

Case No. \_\_\_\_\_

**In the Supreme Court of Nevada**

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

Petitioners,

*vs.*

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

Respondents,

and

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

Real Parties in Interest.

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**PETITIONERS' APPENDIX  
VOLUME 8  
PAGES 1751-2000**

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D. LEE ROBERTS (SBN 8877)  
COLBY L. BALKENBUSH (SBN 13,066)  
BRITTANY M. LLEWELLYN (SBN 13,527)  
WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC  
6385 South Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118

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

*Attorneys for Petitioners*

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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
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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:

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

*Attorneys for Real Parties in Interest*

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

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

*Respondent*

Joseph Y. Ahmad  
John Zavitsanos  
Jason S. McManis  
Michael Killingsworth  
Louis Liao  
Jane L. Robinson  
P. Kevin Leyendecker  
AHMAD, ZAVISTANOS, ANAIPAKOS,  
ALAVI & MENSING, P.C.  
1221 McKinney Street, Suite 2500  
Houston, Texas 77010

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

*Attorneys for Real Parties in  
Interest*

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

1 Q So all in soup to nuts, at the beginning of the period, does  
2 this charge show that the average for all the CPTs, for CPTs, the average  
3 for the Plaintiffs is \$1,005?

4 A Yes, sir.

5 Q A couple dollars below the average FAIR Health 80th?

6 A Yes.

7 Q All right. And so let me just ask you, 30,000 feet, what does  
8 your investigation and analysis tell you about the Plaintiff's charges in  
9 this case?

10 A This illustrates -- this analysis illustrates the reasonableness  
11 of the billed charges of the Plaintiffs, or the Plaintiffs billed charges.

12 Q Did you reach any conclusions, having done the investigation  
13 and the analysis, did you reach any conclusions upon a question of are  
14 the Plaintiff's charges reasonable in this case?

15 A Yes. I mean, that's what I just said. It supports the Plaintiff's  
16 claim that those charges were reasonable and the utilization of the billed  
17 charges in terms of calculation of their damages.

18 Q And is that because, pretty much at all times, we're at or  
19 below a combination of FAIR Health or what all the other ER doctors in  
20 the state are doing?

21 A Yes, sir.

22 Q Okay. And you think that makes -- it's fair to say that you  
23 think that suggests or indicates the charges are reasonable?

24 A Yes.

25 Q Let me switch topics on you.

1 MR. LEYENDECKER: You can take that down, Michelle.

2 BY MR. LEYENDECKER:

3 Q And ask you if you did an investigation and any analysis on  
4 the allowed amount side, the same way you did on the charge side?

5 A I did, yes.

6 Q Tell us what you did there.

7 A So I used the same file of -- not the FAIR Health file. I didn't  
8 have the FAIR Health information. For the other providers, as well as the  
9 claim file, the Excel file we just looked at a moment ago and did a  
10 comparison of the amounts allowed to understand were the amounts  
11 allowed, or that the Plaintiffs were reimbursed, was that consistent, or  
12 higher, or lower than what others in the marketplace were being  
13 reimbursed.

14 Q Okay. So step one is we're checking to see whether our  
15 charges look reasonable, relative to everybody else. And step two was  
16 let's see whether we're being treated the same by the Defendants, as all  
17 the other ER doctors; is that correct?

18 A Correct.

19 MR. BLALACK: Object to foundation.

20 THE WITNESS: As a point in time, as well as --

21 THE COURT: It was foundational. Overruled. Go ahead.

22 THE WITNESS: As well as over the time period.

23 BY MR. LEYENDECKER:

24 Q Did you look to see, on the Plaintiffs -- on the amounts that's  
25 been allowed by the Defendants, did you look to see whether there has

1 been any change in what was going on during the time period in terms  
2 of how much they're being allowed?

3 A Yes.

4 Q Tell us what you did.

5 A Well, first of all, I looked at the claim files of the Plaintiffs.  
6 This was kind of an iterative process. I looked at it early on and as my  
7 analysis progressed, looked at it a little bit more detail, and looked at it  
8 over a period of time; did those charges remain flat? Did they go down?  
9 And that's -- that was step one.

10 Q Okay. And on the allowed amount, did you do something  
11 similar?

12 A Well, that's what -- I'm sorry, maybe I misspoke. I looked at  
13 the allowed amount for the providers, or for the Plaintiffs in this case first  
14 to see what that was at a point in time, and on a CPT-by-CPT code basis.

15 Q Okay.

16 A Then I compared that to the market.

17 Q Did you look at -- did you look at our allowed balance, sort of  
18 on an annual basis to see what was happening in '17 and '18, et cetera?

19 A Yes.

20 Q Okay.

21 MR. LEYENDECKER: Michelle, can I have 530 at 13, please?

22 BY MR. LEYENDECKER:

23 Q Tell the jury what you found when you investigated and  
24 analyzed what was happening with the allowed amounts to the Plaintiffs  
25 during the claim period.



1           A     Well, what you can see is illustrated on this chart, is this is  
2 for all of the claims. There is a pretty significant decline from 2017, the  
3 beginning of the period in dispute, all the way down to 2020, a decline  
4 down to an average charge of \$187.

5           Q     You said charge, you mean allowed?

6           A     I mean allowed. I'm sorry.

7           Q     Okay.

8           A     This is the amount that is reimbursed to the Plaintiffs in this  
9 case, to the providers in this case.

10          Q     Let me -- I want to just slow it down a hair here and bring a  
11 little life to the concept of allowed, because it's been a while, I think since  
12 the jury heard some details about what that means, okay? Is it your  
13 understanding that the allowed amount, sir, represents the combination  
14 of what the insurance companies are going to pay and the patient's co-  
15 insurance or whatever?

16          A     That's correct, yes.

17          Q     Okay. And let me ask you, between the patients who were  
18 paying their share on the one hand, and these insurance companies over  
19 here on the other hand, whose to determine how much they're going to  
20 allow? Who's making that decision about what's going to be allowed?  
21 Patients over here or the insurance companies over here?

22          A     The insurance company is.

23          Q     Okay. Now, when you saw this information, did you do  
24 anything to further, kind of check what was going on with the other ER  
25 doctors in the state?

1 A Yes.

2 Q Okay. And tell us what you found.

3 A I found that the other ER doctors in the state that does  
4 charges remained relatively flat compared to the decline that we saw in  
5 the Plaintiffs.

6 Q You said charges. Do you mean allow, sir?

7 A Allow. I'm sorry.

8 Q That's okay.

9 A I continue to say that. Allow, yes.

10 MR. LEYENDECKER: Michelle, can I get 530, 14, please?

11 BY MR. LEYENDECKER:

12 Q Okay. What -- tell the jury what 530, 14, somebody can't  
13 spell good very good up there at the top, that's me. I'll tell you, I was  
14 trying to take some notes. I don't remember one time that I wrote on a  
15 chart, you know, protection from fire, and anybody's who's dyslexic --  
16 and I couldn't figure out why; it's because I wrote F-I-R. This is worse.

17 So -- okay. I will -- let me just -- let get over in here. You're right,  
18 this is worse. Okay. Tell the jury what you realized about the  
19 Defendant's re-um-iner-amursments [phonetic] in Nevada.

20 A Taking a step back, during the entire time period, the  
21 amounts allowed, or reimbursed on average for the Plaintiffs were \$245  
22 per claim, whereas the other providers during the exact same time  
23 period, same data, the amount allowed or reimbursed to those other  
24 providers was \$528 per claim.

25 Q Now, how did you figure out what that average allow was for

1 all other ER providers in the state? What piece of information did you  
2 use to figure that out, sir?

3 A Well, I had -- I had a data file that contained that information,  
4 and essentially went through and sorted it and organized it in a  
5 consistent way, as I did the Plaintiff's claim files, to ensure again that  
6 we're on an apples-to-apples basis, both in terms of geographic location,  
7 services provided, and time period.

8 Q Let me just make sure I'm on a -- I want to put it here for a  
9 moment and make sure I understand what I'm looking at. Do I hear you  
10 say that when you investigated and analyzed how much the Defendants  
11 were allowed, and this was across all the claims, right, sir?

12 A Yes, sir.

13 Q And you figured out, and you did all that work, did they  
14 have -- did they allow on average about -- during the claim period, \$246  
15 to the Plaintiffs?

16 A Yes, for those 11,563 claims.

17 Q And am I seeing this right that for all the other ER doctors in  
18 the state, those here in -- in Clark County, and those up there in Elko and  
19 Churchill is more -- United's paying more than twice that?

20 A Yes, sir, that's what the data shows.

21 Q Does that seem right to you?

22 MR. BLALACK: Object to form. Vague.

23 THE COURT: Overruled.

24 THE WITNESS: It was surprising to me.

25 BY MR. LEYENDECKER:

1 Q Why?

2 A Because the amounts for the exact same services, during the  
3 same time period, during the same geographic location is almost twice,  
4 and there's no information in the data to understand or to illustrate why  
5 that's the case.

6 Q You think maybe the Defendants thought our board certified  
7 ER doctors just somehow don't do as good a job treating the folks that  
8 are in need of care as the rest of the ER doctors in the state?

9 MR. BLALACK: Object to the form. It's argumentative. It's  
10 also speculative.

11 THE COURT: Objection --

12 MR. LEYENDECKER: I'll withdraw it.

13 THE COURT: -- sustained.

14 MR. LEYENDECKER: I'll withdraw that.

15 BY MR. LEYENDECKER:

16 Q All right. Let's move on.

17 MR. LEYENDECKER: Take that down, Michelle.

18 BY MR. LEYENDECKER:

19 Q Now, a moment ago when we were talking when I stopped to  
20 just give a little orientation on allow, I referenced co-insurance; do you  
21 remember that?

22 A Yes.

23 Q Tell the jury what the concept of the co-insurance has been,  
24 as you understand it.

25 A It's essentially the -- depending on the claim and the

1 individual, it's the percentage of that amount allowed that the patient, or  
2 the member, has to pay.

3 Q Okay. I'm going to try to try to spell this right, first. Did you  
4 see any of the trial at this point where, Mr. -- I believe it was Mr. Blalack  
5 was giving examples, okay, there's a \$1,000 claim and a 30 percent co-  
6 insurance, then your understanding would be what? If there's \$1,000  
7 that's allowed and a 30 percent co-insurance, that would mean that the  
8 member or the patient would be responsible for how much?

9 A \$300.

10 Q Okay, 300. And then I think we saw examples of well, okay, if  
11 the average allowed was \$250, right?

12 A Right.

13 Q And we had that same 30 percent insurance, or excuse me,  
14 co-insurance then he was saying -- what would the co-insurance be  
15 there?

16 A So it would drop down to whatever the -- what \$75 or what  
17 have you.

18 Q Okay. Now let's be honest. Strictly from a financial  
19 standpoint, which of these two would be better for the patient?

20 A The \$75.

21 Q Okay.

22 A Well, I mean in a vacuum just looking at those numbers how  
23 it is.

24 Q All things being equal, if you said that the community could  
25 still have board-certified ER physicians staffing the hospitals, at this as

1 opposed to this, all things being equal, what's better for the patient?

2 A The lower amount of money.

3 Q Okay. Did you do anything to study what the actual co-  
4 insurance was as reflected in the Defendants' claim file?

5 A Yes.

6 Q Tell us what you did.

7 A So what I wanted to look at is while these could be at issue  
8 on a -- on a claim by claim basis, the question to me is what's the overall  
9 size that we're talking about here. You know, is this a \$10 million knife  
10 times 30 percent or is it a different number. So I looked at it overall and  
11 what you find is, is that the overall co-insurance amount or co-insurance  
12 present is not 30 percent. It's substantially less.

13 MR. LEYENDECKER: Michelle, can I get Defendant's --  
14 excuse me, Your Honor, may I ask, was there an objection to  
15 Defendant's -- I believe it's 5322.

16 MR. BLALACK: One second.

17 UNIDENTIFIED SPEAKER: Did he say no objection?

18 MR. LEYENDECKER: No, he's checking.

19 MR. BLALACK: 53 what?

20 MR. LEYENDECKER: 5322, yes, sir. 5-3-2-2. I believe you  
21 had it, and it's your combined claim filed.

22 MR. BLALACK: Yeah, no objection.

23 MR. LEYENDECKER: Okay. Your Honor, we'd offer  
24 Defendant's 5322.

25 THE COURT: Exhibit 5322 will be admitted.

1 [Defendants' Exhibit 5322 admitted into evidence]

2 MR. LEYENDECKER: Okay. Michelle, let me see 5322-A.

3 And zoom in on that so we can see the numbers a little bit better.

4 BY MR. LEYENDECKER:

5 Q Mr. Leathers, did you perform some investigation and  
6 analysis on the Defendant's out-of-network allowed amounts for all other  
7 E.R. doctors in Nevada?

8 MR. BLALACK: Object to form, Your Honor. This was not  
9 part of his affirmative or supplemental report.

10 MR. LEYENDECKER: It's demonstrative, Your Honor.

11 MR. BLALACK: No, the opinion -- any analysis or opinions  
12 was not part of his prior report.

13 THE COURT: If it's not part of the report, then we're not  
14 going to get into your opinions.

15 MR. LEYENDECKER: Okay. You can take that down,  
16 Michelle.

17 BY MR. LEYENDECKER:

18 Q Let me ask you, in the studying of the evidence in the case,  
19 whether it's the Plaintiff's claim file or the Defendant's claim file, did you  
20 reach any conclusions or see any trends on what the actual co-insurance  
21 was?

22 A Sure.

23 MR. BLALACK: Same objection, Your Honor. This is -- none  
24 of this has ever been disclosed.

25 MR. LEYENDECKER: These are facts.

1 THE COURT: Why don't you guys please approach.

2 [Sidebar at 9:36 a.m., ending at 9:37 a.m., not transcribed]

3 THE COURT: All right, so objection is sustained.

4 MR. LEYENDECKER: Okay.

5 BY MR. LEYENDECKER:

6 Q All right. Let's get down to the final subject, Mr. Leathers.

7 Tell the jury again what your big picture task was in the case.

8 A To calculate the damages suffered by the Plaintiffs as a result  
9 of the Defendants actions.

10 Q Okay. And step one, tell us again what you understand what  
11 the Plaintiff's claim is, about how much they think they're due in this  
12 case. The concept of it.

13 A The Plaintiffs' claim that they are owed their billed charges.  
14 And therefore the damages would be the difference between the bill  
15 charges and the amount they were actually paid, or the amount allowed.

16 Q Okay. And did you do any calculations that would allow you  
17 to assess the damages under the Plaintiffs' theory in the case?

18 A Yes.

19 Q Tell us what you did.

20 A Well, so the -- I mean I think the easiest and most recent  
21 piece is the -- I forget the exhibit number, but we started out with today,  
22 was just essentially taking that pivot table and looking at their bill  
23 charges and the amount allowed.

24 Q Okay.

25 A But that culmination was -- started with what we discussed



1 yesterday in terms of the analysis of the claim's files, the assessment of  
2 the reasonableness of the bill charges, and then essentially the  
3 mathematical calculation or essentially taking the exhibit that we had  
4 this morning and taking the difference between those two numbers.

5 Q Did you look at this damage question on a Plaintiff by  
6 Plaintiff -- Plaintiff by Defendant basis, sir?

7 A Yes, sir, I did.

8 Q Okay.

9 MR. LEYENDECKER: And Michelle can I get Exhibit Number  
10 530-16, please?

11 BY MR. LEYENDECKER:

12 Q Tell us what we're looking at here, Mr. Leathers.

13 A So this is -- this is not on a Plaintiff by Plaintiff basis, but this  
14 is on a CPT by CPT code basis. And kind of goes back to some of our  
15 discussion of bundled or bundled or non-bundled charges.

16 Q Okay.

17 A Would you like me to take you through this?

18 Q Yes, please, just briefly.

19 A Okay.

20 MR. LEYENDECKER: Go back to that one, Michelle. Thank  
21 you.

22 BY MR. LEYENDECKER:

23 Q Just give us a little more meat on that one.

24 A So what you can see here is in the bottom left hand corner,  
25 the 11,563 claims. Again, that's what we're focusing on here. And so we

1 looked at it and analyzed it. I looked at it and analyzed it, both in terms  
2 of the upper part, on what I call a core CPT basis. Just that one charge.  
3 And then I looked at it on a bundle basis. And the reason that that's  
4 important is because there's mixing numbers. You want to make sure  
5 you're on an apples to apples basis.

6 And so this calculation, this does the calculation in terms of  
7 calculating the total amount billed, third column from the left. The total  
8 amount allowed. And then the total charges. And what --

9 Q So when we get down to the bottom right, we add it all  
10 together, the total damage under your calculation is the 10,399,000  
11 number, sir?

12 A Yes, sir.

13 Q Okay.

14 MR. LEYENDECKER: Now Michelle, can I get 16-530. 16,  
15 please. Right there.

16 BY MR. LEYENDECKER:

17 Q Okay. So what are we looking at here, on Exhibit 530 at 16,  
18 Mr. Leathers?

19 A So this is taking the exact same information that we had in  
20 the other chart, just the prior chart. And reorganizing it by Plaintiff and  
21 by Defendant.

22 Q Okay, so just to get oriented here. Does that mean that -- let  
23 me ask you. You understand who has the right to decide whether the  
24 Plaintiffs have proved their case, and if so, whether they're entitled to  
25 any damages, right?

1 A Yes, sir, it's the ladies and gentlemen of the jury.

2 Q That is correct. And so just as we're looking at this, if the  
3 jury were to decide that the Plaintiffs proved their case and they were  
4 entitled to what they're seeking, looking at this chart, does that indicate  
5 that for, Fremont, as an example, that they would be entitled to \$102,392  
6 from the Health Plan of Nevada?

7 A Yes, that's correct.

8 Q And then Ruby Crest who didn't have as many claims,  
9 certainly with HPN would be entitled to \$844?

10 A That's correct.

11 Q All right. And then if we -- that same kind of concept going  
12 across would get you the number that you calculated?

13 A Yes, that's correct.

14 Q Okay. By Plaintiff and by Defendant?

15 A Yes, sir.

16 Q All right. Your Honor, we'd offer Exhibit 530-16 is a summary  
17 of voluminous records.

18 MR. BLALACK: Your Honor, may I have a chance to verify  
19 this? I don't have a problem with it being conditionally admitted.

20 THE COURT: Exhibit 530-16 will be conditionally admitted.

21 [Plaintiffs' Exhibit 530-16 admitted into evidence]

22 MR. LEYENDECKER: Okay, Michelle, let me just go back to  
23 473-G for a second.

24 BY MR. LEYENDECKER:

25 Q Now, Mr. Leathers if the jury wanted to compare, you know,

1 to check your math so to speak, could they use this Exhibit 473-G to do  
2 some subtraction and addition and figure out what the difference is?

3 A Yes.

4 Q And you got any sense of what that's going to show if that  
5 were to happen, as it relates to what you calculated?

6 A It would be the exact same number. Essentially taking the --

7 MR. BLALACK: I object to the form.

8 THE WITNESS: -- the chart --

9 MR. LEYENDECKER: Hang on , Mr. Leathers.

10 THE COURT: Reword, rephrase.

11 BY MR. LEYENDECKER:

12 Q Okay. Mr. Leathers, what would you expect if you -- by the  
13 way, let me ask you, so did you double check your math here to see  
14 whether the sum of the charges less the sum of the allowed, how that  
15 compares to the chart we just looked at?

16 A Yes.

17 Q Okay. What did you find?

18 A It's the exact same number.

19 Q Okay. One final subject.

20 MR. LEYENDECKER: You can take that down, Michelle.

21 BY MR. LEYENDECKER:

22 Q Let me show you, let's see, Ms. Paradise was on the stand on  
23 Monday.

24 MR. LEYENDECKER: Can I get, Michelle, the transcript of  
25 Monday at 130, lines 5 through 10? See if you can go there on 130,

1 lines 5 through 10. I think that's November 12th. Right, go to the next  
2 one, Michelle, please. If you look here in the middle it tells you, Friday  
3 and the date. Looking for the Monday. That's Tuesday. I'll tell you  
4 what. Let me -- let me -- I'll just read it, okay.

5 UNIDENTIFIED SPEAKER: Hold on.

6 MR. LEYENDECKER: It's okay. Let me just read it.

7 BY MR. LEYENDECKER:

8 Q On Monday, Ms. Paradise was asked, in this transcript at  
9 page 130, lines 5 through 10. "And their rate of reimbursement" by Mr.  
10 Ahmad, my colleague,

11 "Q And their rate of reimbursement, the Plaintiff's rate of  
12 reimbursement has gone down significantly, has it not?" And Ms.  
13 Paradise answered,

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

18 Do you remember hearing that when she said it, Mr. Leathers?

19 A Yes, sir, I do.

20 Q Based on everything you did in your investigation and your  
21 analysis, what do you make of that statement?

22 A I don't find any support for that statement. Clearly we just  
23 showed a moment ago that the bill charges are not increasing. They've  
24 increased from 2017 to 2020 of approximately 3 percent. And then in  
25 addition to what we heard Mr. Murphy say yesterday, I've seen the

1 documentation that the Plaintiffs have a policy of not balance billing.

2 Q Did you see or find any evidence or read any testimony in the  
3 case, that indicated any of the three Plaintiffs, Ruby Crest, Team  
4 Physicians balance billed a single United member on any of the 11,500  
5 claims at issue in this case?

6 A No, I have not.

7 MR. LEYENDECKER: Thank you, Mr. Leathers. I pass the  
8 witness, Your Honor.

9 THE COURT: All right. Now it's been about an hour since  
10 you guys came into the courtroom. Let's take a recess. It's 9:47. I'll ask  
11 you to be back at 10:00 a.m.

12 Do not talk with each other, or anyone else about any subject  
13 connected to the trial while on your recess. Don't read, watch or listen to  
14 any report or commentary on the trial. Don't discuss this case with  
15 anyone connected to it by any medium of information, including without  
16 limitation, newspapers, television, radio, internet, cellphone or texting.

17 Do not conduct any research on your own relating to the  
18 case. Don't consult dictionaries, use the internet or use reference  
19 materials. Don't talk, text, tweet or Google issues or conduct any other  
20 type of research with regard to any issue, party, witness or attorney  
21 involved in the case.

22 Most importantly do not form or express any opinion on any  
23 subject connected to the trial until the jury deliberates. Thanks again for  
24 a good start to the morning. See you at 10:00.

25 THE MARSHAL: All rise for the jury.

1 [Jury out at 9:47 a.m.]

2 [Outside the presence of the jury]

3 THE COURT: Do you guys want to confer with each other  
4 and come back just a few minutes early?

5 MR. BLALACK: On what specifically?

6 THE COURT: Sorry?

7 MR. BLALACK: On what specifically.

8 THE COURT: On how to go next. Because you're going to  
9 cross examine him. My inclination is to allow the cross examination to  
10 continue. We'll take up the other issue after. But I'm willing to listen --

11 MR. BLALACK: I'm willing to do that, too, Your Honor. My  
12 -- what I would propose is we'll just do the cross and then maybe at  
13 lunch or after lunch we can do the voir dire outside the presence of the  
14 jury.

15 THE COURT: Good enough. Thanks. Have a good break.

16 MR. LEYENDECKER: Thank you, Your Honor.

17 [Recess from 9:49 a.m. to 10:00 a.m.]

18 [Outside the presence of the jury]

19 THE COURT: Thank you, everybody. Please remain seated.  
20 Are we ready to bring in the jury?

21 MR. BLALACK: We are, Your Honor.

22 MR. ZAVITSANOS: Yes, Your Honor.

23 THE COURT: Okay.

24 THE COURT: So that you guys know, Jury Services has  
25 given them a W-9 because they have been here long enough to have to.

1 And so, there's some questions about it. They have some issues. I'm  
2 going to ask them to reduce those questions to writing so I can talk to  
3 the Jury Commissioner over the noon hour.

4 MR. BLALACK: Thank you, Your Honor.

5 THE MARSHAL: All rise.

6 [Jury in at 10:01 a.m.]

7 THE COURT: Thank you. Please be seated. Okay. So to the  
8 members of the jury, I know that a W-9 has been passed out to you. I  
9 know that a lot of you have questions about it. I don't want you to be  
10 distracted during the testimony, so if you have questions, write them  
11 down, give them to the marshal on the next break, and I'll talk to Jury  
12 Services to get your questions answered for you.

13 And cross-examination, please.

14 MR. BLALACK: I was going to start with first to let Mr.  
15 Leyendecker introduced his [indiscernible].

16 MR. LEYENDECKER: Your Honor, I neglected to mention Dr.  
17 Trentini. He is the medical director up there in Elko at the Northeastern  
18 hospital.

19 THE COURT: Very good. Thank you to all of them. Cross-  
20 examination, please.

21 MR. BLALACK: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. BLALACK:

24 Q Mr. Leathers, good to see you again.

25 A Good morning.



1 Q We've met before, correct?

2 A We have.

3 Q And that was in connection with your deposition earlier this  
4 year?

5 A Yes.

6 Q Now, I'd like to take the jury through some of the points of  
7 your background before getting to the testimony you gave earlier today  
8 and your opinions. Let me start by making sure the jury has a good  
9 understanding of your background and qualifications, okay?

10 A Okay.

11 Q Just so we understand how you bring that experience to bear  
12 on the opinions you're offering. You discussed a little about it earlier  
13 with Mr. Leyendecker, correct?

14 A Yes.

15 Q All right. So just so we're starting off on the same foot, are  
16 you a trained economist, sir?

17 A I'm not a Ph.D. economist, no.

18 Q You have, I believe, a bachelor's in business administration;  
19 is that correct?

20 A Yes, sir. That's correct.

21 Q And so your academic degrees are not in economics,  
22 correct?

23 A My formal degree is in finance.

24 Q Now, do you hold yourself out in the market as an  
25 economist?

1 A I don't. I have many people refer to me as an economist.

2 Q But you, yourself, don't hold yourself out in the market as an  
3 economist?

4 A No, because usually an economist would be a Ph.D., doctor  
5 economist. And if you're not, you always hesitate to say you're an  
6 economist.

7 Q Okay. And you had two employees at Alvarez & Marsal who  
8 helped you prepare your expert reports in this case?

9 A Yes, sir.

10 Q And am I right that neither of those employees have degrees  
11 in economics either, correct?

12 A That's correct.

13 Q Now, as I think you testified, you are currently a managing  
14 director at -- well, and I'll shorthand it, sir. If I say A&M, will you  
15 understand I'm referring to your firm?

16 A Yes, sir.

17 Q Okay. So you are currently a managing director at A&M?

18 A Yes.

19 Q Okay. And as I understand it, that's a company that assists  
20 other companies that are involved in transactions, disputes, and  
21 investigations; is that right?

22 A That's correct.

23 Q Okay. Am I right that your focus is in the disputes and  
24 investigations area?

25 A Yes, primarily.

1 Q And there's actually a group at A&M called the disputes and  
2 investigations group?

3 A Yes, sir.

4 Q And is it fair to say the large majority of your work in that  
5 group relates to two areas, intellectual property and technology as well  
6 as energy-related work?

7 A Yes.

8 Q Okay. And at Alvarez & Marsal, is there a healthcare project?

9 A Yes.

10 Q But you are not a part of that healthcare project, correct?

11 A Not formally, no.

12 Q Okay. Now, prior to A&M, you were a managing director at  
13 something called Sirius Solutions?

14 A Yes.

15 Q And did you do the same kind of work focused on the  
16 technology and energy sectors for that firm that you do for A&M?

17 A Yes.

18 Q Okay. And before that, you were a managing director at an  
19 accounting firm -- consulting firm called Huron, correct?

20 A Yes.

21 Q And like Sirius, was your focus there primarily on the  
22 technology and energy sector?

23 A Yes.

24 Q Now, I think you testified to Mr. Leyendecker that you had  
25 given testimony as a retained expert witness before; is that right?

1 A Yes.

2 Q Okay. And how many times did you say you've done that?

3 A Probably 65 or so different matters.

4 Q Okay. Just looking at your resume, sir, I count you've been a  
5 retained expert where you've actually -- not just been retained but  
6 actually got to the point of giving deposition testimony or trial testimony  
7 68 times. Does that sound about right?

8 A That sounds about right.

9 Q Okay. And is it fair to say that you spend about 70 percent of  
10 your time either preparing to give expert testimony or actually giving  
11 testimony of some kind?

12 A That's correct. Certainly in the last two years. As I  
13 mentioned the other day with Mr. Leyendecker, it varies --

14 Q Okay.

15 A -- year to year.

16 Q All right. Now, did I hear you say in response to his question  
17 that you've never provided expert testimony on behalf of a health  
18 insurer or health -- commercial health plan?

19 A That's correct. Yes.

20 Q Have you ever given -- I thought I also heard you to say you  
21 had done some consulting work for healthcare providers before but that  
22 you had never testified as an expert on behalf of a healthcare provider.

23 A That's correct.

24 Q Did I understand that?

25 A Yes, sir.

1 Q Okay. Do you recall giving expert testimony for a doctor  
2 named Franklin Chow?

3 A Yes.

4 Q Was he a healthcare provider?

5 A He was, yes.

6 Q Was that in connection with his role as a healthcare  
7 provider?

8 A Yes.

9 Q So when you said you had never given testimony as an  
10 expert before for a healthcare provider, is that consistent or inconsistent  
11 with your work for Dr. Chow?

12 A Well, let me -- let me clarify that. I think Mr. Leyendecker's  
13 question was more of a -- I thought it was a -- where I said no, it was  
14 really more of a commercial insurance company versus a provider. So if  
15 I said no, I think I was mistaken because Dr. Chow is a -- I believe he was  
16 an OBGYN.

17 Q Okay. And that was back around 2002, 2003?

18 A Yes.

19 Q Okay. And of the 68 cases in which you've testified as a paid  
20 expert, is it accurate that only one of those cases involved the evaluation  
21 of healthcare services?

22 A Well, depending on how you want to define healthcare  
23 services. The *Dr. Chow, U.S. Surgical Corp.* matter is most closely  
24 related to the healthcare services we're talking about in this matter.

25 Q So when I -- and the reason I ask you that, sir, I was referring

1 to your prior deposition testimony in this case when I ask you that  
2 question.

3 A Sure.

4 Q Do you remember me asking that question?

5 A I do.

6 Q And so when you indicated that you had only given expert  
7 testimony on the valuation of healthcare services once, were you  
8 referring to Dr. Chow?

9 A Yes.

10 Q Okay. And that was 18 or 19 years ago?

11 A Yes.

12 Q Okay. Now, that case with Dr. Chow, is it accurate to say that  
13 it did not directly involve measuring the value of out-of-network  
14 professional services?

15 A It did not. I mean, it was -- obviously, there are components  
16 to that because he was an OBGYN providing services. But not directly,  
17 as you asked me.

18 Q The issue that is squarely presented for you in this case and  
19 that the jury is considering, that was not the issue you were evaluating  
20 for Dr. Chow, correct?

21 A It was slightly different.

22 Q Okay. And is it accurate to say that that one case did not  
23 involve the valuation of emergency medical services?

24 A Correct.

25 Q Now, sir, I believe, just so the jury has some background, in

1 addition to the work you do as a consultant for and a testifier for  
2 companies as a testifying expert, you also write and present articles on  
3 various subjects, correct?

4 A Periodically, yes.

5 Q And is it fair to say that a good bit of the work that you do in  
6 the writing and presenting area is in connection with continuing  
7 education courses for lawyers?

8 A A good portion of it is, yes.

9 Q And in fact, you have previously lectured to students at the  
10 University of Houston School of Law?

11 A I have, yes.

12 Q And those lectures, are they related to disputes and  
13 litigation?

14 A Yes. Most of those are related to, as I recall, trade  
15 secret-related matters.

16 Q Okay. Which is not something at issue in this case, correct?

17 A It's a different claim in this case, but certainly the underlying  
18 issues are the same.

19 Q Okay. And you've lectured at the Annual Conference On  
20 Intellectual Property Law?

21 A Yes.

22 Q Okay. And the Institute of Energy Law, Merger, and  
23 Acquisitions?

24 A Yes.

25 Q And the Texas Bar?

1 A Yes.

2 Q It's fair to say, though, sir, that none of these presentations  
3 are articles related to the evaluation of out-of-network emergency  
4 medicine services?

5 A That's correct.

6 Q Now, Mr. Leathers, are you based in Houston, Texas?

7 A Excuse me. Yes, sir, I am.

8 Q And that's where you met Mr. Leyendecker and some of his  
9 partners, who engaged you here?

10 A Yes.

11 Q And have you been engaged by his law firm, the AZA firm, to  
12 provide expert opinion testimony in other matters before this case?

13 A Yes, sir, I have.

14 Q How many times?

15 A Probably three or four times.

16 Q If you can, if you want to, you can refer to your deposition.  
17 Do you recall telling me that you have been engaged by the AZA firm  
18 four times, not including this case?

19 A That sounds correct.

20 Q Did any of those other engagements with the AZA firm  
21 involve the valuation of healthcare services or out-of-network emergency  
22 services?

23 A No.

24 Q Now, I want to talk about what you did to formulate your  
25 opinions in the case and how you conducted the investigation, as you



1 call it, that you referred to earlier, okay?

2 A Okay.

3 Q I'm going to switch to that topic. And I'm not sure I heard  
4 this correctly. Did you say you were engaged in July or in June of this  
5 year?

6 A I think that I said July. As I sit here, I think it was probably  
7 closer to June.

8 Q Okay. Do you recall me asking you in your deposition when  
9 you were engaged and you telling me that you were engaged in  
10 mid-July?

11 A I recall you asking me that. I don't remember if I said  
12 mid-July or June.

13 Q Okay. Let me ask it to you, then, correctly, and if you don't  
14 recall, we can refer to your deposition to refresh your memory.

15 A Okay.

16 Q Do you have a memory now, thinking about it, that you were  
17 engaged in mid-July of this year?

18 A Yes. Generally, I recall that's the case.

19 Q Okay. And if memory serves, you issued your original report  
20 in this case on June -- excuse me, July 30th, correct?

21 A Yes, that seems correct.

22 Q Okay. So is it fair to say that the work that you conducted  
23 from the moment you were engaged that you issued your first report  
24 was a couple of weeks?

25 A Yes.

1 Q And I wasn't sure from the back and forth you had with my  
2 colleague, Mr. Leyendecker, but you kind of characterized that as a fire  
3 drill. Is that how you think of it?

4 A I mean, yes. I don't know that everyone would be a fire drill,  
5 but it was just -- it's just kind of sometimes we refer to something that  
6 it's at the last minute, it's a -- it's a -- how we refer to it sometimes.

7 Q Completely understand that. And I'm not suggesting every  
8 engagement that you have is a fire drill. I'm sure they're not. But for this  
9 little party we're involved in, is it fair to say this one was a fire drill?

10 A You know, I think I would be hesitant to say it's a fire drill and  
11 it be, you know, misconstrued in that it was done in some sort of, you  
12 know, not with a level of rigor that was important for this level of case. It  
13 was done in a very short period of time. There's no question about that.

14 Q And I'm not questioning your rigor, sir. I'm questioning the  
15 time in which you had to apply your rigor. Is it fair to say that you had a  
16 couple of weeks to apply all the rigor you could bring to bear?

17 A For the first report, that's correct.

18 Q Okay. Now, you issued a second report in this case on  
19 September 9th of this year, right?

20 A Yes.

21 Q Okay. And am I correct, sir, that you didn't start working on  
22 that second report until around September 1st?

23 A I did not begin the process of drafting that report, I believe,  
24 until September 1st.

25 Q And in fact, you told me in your deposition that you didn't

1 receive the materials on which you relied for that second report until  
2 around September 1st, correct?

3 A I don't recall that one way or another. I'm not disputing you,  
4 but I don't recall that one way or another.

5 Q Well, I'll be glad to let you refer to your deposition if that will  
6 help you refresh your memory.

7 A No. I don't -- I don't disagree with generally when it -- when  
8 that was -- information was provided.

9 Q Okay. So sitting here today, do you recall that the work you  
10 did to prepare your second report spanned nine days from September  
11 1st to September 9th?

12 A For the preparation of that report, that seems reasonable,  
13 yes.

14 Q So let's just make sure the jury has some visibility into the  
15 sequence. You're engaged in mid-July, you worked really hard for a  
16 couple of weeks, issued your first report on July 30, 2021, right?

17 A Right.

18 Q And on September 1st, you receive a lot of new materials  
19 from Plaintiff's counsel, right?

20 A Correct.

21 Q And then you worked really hard for another eight or nine  
22 days and issued a second report on September 9th; is that right?

23 A That's correct.

24 Q Now, in preparation for your second report, do you recall  
25 reviewing the expert reports of the Defense expert in this case, Mr. Bruce

1 Deal?

2 A Yes. And obviously, that's what was the important piece of  
3 the timing there is that, you know, it's not that we just stopped and  
4 started in those short periods of time. You know, it was a function of  
5 when Mr. Deal's report came out. But yes, I did review Mr. Deal's work.

6 Q Well, that's actually what we're arriving at, sir. Do you know  
7 that Mr. Deal issued his first report on the same day you issued your first  
8 report?

9 A On July 30th. Yes, sir.

10 Q And you didn't review that report until September -- after  
11 September 1st, correct?

12 A That's correct.

13 Q So the timing of you doing your work on that second report  
14 wasn't tied to when Mr. Deal issued his report, correct?

15 A That's correct.

16 Q It was tied to when the Plaintiff's lawyers in this case actually  
17 sent it to you, right?

18 A Correct.

19 Q Now, have you reviewed both of Mr. Deal's reports?

20 A Yes.

21 Q And would you agree they're lengthy documents?

22 A They are, yes.

23 Q Okay. And did you review those reports closely before you  
24 issued your second report?

25 A I hesitate because we're referring back to my deposition. I

1 think that I stated in my deposition that I had reviewed it once fairly  
2 thoroughly. He had had two reports. He had a rebuttal report, and he  
3 had his affirmative report, which was on July 30th. So I don't -- you  
4 know, I don't want to say -- I mean, I reviewed it once thoroughly, but I  
5 certainly reviewed it a lot more since then.

6 Q Okay. Before you issued your second report, you reviewed  
7 Mr. Deal's lengthy reports once, correct?

8 A Yes.

9 Q Now, you mentioned that one of the reports Mr. Deal issued  
10 was a rebuttal report, correct?

11 A Yes.

12 Q He wasn't rebutting your report, though, was he?

13 A Yes, he was.

14 Q Okay. Do you remember that he was also rebutting --

15 MR. LEYENDECKER: Your Honor, can we approach?

16 THE COURT: You may.

17 [Sidebar at 10:18 a.m., ending at 10:21 a.m., not transcribed]

18 THE COURT: Thank you all for your professional courtesy.

19 They needed some guidance on what the scope of the cross would be.

20 Go ahead, please.

21 MR. BLALACK: Thank you, Your Honor.

22 BY MR. BLALACK:

23 Q Mr. Leathers, when we broke, I was asking you about the  
24 materials you relied on for that -- some of your reports. Do you  
25 remember that?

1 A Yes.

2 Q Okay. And I think you had indicated just before we broke  
3 that in preparing your second report, you reviewed the expert reports of  
4 our expert and one of our experts, Bruce Deal, correct?

5 A Yes.

6 Q But you also relied on the expert report of another individual  
7 who had been retained by the Plaintiffs to be an expert on the measure  
8 of damages, correct?

9 A No.

10 Q Do you remember reviewing the expert report of Mr. Scott  
11 Phillips --

12 A Yes.

13 Q -- and assigning it as a basis for your second supplemental  
14 report?

15 A I reviewed -- I recall reviewing Dr. Phillips' -- or Mr. Phillips'  
16 report and I think that my reference to Mr. Phillips was his damage  
17 calculations, specifically, he had information with regards to FAIR Health  
18 that I would have referred to in his report.

19 Q Okay. But let me try to short-circuit this for the jury's benefit.  
20 When you prepare a report, it's your practice to identify in your report,  
21 before you provide your opinions, the documentary information and  
22 data that you reviewed to prepare to render your opinion, correct?

23 A That's correct.

24 Q And you don't put things in there that are completely  
25 irrelevant to what you're doing, correct?

1           A     Correct. I mean, depending on the report, I may -- we may  
2 say this is what I relied upon, but I also may have a list of here's  
3 everything that I received or reviewed.

4           Q     All right. And so in the context of your second report -- and if  
5 we need to, I can bring it up and we can show the jury. But in the  
6 context of your second report, for instance, you listed the expert reports  
7 of Mr. Deal as something you reviewed and relied on, right?

8           A     Yes, sir. That's correct.

9           Q     And you also listed the expert reports -- in fact, the  
10 affirmative expert report of Mr. Phillips, right?

11          A     Yes.

12          Q     Okay. And you remember -- and you reviewed that report,  
13 correct?

14          A     Yes.

15          Q     And you remember that Mr. Phillips did an analysis of data  
16 and information and rendered an opinion on the Plaintiffs' alleged  
17 damages in this case.

18          A     Yes.

19          Q     Okay. Now, in connection with that analysis and your time to  
20 get ready to testify today, have you learned that Mr. Phillips is not going  
21 to be an expert in this case?

22          A     Yes.

23          Q     You're going to be their expert, correct? On damages?

24          A     Yes.

25          Q     When did you learn that?

1 A I'm trying to think about exactly where we are now.

2 Q The last couple weeks?

3 A It probably would have been -- it would have been at the  
4 beginning of this trial, when the trial started, and understanding who the  
5 witnesses were. That would have been when I fully learned that.

6 Q So from the time you -- and in fact, at some point in your  
7 preparation, you were on call with Mr. Phillips, correct?

8 A That's correct. Well, not in preparation for this trial.

9 Q In your engagement.

10 A In the -- in the -- earlier in the engagement, I was on a call  
11 with counsel with Mr. Phillips.

12 Q I'm not asking for the substance of any of those  
13 communications.

14 A Okay.

15 Q So you were on a call with Mr. Phillips, you reviewed his  
16 report, and until a few weeks ago, meaning when we all had a chance to  
17 get together and get to know each other, you were -- you did not know  
18 that Mr. Phillips was not going to testify?

19 A That's correct.

20 Q And then you learned that just before you were going to  
21 testify again.

22 A Yeah. A few weeks ago, correct.

23 Q Now, do you also recall reviewing the expert report of  
24 another Defense expert, a man by the name of Alexander Mizenko?

25 A Yes, sir.



1 Q And tell the jury who Mr. Mizenko is.

2 A Mr. Mizenko is an employee of a company called FAIR Health  
3 that we've talked a lot about here.

4 Q All right. And FAIR Health is -- issues a benchmarking data  
5 on billed charges that forms the basis of the opinions you've written to  
6 the jury today, correct?

7 A That's correct.

8 Q And you've reviewed his report?

9 A Yes.

10 Q And you recall that Mr. Mizenko has been -- is going to testify  
11 as an expert in this case on behalf of the Defendant, correct?

12 A Yes.

13 Q Now, am I correct, sir, that in preparing to render your report,  
14 you also reviewed the market data for the Defendants in this case, the  
15 five Defendants in this case?

16 A Can you describe for me what you mean by the market data  
17 for the --

18 Q Well, you collected data that had been produced in the  
19 litigation by the Defendants in this case that contained the claims  
20 information showing paid claims, denied claims, allowed claims,  
21 between my clients, the five Defendants, and other ER providers in this  
22 state --

23 A Yes.

24 Q -- as well as the TeamHealth Plaintiffs?

25 A Yes, sir. That's correct.

1           Q     And you also got market data from the TeamHealth Plaintiffs  
2 showing their -- the data and rates they accepted from other health  
3 insurers other than --

4                   MR. LEYENDECKER: Your Honor, there's a limine on this  
5 point.

6                   MR. BLALACK: There's not.

7                   THE COURT: Please approach. I believe there is.

8                   MR. BLALACK: There's not.

9                   [Sidebar at 10:26 a.m., ending at 10:27 a.m., not transcribed]

10                  THE COURT: All right, guys. There's an issue we need to get  
11 resolved outside your presence. We'll need to take another recess.  
12 Thank you in advance for your professional courtesy.

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

18                   Don't conduct any research on your own relating to the case.  
19 Don't consult dictionaries, use the internet or use reference materials.  
20 During the recess, don't post on social media about the trial. Don't talk,  
21 text, tweet, Google issues or conduct any other type of research with  
22 regard to any issues, party, witness, or attorney involved in this case.  
23 Most importantly, do not form or express any opinion on any subject  
24 connected with the trial until the matter is submitted to you.

25                   It's 10:28. I'm going to suggest that we need about 20

1 minutes. So please be lined up and ready to go at 10:50. Thank you, all.

2 THE MARSHAL: All rise for the jury.

3 [Jury out at 10:28 a.m.]

4 [Outside the presence of the jury]

5 THE COURT: All right.

6 MR. BLALACK: When you're ready, Your Honor --

7 THE COURT: So --

8 MR. BLALACK: -- I'm reviewing -- I'm referring -- and I'll find  
9 the actual order that adopts this. I'm referring to 10/20/21 transcript on  
10 the hearing, page 23, line 25. Actually, page 24, line 11, and I'll -- I'm just  
11 quoting from an excerpt, Your Honor, so I'm going to actually pull the  
12 broader language.

13 One of the 10 or 15 issues that was in their motion in limine  
14 number 3 related to out-of-network reimbursement with non-party,  
15 meaning other health insurers. Because remember, Your Honor, the  
16 background was we wanted to offer evidence of their network rates with  
17 other health insurers, and we wanted to offer evidence of their out-of-  
18 network rates with other health insurers.

19 THE COURT: And I understand that, but I need to read --

20 MR. BLALACK: And we [indiscernible] --

21 THE COURT: So I'll be back by 10:45, and you guys use the  
22 time however you wish, but when we finish with this, I'm going to bring  
23 the jury back. I want to try to get the testimony finished this morning  
24 before we break for lunch.

25 MR. BLALACK: Thank you, Judge.

1 THE COURT: Thank you, both.

2 [Recess taken from 10:31 a.m. to 10:38 a.m.]

3 THE COURT: Please remain seated. I understand that you  
4 guys have figured out that whatever happened?

5 MR. BLALACK: We're good to go, Your Honor. I think the  
6 parties agree that this is trivial.

7 THE COURT: Good to know.

8 MR. ZAVITSANOS: Yes, Your Honor, I put on the record that  
9 it's fair game, and I stand by my --

10 THE COURT: All right. Very good. Thank you. So the  
11 marshal -- we don't have a jury for ten minutes, and he may be out there  
12 with them. I don't know. Do you all know where he is?

13 THE CLERK: [Indiscernible]

14 THE COURT: No?

15 THE CLERK: Do you want me to go check?

16 THE COURT: Yeah, if you don't mind. Thanks.

17 MR. BLALACK: So now that looks okay [indiscernible].

18 THE COURT: Good enough. Thank you for your professional  
19 courtesy.

20 THE CLERK: He's not out there.

21 THE COURT: He's not out there --

22 THE CLERK: He may be in the back --

23 THE COURT: -- so go ahead -- let's just be back at 10:50 and  
24 be ready to go to noon. Thanks, guys.

25 MR. BLALACK: So we're staying out until 10:50, Your Honor?

1 THE COURT: The marshal is not here. They're not going to  
2 be back till 10:50 so enjoy a few minutes of peace.

3 MR. BLALACK: No, I'm good.

4 MR. ZAVITSANOS: Your Honor, here's the important  
5 question. Who do you pull for in basketball?

6 [Recess taken from 10:40 a.m. to 10:50 a.m.]

7 [Outside the presence of the jury]

8 THE COURT: Please remain seated. Let's bring in the jury.

9 THE COURT: Oh, and so that you guys know, the case being  
10 locked during the trial means you can file things. We can view it, but the  
11 public should not be able to access the docket, which includes  
12 transcripts.

13 MR. BLALACK: That was our understanding, Your Honor.

14 THE COURT: Okay.

15 THE COURT RECORDER: However --

16 THE COURT: However? Go ahead.

17 THE COURT RECORDER: They're requesting them for me  
18 which actually we give out.

19 THE COURT: She is getting --

20 MR. BLALACK: Well, we have a motion to seal pending.

21 THE COURT: Well, she has a lot of requests for transcripts  
22 coming in.

23 MR. BLALACK: Well, that's the -- I think the issue Mr. Roberts  
24 may --

25 MR. ROBERTS: Is that now that we filed a motion to seal the

1 Supreme Court rules say that it should be confidential until the Court  
2 rules on it; and therefore, let us know if we need an order.

3 THE COURT: You need to get a temporary seal.

4 MR. ROBERTS: Okay. It appears to be automatic under the  
5 rule, but we'll move for one.

6 THE COURT: At the Clerk's office.

7 MR. ROBERTS: Okay.

8 MR. ZAVITSANOS: And, Your Honor, we would like to  
9 respond to that.

10 THE COURT: Yeah.

11 MR. ZAVITSANOS: And just -- and I know counsel knows  
12 this, but when we were referring to AEO stuff, I never mentioned the  
13 number. We had a system in place as the Court is aware. So that is not  
14 going to be factor.

15 THE COURT: Hopefully the jury will be back here soon.  
16 Would you all mind bringing Mr. Leathers in?

17 MR. BLALACK: Yeah.

18 THE COURT: Save some time.

19 MR. BLALACK: And we're going to break at noon, Your  
20 Honor, just so I figure out where to stop?

21 THE COURT: Right. I think we --

22 THE MARSHAL: All rise for the jury.

23 [Jury in at 10:52 a.m.]

24 THE COURT: Thank you. Please be seated. Mr. Blalack,  
25 please proceed.

1 MR. BLALACK: Thank you, Your Honor.

2 BY MR. BLALACK:

3 Q So hello again, Mr. Leathers.

4 A Hello.

5 Q I just want to pick up where we left off.

6 A Okay.

7 Q I had asked you about some of the material you reviewed in  
8 preparing your opinion; do you remember that?

9 A Yes.

10 Q And I believe you testified you reviewed the public  
11 Defendants' market data file?

12 A Yes.

13 Q With respect to the jury's memory, that's a file containing  
14 claims data for United Healthcare -- well, the Defendants in this case, the  
15 five Defendants, and the payments they made on various out-of-network  
16 claims to the TeamHealth Plaintiffs and other ER providers?

17 A Correct.

18 Q Then you also reviewed what's called the Plaintiffs' market  
19 data file, which contains the same kind of information except for the  
20 TeamHealth Plaintiffs showing the amounts that they received for out-of-  
21 network claims from United Healthcare and other health insurers?

22 A Yes. I believe I reviewed that very early on in this case.

23 Q In fact, you cited it as some of the material you relied on in  
24 forming your opinion in your first report?

25 A That's correct.

1 Q Now, all these data files that were sent to you for the -- well,  
2 let me back up. Leave the supplemental reports out of it. Let's go back  
3 to your first report. Was the one issued on July 30th of this year, okay.  
4 Am I right, sir, that you received from Mr. Leyendecker a risk of  
5 reimbursement claim that the TeamHealth plaintiffs dispute in this case?

6 A Yes.

7 Q And that list contained 19,065 disputed claims, correct?

8 A Yes.

9 Q We'll put this on this whiteboard so the jury can follow it. I  
10 hope my spelling is better than Mr. Leyendecker's but I --

11 MR. LEYENDECKER: Your Honor, I object to that. That's an  
12 unfair shot at me.

13 MR. BLALACK: Don't worries, Kevin, I'll put you right back at  
14 some point.

15 BY MR. BLALACK:

16 Q All right. So you received your first list of disputed claims in  
17 July, correct?

18 A Correct.

19 Q And that had 19,065 disputed claims, correct?

20 A Yes.

21 Q And then sometime before your second report which you  
22 issued on September 9th, you received a new list of disputed claims,  
23 correct?

24 A Correct.

25 Q Do you remember how many claims were in dispute on the



1 second list?

2 A I have a vague recollection of maybe around 17,000 claims  
3 maybe, something like that.

4 Q Let me see if I can refresh your memory, sir. Do you  
5 remember that it was 12 thousand --

6 A 12? Okay --

7 Q -- 558? Does that ring a bell for your second report?

8 A I don't have a reason to dispute it.

9 Q Okay. I have your report available, so anytime you feel like it  
10 would help you and the jury to consult it to refresh your memory, you let  
11 me know, okay?

12 A Okay. I will. Thank you.

13 Q So sitting here today, you have no reason to dispute that  
14 your second list of disputed claims you worked with for your second  
15 report was 12, 558?

16 A Correct.

17 Q And you used this second report because you were told the  
18 plaintiffs in this case were no longer disputing 6,507 of the previously  
19 disputed claims, correct?

20 A I don't recall the specific reason. Oftentimes, there's a legal  
21 -- as you know, legal reasons why things are included or excluded. I just  
22 understood and was directed to remove those claims.

23 Q Okay. By counsel?

24 A By counsel, yes.

25 Q Okay. Now, do you recall that just before you issued your

1 second report -- the one on September 9th, you received a third version  
2 of this report -- of this list?

3 A Yes, I do recall that.

4 Q And do you remember that that list had 12,081 disputed  
5 claims on it, correct?

6 A Correct.

7 Q So another almost 500 claims were removed, correct?

8 A Okay. Math is correct.

9 Q Does that sound about right?

10 A Yes.

11 Q Now, that's the list you used for your second report, correct?

12 A Correct.

13 Q Now, between your -- let's see your -- after you finished the  
14 second report on September 9th -- let me just put here, second report.  
15 After that, you were provided a file version of disputed claims, correct,  
16 the one you're working with now?

17 A Yes.

18 Q And I believe this is Plaintiffs' Exhibit 473; do you recall  
19 looking at that document with Mr. Leyendecker?

20 A Yes, we looked at it this morning.

21 Q Do you know how many claims are on that list?

22 A 11,563.

23 Q So between the third list which you used for your second  
24 report, the 12,081, the list you're using now another almost 500 claims  
25 were removed?

1 A Yes.

2 Q So over the course of your engagement since the middle of  
3 July when you had your -- you were retained to prepare your first report  
4 and you reviewed the first list, and when you finally supplemented your  
5 analysis with a file list, am I correct that you reviewed four different  
6 versions of the disputed claims list?

7 A That's correct.

8 Q And each time, the list changed, it changed because the  
9 TeamHealth claims were dropping more claims from the dispute,  
10 correct?

11 A I don't know that one way or another. Like I said, there could  
12 be legal things involved in that as well.

13 Q Okay. Well, to be clear, sir, I'm not asking for your motives --  
14 I'm asking as a matter of that what you thought was in dispute or  
15 evaluating when you started and what you ended, it went down each  
16 time, correct?

17 A Yeah. That's correct. Yes.

18 Q Okay. Now, in that first list, the list my clients underpaid  
19 19,065 claims. And from that list, the one they presented to this jury,  
20 they've withdrawn 7,502 claims; does that sound about right?

21 A The math seems correct.

22 Q So if my math is right, the TeamHealth Plaintiffs have  
23 withdrawn their overpayment allegations for almost 40 percent of the  
24 emergency room out-of-network claims that were originally disputed,  
25 correct?

1 A Yes.

2 Q And by the way, Mr. Leathers, you recalled that when you  
3 were engaged, Mr. Phillips had already been engaged and been working  
4 on this case for awhile, right?

5 A Yes.

6 Q Okay. Do you know from your work and your discussion  
7 with Mr. Phillips, whether there were any versions of this list that  
8 predated the first one you got?

9 A No.

10 Q You don't know that?

11 A I do not.

12 Q So you have no knowledge that the original list of disputed  
13 claims are over 25 -- 3,000 disputed claims?

14 MR. LEYENDECKER: Your Honor, may we approach briefly?

15 THE COURT: You may.

16 [Sidebar at 11:02 a.m., ending at 11:04 a.m., not transcribed]

17 THE COURT: I've overruled an objection.

18 BY MR. BLALACK:

19 Q Well, let me just restate that, sir, so the record's clear. You  
20 have no knowledge that there was an earlier version of the list before  
21 you were engaged that was used by another expert that had 23,000  
22 disputed claims?

23 A Correct.

24 Q Did you ever ask anyone at TeamHealth if that was the case?

25 A No.

1 Q So during that investigation, you described to get to the  
2 bottom of the facts, that's not something you brought up with  
3 [indiscernible]?

4 A No.

5 Q All right. I want to talk about some of the -- I've got some  
6 things I want to cover with you, but I thought Mr. Leyendecker's  
7 examination highlighted some important points. So let's go through  
8 what he covered with you first, and then I'll come back to some of the  
9 issues that I want to cover. Okay?

10 A Okay.

11 Q And let me start by showing the jury Plaintiff's Exhibit 473.  
12 Which, again, this is the final list of disputed claims. And I'm going to  
13 ask that we show the -- I guess the newest one, the electronic version  
14 that Mr. Leyendecker used with you today.

15 MR. BLALACK: Let's bring up the electronic version, Shane.  
16 Do you have that?

17 MR. GODFREY: I only have 473A and B.

18 MR. BLALACK: Okay. Kevin, can you --

19 MR. LEYENDECKER: Yes.

20 MR. BLALACK: -- forward that again, please? That would  
21 just make it faster with the electronic version.

22 THE WITNESS: Sure.

23 BY MR. BLALACK:

24 Q And that's the one you worked with, correct?

25 A Yes.

1 Q Okay. That PDF is -- we actually had somebody up here the  
2 other day with a magnifying glass that's a hard way [indiscernible].  
3 While he's doing that, I don't want to keep the jury waiting, I'm going to  
4 ask you a couple of foundation questions while he's bringing that up. Do  
5 you remember you were asked about CPT codes?

6 A Yes.

7 Q You're not a CPT code expert, are you?

8 A No.

9 Q There's an actual profession of people that are clinical --  
10 clinically certified and hopefully certified people that work with CPT  
11 codes, correct?

12 A Correct.

13 Q So you wouldn't be offering opinions about what the nature  
14 of the severity is of any particular code beyond how they are severe --  
15 meet severe relative to the other in intensity?

16 A Correct.

17 Q And just so we use the term intensity correct, intensity  
18 means the level of activity that the provider is expending for the  
19 engagement, for the encounter, correct?

20 A I don't believe it's limited just to that.

21 Q Okay. What do you think intensity refers to?

22 A Well, intensity -- I mean there could be a defined term for  
23 intensity. If there is and you want to --

24 Q The CPT codes.

25 A -- provide that to me from the CPT manual, I could -- I could

1 answer that differently.

2 Q Do you know what that term means in the CPT codes?

3 A I don't know the definition as it's written in the manual.

4 Q So when I'm -- when I'm referring to intensity I'm using the  
5 concept that's used in the CPT manual to distinguish a lower level code  
6 from a higher level code, and that that reflects different levels of effort  
7 and expense.

8 A Okay.

9 Q Does that sound right to you, based on the limited  
10 experience you have with CPT codes?

11 A No. I mean I'm familiar that there are defined terms within  
12 the manual. But I have not -- I mean if we have it in front of me, we can  
13 go through it. But that's all I can answer on that.

14 Q That's all you can do --

15 A Right.

16 Q -- as to your knowledge, correct?

17 A Well, other than -- no, that's not entirely correct, I mean,  
18 because the -- you know, the evidence that's in this case, the  
19 presentations, things to that nature provide a lot of information that is  
20 simplified in terms of the intensity and how the intensity is described to  
21 the market and to doctors and to payers.

22 Q Did you review any clinical records in connection with your  
23 work in this case?

24 A No, sir.

25 Q So you don't know what actual medical services were

1 rendered by a clinician with respect to each of these services, correct?

2 A I do not.

3 Q What you looked at is the spreadsheet that has numbers on  
4 it, which are CPT codes?

5 A Incorrect.

6 Q And you have not gone through the exercise, because you're  
7 not a CPT expert, of defining what actual services occurred in each of  
8 these accounts?

9 A I've not gone through and defined it. But certainly as part of  
10 my work -- my work was a lot more than just looking at the CPT code on  
11 the spreadsheet. It was understanding, you know, what does that mean,  
12 and most importantly, what does that mean when they're bundled  
13 together so I could understand the economic impact of that.

14 Q Right. So, in other words, so you could compare one type of  
15 code to another type of code or a group of codes?

16 A That's correct, yes.

17 Q But I'm asking a slightly difficult question, sir. Because  
18 there's been some suggestion -- I actually thought you said something  
19 about these being very severe claims regarding -- referring to CPT codes  
20 that ended in 5.

21 A Yes.

22 Q Do you remember saying that?

23 A Yes.

24 Q When you were severe, you were not making a clinical  
25 statement about whether they were severe, correct?



1           A     No. I was -- I was interpret -- not interpreting, but I was  
2 essentially restating what I had learned, what I knew from my  
3 experience, and what I saw in the documents.

4           Q     Okay. So if there's testimony in this case that what a 5  
5 represents is that it's the code relative to a 4, 3, 2, and 1 with the most  
6 amount of effort has to be expended by a provider, you'd have no reason  
7 to disagree with that?

8           A     Not the way that you presented it.

9           Q     Okay. And you are not offering an opinion about whether a 5  
10 actually involved a clinically severe encounter?

11          A     Not from a clinical standpoint, no.

12          Q     Now --

13               MR. BLALACK: Shane, do you have that spreadsheet now?

14               MR. GODFREY: I do not.

15               MR. LEYENDECKER: I sent it to you and --

16               MR. BLALACK: Oh.

17               MR. LEYENDECKER: -- and Jeff.

18               MR. GORDON: He sent it to you, he sent it to me, but it  
19 hasn't come up yet.

20               MR. BLALACK: Could you forward that, please, to Shane  
21 and --

22               MR. GORDON: No. It's not in my email. You may be in your  
23 computer.

24               MR. BLALACK: The Court's indulgence.

25                       [Counsel confer]

1 MR. BLALACK: Here, I just sent it to you, Shane.

2 [Counsel confer]

3 MR. BLALACK: Okay. Let's hopefully get to practice.

4 BY MR. BLALACK:

5 Q While we're doing that, one other concept you mentioned.

6 You mentioned a median versus an average. Do you remember --

7 A Yes --

8 Q -- that?

9 A -- I did.

10 Q And I'm not a statistics guy, but as I understood it, these are  
11 statistical terms, an average and a median?

12 A I don't know that I would define them as a statistical term per  
13 se. I mean there are --

14 Q You don't know if median, mode, and average are concepts  
15 and statistics?

16 A They are concepts and statistics, yeah.

17 Q All right.

18 A Sure.

19 Q So my question is, you understand median and average, and  
20 you mentioned a third, mode, are forms of statistics or a measurement?

21 A Yes.

22 Q Okay. Now, I think you indicated that you thought the  
23 average was the appropriate way to look at the data in this case; is that  
24 right?

25 A Yes. Ultimately. Certainly you should look at both the

1 median and the average as part of your analysis.

2 Q Okay. So you considered both, but thought average was a  
3 better measurement?

4 A That's correct, yes.

5 Q Okay. And I believe you told the jury that you reason you  
6 reached that judgment is because you wanted to avoid a situation where  
7 outliers might skew the result. Did I understand you correctly?

8 A Well, I think that that -- the outlier was an example of why  
9 you may use an average over a median. There were other factors in  
10 terms of using the average for comparability purposes and things of that  
11 nature. That was the basis for me ultimately using average.

12 Q Well, I was going to ask you, how do you define the outlier  
13 for your determination that an average is a better statistic to use than  
14 median?

15 A I didn't create a specific definition.

16 Q Well --

17 A I gave the example of a neighborhood situation, and, you  
18 know, where there was one or two large homes that skew the results.

19 Q Right. And so that the jury knows how to apply your  
20 definition to your testimony, I'd like you -- whether you intended to give  
21 me your definition of this term as it relates to your opinions in this case.

22 A So the definition of the term -- of the term outlier is that you  
23 have a set of data that is -- look like my hands, and then you have one or  
24 two components that are very large. It --

25 Q Have you ever heard of a bell curve?

1 A Yes.

2 Q How does a bell curve relate to these statistics and how to  
3 use them?

4 A So a bell curve -- theoretically, a bell curve looks like just kind  
5 of a smooth mountain. And basically what it has is it speaks to kind of  
6 the area of central tendency, kind of in the middle of that. And so,  
7 theoretically, when you want to use the average, you would say that I  
8 have a very smooth bell curve that is -- that's consistent, right, there's  
9 not -- it's consistent on the left and it's consistent on the right. I'm going  
10 backwards here. Okay?

11 Q And in that example, so using the concept of a bell curve --  
12 so is that what you would look for in a bell curve, a standard bell curve?

13 A That's correct, yes.

14 Q And that you said the point of central tendency. Would that  
15 be this point here on the top of the bell curve?

16 A That's correct, yes.

17 Q And when you referred to outlier, were you meaning  
18 something out on the end of the curve, either end of the curve?

19 A Yes.

20 Q So when you used this concept, you were referring to if the  
21 data has evidence of this dynamic, that's heavily influenced and does not  
22 have this bell curve, in that situation, which of the statistics is the  
23 appropriate?

24 A Well, if you have a outlier that could heavily influence the  
25 number and then ultimately you're ending conclusion, then you would

1 consider using the mean.

2 Q The mean or the median?

3 A The mean. I mean the median. I'm sorry. The median.

4 Q The median. Okay.

5 A Yes.

6 Q I want to make sure I understand what you just said because  
7 I'm not sure I followed. What if you didn't have a normal -- this is called  
8 a normal distribution?

9 A That's correct.

10 Q If you didn't have a normal distribution such that it -- there  
11 was a nice lead here with a central tendency, and so the data was more  
12 scattered, and particularly if you had outliers, as you've described, in  
13 that scenario, the median would be a better measure than the average?

14 A In theory.

15 Q Okay.

16 A That doesn't mean that it's automatic situation to --

17 Q Okay.

18 A -- to shift from an average to a median.

19 Q But if the data looked more like this, normal distribution with  
20 less influence of outliers, as you've described, then the average would  
21 be a more useful statistic?

22 A That's, again, the textbook example.

23 Q Right. Okay.

24 A It depends on the situation you're doing and the -- and the  
25 data that you're analyzing.

1 Q Thank you. And based on -- by the way, in your analysis of  
2 the data you reviewed, which would have been the market data from my  
3 client's files, correct?

4 A Yes.

5 Q -- did you look to see what the distribution of the data was?

6 A Yes.

7 Q And did you look to see what the distribution of the data was  
8 on the disputed claims file?

9 A Yes.

10 Q And was it a normal distribution?

11 A It does not look like that, as the way that you've drawn it. If  
12 you look, for example, at CPT code, I think, 285, which makes up the  
13 largest component of the damages, what you'll actually see is is on that  
14 chart that kind of that -- the further end --

15 Q Uh-huh.

16 A -- of the range, you have the large majority of those claims,  
17 kind of a bell curve, to the end.

18 Q So let me make sure I understand what you're saying  
19 because I'm not sure how to draw this. I haven't done this much  
20 drawing in quite a while. Are you saying that it looks like more like that?

21 A Yes, that's correct.

22 Q Which would not be what you'd call a normal distribution,  
23 like this?

24 A It wouldn't -- I'm sorry should be difficult. It's just from -- in  
25 my world, it's hard to kind of answer that as a yes or no. But that has a

1 more normal distribution than what you may see or if you had numbers  
2 scattered, you know, all along that bottom line.

3 Q Okay. Thank you, sir. All right. Let me show you the  
4 Plaintiff's disputed claims sheet.

5 MR. BLALACK: And, Shane, could you go to the --

6 BY MR. BLALACK:

7 Q Or, actually, I think you called this a pivot table; is that right,  
8 sir?

9 A Yes, sir.

10 Q So this summarizes the data in the Plaintiff's disputed claims  
11 sheet, that last one that we talked about that you received in the last few  
12 weeks, correct?

13 A Yes.

14 MR. LEYENDECKER: Mr. Blalack?

15 MR. BLALACK: Yes.

16 MR. LEYENDECKER: Are you working on the summary or  
17 the underlined file?

18 MR. BLALACK: Right now I'm on the summary of the  
19 document you showed him.

20 MR. LEYENDECKER: Okay.

21 MR. BLALACK: And tell me if I'm not reading it correctly.

22 BY MR. BLALACK:

23 Q But I want to show the underlined data which  
24 Mr. Leyendecker walked through.

25 MR. BLALACK: So, Shane, could you put the -- there we go.

1 BY MR. BLALACK:

2 Q Do you remember looking at this file, sir, with  
3 Mr. Leyendecker?

4 A Yes.

5 Q And let's just -- I want to run through this file. So just --

6 MR. BLALACK: Let's stop right here.

7 BY MR. BLALACK:

8 Q And so I'm just going to take the --

9 MR. BLALACK: Are we all the way to the left, Shane?

10 BY MR. BLALACK:

11 Q Okay. I just want to walk through it show the jury can see  
12 what's on this file and understand it, because this is an important  
13 document. So column A, that's the name of the Plaintiff that's bringing a  
14 claim in this case, correct?

15 A Correct.

16 Q Column C is the facility where that service was rendered,  
17 right?

18 A Yes.

19 Q Is there a reason there's not a column B?

20 A It's hidden.

21 Q It's hidden. Okay.

22 MR. BLALACK: Can we bring that up? Is there a way to bring  
23 that up, Shane? Okay. Well, we'll figure that out. Let's not waste time  
24 with that.

25 BY MR. BLALACK:



1 Q All right. Then there is a -- column D is missing. Do you  
2 know, sir?

3 A It's hidden.

4 Q Column E says county. Oh, there we go. So that -- B is the  
5 tax ID of the entity?

6 A Correct.

7 Q C is the facility, D is the zip code, E is the county where the  
8 service is rendered, correct?

9 A Yes.

10 Q So you see Clark County there. And then there's a patient  
11 name and then there's a date of birth, and then there's a policy number,  
12 correct?

13 A Correct.

14 Q And then there is the DOS under column I. What does DOS  
15 stand for?

16 A Date of service.

17 Q All right. So we have numbers in some of these entries but  
18 not in others. Do you know why?

19 A What are you referring to, sir?

20 Q Well, if you -- can you see on the screen for, let's say, row 21.  
21 Do you see there's a date of service of 11/5/2019 there?

22 A I'm sorry. My screen does not show the row numbers.

23 Q Oh. If you would like, I think you can come down --

24 THE COURT: You could --

25 BY MR. BLALACK:

1 Q -- and look at it --

2 THE COURT: -- step around.

3 BY MR. BLALACK:

4 Q -- if it would help you. And we'll walk through this together.

5 THE CLERK: Just please stay near a microphone or speak up  
6 a little louder.

7 THE WITNESS: Okay. Okay.

8 MR. BLALACK: If you want to lean into my lapel, you're  
9 welcome to.

10 THE WITNESS: No. I would prefer not to do that.

11 MR. BLALACK: So you're going to be buzzing by me before  
12 this trial's over, so.

13 MR. LEYENDECKER: Mr. Blalack, if it helps, your fellow there  
14 was just expanding the column widths. I think if he does that, then you'll  
15 get to where you want to be.

16 MR. BLALACK: That would be great. There we go.

17 BY MR. BLALACK:

18 Q Now, does that answer why there wasn't an entry in the  
19 earlier column for I, for date of service?

20 A Yeah. I mean the column was too small.

21 Q Okay. So for date of service, this is the date when the service  
22 on the claim was performed?

23 A Correct.

24 Q And column J, account, what does that represent?

25 A I believe that's the provider's account.

1 Q Okay. And then Bill provided us the name of the physician  
2 that actually --

3 A Yeah.

4 Q -- did the service?

5 A Yes.

6 Q And this is column L, this billed CPT, that's what described  
7 when Mr. Leyendecker --

8 A Yep.

9 Q -- termed it, correct?

10 A Correct.

11 Q And some of these have a single code on them?

12 A Correct.

13 Q And some have multiple codes on them?

14 A Yes.

15 Q What's the difference -- what is -- what does it represent on a  
16 claim form when there's one code as compared with five?

17 A So five codes would have you have an initial service to  
18 perform and then you have additional codes where there's some sort of  
19 follow-up service that's in addition to what the patient initially came in  
20 for.

21 Q In other words, you might have the evaluation in  
22 management service, which is one of these 99281, 282 --

23 A Right.

24 Q -- 283 where there's an evaluation and management of the  
25 patient; but that might actually be a procedure as well, correct?

1 A Correct.

2 Q And that procedure would be included on the claim form  
3 separately?

4 A Could be, yes.

5 Q And it would have a separate billed charge?

6 A Yes, it could be.

7 Q And it would be a separate line amount?

8 A Correct.

9 Q Okay. Now, let's go across here in, you know -- do you see  
10 where it says charges?

11 A Yep.

12 Q These charges are the billed charges from the claim form,  
13 correct?

14 A Yes.

15 Q And this represents the charges for all services and  
16 procedures on the claim form, and whether it's 1, 5, or 50, correct?

17 A I believe so. I think there are some instances in the market  
18 data where they're separated.

19 Q Okay.

20 A But [indiscernible] --

21 Q [Indiscernible - witness and Mr. Blalack talking over each  
22 other]

23 A -- connect here since the raw data in this file, they're all  
24 combined together.

25 Q Okay. And then there's an allowed amount?

1 A Yes.

2 Q Okay. And, again, this is the amount for the entire claim that  
3 was allowed by the Defendant in the case?

4 A Correct.

5 Q Okay. And then there's a payment amount, which is what?

6 A That's the amount that's paid by the insurance company.

7 Q Okay. And then you have a deductible, copay, coinsurance,  
8 and total payments. What's reflected on those columns?

9 A So I mean you could see total payments ties into the amount  
10 allowed. And essentially what we're doing here is it's spreading it out  
11 between the amount that's paid by the insurance company right here,  
12 there's a deductible so that the patient or the members pay in the  
13 deductible, or in some cases, not all cases, there is coinsurance, which is  
14 the percentage of the amount allowed that the patient, you or I, would be  
15 paying.

16 Q And then column T, impact, that's the difference between the  
17 billed charge column and the allowed column, correct?

18 A I believe so. I didn't really focus on that column. We can  
19 probably click it on, and I could tell you the calculation maybe.

20 Q Okay. And then plan name, you've got a listed name, that's  
21 one of the Defendants in the case?

22 A Yes.

23 Q Okay. And then this has a list for employers. These are the  
24 employers who sponsor the health plan that the employee received care  
25 from, correct?

1           A     That's correct. Essentially the employer of the individual B  
2 were being cared for.

3           Q     Okay. And so we have the number of different entities that  
4 are referenced here that are employers of the people who received care  
5 that are reflected in the -- in the claim form?

6           A     Yes, sir.

7           Q     All right. Then you have a claim date, other claims format,  
8 and then you have a column that reads ADASO?

9           A     Yes.

10          Q     What does that refer to?

11          A     That is administrative services. In other words, in this  
12 particular claim, UnitedHealthcare Services is providing -- managing the  
13 claim for an employer who is self-insured.

14          Q     So, in this case, for example, looking at row -- I'll just pick  
15 Apple -- row 20, the employee is an Apple employee who received care  
16 under a self-funded plan operated by -- sponsored by Apple?

17          A     That's correct, yes.

18          Q     United --

19          A     That's -- yes.

20          Q     UnitedHealthcare Services was the administrator of that?

21          A     That's correct.

22          Q     So the money used to pay the allowed amount did not come  
23 from the bank account of UnitedHealthcare Services but from Apple?

24          A     That's correct.

25          Q     Okay. And the damages that are being sought here are being

1 sought from UnitedHealthcare Services, not Apple?

2 A Correct.

3 Q Now, in these lines that don't have the ASO, what does that  
4 reflect?

5 A This means that this is a fully insured claim whereby -- for  
6 example, here, UnitedHealth Insurance Company would be the one that's  
7 on the hook for providing the check.

8 Q Okay. And then you have a column that says iSight. Do you  
9 see that?

10 A Yes.

11 Q And there's a bunch of listings, non-DIS. What does that  
12 mean?

13 A Okay. What that means is, is that these claims were  
14 processed without using the Data iSight process.

15 Q Okay. And you know that -- we'll talk about this in more  
16 detail later. You know that Data iSight is an out-of-network pricing tool  
17 offered to the market by MultiPlan?

18 A Yes.

19 Q Okay. And then the last column, that's just the Defendant?

20 A That's correct.

21 Q All right. Thank you. You can sit down. Now, sir, let me ask  
22 you this. This information that's in Plaintiffs' Exhibit 473, what is it?

23 A All this information came from -- well, actually, this  
24 information, I believe, is a combination of the Plaintiff's claim file and  
25 information from the Defendants.

1 Q What information do you think is on this file that came from  
2 the Defendants?

3 A The identification of the claims that are being processed  
4 through Data iSight.

5 Q That one column you showed me?

6 A Yes, sir.

7 Q Would you agree with me, sir, that other than the column  
8 that you annotated for Data iSight, all of the other data on the claim file,  
9 or Exhibit 473, comes from the Plaintiffs?

10 A Generally, that's my recollection. There may have been  
11 some exceptions. It's been a long time since I've put that together, but  
12 generally, that's correct.

13 Q Sitting here today, other than the Data iSight column, can  
14 you tell this jury if there is a single other data on here that came from the  
15 Defendants?

16 A No.

17 Q Okay. Now, you had underlying market data produced by  
18 the five Defendants in this case, showing what their claims records  
19 actually were with respect to these Plaintiffs in the case, correct?

20 A I don't understand your question.

21 Q You had the market data from the claims systems of the  
22 Defendants accessible to you to review with respect to each of these  
23 claims, correct?

24 A The underlying file for each one of these claims?

25 Q Correct. That shows from the United or Sierra or UMR



1 claims system. You had the data for each of these claims?

2 A I don't recall that I did.

3 Q You don't know that you had the data for each of these  
4 claims in that system?

5 A I don't recall that I do now.

6 Q That's news to you?

7 A Well, I don't want to say it's news to me. It may not be --

8 Q It seems like you're hearing it for the first time from me.

9 A Well, we have a lot of data and I'm trying to be very specific  
10 in answering my question because I had a deposition, and I don't --

11 Q And I agree.

12 A -- want to be different than what I told you in my  
13 deposition --

14 Q I agree.

15 A -- and that sort of thing. And also trying to understand your  
16 question. I do not recall reviewing any further detail or additional detail  
17 behind these individual claims.

18 Q And that's getting at what I wanted to ask, sir. Did you  
19 undertake the exercise of taking each of these claims, 11,563 of them, did  
20 you go through each one of them, on each row, and match each of the  
21 data elements in the claims file marked as Plaintiff's Exhibit 473 and  
22 compare it to the actual raw data in the claims produced in this case, raw  
23 data claims information produced in this case by the Defendants?

24 A No.

25 Q Is there a reason you didn't do that?

1 A No.

2 Q All right. So sitting here today, the accuracy of the  
3 information in Plaintiffs' Exhibit 473, you've accepted for the sake of your  
4 analysis?

5 A Yeah. That's correct, and that's what we would do in an  
6 ordinary sort of situation is we would assume the validity of the  
7 underlying data. We didn't perform a separate audit, if you will.

8 Q Okay. So you don't know, for example, whether there are  
9 allowed amounts --

10 MR. BLALACK: Shane, could you find the column that has  
11 bill charges and allowed amounts? There we go.

12 BY MR. BLALACK:

13 Q So you don't know -- so I'm looking at column M and column  
14 N. You don't know whether the numbers reflected in these two columns  
15 match the numbers in the underlying claims data for every one of these  
16 entries for the claims produced by each of the five Defendants in this  
17 case?

18 A That's correct. I assume that the numbers are consistent.

19 Q Now, if any of these -- let's take one at a time. Your method  
20 of tackling damages is to take the charge, subtract the allowed amount  
21 and measure that as damage, correct?

22 A Correct.

23 Q So if we're, again, using row 30 as an example for these,  
24 your calculation would be 508 minus 112.44, and that would produce the  
25 damage, right?

1 A Correct.

2 Q If you're getting into the underlying claims data produced by  
3 the Defendants in this case and you find out that the charge is 508, that  
4 it's something different, or you get in and find out that the allowed  
5 amount is not 112.44, but it's something different, then for that claim,  
6 your calculation damage would be off, correct?

7 A Well, you'd have to understand -- if you want to make the  
8 assumption that the 508 is incorrect --

9 Q That's the premise I'm asking.

10 A Okay.

11 Q In a world where the underlying claims data produced by the  
12 actual Defendant shows that the charge was something different or the  
13 allowed amount is something different, at least for that claim, your  
14 measured damaged in this, that's been given to the jury, is off?

15 A Yes, only if you assume that that underlying claim data, that  
16 the reason that there is a difference is some sort of key punch error or  
17 what have you.

18 Q Well, it doesn't matter what the reason is. It could've been  
19 an alien could've come down and put them in. If the number for charges  
20 allowed is something other than 508 for charges and \$112.44, the  
21 measure of damages that you've got on this spreadsheet as you've  
22 described to the jury, so that 100 would be wrong, correct? Whatever  
23 the reason.

24 A I'm sorry. I don't mean to argue with you.

25 Q Sure.

1           A     But there could be a lot of reasons why there are -- you look  
2 at a claims file and there could be updates to the claims file, adjustments  
3 to the claims file, but if you assume that, ultimately, the number that  
4 should be represented as the charge is incorrect for whatever reason --

5           Q     Correct.

6           A     -- then yes, then that would mean that the amount of  
7 damages attributed to that claim would need to be revisited.

8           Q     And that would be the case if the charge was correct, but the  
9 allowed was wrong, either way?

10          A     That's correct, yes.

11          Q     Because you have a simple charge [indiscernible] allowed?

12          A     That's correct, yes.

13          Q     Okay. Now, I want to ask you a little bit about the  
14 investigation. You described to the jury conducting an investigation in  
15 this case; is that right?

16          A     Yes.

17          Q     Do you consider that investigation a felony investigation?

18          A     For purposes of the calculations that I needed to perform,  
19 yes.

20          Q     What do you mean by for the purposes of the calculations?

21          A     Well, because when you do an investigation or you do an  
22 audit or review of financial information, you do it to a certain point to  
23 where you determine that the additional work you do is not going to  
24 have a material impact on the ultimate results.

25          Q     Okay. Let me ask -- well, let me -- I want to understand what

1 you found on a couple points in your investigation, okay?

2 A Okay.

3 Q Let me ask you this. Tell me the names of the five  
4 Defendants in the case.

5 A They are --

6 Q Just tell me. I know you've looked at a lot of paper and did  
7 months and months of investigation. Tell me the name of the  
8 Defendants.

9 A So, United Insurance Company Services.

10 Q What's the next one?

11 A United Health Plan of Nevada.

12 Q Okay.

13 A Sierra.

14 Q Okay.

15 A UMR.

16 Q Okay.

17 A I say that because that's how it's been referred to here.

18 Q Yep.

19 A And I've got one more, which would just be United  
20 Healthcare, I believe.

21 Q And these are the five Defendants in the case; is that right?

22 A Yes. I think that the United Healthcare is -- I'm not recalling  
23 the exact name of that, but there is a fifth name there that's not exactly  
24 correct there.

25 Q What do you want me to change, sir?

1           A     No. I'm just saying my recollection is of those five, but I'm  
2 just trying to identify for you that when I say United Healthcare, that's a  
3 general name. There is a -- you can look in my report and I can tell you  
4 the specific name of that.

5           Q     I appreciate that, sir, but the jury is being asked to rely on  
6 your investigation when deciding this case; do you know that?

7           A     Yes.

8           Q     And you've represented that you've spent, what? Over  
9 \$100,000 doing an investigation on this?

10          A     Yes.

11          Q     You understand who the five Defendants are without looking  
12 at the report, right?

13          A     Yes.

14          Q     Okay. So you don't need to check the report to know the  
15 names of the five Defendants in the case, right?

16          A     There's a lot of information that's in here and the analysis --

17          Q     But beyond the names of the parties?

18          A     That's correct, but I think that you could look at the full  
19 names of the parties, and I think it'd be difficult for many in this room to  
20 transcribe exactly the full names of those parties.

21          Q     Now, you noted on the spreadsheet which of the Plaintiffs  
22 were self-funded ASO plans, and which were fully insured, correct?

23          A     Can you repeat the question?

24          Q     For each of the claims you've got in the spreadsheet?

25          A     Yes, they're in there.

1 Q Okay.

2 A That's correct.

3 Q So I want you to tell me, does Sierra do self-funded ASO  
4 business, fully insured business, or both?

5 A I believe they do fully insured business.

6 Q What about United Health Plan of Nevada?

7 A Same. Fully insured.

8 Q What about United Insurance Company Services?

9 A Mostly ASO.

10 Q What about UMR?

11 A I believe UMR is also mostly ASO.

12 Q What about the United Healthcare?

13 A They are a mix, I believe.

14 Q Okay. When you say mostly ASO for United Health  
15 Insurance Company and UMR, what do you mean?

16 A Well, what I mean is there are two of the five -- there are two  
17 of the Defendants that are primarily administrative services only, and I  
18 recall those to be United Insurance Services and UMR.

19 Q Do you have some --

20 A Again, we can look at the spreadsheet and I can tell you for  
21 sure.

22 Q Do you have some doubt as to whether United Insurance  
23 Company services and UMR also offer fully insured product?

24 A I wouldn't call it doubt. I would say that this is my best  
25 recollection, but we can avoid that by simply looking at the spreadsheet.

1 Q Okay. Well, I'll definitely -- you're going to have a chance to  
2 do that, but right now, I'd like the jury to understand what the quality of  
3 your understanding is based on the extensive investigation you've  
4 been --

5 A Okay.

6 Q Now, with respect to the Data iSight tool -- you remember  
7 that?

8 A Yes.

9 Q Okay. Which of these companies utilize the Data iSight tool?

10 A You know, I think I would have to look back at my report to  
11 tell you exactly. There were --

12 Q Right now we're just going to -- we're going to see what you  
13 recall --

14 A Okay.

15 Q -- from your --

16 A Sure, sure, sure. So United Insurance Services would have  
17 utilized Data iSight.

18 Q Okay.

19 A UMR would've used Data iSight. And I believe those are the  
20 only two that --

21 Q Okay.

22 A -- used Data iSight.

23 Q Have you heard the term shared savings program?

24 A Yes.

25 Q Okay. Do you know if any of these Defendants used the



1 shared savings program?

2 A I'm hesitation because of the initial claims in this case that --

3 Q All I'm asking you, sir -- I'm just asking a simple question.

4 Based on your investigation, do you know whether any of these five  
5 Defendants utilized what you understood to be the shared savings  
6 program?

7 A Based on my understanding of the case, all of those  
8 Defendants, in some way, shape, or form, utilized a shared savings  
9 program, and that only two of them, as I recall, utilized the Data iSight  
10 service.

11 Q Okay. So just to summarize, based on your investigation, all  
12 five Defendants utilized the shared savings program and two of the  
13 Defendants utilized Data iSight?

14 A That's correct.

15 Q Okay. Have you heard the name of the program ENRP?

16 A Yes.

17 Q Okay. Which of the Defendants use ENRP?

18 A I don't recall.

19 Q Okay. Have you heard the term physician reasonable and  
20 customary?

21 A Yes.

22 Q Which of the Defendants used the physician reasonable and  
23 customary method?

24 A Are you talking about the program or that the charges should  
25 be based on reasonable and customary?

1 Q I'm asking about the out-of-network programs which you  
2 looked at as part of your investigation. That's the question.

3 A Okay.

4 Q You understand it?

5 A Yes, and I -- it's a -- that particular question is difficult. My  
6 understanding is that each one of those charges, prior to the alleged  
7 actions in this case, were all based on a reasonable and customary basis  
8 or program.

9 Q So --

10 A A reimbursement program.

11 Q So you think all five Defendants utilized a physician  
12 reasonable and customary program to pay for out-of-network ER  
13 services before the period of dispute?

14 A That's correct.

15 Q Okay. Does that capture basically your summary of what you  
16 investigated?

17 A Well, it's my recollection of this component of the  
18 investigation.

19 Q Okay. Now, do you know, by the way, if there is a difference  
20 between the out-of-network programs used by UMR and the out-of-  
21 network programs used by, let's say, United Healthcare?

22 A There could be.

23 Q I appreciate that. I'm asking a different question. Not  
24 whether it could be. Whether you know that to be true?

25 A I mean, the -- I know that each of these use very out-of-

1 network programs, number one. Number two, the information regarding  
2 which ones were used, and even when they were purportedly to use and  
3 the resulting information where that differs, makes it difficult to be able  
4 to say yes or no to that.

5 Q Is the answer, you don't know?

6 A For example, the information we saw yesterday, how the  
7 numbers were all over the map, even though both were based on an  
8 iSight program.

9 Q So is it fair to say you can't answer that question I just asked?

10 A I can't fully answer that question you asked --

11 Q Okay.

12 A -- based on without getting back into the data.

13 Q Okay. For Sierra Health, what's the out-of-network programs  
14 they use?

15 A I don't recall the out-of-network programs specifically that  
16 Sierra Health does because they essentially have been charging a flat  
17 fee.

18 Q Okay. In fact, did you listen to testimony of Ms. Hare who  
19 testified in front of the jury?

20 A I did; yes.

21 Q Do you remember her testifying under oath that Sierra  
22 doesn't have any out-of-network program?

23 A I don't recall that.

24 Q You missed that part of her testimony?

25 A No. I just don't recall her saying specifically, they had no

1 out-of-network programs.

2 Q Okay. So we'll let the jury decide, based on a reading of the  
3 transcript, whether that's true or not. Now, let me show you -- I want to  
4 show you some things that Mr. Leyendecker showed you.

5 MR. BLALACK: Could you bring up his presentation, please?  
6 Can you bring it up? There we go. Thanks a lot. Keep going. Keep  
7 going. Okay. Let's stop here, sir.

8 BY MR. BLALACK:

9 Q Do you remember being questioned by Mr. Leyendecker  
10 earlier today about this charge that's, I think, identified as 530-004?

11 A Yes.

12 Q And I just want to make sure the jury understands what  
13 they're looking at here, okay? And what it means. First of all, the time  
14 period that's being measured here is November 2017 and May 2020,  
15 correct?

16 A Yes.

17 Q And at the time, it says, Fremont's charges, correct?

18 A Correct.

19 Q And it says, 99284, right?

20 A Correct.

21 Q Now, so this is the plotting of Plaintiff Fremont's, bill charge  
22 from November 2017 to May 2020. Am I right about that?

23 A Correct.

24 Q And that's the green line?

25 A That's correct.

1 Q And then there is a blue line that purports to chart the bill  
2 charges of all over ER providers, and that runs from the same period,  
3 correct?

4 A Correct.

5 Q And then there's an orange or brown line that plots the bill  
6 charges reflected at the FAIR Health 80th percentile in the Benchmark  
7 database over the same period, correct?

8 A Correct.

9 Q Okay. Now, I want to make sure I understand what you're  
10 saying here, sir. Now, you know that the FAIR Health benchmark is a  
11 plotting of all bill charges reported by providers for that service in a  
12 certain area called a geo, correct?

13 A Correct.

14 Q So when we say all other ER providers include, that's not  
15 referring to all other ER providers in this area. That's just referring to  
16 other ER providers reflected in the claims data of one of the Defendants?

17 A Yes, for that particular --

18 Q Right.

19 A -- geo.

20 Q So if you wanted to capture what the billed charges were and  
21 how they were changing over time for all ER providers who reported  
22 99284, the FAIR Health benchmark would be a more complete measure,  
23 correct?

24 A No, this is apples to apples in terms of -- yes, you're exactly  
25 right. The other ER providers are those that have provided information

1 to -- or what they charged United. It's United's data, so there is a --  
2 there's a set whereas you're correct. The FAIR Health data is a broader  
3 set of data.

4 Q Right. And so when you compare the Plaintiff's charges and  
5 how they grew to the growth of the charges of all other ER providers in  
6 this region in the 80th percentile, what you found was that the  
7 TeamHealth Plaintiffs charges were roughly in line with FAIR Health until  
8 2019 when the charges for all other ER providers in this area spiked in  
9 November of 2019, and continued at that next level.

10 A Correct.

11 Q Is that right?

12 A Yep.

13 Q And let's just make sure I've got the math right on this. So  
14 for the FAIR health charge database, can you tell the jury how much of a  
15 total increase there was for the 80th percentile, the benchmark from  
16 November of 2017 to May 2020?

17 A Well, if you could give me a calculator, I would do it. The  
18 number that I calculated was kind of an average growth rate, compound  
19 average growth rate, that I think was about 70 percent, 75 percent.

20 Q Well, let me -- I'm not the finance guy you are, but let me  
21 give it a shot. According to my math, over that period, the 80th  
22 percentile benchmark of all charges in this area grew from 883 to 1266,  
23 which is \$383. Does that sound right?

24 A Sounds right.

25 Q And you measured that at over that entire period. That's --

1 what's that? You said -- what was the number you used? Seven what?

2 A 75 percent.

3 Q You said 75 percent measured from November '17 to May  
4 2020, or is that 75 percent on an annual basis?

5 A It's on an annual basis.

6 Q So you're saying it went up 75 percent between November of  
7 2017 and November of 2018? And then 75 percent from November '18  
8 to November '19?

9 A No, no, actually that the 75 percent must have been the  
10 entire time period. Because 75, that would go -- be quite a bit larger.

11 Q Right. So what you're saying is when it went from 883 to  
12 1,276, that was a 75 percent increase?

13 A That's correct.

14 Q Would you agree with me that's a steep increase?

15 A It is, yes.

16 Q Okay. So if you had a -- if you offered a health plan, an  
17 employer, in Nevada, self-funded employer in Nevada, and was trying to  
18 determine what the reasonable rate for an out-of-network emergency  
19 service was, and you were measuring that based on whether it was at or  
20 below the 80th percentile, you would have a program that would take in  
21 a 75 percent increase in the charge, over two years, correct?

22 A No.

23 Q Tell me why.

24 A Because you would look at the Fair Health data, like I did, and  
25 you would understand that there were changes in the Fair Health data in

1 terms of the number -- increased number of claims that were submitted  
2 to that data base. That then created essentially an anomaly during that  
3 particular period of time. And you would have adjusted for that.

4 Q So you would -- the administrator --

5 MR. LEYENDECKER: Excuse me, Your Honor. I'm not sure  
6 Mr. Leathers was finished with his --

7 MR. BLALACK: Oh, I'm sorry.

8 MR. LEYENDECKER: -- commentary there.

9 MR. BLALACK: My apologies. I'm sorry.

10 MR. LEYENDECKER: No, all I was simply doing was you  
11 would -- you would not put it right into a computer program. You would  
12 see that there was an anomaly or something that was going on. And  
13 then you would seek to understand what that is. And when you did, for  
14 example, in this one, you would see that there were a significant  
15 increase in the number of claims that were provided into that data base  
16 during that --

17 Q So you --

18 A -- period of time.

19 Q I'm sorry.

20 A That's okay.

21 Q So if you were the administrator of the self-plan and you  
22 were trying to decide how you're going to reimburse these claims based  
23 on the 80 percentile, which is what you were using, you would say you  
24 know what, I know the plan says used this 80th percentile, but for this  
25 time, we're going to disregard it.



1           A     Well, I think my understand from Mr. Murphy yesterday, and  
2 from the documentation is, it's not a literal here's what Fair Health says,  
3 and we put that in our plan document. It's a basis for assessing what  
4 charges they're going to make and the reasonableness of those charges.

5           Q     I understand and Mr. Murphy doesn't work for the Defendant  
6 in this case, right?

7           A     Correct.

8           Q     He's the head of employment.

9           A     Correct.

10          Q     So I'm talking about the Defendants in the case who have to  
11 settle have reimbursement program for their employer sponsors. And I  
12 understood your opinion in this case to be that when determining what  
13 the reasonable rate of reimbursement for an out-of-network emergency  
14 service is, it was the correct thing to do to rely on the Fair Health 80  
15 percentile benchmark; is that right?

16          A     No.

17          Q     Okay, so you do not agree with anyone arguing that the Fair  
18 Health 80th percentile benchmark should be the measurement of what is,  
19 or is not a reasonable charge?

20          A     No, I do believe, and the evidence supports the fact that Fair  
21 Health should be a basis for a reasonable charge.

22          Q     But in this case, if you were the health plan sponsor, you  
23 would not rely on this data that you just pointed to the jury because it  
24 has an anomaly in it, right?

25          A     You would rely upon it, but you would understand what was

1 going on in that data.

2 Q So this data would not be -- at least this one charge for this  
3 period would not be reliable for that purpose, in your view?

4 A I don't -- I don't want to say that it's not reliable. I think it's  
5 reliable once you go and do the analysis and understand what the  
6 impact is.

7 Q Now the Plaintiffs charges during this period went from \$880,  
8 this is Fremont.

9 A Right.

10 Q To \$965, correct? Is that right?

11 A Yes.

12 Q So that's about an \$85 increase over that -- over little two  
13 year period.

14 A Yes.

15 Q And that runs, comes out to about -- what about a ten  
16 percent increase over that time span?

17 A Yes.

18 Q So --

19 A That's just taking the difference between the numbers.

20 Q Yeah. And have you looked at the rate of inflation issued by  
21 the U.S. Bureau of Labor Statistics for this period in this region for  
22 physician services?

23 A I don't recall if they have the data for this particular region,  
24 but I have looked at it, because there is a sub-component of that for  
25 healthcare services.

1 Q There's actually a subcomponent for physician services?

2 A There is, yes.

3 Q Right.

4 A And hospitals.

5 Q Did you look at what that percentage of increase is for  
6 physician services in this period in this area?

7 A Yes.

8 Q What is that?

9 A So it is, depending on the particular period that you look to, it  
10 goes from maybe 1.5 percent to a little over four and a half percent.

11 Q So an increase in charges --

12 A Excuse me, that's a -- that's not a period to period. Because  
13 the way that it's reported is it's reported on a monthly basis.

14 Q Uh-huh.

15 A So every year when you look at that to say the inflation is 1.5  
16 to 4.5 --

17 Q Uh-huh.

18 A -- that would be comparable to looking at a compound  
19 average annual growth rate that would be more in line with like a 3  
20 percent growth rate.

21 Q Let's get you -- make sure the record is really clear on this.

22 A Okay.

23 Q Before I pass you to the Plaintiffs. Was the increase of 10  
24 percent that's reflected on this chart in Fremont's charges over this  
25 period above or below the U.S. Bureau of Labor Statistics inflation rate

1 for physician services?

2 A It is consistent with and maybe slightly above.

3 Q Whoa. We'll take that and move on. See, I have another  
4 witness that's going to speak to that question.

5 A Okay.

6 Q Let's look at the next chart, please. All right, so here again,  
7 sir, got a different charge for Fremont, same period and this time we  
8 have a big spike in November, don't we, of 2018?

9 A That's correct.

10 Q So is this data, data that is an anomaly?

11 A It's driven by an anomaly related to the volume of claims  
12 submitted to Fair Health.

13 Q Right. And that anomalies in your view makes this data not  
14 appropriate as a sole basis to measure a benchmark for damages in this  
15 case, correct?

16 A Without understanding that anomaly and recognizing that in  
17 your calculation.

18 Q Right. So the answer to my question is yes?

19 A No.

20 Q What's the answer to my question?

21 A The answer to your question is, is that -- is that you cannot --  
22 you can't -- you couldn't go and say hey, there's a difference between  
23 1,423 and 1,888 without explaining to somebody the understanding of  
24 why that increased.

25 Q Yeah, but the number I'm interested in, sir, is the difference

1 between 1,295 and 1,888. That's the number I'm interested in.

2 A Okay.

3 Q You characterize that as an anomaly, correct? In the data.

4 A That's correct, yes.

5 Q So my question to you is does that anomaly in the data that  
6 you are showing, your counsel showed the jury, render this data for this  
7 charge unreliable by itself as a benchmark on reasonable value?

8 A No.

9 Q Okay. So you would still recommend the jury, when it's  
10 evaluating reasonable value, look at this chart and say you know what.  
11 Even though it rose from 1,295 to 1,888 in one year, that's reasonable.  
12 That's your position. Correct?

13 A Yes.

14 Q Okay. Let's look at the next one. Now this one was  
15 interesting, sir. You didn't -- you showed Fremont by itself. But you  
16 showed Ruby Crest and Team Physicians together. Why did you do  
17 that?

18 A Really for two reasons. One is you mentioned Mr. Mizenko,  
19 who works for Fair Health. And in the Fair Health data, they  
20 recommended those geo zip codes be combined together.

21 Q Uh-huh.

22 A Because of the nature of the -- of the practices and the  
23 volume of data. So essentially what I was doing is again, we kind of go  
24 back to being comparable in each of our data sets. So I adopted that  
25 same -- that same approach.

1 Q Okay. You saw his reports, sir, and you know there's no  
2 chart like this in his report; correct?

3 A That's correct.

4 Q And in his report, he did an analysis of the Plaintiffs' --  
5 TeamHealth Plaintiff's billed charges and co-foundation by Plaintiff,  
6 right?

7 A Yes.

8 Q And you're aware from looking at the records produced by  
9 the TeamHealth Plaintiffs in this case, that the bill charges for Team  
10 Physician and the bill charges for Ruby Crest for each of these codes are  
11 different, correct?

12 A They're not exactly the same.

13 Q Not exactly the same. They're substantially different, aren't  
14 they?

15 A We can go back and look exactly what they are.

16 Q Well, here's the thing, sir. You did this very substantial  
17 investigation. And my question is, do you know, based on the months of  
18 work you did, that those charges for those two Plaintiffs are substantially  
19 different.

20 A I know that they're different. I don't know that I would define  
21 them as substantially different.

22 Q We'll let the jury decide what substantially means. Now in  
23 this case, you've got this all other E.R. provider line. Do you see that?

24 A Yes.

25 Q So if I'm -- if I'm looking -- this is, again E.R. providers who

1 submitted a claim to United Health -- one of the Defendants, correct?

2 A Correct.

3 Q In this case, you've got in your data, a charge going up and  
4 if I'm right, between May of 2018 and November of 2018, kind of went  
5 down a little bit?

6 A That's correct, yes.

7 Q And then it spiked up quite a bit for November of 2018 and  
8 May 2019, correct?

9 A Correct.

10 Q And then it came down quite a bit, right? After that?

11 A Yes.

12 Q And then it went down a little more, right?

13 A Yes.

14 Q Do you consider that line for 384 up to 412 to reflect a  
15 reliable representative set of data to measure reasonable value?

16 A Yes.

17 Q And I take it, when you look at the TeamHealth Plaintiff's  
18 charges, you've got their charges starting at 463 in November, dropping  
19 down at or below 400 in May, going back up close to 500 in November,  
20 and coming down to a little over 400 in November of 2019. And popping  
21 back up in May 2020. Am I right about that?

22 A Yes.

23 Q So to believe your data, the Ruby Crest and Team Physicians  
24 bill charges on the charge master, changed from November 2017 to May  
25 2018, went down. And then between May 2018 and November 2018,

1 went up. So within the same year, right?

2 A Yes.

3 Q So literally within six months the charges shot up. And then  
4 within another year, went down some more, right?

5 A Correct.

6 Q And then went back up six months later.

7 A That's right.

8 Q Is that level of charge activity consistent with reasonable  
9 value in your view?

10 A Yes.

11 Q Okay. Let's go to the next one, please. All right. Here we  
12 have another one. Where we have the Fair Health data relatively stable  
13 and then all of a sudden spiking. In that last six months, correct?

14 A Yes.

15 Q And then we have the other E.R. providers in the United  
16 Health -- well the Defendant's data. Stable, spiking, going down and  
17 then stable again, correct?

18 A Correct.

19 Q Okay. And again, I take it you think this represents a  
20 reasonable representative data set for measuring reasonable value,  
21 correct?

22 A Yes.

23 Q Let's see if we can finish one more thing before we break,  
24 Your Honor. Oh, okay, well, this is a good one. Ruby Crest and Team  
25 Physicians, 99285. So for the other E.R. providers that you're using as a



1 benchmark, their -- their data starts in May. So you don't have any data  
2 that you're showing for these Plaintiffs before that. Is that right?

3 A That's right.

4 Q So in your investigation, you didn't ask the --

5 A No, no, no. It -- there is -- there are -- there are no charges --  
6 there are no claims in dispute that are 99285 for these entities prior to  
7 the May time period.

8 Q Oh, I see. So your point is you took these values from the  
9 disputed claim sheet?

10 A That's correct.

11 Q Did you actually for and look at the charge masters that were  
12 produced by the TeamHealth Plaintiffs in this case?

13 A No.

14 Q Do you know what a charge master is?

15 A I do.

16 Q What is a charge master?

17 A A charge master is what the providers have that they use to  
18 charge for a particular code. Like a 99285 code.

19 Q Can it be called a price list?

20 A I think that's a reasonable explanation, yes.

21 Q Well, let's make sure that we've got this straight. You were  
22 asked to render an expert opinion on the reasonable value of 11,500  
23 claims in this case, correct?

24 A Correct.

25 Q And you were told that the TeamHealth Plaintiffs claim that

1 bill charges was what they were due?

2 A Yes.

3 Q And you knew what a charge master was when you were  
4 engaged, correct?

5 A Yes.

6 Q And you didn't ask the TeamHealth Plaintiffs to provide you a  
7 copy of their price list to see what those charges were?

8 A Correct.

9 Q You just simply relied on the disputed claims list that had  
10 numbers written in it that were provided to you by Plaintiffs' counsel,  
11 correct?

12 A Yes, that's correct.

13 Q Do you know that the charge masters were actually produced  
14 in this case?

15 A I don't recall one way or another.

16 Q Now this last one before we break, Your Honor, is 99285  
17 went for the other E.R. providers. Am I correct that literally between  
18 November 2018 and November 2019, that the average bill charges that  
19 you're using for your measure of benchmark increased from something  
20 north of 1,100 to something around 1,500 and then back down to  
21 something around 1,300 in the span of one year?

22 A That's correct, yes.

23 MR. BLALACK: Your Honor, this is probably a good time to  
24 break.

25 THE COURT: Okay. Now we'll take our noon recess. During

1 the recess you're instructed not to talk with each other, or anyone else  
2 about any subject connected to the trial. Don't read, watch or listen to  
3 any report of or commentary on the trial. Don't discuss this case with  
4 anyone connected to it by any medium of information, including without  
5 limitation, newspapers, radio, internet, cellphone or texting.

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

11 Most importantly do not form or express any opinion on any  
12 subject connected to the trial until the matter is submitted to you. It's  
13 11:59. Will you please ready at 11:35.

14 THE MARSHAL: All rise for the jury.

15 THE COURT: Oh, 12:35. I did that again.

16 [Jury out at 11:59 a.m.]

17 [Outside the presence of the jury]

18 THE COURT: I printed out the policy of the scope for you. I  
19 had it done with regard to the locking of the case.

20 MR. LEYENDECKER: Okay.

21 THE COURT: So that you'll know the policy. Four copies for  
22 each side. Now, Mr. Blalack, how do you intend to proceed after lunch?

23 MR. BLALACK: Here's what I propose, Your Honor. I don't  
24 want to waste the jury's time. If Plaintiff's counsel is amenable, I'll finish  
25 my examination. They can take their redirect. If Mr. Leathers would be

1 willing to wait until the end of the day, I can do that at the end of the day.

2 MR. LEYENDECKER: We can do that, Your Honor. I would  
3 like to revisit the substantive argument, whether it's really necessary at  
4 this point in time.

5 THE COURT: Okay.

6 MR. LEYENDECKER: And other stuff I have in the deposition  
7 speaks directly to the question at hand.

8 THE COURT: Good enough. So we'll see after your redirect.  
9 You guys come back at 12:30.

10 MR. LEYENDECKER: Thank you, Your Honor.

11 THE COURT: In case there's any housekeeping matters.

12 MR. ZAVITSANOS: We do, Your Honor. We're going to need  
13 to take up the issue about Mr. Bristow.

14 THE COURT: 12:30. I did four sets for each side because you  
15 have multiple lawyers.

16 MR. BLALACK: Thank you.

17 THE COURT: Have a good lunch, everybody.

18 [Recess taken from 12:01 p.m. to 12:35 p.m.]

19 [Outside the presence of the jury]

20 THE COURT: Let's take up those issues.

21 MR. BLALACK: Which issues, Judge?

22 THE COURT: I don't know. There was one issue I was told.

23 MR. ZAVITSANOS: Oh, yes, Your Honor.

24 MR. BLALACK: Mr. Bristow.

25 MR. ZAVITSANOS: Where's Louis? Can you get Louis,

1 please?

2           Your Honor, so apparently one of the first witnesses that the  
3 defendants want to call is Kent Bristow. They also had subpoenaed him  
4 by the way. Okay. So Mr. Bristow gave in all the depositions. What  
5 they want to do instead of playing Mr. Bristow and calling Mr. Bristow by  
6 deposition and playing it, they want to basically kind of sprinkle it  
7 throughout the fire. So a little bit here, a little bit there, a little bit here.  
8 That's very unorthodox and -- just so you know, Your Honor, we -- Mr.  
9 Bristow is here. We're going to call him directly. When they pass him  
10 on video -- so what are we going to do? We're going to have him come  
11 up and off the stand three times? Now, the law on this is it's 100 percent  
12 in your discretion and this is --

13           THE COURT: I'm just looking for the time schedule.

14           MR. ZAVITSANOS: Yeah. This is --

15           MR. BLALACK: Just to be clear, he wasn't on their list of  
16 witnesses.

17           THE COURT: That's why I'm looking.

18           MR. ZAVITSANOS: No, I mean -- well, we get to cross him.

19           MR. BLALACK: Let me clarify. On the list of witnesses they  
20 provided me, and we provided to the Court, Mr. Bristow was not  
21 identified as a witness in their case as part of this -- getting the trial done.  
22 He's not on their list. The only witness they have left on that is Dr. Frantz  
23 who is sitting outside. So the question we were debating is whether we  
24 bring Mr. Bristow here live or we play by deposition. We've opted to  
25 play by deposition because it's the most efficient way to get the case in

1 and finished on time. I want to be clear. We are not going to cut up Mr.  
2 Bristow's deposition. There are four different depositions. One of Mr.  
3 Bristow as a 30(b)(1) witness; and, three, the corporate depositions of  
4 each plaintiff. So he happens to be the person they designated as the  
5 corporate witness, so our plan is to play his 30(b)(1) -- we told you about  
6 that --

7 THE COURT: Uh-huh.

8 MR. BLALACK: -- and then to play the corporate depositions  
9 of each Plaintiff throughout the balance our time in the case. So we're  
10 not -- it could be Mr. Bristow; it could be Joe Smith; it could be whatever.  
11 The point is I'm presenting the deposition testimony of each plaintiff  
12 separately. That's the issue. And Your Honor, I don't think they have  
13 any standing to ask me to present those witnesses which are four  
14 different individuals -- one individual, and three different entities and  
15 their testimony in any particular order in my case.

16 So I think there's two issues. One, are they going to call Mr.  
17 Bristow live because if so, that just blows our whole plan -- scheduling  
18 and timing. Two, if they're not, they're going to finish with the schedule  
19 they laid out which is Dr. Frantz and then rest, then we would play Mr.  
20 Bristow's 30(b)(1) and then the corporate deposition of each of the three  
21 Plaintiffs.

22 MR. ZAVITSANOS: Okay. Your Honor, first of all, we did  
23 identify him as a witness. We're talking about calling Mr. Bristow during  
24 their case in chief, not during ours.

25 THE COURT: Then let's deal with it when we get there and

1 bring the jury in now. Why do we have to get there now? Now, there  
2 was one question from one juror about the W9.

3 Do you want to see that? Just -- there is a juror who is going  
4 to -- that had to -- everybody got a W9.

5 MR. POLSENBERG: I can guess. What is it?

6 THE COURT: And the other thing to let all of you know is the  
7 W9s were scanned and sent to jury services. They told us to throw them  
8 away. We're not comfortable with that because I'm not sure that their  
9 information is protected. I just wanted to give them back to the  
10 individual jurors unless there's an objection.

11 MR. POLSENBERG: No, not at all, Judge.

12 MR. ZAVITSANOS: No.

13 MR. LEYENDECKER: Perfect.

14 THE COURT: All right.

15 MR. MCMANIS: Your Honor, I have one question about jury  
16 instructions from Ms. Robinson. She had proposed to the other side  
17 earlier this morning the possibility of coming in early in the morning to  
18 continue to sort of tackle that project. I just wanted to raise that to the  
19 Court. I believe the defendants are still considering that. I don't know  
20 whether they're available but --

21 THE COURT: I haven't --

22 MR. BLALACK: I haven't spoken to them, but we can do  
23 whatever you want.

24 THE COURT: We will get there. I have been on the breaks  
25 reviewing proposed verdict forms, the jury instructions, but I didn't get a

1 chance to look at the deposition today that I was asked to rule on  
2 objections because I had a meeting with another judge today earlier.  
3 Ongoing training with our new civil judges.

4 MR. POLSENBERG: Gotcha. But you just let us know what  
5 you want to do.

6 THE COURT: I will.

7 MR. POLSENBERG: Thank you, Your Honor.

8 THE COURT: Thanks.

9 MR. MCMANIS: Thank you, Your Honor.

10 THE COURT: And I'm not a morning person. So after work is  
11 always better for me.

12 MR. MCMANIS: And that's fine too. We just wanted to ask  
13 and to make sure that we were making ourselves available at whatever  
14 time is best for Your Honor.

15 MR. BLALACK: We'll do whatever you prefer.

16 THE COURT: Thank you. Let's bring them in.

17 THE MARSHAL: Yes, ma'am.

18 THE COURT: I got it. There is a rule that everything here is  
19 supposed to be shredded but I'm not --

20 MR. ZAVITSANOS: I'm sorry, Your Honor?

21 THE COURT: There is a rule that everything from the  
22 courthouse is supposed to be shredded but I've never seen it happen.

23 MR. ZAVITSANOS: Mr. Leyendecker keeps a lighter so I  
24 don't know if that would help.

25 MR. LEYENDECKER: You know what, I don't smoke.



1 THE COURT: So for the civil bench bar once when George  
2 Bochanis sponsored it, he offered to dig a hole to cook a lamb on a spit  
3 and he was really shocked when we said no.

4 THE MARSHAL: All rise for the jury.

5 [Jury in at 12:42 p.m.]

6 THE COURT: Thank you. Please be seated. A couple of  
7 housekeeping matters. We do have a note from the juror about the W9.  
8 You should be able to work that out to avoid a double taxation issue. If  
9 you don't have an accountant, talk to your employer about that. And  
10 with regard to you guys had to fill out W9s, they have been scanned and  
11 sent to jury services; however, they instructed us to just throw them  
12 away. I'm concerned about your personal information. We made the  
13 choice instead that they'll be given back to you at the end of the day for  
14 your safekeeping. Okay. Good.

15 Please proceed.

16 MR. BLALACK: Thank you, Your Honor.

17 BY MR. BLALACK:

18 Q Good afternoon, Mr. Leathers.

19 A Good afternoon.

20 Q Welcome back, and we're just going to pick up a little bit  
21 where we left off. We were talking about FAIR Health and your analysis  
22 of FAIR Health data.

23 A Okay.

24 Q I think you testified earlier that one of the things you  
25 reviewed in preparing your opinions in the case was the expert report

1 and data analysis conducted by Mr. Mizenko of FAIR Health, correct?

2 A Yes.

3 Q And do you recall that he did was he took the plaintiffs billed  
4 charges in this case and then he plotted them against the various  
5 benchmarks through the FAIR Health data for this area?

6 A Yes.

7 Q And then he identified in his analysis whether the plaintiffs  
8 billed charge for these three -- these codes -- how they compared to  
9 three benchmarks in the FAIR Health data; do you remember that?

10 A Yes.

11 Q One of those benchmarks is the one you've been talking  
12 about, the 80th percentile, correct?

13 A Yes.

14 Q And one was the median of the FAIR Health data?

15 A Yes.

16 Q And again, remind the jury the median is the 50-yard line,  
17 right?

18 A Correct.

19 Q So that means half the observations are below that spot, half  
20 are above?

21 A Correct.

22 Q And then the third one he looked at was the average, which  
23 is one of the [indiscernible] you used?

24 A Yes.

25 Q And then he added those up and showed how the

1 TeamHealth plaintiffs' billed charges on their charge master compare to  
2 those benchmarks; you remember that?

3 A I do.

4 Q I want to show you a summary of -- actually, before I get to  
5 that summary, let me show you something else. Do you remember --

6 MR. BLALACK: Shane, could you bring up the  
7 demonstrative, please?

8 BY MR. BLALACK:

9 Q All right. So here's my question. Sir, take a look at this  
10 summary here of Mr. Mizenko's analysis and tell me if it corresponds in  
11 terms of claims that he examined and the three benchmarks that he  
12 looked at in FAIR Health data?

13 A If it corresponds to his -- what he has in his report?

14 Q Correct.

15 A Well, I mean, I don't recall the exact percentages that he used  
16 but I don't disagree that he compared it to those three different amounts.

17 Q Okay. So and you looked at his report because obviously,  
18 you're relying on FAIR Health as a benchmark in this case and so seeing  
19 this testimony -- or the expert opinion and testimony of Mr. Mizenko  
20 about the FAIR Health data and his analysis wasn't told to you, correct?

21 A It was a data point.

22 Q I mean, he's the one that works on the FAIR Health data itself,  
23 right?

24 A Well, the FAIR Health data was more important to me but  
25 putting some of that in context, it was -- it was helpful to take a look at

1 Mr. Mizenko's report.

2 Q Would you agree with me, sir, that Mr. Mizenko as the  
3 person who is the data manager for FAIR Health probably has as good or  
4 better of an understanding of that data than you do?

5 A Well, he may have some understanding in terms of where  
6 the data comes from, I come up with different results than he does in  
7 terms of data analysis.

8 Q Oh, you do? Okay. So you disagree with Mr. Mizenko from  
9 FAIR Health's analysis of the FAIR Health data?

10 A Exactly which analysis?

11 Q Well, you said you disagreed with him. I don't know which  
12 analysis --

13 A Well, so for example, in my analysis, I went through, and I  
14 looked at on a claim-by-claim basis, was this particular claim on a geo  
15 basis, on an exact same time period basis, was that claim greater or less  
16 than what FAIR Health was. And if you go and look at all of the 11,000  
17 claims that are -- actually, not the 11,000 I just looked at, the core CPT  
18 codes which I think are about 8,000, and if you look at those 8,000 CPT --  
19 CPT codes what you find is is that only I think three or four percent are --  
20 of claims are over the FAIR Health 80th percentile --

21 Q That's a --

22 A -- so it's a very, very small percentage are over.

23 Q That's a great comparison. So that's a good segue, Mr.  
24 Leathers. So Mr. Mizenko as you know, took the claims that are in  
25 dispute in this case, geozip -- was it a geozip?

1           A     Geozip is the geographic area surrounding a particular  
2 hospital.

3           Q     So there's a geozip around Clark County, for example?

4           A     Correct.

5           Q     And then there's one that addresses the other parts of the  
6 state, correct?

7           A     We talked about that earlier. He combined those together  
8 like I did.

9           Q     So he looked at those codes from the TeamHealth plaintiffs'  
10 billed charges for the disputed claims and then plotted them against  
11 these benchmarks from the FAIR Health data, and you recall that he  
12 determined that 32 percent of those codes exceeded the FAIR Health  
13 80th percentile, correct?

14          A     Generally, that's my recollection.

15          Q     And then he looked at the median which again is the 50-yard  
16 line and determined that 69 percent, almost 70 percent, of the codes on  
17 the disputed claims when plotted against the FAIR Health benchmark  
18 data for this area, exceeded the 50-yard line, exceeded the median,  
19 correct?

20          A     Correct.

21          Q     Okay. Now, notwithstanding that finding, it is still your view  
22 that the TeamHealth plaintiffs' bill charges are reasonable even for those  
23 codes that were identified as exceeding the 80th percentile, correct?

24          A     Yes.

25          Q     Now --

1           A     Assuming -- I mean, I'm not making the assumption that that  
2 information is correct.

3           Q     Assuming FAIR Health accurately analyzed the FAIR Health  
4 data, that would be what you say?

5           A     All the analysis that I've done tells me without question that  
6 the charges are reasonable, and that a very small percentage -- call it  
7 three to four percent are actually in excess which flies in the face of the  
8 analysis that Mr. Mizenko has done.

9           Q     And that's because you -- as you pointed out, you looked at  
10 core CPT codes; you didn't look at all the CPT codes for the disputed  
11 claims against the FAIR Health value, correct?

12          A     That's exactly correct.

13          Q     Now, sir, do you know what a histogram is?

14          A     I do.

15          Q     What is a histogram?

16          A     A histogram is a graphical representation of data over a  
17 period of time or range of information.

18          Q     Okay. Is the document -- the image I'm showing you and to  
19 the jury at this moment which read FAIR Health data -- FAIR Health know  
20 your source -- is that a histogram?

21          A     It is.

22          Q     And do you recognize that histogram as one of the exhibits  
23 to Mr. Mizenko's report?

24          A     I do.

25          Q     And do you remember he attached a histogram like this for

1 every one of the codes initially in this case; do you recall that?

2 A He did.

3 Q There's something like 100 of these things, right?

4 A Yes, because it's a combination of the code and the  
5 geographic location and the charge.

6 Q Right. So for this one, the code at issue is 99291 which is a  
7 critical care code, correct?

8 A Yes.

9 Q And the geozip is 89, correct?

10 A Yes.

11 Q That's in this area of the Las Vegas, Clark County area, right?

12 A Yes, sir.

13 Q And the date of this data that's being analyzed is the charge  
14 data for May 2019, correct?

15 A Correct.

16 Q Which you understand is within the period of dispute in this  
17 case?

18 A Yes.

19 Q Now, you see there's some diamonds that are being plotted  
20 along the lower horizontal bar there?

21 A Yes.

22 Q And they have different colors, red, green, yellow, orange?

23 A Yes.

24 Q And you see that there's a little table down at the bottom that  
25 describes that yellow is the median charge; you see that?

1 A Yep.

2 Q Green means average, right?

3 A Correct.

4 Q Green means it's the 50-yard line?

5 A Correct.

6 Q 80th percentile is the percentile we've talked about before  
7 which is in green?

8 A Yes.

9 Q And then there's a red diamond which is the provider charge;  
10 do you see that?

11 A Correct.

12 Q And you understand from your analysis that in this case, the  
13 provider charge has been plotted is the charge of the TeamHealth claim,  
14 correct?

15 A As Mr. Mizenko has calculated it.

16 Q Okay. Now, you see that it says total occurrences, you see  
17 the number 9,633?

18 A Yes.

19 Q You understand that to be the total number of 99291 codes  
20 reported in the claims data sent to FAIR Health during the period of time?

21 A Yes, sir.

22 Q Okay. Now, if my math is right, the average charge for this  
23 service during this period in this area was \$1,191.39; do you see that?

24 A Yes.

25 Q And the median charge was \$845; do you see that?



1 A Yes.

2 Q And then the 80th percentile charge was \$1765; do you see  
3 that?

4 A Yes.

5 Q And then the TeamHealth charge which in this case would  
6 have been Fremont was \$1938.59; do you see that?

7 A I do.

8 Q Okay. Now, do you see that there are well over 1100  
9 providers who reported charges above the 80th percentile in this period  
10 for this code in this area?

11 A I'm sorry. Can you show me where you're pointing to?

12 Q Sure. Do you see where the 80th percentile is?

13 A I do, yes.

14 MR. LEYENDECKER: Excuse me, Mr. Blalack?

15 BY MR. BLALACK:

16 Q Do you see that there's observations with the numbers on  
17 them?

18 THE COURT: Hang on. Hang on just a second.

19 MR. LEYENDECKER: I didn't hear he said what the period  
20 was. I heard 99291. Can you tell me what period that is?

21 MR. BLALACK: It is May 2019.

22 MR. LEYENDECKER: Okay. Thank you.

23 BY MR. BLALACK:

24 Q Do you see that to the right, sir, every one of the bars has a  
25 number by it, correct?

1 A Yes.

2 Q For example, that top bar that says 1144; do you see that?

3 A Yes.

4 Q That means there were 1144 providers who reported data on  
5 claims forms to TeamHealth for 99291 in May 2019 in this area at that  
6 rate, correct?

7 A Yes.

8 Q So my question is, using the green diamond for the 80th  
9 percentile, do you agree with me that there are at least 1200 instances or  
10 more of providers reporting charges above the 80th percentile for 99291  
11 in this area in May 2019?

12 A Yes.

13 Q And then there are thousands of instances where healthcare  
14 providers reported charges below \$800 for the same service, for the  
15 same code in the same area in the same time period which you can see  
16 by all the bars underneath the orange diamond; do you see that?

17 A I do.

18 Q And in fact, that diamond represents the 50-yard line, right?

19 A Yes.

20 Q That means half of the observations are just below 850 or so  
21 dollars -- what is -- the median is 845. Half of the observations are below  
22 845 and half are above, right?

23 A Yep. Yes.

24 Q And by the way, on the 80th percentile, do you see that's the  
25 highest bar?

1 A I do.

2 Q That means 1705 providers just happened to bill the exact  
3 80th percentile charge; do you agree with me?

4 A Approximately. The 80th percentile is a little bit less than  
5 that, but yes. I understand your point.

6 Q So let me ask you this, using your analysis is that 400-dollar  
7 charge there reasonable?

8 A In what context?

9 Q Is that a reasonable value for that service?

10 A By just looking at the \$400 bill charge alone in a vacuum?

11 Q Yes, sir.

12 A You can't determine that one way or another.

13 Q So just looking at the data that we've got in the FAIR Health  
14 benchmark by itself, you could not answer that the \$400 was a  
15 reasonable value, correct?

16 A Not based on the way it's presented here.

17 Q Okay. Let me ask you this. Would the \$800 that 1,039  
18 providers charge, would that be reasonable?

19 A You can't determine that just by limiting your analysis to this  
20 page.

21 Q All right. What about the \$1200 that was billed by that one  
22 sole provider there? Is that reasonable value?

23 A Again, you cannot and should not look at one single entry  
24 like that, that is in the \$1200 range.

25 Q So I take it, based on your testimony with respect to these

1 lower values, you would tell the jury, you can't just look at the FAIR  
2 Health benchmark of 80th percentile and say, well, we know everything  
3 we need to know and that's the reasonable value?

4 A That's a different question. I think you have to look at, one,  
5 that the Defendants in this case specifically looked at and marked against  
6 the 80th percentile. That's what the evidence in this case says. It's not  
7 that they looked at other pieces. They looked at the 80th percentile,  
8 number one. Number two, when you look at this data that's right here,  
9 when you want to compare it to the actual claims in this case, you have  
10 to compare it on an apples to apples basis, which means it goes from a  
11 time period perspective, as well as a CPT code basis.

12 Q Let me take that last part first, and I'll come back to your  
13 second. You agree with me that the CPT code that you're comparing  
14 here, 99291, is one of the core CPT codes in dispute in this case, right?

15 A It is, yes.

16 Q And you agree with me that the time period May 2019 is  
17 within the time period of dispute, correct?

18 A Yes.

19 Q And you agree with me that the area that's been described  
20 here, geozip 890 Las Vegas, is part of the geographic area in dispute,  
21 right?

22 A Yes.

23 Q So there's nothing about the code, the location, or the time  
24 period that is not an apples to apples comparison, correct?

25 A Incorrect.

1 Q What is not an apples to apples comparison?

2 A Because my understanding from what Mr. Mizenko has done  
3 is he's taken all of the charges that have a starting code of 99291, for  
4 example, and he lumped those with the bundled charges. And when you  
5 lump those with the bundled charges, you have a wide range of charges.

6 So what you have to do if you want to do an appropriate  
7 comparison to FAIR Health is you've got to go look at the actual bill  
8 charges of the Plaintiffs that were incurred during the same time period  
9 of the survey as this, which is not just May. It's actually a period before  
10 May, and you've got to compare just the core CPT code 99291 for the  
11 Plaintiffs' claims, and just the 99291 core CPT code that's here. And  
12 when you do that, you'll see a significantly different number.

13 Q Let's try it again. Are you saying that you believe Mr.  
14 Mizenko's analysis in this histogram is analyzing something other than  
15 just the 99291 code?

16 A It is -- no, I mean, he has represented it to be just 99291.

17 Q Right. So he's analyzing one of the codes at issue in the  
18 case, correct?

19 A Yes.

20 Q Just one code, in at least this histogram?

21 A That's correct.

22 Q And he has 107 more that analyze the other codes, correct?

23 A That's correct.

24 Q And you analyzed 99291 --

25 A I did.

1 Q -- as one of the codes, right?

2 A Yes.

3 Q So you're both looking at one code, 99291. You both do that  
4 in your analysis, right?

5 A Correct.

6 Q You both do it for the services rendered in the Las Vegas  
7 area with the geozip 890, correct?

8 A Correct.

9 Q You both do it for claims that were reported for encounters in  
10 May of 2019?

11 A Not literally May of 2019, but the encounters that incurred  
12 during this survey period that resulted in the May 19 survey.

13 Q So you would capture the data for this period just like Mr.  
14 Mizenko?

15 A Yes.

16 Q Okay. So with respect --

17 A Except for ensuring that I'm just capturing a 99291 CPT code.

18 Q Right. And you do that.

19 A Yes.

20 Q You have in your analysis an analysis of codes individually  
21 by each code, and then you do a separate analysis for what you call the  
22 bundle codes, right?

23 A Correct.

24 Q So you have individual code analysis, right?

25 A Yes.

1 Q Just like he does, right? He's analyzing one code here, right?

2 A In terms of the FAIR Health data.

3 Q Right. So for purposes of analyzing the FAIR Health data,  
4 which you have talked about with this jury, you looked at a single code,  
5 one of which is 99291, right?

6 A Yes.

7 Q You looked at it for services rendered in this area, Las Vegas?

8 A Yes.

9 Q Geozip 890, right?

10 A Yes.

11 Q Including data for the survey period May of 2019?

12 A Yes.

13 Q So in that respect, it's an apples to apples comparison?

14 A Yes.

15 Q Okay. Now, what you were saying is you cannot, and you're  
16 not prepared to render a judgement that the charges from 1800 to 1200  
17 to 800 to 400 is the reasonable value for the service based on just this  
18 data, correct?

19 A I believe that the reasonable value of the service for 99291 is  
20 represented by -- in the Defendant's documents -- is the 80th percentile,  
21 which is \$1765.

22 Q Okay. You've said that now twice. Tell me which  
23 Defendants' claim, in your view, in the record that the 80th percentile  
24 represents the appropriate fair value for a service?

25 A All.

1 Q Every single one of them?

2 A Yeah, so the United -- basically, to clarify that, the United  
3 documents will have a document that say UnitedHealthcare, and it'll  
4 have a discussion about UnitedHealthcare and all of its affiliates, which  
5 then essentially include all of these other Defendants that are here.

6 Q Okay. And you watched some of the trial, didn't you, so far,  
7 correct?

8 A I watched the opening and then a little bit while I was here  
9 yesterday.

10 Q Did you hear any United Defendants testify that that was  
11 true?

12 A I don't recall one way or another.

13 Q So whatever -- sitting here today, you can't identify the  
14 witness or one of the Defendants who represented under oath that what  
15 you just said the record shows is that all Defendants believe the FAIR  
16 Health 80th percentile equals the reasonable value of services?

17 A I don't know. Well, like I said, I don't recall that, and I don't  
18 know if you would see that they would literally say all Defendants, but I  
19 would be -- I don't know how to answer that any more.

20 Q Okay. So I take it your view about this histogram is that you  
21 can't say that 400 -- you told me earlier 400 is not something you could  
22 say is reasonable value; is that right?

23 A Just literally -- just limited to this particular piece of paper?  
24 No.

25 Q So the 400 you can't say is reasonable value. The 800 is



1 something you can't say is reasonable value. The 1200 is something you  
2 can't say is reasonable value. Are you with me so far?

3 A I am.

4 Q But the 1800, that's reasonable value, correct?

5 A The 1800 is a benchmark for reasonable value based on the  
6 information provided by the Defendants in their documentation.

7 Q Okay. Now, let's go back, and we'll come back to this  
8 question about the discovery in a second. Let's go back to the document  
9 Mr. Leyendecker was showing you. I'm going to pick up with another --  
10 this was the spelling incident. You remember this document, sir?

11 A Yes, sir, I do.

12 Q Okay. Let's make sure that the jury remembers what we  
13 were discussing here. So my memory is that you represented that based  
14 on your analysis, the average allowed amount across all of the 11,500  
15 and something claims was \$246; is that right?

16 A Yes.

17 Q All right. My memory is that for that other number, all other  
18 ER providers, you represented to the jury that based on your analysis of  
19 what you called the United market data, that the average reimbursement  
20 for the out-of-network claims in that data to other ER providers, other  
21 than the Plaintiffs was 528?

22 A Yes.

23 Q All right. So does that mean, sir, that in your -- let me get the  
24 calculator out because I'm not the guy that can do that without the  
25 assistance of a calculator. So for purposes of just understanding how

1 these numbers compare, sir, am I correct that that would mean that for  
2 the same population of claims that we had, which was 11,563, that would  
3 mean that the allowed amount for these other Defendants was  
4 \$6,105,264?

5 A Yes.

6 Q Is that right?

7 A Approximately.

8 Q And in fact, you did that calculation in your work papers for  
9 your second report, correct?

10 A I did.

11 Q So just so the jury is clear on what you're doing here, you're  
12 saying if you looked at the allowed amounts for ERs providers, other  
13 than the Plaintiffs, and you use the average allowed to those other  
14 Plaintiffs for the same types of services and measured it against the  
15 same less disputed claim, the allowed amount that you would pay  
16 would've been \$6,105,264?

17 A Correct. For allowed amount you would've received.

18 Q That the -- if that had been the measure, Plaintiffs would've  
19 received that?

20 A Correct.

21 Q Instead of \$2,843,447.78?

22 A That's correct.

23 Q All right.

24 MR. BLALACK: Can you go to the next slide, please? All  
25 right, thanks.

1 BY MR. BLALACK:

2 Q Now, so this is where you were summarizing your  
3 calculation. And my memory is that what you did was you explained  
4 this whole core bundle concept, right?

5 A Yes.

6 Q And you tabulated the total damages for the claims at issue  
7 using your methodology, summed it up, and then on the next slide, you  
8 showed how that dollars distribute by Defendant and Plaintiff; is that  
9 right?

10 A Yes.

11 Q And all of these numbers that add up to this total start from  
12 the premise that the allowed amount for each of these claims should've  
13 been the bill charge?

14 A Correct.

15 Q Okay. If the jury finds that allowed amount for these claims  
16 was not the bill charge and was some other number, this analysis is not  
17 -- would not accurately capture the measure of damages, correct?

18 A Correct.

19 Q So that's the starting point. If they don't agree with that  
20 premise, they can't use these numbers for memory damage, correct?

21 A Correct.

22 Q Let's talk about that first. I'm going to make sure I'm clear  
23 about what your opinion is and what it is not. I thought I heard you say  
24 -- you remember describing the steps that you took to reach the  
25 calculations that we just showed the jury?

1           A     Yes.

2           Q     And the first step you described, I wrote it down as step one,  
3 Plaintiffs claim they are owed their bill charge. You remember saying  
4 that?

5           A     Yes.

6           Q     Okay. Now I want to understand what your opinion is in this  
7 case because when you gave testimony earlier in the deposition, I asked  
8 you whether you were doing a calculation where you accepted the  
9 Plaintiffs' allegations as true for purposes of doing a damages  
10 computation. Then whether you were coming before this jury and  
11 purporting to actually render an opinion, an expert opinion, on whether  
12 those bill of charges were actually the allowed amount. Do you  
13 remember that question?

14          A     I do, yeah.

15          Q     I thought my memory was that you explained that you -- for  
16 purposes of conducting a damages analysis, you treated that allegation  
17 as true for purposes of rendering your opinion; is that accurate?

18          A     Yes. I recall my deposition testimony as I rendered it as true,  
19 but I didn't do it blindly. I did my own analysis to assess the  
20 reasonableness of that claim.

21          Q     Okay. So here, you're not rendering an opinion to the jury  
22 that they should know that based on your expertise, your definitively  
23 saying that full bill charges are the amount that was due and owing  
24 under these circumstances. You're saying you had treated the Plaintiffs'  
25 allegation as true for doing your calculation and then did diligence on

1 the record to make sure there's a reasonable basis for it?

2 A Yes. Recognizing the jury has a lot of information that  
3 they've reviewed, including my opinion from my analysis that bill  
4 charges is the reasonable amount to be --

5 Q Okay.

6 A -- used.

7 Q And by the way, all that analysis that you did to measure  
8 whether the charges are reasonable whether it's looking at the FAIR  
9 Health data, whether it's looking at data from other out-of-network  
10 providers in United's data, that's only measuring whether the charges  
11 are reasonable if that's the proper allowed amount, right? That's not  
12 saying that's the proper -- that doesn't give you any indication of  
13 whether that's the proper allowed amount, right?

14 A Well, yes and no. I mean, one piece is the analysis that is it  
15 reasonable. The second piece is, is that if you look at the data, the  
16 allowed amount prior to the alleged actions were based on usual and  
17 customary charges and according to United's data and information,  
18 reasonable and customary charges are measured against the FAIR  
19 Health data.

20 Q Right.

21 A So there's a tie to not only just the reasonableness, but a tie  
22 back to what the appropriate charges would have been prior to the  
23 actions.

24 Q Right, but I just want to make sure that the methodology is  
25 solid. First, you start with the question of what should be the allowed

1 amount, right? That's the first question that has to be answered for  
2 purposes of conducting this analysis.

3 A Okay.

4 Q Do you agree with me on that? Is that --

5 A It's a narrative process, but you need to understand -- well, I  
6 think you need to understand what the Plaintiffs would have received  
7 absent the actions of the Defendants.

8 Q They alleged the [indiscernible] should have been bill  
9 charges, right?

10 A That's correct.

11 Q You know, my clients contest that and say the allowed  
12 amount was the amount that was reimbursed.

13 A That's my understanding. That's correct.

14 Q So that's a dispute, right?

15 A Yes.

16 Q So if you start for a damages analysis with what's the  
17 allowed amount going to be for figuring out where you start, right?

18 A Right.

19 Q In your case, you started with full bill charges, right?

20 A Correct.

21 Q Then you did an analysis to determine whether those  
22 charges are reasonable?

23 A The chronology is correct.

24 Q Okay. And then once you concluded it was reasonable, then  
25 you did a mathematical equation to get to alleged damage?

1           A     That's correct.

2           Q     Okay. So where I'm going here, just so the jury is clear, you  
3 are accepting the assertion of the Plaintiff that bill charges were and  
4 should have been the allowed amount for these claims. You are not  
5 rendering an independent expert opinion as an expert in insurance law  
6 or insurance rules or the plan documents to say that was the right  
7 allowed amount?

8           A     Correct, as you've described it, but obviously, based on the  
9 information that I have in the analysis I've performed, it supports the  
10 Plaintiffs' claim.

11          Q     Now, let's talk about that. What is the evidence that you  
12 relied on to conclude that Plaintiffs are right and that the allowed amount  
13 are these disputed claims of bill charges?

14          A     I relied upon a combination of the information produced by  
15 the Defendants, produced by all parties. I think I showed a chart -- Mr.  
16 Leyendecker presented a chart I had prepared yesterday that kind of  
17 summarized all the data and information that I have.

18          Q     Right. And I was present for that chart --

19          A     Okay.

20          Q     -- but I'm asking for --

21          A     Okay.

22          Q     -- something a little more specific.

23          A     So that's a component of it.

24          Q     I'm going to make it simple because I don't want you to have  
25 to look at everything you looked at. I know it's substantial. To help the

1 jury get along, you're saying you reviewed evidence that caused you to  
2 believe there was a reasonable basis for Plaintiffs' allegations. The  
3 Defendants knew and understood they had an obligation to pay charges,  
4 correct?

5 A Correct.

6 Q Tell me what you're relying on, specifically.

7 A Specifically --

8 Q Not generally. Specifically.

9 A Well, I don't know that I can recite the Bates number of the  
10 document, but what I can point you to is that there are United  
11 documents --

12 Q Uh-huh.

13 A -- and there is United testimony of which -- some of which is  
14 cited in my report, that state, both in 2016 --

15 Q Uh-huh.

16 A -- or state retrospectively a document that's in '17 and '18  
17 that says, prior to -- it doesn't say prior to the actions, but it essentially  
18 says, prior to some of these savings programs and things like that the  
19 appropriate charge was billed charges.

20 Q Okay. He wrote that?

21 A United Healthcare wrote that document.

22 Q And who -- what individual? Like, what witness? What  
23 person, based on your internal investigation from this?

24 A It was -- when you look at a United document like that, it  
25 doesn't have a specific author. It actually has a copywrite on the bottom



1 of it to say this is United Healthcare, and United Healthcare and all of  
2 their affiliates. It discusses through the process of the plant.

3 Q Okay.

4 A So it is those --

5 Q Is there anything else? Because I want to make sure that  
6 we're not going to be surprised later to learn there's something else that  
7 you didn't disclose. Is the thing you just described, which you can't  
8 identify an author for; it just says United Healthcare its affiliates; is there  
9 anything else?

10 A There are multiple documents that are similar to what I've  
11 described. There are PowerPoint presentations. There is deposition  
12 testimony, authenticating those documents.

13 Q Uh-huh. Whose deposition testimony?

14 A There's deposition testimony of Mr. Haben, Ms. Paradise.  
15 There is deposition testimony of Ms. -- she's in charge of out-of-network  
16 operations. I forget her name.

17 Q Anybody else?

18 A Well, then there's other deposition testimony of the  
19 witnesses that relate to Data iSight, as well as Mr. Bristow that was a  
20 representative of the Plaintiffs.

21 Q Right now what we're discussing is the assertion that the  
22 Defendants in this case knew they were obligated to pay full bill charges.  
23 That's what I'm asking you for the evidence you say you reviewed to  
24 support that opinion.

25 A Okay. So -- all right. So now we're changing our opinion in

1 terms of they knew this?

2 Q Well, yeah, we can stick to that that was the obligation of  
3 United Healthcare.

4 A Okay. So those documents --

5 Q You can do it however you want, sir.

6 A Okay.

7 Q Whatever works best for you.

8 A So there are documents, for example, they'll be a document  
9 that is a -- you know, a 30-page document that's an -- it says -- I can't  
10 remember what it is, but it says something like United Healthcare, and its  
11 information package. And it has a description of in-network and out-of-  
12 network services and how those services are to be reimbursed. There  
13 are other documents that state, that are more, let's say after the 2016  
14 time period that say prior to the beginning of 2017. They may not say  
15 that literally. Prior to the beginning of 2017, out-of-network charges for  
16 emergency room services were at billed charges. We want to get our  
17 providers off of the reasonable and customary language, and we want to  
18 lower those charges.

19 So there is a tie in the documents to both billed charges, being the  
20 amount that is owed, and that amount being prior to the actions in this  
21 matter. And there are documents that show and illustrate that the  
22 actions taken to reduce the amount that's being reimbursed from that  
23 billed charge amount.

24 Q Are you done, sir?

25 A Yeah, I'm sorry, I thought I was answering your question.

1 Q Okay. Yeah, I just wanted to make sure you were done  
2 before I started asking the next question.

3 A Yes.

4 Q Okay. So you mentioned Mr. Haben. I've got deposition  
5 transcript up there for you for Mr. Haben. Do you see where I have  
6 deposition transcript?

7 A I see deposition transcript. Oh, okay, that's me.

8 Q Mr. Haben.

9 A I've got it right here.

10 Q Okay. Now, I'm going to direct you to a language, a quote --

11 MR. BLALACK: Strike that.

12 BY MR. BLALACK:

13 Q I'm going to direct you to the page and line that you cited in  
14 your report for the proposition that the United Defendants knew and  
15 understood and had an obligation to pay charges, okay? And if you  
16 would, go to page 94 of the transcript, line 5, and I would use your  
17 citation from your report. If you would like to close your report, I would  
18 say that I'm showing you the first citation.

19 A Yes, I would appreciate that. Are we looking --

20 Q Do you have your report, sir, is the Defendants' Exhibit 5183.  
21 I'm not going to move it into evidence. So we turn to your exhibit.

22 A That would be --

23 Q I think that should be it right there.

24 A Okay.

25 Q And we're just going to use it to help refresh your memory,

1 just so the jury is clear and accurate on the first pass.

2 A I'm sorry, will you tell me the exhibit --

3 Q Defendant's Exhibit 5183.

4 A 5183.

5 Q And you have a footnote, a footnote 39. Do you see you  
6 citation to Mr. Haben's deposition?

7 A Yes, I do. Okay.

8 Q And in fact, you said that [indiscernible] deposition; don't  
9 you?

10 A I do, yes.

11 Q All right. Let's look at that.

12 A And Ms. Bradley. That was the other person that I was  
13 thinking about.

14 Q That's what I remember. By the way, sir, before we move on,  
15 do you know who these three individuals work for?

16 A Yes. They all work for United Healthcare.

17 Q Do they work for Sierra?

18 A No, not that I recall.

19 Q Do they work for Health Plan of Nevada?

20 A Not that I recall.

21 Q Do they work for UMR?

22 A Not that I recall, other than they -- as we heard yesterday  
23 from Mrs. Hare's testimony, I believe, that they all kind of collaborate  
24 and work together.

25 Q Okay. So did you -- in connection with this deposition, did

1 you cite the deposition testimony of any employee of Sierra Health Plan  
2 of Nevada or UMR?

3 A No.

4 Q Okay. Now, look at Mr. Haben's depo, and look at the  
5 sentence, and I'll direct you to page 94 to lines 5 through 6, and you can  
6 just skim that to yourself. You can read it through

7 A Okay. Let's see here. We've got --

8 Q Page 96, line 8. That covers the subject. Just let me know  
9 when you're done.

10 A Yeah, let me -- just -- I'm sorry, just give me a second to kind  
11 of catch up with you here.

12 Q Okay.

13 A Okay. You would like me to look at --

14 Q Page 94.

15 A Page -- okay.

16 Q And I'm directing you to the citation you have.

17 A Well, that's what I'm looking at. The citation is different.

18 Q You can read whatever you want.

19 A Okay. Well, I mean, I've got multiple citations. Would you  
20 like me to go through each one of them?

21 Q Well, I'm going to have you cite seven pages; do you agree  
22 with me?

23 A I cite Mr. Haben -- we're looking at footnote 39?

24 Q Correct.

25 A Okay. So yes, I cite Mr. Haben in 84 to 87, and 93 to 100, 183

1 to 188.

2 Q Okay. Look at all of those quickly, and then when you're  
3 done, let me know so that I can ask you a question.

4 A Okay. Okay. I'm on the 183 ones. I'm almost done.

5 Q Okay.

6 A I'm just marking them here. I assume you're going to want  
7 me to just recite them to you.

8 Q I don't want you to. The jury will get to see the language that  
9 I'm interested in seeing.

10 A Okay. Okay.

11 Q So my question is this, and I'll keep it -- keep it with your  
12 hand there so you can get to the transcript. So if you would, direct me to  
13 the line -- page and line where Mr. Haben says that United Healthcare  
14 understands that those full bill charges on out-of-network services, or  
15 out-of-network emergency services.

16 A Okay. So beginning on page 85, there's a discussion leading  
17 up to page -- in page 5, talking about the savings and these programs to  
18 try to reduce the billed charges.

19 Q Let's go to the line and be specific.

20 A The line is --

21 Q The page and line.

22 A Line 5, starting at line 5.

23 Q Okay. To where? When does it end?

24 A Well, it's really line 5 through line 13.

25 Q Let's move that to the jury, okay?

1           A     Okay. So it says here on line 5, it says, "Okay. How do you  
2 calculate the savings?" The answer is, from Mr. Haben, "The billed  
3 amount -- the billed charges of the provider, less the allowed amount  
4 through out-of-network program."

5           Q     Uh-huh.

6           A     "Okay. The billed charges of the provider, minus the allowed  
7 amount through the program equals the savings."

8           Q     Okay. And [indiscernible] correct, and he says correct, right?

9           A     That's right. And so --

10          Q     Okay.

11          A     -- I cited that as knowing that before these savings programs  
12 were implemented, which are part of this case, what was paid before  
13 that? Billed charges.

14          Q     Let's -- now, let's break that down. See, your understanding,  
15 that United -- well, let me ask this, when the shared savings programs  
16 going to effect?

17          A     The shared savings -- my recollection is that they have  
18 evolved over a period of time. And I don't recall the exact date that they  
19 would have technically begun.

20          Q     Do you know that the shared savings programs were in place  
21 back in the -- before 2010?

22          A     I don't recall one way or another.

23          Q     So you don't know when the shared savings program began?

24          A     I know that there was a change in the shared savings  
25 programs as it related to out-of-network services beginning on or around

1 the late 2016, early 2017 time period.

2 Q And what was that change?

3 A That change was to get the out-of-network emergency room  
4 charges that were currently on usual and customary charges, that would  
5 then be paid at billed charges off of that program and onto a savings  
6 plan to reduce that amount that was allowed.

7 Q Is your [indiscernible] shared savings program when it  
8 existed before this change was the reasonable and customary -- the  
9 physician reasonable and customary payment; is that what your  
10 understanding is?

11 A No.

12 Q So you understand there was a shared savings program with  
13 a fee that had been in place for over a decade, correct?

14 A I don't recall that one way or another.

15 Q Okay. So that's -- if that's true, that's news to you, correct?

16 A No. There's a lot of information around the shared savings  
17 plans, and exactly when they were implemented or not implemented --  
18 I'm focusing on emergency room physicians and their -- and the -- and  
19 the reimbursement to those emergency room physicians.

20 Q Okay. So the statement that Mr. Haben made that you said  
21 shows that United Healthcare understood that it owed the full bill  
22 charges as the allowed amount for services, is the statement,

23 "Q How do you calculate the savings?

24 "A The billed amount -- the bill charges [indiscernible] for the  
25 out-of-network program."



1 "Q Okay.

2 "A And the bill charges, the provider [indiscernible] program  
3 equals the savings, correct?"

4 A That is one reference, that's correct.

5 Q Okay. Now, that's because you're starting from the premise  
6 that because savings are being calculated based on charges, providers  
7 charges, that is somehow an acknowledgement that charges are  
8 overdue, correct?

9 A Yes.

10 Q Okay. So is it your position to the jury that the provider bill  
11 \$100,000 for a --

12 MR. BLALACK: Strike that.

13 BY MR. BLALACK:

14 Q That the amount due and owed would be amount of the  
15 charges?

16 A If that was what was agreed upon by the parties and by --

17 Q Hold on, sir. You know this is an out-of-network case? There  
18 are no contracts; you understand that, right?

19 A Okay.

20 Q Are you with me?

21 A I am.

22 Q There's no contract. No agreement between the parties; are  
23 you with me?

24 A I am, yes.

25 Q Okay. In that scenario, is it your position that because the

1 billed -- the provider with \$100,000 for strep throat on a claim for and  
2 submitted it for a member of United Healthcare, that United Healthcare is  
3 owed to pay the allowed amount of charges because that's what  
4 provider put on the form?

5 A Well, I think that's a difficult question to ask because it's  
6 nonsensical that somebody would put \$100,000 on a strep throat sort of  
7 thing. But to the extent that that was processed appropriately, and that  
8 \$100,000 for, let's say that unique strep throat was reasonable, then that  
9 would have been the amount that would have been paid.

10 Q So it sounds like you're putting a qualifier, sir, on the  
11 obligation to pay the charges, which is the charge has got to be  
12 reasonable?

13 A Yes. There is a part of it -- it's exactly right. That's the whole  
14 analysis that we've talked about before.

15 Q So what we read is what the jury should be looking for, and  
16 that quoted line that's in the transcripts is what the jury should be  
17 looking for, for the support for your position that United Healthcare knew  
18 and understood it was obligated to pay full billed charges when the  
19 provider put that language?

20 A Well, what I would -- what I would say that the jury should  
21 look for is they should look at that site, along with about one, two, three,  
22 four, five, eight more sites that reference same or similar information,  
23 not necessarily directed to the savings program, that all, when you --  
24 when you put those citations together, acknowledge that prior to the  
25 actions that are claimed in this case, the amount that was owed is the full

1 bill charge.

2 Q So did you -- it sounds like you were at the view that there  
3 was a time when United Healthcare paid the Plaintiffs and others full bill  
4 charges for their services and then they stopped doing that; is that your  
5 understanding?

6 A Generally, that's correct. That's what the evidence illustrates.

7 Q Okay. Did you, in your preparation, review the testimony of  
8 a TeamHealth official, senior officer named Kent Bristow?

9 A I did, yes.

10 Q Did you review his deposition testimony when he testified as  
11 a corporate representative for two of the Plaintiffs in this case, Ruby  
12 Crest and Team Physicians?

13 A Yes.

14 Q Okay. Do you remember Mr. Bristow testifying that for the  
15 period prior to the dispute in this case, which is prior to July 1, 2017, but  
16 the Defendants in this case allowed payments at full bill charges to those  
17 two Plaintiffs, less than seven percent of the time?

18 A Yes.

19 Q Okay. So just so the jury understands and internalizes what  
20 that means, with the period prior to 2017, dispute period, 7/1/17, 1/31/20.  
21 You know that the evidence in the case shows that the Defendants  
22 allowed full charges to Ruby Crest and Team Physicians seven percent of  
23 the time, correct?

24 A Yes, that's what he testified to.

25 Q And you know the number is lower for Fremont, right?

1 A Slightly, yes.

2 Q Okay. So your position is that before the dispute happened,  
3 you understand that the pattern of dealing between the parties was that  
4 the Defendants did not pay those Plaintiffs full billed charges frequently?

5 A Yes. There were adjustments for other considerations.

6 Q They did not pay full bill charges frequently, correct?

7 A Correct.

8 Q Okay --

9 A Without adjustment for those considerations.

10 Q Now, do you agree with me, sir, that in assessing whether  
11 the TeamHealth Plaintiffs are truly entitled to their full billed charges,  
12 how frequently they are paid their full charges by other health insurers is  
13 important evidence?

14 A Yes.

15 Q Okay. And did you look at that data?

16 A I'm sorry. Can you -- can you repeat the question?

17 Q Sure. Let me say it again. Did you look at the data from the  
18 TeamHealth Plaintiffs showing how frequently during the period of  
19 dispute -- leave aside what happened before with my clients. During the  
20 period of dispute, did you look at the data produced by TeamHealth  
21 Plaintiffs showing how frequently they were paid at full charges by other  
22 health insurers, not my clients?

23 A Yes. I believe we were talking about that before lunch. Yes, I  
24 did. I did look at that file early on in this case.

25 Q Do you recall seeing that other health insurers, not my

1 clients, during the period in question, reimbursed the TeamHealth  
2 Plaintiffs at full billed charges only about six percent of the time?

3 A I don't recall that one way or another.

4 Q You don't remember that?

5 A No. I don't -- I don't remember the specifics. Six percent,  
6 five percent, three percent --

7 Q Well, let me ask it another way --

8 A -- twenty percent. I don't recall the specifics.

9 Q Let me ask you this, sir. Let me -- did you review the  
10 deposition testimony of Mr. Phillips, the TeamHealth Plaintiffs' other  
11 damages expert in this case until very recently?

12 A No.

13 Q Did you see that he testified that based on his analysis, the  
14 TeamHealth Plaintiffs were reimbursed for full billed charges by other  
15 health insurers, not my clients --

16 MR. LEYENDECKER: Foundation. He just said he didn't  
17 review the depo, Your Honor.

18 THE COURT: Objection sustained.

19 MR. BLALACK: I'll withdraw it.

20 BY MR. BLALACK:

21 Q Would -- does that surprise you if my representation, sir, is  
22 that Mr. Phillips found that to be true? Does that surprise you?

23 A No.

24 Q Okay. And I take it you have the data to make that  
25 determination yourself, correct? You have the Plaintiffs' market data?

1 A Yes.

2 Q You have the ability to know the answer to that question,  
3 correct?

4 A Yes.

5 Q You do not know the answer to that question, correct?

6 A Not as I sit here, correct. The exact -- the exact percentage, I  
7 do not know.

8 Q Because that's not something you decided to find out the  
9 answer to, is it?

10 A It's something that I looked at early on, but it was just part of  
11 the information.

12 Q Well, when you say you looked at it, you didn't look at it long  
13 enough to know the answer and remember it, correct?

14 A Well, as I'm sure the jury knows, there's a lot of information  
15 and a lot of numbers, and I, you know, endeavor to memorize as much  
16 as I can. But I can't remember every bit of information.

17 Q Did you write that number down in your report anywhere?

18 A No.

19 Q So not only did you not remember it, you didn't, as you were  
20 doing this in-depth investigation, get out a pen and scribble down on a  
21 piece of paper that only six percent of the time did a health insurer other  
22 than my client pay the TeamHealth Plaintiffs their full billed charges?

23 A That's correct. I did not write that down.

24 Q And so did you -- did I hear you just say that you saw the  
25 opening statements in this case?

1 A Yes.

2 Q Okay. Sir, I'm going to show you a slide from Mr.  
3 Leyendecker's opening statement that he gave to the jury. Do you  
4 remember seeing this slide, sir?

5 A No, I don't.

6 Q Well --

7 A I was listening in, so I didn't -- I didn't have the visual.

8 Q Well, you missed it. It was good. And he said in this slide to  
9 the jury that 99 percent of the time, the TeamHealth Plaintiffs do not get  
10 their charges, and the 1 percent they do, that's this little green bar over  
11 here. Do you remember? If you didn't see it, do you remember hearing  
12 it?

13 A Yes, I do.

14 Q Okay. Is there anything about Mr. Leyendecker's statement  
15 about the frequency with which other health insurers, not just my clients,  
16 pay full bill charges to the TeamHealth Plaintiffs that you disagree with?

17 A No.

18 Q Okay. Now, if my memories of it -- and if we need to pull it  
19 up, we can -- is that when explaining this slide to the jury, Mr.

20 Leyendecker said -- this is on page 54 of the transcript. He said, "You  
21 know why 99 percent of the time, we don't get paid the bill charged?

22 Because 99 percent of the time, insurance companies, everyone besides  
23 United, pays us a fair and reasonable discount off what they owed."

24 Do you remember Mr. Leyendecker making that statement?

25 A Generally, I remember the discussion. I don't remember the

1 specifics one way or another.

2 Q Okay. Now, based on your analysis of the TeamHealth  
3 Plaintiffs' market data, you know that that's not true, right? You know  
4 that the TeamHealth Plaintiffs accept reimbursement at substantially  
5 lower rates than billed charges from other out-of-network providers  
6 when they're out-of-network, other than out-of-network health insurers?

7 A Well, your representation to me -- I didn't recall the exact  
8 percentage. If your representation is that it is less than one percent or  
9 greater than one percent, then it -- then it's different than what Mr.  
10 Leyendecker has put forward here.

11 Q I just -- I want to make sure. I may have confused you, and if  
12 I did, my apologies. What this is saying is how often is a TeamHealth  
13 Plaintiff's billed charge claim paid at full charge.

14 A Okay.

15 Q And Mr. Leyendecker was representing, and I agree with him,  
16 according to him, 99 percent of the time it's not paid at charges. It's paid  
17 at something less. And I think that's what you understood him to be  
18 saying, correct? Based on your own analysis of the data?

19 A Well, I didn't -- I did not recall it to be 99 percent of the time.  
20 I thought that it was closer to, like, 94, 95 percent. I mean, we're splitting  
21 hairs, but yeah.

22 Q Okay. And I confess, I think my data is 94 and Mr. Phillips  
23 said 94. I'm not entirely sure why he went up to 99, but I'll take it. My  
24 question, really, is his explanation was somehow within that 99 percent  
25 that are paying less than charges, the other health insurers are paying a



1 reasonable out-of-network rate. That was the implication.

2 A Okay.

3 Q Did you do an analysis of the TeamHealth Plaintiffs' out-of-  
4 network data to determine the rates of out-of-network reimbursement  
5 that the TeamHealth Plaintiffs accept from other health insurers?

6 A Not specific to -- I didn't put a pen to paper specific to the  
7 TeamHealth Plaintiffs' data. I certainly looked at other amounts allowed,  
8 like we talked about earlier with regards to what I referenced as the  
9 market data, to reconcile the difference between the amount that was  
10 allowed by others and what the billed charge is to understand the  
11 reasonableness of the difference between those numbers.

12 Q Right. But my question is this: did you look at the claims  
13 data, the market data, for the TeamHealth Plaintiffs for their claims on  
14 out-of-network claims to determine on an average or median basis what  
15 they accepted in payment from other out-of-network health insurers?

16 A I'm sorry if I haven't answered your question. But yes, I did  
17 look at that.

18 Q And what was the --

19 A Okay? And I -- and I think what I've said to you a couple  
20 times is I did not go to put to a pen to paper exactly what that percentage  
21 was.

22 Q So you cannot tell this jury what that number is, correct?

23 A No. I cannot tell them specifically what the percentage of  
24 time in the TeamHealth data that they actually got 100 percent of their  
25 billed charges.

1 Q I think we've got that, but I'm asking a slightly different  
2 question. It may be I'm not being clear, and if so, my apologies. We've  
3 already established they rarely were paid charges. I think we both agree  
4 with that, correct?

5 A Well, yeah.

6 Q Ninety-four percent of time, anyway.

7 A Right.

8 Q So that's rare. You agree with me that's rare?

9 A I'll be real careful about that. But I think there's -- it's  
10 infrequent.

11 Q Okay. Let's agree on infrequent.

12 A Okay.

13 Q So for when they don't get charges -- I'm asking a different  
14 way --

15 A Okay.

16 Q So pooled claims where they're not paid charged.

17 A Right.

18 Q Did you go into the Plaintiffs' market data that you have, look  
19 at the rates they were paid by other health insurers, not my clients, to  
20 determine what the out-of-network reimbursement was for those  
21 TeamHealth Plaintiffs' out-of-network claim?

22 A Yes. I did look at that.

23 Q And what was the number?

24 A Like I said, I didn't put a pen to paper. I don't recall. I -- my  
25 best recollection is that they were reimbursed slightly more than what

1 the other United data was. The other United data is they were  
2 reimbursed 50 percent and the TeamHealth Plaintiffs were about that  
3 amount or slightly more. That's my best recollection.

4 Q So your -- you don't have the exact number, but your best  
5 guess is that the other health insurers during the same period were  
6 reimbursing the TeamHealth Plaintiffs at about 50 percent of their  
7 charges, 40 percent of their charges?

8 A A little bit higher than that was my recollection.

9 Q Okay. But that's not something you formally calculated and  
10 put in your report?

11 A That's correct.

12 Q Is there a reason why you didn't put that in there?

13 A Yes.

14 Q What was that?

15 A Well, the reason was that I understood that -- I understood  
16 that what was important to me was not as much the number itself but  
17 being able to reconcile between that amount and the billed charges that  
18 were being claimed by the Plaintiffs in this case. That's the important  
19 piece.

20 Q Thank you for that. Okay. Now, I think we can move ahead  
21 because -- I do want to talk about the Data iSight product. That's  
22 something that in your list of disputed -- the Plaintiffs' list of disputed  
23 claims that you analyzed. You annotated every disputed claim that was  
24 adjudicated using the Data iSight tool, correct?

25 A Yes.

1 MR. BLALACK: Okay. Can we bring up Plaintiffs' 473, those  
2 first three pages? If you could, Shane, go over to the right-hand column  
3 where there's the first Data iSight? Okay, there.

4 BY MR. BLALACK:

5 Q Now, sir, that AE column, that's the place where you  
6 annotated the 11,500 claims, which ones were Data iSight and which  
7 ones were not?

8 A Yes.

9 Q Okay. So there has been an enormous amount of time,  
10 energy, and effort that this jury has gone through to learn about Data  
11 iSight and all the ways it works and overrides, reports, and Wizard of Oz  
12 and all that sort of thing. When you did this analysis, how many claims  
13 on the disputed claims list, the 11,500, were reimbursed using Data  
14 iSight?

15 A About 790 claims, as I recall.

16 Q Seven hundred and ninety claims. Sir, we can check your  
17 analysis, but do you recall that was the number that you had in your  
18 supplemental report, 792?

19 A I don't -- yeah. It was -- that -- that seems right.

20 Q The reason I'm asking --

21 A I mean, I'm -- I mean, I recalled 700 and you say 792.

22 That's -- we're probably consistent.

23 Q The reason I'm asking is that as the Plaintiffs have kept  
24 changing their disputed claims list, they kept dropping claims, some of  
25 which involved Data iSight. According to my count, you can do the math

1 and come out and you can count it, I had 686 claims that you've  
2 identified as being reimbursed using Data iSight on this list.

3 A Okay.

4 Q Does that sound about right to you based on your analysis?

5 A Well, I didn't count them up this time. But if you --

6 Q Is there a way to do that quickly?

7 A Sure. Sure. You can go to the -- well, you can go to the filter  
8 up there on column AD. You can click on the filter.

9 MR. BLALACK: Oh. All right, Shane. That will probably  
10 be -- will you try that?

11 THE WITNESS: Probably should be blank.

12 MR. GODFREY: Click on E, AE, right?

13 THE WITNESS: Right.

14 MR. GODFREY: AE.

15 THE WITNESS: No -- yes, that's right. AD -- AE.

16 MR. GODFREY: Okay.

17 THE WITNESS: Okay? And then, so -- it's kind of hard for me  
18 to see here.

19 MR. GODFREY: So we're backing out of that set?

20 THE WITNESS: You could say -- you could unclick Select.  
21 Okay. And then click DIS, Data iSight.

22 MR. GODFREY: Okay. Okay.

23 THE WITNESS: Okay. And then hit Okay. And then, you  
24 should sum that column. That would probably tell you at the bottom. It  
25 looks like it's a count. I can't even read that. I need a --

1 MR. BLALACK: Could you go down, Shane?

2 THE WITNESS: Well, you don't even have to. You can look  
3 in the -- just the bottom -- I'm happy to stand up and show you.

4 MR. BLALACK: Okay.

5 THE WITNESS: But you can sum.

6 THE COURT: You may.

7 THE WITNESS: Okay. I'm sorry. So here you are. Six  
8 hundred candidates. So I get 685 as the total count.

9 MR. BLALACK: Okay.

10 THE WITNESS: So essentially what's happening is that this  
11 column here where we filtered it --

12 MR. BLALACK: Yeah.

13 THE WITNESS: -- to say just these claims. And then,  
14 because he's highlighted the entire column, it counts how many records  
15 that he has counted that are -- that are now here that are for Data iSight.

16 BY MR. BLALACK:

17 Q Okay. So using your math -- and thank you, sir, and thank  
18 you, Shane -- 658 out of 11,563 disputed claims went through Data iSight  
19 according to your analysis.

20 A Yes, sir.

21 Q So do you mean that's a little over six percent?

22 A Yes, it is.

23 Q So the vast, vast, vast majority of disputed claims in this case  
24 do not touch Data iSight, correct? Ninety-four percent.

25 A I'm hesitating because there was a claim of the whole

1 savings program and Data iSight falls into the savings programs. But  
2 yes, the answer is correct. There's a -- there is a relatively small percent  
3 of the 11,000 claims that have been tagged as being processed by Data  
4 iSight.

5 Q Now, sir, do you recall that you did an analysis of the amount  
6 allowed on average --

7 MR. LEYENDECKER: May we approach, Your Honor?

8 THE COURT: Yes.

9 [Sidebar at 1:52 p.m., ending at 1:52 p.m., not transcribed]

10 THE COURT: Okay. This is time for our afternoon recess, or  
11 the first of the afternoon. During the recess, don't talk with each other or  
12 anyone else on any subject connected to the trial. Don't read, watch, or  
13 listen to any report of or commentary on the trial. Don't discuss this  
14 case with anyone connected to it by any medium of information,  
15 including without limitation newspapers, television, radio, internet, cell  
16 phones, or texting.

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

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

24 It's 1:53. Let's be back sharp at 2:10.

25 THE MARSHAL: All rise for the jury.

1 [Jury out at 1:53 p.m.]

2 [Outside the presence of the jury]

3 THE COURT: Sir, you may step down during the recess.

4 THE WITNESS: Thank you.

5 THE COURT: Plaintiff, do you have anything for the record  
6 before you take your break?

7 MR. ZAVITSANOS: Not from the Plaintiffs, Your Honor.

8 THE COURT: Defendant?

9 MR. BLALACK: Not from us, Your Honor.

10 THE COURT: So it seems to me that the Bristow issue,  
11 when -- Mr. Zavitsanos, the Bristow issue, when the Defendant calls him  
12 in their case in chief, they have the right to choose the method of  
13 examination. But you may -- you're entitled to have your further  
14 cross-examination.

15 MR. ZAVITSANOS: Yes. Thank you.

16 THE COURT: All right? Does that resolve that issue?

17 MR. BLALACK: Yes, it does. For us, it does.

18 THE COURT: Good. Thank you. Have a good break,  
19 everybody.

20 [Recess taken from 1:54 p.m. to 2:10 p.m.]

21 [Outside the presence of the jury]

22 THE COURT: Please remain seated. So I'm not sure who  
23 gave me deposition designations, but there's the rulings.

24 MR. BLALACK: Thank you, Your Honor.

25 THE COURT: Are we ready to bring in the jury?



1 MR. BLALACK: We are, Your Honor.

2 MR. LEYENDECKER: Yes, Your Honor.

3 THE COURT: Okay.

4 [Pause]

5 THE COURT: So I need to bring something to your attention.

6 Mr. R has had a -- just learned of a death in his family. He's pretty  
7 shaken up, according to the marshal. I would propose that we bring him  
8 in and assess that, and probably excuse him.

9 MR. BLALACK: Which one is Mr. Reese?

10 THE COURT: He would be Juror Number 10.

11 MR. BLALACK: Okay.

12 THE COURT: In the front row.

13 MR. BLALACK: Yeah.

14 THE COURT: The casino worker who takes notes.

15 MR. BLALACK: Understood.

16 THE COURT: Yeah. So do you guys want to excuse the  
17 witness for that discussion?

18 MR. ZAVITSANOS: I'm sorry, Your Honor?

19 THE COURT: Would you like to excuse the witness for that  
20 discussion?

21 MR. BLALACK: Oh, yeah.

22 MR. ZAVITSANOS: We don't -- we can excuse him.

23 THE COURT: Thank you. Bring in -- can you bring in Mr.  
24 Reese?

25 THE MARSHAL: Yes. Watch your step.

1 THE COURT: Mr. Reese, we understand you just got some  
2 bad news. We all extend our sincere sympathies to you and your family.

3 JUROR NO. 10: Thank you.

4 THE COURT: Do you think you can go on? Do you need to  
5 travel?

6 JUROR NO. 10: No. It's in town, but I have to make  
7 arrangements. And he -- I'm the only person he had left in the world.

8 THE COURT: We're all so very sorry.

9 JUROR NO. 10: And I don't think I can [indiscernible].

10 THE COURT: Thank you. And we didn't mean to put you --

11 JUROR NO. 10: I'm sorry.

12 THE COURT: -- on the spot. We didn't want to embarrass  
13 you in front of everybody. But thank you. Why don't you step out with  
14 him, Marshal, please?

15 THE COURT: Do you guys want a moment to confer with  
16 your teams?

17 MR. BLALACK: I think I know what -- we're ready to proceed,  
18 Your Honor.

19 MR. ZAVITSANOS: The same.

20 THE COURT: Bring them all in, please.

21 THE MARSHAL: Bring them all in?

22 THE COURT: Will you bring in -- yeah. Bring in Mr. Reese  
23 alone, please.

24 THE MARSHAL: Yes, Your Honor.

25 [Pause]

1 THE MARSHAL: All rise for the jury.

2 [Jury in at 2:14 p.m.]

3 THE COURT: Mr. Reese, why don't you hold up right there?

4 Just hold up there. Thank you. Come on in, Ms. Wynn, Ms. Herzog.

5 Mr. Reese, we thank you for being willing to serve your  
6 community. You've been such a great juror. You've taken notes, you've  
7 been so attentive. We understand you've received some sad news in  
8 your family. We thank you and excuse you from further jury service.

9 JUROR NO. 10: Okay, thank you. I'd like to apologize to  
10 everybody. It's been educational and [indiscernible] experience. Sorry I  
11 couldn't finish it out.

12 UNIDENTIFIED SPEAKER: Thank you for your time.

13 MR. BLALACK: Thank you.

14 UNIDENTIFIED SPEAKER: Thank you, sir.

15 MR. ZAVITSANOS: Our condolences.

16 THE COURT: All right. Let's ask the witness to come back  
17 please. Mr. Leathers. Mr. Blalack, please proceed.

18 MR. BLALACK: Thank you, Your Honor.

19 BY MR. BLALACK:

20 Q Mr. Leathers, when we broke, we were discussing your  
21 analysis of the two claims as it relates to the Data iSight service; do you  
22 remember us talking about that?

23 A Yes, sir. I do.

24 MR. BLALACK: And if I could have Shane bring it back up to  
25 show the column with the Data iSight claim?

1 BY MR. BLALACK:

2 Q So again, just reminding the jury you have 11,500 and some-  
3 odd claims. You determined that, well, about six percent -- well, under  
4 six percent had been reimbursed using the Data iSight tool, correct?

5 A Correct.

6 Q Okay. And I want to talk about that tool some more and what  
7 you found in your investigation. Before I do that though, let's set those  
8 640 or 90 whatever it was aside for the remainder, the other 94 percent.  
9 Did you investigate or determine which of those claims were reimbursed  
10 using the shared savings program?

11 A Yes.

12 Q Which ones were reimbursed using the shared savings  
13 program?

14 A I attempted to investigate that and to identify that, and I was  
15 unable to conclude which shared savings program, if any, were utilized  
16 for each of those different claims.

17 Q Did you investigate to determine which of the claims had  
18 been reimbursed using the ENRP Program?

19 A Yes, I investigated that. But was unable, based on the  
20 information that I had, to determine which ones were or were not.

21 Q Did you investigate to determine which claims were  
22 reimbursed using the physician reasonable and customary program?

23 A Yes.

24 Q And which -- how many funds were reimbursed using the  
25 physician reasonable and customary program?

1           A     My understanding is that -- two answers to that. One is that  
2 is part of the dispute in terms of that they should have been reimbursed  
3 at that reasonable and customary rate. But specifically how the actual  
4 dispute was resolved, I investigated that and could not determine the  
5 specific plan that was utilized.

6           Q     Okay. And did you investigate to determine which of these  
7 claims were reimbursed using the outlier cost management program?

8           A     Yes.

9           Q     And which claims were reimbursed using the outlier cost  
10 management?

11          A     So I believe that at a minimum, the ones that are identified as  
12 iSight because the iSight and the outlier cost management program are  
13 used interchangeably as part of the savings programs in here.

14          Q     Okay. So that's the six percent or a little less?

15          A     At least the six percent, yes.

16          Q     Okay. But beyond that, you can't say anything about which  
17 programs you --

18          A     That's correct.

19          Q     Okay. With respect to the out-of-network programs used by  
20 UMR, do you remember the names of those programs?

21          A     Do I remember each of them?

22                 THE COURT RECORDER: Mr. Blalack?

23                 BY MR. BLALACK:

24          Q     Each of the names of the of the UMR program.

25                 THE COURT: Can you turn your mic on?

1 THE COURT RECORDER: Can you turn your mic on?

2 MR. BLALACK: Oh, I'm sorry. I must not be loud enough to  
3 be heard there.

4 THE COURT: No, this beautiful ceiling is coppered. And it's  
5 beautiful, but it bounces the sound around. And with the masks, it's  
6 even harder.

7 MR. BLALACK: My apologies.

8 BY MR. BLALACK:

9 Q So coming back to my question, sir. UMR, Defendant, there  
10 are a number of different out-of-network programs; you're aware of that,  
11 right?

12 A Yes.

13 Q What are the names of those programs?

14 A That were specifically used for UMR?

15 Q Yes.

16 A I don't recall.

17 Q Okay. Did you determine which of these UMR claims were  
18 priced using the specific UMR programs that's been your testimony in  
19 this case?

20 A I investigated that and was unable to determine that based  
21 on the information available.

22 Q Okay. All right. So I take it then that with respect to out-of-  
23 network programs -- just talking about that concept -- the only out-of-  
24 network program that you identified with respect to each of the 11,500  
25 claims are claims reimbursed using the Data iSight tool?

1 A Correct.

2 Q And that's just less than six percent?

3 A Yes.

4 Q And so you were not offering any opinion or evidence  
5 connecting any of these other just short of 11,000 disputing claims to any  
6 other out-of-network program, right?

7 A I'm not linking them to a specific out-of-network program  
8 such as Data iSight or OCM.

9 Q Okay. Now, let's come back to Data iSight. And my  
10 recollection -- so it's -- that you did an analysis of the Data iSight claims.  
11 You determined what you probably -- essentially, a discount percentage  
12 off of bill charges for claims reimbursed using Data iSight; is that right?

13 A Yes.

14 Q And then you did the same kind of analysis for the level of  
15 discount for claims that were reimbursed using some other program, not  
16 Data iSight?

17 A Correct.

18 Q Okay. Do you recall what the Data iSight reimbursement  
19 allowed amount percentage was?

20 A I don't specifically. If I could look at my report, I can tell you  
21 exactly what it was.

22 Q All right. And I'm going to ask you to do this. Let me try to  
23 fast forward. I'll just give you some numbers and see if they seem about  
24 right. So for the claims in dispute that were submitted by Fremont, did  
25 you find that the Data iSight claims were allowed at about 30.3 percent

1 of bill charge?

2 A That seems generally correct.

3 Q And for the claims in dispute submitted by Ruby Crest, did  
4 you find that the Data iSight claims were allowed at about 43.1 percent  
5 of bill charge?

6 A That -- that seems correct.

7 Q And for the claims in dispute submitted Team Physicians, did  
8 you find that the Data iSight claims were allowed at about 40.2 percent  
9 of bill charge?

10 A That also seems generally correct.

11 Q So if my math is right, on average, the claims that were  
12 reimbursed using the Data iSight tool were allowed at about 40.5  
13 percent. Does that number ring a bell to you based on your analysis of  
14 the claims?

15 A I was about to say 38 percent, so 40 is not too far off of that.

16 Q Now, do you recall then that the -- you did a similar analysis,  
17 as you noted, for claims that were reimbursed using something other  
18 than Data iSight?

19 A Yes.

20 Q And do you remember determining that on average, for the  
21 claims that were reimbursed using some basis other than Data iSight,  
22 that the percentage allowed was about 29 percent?

23 A I'm hesitating because are we looking at what I concluded in  
24 my first report or what that number would be here?

25 Q Well, sir, I'm looking at the findings that you provided to



1 counsel that were provided to me on Sunday night, which is entitled  
2 "Leathers Report, Exhibit 4 for trial". Does that ring a bell?

3 A It does. And what does not ring a bell is the remainder. I  
4 thought that the -- my recollection was the remainder had been resolved  
5 at a discount closer to 22 percent.

6 Q Okay. I think that was the number you had in your first  
7 report before all those claims were removed. Is it still -- do you think it  
8 was 22 percent even after all those claims were removed?

9 A Yes. I don't -- I don't recall that that amount went up as a  
10 result of those claims being removed.

11 Q Okay. But I guess the key takeaway from the analysis, sir, is  
12 that for a claim that was reimbursed using the Data iSight tool as  
13 compared to a claim that was reimbursed not using the Data iSight tool,  
14 your analysis found that the Data iSight claim reimbursed had almost  
15 twice, according to you, the allowed amount of the non-Data iSight?

16 A Yes, that's correct.

17 Q So Data iSight paid significantly more in reimbursement than  
18 non-Data?

19 A On average, it was approximately twice. But it is fairly  
20 inconsistent, as we noticed. For example, some of the examples we  
21 looked at yesterday, we had two Data iSight claims for the same facility  
22 on the same date, the same service, and the numbers were slightly  
23 different.

24 Q Now, let's talk about MultiPlan real quick. And sir, I think you  
25 recall, based on your analysis, that you said you've -- you said that you

1 had familiarity with the industry. Do you recall that you know that  
2 MultiPlan is a large company with offices across the country with about  
3 700 clients?

4 A Yes.

5 Q And you understand that those 700 clients are not all  
6 affiliated with United or one of the defendants in this case, right?

7 A Correct.

8 Q And you understand that MultiPlan provides services to  
9 health insurers and self-funded health plans other than my client?

10 A Yes.

11 Q In preparing your affirmative report in this case, you  
12 reviewed deposition testimony from MultiPlan witnesses, correct?

13 A Yes.

14 Q And do you recall that those witnesses said MultiPlan  
15 provides the same services to my client's competitors as they do to my  
16 clients?

17 A Yes.

18 Q And you know that the Data iSight tool, which we've just  
19 been talking about, is it a broadly known and used tool in the healthcare  
20 community?

21 A That's what MultiPlan claims.

22 Q And in fact, based on your review, that's what you told me in  
23 your deposition in this case.

24 A Yeah. I was just acknowledging that. That's correct.

25 Q And you understand, sir, that not just the health insurers

1 utilize the Data iSight tool. Self-insured or self-funded health plans, the  
2 actual health plans themselves, the sponsors also use the Data iSight?

3 A Yes, that's what MultiPlan claims.

4 Q Okay. All right, let's go back to talking to you -- what I asked  
5 you about earlier. When I asked you about determining the rate at which  
6 other health insurers, not my clients, reimbursed out-of-network claims  
7 submitted by the TeamHealth Plaintiffs. I believe you said earlier today  
8 that you reviewed that data and had some general sense of what the rate  
9 was, or number was, but you hadn't written it down or put it in your  
10 report. Do you remember that testimony?

11 A Yes.

12 Q Okay. Now, I notice in the materials you just recently  
13 prepared in last week or so were sent to me on Sunday. I have  
14 something I want to show you. Tell me if I'm looking at this correctly.

15 MR. BLALACK: Let me ask. Shane, can I have Defendant's  
16 Exhibit 5412? Do not publish it, just bring it up, please. That's Exhibit  
17 5412.

18 MR. GODFREY: What do you mean don't publish it?

19 MR. BLALACK: Oh, I don't want it shown to the jury yet  
20 because it's not in evidence.

21 MR. GODFREY: [Indiscernible]

22 BY MR. BLALACK:

23 Q Okay, so. Now, Mr. Leathers, I'm going to ask you this.  
24 Would you take a look at Defendant's Exhibit 5412, and tell me if you  
25 recognize it?

1 MR. GODFREY: [Indiscernible]

2 MR. BLALACK: Oh, I'm sorry. My apologies. I thought he  
3 was looking at it electronically.

4 BY MR. BLALACK:

5 Q So could you bring Defendant's Exhibit 5412 out? It should  
6 be in the exhibit binder you have. Yes, sir. My apologies.

7 A No, no. No problem at all. No problem at all, sir.

8 MR. BLALACK: You weren't looking at it; I'm over there  
9 staring at the wall.

10 MR. LEYENDECKER: Mr. Blalack, is this the Mizenko resume?

11 MR. BLALACK: No, sir. This is one of the things you sent  
12 me.

13 MR. LEYENDECKER: Oh, okay. You swapped 5412, then?  
14 No, that's 5312.

15 MR. BLALACK: Because it's a file?

16 MR. GODFREY: Right.

17 MR. BLALACK: Okay.

18 BY MR. BLALACK:

19 Q Sir, do you have -- do you remember preparing work papers  
20 in preparing to give testimony today?

21 A Yes.

22 Q Okay. Do you remember preparing a spreadsheet titled,  
23 "Summary of Other Payer Bill Allowed Paid" prior to the file, FESM 01548  
24 UMC Nevada EV Market 2012?

25 A No.

1 Q That file doesn't ring a bell to you?

2 A No. I know that after I produced my first report, and I believe  
3 prior to my deposition, I produced just my entire work file that included a  
4 number of miscellaneous files. So I just don't remember what that  
5 particular one is compared to others.

6 Q Okay. Okay. All right. Well, let me try to describe it and see  
7 if it rings a bell.

8 A Okay.

9 Q And if it doesn't, we'll do it the long way. So sir, this is an  
10 analysis of data that was produced to us by Mr. Leyendecker, but I  
11 understand it came from you, that shows your analysis of claims data  
12 regarding the loss paid to the TeamHealth Plaintiffs for other health  
13 insurers beside the Defendant. So let me start with that question. Do  
14 you remember preparing an analysis in a spreadsheet like that?

15 A No. That's why I just testified earlier I did not recall putting a  
16 pen to paper to that.

17 Q Okay. Let's do this.

18 MR. BLALACK: Shane, press copy of the face of this page so  
19 I can show him and just see if -- my apologies, Your Honor. Can I  
20 approach, Your Honor?

21 THE COURT: You may.

22 BY MR. BLALACK:

23 Q Sir, just take a look. This is the first page of a file produced  
24 to us by the TeamHealth plaintiff's counsel. Could you tell me if you  
25 recognize that?

1           A     This appears to be a -- yeah, this is a -- I believe this is the  
2 market file or what I've kind of described as the market file that  
3 represents the sum of charges and allowed amounts for other United  
4 providers.

5           Q     Do you see the name of the file that's referenced there?

6           A     Yes.

7           Q     What's the Bates number of the first?

8           A     FESM 001548.

9           Q     Sir, I'll represent to you that that is the Bates number for a  
10 document or data file produced by the Plaintiffs in this case; not the  
11 Defendant. So do you have some reason to think that that is a file from  
12 the Defendant?

13          A     Yes.

14          Q     All right. Well, we'll take that up. Okay. No, we see that  
15 there's a reference -- no, strike that. Do you see there is a reference to  
16 bill charges on that file of \$225,395,776?

17               MR. LEYENDECKER: Can we approach, Your Honor?

18               THE COURT: You may.

19               [Sidebar at 2:32 p.m., ending at 2:33 p.m., not transcribed]

20 BY MR. BLALACK:

21          Q     Sir, I'm going to hand this back to you. And I'm just to tab  
22 this off with [indiscernible]. So I just -- I understand for you, that this  
23 page of Defendants' Exhibit 5412, you believe is not --

24               MR. BLALACK: Strike that.

25 BY MR. BLALACK:

1 Q You do not believe this is an analysis of the allowed amounts  
2 relative to charges paid by health insurers other than the Defendants to  
3 the TeamHealth Fund? You do not believe it is [indiscernible]?

4 A I'm sorry. Can you repeat the question one more time?

5 Q Sure. And if counsel will let me try again. You do not  
6 believe that the information described in that exhibit, which is Defense  
7 Exhibit 5412, is representing an analysis of the allowed amount paid by  
8 health insurance, other than my client, to the TeamHealth Plaintiffs, as an  
9 out-of-network provider?

10 A Correct.

11 Q Okay. But just until we have the numbers logged down, the  
12 amount of billed charges reflected on that exhibit, is \$225,395,776.

13 A Okay.

14 Q Is that right?

15 A Well, I mean -- I mean, that's the number that's on this piece  
16 of paper.

17 Q Just to be clear, sir, I didn't write that piece of paper, I got it  
18 from you all. I believe it got it from you. Now you're telling me  
19 something other than I'm describing, I'm taking it as gospel. I'm just  
20 trying to understand the numbers which came from your file. So my  
21 question is, did your analysis on that document tabulate billed charges,  
22 as \$225,395.776?

23 A That -- that's the sum that we created, yes.

24 Q For the Team -- all of the TeamHealth Plaintiffs, all three of  
25 them?

1           A     Yes. I'm just not -- I'm trying to -- I'm trying to recall if this is  
2 a summary schedule, or if this is just a snippet of a larger document that  
3 was printed out?

4           Q     That is the summary, what --

5           A     This represents --

6           Q     -- I recall --

7           A     -- one tab in the file.

8           Q     Which you call a pivot table for a file?

9           A     Okay. Well, this wouldn't be a pivot table, but this is -- I think  
10 -- I think what you're trying to tell me is this is just one tab in an Excel  
11 file?

12          A     Correct.

13          Q     Okay. Which I've never seen until I got it from you on  
14 Sunday --

15          A     Okay.

16          Q     -- and it came from an email from you.

17          A     Okay.

18          Q     Does this ring a bell?

19          A     No. I certainly remember sending all the -- my supporting  
20 documentation, after my report, so I think you've cleared that up for me  
21 now.

22          Q     Okay. Now from being reminded that you sent it, and  
23 looking at it, do you recognize it's something you created, right?

24          A     Yes. Or somebody at my direction.

25          Q     And by "somebody" you mean somebody working in



1 [indiscernible]?

2 A Yes, sir.

3 Q Okay. So just to summarize, before we put this up, one more  
4 try. The full bill charges is reflected on that document, the three  
5 TeamHealth plan has \$225,395,766?

6 A That's correct.

7 Q And the allowed amount for those same charges, for the  
8 three TeamHealth Claimant, is \$88,270,204; is that right?

9 A Yes.

10 Q And just so my math again is correct, that would be the  
11 allowed amount you'd have on that page would reflect 39.16 percent of  
12 those charges would be the allowed amount; is that right?

13 A The math seems correct. It's less than 50 percent.

14 [Counsel confer]

15 MR. BLALACK: One more, Your Honor, then I think I'm  
16 finished.

17 [Pause]

18 BY MR. BLALACK:

19 Q Okay. The last few questions, sir now, and then I'm going to  
20 give you to Mr. Leyendecker. So when you reviewed Mr. Mizenko, you  
21 reviewed his report; is that right?

22 A Yes, sir, I did.

23 Q Did you review his deposition as well?

24 A No.

25 Q Do you remember seeing in his report a statement where he

1 said, quote: "FAIR Health has not determined, developed or established  
2 an appropriate fee, or reimbursement level for any procedure or service,  
3 while FAIR Health's license is based on FAIR'S data that some insurers  
4 may use to help inform their decision on out-of-network reimbursement.  
5 FAIR Health has set UCR, or out-of-network reimbursement rates for  
6 insurers. These decisions are made solely by insurers and health claims.

7 Do you remember seeing a statement from Mr. Mizenko to  
8 that effect?

9 A Yes.

10 Q And prior to reading that was that your understanding, as  
11 well?

12 A I don't know that I have an understanding one way or  
13 another, before I look at Mr. Mizenko's report, because that's where we  
14 got the FAIR Health information from. I read that statement as a fairly  
15 standard statement that would be made by a survey company, to the  
16 readers and the users of its information.

17 Q Okay. But you understand that FAIR Health does not  
18 determine appropriate reimbursement levels for out-of-network  
19 emergency services?

20 A That's what they state, yes.

21 Q And you understand that FAIR Health doesn't report is  
22 benchmark, or its website, or his report of Alexander Mizenko to  
23 establish the usual customary or reasonable charge, correct?

24 A I don't think it affirmatively says what it is. It clearly said --  
25 you know, I read that as clearly recognizing that users of the data may

1 utilize that for purposes of determining usual and customary charges?

2 Q Right. In other words, users can license the data and decided  
3 to use it however they wish, right?

4 A Correct.

5 Q But FAIR Health does not hold itself out as establishing a  
6 market that hadn't be a UCR definition array, correct?

7 A That's correct, that's what they say.

8 Q And you understand that Mr. Mizenko noted in his report that  
9 FAIR Health has not determined the reasonable value of out-of-network  
10 services?

11 A That's what he stated, yes.

12 Q And you have no reason, based on your investigation to  
13 contest or dispute FAIR Health's statement on that form, correct?

14 A Correct.

15 MR. BLALACK: Okay. I think I'll pass the witness, Your  
16 Honor. Thank you, Mr. Leathers, I appreciate it.

17 THE WITNESS: Thank you, sir. I appreciate your courtesy.

18 THE COURT: Redirect, please.

19 MR. LEYENDECKER: Thank you, Your Honor.

20 [Counsel confer]

21 REDIRECT EXAMINATION

22 BY MR. LEYENDECKER:

23 Q Well, Mr. Leathers, I've got news for you, I got me another  
24 itch, okay? And I'd like to see if you can help me stretch it. We were  
25 talking -- you were talking --

1 MR. LEYENDECKER: Mr. Blalack, where's the thick black  
2 binder? Is the black binder around?

3 BY MR. LEYENDECKER:

4 Q You were commenting on the -- we're just talking about out-  
5 of-network here, right, sir?

6 A Yes.

7 Q You were commenting on what you called a before period,  
8 right? And then we had the claim period, right?

9 A Correct.

10 Q All right. Do you remember, and I know it's not really a  
11 memory test here, but do you remember, you know, the big picture,  
12 what the claim period is, brass tacks?

13 A Yes.

14 Q Go ahead and tell us?

15 A It is generally July 2017 through January 2020.

16 Q Okay. So the before period would be sometime before the  
17 summer of 2017?

18 A That's correct.

19 Q Okay. Now you, I thought were making some commentary  
20 about documents you saw, relating to what gave you the point of view  
21 how things are being reimbursed?

22 A That's correct.

23 Q Tell us -- tell us just a bit more about that?

24 A Well, so there were really two types of documents, they were  
25 documents that were back 2016, and then there were also documents

1 that were after, call it the summer of 2016, that talked about what  
2 happened in 2016.

3 Q Okay.

4 A And so the -- and those two documents corroborated one  
5 another, in terms of how out-of-network charges were processed, prior  
6 to the claims at issue in this case.

7 Q Okay. And based on that investigation how were out-of-  
8 network claims processed in the before period?

9 A They were processed and paid based on billed charges.

10 Q Okay. Billed charges, FAIR Health, UCR, what year?

11 A Well, there were billed charges, and when they were  
12 processed using UCR the documents state that they would utilize FAIR  
13 Health, when the language included UCR they would use FAIR Health.

14 MR. LEYENDECKER: Michelle, could I get Exhibit Number 25,  
15 please? Plaintiff's Exhibit Number 25, and I'd like you to go to page 2.  
16 First of all let me take you back to page 1, Michelle.

17 BY MR. LEYENDECKER:

18 Q Mr. Leathers, is this United Healthcare 2016, out-of-network  
19 programs, one of the kinds of documents you described to Mr. Blalack,  
20 about things were paid in the before period?

21 A Yes, sir.

22 MR. LEYENDECKER: All right. Michelle, can I get over to  
23 page 2, please, and I would like you to highlight, "usual and customary"  
24 this whole enchilada right here, okay?

25 BY MR. LEYENDECKER:

1 Q Usual and customary receivable, UCR, historically known  
2 R&C, reasonable, customary, percentile values provided by FAIR Health.  
3 Is that what you're talking about, Mr. Leathers?

4 A Yes, sir.

5 MR. LEYENDECKER: And over here in the far right-hand  
6 column, can I get this highlighted in yellow, Michelle.

7 BY MR. LEYENDECKER:

8 Q ASO, it's an available option clients, instead of MNRP,  
9 majority of ASO clients still use this reimbursement, this out-of-network  
10 reimbursement methodology. What does that say to you when you ran  
11 across documents like this, and others like it?

12 A Well, that both ASO and fully insured clients use the usual  
13 and customary methodology.

14 Q And he before period?

15 A Yes, sir.

16 Q Okay. Now was this the only document you saw that has this  
17 concept in the before period?

18 A No, sir. I mean, there were -- there were a bunch of  
19 documents.

20 Q And now you said something about documents in the claims'  
21 period, and you understand the claims' period is the period in which my  
22 clients are alleging wrongful, unlawful behavior took place to drive the  
23 prices down?

24 A Yes.

25 Q Okay. Now what documents did you see --

1 MR. LEYENDECKER: You can take that down, Michelle.

2 BY MR. LEYENDECKER:

3 Q What documents did you see in the claims' period, that you  
4 represented a few minutes ago, by commenting on, or speaking to the  
5 prior before period?

6 A So these would be documents --

7 Q Just in general description?

8 A In general they would be documents that would say, we want  
9 to process these claims using this shared savings program, or this  
10 program, for these claims that we used to reimburse at full-billed  
11 charges.

12 MR. LEYENDECKER: Okay. Michelle, I'd like you to bring up  
13 for us, Exhibit Number 368, that's in, over to page 7. And I would like  
14 you to highlight -- here I'm under, "existing ASO clients." I'm looking for,  
15 let me get my bearings. Oh, right here. "At a minimum, meet with  
16 clients that have not adopted the program and/or remain on R&C."

17 BY MR. LEYENDECKER:

18 Q And, Mr. Leathers, what's R&C?

19 A Reasonable and customary.

20 Q Okay. Class is not obligated to change, but the goal is to get  
21 class off R&C for health. Is this the other document you were talking  
22 about, Mr. Leathers, that you saw in your investigation that in a claims  
23 period where we're saying unlawful stuff happened, the firm said the  
24 prior period was bill charges, UCR or FAIR Health?

25 A Yes, sir.

1 Q Okay. Now remember you answered some questions about -  
2 -

3 MR. LEYENDECKER: Before I go there, Your Honor, may we  
4 approach real quick?

5 THE COURT: You may.

6 [Sidebar at 2:49:01 p.m., ending at 2:50:58 p.m., not transcribed]

7 MR. LEYENDECKER: May I please have the Elmo, Your  
8 Honor?

9 THE COURT: You can ask Brynn directly.

10 MR. LEYENDECKER: May I please have the Elmo, ma'am?

11 THE COURT RECORDER: Yes.

12 MR. LEYENDECKER: Thank you.

13 BY MR. LEYENDECKER:

14 Q Okay. I think I can figure this out. I'm showing you, Mister --  
15 let me get us reoriented. I want to touch on this before period you and I  
16 are talking about, and I want to follow along on Mr. Blalack's questions  
17 about his examination of Mr. Bristow, as a representative, a corporate  
18 representative for two of the parties in the case.

19 A Okay.

20 Q Do you remember there were questions about, well, do you  
21 recall reading that they only got -- in the before period they were only  
22 getting bill charges about six percent of the time, that's the discussion I  
23 want to talk to you about, okay?

24 A Okay. I do recall that.

25 Q Okay. So this is Defendant's Exhibit 5177, and I'm just going



1 to show you one page, but I'm going to zoom in. I'll tell you, these are  
2 Mr. Bristow's notes, right here; 5177, pages 3. "United Defendant's  
3 payments in the pre-dispute period. Do you see that 1115 through June  
4 of '17, that's definitely in the before period; right Mr. Leathers?

5 A Yes, sir, it is.

6 Q Okay. What's the very first bullet say?

7 A "97 percent of claims for United pay at 90 to 100 percent of  
8 bill charges.

9 Q Okay. Now you remember Mr. Blalack asked you about the 6  
10 percent, 7 percent?

11 A Yes.

12 Q Okay. If we look a little closer, here's a UAC." Do you  
13 understand that's one of the Defendants?

14 A Yes.

15 Q It says one of the Defendant's 938 claims, 62 claims at 100  
16 percent, okay? So what's a ballpark, what's 62 of 9 and 38, is that about  
17 6, 7 percent?

18 A It is.

19 Q Okay. But were 97 percent of the claims for United paid it,  
20 and a before period --

21 A Well, 9 --

22 Q -- out-of-network?

23 A 99 percent of those were paid between 90 and a 100 percent  
24 of billed charges.

25 Q 97? No, okay, that's to the 938, right? Big picture, 97 percent

1 of paid at 9 to 100, fine. So you're saying 99 -- let's just call it 97 to 99  
2 percent; 97 to 99 --

3 MR. LEYENDECKER: Can you take that down, Gregg?

4 BY MR. LEYENDECKER:

5 Q 97 to 99 percent of the claims in the before period, the out-of-  
6 network claims, looking at two or three claims, were paid between 90  
7 and 100 percent of billed charges. What does that say to you about what  
8 -- that's consistent, or inconsistent with the way the Defendants pay  
9 before the clients are saying they started engaging in improper conduct?

10 A In alliance with what they were doing before in the  
11 documents, and statements with regards to paying billed charges.

12 Q Okay.

13 A Or paying a 100 percent, or close to 100 percent of billed  
14 charges.

15 Q Mr. Blalack asked you a question, he spent a few minutes  
16 probing your memory, on well, how do you know that United defendants  
17 knew this or knew that, you didn't have an obligation to do what we  
18 understand they were doing. Now to be fair, it doesn't say 100 percent  
19 of a billed charges; does it, sir?

20 A No, sir.

21 Q But 97 to 99 percent of the time the Defendant pays 90 to 100  
22 percent of billed charge, right?

23 A Yes.

24 Q Okay. So on the question, what the defendants know or  
25 don't know, let ask Michelle to pull up Exhibit 147, at 24, that's in

1 evidence.

2 MR. LEYENDECKER: And, Michelle, I want to be careful what  
3 we highlight here. I just want you to highlight this piece right here,  
4 okay? Keep the top piece out of view, if you would, please. Right there.  
5 And then what I'd like you to highlight in yellow, "savings obtained  
6 means the amount that would have been payable to a Healthcare  
7 provider."

8 BY MR. LEYENDECKER:

9 Q Right? Including amounts payable by both the participant  
10 and the plan, and you understand that's allowed, right sir?

11 A Yes, sir.

12 Q If, right here, if no discount were available. Now, what do  
13 you take that to mean, Mr. Leathers.

14 A Billed charges.

15 Q Whose document is this?

16 A This is a United document.

17 Q Okay. So they're taking their fee off the billed charge, but  
18 they're coming in here and telling the ladies and gentlemen of the jury,  
19 that the Plaintiffs can't ask for the billed charged, but they can certainly  
20 make a big enough billed charge. Is that how you read this?

21 A Yes, sir.

22 Q When they the amount that would have been payable to a  
23 healthcare provider, you take that again, to mean well?

24 A Billed charges.

25 Q Were you here, I forget the witness, I think it's Ms. Paradise,

1 maybe it was Mr. Haben. Mr. Haben, do you recall when he said -- I  
2 don't know what he said. Do you recall his testimony I asked for?

3 A You know, I didn't listen to all of what Mr. Haben has said,  
4 although I marked the same response in his deposition.

5 Q Is this the only ASO pack agreement that you saw, that had  
6 this language in?

7 A No, sir.

8 Q Okay. Do you see the same language about the amount that  
9 would have been payable if no discount were available? How many  
10 times do you think that you saw that in the documents?

11 A I saw probably -- I don't know 3 or 4, actual agreements  
12 between companies. And then there were probably another -- I mean,  
13 it's hard to count, you know, number of documents, 10, 20 documents  
14 that had the same sort of language summarizing this amount that would  
15 have been paid if no discount were available. Most of those documents  
16 would say bill charges. So it allows me to kind of confirm what the  
17 interpretation of this document is.

18 Q Okay.

19 MR. LEYENDECKER: Michelle, you can take that down,  
20 please.

21 BY MR. LEYENDECKER:

22 Q So I understand you're not a PhD economist?

23 A No, sir.

24 Q Did I hear you say he's got clients that look to you for kind of  
25 economist style advice?

1           A     Sure. People call me an economist. It's just a real  
2 economist, a Ph.D. economist gets very upset when somebody that  
3 doesn't have their Ph.D. call themselves an economist.

4           Q     Understood. From an economic standpoint as an expert in  
5 your 20, 30 years of experience, if you were trying to figure out what is  
6 the correct measure of damages and you got allegations where there's a  
7 period before there's a certain payment made, and then a period when  
8 there's an allegation of unlawful activity going on, which of those two  
9 periods do you think is the one that should be looked at from an  
10 economic standpoint to assess what the damages should look like?

11          A     You would look at the before period. And specifically, from  
12 an economic perspective, if you were to look at articles and treatises  
13 around economic so calculated damages, there's actually a -- an  
14 accepted approach called the before and after approach, which is what  
15 you were describing.

16          Q     So for example, if in this time period they're paying the  
17 Plaintiffs 246 dollars versus the 528 they paid all the other doctors  
18 treating their insurance, as between the 528 and this 246, which they're  
19 paying, and what we're calling the bad behavior period, and the 90 to  
20 100 percent in charges, which were paid 97 to 99 percent of the time,  
21 which do you think as an economist is the appropriate measure of  
22 damages?

23          A     Well, again, from an economic perspective, you look at what  
24 was done before the bad acts, which would have been in the period prior  
25 to July of 2017.

1 Q This 90 to 100 percent billed charge?

2 A Yes, sir.

3 Q Okay. So we have the same 246 and this 528. Now, that's in  
4 the period where the alleged unlawful activity's going on, right, sir?

5 A Yes.

6 Q Do you recall what Mr. Murphy testified to and asked about  
7 why or what happens when the various groups affiliated with  
8 TeamHealth get paid a discount on the billed charge? Do you remember  
9 that testimony?

10 A I do.

11 Q Okay. He says something like -- and I -- and this just -- I  
12 didn't write them down, but I had -- it struck me. He said something like,  
13 well, we'll take a discount, right? We believe we're owed the full bill  
14 charge, but if you're going to pay me a reasonable discount and it's not  
15 that many claims, it's just not economical to pursue it. Do you  
16 remember that comment?

17 A Yes.

18 Q What do you think about that concept?

19 A Well, I think that's a logical concept. And I think that it is --  
20 there's also other consideration of, you know, if you're going to accept  
21 something that's a little bit below 100 percent, you may get assuredness  
22 of payments or things to that nature.

23 Q How about the cost of coming down here when you've been  
24 treated to 246 when all your competitors pay more than two times that?  
25 What about the cost to do that? Should that be factored in from an

1 economic standpoint?

2 A Well, it's called --

3 Q I'm not talking damages. I'm just talking economic  
4 standpoint here.

5 A From an economic standpoint, it's called --

6 MR. BLALACK: Objection. Foundation. I have no problem  
7 with damages but nothing beyond that.

8 THE COURT: Let's lay a better foundation.

9 BY MR. LEYENDECKER:

10 Q Well, you know, what? I'm going to move on. We want to  
11 get you off the stand. Let me ask you a certain question. Do you think  
12 it's fair that the Defendants paid us 246 in claims when they paid  
13 everybody else in Clark County and around the state more than two  
14 times that over this two and a half, three-year claim period? Does that  
15 seem fair to you?

16 MR. BLALACK: Objection to the form of the question. He's  
17 an expert here to offer an opinion on reasonable value.

18 THE COURT: Overruled.

19 THE WITNESS: From an economic standpoint, there is no  
20 evidence to support the difference between those two numbers and to  
21 support a reasonable -- a fair basis for that lower amount.

22 BY MR. LEYENDECKER:

23 Q Does it at a minimum put a question in your mind about  
24 what the Defendant's had as a motive and what they were doing with my  
25 clients during this period?

1 MR. BLALACK: Objection to the form of the opinion. And  
2 also, beyond the scope of his expert report and disclosure.

3 THE COURT: Overruled.

4 THE WITNESS: For the answer from a personal perspective,  
5 from an economic perspective it suggests particular when you compare  
6 to other savings programs that there is something else going on that  
7 results in that 246 number.

8 BY MR. LEYENDECKER:

9 Q Do you remember reading documents and testimony about  
10 the whole Yale study and the behind the names. Go ahead and name  
11 them. You remember all that?

12 A I have a recollection of that.

13 Q So that changed the public narrative in 1923.

14 MR. BLALACK: Objection. Beyond the scope of his expert  
15 report.

16 THE COURT: Overruled.

17 THE WITNESS: Is background information that aligned to the  
18 actual actions for the -- essentially, they -- a narrative to say we need to  
19 change what's happening in the marketplace, and then we'll reduce the  
20 amounts that's being paid. And that aligns to what you actually saw  
21 during the claims period of we need to get these off of UCR. We need to  
22 lower the amount. For those items that were previously paid, they'll  
23 charge us.

24 BY MR. LEYENDECKER:

25 Q Do you remember which of the two physician services group



1 she is talking about? Do you know who is working with this Yale  
2 professor to specifically identify that study in the New York Times? Do  
3 you remember one of those two?

4 A No, sir. I do not.

5 Q If I told you it was TeamHealth, would that surprise you?  
6 Would that be consistent with any of this what's going on here?

7 A It would be. Yes, sir.

8 Q Okay.

9 MR. LEYENDECKER: Michelle, I would like you to bring up  
10 Defendants 54.24 at 81.

11 [Pause]

12 BY MR. LEYENDECKER:

13 Q Now, are you on there?

14 A Yeah.

15 Q Okay. Now, what we're looking at here, Mr. Leathers, is one  
16 of those histograms that Mr. Mizenko, the FAIR Health gentleman, put  
17 together for the Defense. Do you recognize that?

18 A I do.

19 Q Okay. And did you study that? Did you tell Mr. Bristow you  
20 studied that before? I'm sorry, Mr. Blalack?

21 A Yes.

22 Q All right. And am I right that FAIR Health puts out their data  
23 once in May and once in November each year?

24 A Correct.

25 Q And did Mr. Mizenko evaluate the Freemont charges, the

1 Ruby charges, and the Team Physician charges relative to FAIR Health in  
2 those May and November periods in that time period?

3 A Yes, he did.

4 Q Okay. Now, did he look at all 11,653 claims like you did?

5 A No.

6 Q Okay. Let me have -- hold that thought. Let's make sure we  
7 have our bearings. So this is one of the scattergrams for 99282. This is  
8 for Team Physicians from 893 in May of 2018. You see that?

9 A Yes.

10 Q And what he's saying over here if I look down here in the  
11 key -- you remember looking at these keys?

12 A I do.

13 Q 80 percentile, Freemont, 11 dollars, provider charge 323.

14 Now, if you would tell us what you remember about whether Mr.  
15 Mizenko said this is an indication of the Plaintiffs' being egregious billers  
16 and going over that 80th percentile.

17 A Well, I mean, he was -- he was illustrating through this  
18 analysis that the provider's charges were greater than the 80th  
19 percentile.

20 Q Okay. So we've got May of 2018, 99282, Team Physicians.  
21 Let's go ahead and get the gentleman's name up here. Okay. Do you  
22 know off hand -- just let me back up. I'm, you know, scratching my itch  
23 here. He looked at -- was it 108? 36 each times three groups is 108?

24 A Yes.

25 Q 108. And did not count --

1           A     He just didn't --

2                   MR. LEYENDECKER: Michelle, and I want to look at Exhibit  
3 5422, Michelle.

4 BY MR. LEYENDECKER:

5           Q     I'll tell you, if you don't recognize this, this is Mr. Mizenko's  
6 summary. And I want to highlight right up in here. Okay. You see here  
7 he's talking about billed charges in relation to 80th percentile FAIR  
8 Health? And for Team Physicians, he says, 1736 fell below, 1936 are at  
9 or above, right?

10          A     Right.

11          Q     So he looked at 36 for Team, 36 for Ruby, and 36 for  
12 Freemont?

13          A     Sure.

14          Q     108 in total?

15          A     Correct.

16          Q     And how many did you look at? How many claims did you  
17 look at to see whether we were over the Fair Health pay?

18          A     Well, I looked at 11,500 -- well, actually, no. I looked at just  
19 the Core CPT ones, which would be approximately 8,600 claims.

20          Q     Okay. And when you look at it on a claim-by-claim basis  
21 under Core CPTs for these 8,000-plus claims, about what percent did you  
22 find were -- of those charges were over FAIR Health?

23          A     Less than five percent.

24          Q     Okay. Mr. Mizenko on Team Physicians looked at 36. One  
25 period says 53 percent or above, you see that?

1 A Yes.

2 Q And overall, down here at the bottom under number four  
3 says 35 of 108 are at or above, you see that?

4 A Yes.

5 Q So he's saying 32 percent of our charges are above  
6 TeamHealth. Is that how you read this?

7 A Yes.

8 Q You found five on a claim-by-claim basis?

9 A Correct.

10 MR. LEYENDECKER: Okay. Can I get Exhibit 473, the  
11 electronic version, please? Before we do that, can I go back to the Elmo  
12 one time real quick, so everybody knows what we're talking about?

13 BY MR. LEYENDECKER:

14 Q TeamHealth, May of '18, 99282, this is one of the ones Mr.  
15 Mizenko was saying we're over because our charges are 323 versus 311,  
16 right?

17 A Right.

18 Q Okay. Did you study those, Mr. Leathers?

19 MR. LEYENDECKER: I'm sorry, I want to look at 542481. I  
20 gave you the wrong number. Do you have that? I want to look at the  
21 281s. I misread my note.

22 BY MR. LEYENDECKER:

23 Q Okay. This is 542480, CPT. This is also Team Physicians.  
24 8197, provider charge 239. Now, since Mr. Mizenko is a purported  
25 expert, do you think he might bother to check our file to see whether we

1 actually have any 99 -- whether Team Physicians actually had any 99281s  
2 before putting this report at the Defendant's request and saying we're  
3 overbilling? Do you think that'd be a reasonable thing to do for an  
4 expert?

5 A I would.

6 Q Okay. This is May 18. It's a 99281 over FAIR Health.

7 MR. LEYENDECKER: We're now going to go back to the  
8 document camera because I want to look at the claim file.

9 BY MR. LEYENDECKER:

10 Q Mr. Leathers, did you do a little homework to see whether  
11 Mr. Mizenko's theory held water?

12 A Yes.

13 Q What'd you find?

14 A It did not.

15 Q Did he include claims that he said were over in his sample of  
16 36 for TeamHealth when there was no such claim in that period, not one  
17 at all?

18 A That's my recollection. Yes.

19 MR. LEYENDECKER: Okay. Let's do this. Filter here for me  
20 on Team Physicians and then go to the CPT column. Just open that for  
21 me real quick and leave it where it is. Okay. Leave that right there  
22 where it is.

23 BY MR. LEYENDECKER:

24 Q Mr. Leathers, you're pretty good at Excel, aren't you, sir?

25 A Yes.

1 Q What happens -- so what I've done here is I've filtered on all  
2 the claims for Team Physicians, right, sir?

3 A Yes.

4 Q Okay. The entire period, Team Physicians. Tell the jury what  
5 happens. When you click on that filter, what shows up, the filter or the  
6 CPT? What would you see if you filtered all that?

7 A Well, you would expect to see a 99281 in that filter.

8 Q Can we assume that the computer program has correctly  
9 identified all the available CPTs for Team Physicians through the entire  
10 claim period when we click on that filter?

11 A Yes.

12 MR. LEYENDECKER: Jason, scroll down there and see if  
13 we've got us a 99281.

14 BY MR. LEYENDECKER:

15 Q And now we're getting bigger, right, Mr. Leathers?

16 A Yes, sir.

17 Q No 99281, is there?

18 A No.

19 Q Do you know what junk science is?

20 A It's a --

21 Q Mr. Leathers, do you know what junk science is?

22 A It's a -- I guess an urban word for weak scientific study.

23 Q You're being polite, sir.

24 MR. LEYENDECKER: Let's see. Can I have -- can I get the  
25 camera, please?

1 BY MR. LEYENDECKER:

2 Q Now, mind you, he counted -- he totaled -- of the 36 he  
3 surveyed, he counted the one from May of 2018 as over, right?

4 A Right.

5 Q Let's see what he did for November. 99281, number 18, here  
6 we go. All right. FAIR Health 80197, provider charge 239. What does it  
7 say to you, Mr. Leathers, that the Defendants would engage FAIR Health  
8 to come in here and put this kind of junk science before this jury to  
9 suggest that we are cheating on our charges?

10 MR. BLALACK: I'll object to the form of that question as  
11 argumentative. And it's also compound.

12 THE COURT: It's argumentative. Rephrase.

13 MR. LEYENDECKER: Thank you, Judge.

14 BY MR. LEYENDECKER:

15 Q What does it say to you, Mr. Leathers, about the reliability,  
16 legitimacy, however you want to describe it? What does this say to you  
17 about the Mizenko analysis?

18 A Well, to me, from a financial perspective, it illustrates a lack  
19 of rigor because when you do the work, you can clearly see that the  
20 numbers don't match up.

21 Q You're a whole lot more polite than I am. One last question.  
22 Do you know whether their other expert, Mr. Deal, is relying on this  
23 same analysis that Mr. Mizenko put together?

24 A Yes. He has a reference to it in his report.

25 MR. LEYENDECKER: Those are all the questions I have, Your

1 Honor.

2 THE COURT: Okay. Is there any recross?

3 MR. BLALACK: Yes, Your Honor.

4 THE COURT: Everybody good without a break? If anyone  
5 needs a break, let me know and we'll take one.

6 MR. BLALACK: I think this will be short, Your Honor.

7 FURTHER RECROSS EXAMINATION

8 BY MR. BLALACK:

9 Q I just want to make sure I understand your -- I just want to  
10 make sure I understand your statement, Mr. Leathers. All right. So I  
11 want to make sure I understand your criticism of the Mizenko report. Are  
12 you suggesting that you believe 108 histograms are in that report, was  
13 an effort by Mr. Mizenko to chart every disputed claim in the kit? Is that  
14 what you understand he was doing?

15 A No.

16 Q Okay. You know that that was not the scope of work he  
17 described in his report and that he wasn't attempting to do that, right?

18 A Well, he did not endeavor to charge every claim, that's  
19 correct.

20 Q Let's see if you actually know what he did. What did he say  
21 in his report he was attempting to do? Leave aside whether he did it well  
22 or not, whether it's junk science or what it is Mr. Leyendecker said. What  
23 do you understand from reading his report that you read and relied on,  
24 what is it you think he said he was trying to do?

25 A He was trying to test the reasonableness of the provider's



1 billed charged compared to FAIR Health.

2 Q Did he say he was trying to test the reasonableness of their  
3 charge?

4 A I don't recall the specific language, but that's the general gist  
5 of what he described.

6 Q All right. Why don't we -- let's make sure you know exactly  
7 what he said he was going do. Let's look at Defendant's Exhibit 5186.  
8 Do you recognize this, sir, as the Mizenko report that you reviewed for  
9 your -- as part of your second report?

10 A Yes, sir.

11 MR. LEYENDECKER: Your Honor, I have an objection on a  
12 hearsay grounds, out-of-state -- out-of-court statement by him.

13 MR. BLALACK: I'm not going to offer it into evidence.

14 THE COURT: All right.

15 MR. LEYENDECKER: Well, he's publishing it to the jury.

16 MR. BLALACK: You can take it up. Take it down.

17 THE COURT: Take it down.

18 MR. BLALACK: Thank you.

19 BY MR. BLALACK:

20 Q So sir, pull it up in the hard copy in your binder there, 5186.  
21 You don't need to go to it, we just make sure you know what you're  
22 talking about. Do you have that, sir?

23 A I'm getting to it right here.

24 Q And just 55186, go to the Mizenko report; do you see that?

25 A Okay. I see it.

1 Q All right. So if you would and catch up with you. All right.  
2 Looking at the Mizenko report, go to the section at the back where he  
3 describes the data analysis that he conducted. Do you see that, starting  
4 on Roman Numeral eight and then Roman Numeral nine?

5 A Yes.

6 Q Would you read that to yourself very quickly, please?

7 A Roman Numeral eight?

8 Q Roman Numeral eight.

9 A Okay.

10 Q And then Roman Numeral nine.

11 A Okay.

12 Q And you don't have to read it all, just --

13 A Yeah.

14 Q -- only to yourself enough to answer some questions about  
15 it.

16 A Okay. I've orientated myself to it.

17 Q Okay. Just briefly describe to the jury, sir, what you  
18 understand Mr. Mizenko was attempting to do when comparing these  
19 108 histograms?

20 A Well, under section eight and nine, he simply plots the bill  
21 charges for six CPT codes, compared to the FAIR Health data, and  
22 reports on the amount that they were above or below the 80th percentile.

23 Q And some other metrics, as well, right?

24 A Yes, I mean, he plots them based on the mean as well as the  
25 median charge.

1 Q Okay. So do you understand from looking at the report that  
2 Mr. Mizenko wasn't attempting to or reporting to do an analysis of the --  
3 all of the codes associated with, and all of the claims on the two claims  
4 filed? That's not anything he says he was engaged in, correct?

5 A He does not specifically say that, no.

6 Q All right. So what he was doing, as you can see in section  
7 eight there, he was taking the claims and the codes for the claims in  
8 dispute, meaning CPT codes?

9 A Right.

10 Q For each plaintiff, in each region, or geo code, and simply  
11 plotting how that charge for that code corresponded to the charges of  
12 other providers in that area in that time; is that right?

13 A Yes.

14 Q Okay. And the reason there are 108 because there were --  
15 that was the combination of codes, providers, and regions here, right?

16 A Yes.

17 Q Okay. So you now understand that there was not an  
18 accurate way for Mr. Mizenko to do an analysis of the disputed claims in  
19 this case, right? He didn't even look at the disputed claims, right?

20 A Except for the fact in his exhibits he put the provider's  
21 amount there which is from the disputed claims.

22 Q Well, that's actually from the charge master, sir, which you  
23 did not look at, correct? You didn't look at the charge master?

24 A I did not look at the charge master, no.

25 Q So my point is he did not review and rely on disputed claims,

1 right? He did an analysis.

2 A But they -- with your clarification, it does not appear that he  
3 did.

4 Q So you now understand Mr. Mizenko was simply trying to  
5 measure the providers billed charges, the Team appointed for matters,  
6 billed charges, compared the charges of other ER provides in the  
7 relevant regions during the relevant time, correct?

8 A Well, that's still unclear because if he's using the charge  
9 master instead of the claim files, then that comparison is not -- I mean,  
10 it's just not even relevant.

11 Q The charge master's not relevant to their charges?

12 A Well, I think what's important is the -- is the actual -- because  
13 you've got multiple claims that are n there, and those charges may differ,  
14 particularly when you look at Ruby Crest and TeamHealth, how he has  
15 combined those together, you could get very widely different numbers.

16 Q Do you think he combined in the histograms Ruby Crest and  
17 Team Physician?

18 A For the geo code, he did, yes.

19 Q He used the geo code because that's how FAIR Health does  
20 it.

21 A That's right.

22 Q He did a separate analysis for each plan, right?

23 A Yes.

24 Q He did not combine an analysis for Ruby Crest and Team  
25 Physicians, right?

1 A That's correct. That's correct.

2 Q All right. All right. Now with respect to this notion of junk  
3 science, I just want to make sure I understand what you're saying.

4 You're -- you and Mr. Leyendecker are being critical of Mr. Mizenko and  
5 FAIR Health's methodology and analysis; is that right?

6 A Yes.

7 Q From the same guys who've done this, in the last two and a  
8 half months; is that right? That's you, right? You and the Plaintiffs?

9 A What's that?

10 Q Well, the list, that we have 19,000 disputed claims, and then a  
11 month later you allege we have 12,000, then 12,081, 11,500, right?

12 Which is it?

13 A It's 11,563.

14 Q You sure?

15 A Yes.

16 Q It's not going to change tomorrow?

17 A Not to my knowledge.

18 Q Okay.

19 MR. BLALACK: I have nothing else.

20 THE COURT: Any redirect, please?

21 MR. LEYENDECKER: Nothing, Your Honor.

22 THE COURT: All right. Does the jury have any questions for  
23 Mr. Leathers? All right. We have a taker. Thank you, Ms. Ross.

24 JUROR NO. 6: Oh, I'm sorry. I was just writing.

25 THE COURT: And the other?

1 JUROR NO. 6: My bad, my bad.

2 THE COURT: All right. If there's anyone else writing, give  
3 me a high sign. Come on up, guys.

4 [Sidebar at 3:28 p.m., ending at 3:29 p.m., not transcribed]

5 THE COURT: All right, everybody. Let's get back to work.  
6 So Mr. Leathers, I get to ask the question. So first one is: Sounds like  
7 the Plaintiffs and the Defendants each have claim data files. Did your  
8 company -- whoa, these files before doing your analysis to ensure you  
9 had accurate data or the same data?

10 THE WITNESS: Yes, thank you for the question. Both parties  
11 produced claim files, and the very -- one of the very first things that we  
12 did was to look at the claim files, or the number of claims and the  
13 amounts, and to do a cross reference between those and those that were  
14 produced by the United Defendants. There were a few exceptions to  
15 that, but generally, they matched up which then gave me the comfort  
16 level to utilize those that were from the Plaintiffs.

17 THE COURT: Okay. Second question is: In your analysis,  
18 why did you use the allowed charges, paren, that includes coinsurance  
19 and deductibles paid by the members, end paren, instead of using the  
20 amounts paid to the providers, question mark. Seems like you are  
21 double-dipping.

22 THE WITNESS: Would it be possible for you to repeat that  
23 question? I'm sorry. I just want to make sure I get it right for them.

24 THE COURT: Got it. In your analysis, why did you use the  
25 allowed charges, paren, that includes coinsurance and deductibles paid

1 by the members, end paren, instead of using the amount paid to the  
2 providers? Sounds like you are double-dipping.

3 THE WITNESS: No, your -- it's really just an apportionment  
4 issue. The allowed charge is the amount that the -- that is being  
5 reimbursed on the claim and the amount that's being paid to the  
6 provider. The net amount that's paid is after the deductible amount.

7 THE COURT: Okay. Does anybody on the jury have further  
8 questions after those?

9 UNIDENTIFIED JUROR: That didn't really answer my  
10 question. I thought -- well, you even had a line up there that showed bill  
11 charge, allowed charge, and some of it was paid by the coinsurance on a  
12 member, so then there's a different amount paid to the provider, so why  
13 are you, you know, asking for, like, the difference between the allowed  
14 and the billed when you already received maybe a couple hundred bucks  
15 from the member.

16 THE COURT: Mr. Leathers?

17 UNIDENTIFIED JUROR: Does that member not pay you?

18 THE COURT: Before you answer? All right. This is a little bit  
19 unusual. We usually make you write them, but counsel, please  
20 approach?

21 MR. LEYENDECKER: Your Honor, I have a follow-up  
22 question, too.

23 THE COURT: Well --

24 UNIDENTIFIED JUROR: See if I can repeat that.

25 [Sidebar at 3:32 p.m., ending at 3:32 p.m., not transcribed]

1 THE COURT: All right.

2 UNIDENTIFIED JUROR: All right, though.

3 THE COURT: So Ms. Ross -- you may answer the question,  
4 Mr. Leathers.

5 THE WITNESS: Okay. So the claim is, is the difference  
6 between the amount that is owed to the provider. And so if you're  
7 paying billed charges, based on billed charges, that allowed amount is  
8 the same, but who pays that is spread, could be spread depending on  
9 the particular claim.

10 UNIDENTIFIED JUROR: All right.

11 THE WITNESS: Okay. And so if you have a lower amount  
12 allowed, that could be spread based on that particular claim. So there's  
13 no double-dipping. You're essentially taking the different between that,  
14 and that difference may be apportioned between the insurance  
15 company, a coinsurance, or a deductible.

16 THE COURT: And I'm going to give the lawyers a chance to  
17 ask more follow-up questions. I can ask again if anyone on the jury  
18 needs another question after they finish. Plaintiff, it's your witness.

19 MR. LEYENDECKER: Thank you, Your Honor. I do have a  
20 couple on this very subject. Running out of paper but let me try it over  
21 here. So I'm thinking an example might help here.

22 FUTHER REDIRECT EXAMINATION

23 BY MR. LEYENDECKER:

24 Q So if the charge; what was our average charge? Like eleven-  
25 forty-five?



1 A Yes.

2 Q All right. And the average allowed was 246; right, Mr.  
3 Leathers?

4 A Yes.

5 Q Okay. And of the 246, am I right that the insurance company  
6 paid the lion's share of the 246?

7 A That's correct.

8 Q And did I hear you say that a typical coinsurance was about 6  
9 percent on the patient member's side?

10 A Yes.

11 Q Okay. So if that was the -- let's use a simpler number. Let's  
12 say the coinsurance was 10 percent so the math is easy. Then that  
13 would mean the member would have paid about \$24.60, right?

14 A Yes.

15 Q Okay. In this case, are the Plaintiffs seeking the difference  
16 between eleven-forty-five and the 246 solely from the Defendants?

17 A Yes.

18 Q Okay. So whatever was paid or however much the 246 got  
19 paid, it has been paid, and that's in arrears, right?

20 A Correct.

21 Q Okay. Do you have any reason to believe that the  
22 Defendants would go back and collect additional money from the  
23 insurance?

24 A No.

25 Q Thank you.

1 MR. LEYENDECKER: That's all I have.

2 THE COURT: Defense, do you have any questions for Mr.  
3 Leathers based upon these?

4 MR. BLALACK: I do, Your Honor, just to clarify one point that  
5 was made up there.

6 FURTHER RECROSS EXAMINATION

7 BY MR. BLALACK:

8 Q So Mr. Leathers, I want to ask you about the first question  
9 that one of the jurors asked related to the exercise to check the data in  
10 the disputed claim sheets, okay?

11 A Okay.

12 MR. BLALACK: So Shane, would you bring up the electronic  
13 version of E473, please?

14 BY MR. BLALACK:

15 Q I just want to make sure the jury's clear on what you did and  
16 what you did not do. All right. This is the claims, disputed claims file  
17 again, all right, that we talked about or --

18 A Yes.

19 Q And you testified this was a list prepared by the Plaintiffs, not  
20 the Defendants, right?

21 A Yes.

22 Q Okay. Now the data sources you were asked about, did the  
23 Plaintiffs have some data and did the Defendants have data? Do you  
24 remember that?

25 A Yes.

1 Q In response to one of the juror's questions. And you  
2 indicated that you went through an exercise to try to match the data in  
3 the underlying data files to confirm if you had the same, you were  
4 speaking about the same claim; do you remember that?

5 A Yes.

6 Q Okay. And, in fact, you believe that you matched the claims  
7 in the Defendants data with the Plaintiffs data for most of the claims?

8 A Yes.

9 Q Okay. And, in fact, but just to be clear, you are including in  
10 your damages calculation about 270 claims that do not show up  
11 anywhere that you could find in the claims of the Defendant? Correct?

12 A Approximately, that's right.

13 Q Right. Now, so that, that hopefully explains kind of what was  
14 done to see if you're talking about the same body of claims, right?

15 A Correct.

16 Q You with me?

17 A Yes.

18 Q I have a separate issue, though. That's different from saying  
19 that you went through and validated each and every field of data in the  
20 underlying data source on the disputed claim sheet, correct?

21 A Oh, no, it's the same thing. It's a -- we used a function called  
22 a V look-up to compare the claim number to the amount.

23 Q Okay. So you're representing that for every matched claim  
24 on this list which should be over 11,000, every single field of data on  
25 Plaintiff's Exhibit 473 will be found in the underlying claims data of the

1 Defendant for that claim?

2 A No.

3 Q That's what I thought. So what you -- and I think you said  
4 this earlier in your examination, maybe even this morning, I think you  
5 said something like you took it, you took it on faith that the data was an  
6 accurate representation of those claims, to something to that effect?

7 A Yes. To the supporting information, the actual claim file tied  
8 into the claim.

9 Q So once you found that there was a claim that seemed to  
10 correspond with something on that claim in the Defendants data, there  
11 wasn't an additional audit that every value in the disputed claim sheet  
12 was accurate relative to the underlying data in the Defendants data?

13 A Correct.

14 Q Okay.

15 MR. BLALACK: Okay. Hopefully, that explains it then. Thank  
16 you, sir.

17 THE COURT: Okay. Thank you both.

18 MR. LEYENDECKER: Very -- just one question, Your Honor?

19 THE COURT: Go ahead.

20 FURTHER REDIRECT EXAMINATION

21 BY MR. LEYENDECKER:

22 Q Mr. Leathers, I may have misunderstood the question that  
23 was asked. When the allowed amount was 246, you understand the bulk  
24 was paid by the insurance company?

25 A Correct.

1 Q And in my hypothetical here, the 24.60 would have been paid  
2 by the member?

3 A That's right.

4 Q Did we get the 246 plus the 24.60 already? Or just a  
5 maximum of the 246?

6 A The maximum of the 246.

7 Q So it's not like we got 246 from the insurance company, 26  
8 over 24 over here, and another 24 over here?

9 A Yeah, that's exactly right.

10 Q Well, I'm not sure what was behind the question, but if this --  
11 we didn't get the 246 plus the 24.60, right, sir?

12 A No, sir.

13 MR. LEYENDECKER: That's all I have, Judge.

14 THE COURT: All right. Any other questions of the jury?

15 Okay. May we excuse Mr. Leathers?

16 MR. LEYENDECKER: Yes, Your Honor.

17 THE COURT: Very good. Sir, you may step down and you're  
18 excused. Please, Plaintiff, please call your next witness.

19 MR. LEYENDECKER: The Plaintiffs call Dr. Robert France.

20 THE COURT: Okay. Let's take a recess before he takes the  
21 stand.

22 MR. LEYENDECKER: Recess, Your Honor?

23 THE COURT: Yeah. I should have called the recess first. So  
24 during the recess, don't talk with each other or anyone else on any  
25 subject connected with the trial. Don't read, watch, or listen to any

1 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 newspaper, television, radio, internet, cellphone, or texting.

4 Don't conduct any research on your own relating to the case.  
5 Don't consult dictionaries, use the internet, or use reference materials.  
6 During the recess, don't post on social media, don't talk, text, Tweet,  
7 Google, or conduct any other type of research with regard to any issue,  
8 party, witness, or attorney involved in this case. Do not form or express  
9 any opinion on any subject connected with the trial until the matter is  
10 considered by the jury.

11 It's 3:40, please be back at 4:05, and we'll work today 'till 5  
12 p.m.

13 THE MARSHAL: All rise for the jury.

14 [Jury out at 3:40 p.m.]

15 [Outside the presence of the jury]

16 THE COURT: Okay. The room is clear. Does Plaintiff have  
17 anything for the record?

18 MR. LEYENDECKER: I don't believe so, Your Honor.

19 THE COURT: Defendant, do you have anything for the  
20 record?

21 MR. BLALACK: Your Honor, I think we were going to do the  
22 offer of proof after we get done with this time limit.

23 THE COURT: Do you want to do that at, see --

24 MR. BLALACK: Five?

25 THE COURT: Yeah, let's do it at 5:00.

1 MR. BLALACK: Yeah, that's what I was going to say.

2 THE COURT: Okay. So --

3 MR. BLALACK: I think we can do it in 15 or 20 minutes.

4 THE COURT: I let them out a little bit longer than I intended  
5 to.

6 MR. BLALACK: That's fine.

7 THE COURT: So I'll -- Mr. Polsenberg, did you have  
8 something for the record?

9 MR. POLSENBERG: Yeah, Your Honor, I'm just wondering --  
10 the back of the room's starting to fill up. Do you know when you want to  
11 do jury selection, or jury instructions?

12 THE COURT: After we release the jury, and keep in mind, the  
13 fire department says only 41 people can be in this room, so I'll ask you to  
14 respect that.

15 MR. POLSENBERG: Thank you, Your Honor.

16 MR. ZAVITSANOS: So on that point, Your Honor, we have  
17 gotten a lot of inquiries about closing arguments, and I'm going to make  
18 a gentle ask, if there's any way we can arrange to have the larger  
19 courtroom, of course, subject to Your Honor's preferences and  
20 availability, and I don't want to create any waves here, but we have  
21 gotten a lot of inquiries.

22 THE COURT: That cost me a six pack of Lagunitas to get that  
23 other big courtroom for your jury selection, so I can ask.

24 MR. BLALACK: So we're fine, we're fine anywhere you want  
25 to do it, Your Honor, we don't --

1 MR. ZAVITSANOS: We are too, Your Honor, I'm just saying I  
2 just -- there's just a lot of folks that want to attend.

3 THE COURT: I know. All right. I will make an inquiry. How  
4 about that?

5 MR. ROBERTS: That's fine.

6 THE COURT: And did you have something else to add?

7 MR. PORTNOL: No, Your Honor. Thank you.

8 THE COURT: Good enough. Then have a good break, and if  
9 you guys think of something just let me know and come back at four.

10 MR. LEYENDECKER: Okay. Thank you, Your Honor.

11 MR. BLALACK: Thank you, Your Honor.

12 [Recess taken from 3:42 p.m. to 4:01 p.m.]

13 [Outside the presence of the jury]

14 THE COURT: Thanks, everyone. Please remain seated.  
15 Okay. We've got a few minutes before we bring the jury back. Anything  
16 we need to take up?

17 MR. BLALACK: Not on our side. I think our plan, Your  
18 Honor, is to finish -- just for housekeeping. They're going to finish Dr.  
19 Frantz -- or do Dr. Frantz, which we hope will be finished today and  
20 expect to be finished today. And then I believe you guys are resting; is  
21 that right?

22 MR. ZAVITSANOS: Yes. Yes.

23 MR. BLALACK: That was a momentary pause that worried  
24 me just a tad, but I think we're back on track. And assuming that  
25 happens, then we -- our motion for judgment will be on file and I -- Mr.



1 Portnoi. And you can either discuss it with him, we could reserve; do  
2 whatever you want.

3 And then, we would propose to knock out the Mr. Leathers  
4 voir dire issue. And then if the Court would like to hear argument on the  
5 instructions or anything like that, Mr. Portnoi is here.

6 THE COURT: Fine.

7 MR. BLALACK: That's our view of the --

8 THE COURT: You guys estimated half an hour each with  
9 Frantz, Dr. Frantz?

10 MR. BLALACK: I think that's right.

11 MR. LEYENDECKER: Yes, Your Honor.

12 THE COURT: Okay. And let's make sure he's ready to come  
13 in as soon as we bring the jury in.

14 MR. LEYENDECKER: He's -- he is, Your Honor.

15 THE COURT: Very good. Okay. So Andrew, why don't you  
16 round up the jury?

17 MR. ZAVITSANOS: Your Honor?

18 THE COURT: Yes?

19 MR. ZAVITSANOS: I have a question. So I understand  
20 they're going to make a directed verdict motion. I assume the Court  
21 does not want to take that up today or?

22 THE COURT: I don't know how I can.

23 MR. ZAVITSANOS: Yeah.

24 THE COURT: Especially if we're going to finish the proof at  
25 five o'clock.

1 MR. ZAVITSANOS: Yeah.

2 THE COURT: And then further arguments.

3 MR. ZAVITSANOS: I'm just asking because whether Ms.  
4 Robinson needs to be here or not. So we can just take it up.

5 MR. BLALACK: Yeah. Our assumption, Your Honor, is that  
6 we filed, and the Court would want to reserve and have an opportunity  
7 to raise it in opposition.

8 THE COURT: Good enough.

9 MR. BLALACK: We can argue it whenever you'd like.

10 MR. ZAVITSANOS: Okay.

11 THE COURT: Thank you.

12 MR. ZAVITSANOS: Makes it easy.

13 MS. LUNDVALL: And Your Honor is not compelling written  
14 briefs or written responses to the Rule 50 motion, are you? I mean, if we  
15 wanted -- if we choose to do an oral presentation in opposition to  
16 whatever that they present, will you listen to that, as well?

17 THE COURT: I would ask you guys how you want to  
18 respond. Do you want a chance to respond in writing? Are you willing  
19 to do it orally? Because if you're willing to do it orally and they waive  
20 the reply, we could take it in the morning.

21 MS. LUNDVALL: Thank you, Your Honor.

22 MR. BLALACK: That's fine with us, Your Honor.

23 THE COURT: Yeah. Talk to each other and let me know at  
24 the end of the day.

25 MR. ZAVITSANOS: Your Honor, I think that's on record.

1 THE COURT: Good enough.

2 MR. ZAVITSANOS: I think you have enough paper.

3 THE COURT: Well, I have a law clerk matching up all of your  
4 briefs and how they match up to the jury instructions, because keep in  
5 mind, I've been in the courtroom with you almost every, you know, the  
6 whole time. I don't have as big a team as you all have.

7 MR. GORDON: And you're fourth and fourth, Your Honor.

8 THE COURT: Let's bring them in. And I see there are some  
9 more Plaintiff's jury instructions now.

10 THE MARSHAL: All rise for the jury.

11 [Jury in at 4:05 p.m.]

12 MR. LEYENDECKER: Yes, Your Honor.

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

14 Recalling the case of Freemont Emergency v. UnitedHealthcare, done in  
15 the presence of counsel and their representatives and the members of  
16 the jury. And you've called Mr. Frantz?

17 MR. LEYENDECKER: Yes, Your Honor.

18 THE COURT: Next witness.

19 ROBERT FRANTZ, PLAINTIFFS' WITNESS, SWORN

20 THE CLERK: Please have a seat and state and spell your  
21 name for the record.

22 THE WITNESS: My name is Robert Frantz, and the last name  
23 is F-R-A-N-T-Z.

24 THE CLERK: Thank you.

25 THE WITNESS: Common spelling of the first name.

1 THE COURT: Please proceed.

2 MR. LEYENDECKER: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. LEYENDECKER:

5 Q Dr. Frantz, would you please introduce yourself to the jury?

6 A Yes. I'm Robbie Frantz, ER physician, and I'm here to testify  
7 today.

8 Q Where do you work, Dr. Frantz?

9 A I live and work in Norman, Oklahoma.

10 Q And who do you work for?

11 A I work for TeamHealth in Norman, Oklahoma.

12 Q And you might speak up just a hair. I'm having a smidgen  
13 time. Could be my shoes there at hearing.

14 A No problem.

15 Q So you live in Norman, Oklahoma?

16 A Yes, sir. That's right.

17 Q And you said you work with TeamHealth?

18 A That's correct.

19 Q And can you tell us what do you do for TeamHealth?

20 A I'm an ER physician, and I'm the group president for the West  
21 Group of TeamHealth.

22 Q And the West Group means what? Give us a little more  
23 meaning on that, please.

24 A The West Group is geographically just the western half of the  
25 United States. So essentially, the -- everything west of the Mississippi,

1 I'm responsible for emergency medicine and hospital medicine in that  
2 geography.

3 Q Okay. How long have you been an emergency room doctor?

4 A I graduated from residency in 2000. So 21 years.

5 Q And did you have a professional life before you were an ER  
6 doctor?

7 A Yes. I was a -- what they would consider to be a  
8 non-traditional student. So I had worked quite a bit before I ever went to  
9 medical school. And before I ever went to medical school, I was a  
10 paramedic and a police officer. And I did that job as a police medic for  
11 seven years. And then I was a paramedic, just outside of a police firm,  
12 for another three years additional to that.

13 Q So what prompted you to leave the paramedic and law  
14 enforcement world and go to medical school?

15 A Well, my whole family was sort of in public safety. My father  
16 was a cop. He was a police lieutenant in Oklahoma City and my sister  
17 was a cop. And my dad -- ultimately -- they both retired from the police  
18 department there. And ultimately, you know, they said this is probably  
19 not a job you want to retire at. And they were -- they were probably  
20 correct.

21 The police department that I worked at was in Norman, which is  
22 the -- where the University of Oklahoma is, and they had a really strong  
23 tuition program there. And so a lot of the medics and a lot of the cops  
24 ended up going on and becoming something else. They got degrees and  
25 encouraged us to go to school. And so I worked through school for the

1 seven years I was there and then ultimately applied to one medical  
2 school one time and got in.

3 Q So you started medical school at what age?

4 A I think I was 29.

5 Q Twenty-nine. And you made some comment about  
6 non-traditional college path or something like that.

7 A Right.

8 Q What did you mean by that?

9 A Well, it's a -- it's a traditional path for -- the way they defined  
10 it there was somebody who came directly out of high school and went to  
11 four years of college and then got into medical school. And that was  
12 really not my path, obviously, so.

13 Q Your path was a little delayed, something along those lines?

14 A Right. Because I was working.

15 Q We've heard from a few witnesses the phrase board-certified  
16 residency. Are you a board-certified emergency room doctor?

17 A Yes, sir, I am.

18 Q And can you give us a little background on what do you got  
19 to do to get that status?

20 A It's a little confusing for emergency medicine because  
21 historically, it's a fairly young specialty compared to a lot of others. And  
22 emergency departments used to be staffed by just whoever they could  
23 get to cover them. And so that's not the way it is really now. The  
24 training for emergency physicians is three or four years long. There are  
25 two different residencies, an academic type and a more clinical focused,

1 but they're all very clinical-based. And then after that, you sit for an oral  
2 board. And so you go up before bunch of examiners who ask you  
3 questions and put you through tests, and then a written test. And  
4 assuming you pass all that, then you can call yourself a board-certified  
5 emergency physician.

6 Q So if you started medical school when you were about 28, at  
7 what point in time in your life did you achieve that steps?

8 A About 35.

9 Q Okay. So about eight years of college and residency and all  
10 the other things you just described.

11 A Right. Four years of medical school and four years of  
12 residency after college.

13 Q Okay. After college.

14 A Right.

15 Q So college, four years of residency, four years of --

16 A Medical school.

17 Q Medical school and then the residency.

18 A That's right.

19 Q Okay. Now, before, we talked a little bit about your work at  
20 TeamHealth. Have you always worked for a TeamHealth entity?

21 A No.

22 Q Can you give us a little bit of background? Not a ton. A little  
23 bit of background about what you did before you were involved with the  
24 TeamHealth folks.

25 A So after I graduated residency, I moved back to Oklahoma

1 and joined a democratic group in Oklahoma City that was primarily an  
2 osteopathic group of other board-certified emergency physicians. And  
3 we worked in Oklahoma City and staffed about four hospitals there. And  
4 over 10 years, we grew to 8 hospitals, 12 hospitals, 16 hospitals. And the  
5 name of that group was Morningstar Emergency Physicians.

6 Q You used a term there. Did I hear you say it was a  
7 democratic group?

8 A Yes, sir.

9 Q Is that a political thing?

10 A No. It's --

11 Q What did you mean by that?

12 A Well, what I meant by it, it can mean a lot of different things,  
13 so that's a good question. Every physician that worked there had a vote.  
14 They were -- they were all owners of the company and helped to run the  
15 company, if you will.

16 Q And so about how long were you with Morningstar?

17 A Ten years.

18 Q Ten years. And you said -- I know -- here it is -- four hospitals  
19 or four contracts? Give me a little more detail on that.

20 A So we provided emergency physicians to cover about four  
21 different hospitals whenever I initially joined them. But over --

22 Q Okay.

23 A -- over time, we added more and more and grew into more  
24 facilities where we -- where we worked.

25 Q So sort of 10 years later, what, you said you went from



1 covering 4 hospitals to about 16 hospitals?

2 A Yes, sir. That's right.

3 Q And these are all in the Oklahoma City area?

4 A Well, it was Oklahoma City, rural Oklahoma, and also in  
5 Kansas, as well.

6 Q How did you all -- and so about how many doctors in total  
7 were in that group by the time it reached its, you know, peak size?

8 A About a hundred.

9 Q And without getting into too much of a teeth-gnashing, how  
10 did you all communicate, coordinate, you know, change ideas?

11 Whatever you -- however you might describe that, how did that work  
12 with that group?

13 A Well, we would typically meet on a monthly basis, and we'd  
14 spend most of our time actually talking about the management of stuff.  
15 We, you know, we would try to develop best practices, but it was difficult  
16 to sort of share them. But ultimately, you know, we had one physician  
17 who was a founder. And over time, I ended up moving into a chief  
18 operating officer role with that company for the last two years that I was  
19 with them. And together, he and I tried to manage the, you know, that  
20 company until we merged with TeamHealth.

21 Q You used the word best practices. Whenever I hear a word  
22 that I'm not sure, I like to slow down. And so tell us what you meant by  
23 best practices.

24 A Well, when we had 16 hospitals, it was not uncommon for  
25 one medical director to come up with a good idea on how to do

1 something. You know, for instance, how to maybe get patients admitted  
2 to the hospital in a more timely fashion or to maybe get them discharged  
3 with their lab quicker, or to get tests done faster. And those are best  
4 practices. But the problem was that we couldn't ever really exchange  
5 those practices because we had to uncover them, first of all, which was  
6 difficult to do because everyone sort of thought they had a best practice,  
7 but we didn't really have the perspective to determine that, really. And  
8 then you have to train and teach, and then you have to get buy-in from  
9 the hospitals to actually enact these practices, to get them -- to get them  
10 happening.

11 Q Well, let me ask you, were all the doctors in that group, like  
12 you, board-certified emergency room doctors?

13 A Yes. They're either board-certified or board-eligible,  
14 meaning they were waiting to take their boards.

15 Q And here's what I'm thinking, if they're board-certified  
16 doctors, I assume they're doing good doctoring. I mean, that's -- you  
17 follow what I'm saying?

18 MR. ROBERTS: Objection. Leading.

19 THE COURT: Objection sustained.

20 BY MR. LEYENDECKER:

21 Q Okay. How would you describe the quality of the care that  
22 those doctors were giving?

23 A Well, I'd like to think we were giving really good care. When  
24 I moved in my chief operating officer role, though, I found out that it  
25 was -- it was really inconsistent. I would -- I would put it that way. So

1 we all felt like we were practicing the care individually at the patient level  
2 about the same, because we were all similarly trained. But all the rest of  
3 the things, you know, the management of the department, the training  
4 of the medical directors, those sorts of things, that was -- that was really  
5 fairly inconsistent in --

6 Q Okay. So trying to coordinate the best practices, and even  
7 though doctors are doing -- providing good care, was that a smooth and  
8 successful process? How would you describe that?

9 A I'd describe it as significantly challenging. It was -- it was  
10 challenging to do because again, without perspective, without proper  
11 perspective, everyone sort of thinks that they're doing the best. And  
12 everyone was doing good medicine. But there were -- there were lots of  
13 opportunities for improvement. And something may come up at a -- at a  
14 site, for instance, like an observation unit. And we had one hospital that  
15 had an observation unit. But when a second hospital wanted to develop  
16 an observation unit, we -- it was like trying to reinvent the wheel every  
17 single time we would, you know, do something like that.

18 Q Did the Morningstar Group have a physician services  
19 company like TeamHealth that it was affiliated with to handle the  
20 non-doctoring kind of activities?

21 A No. No. We would outsource, for instance, you know, the --  
22 you know, our accounting services and payroll and those kinds of things.  
23 But the rest of it was really just us managing it ourselves.

24 Q Did you all -- we heard a little bit of information from Dr.  
25 Scherr earlier in the case about -- metrics may have been the word he

1 used, like door to doctor or clock question time, something like that. Are  
2 you familiar with that concept?

3 A Yes, sir.

4 Q And did the Morningstar Group, even though it didn't have a  
5 physician services company that it was affiliated with, did they make an  
6 effort to identify, keep track of some of those kind of metrics?

7 A Yeah. We would manage to, maybe three or four of these  
8 metrics. So think length of stay in the emergency department or how  
9 long it takes for you to see your doctor, door to doctor time, or patient  
10 satisfaction scores, those sorts of things. But it was very, very few of  
11 these and they were very, again, just inconsistent. And we didn't -- it  
12 was all in data provided by the hospitals.

13 Q How would you -- let me switch gears a little bit here. How  
14 would you characterize the best practices, the metric analysis, et cetera,  
15 back in the Morningstar days as compared to today when you're  
16 affiliated with TeamHealth. Give us a little bit of an idea there.

17 A Well, you know, if it -- like I said, we would maybe monitor  
18 four or five of these things. And you know, it's not uncommon for a, you  
19 know, a physician management group, you know, like TeamHealth to  
20 monitor 20, 30, 35 of these metrics and manage to them. And it can be  
21 anything from, you know, compliance with, you know, treatment for  
22 sepsis, if you have a severe infection, or compliance with clot-buster  
23 drugs for stroke or for heart attack or how we treat those sorts of things.

24 So we never were able to kind of manage to those sorts of things.  
25 And then, you know, any time a best practice gets identified, it's easily,

1 you know, sort of scaled and the training is then brought out for the  
2 people. We certainly didn't do that.

3 Q Do you have a point of view about whether having a  
4 physician services company like TeamHealth, as a, you know, affiliated  
5 with, a relationship, do you have a point of view about whether that  
6 facilitates the rendition of care, hinders it, helps it? What's  
7 your -- because it sounds like you've been in both worlds.

8 A I have. I've --

9 MR. ROBERTS: Objection, Your Honor. Calls for expert  
10 testimony.

11 THE COURT: Overruled. It's based upon his own  
12 impressions. You can answer.

13 THE WITNESS: Thank you, ma'am. Yeah. I've worked in  
14 over 20 different emergency departments as a clinician and, you know,  
15 and had that practice, and then now this. And yeah, I would say that it  
16 takes a lot of burden off the individual medical directors and the leaders  
17 of those facilities to be affiliated with a physician services group, as  
18 you've described, because the -- a lot of that information is aggregated  
19 and brought to them. And they have that -- that perspective that they  
20 otherwise might not have.

21 So the best practice could be, you know, we're just  
22 functioning in Oklahoma, but a best practice could certainly crop up here  
23 in a -- in a place like Las Vegas. And we would have no way of really  
24 identifying or knowing how to do anything about it.

25 BY MR. LEYENDECKER:

1 Q In the old Morningstar models --

2 A In the old days.

3 Q -- so to speak.

4 A Right.

5 Q Give a little bit of more detail about what you do today. You  
6 said you were the president of the West Group. Give us an idea about  
7 your responsibilities in that role.

8 A It's fairly broad, but ultimately, I see myself as an advocate  
9 for the doctors and the mid-levels, the APCs, you know, the nurse  
10 practitioners and the -- and the PAs that are working clinically. I think of,  
11 you know, what they're doing at two in the morning. I want them to -- I  
12 want to advocate for them so that that -- that goes smoothly, whatever is  
13 happening at the patient bedside goes smoothly. So that's first and  
14 foremost.

15 But I also maintain recruiting and retention best practices for  
16 doctors and APCs. I do relationship with our client hospitals and client  
17 facilities. And then finally, I'm the chief physician responsible for  
18 wellness within the company right now, so that means burnout, PTSD,  
19 impairment, counseling, you know, those sorts of things. And so I'm the  
20 chief executive for that right now, too.

21 Q And for what -- for just emergency room doctors in the  
22 western group or for more than that?

23 A So for the -- for the wellness part of this things, it's all  
24 specialties across the entire company.

25 Q Now, are you still practicing? You said you're an ER doctor.

1 Are you still practicing the ER medicine today?

2 A No, I'm not.

3 Q And when did you stop?

4 A About two years ago.

5 Q And why did you stop?

6 A Well, it's -- it got to be increasingly difficult. And I felt like I  
7 could be more productive, have more impact, doing this job. This -- this  
8 seemed -- this was transitioning to be my purpose. You know, I took  
9 care of patients for 30-something years in 20 different emergency rooms  
10 and in the back of ambulances and I felt like that little boy on the  
11 star -- on the beach whenever the starfish wash up after the storm, you  
12 know? You're throwing the one starfish in over and over again, and  
13 someone says to him, well, you know, you're never going to make a  
14 difference.

15 And I always said, well, I am to that one. You know? And that  
16 made me feel better. But I think in the job that I have now, the purpose I  
17 have, I can make more of a difference. I can make that -- I can make that  
18 much more impactful. So I feel like I'm -- I'm doing my purpose now and  
19 it was -- it was time to transition to this job.

20 Q Do you miss it at all?

21 A Sure. But my daughter is an ER nurse now, and so I get to  
22 talk to her quite a bit. And especially over the last couple of years, the  
23 challenges of it, it's been very significant. So I always miss that  
24 interaction with patients. But I feel that void has been filled by this -- by  
25 everything else that I do. You know, especially the wellness work I do.

1 Q Let me ask you something. There's been something  
2 discussion with some of the Defendant's witnesses and some of the  
3 witnesses on our side of the case about what ER doctors do. And I don't  
4 want to rehash all that. But I want to be fair and not gild the lily. And  
5 sometimes, I have said, you know, well, you save lives, you save lives,  
6 you save lives. And am I being a little, you know, too friendly in -- I  
7 mean, is that all we do? Do we always save lives?

8 MR. ROBERTS: Objection, Your Honor. This is beyond  
9 foundation. This is readying to paint a case.

10 THE COURT: It does. Objection sustained.

11 BY MR. LEYENDECKER:

12 Q Okay. What I'm trying to ask you about, Dr. Frantz, is do you  
13 ever have situations where you treat a patient, and you lose a patient?

14 MR. ROBERTS: Same objection, Your Honor.

15 THE COURT: Sustained.

16 MR. LEYENDECKER: Kind of the basis of the other questions,  
17 Your Honor.

18 THE COURT: For the reasons stated in the objection --

19 MR. ROBERTS: Irrelevant, Your Honor. Also ready to paint  
20 the case.

21 MR. LEYENDECKER: I'll move on.

22 BY MR. LEYENDECKER:

23 Q Okay. How about TeamHealth doctors? Are they like the  
24 Morningstar doctors? Do they -- does TeamHealth hire board-certified  
25 doctors, too?



1           A     Yes. Largely, they do board-certified in emergency medicine  
2 and residency-trained in emergency medicine. But not everywhere, no.

3           Q     How about here in Nevada?

4           A     Yes. In Nevada, 100 percent of the physicians are  
5 board-certified and residency-trained in emergency medicine, I believe.

6           Q     Now, why are you here, Dr. Frantz? Do you have any  
7 connection to the three Plaintiffs in this case? The three healthcare  
8 provider groups?

9           A     Yes, sir. They're within my group, obviously, my geographic  
10 group and my area of responsibility. But I'm the vice president of the --  
11 of the entities that are in dispute with the various companies within  
12 United over out-of-network reimbursement.

13          Q     So you have a job for TeamHealth and you're also vice  
14 president of the Freemont group, the Ruby Crest group, and the Team  
15 Physicians group?

16          A     Yes, sir. That's right. And you know, as I said, my job is to  
17 advocate for the physicians, so.

18          Q     Did you provide any care in the case?

19          A     No. No, I did not.

20          Q     Do you have an idea at 30,000 feet what the dispute is about?

21          A     Yes. As I said, it's about the, you know, the question of  
22 fairness of reimbursement for out-of-network claims seen by our staff in  
23 these -- in these contracts.

24          Q     Let me ask you on the claim question, have you heard of, are  
25 you familiar with the concept of a clean claim?

1 A Yes.

2 Q And tell the jury what a clean claim is.

3 A My understanding is -- of a clean claim is that it's a claim  
4 where the -- the charge is accurate and that all the information is  
5 necessary to bill the charge appropriately as present in the chart. And so  
6 that is a clean claim. So an accurate chart with all the elements  
7 necessary to accurately build the chart.

8 Q Did you have an understanding whether insurance  
9 companies like the Defendants in this case, based on your time at  
10 Morning Star here at TeamHealth, whether insurance companies like  
11 those here, require that doctors submit claims, submit a clean claim?

12 A Well, yes, otherwise they won't pay anything on it. And  
13 these claims, they paid something, at least, on every single one of them,  
14 so we know these are clean claims that we're talking about.

15 Q Let me just ask you, here in Nevada, are you familiar with a  
16 group called Sound Physicians?

17 A Oh, yes.

18 Q Okay. And what is Sound Physicians?

19 A Sound Physicians is a group, not unlike TeamHealth. So it's  
20 a physician services group that is owned by Optum, which is a company  
21 that's owned by United Healthcare. And they do similar work that we do.  
22 They started out as a hospital medicine company, but they also do  
23 emergency medicine. I think they may also do anesthesia, but that's  
24 who they are.

25 Q You said similar in size to you all here in Nevada?

1           A     No, I think they're in the top three, so I think the top three in  
2 size in Nevada probably TeamHealth and Vituity and Sound.

3           Q     Okay. Let me get back to this -- the core issue in the case.  
4 Do you think you have an expertise on what the rate and payment  
5 should be?

6                     MR. ROBERTS: Objection, Your Honor. He was not  
7 designated an expert.

8                     THE COURT: Your response?

9                     MR. LEYENDECKER: I asked him whether he thinks he -- I  
10 think you all were to hear the answer.

11                    THE COURT: Okay.

12                    MR. ROBERTS: It's irrelevant since he's not designated as an  
13 expert.

14                    THE COURT: Yeah, I'm going to overrule that because it's  
15 within his personal knowledge.

16                    You can testify with regard to what you know.

17 BY MR. LEYENDECKER:

18           Q     The question is do you feel like you have any expertise to  
19 share with this jury about whether the greater payment should be for a  
20 99282 or a 99285?

21           A     No, I don't, no.

22           Q     Okay. Let me ask you, do you know about CPT codes?

23           A     Yes, I do.

24           Q     Yesterday I asked a hypothetical question to Mr. Leathers  
25 where I described CPT code 99282 as presenting problems that are a low

1 to minor severity; is that consistent with what you understand as 282?

2 A Yes, sir, that's right.

3 Q And then I -- when I asked him about the 285s, I described it  
4 as presenting problems that are high severity and pose an immediate  
5 significant threat to life or cycle, physiological function; is that consistent  
6 with your understanding?

7 A It is.

8 Q Okay. Now, even though you don't think you have any  
9 expertise about what 282 should be compensated as, et cetera, do you  
10 have a point of view about reimbursement with a larger company?

11 MR. ROBERTS: Objection. Calls for a narrative. For  
12 relevance.

13 THE COURT: Overruled.

14 THE WITNESS: Well, sure. I mean, if reimbursement is not  
15 adequate, then we're going to have difficulty, you know, for sure  
16 recruiting and retain -- retaining physicians to work in these facilities,  
17 and it can undermine the care and the community for the safety net of  
18 emergency medicine.

19 BY MR. LEYENDECKER:

20 Q You know, when I first started working on the case, I realized  
21 that the ER doctors didn't -- if they -- like, you didn't really have a sense  
22 of what the rate of payment should be and what I was used to is lawsuits  
23 where a doctor would come in and say I treated a patient and my  
24 charges were this, and they're reasonable and they're customary. And  
25 so those doctors have a good idea of what those rates should be, and the

1 -- and so I -- why do you suppose that is about ER doctors, in the sense  
2 that they don't -- they don't really have a sense of what the rates should  
3 be?

4 MR. ROBERTS: Objection. Calls for speculation.

5 THE COURT: You can answer if you know.

6 THE WITNESS: Yeah.

7 THE COURT: Overruled.

8 THE WITNESS: I do know. ER physicians are generally,  
9 blissfully ignorant about these things, and the reason, I think, is because,  
10 you know, unlike any other specialty out there, we have a federal  
11 mandate, which is unfunded in the mid-80s calls EMTALA, whereby  
12 emergency physicians have to take care of stabilize and take care of,  
13 evaluate all patients that present to the emergency department, whether  
14 they can pay or not. So emergency physicians, unlike a lot of other  
15 physicians out there, don't have financial discussions with the patients.

16 You know, when I went to go see my eye doctor, before I  
17 could even get behind the slit lamp or have anybody take a look at my  
18 eyes or see an eye chart, they'd run my credit card and had already, you  
19 know, told me how much -- how much this is going to cost. So that's  
20 not -- that's completely not for emergency medicine. So that's part of  
21 the major drive of why they don't really have an idea.

22 BY MR. LEYENDECKER:

23 Q Are you aware of any other doctors that are like emergency  
24 room doctors in the sense that there's a law that requires them to treat  
25 every patient that wants to get treated by them?

1           A     It's really unique to emergency medicine.

2                   MR. ROBERTS: Objection.

3                   THE COURT: Overruled.

4                   MR. LEYENDECKER: Several witnesses on --

5                   THE COURT: Go ahead. Overruled.

6 BY MR. LEYENDECKER:

7           Q     So if emergency room doctors don't really have an idea like  
8 the -- what I was used to before I got involved in this case, then how are  
9 they typically thinking about compensation?

10          A     So the way it works for emergency physicians is that all the  
11 payers that present to the emergency department, whether they can pay  
12 anything at all or not, which is a big chunk that can't afford to pay  
13 anything, that goes into the same bucket as the government payers,  
14 which are, you know, I think Medicaid, who pay very little. And then  
15 private insurance, and that's all aggregated into one big bucket, and then  
16 that's how they're -- how they're paid is out of -- out of the aggregated  
17 amount of reimbursement.

18          Q     Okay. You mentioned in the ER world, you get patients that  
19 are uninsured. Any sense about, is that a few? It's a lot? Percentagewise,  
20 where do you think that falls in your experience?

21          A     Well, it varies from place to place, but it's almost pretty  
22 consistently between 20, 25 percent of the patients come to the  
23 emergency room.

24          Q     Okay. And those are folks that didn't pay a little? Pay  
25 nothing at all? What's your experience there?

1           A     Well, in general, they try to pay some, but most of the time,  
2 these people don't have the ability to pay anything for their care. And so  
3 it's very little, if anything.

4           Q     So let me ask you about something, and I feel like it's right  
5 here in the room that maybe hadn't bubbled to the surface just yet, and  
6 then it is up -- I find myself asking, or thinking some folks might say,  
7 well, why is it fair for insurance companies like the Defendants to have to  
8 pay something different than those folks that can't afford, or like the  
9 Medicaid program? I mean, does that seem fair that -- to you that the  
10 insurance companies often do something different or have to pay more?  
11 What's your thought on that?

12          A     Well, yeah, I think it is fair. It is fair because at the end of the  
13 day, the insurance companies make the decision about where they're  
14 going to sell their insurance. You know, what states they're going to sell  
15 their insurance in. This is -- this is the social situation that we have. Like  
16 it or not, this is -- this is the safety net for the healthcare system is  
17 emergency medicine. And you know, they can make a financial decision  
18 based upon -- on what they're going to be seeing a particular area to sell  
19 the insurance in a state, and if they do, they have to pay reasonably,  
20 emergency medicine. They have to cover emergency medicine.

21          Q     You mention something about what I asked, you got a point  
22 of view -- I know you're not an expert on any particular way, you said  
23 you had a point of view and said something about, well, according to the  
24 doctor, but also according to the community; did I hear that right?

25          A     Yes, sir.

1           Q     Can you give me a little more meat on the bones, so to  
2 speak, what you meant by the, obviously I understand the doctor part,  
3 but the community part?

4           MR. ROBERTS: Objection, Your Honor.

5           THE COURT: The objection is sustained.

6 BY MR. LEYENDECKER:

7           Q     Okay. I've just got a few more questions, and what I'd like to  
8 do is show you some testimony from -- that the jury heard from Mr.  
9 Haben who is a retired senior executive title from one of the United  
10 entities.

11           MR. LEYENDECKER: And, Michelle, if I could get the  
12 November 2nd transcript at 130, lines 20 through 131, line 8.

13           MR. ROBERTS: What page?

14           MR. LEYENDECKER: 130, line 20 through 131, line 8.

15           MR. ROBERTS: Your Honor, I object. This violates the  
16 exclusionary rule. He can't show this witness the testimony of another  
17 witness. He's a lay witness, subject to the rule.

18           THE COURT: Your response?

19           MR. LEYENDECKER: We've been doing that throughout the  
20 case, Your Honor.

21           THE COURT: This is the first time there's been an objection.  
22 Given the history of the case, I'll overrule that.

23 BY MR. LEYENDECKER:

24           Q     So let me just set up the situation, Doctor Frantz. In the first  
25 ten minutes of this lawsuit being heard by the jury, Mr. Haben was



1 shown by my colleague, Mr. Zavitsanos, these two numbers, and he  
2 represented to Mr. Haben that the 1428 was an example of a level 5 case;  
3 I think it was either a heart attack or gunshot, I can't remember. Right.  
4 And the 254 was one of the claims they disputed in the case. And the  
5 254 was the amount that the United Defendants reimbursed for this  
6 claim. So that's the context, okay?

7 A Okay.

8 Q And over here, line 20, Mr. Zavitsanos was being a little,  
9 some would say aggressive. I want to be respectful, yes or no, for  
10 99285, the most severe code in the emergency room is \$254 egregious.  
11 And obviously, a little more background here, Mr. Zavitsanos was asking  
12 about egregious because the gentleman had written some memos  
13 calling charges egregious. Okay. So that's a little more background.

14 A Okay.

15 Q And what he goes onto say, basically is there's a little bit of  
16 back and forth. Question, and if you want to say I can't answer that,  
17 that's fine, too, and there at line 1 he says, "I can't answer that." Do you  
18 see that?

19 A Yes, sir.

20 Q Recognizing that you're not an expert on rates, Dr. Frantz, do  
21 you have a point of view about what the \$254 is egregious?

22 MR. ROBERTS: Objection, Your Honor. This witness has  
23 previously testified he has no knowledge what a reasonable rate is, and  
24 therefore, no foundation to answer this question.

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

1 the right to cross-examine.

2 BY MR. LEYENDECKER:

3 Q I didn't ask, to be clear, Dr. Frantz, the senior executive at  
4 United said we couldn't answer. I'm simply asking, and I know you're  
5 not an expert, do you think \$254 -- do you have any point of view about  
6 whether \$254 for a level 5 heart attack, gunshot kind of situation, do you  
7 have any point of view of whether that's egregious?

8 A Yeah, I think it is. I mean, I had two plumbers out to my  
9 house a week ago and they charged almost double that just to come to  
10 my house. So yeah, I do perceive those as being egregious.

11 Q Let me just go back to the -- make sure we'll all square here.

12 MR. LEYENDECKER: Michelle, come up a little bit. I want to  
13 see -- come up to line number 7 here at 131, line 7. Hold on. Stay there,  
14 please. Stay right there.

15 BY MR. LEYENDECKER:

16 Q A little more discussion. I can't answer that. He goes onto  
17 say, line here, 8, I'm not a commission. I cannot answer that. Even  
18 though you're not an expert on what the rate should be, you are  
19 commission, right, sir?

20 A Yes, sir. Yes.

21 Q Do you think 254 for a level 5 service is fair?

22 MR. ROBERTS: Same objection. No foundation, Your Honor.

23 THE COURT: No. Overruled.

24 MR. LEYENDECKER: No, it's not fair.

25 BY MR. LEYENDECKER:

1 Q You got any life experiences that might put that \$254 in  
2 perspective?

3 A Well, just as I --

4 MR. ROBERTS: Same objection, Your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: Just as I said, you know, I -- I literally had  
7 two plumbers out to my house this week and it was \$150 for just the  
8 service call and then it was another \$275 to run a snake, so I mean, I -- I  
9 don't want to disrespect the work he did because I -- I can't do it, but  
10 putting it in perspective, yeah, I think it's egregious.

11 BY MR. LEYENDECKER:

12 Q Did you say you had plumbers out to your house to snake  
13 the drain and it ended up being in the \$500 range?

14 A Pretty near, yeah.

15 Q If I would --

16 MR. LEYENDECKER: I'm not going to go there.

17 BY MR. LEYENDECKER:

18 Q Okay. Let's look at what Mr. Haben said about the charge,  
19 the 1428.

20 MR. LEYENDECKER: Can I go to 128 at 9 through 16,  
21 Michelle?

22 BY MR. LEYENDECKER:

23 Q Line 9, "Question: I think we established for 99285, the most  
24 serious 1428 is reasonable, right?"

25 MR. LEYENDECKER: Highlight right there on line number 11,

1 Michelle, please.

2 BY MR. LEYENDECKER:

3 Q Dr. Frantz, what did the former senior executive of United tell  
4 this jury about whether \$1,428 was a reasonable price, reasonable  
5 charge for a level 5 kind of service?

6 MR. ROBERTS: Objection. Mischaracterizes the answer.

7 THE COURT: Overruled.

8 THE WITNESS: Well, he says here, "Yes, for saving  
9 somebody's life, yes."

10 BY MR. LEYENDECKER:

11 Q Do you think \$1,428 is a reasonable charge? Do you agree  
12 with Mr. Haben?

13 A Well, I do agree with him, yes.

14 MR. LEYENDECKER: Thank you for your time. Those are all  
15 the questions I have, Your Honor. I pass the witness.

16 THE COURT: Cross-examination.

17 MR. ROBERTS: May I approach, Your Honor?

18 THE COURT: You may.

19 [Sidebar at 4:41, ending at 4:47 p.m., not transcribed]

20 THE MARSHAL: Court resumes.

21 THE COURT: Thank you to the members of the jury for your  
22 professional courtesy. And cross-examination, please.

23 MR. ROBERTS: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. ROBERTS:

1 Q Good afternoon, Doctor.

2 A Sir.

3 Q Your testimony was that when you first were a physician of  
4 Morningstar, it was democratic, all the physicians owned the company.  
5 That's no longer true, correct?

6 A There's no longer a Morning Star Emergency Physicians as  
7 a -- as an organization.

8 Q When there was a Morningstar, did the doctors do the  
9 coding? Did they determine whether it was a 285 or 284 or 283?

10 A No, sir. They didn't.

11 Q They did not?

12 A No, they didn't.

13 Q Did the doctors see what was on the bills before they went  
14 out?

15 A No, sir.

16 Q Well, you said that you did your own billing. How did the  
17 doctors do their own billing without seeing the bills or knowing the  
18 codes?

19 A I don't believe I said we did our own billing. I said I think we  
20 did our own management. We outsourced payroll and some -- and  
21 some things like that. And so we did -- for a period of time, we  
22 outsourced through a billing company to do that work for us. And then  
23 ultimately, some of the members teamed together and formed a billing  
24 company. But it was a standalone entity that was kind of on its side in  
25 parallel to that.

1 Q So the physicians formed a billing company, and the  
2 physicians that owned the billing company then charged a fee to the  
3 other physicians to send the bills?

4 THE COURT: Hang on. There's an objection.

5 MR. LEYENDECKER: Your Honor, this is far field of the  
6 direct, and its relevance.

7 THE COURT: Where are you going with this?

8 MR. LEYENDECKER: And a limine issue, Your Honor.

9 MR. ROBERTS: I'll move on, Your Honor. Not important.

10 THE COURT: Thank you.

11 MR. ROBERTS: Trying to get through.

12 BY MR. ROBERTS:

13 Q So just to confirm to the jury. You gave a lot of faithful  
14 testimony about the good things that TeamHealth does for physician  
15 groups, right? But you are an employee of TeamHealth, correct?

16 A Yes, sir.

17 Q And you are the president of TeamHealth West Group,  
18 correct?

19 A That's correct.

20 Q And you are the vice president of these three entities that are  
21 the plaintiffs in this case, right?

22 A Yes.

23 Q And just to sort of put it in perspective in the chain of  
24 command at TeamHealth. Dr. Scherr, who they heard from, is the  
25 president of the local groups. You're the president of the regional

1 groups. And then --

2 MR. LEYENDECKER: Your Honor, we're getting into limine  
3 on corporate structure here.

4 MR. ROBERTS: Let me rephrase, Your Honor.

5 THE COURT: Yeah, rephrase.

6 BY MR. ROBERTS:

7 Q You are Dr. Scherr's boss, correct?

8 A Yes.

9 Q And Leif Murphy is your boss?

10 A Yes.

11 Q And you report to Mr. Murphy?

12 A No. Not directly, no.

13 Q So you're the regional president. Isn't it true that you did not  
14 become aware of this litigation until after the case was filed either in  
15 your role as regional president or in your role as vice president of the  
16 three Plaintiff entities?

17 A Yes, but I was hardly surprised. But yes, that is true.

18 Q So you did not review or approve anything in the complaint,  
19 any allegation before it was filed, correct?

20 A No, I did not.

21 Q And do you recall being deposed May 27th of this year?

22 A Yes, I believe that's the date.

23 Q At the time of that deposition on May 27th, you had not even  
24 reviewed the complaint; is that correct?

25 A I believe that's true.

1 Q And at the date of that deposition, you had personal  
2 knowledge of a single allegation of the Plaintiffs' complaint; is that  
3 correct?

4 A No, nothing specific. Right.

5 Q And on the date of that deposition, you told us that you had  
6 absolutely no personal knowledge regarding how TeamHealth goes  
7 about determining what a particular emergency service will be charged  
8 at, correct?

9 A I'm not sure if that's the exact question, but that's driving to  
10 the issue.

11 Q Let me put it in a different then. Try to get a little closer. You  
12 have no personal knowledge what a reasonable charge for a level-five  
13 service should be in the Nevada market, correct?

14 A That's right. As I said earlier, yes.

15 Q And despite the positions you hold within the TeamHealth  
16 organization in the west region, at the time of your deposition. You  
17 didn't have any idea of how TeamHealth sets its charges in its charge  
18 masters, correct?

19 A That's not my area of expertise. And I didn't -- I don't have  
20 any specific understanding of how they -- how they do that now.

21 Q Do you at least have general knowledge that those bill  
22 charges have increased over time?

23 A I believe they have.

24 Q Do you know whether a doctor or a non-doctor is responsible  
25 for setting the charges?



1 MR. LEYENDECKER: Foundation, Your Honor. He's testified  
2 that's not his area of operations.

3 THE COURT: Overruled. You can answer, if you know.

4 THE WITNESS: I'm not aware. No, I don't know.

5 BY MR. ROBERTS:

6 Q At the time of your deposition, did you have any personal  
7 knowledge about any of the rates of reimbursement that the United  
8 Defendants paid to the Plaintiffs in this lawsuit?

9 A Can you repeat your question, please?

10 Q Yes. At the time of your deposition in May of this year, did  
11 you have any personal knowledge about any of the rates of  
12 reimbursement that the United Defendants paid to the Plaintiffs in this  
13 lawsuit?

14 A I don't believe I knew anything specifically, no, that I could  
15 have relayed there in that deposition. No.

16 Q Did you indicate that you had any personal knowledge in the  
17 rates that should have been paid for an out-of-network reimbursement in  
18 the Nevada market at the time of your deposition?

19 A I don't believe I offered an opinion on that, no.

20 Q And you didn't offer an opinion because you said you had no  
21 knowledge of what it should be, correct?

22 A That may be true. Yes.

23 MR. ROBERTS: Court's indulgence. I'm going to try to skip a  
24 few and see if --

25 THE COURT: You may.

1 MR. ROBERTS: -- anything is critical before 5:00

2 [indiscernible].

3 BY MR. ROBERTS:

4 Q Sir, do you have any knowledge as to how many patients an  
5 ER doctor in the Nevada market can see per hour under the current  
6 organizational structure and efficiencies that TeamHealth has  
7 implemented?

8 A Yes.

9 Q How many?

10 A Well, it varies from place to place. And it can be -- the  
11 anchors is around 2 patients an hour, but there are some places that  
12 have very high efficiency and are able to see -- more like 2.5 patients an  
13 hour, 2.6 patients an hour. And then in some of our more rural sides, we  
14 may see significantly less than 2 patients an hour depending on the time  
15 of arrival and, you know, how many patients come and so forth.

16 Q But when the crowded market like Las Vegas and a room full  
17 of people in the waiting room, those volumes can be fairly high, correct?

18 A Yes, sir.

19 Q And can it be 10 patients an hour? You ever heard of that?

20 A We certainly hope not, but I've worked when it's -- when  
21 that's happened. You know, anything can occur.

22 MR. LEYENDECKER: Your Honor, we're getting pretty close  
23 to opening the door.

24 MR. ROBERTS: Let me ask just one last question, Your  
25 Honor.

1 BY MR. ROBERTS:

2 Q How many people per hour does your plumber see?

3 A I'm sorry?

4 Q How many people per hour does your plumber see?

5 A Well, I think just one.

6 Q Thank you, sir.

7 MR. ROBERTS: No further questions, Your Honor.

8 THE COURT: Redirect?

9 MR. LEYENDECKER: None, Your Honor.

10 THE COURT: Does the jury have any questions for Dr.

11 Frantz? If so, this is your chance. I don't see anybody giving me the high

12 sign. Okay. Good enough. May we excuse Dr. Frantz?

13 MR. LEYENDECKER: Yes, you may, Your Honor.

14 MR. ROBERTS: Yes, you may, Your Honor. Thank you.

15 THE COURT: Dr. Frantz, you may step down, and you're

16 excused.

17 THE WITNESS: Thank you.

18 THE COURT: So let's take our afternoon recess for today.

19 During the recess, you're instructed not to talk with each

20 other or anyone else on any subject connected with the trial. Don't read,

21 watch or listen to any report of or commentary on the trial. Don't

22 discuss this case with anyone connected to it by any medium of

23 information, including without limitation; newspapers, radio, internet,

24 cell phones, texting -- or cell phones.

25 Do not conduct any research on your own relating to the

1 case. Don't consult dictionaries, use the internet or use reference  
2 materials. Don't talk, use social media, text, tweet, Google or conduct  
3 any other type of research with regard to any issue, party, witness or  
4 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 case is finally submitted to you.  
7 Thanks for another great day. It is 4:57. I'm bringing the lawyers in at  
8 8:30. You can start tomorrow at 9. Okay.

9 [Jury out at 4:57 p.m.]

10 [Outside the presence of the jury]

11 THE COURT: So is there anything that the Plaintiff wants to  
12 put on the record before we take our recess?

13 MR. ZAVITSANOS: No, Your Honor.

14 MR. BLALACK: Not -- are we going to do the voir dire on Mr.  
15 Leathers or not?

16 THE COURT: He went out in the hall just now. There's  
17 something I need to talk to the chief judge about. I should be gone about  
18 10 minutes.

19 MR. BLALACK: Okay.

20 THE COURT: If I can reach her right away. I'll come back as  
21 soon as I can.

22 MR. BLALACK: Okay.

23 THE COURT: Thank you for your professional courtesy.

24 MR. ROBERTS: Thank you, Your Honor. And as you know, I  
25 didn't want to put what was in the hall on the record, but I agree to do it

1 after your conference with the chief judge.

2 THE COURT: I understand. Thank you.

3 MR. ROBERTS: Thank you, Your Honor.

4 [Recess taken from 4:58 p.m. to 5:12 p.m.]

5 [Outside the presence of the jury]

6 THE COURT: Mr. Roberts, when you're ready.

7 MR. ROBERTS: Thank you, Your Honor.

8 To confirm the objection that I made in the hallway, during  
9 the break, Your Honor --

10 THE COURT: Now Mr. Leathers is in the room, is that an  
11 issue for anybody?

12 MR. LEYENDECKER: Your Honor, did you ask me -- Mr.  
13 Leathers to leave?

14 MR. ROBERTS: Are we still going to do an offer of proof with  
15 him?

16 MR. BLALACK: We're going to do a voir dire of him --

17 MR. ROBERTS: Right.

18 MR. BLALACK: -- related to another motion.

19 THE COURT: All right. I just didn't know how you wanted to  
20 start, whether it was with argument, or with the proof?

21 MR. ROBERTS: Well, I don't think there's anything to --

22 MR. BLALACK: I don't think any of this pertains to --

23 MR. ROBERTS: He's an expert, he's not excluded, I don't  
24 think the things he's testified about.

25 MR. BLALACK: I agree.

1 MR. ROBERTS: I have no objection if he remained in the  
2 courtroom.

3 So the specific testimony I raised out in the hallway was a  
4 question that I objected to, and the answer to the question is, "If rates are  
5 not high enough you will have trouble playing the physicians. Now I  
6 may not have gotten that exactly right, but that's pretty close to what he  
7 said.

8 We objected to the statement in opening, that this case was  
9 about the quality of care in Las Vegas, going forward. And that, to us,  
10 that was very objectionable, it violated *Lioce*, it encourages the jury to  
11 decide the case on a basis other than whether or not the reimbursement  
12 rates we paid were reasonable.

13 Because what it does is, imagine now going in the back, well,  
14 this case is about the quality of care. That counsel -- you know, that's  
15 what they said, "Who here is against better quality care in Las Vegas,  
16 raise your hand?" The jury can't be encouraged to do that, that's  
17 nullification. But now we've taken it to a different level with this  
18 question, because the jury has no evidence from which they can decide if  
19 the rates United paid on the claims at issue were high enough to prevent  
20 TeamHealth and these plaintiffs from hiring and paying physicians.

21 In order to answer that question the jury would have known,  
22 well, how much does it cost to pay the physician per account, and we  
23 know from the offer of proof on Mr. Murphy, that the average is \$150 per  
24 account, and we know that the rate they said was egregious is not  
25 enough to pay physicians, was 254 an hour, where they're making a

1 profit.

2           So what the jury is left to speculate, is if we don't give them  
3 enough money they won't be able to pay physicians, and the quality of  
4 care in our community will suffer, but they have no information from  
5 which they can make that decision, so they're just left to speculate, and  
6 probably award more money, just because they don't know the answer  
7 to that, and they don't want to hurt quality of care in Las Vegas.

8           And that's why this went too far, because now it's not just if  
9 it's not high enough, it's quality of care, it's if it's not high enough we  
10 can't pay physicians. Now we know from Mr. Murphy what their cost,  
11 their all-in cost of clinical care is, for physicians per visit, and the jury  
12 ought to know that now too, and we ought to be able to play the offer of  
13 proof that we may on the record here in the courtroom with Mr. Murphy,  
14 and I should have been able to inquire, but I think that can be fixed if we  
15 now play the offer of proof.

16           Alternatively, if the Court still disagrees, as she did in the  
17 hallway, the jury needs to be instructed that this case is not about  
18 whether or not the rates are high enough to pay physicians. They need  
19 to be told in an instruction that you have no evidence before you on the  
20 cost of care, and I have held that it's irrelevant to your decision. You  
21 should not consider whether the rates or high enough to hire and  
22 maintain the employment of quality physicians, in Las Vegas, in making  
23 your decision.

24           They need to know that. They either have to have the  
25 evidence, or they need to be told not speculate, now that these improper

1 issues have been interjected into these proceedings. Thank you, Your  
2 Honor.

3 THE COURT: Thank you. And the response, please?

4 MR. ZAVITSANOS: Yes, Your Honor. People, number one,  
5 as we discussed out in the hallway, Mr. Leyendecker was saying just  
6 general, foundational, healthcare industry kind of realities. We did not  
7 get into pay, we did not get into costs, we did not get into profit margins.  
8 These are the exact same arguments that we made during opening. It's  
9 the exact same argument that the other side made, when we opened the  
10 door multiple times during the trial, there's nothing new here; he did not  
11 step over the line.

12 Second, if we're going to include a list of what's not relevant,  
13 that list is going to be a mile long, in terms of what the Court should  
14 instruct, that they have \$1300 an hour lawyers here, represented, that  
15 they shouldn't consider that. They've got an army of a hundred lawyers  
16 reviewing documents, they shouldn't look at that. I mean, that's kind of  
17 silly.

18 The Court's charge is going to contain the evidence they  
19 should consider, the instructions they should consider, it is not difficult  
20 to instruct what they should not consider, and frankly, there are, I  
21 believe, in the general instructions at the beginning, do not let -- and  
22 then there's a whole slew of things like, you know, motion the --

23 THE COURT: Public opinion --

24 MR. ZAVITSANOS: Yeah. Public opinion and things like that,  
25 and these are -- these have been -- and I know, Your Honor, Nevada is



1 obviously like every other States, these are very carefully thought out.  
2 Jurors take it very seriously, and I just don't think it's warranted at all. I  
3 don't believe we've done anything to open the door, and I keep making a  
4 run at this, and it's the same -- these are the same issues that have come  
5 up time and time again.

6 MR. LEYENDECKER: And, Your Honor, very briefly, as far as  
7 on this point, because Mr. Roberts, he wheels in the *Lioce v. Cohen*  
8 decision, like it's some type of a sword. As we argued *Lioce* they came  
9 up with the same issues the first time, in response to my argument  
10 during opening statement, that *Lioce* was during an alternation issue. At  
11 no point in time did we ask the jury to disregard the law, or the jury  
12 instructions that you're going to give.

13 So to the extent that it is not an applicable standard, and this  
14 goes all the way to I think one of the first decisions to be made on our  
15 discovery orders, about not talking about a factor in this case. So  
16 therefore, we augment the record then, with those two points.

17 THE COURT: Thank you. And the reply, please?

18 MR. BLALACK: Just briefly, Your Honor, there's not going to  
19 be any instruction on the quality of care in Las Vegas. There's not going  
20 to be any place they can put that on their form. If you should ask the jury  
21 to make their decision based on the quality of care in Las Vegas, you are  
22 asking for jury nullification. Thank you.

23 THE COURT: All right. And I had overruled the objection. I  
24 just never have seen the issue of cost of care as being relevant here, or  
25 the profitability of the Plaintiff. I'm going to deny the request to play the

1 Murphy offer of proof and deny the request for an instruction.

2 Now what's our next issue?

3 MR. BLALACK: I think we're going, if Mr. Leathers is  
4 available, hopefully in about 10 or 15 minutes, to resolve the record of  
5 the question of his report, and then we can briefly argue the question of  
6 the --

7 MR. LEYENDECKER: May I just --

8 MR. BLALACK: -- the admissibility --

9 MR. LEYENDECKER: May I just raise one thing? You know, I  
10 was remembering, Your Honor, in my mind, questions on this topic,  
11 whether he had made disclosure, I cited something to Your Honor in the  
12 original award and the deposition, and last night I finally tracked down  
13 what I was remembering. And here on page 131, he gives an answer:

14 "A You can certainly see, in my exhibits."

15 And he's talking about the original report, "the full amount of  
16 damage that the Plaintiffs are claiming between the billed charge and the  
17 amount allowed.

18 "Q Right. And you're treating all of that delta as damage,  
19 correct?

20 "A Yes. "

21 And then he goes on to say so forth and so on. So the  
22 numbers went in the report, he's asked about it in the deposition, but  
23 there's no prejudice here, for obvious reasons. We admitted the  
24 summary of 473, that has the charges, and the allowed amounts, by  
25 Plaintiff, by Defendant, that heard from the witness that they can --

1 MR. BLALACK: Can I interrupt? If we're going to argue this  
2 I'd like Mr. Leathers to leave. I thought we were going to do the offer of  
3 proof. If we're going to argue, I'm going to ask that he step out.

4 THE COURT: Mr. Leathers, please step out.

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: And let me just frame the issue for the record.  
7 Plaintiff updated the expert report, Sunday, says it's a calculation update,  
8 and the Defendant claims that they believe there's new methodology.

9 MR. BLALACK: New methodology that results in a  
10 completely different way to get to the outcome, that's the issue I'm  
11 having. You hear his testimony, and you disagree with him, then it  
12 moots the point entirely. If you hear it, and you think there's been a  
13 change, then we have some have something to decide.

14 MR. LEYENDECKER: The only thing I'd add, Your Honor, so  
15 the evidence couldn't have been more clear, he's testified the bill charge  
16 allowed amount, and that's the damage, yes. All right. Today we saw  
17 extensive cross-examination about, oh, claim this number, claim that  
18 number, drop it here, drop it there.

19 I just think there's no prejudice, it was fairly disclosed, it was  
20 fairly asked about in the first deposition. The idea that there's a new  
21 methodology which was -- I mean, exactly asked for and described on  
22 page 131; it simply doesn't exist in the record.

23 THE COURT: What's your response?

24 MR. BLALACK: Your Honor, the only thing I can do is, is I  
25 think I've explained I think there was. You may ultimately disagree with

1 me, but I think the best way to resolve it is to hear from the witness, look  
2 at his paper, and see if you agree or disagree.

3 THE COURT: Good enough. So, Marshal, lets bring in Mr.  
4 Leathers. Bring in Mr. Leathers. Mr. Leathers, the witness.

5 THE MARSHAL: I'll get him.

6 THE COURT: Can you guys introduce me to the new team  
7 members who have joined us?

8 MR. BLALACK: Oh, this is our expert, Mr. Deal and his  
9 colleague. They're going to be joining us tomorrow, and my colleague,  
10 Stacey [phonetic] who works with me.

11 THE COURT: Okay.

12 MR. ROBERTS: And, Your Honor, I may have neglected to  
13 put it on the record, although I believe your Court recognized him earlier  
14 at counsel table with me, was Mr. Colby Balkenbush.

15 THE COURT: I did, out in the hall.

16 MR. ROBERTS: Thank you.

17 THE COURT: Okay.

18 MR. ROBERTS: Yes, he was in the hall.

19 THE COURT: Okay. And this is Ms. Lewellyn? No.

20 MR. BLALACK: That's his assistant.

21 MR. ROBERTS: That's Bonnie, my assistant, she's my  
22 paralegal --

23 THE COURT: Got it.

24 MR. ROBERTS: The one I introduced during voir dire, who  
25 was sitting over in the corner.

1 THE COURT: Thank you, both.

2 MR. ROBERTS: Behind -- I think she was behind the column  
3 Your Honor.

4 THE COURT: The courtroom is 3D, that's all I can say.

5 UNIDENTIFIED SPEAKER: I've been in many trials with  
6 Audra, and sometimes Lee helps too.

7 THE COURT: Please proceed.

8 MR. BLALACK: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. BLALACK:

11 Q Mr. Leathers, welcome back. We're outside the presence of  
12 the jury because I'd like to help explain real briefly to the Court what --  
13 how you went about forming your opinions, in your various reports, as  
14 they changed over time. So let me just take you through them real  
15 quick, and I think we can hopefully establish what we need to  
16 [indiscernible].

17 MR. BLALACK: So first I'm going to ask my colleague,  
18 Shane, to bring up on the screen, Defendant's Exhibit 5083.

19 BY MR. BLALACK:

20 Q Sir, do you recognize Defense Exhibit 5083, is your original  
21 reported dated July 30th, 2021?

22 A Yes.

23 MR. BLALACK: Shane, could you go to the first page,  
24 paragraph 1, under Solomon.

25 BY MR. BLALACK:

1           Q     And Mr. Leathers, you can just read that to yourself. Well,  
2 obviously not in front of a jury, but am I correct that your -- the original  
3 scope of work for your first report was to measure and calculate alleged  
4 actual damages --

5                     MR. BLALACK: Strike that.

6 BY MR. BLALACK:

7           Q     Measure and calculate the actual damages from an alleged  
8 violation of the Nevada Racketeering defense?

9           A     Yes.

10          Q     Now will you would go to paragraph 40 -- well, as you look at  
11 paragraph 40, which is on page 11, you will see an amount resulting  
12 from alleged fraud. Do you see that?

13          A     It's kind of hard to see, okay.

14          Q     There you go. Can you just skim that to yourself, and when  
15 you're ready we'll go over to the next page and continue reading?

16                     [Witness reviews document]

17                     THE WITNESS: Okay.

18 BY MR. BLALACK:

19          Q     All right. Go to the top of page 12, the end of paragraph 40,  
20 and then paragraph 41, along with the charge?

21                     [Witness reviews document]

22                     THE WITNESS: I see that.

23 BY MR. BLALACK:

24          Q     Okay. Now, sir, look at that chart, do you agree with me  
25 what you were doing in your efforts to measure the damages for -- the

1 actual damages for the alleged RICO violation, you were focusing on the  
2 discount, at least in this portion of your analysis, associated with use of  
3 the Data iSight tool?

4 A Yes.

5 Q And you came up with something you called the iSight  
6 savings percentage; do you see that?

7 A Yes.

8 Q And that's in the far right-hand column?

9 Q Yes.

10 A And that was measured, as you said there, column B is equal  
11 to column C, divided by A, correct?

12 A Yes.

13 Q So what you had done there was figure out which claims  
14 were reimbursing the Data iSight tool, correct?

15 A Yes.

16 Q And at that time it was 797, correct?

17 A Yes.

18 Q And then you had measured the billed charge versus the  
19 allowed for each of those claims TeamHealth Plaintiffs, correct?

20 A Correct.

21 Q And then you would come up with a percentage of the billed  
22 charges that were reimbursed in the allowed amount with connection to  
23 Data iSight?

24 A Yes.

25 Q Okay. And those are the numbers in that column B, that are