITSANOS: Yes. Yes, and Ms. Robinson is here.

13 THE COURT: And I see Mr. Portnoi joined us as well.

14 MR. BLALACK: That's correct, Your Honor.

15 THE COURT: All right. So it is 5:08. I'll be back at 2:20 [sic];
16 we'll work until 6:00.

17 MR. BLALACK: Thank you, Your Honor.

18 [Recess taken from 5:08 p.m. to 5:21 p.m.]

19 THE COURT: Okay. So on this issue with the report. What
20 makes sense to me -- oh, you guys don't have all your players.

21 MR. BLALACK: No, this is going to be the group to be heard.
22 Do you want to wait this until tomorrow?

23 MS. LUNDVALL: Sure.

24 THE COURT: Yeah. He got the message. Tentatively I'm
25 going to allow the Plaintiff to use those new calculations and then to

1 allow you to take the witness on voir dire on limited issue.

2 MR. BLALACK: Okay.

3 THE COURT: Outside the presence.

4 MR. BLALACK: Perfect.

5 THE COURT: That's my tentative.

6 MR. BLALACK: That will be fine, Your Honor. Mr. Roberts
7 said one issue he wanted to raise when we got the instruction, Your
8 Honor.

9 THE COURT: Yeah, go ahead.

10 MR. ROBERTS: Thank you, Your Honor. My client wanted
11 me to raise this earlier, but I did want to wait until the jury was gone, so
12 we wouldn't waste any jury time, because I know we're squeezing it.

13 And it deals with an article and the confidentiality issue
14 again. And I gave a copy earlier to Mr. Zavitsanos and Ms. Lundvall
15 asked for a copy of the Court's -- to review the Court's copy. So if I could
16 ask her to provide that to you.

17 MS. LUNDVALL: That was the Court's copy?

18 MR. ROBERTS: That's what I told you, yes.

19 MS. LUNDVALL: Well, my apologies --

20 MR. ROBERTS: I let you borrow it --

21 MS. LUNDVALL: I think -- I think that I may have scribbled all
22 over it, so --

23 MR. ROBERTS: Do you have the copy that I gave Mr.
24 Zavitsanos?

25 MS. LUNDVALL: I don't believe so.

1 MR. ROBERTS: Well, if you don't mind the highlighting, I'll
2 give this to the Court.

3 THE COURT: That one looks clean.

4 MR. ROBERTS: Your Honor, may I approach.

5 THE COURT: You may.

6 MS. LUNDVALL: Do you have a copy back for me?

7 MR. ROBERTS: I only have -- I had one copy for your side. I
8 gave that to Mr. Zavitsanos. I don't know what he did with it.

9 MS. LUNDVALL: Does the Court now have two copies?

10 MR. ROBERTS: No, the Court has one copy.

11 MS. LUNDVALL: Okay. I'll try to reply then based upon
12 memory.

13 MR. ROBERTS: After I'll give you mine.

14 MR. BLALACK: Would it be helpful for me to email one to
15 you, Ms. Lundvall?

16 MS. LUNDVALL: That would be helpful. Thank you.

17 MR. ROBERTS: Very good.

18 THE COURT: Yeah.

19 MR. ROBERTS: So, Your Honor, this is from the
20 Modernhealthcare.com website from yesterday -- yesterday's release.
21 And in it --

22 THE COURT: And this person had a media request, as I
23 recall. That's correct?

24 MR. ROBERTS: I don't believe they did, Your Honor.

25 THE COURT: Okay.

1 MR. ROBERTS: I believe there were -- there were two media
2 requests. One for --

3 THE COURT: Two or three.

4 MR. ROBERTS: Oh, were there -- if there were three, then I
5 don't know about.

6 MS. LUNDVALL: Uh-huh.

7 THE COURT: I'm not sure. I'm just trying to get there right
8 now. But go ahead. Well, I can listen --

9 MR. ROBERTS: Sure.

10 THE COURT: -- because I don't have to concentrate. I'm just
11 looking for words up here.

12 MR. ROBERTS: And on the first page they discuss Mr.
13 Haben's testimony and certain testimony that he gave regarding Multi-
14 Plan. But then they say, "According to a Court transcript provided to
15 Modern Healthcare by TeamHealth." And it was my understanding
16 that -- because we were doing this sealing and we filed a motion to
17 seal --

18 THE COURT: Well, the --

19 MR. ROBERTS: -- and that the records were locked.

20 THE COURT: The transcripts are -- hang on. Transcripts are
21 filed. They are part of the record. The case is locked meaning they
22 can't -- they can still look at this case.

23 MR. ROBERTS: Well, I don't understand how we can have an
24 opportunity to move to redact certain portions of the record at the end of
25 the trial if the public has free access and TeamHealth care share

1 transcripts. These transcripts include things out of the presence of the
2 jury. Discussion of confidential documents that we thought was off the
3 record and that we would have an opportunity to move to redact.

4 And on the next two pages, we see attorney's eyes only
5 documents published on the internet by a third party attributed to
6 Twitter of TeamHealth. Now they took -- they took documents down
7 from their website after the Court admonished them. We verified that.
8 But they've got a private Twitter account with 17.2 thousand followers.
9 7.2K followers. And they posted apparently attorney's eyes only
10 documents to their public Twitter account.

11 THE COURT: Okay.

12 MR. ROBERTS: And even if transcripts are fair game,
13 certainly this violates what we thought were the rules on AEO
14 documents and we don't know what else is published on this Twitter
15 account because it's private. We can't access it. You have to be a
16 follower. And we would just request that we know the extent of the
17 damage with regard to our confidential information and that they be
18 required to tell us who has accessed our attorney's eyes only documents
19 on their website, who has downloaded it, and who has viewed it on the
20 Twitter account, and request -- so we can request that those people be
21 advised not to publish confidential data until this Court has heard a
22 motion to seal and hopefully granted it. But at least denied it.

23 THE COURT: Well --

24 MR. ROBERTS: The thing that makes this somewhat --

25 THE COURT: Hang on. When this came up before when the

1 whole team was here. I think it disadvantages the whole team. And it
2 doesn't mean that you two can't speak to the team.

3 MS. ROBINSON: No.

4 THE COURT: It's not --

5 MS. ROBINSON: I'm sorry, I didn't mean to interrupt you,
6 Your Honor, but I'm trying to get ahold of my team, to get them back into
7 the courtroom, so that they can be here and respond.

8 MS. LUNDVALL: Well, and in particular, client
9 representatives that are intimately familiar with, you know, what has
10 been done and what hasn't been done. And so therefore, I feel like I'm at
11 a disadvantage because Mr. Roberts is now bringing this up once these
12 people have vacated.

13 THE COURT: Well, and when something was up before, I
14 made them take it down immediately.

15 MS. LUNDVALL: Yes.

16 THE COURT: So especially if there's something AEO. But I
17 will tell you that I've had trials in the middle of trial where my picture
18 comes up on the news, and there's nothing you hate more, okay.
19 Because we're just public servants, right.

20 But so there was a media request. I am going to have to
21 investigate a little bit further. But you guys need to tell your client
22 tonight to get things down. Shut down the Twitter.

23 MS. ROBINSON: They're -- I'm sorry, Your Honor, but our
24 understand is -- everything -- I don't know -- I don't know anything about
25 the Twitter, but everything is down. I asked my team if they could call

1 into Blue Jeans. Could we --

2 THE COURT: And how many people are on Blue Jeans right
3 now?

4 MR. ZAVITSANOS: Your Honor, I'm on -- this is John
5 Zavitsanos.

6 THE COURT: Oh, good. Okay. How many people are on
7 Blue Jeans right now?

8 THE CLERK: 27, Your Honor.

9 THE COURT: 27. So you know, I understand we do the
10 public's business in the courtroom, but I can't let -- we've come this far, I
11 can't let something like this effect -- potentially effect a jury. So we'll
12 take it up right at 8:30 in the morning. But Mr. Zavitsanos make sure that
13 you have a response. That your client is aware of the issue. And that we
14 have a response.

15 MR. ZAVITSANOS: Your Honor, my apologies. I thought -- I
16 don't know -- I don't know what the issue is. I just saw -- I received a text
17 to call into BlueJeans.

18 THE COURT: Oh, okay.

19 MR. ZAVITSANOS: May I ask what the issue is, Your Honor?

20 THE COURT: There is a Modernhealthcare.com article dated
21 November 15, 2021, written by Nona Tepper, who I think did a media
22 request that apparently alludes to a transcript received by a TeamHealth
23 member and also has things from the TeamHealth's Twitter account,
24 which includes some attorney eyes only exhibits. So did I recite that
25 correctly?

1 MR. ROBERTS: You did, and you -- Mr. Zavitsanos can hear
2 me, this is the article I handed you about an hour ago, John.

3 THE COURT: Just stand by the microphone, please.

4 MR. ZAVITSANOS: The --

5 MR. ROBERTS: John, this is the article I handed you about
6 an hour ago and indicated I would raise.

7 THE COURT: Make a Court's exhibit of this, and I'll look at it
8 again tomorrow.

9 MR. ZAVITSANOS: Yeah, I'm sorry, Your Honor. I did not
10 mean to cut you off. I'm not in the courtroom obviously.

11 THE COURT: I know.

12 MR. ZAVITSANOS: Yeah, Mr. Roberts did give me the article.
13 He did not tell me what it was about. I did not read it because we were
14 taking up all these issues that were before Your Honor. I understand
15 what Your Honor is saying, and I would like the opportunity to look into
16 this. I do know, Your Honor, that within less than 60 minutes, when this
17 issue came up, I believe I was last week, everything came down off of
18 the TeamHealth website. Everything. I'm not really sure what this is, but
19 I would like, Your Honor, if I could have until tomorrow morning.

20 THE COURT: You can.

21 MR. ZAVITSANOS: To respond, I would very much
22 appreciate that.

23 THE COURT: You can. And then to let you know, Mr.
24 Zavitsanos I've made a tentative ruling. We'll revisit that in the morning
25 as well, to allow the Plaintiffs' expert to testify and then allow the

1 Defendant to take him outside the presence on some cross to make a
2 decision about the additional information. Whether or not it's just work
3 papers with calculations or if it is a new methodology.

4 MR. ZAVITSANOS: I understand, Your Honor. Thank you,
5 very much. And thank you -- thank you for allowing me to have until
6 tomorrow morning to respond. I will -- this will be at the top of my list,
7 and I will have a response first thing in the morning to the Court.

8 THE COURT: Great, thank you.

9 MR. ZAVITSANOS: Thank you, Your Honor.

10 THE COURT: So I've been looking here for media requests.
11 You guys will have to take a look at that tonight. I'm not sure that I'm
12 going to get to do that before Court at 8:30.

13 Now are we ready? Now the last thing is the Chief Judge
14 texted me that we should all be out of the building by 6:00.

15 MR. ROBERTS: Okay.

16 THE COURT: So let's go to 5:50 on jury instructions. And
17 let's go ahead and get started then. Plaintiff.

18 MS. ROBINSON: Thank you, Your Honor.

19 MR. ZAVITSANOS: Your Honor, may -- I'm sorry, Your
20 Honor, I did not mean to cut you off. It's hard to do this by phone. May I
21 be excused, Your Honor?

22 THE COURT: Absolutely.

23 MR. ZAVITSANOS: Thank you.

24 THE COURT: Okay.

25 MS. ROBINSON: So --

1 THE COURT: I think I have your latest version here on the
2 bench.

3 MS. ROBINSON: Yes, I filed them last night.

4 THE COURT: Yeah.

5 MS. ROBINSON: And then about 40 minutes ago, we also
6 filed our proposed verdict form which we had emailed to Mr. White, but
7 it had a little edit anyway. So the most recent verdict form was filed
8 tonight at just before 5:00. So that should be available, I hope to the
9 Court.

10 Now I don't know -- as you know we have joint instructions.
11 We've got a couple general instructions that are contested from the
12 Plaintiff's side. Would you like to talk about the general ones or just go
13 straight into the substantive instructions?

14 THE COURT: Let's start with general because I haven't read
15 all of your briefs. And the last time I admitted on the record that I hadn't
16 read something, it ended up in a blog. And it was something they filed
17 after Court started. And they said had I read it and I said no, I wasn't
18 aware of it. And it got blogged about. So -- but I haven't read your
19 substantive brief.

20 MS. ROBINSON: That's all right. And I certainly would not
21 blog that. I certainly -- yeah.

22 THE COURT: I see you guys a little different because of who
23 you are in this Court so --

24 MS. ROBINSON: So the first instruction, which is -- that we
25 propose is just that the term person, as used in these instructions,

1 include corporations and other business entities. I have a kind of old
2 case on that. I was surprised I had to go back that far.

3 THE COURT: It's in the Nevada Pattern Instructions.

4 MR. PORTNOI: It's not a pattern instruction, so I don't know
5 if that was address to me or Ms. Robinson, but I don't believe it is.

6 MS. ROBINSON: Yeah, actually I didn't find it there, but if I
7 overlooked it then I --

8 THE COURT: I have the Pattern Instructions on my screen.

9 MS. ROBINSON: Oh.

10 THE COURT: I should be able to pull that up.

11 MS. ROBINSON: We have corporation as a party is in the
12 Pattern Instructions and that's a little different.

13 THE COURT: Dan you probably have this memorized.

14 MR. POLSENBERG: I didn't -- I didn't know when I packed
15 this morning we were doing that, because -- this tonight, or I would have
16 brought both different sets of pattern instructions.

17 THE COURT: Let me just pull it up because I get this
18 regularly. What would the prejudice be to the Defendant?

19 MR. PORTNOI: Your Honor, there's nothing necessarily
20 prejudice on this instruction. I think that the -- since there's not a blend
21 of corporations and non-corporations that are parties here, we didn't
22 believe that it was necessary and belonged in the instructions. I think
23 these instructions might be quite long. The harder it is going to be for
24 the jury to be able to follow them. But there's not a -- we don't have a
25 strenuous objection to this instruction.

1 THE COURT: I'm just looking really quickly at the contents.

2 MR. PORTNOI: Yes.

3 THE COURT: Have you guys consulted the Pattern
4 Instructions on both sides?

5 MS. ROBINSON: Yes, I -- both sides have definitely included
6 Pattern Instructions and instructions based on Pattern Instructions.
7 That's certainly where we started from.

8 MR. PORTNOI: Yes, Your Honor, I think both sides made
9 every effort. There are certainly instructions in this case that both sides
10 proposed that are not Pattern Instructions.

11 THE COURT: Yeah, 1.3 Corporation as a party is the Pattern
12 Instruction. And so I would just suggest that 1.3 be used in lieu of the
13 proposed.

14 MS. ROBINSON: So jointly we actually submitted something
15 that was basically 1.3. And maybe what we could do -- it doesn't -- the
16 problem -- it actually comes down to the punitive damage Pattern
17 Instruction uses the word person. And so I think that was the one that
18 we were particularly concerned about. We just wanted to make sure
19 that it was clear that that applied to the entities in this case. Maybe we
20 could just add the line that I had proposed to the corporation as a party
21 instruction that we jointly agreed to.

22 THE COURT: Why don't you just use the Pattern Instruction
23 1.3?

24 One of the parties in the case is a corporation. A corporation
25 is entitled to the same fair and unprejudiced treatment as an individual

1 would be under like circumstances. And you should decide the case
2 with the same impartiality you would use in deciding a case between
3 individuals.

4 MS. ROBINSON: We would -- we've agreed to that
5 instruction. That's in our -- we've agreed to that. I just-- it was just the
6 word person that concerned me that they would be confused when they
7 saw the word person and think maybe that doesn't apply here. But
8 maybe what I could do is I could just put individual in the -- in our
9 proposed instruction instead of person.

10 MR. POLSENBERG: Okay, and what's the instruction.

11 MS. ROBINSON: It's punitive -- the punitives.

12 THE COURT: Well, I'm looking at federal instruction page 3
13 of 19.

14 MR. PORTNOI: Well, then, Your Honor -- if Your Honor you
15 want a joint submission it is on page 6 of 25 that we have that parties are
16 corporations.

17 THE COURT: I have to get to a different screen for that.

18 MR. PORTNOI: I didn't know, Your Honor.

19 THE COURT: That's all right.

20 MS. ROBINSON: Yeah, it's a statutory definitions of malice,
21 oppression and fraud. Refer specifically to person. And since we used
22 the statutory definitions there, I was just concerned that it not confuse
23 the jury.

24 THE COURT: I think it only needs to be given once and the
25 Pattern Instruction is adequate. Now where -- are we going to take these

1 in order, or what's next?

2 MS. ROBINSON: I was just going to go through the order of
3 our contested instructions.

4 THE COURT: Okay. Next would be page 4.

5 MS. ROBINSON: Right. That is just a simple definition of --
6 instead of repeating the sort of -- the jury's not going to be familiar with
7 the business entity names. They've heard it, but I thought Fremont
8 Emergency Team Physicians and Ruby Crest Emergency Medicine was
9 just a simpler way to proceed.

10 THE COURT: Okay. Mr. Portnoi?

11 MR. PORTNOI: I think that there is already a contemplated
12 instruction where the -- where there's some summary of the case that is
13 given. And I think it makes some sense to at that time provide the
14 abbreviations. I do think by the time we get there, obviously probably by
15 this point; the jury has become a little bit -- become aware that when we
16 say Fremont, we mean Fremont Emergency Services.

17 So I think that this is mainly a form over substance in terms
18 of, you know, pattern instruction. I think it is -- so for instance, pattern
19 instruction 13.0 under contracts requires the Court to give -- it doesn't
20 require; the Court adopts that instruction -- would have the Court give a
21 summary of what the contract claim is about. I imagine that might be
22 the first claim that gets instructed in the case. And that one
23 contemplates saying which party alleges what against which defendant,
24 and that seems like the appropriate time to give the jury those
25 abbreviations.

1 MS. ROBINSON: So are you -- I'm sorry. I didn't mean to cut
2 you off.

3 MR. PORTNOI: Go ahead.

4 THE COURT: Just a second. What is the prejudice to this
5 explanation?

6 MR. PORTNOI: There's not prejudice. This is only at this
7 point contested as to form. There's not a prejudice as to this instruction,
8 Your Honor.

9 THE COURT: I got it. And any reply, please?

10 MS. ROBINSON: Yes. So as a first matter, the proposed
11 summary of the parties' positions is something that we are objecting to.
12 We don't believe it's necessary to characterize the parties' positions in
13 this case and I think it's really actually quite -- potentially quite
14 dangerous in a case as complicated as this one where the jury has sat
15 through weeks of testimony. I don't think they need to have a very
16 complex case broken down in instructions. That could potentially just be
17 too simplified. So we're going to object to that particular instruction.

18 It also actually doesn't define --

19 THE COURT: Well, we're not there yet. We're still on your
20 proposal.

21 MS. ROBINSON: Well, I was just responding to him saying
22 that it was adequate to have it in that instruction. We don't agree to that
23 instruction. The instruction also actually doesn't make those definitions.
24 It just refers to them in short names. And obviously, we want to make
25 sure that the jury instructions in verdict form reflect very clearly the

1 entities who are being awarded money.

2 And then, we also actually plan to do unjust enrichment first
3 instead of breach of contract. So for all these reasons, we think our
4 instruction is quite simple and not objectionable.

5 THE COURT: The proposed instruction on page four of
6 Plaintiff's objected to, the objection is overruled, and this instruction can
7 be given. There's admittedly no prejudice to the Defendant and it does
8 just outline the case.

9 MS. ROBINSON: Thank you.

10 MR. PORTNOI: And Your Honor, was there a ruling on the
11 prior instruction?

12 THE COURT: Yes. The 1.3 would be used in lieu of the
13 proposed.

14 MR. PORTNOI: Thank you, Your Honor. Just for the record.

15 THE COURT: I'm sorry. I thought I had made that clear.
16 Okay. So let's go over now to page five, where we talk about clear and
17 convincing evidence.

18 MS. ROBINSON: Yes, Your Honor. So I'm just turning to
19 instruction 2.2 here. This is very similar to that. I just made a couple
20 edits, which I described. I just want to make sure I have it in front of me.
21 So I put -- oh, I put quotation marks around clear and convincing
22 because that's the way that preponderance is handled, and I just wanted
23 them to be parallel. I believe in the -- it's of course been pulled apart, but
24 I believe -- oh, right. If you look at 2.1, the pattern instruction 2.1, it puts
25 quotation marks around preponderance of the evidence. And so I just

1 thought that it made sense to do the same around clear and convincing,
2 so the jury wasn't -- its eye wasn't drawn to a difference there.

3 And then we also, in our read instruction on preponderance,
4 had a sentence saying, "In determining whether a party had met this
5 burden, you will consider all the evidence, whether introduced by the
6 Plaintiffs or Defendants." And what I didn't want was a clear and
7 convincing instruction that didn't have that sentence because the jury
8 would notice that and wonder, you know, maybe if it was taken away for
9 a reason.

10 THE COURT: I don't know why you're deviating from 2.1A. I
11 understand the issue about clear and convincing evidence, but that has
12 adopted different language than what you proposed at the very last
13 paragraph, the last sentence there.

14 MS. ROBINSON: So 2.1A, on the 2018, right? The --

15 THE COURT: Right.

16 MS. ROBINSON: The burden of proof? So we have an
17 agreed instruction. And maybe I'm just jumping forward because we
18 haven't gone through the agreed instructions. But if you look at our
19 agreed instructions on page --

20 THE COURT: Oh, I see. I skipped at 2.1A. I should have been
21 on 2.1. Sorry.

22 MS. ROBINSON: Right. So we have --

23 THE COURT: Well, but -- so I have the same issue.

24 MS. ROBINSON: We have an agreed instruction on page 14
25 of the joint instructions where we agreed to, basically as a modified

1 version, we took out the description of the claims. And then, you know,
2 if we -- I guess -- we took out the description of the claims and defenses
3 and just went straight to preponderance of the evidence, and then used
4 that portion of the instruction there in determining -- and then, in
5 determining whether a party has met that burden, that's all part of the
6 standard instruction. "In this case, the standard of proof is the
7 preponderance of evidence unless I instruct you otherwise."

8 The pattern instructions are not consistent in instructing a
9 claim should be proved by a preponderance of the evidence. And since
10 we have both, but it's mostly preponderance, I thought it made sense to
11 just clarify for the jury that the default is preponderance unless you're
12 instructed otherwise.

13 THE COURT: And the response?

14 MR. PORTNOI: Your Honor, I disagree. I think that the
15 pattern instruction stands on its own and is proper.

16 MS. ROBINSON: But this is our agreed instruction.

17 MR. PORTNOI: Oh, I'm sorry. With respect to
18 preponderance, yes. I apologize. I thought we were --

19 MS. ROBINSON: Yeah.

20 MR. PORTNOI: I thought we were arguing preponderance
21 and clear and convincing in the same pattern.

22 THE COURT: Well, we might be jumping around a little bit.

23 MR. PORTNOI: Yeah. It occurs to me, and maybe it makes
24 sense since we have a bunch of joint instructions that Your Honor hasn't
25 agreed to give yet. Just because we agreed doesn't mean you agree.

1 And it might make some sense to start with that and build from the first
2 in the joint. And then we build it. Then we'll know what's in there and
3 we can see what we have to add.

4 THE COURT: Okay. So I had hoped that we could jump
5 ahead, but let's not. Let's go to the joint jury instructions and start again.

6 MR. PORTNOI: Well, we did move very fast through the
7 joint.

8 THE COURT: And I --

9 MS. ROBINSON: Yeah, there's probably nothing in here
10 that -- I mean, probably just the evidence instructions would be worth
11 looking at.

12 THE COURT: So we're to the jointly submitted jury
13 instructions. Let's start, then --

14 MS. ROBINSON: I think probably page 14 of 24.

15 THE COURT: Fourteen, is that the first one?

16 MS. ROBINSON: That's the first evidence instruction. The
17 rest are, like, really standard.

18 MR. PORTNOI: Well Your Honor, if we could, just to go to
19 page six of the joint?

20 THE COURT: Can we just start at page one?

21 MS. ROBINSON: Okay.

22 MR. PORTNOI: Okay.

23 THE COURT: Can we just start -- it is page four. It would be
24 jury instruction number one.

25 MR. PORTNOI: Yeah.

1 THE COURT: This is standard, and so it's approved.

2 MR. PORTNOI: Standard and unmodified.

3 THE COURT: Okay. Next page. This is, again, a pattern
4 instruction and will be given.

5 MR. PORTNOI: On page 6, Your Honor, I just wanted to --

6 THE COURT: I'm getting there right now.

7 MR. PORTNOI: -- this is somewhat modified just because the
8 pattern instruction would say a party is a corporation. We just modified
9 to say the parties in this case are corporations. So that's all of it. I don't
10 think we did anything else to this instruction. But I wanted to flag that it
11 was modified from the original.

12 THE COURT: Because you both agree, this instruction will be
13 given in the manner you have requested. Let's go, then, to page seven.

14 MS. ROBINSON: I don't think this is modified from the
15 standard.

16 THE COURT: Not modified?

17 MR. PORTNOI: We don't have objections, Your Honor.

18 THE COURT: Okay. So the instruction on page seven can be
19 given. Let's go page eight. Again, this is a pattern instruction?

20 MS. ROBINSON: Yes. I tried to make sure that I noted
21 modified, but I think none of these have been.

22 THE COURT: Okay. So eight is good. Nine. Page nine.

23 MS. ROBINSON: Yep. That should be --

24 THE COURT: It's a pattern instruction and will be given.
25 Let's go over to page ten now. This is a pattern instruction, as well.

1 MR. PORTNOI: There's a minor modification, if you will go to
2 the bottom, which is --

3 THE COURT: Or her. His or her.

4 MR. PORTNOI: -- I believe agreed by the parties.

5 MS. ROBINSON: Yeah.

6 THE COURT: You both agreed, so given that you both agree,
7 it's your case, it'll be given as-is. And next instruction would be, again, a
8 pattern on page 11?

9 MS. ROBINSON: Yes.

10 MR. PORTNOI: Yes, Your Honor.

11 THE COURT: And that will be given. Let's go over to page
12 12.

13 MS. ROBINSON: I replaced spokesman with spokesperson,
14 just to be neutral.

15 THE COURT: Sometimes when I read it, I make that change
16 myself only because we are trying to be a more inclusive environment
17 for everyone.

18 MR. PORTNOI: It's a little odd that it says foreperson and
19 then spokesman.

20 MS. ROBINSON: Yeah.

21 THE COURT: Well, and I usually say foreperson and
22 spokesperson. So I would use -- yeah. You can use this. So the one on
23 page 12 will be given as you request. Page 13. So were there any
24 revisions? No, it's pattern.

25 MS. ROBINSON: I don't think so.

1 MR. PORTNOI: No revisions, Your Honor.

2 THE COURT: So 13 will be given. Fourteen, evidence
3 instructions. Preponderance.

4 MS. ROBINSON: So in this one, that was where the pattern
5 instruction begins with a characterization of the parties' claims. I just
6 don't think that's necessary, and I do think in a complicated case like this,
7 it could be misleading. And the parties agreed to omit that portion of the
8 instruction.

9 THE COURT: And there's consensus on that?

10 MR. PORTNOI: That's correct, Your Honor. As I said, when
11 we get -- I want to just preserve that when we get to the individual
12 claims, we may believe that that's the time to have such a description.
13 And if we don't have that description there, we may want to revisit this.
14 But agreed that this is consented to at this time.

15 THE COURT: All right.

16 MS. ROBINSON: And then to be clear, there is one further
17 modification, which is where we had added, "In this case, the standard of
18 proof is the preponderance of evidence unless I instruct you otherwise."

19 THE COURT: No objection to that?

20 MR. PORTNOI: No objection.

21 THE COURT: All right. Fourteen will be given as agreed.
22 Fifteen?

23 MS. ROBINSON: 2.3 is --

24 THE COURT: It looks like it's a -- I don't see any
25 modifications on it.

1 MS. ROBINSON: It's -- I don't think it's -- it's not intended to
2 be modified.

3 THE COURT: And you both agreed to this?

4 MS. ROBINSON: Yes.

5 MR. PORTNOI: Yes, Your Honor.

6 THE COURT: All right. So number 15 will be given as you've
7 requested. Sixteen?

8 MS. ROBINSON: So I had an error in the Word document
9 that I sent over to Mr. White. And I corrected it in the PDF that we filed in
10 this instruction. I intended it to be the pattern instruction. We had
11 agreed, they -- I had originally said video only and they had requested
12 that we include video and written. Which, I intended to make that
13 modification, but I need to send a revised Word document. The PDF that
14 was filed should be accurate.

15 MR. PORTNOI: And we were simply thinking we would wait
16 until the evidence was in in case, for some reason, something was read
17 to the jury.

18 THE COURT: All right.

19 MS. ROBINSON: And that's fine.

20 MR. PORTNOI: But ultimately, it seems likely it's all going to
21 come in by video.

22 THE COURT: Sixteen, you want to defer. Pending?

23 MS. ROBINSON: Yes.

24 MR. PORTNOI: Until we have agreement.

25 MS. ROBINSON: Sure. Yeah.

1 THE COURT: Okay. Thank you. Seventeen?

2 MS. ROBINSON: So this is one that I kind of cobbled
3 together. They had proposed charts and summaries that are not
4 evidence and then the charts and summaries that are evidence. And it
5 seemed -- one was the pattern instruction from Nevada and the other
6 one was a Ninth Circuit. I believe a Ninth Circuit --

7 MR. PORTNOI: It is.

8 MS. ROBINSON: -- or maybe *Casey*. And so it seemed more
9 clear. I didn't know if the jury was going to -- in fact, it took me a couple
10 of readings to kind of key in on the fact that the difference was
11 demonstrative versus admitted evidence. And that's why I put together
12 one that I thought would be a little bit clearer.

13 MR. PORTNOI: Yeah. What is unusual is that the pattern
14 instructions have an instruction for charts and summaries that have not
15 been admitted into evidence, but it doesn't have one for charts and
16 summaries that have been. So we just combined them. I think it does
17 not matter. I don't think jurors pay attention to whether it's one
18 instruction or two instructions.

19 THE COURT: And you both agree?

20 MR. PORTNOI: So this is consented to.

21 MS. ROBINSON: Yes.

22 THE COURT: Then number 17 will be given. Go over to 18.

23 MS. ROBINSON: Let's look at the modification.

24 THE COURT: This is modified.

25 MS. ROBINSON: I think it wasn't -- it was not a big one. Let

1 me just take a look at the modification.

2 MR. PORTNOI: This may be a his or her.

3 MS. ROBINSON: Yeah. I normally put that there, but --

4 THE COURT: "You are not bound by the expert's opinion,"
5 was that added?

6 MR. PORTNOI: I don't believe so. I believe that is in there.

7 THE COURT: That's part of it?

8 MS. ROBINSON: So this was actually one of your
9 instructions. And I read it and just decided it was fine. I don't remember
10 the exact modifications, but that's --

11 THE COURT: If you both agree, then 18 will be given.

12 MS. ROBINSON: Thank you, Your Honor.

13 THE COURT: Nineteen?

14 MS. ROBINSON: So this one, I think this was also Mr.
15 Portnoi's. And I think, you know, he made a good choice in just using
16 information instead of that long list of things that experts can rely on. I
17 thought information just summed it up. I think that might have
18 been -- you might know better than I what other modifications --

19 MR. PORTNOI: I don't think that there is another one. Do
20 you mind, I can bring my pattern to you. Would you --

21 MS. ROBINSON: Oh, no. Here, go ahead. Take a look.
22 Sorry.

23 MR. PORTNOI: Yeah. Yes, Your Honor. This is just one
24 where there's just a lot of brackets in there. I don't think -- I think this is
25 modified only insofar as we address the brackets to have, you know --

1 THE COURT: To streamline it?

2 MS. ROBINSON: Yes.

3 MR. PORTNOI: Yes, Your Honor.

4 THE COURT: And you both agree?

5 MS. ROBINSON: Yes.

6 THE COURT: Nineteen will be given as-is. Twenty?

7 MS. ROBINSON: So I think we just made this plural.

8 It's -- the pattern is just hypothetical question has been asked of an
9 expert witness, and we just made it more realistic for this case.

10 THE COURT: And you both agree?

11 MR. PORTNOI: Yes, Your Honor.

12 MS. ROBINSON: Yes.

13 THE COURT: All right. So 20 will be given. Twenty-one?

14 MS. ROBINSON: So that's contracts instruction and that's
15 the pattern instruction. So we both agreed to that.

16 THE COURT: Mr. Portnoi, that's correct?

17 MR. PORTNOI: We did.

18 THE COURT: Twenty-one will be given.

19 MR. PORTNOI: There are other contracts instructions that we
20 dispute, but this one we agree on.

21 MS. ROBINSON: This is where our beautiful cooperation
22 gets -- comes near a close, I'm afraid.

23 THE COURT: Well, the best lawyers are the most
24 professional like that. All right, let's go over --

25 MS. ROBINSON: Thank you, Your Honor.

1 THE COURT: -- to 22.

2 MS. ROBINSON: And that, I think, is -- oh, that's -- so -- and
3 just for the record, Your Honor, this is an affirmative defense. We're
4 going to object that there's no evidence to support it, but we do agree as
5 to the form if the evidence supports it to be given.

6 THE COURT: Okay.

7 MR. PORTNOI: Yes, Your Honor.

8 THE COURT: You both agree subject to that caveat, so --

9 MR. PORTNOI: And I believe that's just the pattern,
10 unmodified.

11 THE COURT: Based upon what instruction is given, if one is
12 given, this is the one that will be given.

13 MS. ROBINSON: Yes, Your Honor.

14 THE COURT: Twenty-three.

15 MS. ROBINSON: Same. It's the same, Your Honor. It's a
16 pattern instruction. We're going to object that there's no evidence to
17 support it, but if it is given, we agree to the form.

18 THE COURT: That's correct.

19 MR. PORTNOI: Agreed, Your Honor.

20 THE COURT: All right. So if a waiver instruction is given, it
21 will be in the form of 23. Twenty-four?

22 MS. ROBINSON: Let's see. That's just the standard closing
23 instruction, Your Honor.

24 THE COURT: No problem. That will be given as-is. It's
25 unmodified. Oh, and that takes us to the end. And it is 5:52. So --

1 MS. ROBINSON: Well, this was a warm, cooperative
2 experience.

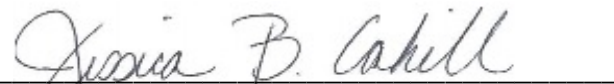
3 THE COURT: That's okay. Save your fights for the fight. See
4 you guys in the morning. Have a great night.

5 MS. ROBINSON: Thank you, Your Honor.

6 MR. PORTNOI: Thank you, Your Honor.

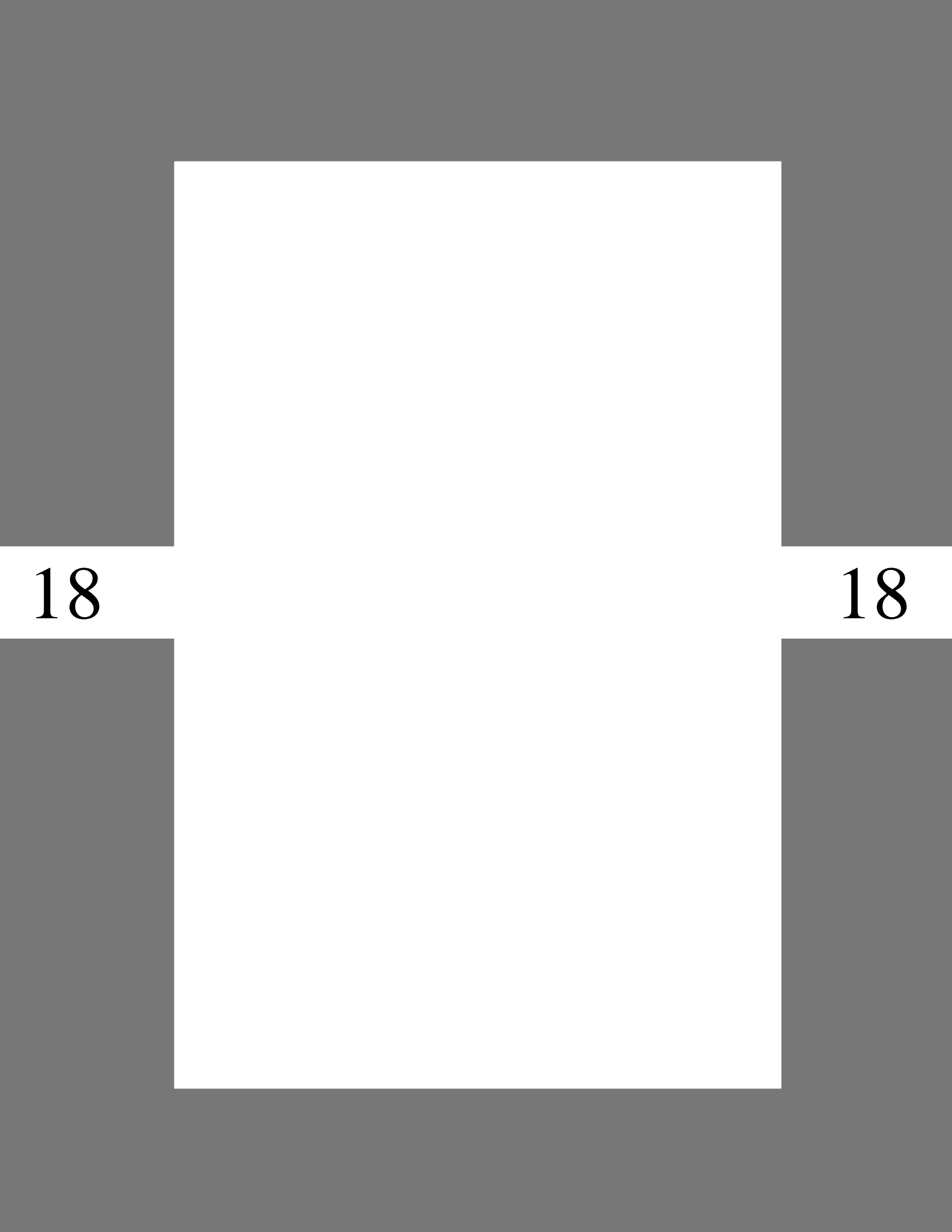
7 [Proceedings adjourned at 5:52 p.m.]
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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708



18

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

Defendants.

CASE#: A-19-792978-B

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
WEDNESDAY, NOVEMBER 17, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 14

APPEARANCES:

For the Plaintiffs:

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

For the Defendants:

D. LEE ROBERTS, JR., ESQ.
K. LEE BLALACK, ESQ.
JEFFREY E. GORDON, ESQ.
CECILIA PLAZA, ESQ.
DANIEL F. POLSENBERG, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

INDEX

Testimony14

WITNESSES FOR THE PLAINTIFFS

DAVID LEATHERS

Continued Direct Examination by Mr. Leyendecker 14

Cross-Examination by Mr. Blalack 52

Redirect Examination by Mr. Leyendecker 199

Further Recross Examination by Mr. Blalack 220

Further Redirect Examination by Mr. Leyendecker 228

Further Recross Examination by Mr. Blalack230

Further Redirect Examination by Mr. Leyendecker232

ROBERT FRANTZ

Direct Examination by Mr. Leyendecker 240

Cross-Examination by Mr. Roberts 264

DAVID LEATHERS

Direct Examination by Mr. Blalack 281

Cross-Examination by Mr. Leyendecker 296

1 Las Vegas, Nevada, Wednesday, November 17, 2021

2

3 [Case called at 8:39 a.m.]

4 [Outside the presence of the jury]

5 THE MARSHAL: -- is back in session. The Honorable Judge
6 Allf presiding.

7 THE COURT: Thanks everyone. Please be seated. Calling
8 the case of Fremont Emergency v. United Healthcare. Let's take
9 appearances real quick.

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

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

14 MR. AHMAD: Joe Ahmad also on behalf of the healthcare
15 providers, Your Honor.

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

18 MS. MCMANIS: Good morning, Your Honor. Jason
19 McManis on behalf of the healthcare providers.

20 THE COURT: Thank you.

21 MS. KILLINGSWORTH: And Michael Killingsworth on behalf
22 of the healthcare providers.

23 THE COURT: Thank you. For Defendants, please?

24 MR. BLALACK: Your Honor, good morning. Lee Blalack on
25 behalf of the Defendants.

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

3 MS. PLAZA: Cecilia Plaza on behalf of the Defendants.

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

6 MR. POLSENBERG: Good morning, Your Honor. Dan
7 Polsenberg.

8 THE COURT: Thank you. All right, guys. So Mr. Zavitsanos,
9 let's have a report on this. You know, I understand that there were
10 media requests, but if they're attorney's eyes only things out there, that's
11 a problem.

12 MR. ZAVITSANOS: So Your Honor, there's much more to
13 this. And let me -- if -- with the Court's permission, what I would like to
14 do -- Mr. Killingsworth has done all the diligence. He's going to give you
15 a full report. And at the end, I would like to make a couple of comments
16 about kind of generally what's going on --

17 THE COURT: Okay.

18 MR. ZAVITSANOS: -- if I can. So let me let Mr. Killingsworth
19 walk you through the questions that the Court posed to me last night.

20 MS. KILLINGSWORTH: Thank you, Your Honor. And I don't
21 believe I was in the courtroom when the entire argument was made by
22 Mr. Roberts, but I just want to give a -- contextualize the issue. So at the
23 beginning of trial, the parties had reached an understanding that if there
24 was AEO material that they would seek to have redacted in the record
25 that were admitted exhibits, they would provide us those exhibits with

1 the redactions. On November 3rd, they provided us with 19 exhibits that
2 they have redactions, and I can provide Your Honor those exhibit
3 numbers, if you would like.

4 At that point, those documents have not been transmitted,
5 have not been given to anyone, because that redaction issue has not
6 been resolved. And after that point, as the issue was raised by Mr.
7 Roberts on November 10th, that some documents had been posted to
8 the TeamHealth website. Within an hour, all of that was pulled down.
9 Now, I believe Mr. Roberts has stated that the AEO document was posed
10 on a TeamHealth Twitter account. And I just provided these documents
11 to Mr. Roberts, and I want to provide you the Twitter account in which
12 the document was actually posted.

13 This is from a Twitter account that's named JabroniCoin, has
14 no affiliation with TeamHealth, and it is posting Exhibit 246. However,
15 this was posted on November 9th, so the day before this issues was
16 brought up and the documents were pulled down. And I just want to
17 note for the Court we can tell that this is the document that Modern
18 Healthcare used, because here's printed color copy, and I've also
19 provided this to opposing counsel, of the Modern Healthcare article and
20 it has the same boxing around Exhibit 246 as is on that Twitter account.

21 THE COURT: This is what we saw last night.

22 MS. KILLINGSWORTH: Yes. And if you notice, it has the two
23 boxes, the red boxes. And I want to also provide the Court and I
24 provided this to Mr. Roberts, this same Twitter account, he routinely puts
25 these boxes around different posts that he has over different topics. And

1 there's three different tweets in there as examples. And so the Modern
2 Healthcare pulled these two examples from the -- this gentleman's
3 Twitter account, was not provided by any TeamHealth personnel, and it
4 -- this gentleman must have downloaded it before we pulled everything
5 down. Exhibit 246 was not one of the 19 documents that Defense
6 counsel provided us that had -- that they have redactions. And on
7 November 15th, which is the say that this Modern Healthcare article was
8 posted, the writer Nona --

9 THE COURT: Tepper.

10 MS. KILLINGSWORTH: Nona Tepper reached out to
11 TeamHealth for a comment on P246 and at that point, we told him based
12 on the Court's orders, this is not to be disseminated. We will not
13 comment on it, and we ask that you not put it in anything. And
14 obviously later that day, the article was posted. And they did it with --
15 they did not take, you know, our strenuous advice not to disseminate,
16 because we were trying to follow the Court's orders. Now, I'm going to
17 hand it over to Mr. Zavitsanos, because that's the background I wanted
18 to provide --

19 MR. ZAVITSANOS: So Your Honor, the two takeaways from
20 what Mr. Killingsworth just said -- and then I've got some other things I
21 need to share with you, is number one, we relied on what the Defendant
22 told us would be AEO. It was not everything that they had stamped AEO.
23 They pared the list down, because if you remember, Your Honor, we had
24 a big discussion about whether the courtroom was going to be closed,
25 what's going to happen with the media. And so we worked very hard to

1 pare that list down. That list got pared down. Some documents were
2 put up on the TeamHealth website that were not those 19. And as soon
3 as Your Honor said take it down, we took it down.

4 Now, what did they do? They expanded the list of the 19
5 documents that they gave us, and they reverted back to anything that
6 has AEO on it is now AEO. And they did that after the stuff was posted
7 on the TeamHealth website. They took that position after that was put
8 up. Now, here's what's going on in the background. There are a lot of
9 eyes on this case. On the second day that Mr. Haben testified, the
10 MultiPlan stock price dropped almost 15 percent. They issued a press
11 release about this trial. There's all kinds of chatter going on on Wall
12 Street about this trial. The day that we began jury selection, a few days
13 before that, TeamHealth files this frivolous lawsuit in Tennessee
14 accusing us of --

15 THE COURT: TeamHealth? Us meaning TeamHealth?

16 MR. ZAVITSANOS: Us, meaning TeamHealth. They issue a
17 press release that appears in Law 360, and it appears in --

18 THE COURT: Yeah, I get the Law 360 flashes, but --

19 MR. ZAVITSANOS: Yes. And in Modern Healthcare. And by
20 the way, Your Honor, let me say this about Modern Healthcare. I don't
21 know what's going on there. Modern Healthcare is very pro-United and
22 we have been getting bashed in Modern Healthcare repeatedly. And so
23 this is -- we've been their punching bag for the last five years. And so --

24 THE COURT: That is --

25 MR. ZAVITSANOS: -- look, Your Honor, all I'm saying is you

1 know, this suggestion that we have a Twitter account that we put this up,
2 it's a little disturbing to say the least, because we're talking about this
3 because we relied on what United told us was going to be AEO. This
4 was not one of the AEO documents. And so -- now, look, in fairness,
5 TeamHealth has been issuing press releases. They've been talking to,
6 you know, to the media about what's going on here. We have not
7 disclosed any AEO stuff. We've not done anything, because look, we
8 have to exist outside of this courtroom as well. This is a public deal.
9 And I'm not participating in that. Honest. I am not -- I have no role in
10 that. I'm here in this case.

11 THE COURT: Nobody's accused you.

12 MR. ZAVITSANOS: Yeah. So that's it. And I think this really
13 much ado about nothing. We did not violate anything. I take the Court's
14 directions very seriously. We took it down --

15 THE COURT: Okay.

16 MR. ZAVITSANOS: -- immediately when Your Honor said to
17 do it and that's --

18 THE COURT: Got it.

19 MR. ZAVITSANOS: -- all I have, Your Honor.

20 THE COURT: If there's no objection, I will make the Plaintiff's
21 documents a Court exhibit.

22 MR. ROBERTS: No objection, Your Honor.

23 THE COURT: And, Mr. Roberts.

24 MR. ROBERTS: Thank you. And first of all, I'm not -- you
25 know, have not and will not accuse counsel of any --

1 THE COURT: I didn't --

2 MR. ROBERTS: -- impropriety here.

3 THE COURT: Did not think that you had.

4 MR. ROBERTS: I just want to make it clear on the record.

5 THE COURT: Yeah.

6 MR. ROBERTS: So this is the first I've seen of this tweet, and
7 it does appear that this is where the information that was posted by
8 Modern Healthcare came from. Of course, the tweet itself indicate that
9 JabroniCoin, the tweeter, uploaded it from
10 TeamHealth.com/wp/content/upload. And while this -- I accept the
11 representation that this was uploaded before the Court admonished
12 them to take it down, we still believe it was improper for them. They
13 should have known that the exhibits were locked until trial was over.

14 THE COURT: Right. And you have a motion that will be
15 resolved posttrial.

16 MR. ROBERTS: Correct. Yes.

17 THE COURT: So we're not going to resolve that today.

18 MR. ROBERTS: Correct, Your Honor. And therefore, they --
19 understand, they've taken it down, but there's still something that is not
20 addressed and that's the same article on page 1 indicates that Modern
21 Health received the transcript that they're quoting from TeamHealth.

22 And I understand the Court indicated initial inclination that
23 the transcripts were public record and fair game, but I would point out
24 that we filed a motion to seal and the Supreme Court rule applicable to
25 the motion to seal doesn't apply just to exhibits. It applies to all court

1 records, would include transcripts, including electronic media.

2 And therefore, as soon as we filed that written motion to
3 seal, all of those documents became confidential, including the
4 transcripts, until the Court can review those documents and we can at
5 the end of trial to see if there's any attorney's eyes only documents
6 where our interests would pay the public interest.

7 THE COURT: Good enough.

8 MR. ROBERTS: And therefore, we do thinks it's improper for
9 them to have provided the transcript after our motion to seal to this
10 Modern Healthcare website.

11 THE COURT: And we'll resolve that issue posttrial.

12 MR. ROBERTS: Yes, Your Honor. But in the meantime, what
13 we would request is under the Supreme Court rule that the transcripts
14 remain private until the Court rules, and we have an opportunity to seek
15 redactions. And that would include the reporter showing transcripts to
16 the general public or TeamHealth continuing to provide transcripts to the
17 media.

18 THE COURT: If the two of you need to talk about that on the
19 next break. If you can stipulate, great. If not, you have to file a motion.

20 MR. ROBERTS: Okay.

21 THE COURT: And I'll hear it on 24 hours' notice.

22 MR. ROBERTS: We will do that, Your Honor. And yesterday,
23 I did ask that we be provided a list of anyone who uploaded documents
24 from their website, and I think that is a valid request, so that we can seek
25 to notify those people that these are confidential.

1 THE COURT: If you can't agree, file a motion. I'll hear it on
2 24 hours' notice.

3 MR. ZAVITSANOS: Your Honor, I'm assuming that
4 information -- we can get that, and so if anybody did that, will provide
5 that -- we'll provide that.

6 THE COURT: Okay.

7 MR. ZAVITSANOS: Okay?

8 THE COURT: Good. Can we bring in the jury?

9 MR. ROBERTS: Thank you, Your Honor.

10 THE COURT: I don't want to lose too much time here. And
11 you're both aware of the tentative ruling with regard to David Leathers to
12 allow the new -- well, I'm being told --

13 UNIDENTIFIED SPEAKER: Kevin, please pay attention.

14 THE COURT: I'm being told that the new information from
15 Leathers is work papers with calculations. Yesterday I ruled tentatively
16 that I would allow him to testify with regard to the new information. I
17 didn't see the prejudice to the Defendant, because it actually lowered the
18 request. And their argument was that you had two days. They're going
19 to get half a day. But I wanted to protect the Defendant's rights by
20 letting you take, outside of the presence, some testimony with regard to
21 that to determine whether or not a new methodology was used.

22 MR. BLALACK: Agreed, Your Honor.

23 THE COURT: Okay. So --

24 MR. BLALACK: Do you want to do that now or do you want
25 to --

1 THE COURT: No. We're going to let him testify first. I want
2 to get going.

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

4 MR. LEYENDECKER: Your Honor, would you like Mr.
5 Leathers to take the stand?

6 THE COURT: Yes, please. Come on up, Mr. Leathers. Good
7 morning.

8 MR. LEYENDECKER: Your Honor, I was visiting with Mr.
9 Blalack, and we've decided we're going to substitute that PDF of the
10 claim file with the actual Excel, so we're going to coordinate to get that
11 done later, so that we've got an easier more readily available, and then
12 I'll take up the admission of the summary exhibits at this time.

13 THE COURT: Thank you. THE COURT: That's correct. And --

14 MR. LEYENDECKER: And is it --

15 THE COURT: -- do you have a response yet on the
16 conditional admission or is that the resolution?

17 MR. LEYENDECKER: Well, I mean that's -- yeah. The reason
18 we're doing this, Your Honor, is --

19 THE MARSHAL: All rise for the jury.

20 [Jury in at 8:53 a.m.]

21 THE COURT: Thank you. Please be seated. Good morning,
22 everyone. Welcome to Wednesday and we're only a few minutes late
23 this time, we want you to know. We actually do work very hard to
24 respect your time.

25 So Mr. Leathers, you're under the same oath you took

1 yesterday. There's no reason to re-swear you.

2 DAVID LEATHERS, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: Go ahead, please.

5 MR. LEYENDECKER: Thank you, Your Honor.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. GORDON:

8 Q Good morning, Mr. Leathers.

9 A Morning Mr. Leyendecker.

10 Q Okay. Let's just get right into it. What do you understand
11 that the Plaintiffs are claiming about the amount they contend they're
12 owed in this case? Big picture wise.

13 A Big picture. They contend that they are owed their billed
14 charges.

15 Q Okay.

16 A Or the difference between the build -- their billed charges --
17 and the amount was actually allowed for those claims.

18 Q We spent a good bit of time yesterday talking about Exhibit
19 473. Do you recognize as that as the underlying claims file, Mr.
20 Leathers?

21 A Yes, sir, I do.

22 Q And we've looked at some summaries. And so I want to ask
23 you, did you -- does Exhibit 473 contain enough information to analyze
24 those charge numbers per claim and allowed number per claim?

25 A Yes, sir, it does.

1 Q All right. And did you prepare any summaries of the 11,563
2 claims that relate to charges and the allows on the Plaintiff via Defendant
3 nexus?

4 A Yes, sir, I did.

5 MR. LEYENDECKER: Michelle, could we see Plaintiff's
6 Exhibit 473-G?

7 BY MR. LEYENDECKER:

8 Q Mr. Leathers, do you recognize Exhibit 473-G?

9 A Yes, sir. I do.

10 Q Can you tell the jury what that is?

11 A Yes. The claim file 473 is actually an Excel file. Excel is a
12 spreadsheet function or a spreadsheet program. In that program, they
13 have a functionality called a pivot table. You can create a pivot table.
14 This is a pivot table that has been created from that Excel database of
15 numbers.

16 MR. ZAVITSANOS: Your Honor, may -- I'm sorry. I have
17 something I need to bring to the Court's attention. May I visit with Mr.
18 Blalack in person?

19 THE COURT: You may.

20 [Sidebar at 8:56 a.m., ending at 8:58 a.m., not recorded]

21 THE COURT: Please proceed.

22 MR. LEYENDECKER: Thank you.

23 BY MR. LEYENDECKER:

24 Q Okay. Let me just back up a bit here. So Exhibit 473-G is
25 something you prepared, Mr. Leathers?

1 A Yes, sir, it is.

2 Q Okay. And so you're saying -- you're using a feature in
3 Excel -- Microsoft Excel to do what? Tell us again.

4 A It's a feature called a pivot table. And essentially, what it
5 does is it allows you to extract the data and summarize it in multiple
6 different ways. And here, what that functionality was was to say show
7 me the charges, which is the first numerical column, sum of charges,
8 show me the sum of allowed. And then I go and say I want to see each
9 of the Defendants listed and I want to see each of the Plaintiffs
10 presented.

11 Q So let me ask you just a basic question here. The very first
12 row is Freemont Emergency Service. That's one of the three Plaintiffs,
13 right, sir?

14 A Yes, sir.

15 Q And then underneath that, does your table list the five
16 Defendants and then the total charges for the claims related to those five
17 Defendants and the total allowed per each Defendant accordingly on
18 those claims?

19 A That's correct. Each one of those numbers then would sum
20 up to the 12.2 million and the 2.4 million for Freemont.

21 Q So the total charges in the case are 13 million -- if I wrote it
22 down write, \$13,242,789? And the total that was allowed was
23 2,843,447.78, right?

24 A Yes, sir.

25 Q Okay.

1 MR. LEYENDECKER: Michelle, can I actually get the
2 underlying Excel file. Let's just double check the numbers if we can.

3 BY MR. LEYENDECKER:

4 Q Okay. Mr. Leathers, do you recognize this is the Excel
5 electronic version of the claim file?

6 A Yes, sir, I do.

7 Q Okay. And just --

8 MR. LEYENDECKER: Michelle, scroll over so we can get to
9 column A all the way over. Here we go.

10 BY MR. LEYENDECKER:

11 Q Just briefly orient the jury about the columns and the
12 information in there, sir.

13 A So the first column you can see is Freemont. The rows on
14 the left, row 1 through -- it goes all the way down to over 11,000.

15 Q Stop. Let me stop you there.

16 MR. LEYENDECKER: Michelle, go all the way down. Can you
17 make the window a little smaller, so that we can scroll all the way to the
18 bottom of the claim file. Touch the -- see in the upper righthand corner.
19 Let me show you. Right there. Yes. Now center. Just touch it and
20 scooch it over, please. There you go. Now, Michelle, if you would take --
21 here we go.

22 BY MR. LEYENDECKER:

23 Q Okay. Mr. Leathers, what are we looking at here on the Excel
24 version?

25 A Okay. So --

1 Q How many number rows?

2 A So the number of rows you see there's a total of 11,564.

3 We've got 11,563 claims. The reason it's additional rows because row
4 number one is the title.

5 Q Okay.

6 A So each one of those lines represents a claim. And then
7 moving in this spreadsheet from left to right are basically -- and the
8 descriptions at the top.

9 MR. LEYENDECKER: Michelle, scroll a little bit over again,
10 left to right. Like let's get over to the -- leave it there. Just -- yeah, there
11 you go.

12 THE WITNESS: So we started out with the -- where you got
13 the facility, the patient name. Date of service is an important column in
14 terms of understanding chronology. The provider, that's the doctor. The
15 billed CPT -- if you stop right there for a moment, you can see here is
16 what I talked a little bit about yesterday, where we would have a CPT
17 number on this line right here of 11558, where you have 99291;225. And
18 you've got additional information there. That's what I call or have
19 described as a bundled CPT code.

20 BY MR. LEYENDECKER:

21 Q And do similar claims just have, for example, the 99291 or
22 99285?

23 A Exactly right. That's exactly right.

24 Q What's column M represent, sir?

25 A So then M says charges. That's the billed charge for that

1 claim.

2 Q And column N represents what?

3 A The amount allowed.

4 Q Okay.

5 MR. LEYENDECKER: Now, Michelle, go all the way over to
6 the right. Just -- let's give the jury a sense of the other columns in here.
7 And so, column -- stop right there, Michelle. Go back.

8 BY MR. LEYENDECKER:

9 Q Column W, Mr. Leathers, represents what?

10 A This represents the -- well, that's the employer, which is
11 important to understand just in terms of understanding the analysis and
12 the difference in some of the amounts allowed that we looked at
13 yesterday, for example.

14 Q Let me stop you for just a second and ask a very basic
15 question. Am I right that if I'm on row 11556, that, number one, does
16 that represent a discrete claim in the case?

17 A Yes, sir.

18 Q And does all the information when you can go left to right,
19 employer group, all this other stuff, represent the information associated
20 with that particular claim?

21 A It does.

22 Q Okay.

23 MR. LEYENDECKER: And all the way to the right, Michelle.

24 BY MR. LEYENDECKER:

25 Q And does the claim file that you reviewed in this case also

1 identify each particular Defendant per claim, sir?

2 A It does, yes.

3 Q Okay. Now here's what I want to do. I want to just check the
4 math.

5 MR. LEYENDECKER: Michelle, if you'll go to the bottom
6 again. And let's go to the charge column and the allowed column and
7 see if those [indiscernible]. Go all the way to the bottom. And then, if
8 you can, yes, put the sum feature there. Let's see. Hang on. No, no. It's
9 hidden. There you go.

10 THE WITNESS: Top right. There you go.

11 MR. LEYENDECKER: And hit enter, please.

12 BY MR. LEYENDECKER:

13 Q 13242789. That's the same as on your summary chart, right,
14 Mr. Leathers?

15 A Yes, sir.

16 MR. LEYENDECKER: And, Michelle, if you would total the
17 allow column too, if you would.

18 BY MR. LEYENDECKER:

19 Q 2,843,447.78. And does that tie?

20 A Yes, sir. It does.

21 Q Okay.

22 MR. LEYENDECKER: If you could take that down and go back
23 to the summary, Michelle. Thank you.

24 Okay. At that -- this time, Your Honor, the Plaintiffs would
25 offer Exhibit 473G as the summary of the underlying claim file in the

1 case.

2 MR. BLALACK: Your Honor, just -- if I could be clear, is the
3 Excel file been moved into evidence that he just referred to?

4 MR. LEYENDECKER: I also request we move the Excel file to
5 replace the PDF that was previously marked as 473.

6 MR. BLALACK: And, Your Honor, because I haven't had a
7 chance to review the underlying Excel file, I have no -- I think I'm going
8 to have no objection once I have a chance to review it, but I'd like to
9 reserve that until -- so it can be conditionally admitted.

10 THE COURT: 473-G will be conditionally admitted. The Excel
11 spreadsheet will be conditionally admitted.

12 [Plaintiffs' Exhibit 473 and 473G admitted into evidence]

13 MR. LEYENDECKER: Perfect.

14 BY MR. LEYENDECKER:

15 Q Thank you, Mr. Leathers.

16 A Uh-huh.

17 Q Let me refocus this on the billed charge analysis that you
18 talked a little bit about yesterday.

19 A Okay.

20 MR. LEYENDECKER: And, Michelle, can I get Defendant's --
21 Mr. Blalack, do you -- Your Honor, may I ask Mr. Blalack if he has an
22 objection to Defendants' 4048?

23 MR. BLALACK: I think this is already in evidence, Your
24 Honor.

25 MR. LEYENDECKER: Okay. Thank you. Michelle, could I get

1 Defendant's 4048 at page number 11? And what I'd like you to do,
2 Michelle, is to highlight right here where it says the last three to five
3 years reflects steep growth in usual, customary, and reasonable charges.
4 Bring that out for us. Thank you.

5 BY MR. LEYENDECKER:

6 Q Okay. Mr. Leathers, were you here or were you watching
7 when Ms. Paradise was testifying before the jury?

8 A Yes. I wasn't here, but I was listening in.

9 Q Do you remember the questions about this chart with Ms.
10 Paradise where she was commenting on the steep growth or the ramped
11 up growth? I forget the word she used. But do you recall that
12 testimony?

13 A Yes, sir. I do.

14 Q Did you do anything to analyze or investigate the Plaintiff's
15 charges or all the charges by all the other ER doctors in Nevada -- excuse
16 me -- Nevada.

17 MR. LEYENDECKER: Sorry, Your Honor.

18 BY MR. LEYENDECKER:

19 Q To see whether they had steep growth in the charges during
20 the claim period?

21 A Yes, sir. I did.

22 Q Tell us what you did.

23 A Well, I took from that file that we just looked at, that Excel file
24 that we just looked at, I compared the billed charges, which was the
25 charged column that was in that Excel file, and I compared it to two

1 different sets of information. One, I compared it to data from Fair Health,
2 and I also compared it to data that I had received from what other
3 providers had charged United for the same or similar services, and then
4 did that both in total but also during the period from 2017 to 2020 that's
5 at issue in this case.

6 Q Okay. So big picture. You looked the Plaintiff's charges, the
7 charges of all other ER doctors in Nevada, whether they're down here in
8 Clark County or up in the middle part of the state, and also the Fair
9 Health concept?

10 A That's correct. Yes, sir.

11 Q Okay.

12 MR. LEYENDECKER: Michelle, could we go to -- I believe
13 that's the [indiscernible] point version of the first demonstrative.

14 MS. RIVERS: There?

15 MR. LEYENDECKER: I think so. Let me see if I'm live here.
16 Tell you what. Can you press the arrow button and let it come forward?
17 There we go. Okay.

18 BY MR. LEYENDECKER:

19 Q So, Mr. Leathers, I'll tell you -- represent to you that during
20 the opening statements, Mr. Blalack put up a chart of the 99283 CPT in
21 Clark County. And let me ask you. Do you understand that Freemont is
22 one of the three Plaintiffs -- is the one of the three Plaintiffs that's
23 provided services here in Clark County?

24 A Yes, sir. I do.

25 Q Okay. So if we look at this chart, I just -- we just populated

1 the first row. Tell the jury what that first row represents.

2 A So this is a plotting of the billed charges as reported by Fair
3 Health in its reports from May -- April -- November 2017 through May
4 2020. Fair Health has reports that come out on -- I think I mentioned that
5 yesterday, in November and May of each year. That's why you see the
6 November and May references.

7 Q So we see a pretty big incline it looks like in -- from May '19
8 to November '19, jumps up pretty good to \$1991 for this 283 Code in
9 Clark County. You see that?

10 A Yes, sir. I do.

11 Q Okay.

12 MR. LEYENDECKER: Can we look at the next one, Michelle?

13 BY MR. LEYENDECKER:

14 Q All right. What's the next line that just got populated, Mr.
15 Leathers?

16 A So these are other providers. They're not a party to this
17 case. They're other providers and what -- and it's showing the amounts
18 that they charged United in Freemont -- or for Freemont for CPT code
19 99283.

20 Q Okay. Let's see if I can unpack that. The all other -- the blue
21 line -- first of all, orange line represents the Fair Health charges charted
22 over time, where they start at 473, November '17. They got a steep
23 incline in 1991 as of May 2020; is that right?

24 A Yes, sir. That's correct.

25 Q Okay. And the blue line represents at the start of the period

1 what all other ER doctors in Clark County were charging United --

2 A Yes.

3 Q -- on averages?

4 A That's correct. Yes.

5 Q And that's the 661 number?

6 A Yes.

7 Q Okay. And that 60 -- 661 number grew to what number at the
8 end of the claim period, sir?

9 A To 725.

10 Q Okay. So the other ER doctors a little above Fair Health, and
11 then they end up modest growth, below FAIR Health in that time period.
12 Fair to say?

13 A That's right. Yes.

14 Q Okay.

15 MR. LEYENDECKER: Michelle, can I populate the --

16 BY MR. LEYENDECKER:

17 Q Now what's the green line, sir?

18 A So this represents the three Plaintiffs in this matter and what
19 their charges were here in Clark County for the same CPT code, 99283.

20 Q Okay. So the \$459 represents what on the Plaintiff's charges
21 at the beginning of the period for this 99283 code, sir?

22 A They're billed charges.

23 Q Okay. And the -- and at the end of the period, those charges
24 had grown to how much?

25 A To \$504.

1 Q Did you take a look and do any calculations to figure out how
2 much growth there had been -- how much growth there had been --

3 MR. LEYENDECKER: Is that me?

4 THE COURT: No. No. Go ahead.

5 BY MR. LEYENDECKER:

6 Q Mr. Leathers, let me back up. Did you do anything -- any
7 math equations or calculations to figure out how much growth existed
8 on a Fair Health -- all of the doctors and the Plaintiffs?

9 A Yes.

10 Q Okay.

11 MR. LEYENDECKER: Michelle, can I populate the next piece?

12 BY MR. LEYENDECKER:

13 Q All right. Tell the jury what just flashed up on the
14 demonstrative.

15 A So that is -- the 78 percent is a -- is what we call a compound
16 average annual growth rate calculation. It's essentially the average
17 growth from November 2017 to May 2020, which is 78 percent.

18 Q Okay. So let me just stop here and make sure we all know
19 what's what. Are you saying that on the Fair Health 80th, whatever Fair
20 Health reported, that what started as \$473 for 283 grew by about 78
21 percent per year to this 1991 number?

22 A That's correct. Yes.

23 Q Okay. Now do we know exactly what providers or clinicians
24 are in the Fair Health numbers?

25 A I mean there are hundreds of providers and clinicians. And

1 it's a very large database.

2 Q Let me ask perhaps a better question.

3 A There are those that are here in Clark County.

4 Q Okay.

5 A This has been adjusted for both Clark County and just for that
6 CPT code.

7 Q Do we know -- how do you feel in terms of certainty about
8 how accurate the -- all other ER doctors -- first of all, let me back up.
9 Where did that information -- tell the jury again where that information
10 came from.

11 A So that information came from United. United provided a
12 database of all of their charge -- or charges that were provided to --
13 charges that were charged to them from other providers. That data was
14 provided -- was claims, was provided just like the other file we just
15 looked at, by date, by location, by facility, et cetera, et cetera. So I was
16 able to look at that and make sure that I was comparing apples to apples
17 in terms of the date and the geographic location, meaning Clark County
18 for this example.

19 Q So big picture, would it be fair to describe those -- all other
20 ER doctors as sort of the -- competition is not the right word but the
21 other folks here in Clark County that service the other hospitals that
22 Freemont does not?

23 MR. BLALACK: Object to form. Leading.

24 THE COURT: It is leading. So you can just rephrase.

25 MR. LEYENDECKER: That's fine. Let me move on.

1 BY MR. LEYENDECKER:

2 Q What --

3 MR. LEYENDECKER: Michelle, may we have the next slide.
4 Not next slide. There you go.

5 BY MR. LEYENDECKER:

6 Q What did -- what did you study the growth of the -- all of the
7 ER doctors in Clark County, sir?

8 A So that was an average growth rate of 3.8 percent.

9 MR. LEYENDECKER: Okay. And the next one, Michelle.

10 BY MR. LEYENDECKER:

11 Q And the Plaintiffs?

12 A Approximately the same, yes.

13 Q Okay. Now, let me ask you, were you in the courtroom
14 yesterday when Mr. Murphy was on the stand?

15 A Yes, I was.

16 Q In the courtroom?

17 A Yes, I was, yes.

18 Q Did you hear the discussion about FAIR Health, that he was
19 having with Mr. Zavitsanos?

20 A I did.

21 Q Do you remember the comment he made about, yeah, we
22 looked at, but we don't chase it?

23 A That's correct, he did say that.

24 Q When you heard that, what were you thinking?

25 A Well, I mean, what I was thinking is that they don't literally

1 use FAIR Health. They look at FAIR Health as a data point for the
2 reasonableness of their billed charges.

3 Q Okay.

4 A So you can see here in this chart, for example, I mean, it --
5 where he's saying -- I don't think he was thinking about it at the time, but
6 chasing it, obviously, the Plaintiffs didn't increase their bill charges
7 following what happened to the FAIR Health data.

8 Q How about all of the other ER providers in Clark County, were
9 they chasing the FAIR Health number for the end of the period?

10 A No, sir.

11 Q Okay.

12 MR. LEYENDECKER: Let's look at the next one, Michelle, 284.

13 BY MR. LEYENDECKER:

14 Q Did you prepare Mr. Leathers to this analysis for the 283, 284,
15 and 385 CPTs, both for the providers up north and the one here in Las
16 Vegas, Fremont?

17 A Yes, sir, I did.

18 Q Okay.

19 MR. LEYENDECKER: Michelle, can I get P350 and -- excuse
20 me, P5, 384.

21 MR. BLALACK: Counsel, was there a number of some kind
22 associated with that slide that you just referenced, if I could inquire?

23 MR. LEYENDECKER: It was an interactive version. I'm happy
24 to provide it to you.

25 MR. BLALACK: Okay. Thank you.

1 MR. LEYENDECKER: This is P -- so, okay.

2 BY MR. LEYENDECKER:

3 Q What are we looking at here?

4 A So you are looking at the same type of chart from the same
5 data source. All we're doing is changing it to look at 99284, instead of a
6 99283 CPT code.

7 Q Okay.

8 A It's a -- it's a -- I'm sorry.

9 Q No, if I interrupted you, I apologize.

10 A I was just going to say, as you see from you go from three to
11 four to more severe -- more severe charge. And you can see the charges
12 increasing, compared to what we saw on the last chart.

13 Q Okay. All right. And big picture, when you look at this
14 charge -- excuse me, this chart, what do you take away from it as it
15 relates to the Plaintiff's charges here in Clark County for this 99284 CPT
16 code during the period in question?

17 A Right. Again, that the Plaintiff's charges were at or below
18 both that of what was reported by FAIR Health, as well as those other
19 providers in the same area.

20 Q Okay.

21 A Same.

22 Q Okay. We're going to get, maybe a little bit more detail later,
23 but do you have a point of view about whether, if the Plaintiff's charges
24 are at or below FAIR Health 80th, and they're at or below what
25 everybody else charges in the market, do you think that has some in half

1 of what was reasonable charges?

2 A Absolutely. Absolutely. That's, essentially, the basis for my
3 opinion, or part of my opinion in terms of the reasonableness of those
4 billed charges.

5 MR. LEYENDECKER: Michelle, let's look at 530 at 5
6 [phonetic].

7 BY MR. LEYENDECKER:

8 Q Okay. This is for the 285, the more severe code we talked
9 about yesterday. And what -- big picture, what are we seeing here, Mr.
10 Leathers?

11 A Again, consistent trend is what we had seen on the prior two
12 charts at or below both FAIR Health or the other ER providers, and again,
13 suggesting, or illustrating the reasonableness of those billed charges.

14 Q Okay. So just there here, it looks like in November 17, am I
15 reading this right that the Plaintiffs average charge for 285 was \$1,292,
16 which was a \$2 under the FAIR Health paid?

17 A Yes.

18 Q All right. Did you also do the same kind of analysis for these
19 three main codes for the team positions at Ruby Crest up there in the
20 northern part of the state?

21 A I did, yes.

22 Q Okay. This one got a little more [indiscernible] on it, what do
23 you make of it?

24 A Well, it's a different -- I mean, it's a different geographic
25 location or the two -- really, two separate geographic locations, but

1 relatively close together. But it still shows the relative consistency
2 across the time period in terms of the Plaintiff's charges being at or
3 below those of others in the market and FAIR Health.

4 Q So at times, we -- as this charge go for Ruby Crest to Team
5 Physicians, on the 283 code, does it show at all times we're below the
6 FAIR Health 80th; is that number one?

7 A Yes.

8 Q And number two, does it show times we're above all the
9 other doctors, and times we're below the other doctors?

10 A Yes.

11 Q Pretty -- you think those are pretty consistent though?

12 A I think over the time period, they are, yes.

13 MR. LEYENDECKER: Michelle, can we look at the 284 charge
14 right there?

15 BY MR. LEYENDECKER:

16 Q How about this one, Mr. Leathers, what do you see in here?

17 A So again, a little bit different than what we had looked at for
18 just Fremont, but -- and a little clearer compared to the 283 charge. But
19 again, illustrating that the Plaintiff's charges are below both during the
20 entire time period, below both the other providers as well as FAIR
21 Health, and remain at a relatively stable -- and actually, in this particular
22 case, the average charges for the Plaintiffs are declining.

23 Q Okay. This is on the 284 code for Ruby Crest and Team
24 Physicians?

25 A Yes, sir.

1 Q All right.

2 MR. LEYENDECKER: Michelle, how about we look at the --
3 the next one for the 285?

4 BY MR. LEYENDECKER:

5 Q Okay. Mr. Leathers, what is the 285 chart saying to you
6 about Ruby Crest and Team Physicians?

7 A Again, consistent with the others, the Plaintiffs remain at or
8 below both other providers, as well as FAIR Health. We see just a little
9 blip there in some of the other providers, inching up to what FAIR Health
10 was and then back down again.

11 Q Did you also look at these when you combine all three plan
12 groups together to look at, okay, we look at the Plaintiffs altogether
13 across the state, did you do that, sir?

14 A Yes, sir, I did.

15 MR. LEYENDECKER: Michelle, could we have the next one,
16 please? 530, 9.

17 BY MR. LEYENDECKER:

18 Q Okay. Here we go. So Mr. Leathers, tell the jury what we're
19 looking at here on 530, 9.

20 A So here, we are looking at the total billed charges, total
21 average billed charges for all of the core CPT codes. In other words,
22 when we go back to that data set, we're just looking at those CPT codes
23 that don't have the other bundled services to them. The reason we do
24 that is to make sure that we're on an apples-to-apples comparison to
25 FAIR Health and those other providers.