

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 10
PAGES 2251-2500**

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

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

CERTIFICATE OF SERVICE

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

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

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

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

1 MR. BLALACK: Strike that.

2 BY MR. BLALACK:

3 Q So according to UMR's claim data, UMR allowed payment of
4 almost the exact same amount, that's off by one penny, on both claims,
5 just as Mr. Ziemer testified he would have expected, right?

6 A Yes, I believe that's accurate.

7 Q All right. Let's look at the other example that Mr. McManis
8 showed Mr. Ziemer.

9 MR. BLALACK: So Shane, could you pull up Mr. Ziemer's
10 testimony from November 15th again? On page 231, line 12. Pull it up a
11 little bit.

12 BY MR. BLALACK:

13 Q And so instead of reading it like I did before, I'm going to ask
14 you and the jury, sir, to start on page 12 and read down to the next page,
15 page 232 at line 11.

16 A You meant row 12; is that right?

17 Q Line 12. Yes, starting line 12.

18 A Line 12? Line 12, yeah.

19 Q At the question, "All right, Mr. Ziemer".

20 A Yeah.

21 Q Read to the bottom of the page, and then go to the next
22 page, and read to line 11 of the next page. Once you're done and the
23 jury's done, if you could now skip to page 233, line 11?

24 A Okay, I'm done.

25 Q And read line 11 to 25, so the bottom of the page.

1 A Okay.

2 Q And go to page 235. There's a final Q and A I want to show
3 you and the jury. Line 10 to 13 on page 235. Do you see that, sir?

4 A I do, yes.

5 Q All right. Mr. Deal, based on the testimony from Mr. Ziemer
6 and the questioning from Mr. McManis, what did you understand Mr.
7 McManis was purporting to show with this summary, Plaintiffs' Exhibit
8 473-A?

9 A So basically, the same point, which is perhaps casting
10 aspersions or doubts on the adjudication of the claims by saying, same
11 employer, same year, same codes, same seeming things that one would
12 expect to similar allowed amounts, same bill charges. And yet, he sees
13 some varying allowed amounts across these different claims. In this
14 case, I think it was three different amounts that he referenced across four
15 claims.

16 Q In fact, the Plaintiffs' Exhibit, PX 473-A, is up on the screen
17 now. If you look at the allowed about row, row 9, how many different
18 values are there?

19 A There's three unique values there. \$230.30 that shows up
20 twice, \$253.33 shows up once, and \$315.25 shows up once.

21 Q Do you know if these four claims on Plaintiffs' Exhibit 473-A
22 can also be found on Plaintiffs' disputed claims list, Plaintiffs' Exhibit
23 473?

24 A Yes, they can.

25 MR. BLALACK: Shane, would you bring up Plaintiffs'

1 disputed claims list? 473, and in the bottom half. I'll represent that this
2 is exactly the same data as Plaintiffs' Exhibit 473. I've just done some of
3 the -- I think we've got some highlight beforehand. Do you have that,
4 Shane? There we go.

5 BY MR. BLALACK:

6 Q Now, you see, Mr. Deal, that I've highlighted --
7 pre-highlighted those four claims?

8 A I see that, yes.

9 Q Now, can you --

10 MR. BLALACK: Shane, please scroll down to 6773. Do you
11 have it?

12 MR. GODFREY: Yes, sir.

13 BY MR. BLALACK:

14 Q All right. If you can, Mr. Deal, confirm whether that first row,
15 the demonstrative Mr. McManis showed you -- or excuse me -- showed
16 Mr. Ziemer and the jury Plaintiffs' Exhibit 473-A; is that the same claim as
17 row 9130 on the disputed claims list? If you want, I can take you through
18 some of the data?

19 A Yeah, I should be able to do it. If you can scroll so I can see
20 date of service? Just pause there for a moment. Yes, I see all four of the
21 dates of service match. I see all four of the billed CPT codes match. I see
22 all four of the charges match.

23 Q Okay.

24 A So these appear to be the same claims.

25 Q Mr. Deal, does the claim on row 11202 of the disputed claims

1 list, Plaintiffs' Exhibit 473, correspond to the second claim on Mr.
2 McManis' demonstrative?

3 A Yes, it does.

4 Q What are you relying on for that?

5 A Again, the data of service, the CPT code, the charge, and the
6 allowed amounts. I believe the employer also -- if we can scroll to the
7 employer? I'll just verify that as well. Yes, yes.

8 Q Okay. Mr. Deal, does this claim on row 10817 of the disputed
9 claims list correspond to the third claim on Mr. McManis' demonstrative
10 473-A using the same criteria you just described?

11 A It does. Yes.

12 Q Finally, Mr. Deal, does the claim on row 6774 on the disputed
13 claims list correspond to the fourth claim his demonstrative, again, using
14 the same criteria?

15 A Yes, it does.

16 Q Mr. Deal, were you able to locate all four of these claims and
17 underlying claims data that UMR produced in this lawsuit which is
18 contained in Defense Exhibit 4006?

19 A I was, yes.

20 Q I want to start by looking more closely at the third claim on
21 the demonstrative that Mr. McManis used.

22 MR. BLALACK: Shane, could you please keep the
23 demonstrative open, but close Plaintiffs' 473? And then pull up Defense
24 Exhibit 4006, again, the UMR claims data. If you would go to row 949
25 and highlight that row?

1 BY MR. BLALACK:

2 Q Okay. Mr. Deal, were you able to determine whether the
3 third claim on Mr. McManis' demonstrative, 473-A, and the
4 corresponding claim on the disputed claims list, Exhibit 473, are the
5 same claim as shown on row 949 of the UMR claims data?

6 A Yes, the third one is October 23rd of 2019, and that's
7 highlighted up above as well. Same bill charges.

8 Q Well, let me just ask it this way. What is the employer listed
9 in column D?

10 A Scroll to the left there. Las Vegas Sands.

11 Q And what's the group number in column E?

12 A 76411 -- excuse me. 76410018.

13 Q And on the -- is the employer with the new number the same
14 as in the demonstrative that Mr. McManis used?

15 A Yes, they are.

16 Q And the date of service; is it the same?

17 A It is.

18 Q Is the charge amount 1,428 the same?

19 A Yes.

20 Q Look at this, Mr. Deal. When we get to column S, the
21 allowed amount, what does the actual historical data the UMR claims
22 system show was the amount that UMR allowed for this claim?

23 A \$230.30.

24 Q And that's for, again, claim number three, row -- which is
25 5893 in the demonstrative?

1 A That's right. So that would match the first and the fourth
2 row, the allowed amounts for this.

3 Q Now, whereas before you had two claims that were
4 reimbursed at 230.30. Now, you have three?

5 A That's correct. Yes.

6 Q Now, does the third claim on Mr. McManis' demonstrative
7 and the corresponding claim on Plaintiffs' disputed claims list, Exhibit
8 473, accurately report the amount that UMR actually allowed for the
9 disputed claim as reflected in the claims data produced by UMR?

10 A No, it doesn't.

11 Q According to UMR's data, the amount was the 230?

12 A And 30 cents. That's right. \$230.30.

13 Q Now, let's look at that second claim on the demonstrative.
14 The one that has allowed amount 315.25. Do you see that?

15 A I do. Yes.

16 MR. BLALACK: Now, please pull up Defense Exhibit 4006
17 again, Shane. That's the underlying UMR claims data. Go to row 3 and
18 highlight row 3. You got that?

19 BY MR. BLALACK:

20 Q And Mr. Deal, are you able to tell me whether the second
21 claim on Mr. McManis' demonstrative, the one that's got the amount of
22 \$315.30 as the allowed. Are you able to determine whether that claim
23 and the corresponding claim on the Plaintiffs' disputed claims list are the
24 same claim as the one shown in row 3 of UMR's claims data?

25 A Yes.

1 Q How can you confirm that they are the same?

2 A Again, looking at the charge, the code, the date of service.

3 Q Mr. Deal, at this time, we're going right to left. Right to left,
4 starting with column S. Is the allowed amount of UMR's claims data
5 insist on the same allowed amount that's in Mr. McManis'
6 demonstrative?

7 A It is. Yes.

8 Q As \$315.25?

9 A That's correct.

10 Q And going to column R. Is the charge amount the same?

11 A It is. \$1,428.

12 Q And is the date of service in column O of UMR data also the
13 same date of service in Plaintiffs' demonstrative?

14 A Yes. June 21st of 2019 in both data sets.

15 Q Well, looky here, sir. Look what we found. What's in column
16 D of UMR data? What is the employer listed for this claim in the UMR
17 claims system?

18 A Switch, Ltd.

19 Q Mr. Deal, for this claim, do you see any reference anywhere
20 in the UMR claims data, Las Vegas Sands?

21 A I didn't -- well, not for this claim. For the ones we just looked
22 at, the other three, yes. But for this claim, no.

23 Q For the claim that's in UMR data, row 2 that corresponds to
24 the demonstrative claim in the second line of Mr. McManis'
25 demonstrative, Mr. McManis' demonstrative refers to the employer as

1 being Las Vegas Sands, correct?

2 A That's correct.

3 Q Which is the same employer sponsor identified for the other
4 three claims, right?

5 A That's correct.

6 Q Which might lead one to think that the allowed amount
7 would be the same as the other three claims, right?

8 A That's what I understand the line of questioning was sort of
9 implying that it should have been the same and it wasn't.

10 Q But in fact, when you go to the underlying raw data that UMR
11 produced in this case, the employer sponsor is not Las Vegas Sands.

12 A That's correct.

13 Q What's the name of the employer again, sir?

14 A Switch, Ltd.

15 Q And just so that there's no confusion and it's not just a typo.
16 When you went to see whether the group number in column E of UMR
17 data is different from the group number that Mr. McManis showed Mr.
18 Ziemer and the jury in the summary?

19 A It's different. Yeah. The first three digits, I think, are the
20 same. But then it's 12707 for Switch, Ltd. And it's 10018 for Las Vegas
21 Sands.

22 Q You have two different employers are listed in these
23 documents, is the fact that you have different group numbers surprising?

24 A It's not at all surprising.

25 Q That would be surprising if they weren't different group

1 numbers?

2 A It wouldn't surprise me one way or the other. It could occur,
3 it couldn't, it could be different. But certainly, there would be no reason
4 to think they'd be the same.

5 Q Okay. After your review of the underlying claims data for
6 UMR here, did you have a view about whether the demonstrative PX
7 473-A and the corresponding claims referenced in the demonstrative and
8 disputed claims list, Plaintiffs' 473, accurately captured employer
9 information listed in the underlying claims data produced by UMR in this
10 case?

11 A It got it right for three of the four claims, but not the fourth
12 one.

13 Q Now, Mr. Deal, given that there are different employers for
14 these claims, Las Vegas Sands and Stitch, Ltd., is there anything
15 surprising to you about the fact that this claim has a different allowed
16 amount from the other three claims on Mr. McManis' demonstrative?

17 A No, it's not surprising at all.

18 Q Is there anything in the data you have discussed with the jury
19 about these claims that Mr. McManis showed Mr. Ziemer which led you
20 to conclude that the reimbursements reflected here are arbitrary?

21 A No, in fact, they look quite consistent. When it's the same
22 employer and the same code and the same year, all the alloweds are the
23 same. When it's a different employer, same code, different amount; not
24 surprising at all.

25 MR. BLALACK: Okay. I'm going to run through quickly just a

1 handful of other examples, and then I can wrap up, Your Honor. Do you
2 want to take a break?

3 THE COURT: We're close. I would say can you go till 3:45?
4 Or do you want to take a break now?

5 MR. BLALACK: I've got about -- I've got about 10 minutes,
6 but I'm fine to come back and tie it off and juts give it to Mr.
7 Leyendecker.

8 THE COURT: Everybody okay with taking a break now and
9 then having a one last hour? Okay. So let's take a recess. We'll be back
10 at 3:55.

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

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

23 Have a good break. See you at 3:55.

24 THE MARSHAL: All rise for the jury.

25 [Jury out at 3:38 p.m.]

1 [Outside the presence of the jury]

2 THE COURT: You may step down.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Okay. Room is clear. Plaintiff, anything for the
5 record?

6 MR. ZAVITSANOS: I'm sorry, Your Honor?

7 THE COURT: Anything for the record?

8 MR. LEYENDECKER: No, Your Honor.

9 THE COURT: Defendant?

10 MR. BLALACK: I have something, Your Honor. As I
11 previewed when we were at the sidebar, I'm almost at the end of my
12 examination now, so I'd like to raise what I'd like to do to conclude my
13 examination in forming my basis for it.

14 So what I'd like to do is, as I mentioned, Mr. Deal's
15 reasonable value opinion is based on two things. It's based on a range
16 that he had, which was the range of the median range in the out of the
17 network rates that UnitedHealthcare had with other ER providers. And
18 then the median rates that TeamHealth claims had with other health
19 insurance. That was his definition of what is a fair market rate and
20 reasonable value, which he basically laid the predicate for, but did not
21 articulate the basis for it.

22 Based on the in limine rulings that the Court had before the
23 beginning of trial, it's my view that that top value is not admissible, and
24 I'm not asking to revisit that. That's been resolved and ruled on. We've
25 made our record, and there's no need to -- we'll put in our offer of proof,

1 but no need to revisit the [indiscernible]. The bottom measure though is
2 still an available option, and here's why.

3 When Plaintiffs moved to exclude in motion in limine
4 number 3 the offering of evidence regarding network rates, I objected to
5 that argument and made a number of points. One of which was that Mr.
6 Deal, our primary expert, I explained, would be relying on this
7 benchmarking value as a core opinion for our liability in the case. And I
8 explained why it was sound in economics, independent of any legal
9 analysis, and that it should be admitted on that basis.

10 Your Honor did not grant the motion at that time. Your
11 Honor specifically said -- and I'm quoting here. This is at page 211 of the
12 transcript on October 19th, line 25 written over to 212. The Court said,
13 "Okay, you know, I'm going to defer this to the time of trial only because
14 I want to see how the Plaintiffs' evidence comes in". You did say, "I'm
15 inclined to say that in-network just are relevant. But if I preclude your
16 witness from testifying on that, I'll make sure you have an offer of proof
17 on the record, and an objection on the record, and we'll take it on its time
18 in front of the jury". So where we left it on that argument was you were
19 leaning in that direction but didn't rule and reserved on the issue until
20 the appropriate time. It's my view that now is the appropriate time.

21 THE COURT: So I'm -- did I interrupt you?

22 MR. BLALACK: I had one more point to make, Your Honor.

23 THE COURT: Go ahead, please.

24 MR. BLALACK: In question of your ruling. Separate from
25 that, Your Honor, we moved in limine concerning Plaintiffs' agreements

1 with other health insurers. And because of the Court's prior ruling on
2 motion in limine 3 would acknowledge that that was an issue that had
3 been resolved against us and was moot. But we know that we had a
4 paired motion to that, which meant that the Plaintiffs should not be able
5 to consult with evidence, offer evidence of our network rates and
6 agreements with other ER providers.

7 So I said if we can't offer evidence of their network rates and
8 agreements, they shouldn't be able to offer evidence on our network
9 rates and agreements. Plaintiffs opposed that position, they opposed
10 our motion. And the Court agreed with them and said that they should
11 be able to offer. There should be evidence of our agreements and our
12 rates with other ER providers was admissible and prevented and denied
13 our motion in limine to exclude.

14 So where we stand as of now is that the expressed question
15 of network rates being relevant to expert opinions was reserved and
16 unresolved at settlement [indiscernible]. Our request to -- if we were
17 going to not be able to offer theirs, then they shouldn't be able to
18 introduce evidence on ours was denied. Meaning the evidence of our
19 network rates and agreements with other providers is fair game. This is
20 not the way I wanted to present my liability defense, but it's better than
21 nothing.

22 So my request, Your Honor, is that I be able to have Mr. Deal
23 explain the basis of his opinion that he just gave beyond just his
24 experience and knowledge and judgment about why the allowed
25 amounts represent a reasonable value by not referring to the range, but

1 at least explaining that he's got a benchmark for network, union, network
2 rates, and that that represents a reasonable basis for [indiscernible]. So
3 that's my [indiscernible].

4 THE COURT: I need to go and refresh my memory on the
5 issue.

6 MR. BLALACK: Sure.

7 THE COURT: Let's argue this at 3:55. That gives you guys a
8 chance to discuss it too.

9 MR. LEYENDECKER: Sure. Thank you, Your Honor.

10 MR. BLALACK: Thank you, Your Honor.

11 THE COURT: Thank you.

12 [Recess taken from 3:43 p.m. to 3:54 p.m.]

13 [Outside the presence of the jury]

14 THE COURT: Are we going to ask the witness to leave?

15 MR. BLALACK: Oh, sure.

16 THE COURT: Thank you, Mr. Deal.

17 THE WITNESS: Of course.

18 THE COURT: Okay. Plaintiffs?

19 MR. LEYENDECKER: A few things, Your Honor.

20 MR. BLALACK: Hold on.

21 THE COURT: Well, let me make sure that I can see
22 everybody.

23 MR. BLALACK: He's out, Your Honor.

24 MR. LEYENDECKER: Okay. Two things, Your Honor. It's
25 very straightforward.

1 Number one, we have not put on any evidence of their in-
2 network contracts, so I'm not sure where that came from. Number two,
3 and honestly, more importantly, I think it was in February of this year
4 that -- whether it was Your Honor or a Master issued a first ruling that
5 said no in-network rights. At least two or three times since then, they've
6 tried to come back to that. And each time you've been consistent in your
7 rulings.

8 Now, with 100 percent clear knowledge and understanding of
9 Your Honor's rulings on that, they chose to hire an expert and chose to
10 put together an in-network file. And the reason for that is painfully
11 obvious. It's because they pay us less than half of what they pay every
12 other provider in-network.

13 And so how could they come in here and make a defense if
14 they're going to make an analysis of the most obvious, fifth grader could
15 understand, apples to apples comparison, which is out-of-network -- out-
16 of-network. They can't. And so with full knowledge that you had said
17 no, knowing they didn't want to go their route because it says they owe,
18 they now say, save us from ourselves. And you should not.

19 MR. ZAVITSANOS: And one other thing, Your Honor. When
20 this issue came up during pretrial, Your Honor, made some kind of a
21 comment like, you don't like the idea of not having a -- of preventing a
22 party from calling an expert. At that point, both Ms. Lundvall and I
23 alerted the Court that we are willing to let him do a new analysis. We're
24 not going to depose him. We just need -- I think Mr. Leyendecker said
25 we just need his work papers, but we gave them plenty of opportunity,

1 without jamming them, without taking their deposition, and they elected
2 to stand pat on what they were doing. So I don't think there's anything
3 to talk about, Your Honor.

4 MS. LUNDVALL: Your Honor, the only additional point that I
5 would make and add to this presentation is this. Topic Number 4 of our
6 very first motion in limine dealt with the in-network negotiations that --
7 [indiscernible] contracts --

8 MR. ZAVITSANOS: You okay?

9 MS. LUNDVALL: More water.

10 UNIDENTIFIED SPEAKER: Can you get her some water
11 please, gentlemen?

12 THE COURT: So Marshall, will you let the jury know it will be
13 five more minutes?

14 Marshall, let them know it'll be five more minutes.

15 THE MARSHAL: Five minutes?

16 THE COURT: You were very polite to mention you've been
17 triple-teamed.

18 MR. BLALACK: Oh, well, I'm just assuming that Mr. McManis
19 is going to jump in here.

20 MR. ZAVITSANOS: Well, he's three times the lawyer, so
21 that's -- we're just making it fair.

22 MR. BLALACK: Well, go ahead.

23 MS. LUNDVALL: But the point being is that Topic Number 4
24 of our first motion in limine dealt with the healthcare provider's in-
25 network negotiations as well as the contracts that -- with United. That

1 was granted. That was not going to be part of this trial. As part of the
2 reason the Court deferred ruling on topic number 3 was based upon
3 whether or not --

4 THE COURT: Because I didn't know where you were going.

5 MS. LUNDVALL: -- that their [indiscernible]. We did not.

6 And so to the extent that we have had this issue does not -- they're
7 voluntarily trying to stick it in. You should not allow them to do so.

8 THE COURT: Do you guys want a couple of minutes?

9 MR. BLALACK: No, I'm ready, Your Honor. I mean, unless
10 there's -- is there anybody else on that side?

11 MR. ZAVITSANOS: No, sir. No.

12 MR. BLALACK: Okay. So Your Honor, a couple of things.

13 One, I don't think the description of the sequence of the discovery rules
14 is accurate, but we do not have a ruling barring us from offering
15 evidence on network rates, network contracts, or anything of the kind at
16 the time we gave Mr. Deal -- just the chronology is off. And, in fact, we
17 have hours and hours and hours of testimony about network rates,

18 network negotiations, network contracts of those [indiscernible].

19 Plaintiffs produced thousands and thousands of documents about
20 network negotiations and network contracts. And both sides -- both
21 sides in response to discovery requests voluntarily produced claims
22 [indiscernible] showing their network and non-network rates for people
23 other than [indiscernible].

24 So it's just not an accurate statement to say by the time of
25 engagement we had some fully knowledge that the central premise of

1 our liability defense was somehow off limits. Now, over time, and
2 particularly with rulings that the Court had in the summer based on
3 rulings from the Special Master, it became more clear to us that that was
4 where it was heading, which is why, obviously, we filed a motion in
5 limine seeking confirmation that we be permitted to do -- to rely on this
6 opinion. And in the event we weren't, making sure that the evidence of
7 network rates involving us that might be used against us would be
8 offered and available.

9 So that's where the state of the world was at the time of the
10 in limine hearing. And Your Honor heard the arguments on network
11 rates and reserved, which is fine. And as a result the Court has not
12 heard me say one word to this jury in opening or in -- in any witness
13 about network contracts and network rates. And I've got a pile of
14 material this high to do it, and we [indiscernible], but we're at the point
15 where our expert witness has given an opinion which -- and by the way,
16 Your Honor, is an opinion he's been qualified to give in court after court
17 after court from California to Florida.

18 THE COURT: I don't doubt his qualifications.

19 MR. BLALACK: And -- well, but it's not just that he's
20 qualified. The opinion that network rates can inform a basis for a
21 reasonable value of an out-of-network service is something he has done
22 many, many times. And he is on record on that. It's not like I went out
23 and got some guy who believes out-of-network rates are the appropriate
24 comparison when they're not even the same network. He's said it
25 courtrooms all over the United States. And then -- qualified to do it by

1 courts, by judges.

2 So I know that's -- you know -- an open question in this case,
3 but it is not the case that this is some aberrant opinion. It's an opinion
4 given in many other cases from the children's hospital case to
5 everywhere else.

6 And so our view is given the predicate that's been laid, given
7 that the issue was not ruled out of bounds in the in limine hearing and
8 was left open, and in fact, specifically, the motion in limine we made to
9 give out our network contract rates being offered against us was denied.
10 That was denied. They opposed that so they could offer it.

11 Now, they may have chosen not to offer it, but it was fair
12 game. And so my view is, given the Court reserved, given the prior
13 ruling, we ought to be able to at least show half of the benchmarks, so
14 the jury has some understanding of the basis. And that's all.

15 MR. ROBERTS: And --

16 MR. BLALACK: We're going to tag team too, Your Honor.

17 MR. ROBERTS: And I did want to briefly add one thing, Your
18 Honor.

19 THE COURT: Come on up, Mr. Gordon.

20 MR. ROBERTS: Just in fairness to the Court, in case you
21 missed it, this was Slide 37. The demonstrative that was shown to the
22 jury.

23 THE COURT: Yeah, I don't have access to that, but I have it
24 on my screen here.

25 MR. ROBERTS: And it does -- and this is what Mr. Deal

1 testified to. And as you know, the Plaintiffs have pointed to Fair Health
2 throughout the trial as the source for what the jury should look to for fair
3 and reasonable compensation. And Fair Health itself on the Fair Health
4 database says that there are three possible approaches for payers may
5 use for out-of-network allowed amounts. "For out-of-network providers
6 the allowed amount may be, number one, the same as for in-network
7 providers." And it's one of the accepted industry standards. And that's
8 already --

9 THE COURT: All right. So --

10 MR. ROBERTS: -- been read to the jury.

11 THE COURT: All right.

12 MR. ROBERTS: Thank you, Your Honor.

13 THE COURT: I'm going to deny the request, Mr. Blalack. his
14 is a case -- and I know this is a corny way to put it. This is a case about
15 apples and apples, not apples and oranges. I find that should you be
16 allowed to go that -- in that direction, it would be confusing to the jury.

17 MR. BLALACK: Okay.

18 THE COURT: Because the Plaintiff didn't go there.

19 MR. BLALACK: Understood, Your Honor.

20 THE COURT: And at 5:00 you can make your offer of proof.

21 MR. BLALACK: Your Honor, on this I think -- I don't want to
22 waste more time. We'll just include that in a big written offer we were
23 going to make and just --

24 THE COURT: Good enough.

25 MR. BLALACK: -- put it all in there.

1 THE COURT: Thanks. So --

2 MR. BLALACK: But I can finish up this witness in five or ten
3 minutes, Your Honor.

4 THE COURT: Great. Somebody get the Marshal, please, if
5 you will?

6 THE MARSHAL: All rise for the jury.

7 [Jury in at 4:05 p.m.]

8 THE COURT: Thanks. Thank you, everyone. Please, be
9 seated. Mr. Blalack, go ahead, please.

10 MR. BLALACK: Thank you, Your Honor. All right. Mr. Deal,
11 let's try to wrap it up.

12 BY MR. BLALACK:

13 Q I want to continue our discussion on the excluded claims list
14 and the extent to which it represents a reliable source of information to
15 make judgements about the arbitrariness or randomness of any
16 particular reimbursement, okay?

17 A Okay.

18 Q Individual reimbursement. All right. So we just went
19 through a list of claims that were shown to Mr. Ziemer earlier this week
20 by Mr. McManis, where the suggestion was that the claims data showed
21 that the claim had been reimbursed in a random and arbitrary manner
22 and Mr. Ziemer couldn't offer an explanation. And you just now walked
23 the jury through the underlying claims data for the UMR data related to
24 those claims; is that right?

25 A That's accurate, yes.

1 Q And do you have a view of whether the data in the UMR
2 system reflects anything arbitrary about the reimbursement for those
3 claims?

4 A I -- generally, I don't have a sense that there's anything
5 arbitrary about it, and the examples we went through were actually
6 consistent.

7 MR. BLALACK: Now, let's look at two other examples, which
8 we can do at the same time.

9 And I'm going to ask Shane if we could pull up Plaintiff's
10 disputed claims list and go to -- again, that's 473. And go to row 218.
11 My apologies. Let's go to a different -- my apologies, I jumped ahead.
12 All right. Let's go to Defendants' Exhibit 4005. It's the claims data
13 produced by United Healthcare Insurance Company. UnitedHealthcare
14 for claims submitted.

15 BY MR. BLALACK:

16 Q Okay. Do you see that, sir?

17 A I do, yes.

18 MR. BLALACK: Okay. Now, that I figured out where I am.
19 All right. Shane, if you could please pull up the disputed claims list?
20 That's Plaintiff's Exhibit 473. And I want you to highlight row 10183 of
21 the disputed claims list.

22 Okay. Now, in Defendant's Exhibit 4005 -- which again is the
23 data from United Healthcare's claim system for the at issue claims --
24 would you please go to row 64094 and pull that up?

25 BY MR. BLALACK:

1 Q All right, sir. Mr. Deal, could you tell me if row 64 of -- from
2 the disputed claims list, Exhibit 46 -- 473 -- describes the claim I'm
3 showing you from the underlying claims data, Defense Exhibit 4005?

4 A Yeah, maybe you could scroll on the lower one to the right
5 just a little bit so we can see -- so it's the same date of service.

6 Q If you look at the patient, provider, CPT code, and date of
7 service --

8 A Yeah, that's what I was trying to -- there we go. Oh, that's
9 the service provider. Yeah. Same patient name. Yeah, based on the
10 variables I've seen so far it does appear to be the same claim.

11 Q Okay. If you look at the information in Column W of
12 Plaintiff's disputed claims list -- 473 -- what employer is identified in that
13 column?

14 A Walmart.

15 Q That's one of the employer sponsors -- employer clients of
16 UnitedHealthcare we've heard testimony about in this trial?

17 A Yes, that's correct.

18 Q If you look at Column AO of United's actual claims data in
19 Defendants' Exhibit 4005 that was produced in this case, can you tell
20 what was the patient's employer?

21 A United States Postal Service.

22 Q So the -- and that's another client of the Defendant's in this
23 case, correct?

24 A That's my understanding, yes.

25 Q So the employer data in Plaintiff's disputed claims list,

1 Exhibit 473, showed the employer as Walmart. But the actual underlying
2 claims data maintained by United shows that the employee worked for
3 the Postal Service; is that correct?

4 A That's accurate.

5 Q So does the disputed claims list identify a different employer
6 than the employer reported in United's actual claim system?

7 A Yes, it's inconsistent with the underlying United Defendant
8 data.

9 MR. BLALACK: Shane, before we pull up another example,
10 let's go back to Plaintiff's disputed claims list, 473, and highlight row
11 4719. Please keep that up. And let's turn back to Defendant's Exhibit
12 4005, the United claims data. Row 67964. Highlight that.

13 BY MR. BLALACK:

14 Q Okay. Mr. Deal, were you able to match the claim on Row
15 4719 from Plaintiff's disputed claims list, Exhibit 473, to the highlighted
16 claim I'm showing you on row 67694 of Defense Exhibit 4005?

17 A Yes, it appears -- it -- the same date of service, the CPT code
18 is the same, the --

19 Q If you need to move -- need us moving into the row
20 [indiscernible]?

21 A Yes, maybe down below if you could just scroll to the left a
22 little bit? Yes, there we go. I see the name. Yes, they're the same claim.

23 Q Okay. All right. If you look at the information in Column W
24 of Plaintiffs' Exhibit 473; do you see that? Do you see the employer?

25 A I do, yes.

1 Q Another Walmart?

2 A I -- yes.

3 Q But if you look in United's own claims data, Defense Exhibit
4 4005 produced in this case; what employer is listed in Column AO?

5 A It's not Walmart. It's for -- excuse me. Full House Resorts.

6 Q Different company?

7 A Correct.

8 Q So once again, Mr. Deal, does the employer data in Plaintiff's
9 disputed claims list, Exhibit 473, match the employer data contained in
10 United's claim system? The data produced to the Plaintiffs in this case?

11 A No, the claims in dispute list is inconsistent with the
12 underlying United Defendant data.

13 MR. BLALACK: Let's look at another variable. We see two
14 examples where the employer information in the disputed claims list
15 does not match the employer information in the United claims system.
16 Let's look at a different type of error now.

17 So let's go back to the disputed claims list, Plaintiffs' 473, and
18 turn to row 1781. 1781. And highlight that if you would, Shane? Keep
19 that up on the screen and then turn to Defendants' Exhibit 4005, the
20 UnitedHealthcare claims data. And this one is going to get a bit more
21 complicated, Mr. Deal, so hopefully you, and more importantly, the jury,
22 can follow along. Shane, please pull up row 30737 and then row 31466.
23 And if you would then, once you've got them, Shane, hide the rows
24 between 30737 and 31466 so they both appear on the screen together.
25 Do you have those two? Okay.

1 BY MR. BLALACK:

2 Q You see those, Mr. Deal?

3 A I do, yes.

4 Q Now does this row from Plaintiffs disputed claims list Exhibit
5 473, which is the one that purport to detail the claims I'm showing you
6 from Defendants' Exhibit 4005? Do you want me to move --

7 A Yeah. Can you scroll to the left a little bit? Yes. The date of
8 service matches -- if you can scroll the bottom one to the right a little bit.
9 Can you go down to the lower one and scroll to the right? So -- sorry, go
10 to the left a little. Start at the charges. So that's 783 and then if you go
11 to the top one and find the charges. A little bit to the left. Yeah. So it's
12 the sum of those two, yeah. So it's the same one.

13 Q Okay. And that's what I was going to ask. If you look at the
14 CPT codes that are listed on the disputed claims list row 1781 and
15 compared to the CPT codes listed for the two claims in the United
16 Healthcare data, can you tell me what you see?

17 A Yeah. So they're organized a little differently so the top one
18 is each row is its own -- if you leave it to the right so we can see it a little
19 bit, you can see in column -- right there. Column M we see a 99283 and
20 a 12001, those two CPT codes. The corresponding claim on the bottom
21 we see 99283 with a modifier .25. That just means there's another code
22 coming. And then 12001. So think of the top one as being sort of flipped
23 into one row on the bottom.

24 Q And are you able to confirm if these two rows from Defense
25 Exhibit 4005 contain the claims in Plaintiff's disputed claims list Exhibit

1 473?

2 A Yes.

3 Q Now if you look at the allowed amount on the disputed
4 claims list -- Plaintiff's disputed claims list, can you tell the jury what the
5 allowed amount is?

6 A Yeah, \$235.55.

7 Q But if you look at the allowed amounts for these claims in the
8 Defendant's data, United Healthcare's data, Defense Exhibit 4005, do you
9 see 235.55 or no?

10 A No. You need to add it up, but it's 112.44 plus 83.85. So
11 that's what, 195 or 196 and 20 some cents, I think.

12 Q Okay. So according to my math you add those two figures
13 together you get \$196.29, is that about right?

14 A That sounds right.

15 Q Okay. Would you expect the combined allowed amounts for
16 these two rows to match the allowed amount in Plaintiff's disputed list,
17 Plaintiff's 473 if they were accurately capturing the data?

18 A I would, yes.

19 Q So does the allowed amount listed in Plaintiff's Exhibit 473
20 match the allowed amount for this claim in the United claims system?

21 A No, it doesn't.

22 Q Now let's look at the two last examples, which we can do at
23 the same time. And if you'd please turn to row 218, Plaintiff's disputed
24 claims list Exhibit 473.

25 MR. BLALACK: And if you would read the column headers at

1 the top of the page and please highlight that row.

2 BY MR. BLALACK:

3 Q Mr. Deal, if you can, tell me what is the entity listed in
4 column A for these?

5 A It's Ruby Crest.

6 Q And what is the facility listed for these claims in column B?

7 A The ER at Aliante.

8 Q And what county is listed in column B?

9 A Clark County.

10 Q Where we are right now, right?

11 A Yes. This is one of the entities typically served by Fremont.

12 Q Mr. Deal, I'm going to show you and the jury some more trial
13 testimony from earlier this week.

14 MR. BLALACK: Shane, will you please pull up the trial
15 testimony from November 15. That was earlier this week, page 171, line
16 2 to 5. I'll represent to you sir that this is the testimony of Dr. Scheer
17 who is I believe the regional medical director for Fremont, a TeamHealth
18 employee. He testified to the following if you can see there:

19 "Q Okay. What about for Ruby Crest? What are some of the
20 [indiscernible]?"

21 "A Well, it's in Elko -- Nevada, Elko County. There's only one
22 hospital, it's Northeastern Nevada Regional Hospital."

23 Do you see that?

24 A Yes.

25 Q Okay. And based on the testimony of Dr. Scheer you had an

1 understanding that Ruby Crest only provides services at one facility in
2 Northeastern Nevada?

3 A Yes. That was my understanding before it was confirmed by
4 his testimony, yes.

5 Q Okay. And now going back to the disputed claims list,
6 Exhibit 473, look at row 218. Does it indicate that Ruby Crest performed
7 services at a hospital in Clark County?

8 A Yes. The entity is Ruby Crest, but again the facility is the ER
9 at Aliante in Clark County, which again is normally serviced by Fremont.

10 Q So if you were looking at just this claim, this spreadsheet
11 does it appear that some of the information on row 218 is incorrect?

12 A Certainly the entity that provided the service would not have
13 been Ruby Crest. It would have been in Fremont.

14 Q So either the entity is wrong, or the facility is wrong?

15 A Yes. I suppose if the facility is wrong then the county would
16 also have to be wrong. It would be a number of fields that would have to
17 be wrong if that's the case.

18 Q So Mr. Deal, in your professional opinion does the
19 information contained in Plaintiff's disputed claims list Exhibit 473 offer
20 this jury a reliable basis to draw any conclusion about whether the
21 Defendant's claims reimbursements were random or arbitrary?

22 A No. I don't -- you couldn't make that conclusion from the
23 data.

24 Q Did you rely on the information in Plaintiff's Exhibit 473 when
25 performing your reasonable value analysis?

1 A I did, yes.

2 Q If the data in the disputed claims list contains error, and you
3 clearly show it does, why did you rely on it?

4 A So for the purposes of what I was analyzing the errors were
5 not material for that analysis. And of course it's the Plaintiff's burden so
6 I was going with what the Plaintiffs were asserting to be the basis for
7 their claim.

8 Q Thank you for your time, sir. I'm going to pass you to Mr.
9 Leyendecker.

10 A Thank you.

11 THE COURT: Cross-examination please.

12 MR. LEYENDECKER: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. LEYENDECKER:

15 Q Okay. Mr. Deal let's start with what I like to think of are the
16 rules of the road. You've heard that quote before, haven't you, sir?

17 A Yes.

18 Q And one of the rules of the road is that good experts don't
19 pick a side; do you agree?

20 A Yes. In the sense that obviously you're being hired by a
21 particular client, but our job is to analyze the facts.

22 Q Okay. Let's just be clear. In the first five minutes you told
23 this jury even though you have been hired and testified more than 200
24 times on behalf of insurance companies, did I get my notes just right?

25 A Is that a question.

1 Q Not going to pick a side, right? That's what you told the jury.

2 A Yeah. That's not exactly what I said, but I'm happy to
3 elaborate.

4 Q Well, I wrote it down in quotes and the jury will reflect
5 whether I'm wrong or not, okay. Good experts don't pick a side, right,
6 sir?

7 A They certainly don't --

8 Q And because of that they're trustworthy?

9 MR. BLALACK: Could he have a chance to answer the
10 question he was asked?

11 THE COURT: Okay. Don't interrupt.

12 MR. LEYENDECKER: I thought he said yes. I'm sorry, Your
13 Honor.

14 THE WITNESS: I said I certainly don't pick a side for the sake
15 of picking a side.

16 BY MR. LEYENDECKER:

17 Q Okay. Good experts -- and because of that, that makes these
18 good experts trustworthy, right?

19 A That's the idea, I think.

20 Q Right. You would agree with me that if a -- bad experts do
21 the opposite, they pick a side?

22 A I'd say bad experts typically do bad analysis and draw bad
23 conclusions.

24 Q You don't want to agree --

25 A It's not necessarily about picking a side.

1 Q You don't want to agree -- you're telling me that if an expert
2 picks a side and when given an opportunity to look object -- first of all,
3 should experts be reviewing the data with an independent objective state
4 of mind?

5 A Sure.

6 Q Okay. Good experts, independent, objective, would you also
7 agree, neutral state of mind?

8 A Sure.

9 Q Okay. Certainly we can agree that if an expert doesn't have
10 the independent objective neutral state of mind that makes them a bad
11 expert?

12 A It's -- I'm not even sure exactly what you're getting at, but I
13 think they should have those things.

14 Q Well, did you take your medication today?

15 A No.

16 MR. BLALACK: Objection. That's argumentative and rude.

17 MR. LEYENDECKER: I'm just trying to -- I'm not --

18 MR. BLALACK: I don't know.

19 MR. LEYENDECKER: -- give me a little leeway here, Judge.

20 MR. BLALACK: Argumentative captures it.

21 THE COURT: Objection sustained.

22 BY MR. LEYENDECKER:

23 Q Well, is there something that's preventing you from
24 understanding my questions and answering simple questions in a
25 straightforward way?

1 A I think that's what I'm trying to do.

2 Q Well, here's my question. Do you agree that bad experts are
3 not independent, are not objective and don't put themselves in a neutral
4 state of mind?

5 A I said I agree with those things.

6 Q Okay. And a bad expert is not trustworthy?

7 A I mean if you're a bad expert presumably you shouldn't be
8 trustworthy.

9 Q Right. Bad experts pick a side and advocate on behalf of
10 their client. And that's why you told the jury, even though you've been
11 hired over 200 times, testified over 200 times for insurance companies,
12 you weren't picking a side in this case. That's what you told the jury,
13 right, sir?

14 A Yeah. Again, your statement about the 200 times for the
15 insurance company is not accurate but.

16 Q Okay. We're going to get to that. So bad experts not
17 trustworthy and pick a side, right, sir? And advocate. Because that
18 means they're not independent, they're not objective and they don't
19 have a neutral state of mind, fair enough?

20 A Again, I agree with those things.

21 Q Okay. So we just spent about an hour looking at a variety of
22 claim files where there was a comparing contrast, and you gave the
23 opinion that the Plaintiff's claim file is not reliable. That's what you just
24 said, right, sir?

25 A I think the question was, is that -- is it a basis in which you --

1 Q Excuse me, sir. Did you just tell this jury in response to Mr.
2 Blalack's opinion that in your professional opinion the Plaintiff's claim
3 file was not reliable because we had a different employer name or
4 because there was a slight modifier code on one of the examples, or
5 because the dollar amounts weren't the same? Isn't that what you just
6 told the jury, sir?

7 A That wasn't what he asked me. It was a different question.

8 Q Okay. So you did tell the jury, you spent a bunch of time
9 studying the claim file on the Plaintiff's side and studying the
10 Defendant's files, and in your professional opinion there were about 270
11 claims that should come out of this case, right, sir? Because you
12 couldn't find them when you looked at Defendant's match file, isn't that
13 what you told them?

14 A There were 270 claims that were unmatched, that's right.

15 Q I've got my quotes here again. You said, carefully reviewed
16 and, "I couldn't find a claim in Defendant's data". Did I get that right?

17 MR. BLALACK: Object to the form, asked and answered.

18 THE COURT: Overruled.

19 THE WITNESS: Yes.

20 BY MR. LEYENDECKER:

21 Q So you couldn't find 270 claims in the Defendant's data and
22 your testimony to the jury is, those should come out, right?

23 A That would be my standard approach, yes. Is that --

24 Q Okay.

25 A -- if I can't find them in the underlying data then they

1 shouldn't be considered to be a part of the set of claims, but of course I
2 presented both sets of data.

3 Q You mean if you can't find them in the Defendant insurance
4 company's data, right, sir?

5 A That's the standard approach on doing these cases all the
6 time, is to look at the claims in dispute and to try and find them in the
7 underlying insurance claim data.

8 Q Are you suggesting that TeamHealth and their entities'
9 record keeping is unreliable?

10 A It's hard for me to know why they're in the data, but they're
11 not in the underlying Defendant's data.

12 Q Well, how many claims do you think United processes a day?

13 A Which United, Defendant?

14 Q Any of them? Millions?

15 A I doubt it's millions a day, but it's a lot.

16 Q Okay. Here's my point. You know that -- you expect
17 TeamHealth is a sophisticated entity, right, sir?

18 A That'd be my expectation.

19 Q Right. In fact, they are to use your words, along with sound
20 physicians, and that's where the case is going to get real interesting in a
21 hurry, I promise you that sir. You told this jury that TeamHealth and
22 sound physicians are "some of the biggest staffing companies in the
23 country", right?

24 A I think I mentioned MCare [phonetic] as well, but yes, there
25 are.

1 Q And you would expect some of the biggest staffing
2 companies in the country would have sophisticated, reliable computer
3 record keeping abilities, wouldn't you, sir?

4 A In general, sure.

5 Q Just like the Defendants, you would think they would have
6 sophisticated, reliable computer keeping capabilities?

7 A Sure.

8 Q And what you did, even though in this case you've seen the
9 testimony from the folks at TeamHealth for example Mr. Ocasio
10 describes an intricate detail, the steps they go to, to collect and maintain
11 that data on a routine basis, right?

12 A I don't know if I saw that testimony, but I'm sure they do.

13 Q Right. So what you're doing here simply because you
14 couldn't find it in the Defendant's data, you knew it was in the Plaintiff's
15 data. You know that we're sophisticated data keepers, but you're
16 choosing a side, you're picking a side. And you didn't tell this jury well, I
17 found some over here, but I couldn't find them over there. That's for you
18 all to decide. You figure out whose company you think keeps better
19 records. Did you tell them that?

20 A I didn't use those words. I certainly presented both numbers,
21 but --

22 Q Right. No. You said, take them out. They should come out.

23 A That based on my experience that's exactly what I would
24 recommend doing, but it's up to them to decide what to do.

25 Q Did you tell them that earlier? Did you tell them, that I

1 understand TeamHealth has sophisticated record keeping and they have
2 a record of those 270 cases? I couldn't find them in United's, but I know
3 that the sophisticated record keepers over here at TeamHealth, they have
4 them. Jury, you all figure out whether they should stay or not. Did you
5 tell them that? No, sir. You said, take them out.

6 MR. BLALACK: Object to form. It's compound.

7 THE COURT: Objection sustained.

8 BY MR. LEYENDECKER:

9 Q Mr. Deal, you could have sat in that chair right there if you
10 truly were not picking a side, if you truly were trustworthy, if you truly
11 put yourself in an independent, objective, neutral state of mind, you
12 could have said, ladies and gentlemen, there were 270 claims that I know
13 the Plaintiffs had the record of and I know they have a sophisticated
14 system. I couldn't find those same 270 on United's side. That's for you
15 to decide whether you want to count them or not. You could have done
16 that, but you didn't, did you?

17 MR. BLALACK: Your Honor, that's another compound -- it's a
18 speech actually. It's not even a question.

19 THE COURT: Objection sustained.

20 BY MR. LEYENDECKER:

21 Q Why didn't you just tell the jury, you all decide? They've got
22 it over here; they don't have it here. Why didn't you just tell the jury to
23 decide? Why did you tell them, take them out, they should come out?

24 A Because that is my experience is that's what they should do.
25 That you start with the -- all the claims data that we have from the United

1 Defendants. Not just the claims in dispute. We have all of their data.
2 And that is a discovery. That's typically done as a complete set of data.
3 So it represents the totality of everything they receive. So when I can't
4 find them from the other entity, that to me is sufficient evidence to say
5 that they didn't receive them.

6 Q Are you saying these Defendants that in tens of thousands if
7 not hundreds of thousands of claims have never made a mistake in their
8 claim system?

9 A I'm sure they've made mistakes in their claim system.

10 Q Okay.

11 A But this is a more basic point of, did they even receive the
12 claim and is it in the data.

13 Q So you just think it came out of thin air from the Plaintiffs?

14 A I don't know where it came from. I'm certainly -- mistakes
15 are made on all sides on these things so.

16 Q That's my point, sir. Okay. You could have said in a very
17 simple way, I couldn't find these. They're over here. I couldn't find them
18 over here. You all figure it out. You could have said, couldn't you have?

19 A I --

20 MR. BLALACK: Objection; calls for speculation.

21 THE COURT: Overruled.

22 THE WITNESS: I could have used those words, but it's -- that
23 wouldn't be my opinion. My opinion is that they should come out.
24 That's my consistent opinion in all these cases.

25 BY MR. LEYENDECKER:

1 Q Because you pick a side sir. You pick the side of the
2 insurance companies each and every time they've hired you to testify on
3 the more than 200 occasions in your career, right, sir?

4 A I disagree with that.

5 Q Okay. Since you're so concerned and believe our records are
6 so unreliable, go ahead and tell the jury how much you totaled, how
7 much the -- when you found for the matched claims, when you did all of
8 this record keeping to figure out whether our stuff was reliable, go ahead
9 and tell them what was the total amount of charges on what you thought
10 were the claims you found on the Defendant's record keeping side.

11 A I'm sorry; I'm not understanding your question.

12 Q Yes, sir. It's real simple. We've got \$13.2 million in charges
13 and \$2.8 in allowed amount.

14 A Okay.

15 Q Did you lift one finger to see whether the Defendant's
16 records were \$10,000 difference in one direction or the other?

17 A Oh, between the two data sets?

18 Q Yes, sir.

19 A I don't remember the exact number. They certainly weren't
20 \$8 million different. No.

21 Q Well, what were they? Go ahead and tell them -- just go
22 ahead and tell them how much they were apart.

23 A I don't recall off the top of my head.

24 Q Is there a single word in any of your hundreds of pages of
25 reports and work papers that would identify there is any meaningful

1 difference in the total charges or the total allowed amount on the claims
2 at issue in this case?

3 A I think we talked about this with Mr. Blalack that for my
4 analysis, I assumed the data from the claims in dispute.

5 Q No, sir.

6 MR. BLALACK: Could he be allowed to finish?

7 THE COURT: Don't interrupt him. Did you finish your
8 answer?

9 THE WITNESS: Yes. I didn't put a difference of calculation in
10 my reports. I ultimately assumed the numbers in the claims in dispute
11 list were -- I used those for the basis of my analysis.

12 BY MR. LEYENDECKER:

13 Q So our file's not reliable, but you did not -- did not check to
14 see if any meaningful difference in total charges or total allowed. Is that
15 a true statement?

16 A Not quite. I do -- I did look at it. I don't remember what the
17 difference was. It was not anything close to 8 million. It was --

18 Q Okay. Was it 10,000?

19 A I don't recall off the top of my head. It wasn't a huge
20 difference. I just don't remember how much it was.

21 Q Of the -- of the \$13.2 million that TeamHealth records say are
22 the charges, how big of a difference did you find on the United side?

23 A I think I've answered that question. I don't remember.

24 Q Was it 100,000?

25 MR. BLALACK: Objection. Asked and answered.

1 A You can ask it again, but I'm not going to remember because
2 you asked it again.

3 THE COURT: He can explore the -- his memory. So
4 overruled.

5 BY MR. LEYENDECKER:

6 Q Was it less than 10,000?

7 A I don't remember.

8 Q How about -- how about in the 2.8 million in allowed, was the
9 difference less than 10,000?

10 A Again, I don't remember.

11 Q Did the United file have a greater amount in charges than our
12 file?

13 A Again, I don't remember.

14 Q Did the United file have a greater amount of allowed?

15 A Same answer. I don't remember. I just remember -- I do
16 remember looking at it, and it wasn't a big difference. And ultimately, I
17 used the claims in dispute.

18 Q Okay. There we go. And when you say wasn't a big
19 difference, you -- what you mean by -- what that means in expert talk, sir,
20 is that it's not enough to get your attention to come in and say, this
21 data's not reliable because I'm showing significant differences between
22 the charges and allowed. That's what you mean when you say that,
23 wasn't a big difference, right, sir?

24 A No. There's a lot of thoughts in that statement there. But it
25 certainly wasn't big enough to suggest to me that I -- that for purposes of

1 my analysis, I couldn't assume that the claims in dispute was largely
2 accurate.

3 Q Let's just stay on this subject for a second. Remember all of
4 those two to three examples Mr. Blalack showed you when he was
5 putting up the UMR claim file?

6 A Yes.

7 Q Tell the jury what the coinsurance column said on the UMR
8 file on those claims where you said, no, no, this -- it's not 409, it's 315.
9 Go ahead and tell the jury what the coinsurance file, that -- that column
10 on the UMR spreadsheet for the ones you said were different numbers,
11 what did that coinsurance column say on these claims?

12 A I don't have it memorized.

13 Q Did you even look?

14 A I was looking at the allowed amounts.

15 Q Do you think a good expert just says yes to whatever the
16 lawyer asks?

17 A Of course not.

18 Q Did you bother to look before you said, yes, yes, yes, these
19 are all wrong, these are all different, did you bother to look even if the
20 UMR file identifies the coinsurance? Did you even look for that?

21 A It wouldn't particularly be relevant for the analysis of the
22 allowed amounts. But I did -- I did -- as we were looking through it, there
23 were other amounts for coinsurance and copay and deductibles and
24 things like that.

25 Q Did you bother to see if the difference between -- in those

1 occasions, where there was a slightly different number between the
2 Plaintiffs' claim file and the Defendants' -- UMR's claim file, did you
3 bother to check to see if the difference was the coinsurance, sir?

4 A That wouldn't make sense in a -- in a general way because
5 the coinsurance is underneath the allowed amounts. So you want to
6 compare the allowed to allowed. And that -- what you're talking about is
7 the breakdown of the allowed into patient responsibility and --

8 Q Did you check it out?

9 MR. BLALACK: Will you please let him finish, Your Honor?

10 THE COURT: You have to stop interrupting him.

11 BY MR. LEYENDECKER:

12 Q Did you check those examples before you told this jury there
13 was a problem?

14 A I'm not sure exactly what you mean. I think I've described
15 what I did.

16 Q Did you check the math? Before you told the jury there's a
17 problem, did you check the math on the coinsurance, what the UMR
18 coinsurance said, to see if that lined up? Maybe there was none. Did
19 you check it?

20 A I'm not quite sure what you're asking. But I compared
21 allowed to allowed. I think it was clear from --

22 Q Okay.

23 A -- the analysis.

24 Q Did you --

25 MR. BLALACK: Could he finish, please, Your Honor?

1 THE COURT: Yeah. Stop interrupting, please, Mr.
2 Leyendecker.

3 MR. LEYENDECKER: Okay.

4 BY MR. LEYENDECKER:

5 Q Do you know whether the UnitedHealthcare file that was
6 displayed, did it have coinsurance in it?

7 A My recollection is it did. But I don't remember the exact
8 amounts.

9 Q And do you know if the UMR file had coinsurance I it?

10 A It typically would. Yes.

11 Q I'm asking you if you know that it did. You just went through
12 testifying before the jury about different amounts. And I just want to
13 know, do you know for a fact sitting there, did that UMR file have a
14 coinsurance column?

15 A That's my recollection is it did. Yes.

16 Q Okay. Do you think it would be common or uncommon
17 whether it's TeamHealth's claim system or the Defendant's claim system,
18 that there might be a mistake about who the employer is?

19 A Certainly in theory there could be mistakes on either party.
20 In my experience, it'd be much more likely to be on the provider side.

21 Q Okay. Does a differing employer have any impact on
22 whether the charges or the allowed amounts are accurate, sir?

23 A Sure. In terms of the accuracy because I mean, we -- I'm
24 happy to elaborate if you -- if you'd like.

25 Q Go on, please.

1 A That the allowed amounts are dependent upon the individual
2 plans. So of course, you know, Walmart versus the postal system, that
3 could certainly be different.

4 Q I asked a poor question. What I mean to say is if I'm looking
5 at any particular claim and it says charge \$145, allowed amount \$245,
6 does it matter whether the employer is correctly or incorrectly identified
7 on either of the two spreadsheets if both of them have the same charge
8 and same allowed?

9 A It depends on the point you're trying to make. I mean, in
10 terms of the dollars of charge and allowed, no. But if you're trying to say
11 that there's a problem with the adjudication of the claims, then the
12 employer could matter a lot.

13 Q And you know this case is not about the adjudication. It's
14 about the amounts, right, sir?

15 A That's been my view. But that wasn't my understanding of
16 the demonstrative that was being shown and that we were talking about
17 with Mr. -- with Mr. Blalack.

18 Q Now, I wrote something else down that you said. One of the
19 examples -- one of the examples I think was 99283:25, and then another
20 CPT code, right, sir?

21 A Yes.

22 Q And you told the jury that that -- was it colon or semicolon?

23 A I believe it was a colon.

24 Q That's the two dots?

25 A That's right.

1 Q Okay. You told the jury that that modifier of two dots 25
2 meant another code was coming, right?

3 A That's my general understanding. Yes.

4 Q Well, do you have training in coding?

5 A Not formal training in the sense of being a formal coder. But
6 I've worked with insurance claims data for a long time.

7 Q And it was your point to the jury that that -- the two -- the two
8 claim files are different because one had that colon 25? Is that what you
9 said?

10 A Oh, no, no, no. Not at all. Not at all.

11 Q Do you know whether the colon 25 actually represents when
12 the nurse practitioner is providing a service?

13 A I don't think the point -- the 25 does. No.

14 Q Okay.

15 A No. It was -- I was -- I'm happy to elaborate. It was -- the one
16 is shown on a row, and the other one was showing two different lines.
17 So I was just noting the fact that you see the two codes on the row in a
18 .25 is simply noting there's -- it's -- you would -- you would expect to see
19 two codes.

20 Q So my question is do you know one way or the other
21 whether when that colon 25 appears, if in fact that's an indication that a
22 physician's assistant or a nurse practitioner?

23 A I don't believe that code is. No.

24 Q Okay. Well, go ahead and tell the jury if it's a straight 99283
25 that's performed by a nurse practitioner on a United insured, go ahead

1 and tell the jury how that gets identified on the claim file.

2 A You'd have to look at the service provider.

3 Q Okay. Do you know whether United issued instructions a few
4 years ago -- about a year ago to our clients that said whenever a nurse
5 practitioner performs a service, we want you to put a colon 25 after the
6 code?

7 A I don't know.

8 Q Did you do any investigation into that?

9 A No.

10 Q Okay. Now, let's get to the -- honestly, I have [indiscernible]
11 Mr. Deal, for three weeks to get to the real issue in the case. Sound
12 physician. The jury has not heard anything about Sound Physicians,
13 who they are. A little bit yesterday from Dr. Frantz. You know who they
14 are, right?

15 A A little bit.

16 Q Well, do you know that they are one of the largest physician
17 services companies in the U.S., along with TeamHealth, right?

18 A They are a large -- yeah. We talked about that a few minutes
19 ago. I do know that.

20 Q And you know that in 2019, they started doing business in
21 Nevada?

22 A I didn't know that.

23 Q Okay. All these charts that you were showing the jury where
24 the charges were sky -- use their words, skyrocket into 2019, did you
25 bother to look to see whether that's when Sound Physicians came into

1 state?

2 A Like I said, I'm not aware of when and how they came into
3 the state.

4 Q Okay.

5 A I'm aware they're providing service.

6 MR. LEYENDECKER: Brandon, may I please have the Elmo?

7 BY MR. LEYENDECKER:

8 Q Okay. Can you see this okay?

9 A Yes, I can.

10 Q This is a summary of one of the claim files produced in the
11 case. Defendant 097900, you recognize that as a base number, right, sir?

12 A That is a base number. Yes.

13 Q You studied lots of claim files in the case, didn't you?

14 A I did. Yes.

15 Q Did you study the Defendant's 097900 Sound Physician's
16 claim file?

17 A I don't recall off the top of my head.

18 Q This is an excerpt from it, sir. You see, it's got two claims on
19 here. Date of service, April of '19. What's the amount charged?

20 A \$1,761.

21 Q What's the CPT code?

22 A The 99285.

23 Q \$1,761, is that egregious?

24 A I'm not sure what you mean by egregious. It's sort of -- it's --

25 Q Well, you -- I know you didn't, you know, study it with a fine-

1 tooth comb. But I heard you tell the jury that you studied the underlying
2 documents and things of that nature, right, sir?

3 A I've reviewed some of the underlying documents and things.
4 Yeah. Mostly my --

5 Q And depositions?

6 MR. BLALACK: Can he please be allowed -- Your Honor, I'm
7 going to ask for the last time --

8 MR. LEYENDECKER: It was an accident.

9 MR. BLALACK: -- could I ask for the last time that opposing
10 counsel not interrupt the witness? Show just the slightest courtesy as a
11 human being to another person who's giving testimony.

12 THE COURT: All right. You have to --

13 MR. LEYENDECKER: Mr. Deal, I apologize.

14 THE COURT: -- you have to dial it back.

15 BY MR. LEYENDECKER:

16 Q I apologize, Mr. Deal.

17 A Okay.

18 Q Let me ask you again. Did you see here on 297A, August of
19 '19, one claim for a non-provider and one claim for a contract provider?

20 A I see that.

21 Q Okay. Here in Las Vegas?

22 A Yes.

23 Q All right. Let's just look at how the Sound Physicians claim
24 charged amount compares to the Plaintiffs. You've -- have you seen my
25 summary here of the Freemont charges?

1 A I have not seen it before. No.

2 Q Okay. I notice that when you put your slides together with all
3 those Fair Health charges, you didn't also chart what the Plaintiffs' actual
4 charges were?

5 A Yeah. That's right. I remember I said I did all the Fair Health
6 ones to illustrate the impact of using Fair Health and the overall inflation
7 in the market. And then I separately analyzed the charges from
8 TeamHealth.

9 Q Now, the Plaintiffs -- the Freemont Plaintiff, their charges in
10 2019 were somewhere between -- somewhere a little under \$1,400,
11 would you agree?

12 A I'll take your representation. I'd have to go back and look at
13 the data. But I'll take your representation.

14 Q Okay. Do you recall reading any of the emails or any of the
15 documents or depositions Mr. Haben's and Ms. Paradise and the out-of-
16 network programs reference to egregious charges, egregious bills being
17 the source of some of these problems?

18 A I think I heard some reference to that in the trial.

19 Q Okay.

20 A But I -- it's not something I've studied carefully.

21 Q Have you offered any opinion about whether the Plaintiffs'
22 charges or Sound Physician's charges, do you consider these to be
23 egregiously high, sir?

24 A I --

25 Q 1,761.

1 A I don't really ever have an opinion about egregiously high. It's
2 my opinion that you should never use bill charges for reasonable value.
3 So the fact that one's higher than the other I wouldn't say is necessarily
4 egregious. They're high, and they're much higher than the actual market
5 prices you see in the -- in the market, so.

6 Q You do know that Sound Physicians is owned by one of the
7 United entities, right, sir?

8 A I think I heard you say that. I actually didn't -- I don't know
9 that. It doesn't surprise me. But I don't know, and I haven't studied it.

10 Q Well, let me ask you, Dr. Frantz testified, he knows about it,
11 and they're owned by United. Okay, sir?

12 A Yeah. I heard that. Well, at least I heard that he knows the
13 outfit. I don't remember if he said who they were owned by. But --

14 Q You've read a lot about the shared savings programs?

15 A I read some. I wouldn't say a lot. But I read some.

16 Q Where the concept was various United Defendants would
17 take a fee of 30, 35 percent on the difference between the billed charge
18 and the allowed amount. You recall seeing that, don't you?

19 A I have seen reference to that. Yes.

20 Q Okay. And so -- and that was happening in cases where it
21 was the employer's dollars at stake, not United's? Those are charges
22 claimed, right, sir?

23 A I believe SSP, the shared savings program, I think that is
24 something that's used by the ASO, the TPA. I don't remember whether
25 it's also used in the fully insured. But I think it is used by that. That's the

1 best of my recollection. It's not something I've studied.

2 Q Well, if it's fully insured it wouldn't make a difference for
3 United to take a 35 percent fee because it's all they're going to get
4 anyway?

5 A Generally, I would agree with that. Yeah.

6 Q Okay. So is United getting -- in this situation, when they're
7 owning Sound Physicians, are they getting one dip of ice cream with
8 these high charges when it's an ASO plan at 35 percent?

9 MR. BLALACK: Objection. Foundation.

10 THE COURT: Objection's sustained.

11 A I don't -- it's not something I studied. I don't know.

12 THE COURT: I sustained the objection.

13 THE WITNESS: Oh, thank you. I'm sorry.

14 BY MR. LEYENDECKER:

15 Q Assume with me that this is an administrative service only
16 claim and that there is a shared savings plan in place where United is
17 going to make a fee of 35 percent off whatever it saves the employer
18 who's paying. Make that assumption, okay, sir?

19 A Okay.

20 Q In that scenario, United would be making a fee, what I call
21 the first dip, between this and whatever they allow. Can we agree on
22 that with that assumption?

23 A Assuming the allowed is below either one of those numbers,
24 then I agree there would be some difference between 1,761 and 1,423,
25 and they would get some portion of that fee.

1 Q On top of the regular fee they're paying just to administrate
2 these claims?

3 MR. BLALACK: I object to the foundation of the question.

4 THE COURT: Overruled.

5 THE WITNESS: Yeah. You're certainly getting beyond my
6 knowledge of any of these programs. But I -- generally, there's a
7 standard fee for processing a claim. And I understand shared savings is
8 separate from that.

9 BY MR. LEYENDECKER:

10 Q Okay. So the fee for processing the claim. The shared
11 savings fee would be a second fee, right, sir?

12 A Yeah. You're getting pretty -- pretty quickly getting beyond
13 my -- the scope of anything I know in terms of details. But that's my
14 general understanding.

15 Q Well, do you have enough knowledge to understand that
16 Sound Physicians owned by United would be submitting claims to all
17 sorts of other insurance companies around the State of Nevada for these
18 claims?

19 A To the extent they're servicing emergency departments and
20 there's out-of-network and they don't have contracts with them, then
21 presumably they would be submitting claims to other insurance
22 companies.

23 Q Do you have any idea where the Sound Physician ever
24 attempts to get their bill charges?

25 A I don't know.

1 Q Now, by the way, were you aware that Sound Physicians is
2 not -- this is an emergency room practice group, right, sir?

3 A I thought they started out as more hospitalists as I recall, but
4 they may also provide emergency services.

5 Q Right. And United bought them.

6 MR. BLALACK: Objection. Foundation.

7 THE WITNESS: I don't know that, but it sound -- again, we've
8 talked about it.

9 THE COURT: Sustained.

10 THE WITNESS: Oh, sorry.

11 THE COURT: Objection sustained. You have to give me a
12 chance to rule.

13 THE WITNESS: Sorry about that.

14 BY MR. LEYENDECKER:

15 Q You recognize these numbers, don't you, Mr. Deal?

16 A Yes, I do. Although, are -- I do recognize the numbers. The
17 heading is kind of funny but --

18 Q That's because I'm not a very good speller but we've been
19 over that.

20 A My wife is a nurse, and my daughter is a nurse so -- or she's
21 becoming a nurse, so I like it. It's kind of creative but -- anyway, sorry I
22 got distracted.

23 Q Let me ask you a hypothetical question. Do you understand
24 that 246 is the average allowed by the United defendants, these
25 defendants in this case, for all of the claims at issue, right, sir?

1 A Yes, that's right.

2 Q And you understand that \$528 is the average allowed as
3 calculated by Mr. Leathers of what United paid all the various other ER
4 doctors in the state, right, sir?

5 A Yes, that's right based on his methodology and so forth. But
6 generally, that's right.

7 Q Can you think of any economic reason why these defendants
8 would want to pay the plaintiffs well under half of what they pay all other
9 emergency room doctors in the state?

10 A I'm not sure what you mean by want. I can certainly imagine
11 why it's happening. It depends on the plan documents and the
12 programs that are in the place and the various methodologies that are
13 used. But I'm not -- you -- I'm not quite sure that the want part of your
14 question, but --

15 Q Do you think there are any different plans insuring that the
16 members treated for this 246 that are insuring the members are treated
17 for this 528?

18 A I mean, the mix could certainly be different. I don't know.
19 It's not something I've studied in detail.

20 Q Here's the hypothetical. If one or more of the United
21 defendants wanted to weaken TeamHealth and the plaintiffs here in
22 Nevada by paying them a fraction of what they pay everybody else in the
23 state, do you think that might make them attractive to purchase?

24 A You're asking if United wanted to buy TeamHealth, would
25 they try and weaken them financially; is that what you're asking?

1 Q Yes, sir.

2 A I've never, ever heard that so I can't really comment on that.
3 I suppose it's always better if you're going to buy something to buy it
4 less expensively but that's not something I've seen any information on.

5 Q We know they're now in the ER doctor business and my last
6 question for the day is can you give us any economic explanation,
7 rational explanation for why if they're not trying to weaken TeamHealth
8 by dramatically cutting their rates relative to everybody else, can you
9 offer some other rational economic explanation for why that's
10 happening?

11 MR. BLALACK: Objection. First of all, this entire line of
12 examination has no foundation, but it's also argumentative.

13 MR. LEYENDECKER: It's a hypothetical, Your Honor.

14 THE COURT: Overruled.

15 MR. BLALACK: It is that.

16 THE WITNESS: I -- as I said, there certainly could be different
17 plans and different out-of-network payment methodologies so there can
18 be lots of reasons why you would observe that. I haven't studied
19 anything about want or intent or things like that.

20 MR. LEYENDECKER: Your Honor, it's 5 --

21 THE COURT: Yeah. Time --

22 MR. LEYENDECKER: -- and I think it's time for the day.

23 THE COURT: Very good. So we'll take a recess until
24 tomorrow at 8:30. During the recess, you're instructed do not talk with
25 each other or anyone else on any subject connected with the trial. Don't

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

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

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

12 Thank you for a great four days this week. Tomorrow we'll
13 wrap up the week. Have a good night. See you at 8:30.

14 THE MARSHAL: All rise for the jury.

15 [Jury out at 5:00 p.m.]

16 [Outside the presence of the jury]

17 THE COURT: Mr. Deal, you may step down during recess.
18 Okay. The room is clear.

19 MR. BLALACK: I don't have [indiscernible], Your Honor.

20 THE COURT: I was just going to kind of agendize a couple of
21 things. One, I've been asked to do some deposition transcripts for Harris
22 and Jones. Do you need them at 8:30? When do you need them
23 tomorrow? Without holding you to it on the time --

24 MR. BLALACK: Yeah, let me tell you the plan, Your Honor. I
25 don't know if -- Mr. Leyendecker, how much more do you think you have

1 tomorrow?

2 MR. LEYENDECKER: I would guess some two hours-ish
3 depending on whether I am able to control my [indiscernible]

4 THE COURT: I know it's not intentional --

5 MR. LEYENDECKER: -- and get the rattle, Your Honor.

6 THE COURT: But it's not fair when the witness doesn't get to
7 tell us --

8 MR. LEYENDECKER: I apologize. You're right.

9 MR. ZAVITSANOS: Your Honor, we're going to give him a
10 valium in the morning so --

11 THE COURT: Well, I don't want to know that but just --

12 MR. BLALACK: So Your Honor, if he goes another two hours,
13 my guess is I've got 30. So we're starting at --

14 THE COURT: 8:30 --

15 MR. LEYENDECKER: -- 8:30 tomorrow.

16 THE COURT: So I'll do --

17 MR. LEYENDECKER: So we'd be done by -- and then at that
18 point and Mr. King will probably go about an hour and a quarter.

19 MR. ZAVITSANOS: Joe, who do you have with King?

20 [Counsel confer]

21 MR. BLALACK: Okay. So let's assume three hours for Ms.
22 King. That gets us to the afternoon and then Mr. Mizenko.

23 THE COURT: Good enough.

24 MR. BLALACK: I think if we could get -- who all do you have,
25 Your Honor? You're going to have Ms. Harris?

1 THE COURT: Harris and Jones.

2 MR. BLALACK: If it was possible to get through Ms. Harris --

3 THE COURT: Do that first.

4 MR. BLALACK: If we're -- yeah. If we run -- I think we're
5 going to go the whole day tomorrow with those live witnesses but if we
6 have any space, Ms. Harris would be a good --

7 THE COURT: Good enough. I'll do my best to have them
8 free --

9 MR. BLALACK: Thank you, Your Honor.

10 THE COURT: -- tomorrow. Okay. Next, confirm with me
11 you'll make your offer of proof on your expert in writing?

12 MR. BLALACK: I will, Your Honor.

13 THE COURT: Very good.

14 MR. BLALACK: I'll put that in the large -- we're going to do
15 one large offer of proof. We'll --

16 MR. ZAVITSANOS: And we have no -- just for the record --
17 we have no objection to them doing it in writing. They're not waiving
18 anything, and we will not argue that at any point.

19 THE COURT: Okay. Next thing is if we do jury instructions
20 over the weekend, the rules require that to be done on the record. Do
21 you both stipulate to waive the rule so that it won't be an issue on
22 appeal?

23 MR. ZAVITSANOS: Plaintiffs do, Your Honor.

24 MS. LUNDVALL: Well, hold on. Hold on. No we don't --

25 THE COURT: No, it wouldn't be -- meaning there would not

1 be a BlueJeans record.

2 MR. POLSENBERG: But there would be a court reporter?

3 THE COURT: There will be a record but --

4 THE COURT RECORDER: BlueJeans is not the record.

5 THE COURT: BlueJeans is not the record anyway.

6 MR. POLSENBERG: Right. It'll add two hours to it if we do it
7 without a court reporter.

8 MR. LEYENDECKER: I understand, Your Honor, but the client
9 is wanting to have jury instructions on the record.

10 THE COURT: They -- does it need to be public?

11 MR. LEYENDECKER: No, it does not need to be public.

12 THE COURT: All right. So I just want to verify that I'm not
13 leaving an issue on appeal for either side by doing it Sunday afternoon
14 with a court reporter.

15 MR. POLSENBERG: Like I say, I've done it several times.

16 MS. ROBINSON: I mean, our understanding is that there will
17 be after the record -- after we've all made our arguments about the
18 instructions to the Court, the Court will present with a charge and then
19 we'll have an opportunity for formal objections.

20 MR. POLSENBERG: No.

21 THE COURT: It doesn't work that way.

22 MS. ROBINSON: Okay.

23 THE COURT: We resolve the --

24 MR. POLSENBERG: That will add two hours.

25 THE COURT: We do the jury instructions and then I have you

1 agree as to the order of them and then I make you put on the record that
2 you -- all of your objections are in the record and then I read them right
3 before the closings.

4 MR. POLSENBERG: And that's precisely why we need to
5 have a reporter so it --

6 THE COURT: Yeah, I have no problem with the reporter --

7 MR. LEYENDECKER: But we've already -- I guess I already
8 arranged for a --

9 THE CLERK: The reporter is not the official record. It would
10 have to be one of the [indiscernible]

11 THE COURT: Well, can we send that to someone to do a
12 transcript?

13 THE CLERK: It would have to be on the record as far as here.
14 We can't have like an outside --

15 MR. POLSENBERG: We can stipulate to it. I said I've done
16 this several times this way.

17 THE COURT: Put it in writing. Just if you can come to terms,
18 put it in writing and tell me about tomorrow. We'll talk about it again
19 tomorrow.

20 MR. POLSENBERG: Thank you, Your Honor.

21 THE COURT: Yeah. All right. It wasn't my intention to put
22 you guys on the spot so --

23 MR. POLSENBERG: That's all right. I was trying to figure out
24 the same kinds of stuff.

25 THE COURT: All right. So let's jump into jury instructions,

1 what we can do and let's see if we can remove these so that I can see
2 everyone.

3 MR. ROBERTS: Your Honor, I did have one question before
4 we move on.

5 THE COURT: Sure.

6 MR. ROBERTS: One request from the defendants and that's
7 that the jury be admonished that there's no evidence that any of the
8 [indiscernible] purchased Sound Physicians. The question was asked. It
9 was sustained. He didn't give an answer and he went on to ask another
10 question --

11 THE CLERK: I'm sorry. Can I have everyone -- the record is
12 getting really messed up here now.

13 THE COURT: Thank you, Brynn.

14 MR. ROBERTS: And then he went on to ask another question
15 which assumed that he got an affirmative answer and doubled down on
16 his testimony to the jury that United bought Sound Physicians. And they
17 know from our interrogatory answers that is not true.

18 THE COURT: Then you can cure that on your redirect.

19 MR. ZAVITSANOS: So, Your Honor, just for the record,
20 yesterday there was uncontroverted, unobjected evidence that they did
21 buy them, and I got news for them, that's what this case is about going
22 forward. So --

23 THE COURT: Well, I guess we'll have to talk about that more
24 tomorrow then.

25 MR. ZAVITSANOS: All right. Dr. Frantz.

1 THE COURT: Are you guys -- you're getting daily transcripts?

2 MS. ROBINSON: Yes.

3 MR. ZAVITSANOS: We are.

4 THE COURT: All right. So you -- hopefully you'll be prepared
5 on that issue tomorrow?

6 MR. LEYENDECKER: I will, Your Honor, thank you.

7 MS. ROBINSON: So we were conferring. I'm sorry. We
8 missed the opening part of the conversation about the charge. I was just
9 saying that my plane lands in Nevada at 2:15. The reason I requested
10 the option of having a remote hearing was in part just because you
11 know, there's a concern as plane schedules are that there might be a
12 delay which is --

13 THE COURT: And you don't need to be worrying about that.
14 We're going to accommodate your schedule.

15 MS. ROBINSON: Thank you. I appreciate it --

16 MR. POLSENBERG: Right. And I also pointed out that she
17 can't live closer to the airport than my office is. She could just come
18 right over.

19 MS. ROBINSON: The other thing that I wanted to mention
20 and with the Court's indulgence, I -- the issue is that I have a family
21 obligation this weekend that was -- I tried -- I spent about an hour-and-a-
22 half last night trying to --

23 THE COURT: We cannot do jury instructions tomorrow to get
24 you home if you can give me -- if we can get it done Sunday.

25 MS. ROBINSON: Okay. Well, I was going to say with the

1 Court's indulgence, I can do it over BlueJeans tomorrow. I just couldn't
2 move my flight to be after --

3 THE COURT: I certainly have no objection to that.

4 MS. ROBINSON: Okay. Thank you, Your Honor.

5 THE COURT: Did you have an objection, Mr. Polsenberg?

6 MR. POLSENBERG: No and I've even said on the record
7 earlier we can do hybrid where we can have some of us --

8 THE COURT: Sure --

9 MR. POLSENBERG: -- in person. Because moving all the
10 papers around, I think it's easier if we're in person, but you can come in
11 on BlueJeans or Zoom or whatever you want to use.

12 MS. ROBINSON: Yeah, in my experience, hybrid hearings
13 tend to be a little bit rougher than all in person or all --

14 THE COURT: They're far more informal which is why I came
15 back full time in March because I just needed to move my cases along.
16 We were already in a backlog.

17 MS. ROBINSON. Understood.

18 THE COURT: So --

19 MR. POLSENBERG: Yeah, but I want to be in person because
20 of --

21 THE COURT: That's fine.

22 MR. POLSENBERG: -- papers and writing words.

23 THE COURT: Okay.

24 MR. POLSENBERG: Okay.

25 THE COURT: Now, are we ready now to tackle jury

1 instructions?

2 MS. ROBINSON: Yes, yes. Thank you, Your Honor.

3 THE COURT: And have you two agreed on an order to take
4 them?

5 MS. ROBINSON: We -- I just assumed we would continue
6 progressing as we had through unjust enrichment and contracts but --

7 THE COURT: So let me make sure I have the right -- I think
8 that I have the plaintiffs and my notes show that we were arguing page
9 5.

10 MS. ROBINSON: Of our contested?

11 THE COURT: Yes.

12 MS. ROBINSON: I'm just standing here for a moment
13 because there's a lot of activity --

14 THE COURT: Sure.

15 MS. ROBINSON: -- back there.

16 THE COURT: You guys, take a minute and let me know when
17 you're ready to go.

18 MS. ROBINSON: I'm ready, Your Honor. Yes, I agree. We're
19 at page 5. I can just transfer, or I can stand here or go there either way.

20 COURT RECORDER: I just need everyone else to lower the
21 volume, please.

22 MR. POLSENBERG: This is why when the jury leaves I come
23 in here because I can't hear over there with everybody talking.

24 COURT RECORDER: Well, the record is going to be really
25 difficult to hear.

1 THE COURT: Well, and -- yeah.

2 MR. POLSENBURG: Do you want to just give --

3 THE COURT: Yeah. Let's -- you know, I'll just take a quick
4 recess because that way I'll be able to work till our 5:50.

5 MR. POLSENBURG: All right. Thank you, Your Honor.

6 THE COURT: Be right back.

7 [Pause]

8 THE COURT: Please remain seated. So we're on page 5 of
9 the Plaintiffs.

10 MS. ROBINSON: Yes, Your Honor. I believe, as -- the
11 difference here, the modification from the standard instruction was that I
12 had placed clear -- quotation marks around clear and convincing to be
13 parallel to the way that the preponderance of evidence instruction is
14 worded in the standard instruction.

15 And then I added the -- all of the evidence, because in our
16 agreed instruction, the preponderance of the evidence, and I don't know
17 if you have that up as well, but in that, we had agreed, and in this case --
18 excuse me, in determining whether a party has met this burden, you will
19 consider all of the -- all the evidence, whether introduced by the Plaintiffs
20 or Defendants. And I believe that if that sentence appears in one
21 instruction for a preponderance and not for clear and convincing, I
22 believe the jury will seize on that and believe that there is a significance
23 to that difference. And that's why I had suggested that we add that to
24 this instruction.

25 THE COURT: And the response, please.

1 MR. PORTNOI: Well, so Your Honor, first thing I would note
2 is we actually have a competing instruction on clear and convincing
3 evidence that is a little bit different. There's a fraud -- there's been a
4 fraud claim in here under the punitive damages. And pattern instruction
5 10.8 is a clear and convincing evidence instruction that -- that, you know,
6 is designed for fraud claims. But in addition, the authority that's in 10.8
7 is general punitive. It is general clear and convincing evidence
8 instruction. And when you read 10.8 -- and just to be clear, this is in our
9 proposed instruction, I will note the authority underneath our clear and
10 convincing evidence instruction says 2.1 and 2.2. We filed a notice of
11 errata because that was an error. We were relying on 2.1 and 2.2 as well
12 as 10.8.

13 The latter, 10.8 is actually a little bit better. It's that it's -- to
14 be honest, is that it says 2.2 has an unfortunate aspect to it where it
15 really just says that clear and convincing evidence is not preponderance.
16 It's not reasonable doubt. It doesn't quite say what it -- what it is. When
17 we look at 10.8, it says the proof must be so strong in cogent as to satisfy
18 the mind and conscious of a common person, and so to convince
19 him/her that he/she would venture to act upon that conviction in matters
20 of the highest concern and importance to his or her own interest. It need
21 not possess such a degree of force as to be irresistible, but there must be
22 evidence of tangible facts from which a legitimate inference may be
23 drawn.

24 So we would recommend -- our instruction is derived from
25 10.8, and we would -- we would actually recommend that we work with

1 10.8 as the basis.

2 THE COURT: Okay. My inclination is to go with the pattern
3 jury instructions. So please make your record.

4 MS. ROBINSON: And when you say the inclination is to go
5 to pattern, we both offered a pattern jury instruction, Your Honor.

6 THE COURT: Right. The 10.8.

7 MS. ROBINSON: 10 point --

8 THE COURT: With modification.

9 MS. ROBINSON: I'm sorry?

10 THE COURT: 10.8 with modification.

11 MS. ROBINSON: Well, Your Honor, the issue with that is that
12 we don't have a claim for fraud. There is a claim for a fraudulent aspect
13 of punitive damages.

14 THE COURT: Okay.

15 MS. ROBINSON: But there is a couple of different ways that
16 clear and convincing applies here. It's not only just in whether punitive
17 damages should apply at all, but it's also that it -- honestly, it also applies
18 to contract modification, which is another instruction. So I just don't
19 know that the fraud instruction belongs in a case without a claim for
20 fraud.

21 MR. PORTNOI: It -- and Your Honor, the -- in our proposed
22 instruction, we obviously took out the in order for the Plaintiff to
23 establish a fraud claim, because really what we're trying to do is use
24 10.8, which is a correct statement of the law, to -- for any issue on clear
25 and convincing evidence, so that's why in our proposed instruction, we'd

1 modify 10.8 to take that in order for the Plaintiff to establish.

2 THE COURT: 10.8 is inappropriate. 2.2, as is, is the
3 appropriate instruction.

4 MS. ROBINSON: Your Honor, if we're going to just give 2.2
5 without modification, I would recommend that we take out the line in
6 both preponderance and our -- you know, about the considering of all
7 the evidence, because on reelection, we actually have an agreed
8 instruction that also says that. So it would be -- we have an instruction --

9 THE COURT: The agreed instruction says without regard to
10 which party introduced the evidence.

11 MS. ROBINSON: Yes. So I think the -- we have that agreed
12 instruction, but we also have, in our agreed instruction on
13 preponderance, and I'll tell you, I agree -- we agreed to this
14 preponderance instruction and we -- and I found that we wouldn't be
15 agreeing to clear and convincing, and that's when I looked back and
16 realized that there would be a line in this one that did not appear in clear
17 and convincing about considering all the evidence.

18 So I just don't think it should appear in one and not the other.
19 Particularly, since we have an additional instruction that says that you
20 should consider all evidence bearing on the question. So I just want
21 them to be parallel. I don't mind if the line is in there or out of there, I
22 just want them to be the same.

23 THE COURT: Yeah. Are you okay if they're parallel?
24 Because the language we use is put that regard to which party
25 introduced the evidence, not whether introduced by Plaintiffs or

1 Defendants. I think it should be as neutral as possible.

2 MR. ROBERTS: Yeah, I'm okay with it being parallel, Your
3 Honor. I only stood because I thought you would offer for us to be able
4 to make a record on the exclusion of the sentence we wanted to add it to,
5 too, that comes from today. And I'll be very brief that this came from
6 me, Your Honor. I think that when it comes to jury instructions, patterns
7 are great, but the Court has a duty to give an instruction if it's requested
8 and it's a correct statement of the law. And -- but since we --

9 THE COURT: You know, I have done that so many times, and
10 it inevitably it ends up being the reason for the appeal and the remand.

11 MR. ROBERTS: But this one is so safe, Your Honor, and
12 here's why --

13 THE COURT: So --

14 MR. ROBERTS: -- because 10.8 is also a statement of clear
15 and convincing evidence. And there will be no argument that clear and
16 convincing is different in a fraud claim than it is for any other claim.

17 THE COURT: It can --

18 MR. ROBERTS: And then you take --

19 THE COURT: It's possible to modify it if you're -- it says --
20 that says fraud.

21 MR. ROBERTS: But I know. We just want to take that one
22 sentence from 10.8 and put it in 2.2. You know, the people would ask --
23 would ask upon to the matters of the highest [indiscernible] something
24 like that.

25 And here's why it's appropriate, because even though that

1 sentence is in 10.8, not 2.2, if you look at the authority for 2.2, it has that
2 exact quote in the authority for 2.2.

3 THE COURT: 2.2 is appropriate. So you've made the record.

4 MR. ROBERTS: Thank you, Your Honor. I'll get out of your
5 hair.

6 THE COURT: Okay. So --

7 MR. ROBERTS: I got a to leave, so I'm going to leave it to
8 this good team here. Thank you so much, Your Honor.

9 THE COURT: No, I do have to say that I was impressed with
10 the way the teams have integrated some associates and younger
11 partners in the trial process.

12 MS. ROBINSON: Thank you, Your Honor.

13 THE COURT: I've meaning to say that all week. Because I
14 get so caught up, as you do.

15 MR. PORTNOI: And Your Honor, I would -- I would -- you
16 often ask for introductions, my associate Collin Stanton is in the court for
17 the first time today.

18 THE COURT: Thank you.

19 MR. PORTNOI: Probably keep me honest with jury
20 instructions.

21 THE COURT: We see you pretty regularly.

22 MR. ROBERTS: And it came up with Mr. Murphy, Your
23 Honor, William and Mary [phonetic] alone.

24 UNKNOWN SPEAKER: You didn't go to UVA, did you? All
25 right. You can stay.

1 THE COURT: All right. So on the -- page 5 for clear and
2 convincing, we'll make the two standards parallel in a neutral way.

3 MS. ROBINSON: Thank you, Your Honor.

4 THE COURT: And we'll adopt 2.2. Does that take us to page
5 6 with regard to unjust enrichment?

6 MS. ROBINSON: Yes, Your Honor. So our modification here
7 to the standard instruction was that we had inserted direct or indirect
8 benefit, and then I also added, this is called unjust enrichment, and the
9 reason I had added this is called unjust enrichment is just because we
10 had to have a damages instruction, and I was trying to direct the jury
11 to -- I didn't know how to direct the jury -- how I was going to describe
12 the damages instruction, unless I told them what this claim was.

13 THE COURT: Okay.

14 MR. PORTNOI: Your Honor --

15 THE COURT: Your spokesperson, please.

16 MR. PORTNOI: -- so we also have a competing instruction on
17 unjust enrichment that I think has a foundational issue. One thing that
18 comes up as we talk about unjust enrichment is whether or not we are --
19 oh, and we can do this later, but whether or not we are presenting unjust
20 enrichment before breach of implied fact contract. The unjust
21 enrichment claim is plead as an alternative to an implied and fact
22 contract, and there's a lot of authority on the fact that once you have
23 found a contract, whether it is implied or express that you can't have an
24 unjust enrichment claim. So really, as efficiency for the jury, what you
25 would normally do is start with a breach of implied and fact contract if

1 the, you know, evidence has a little bit more to do with the verdict form,
2 but --

3 THE COURT: That has more to do with the order in which
4 the instructions are read also.

5 MR. PORTNOI: That's what I'm saying is whether we should
6 be moving to unjust enrichment first or breach of implied in fact
7 contract. We can argue that at a different time on Sunday, or we can
8 argue about that now, if you wanted to.

9 THE COURT: Let's do it now.

10 MR. PORTNOI: Yes.

11 THE COURT: Well, it's --

12 MS. ROBINSON: Sorry, I didn't mean to interrupt. Go ahead.

13 THE COURT: Did you wish to comment?

14 MS. ROBINSON: Oh, I -- I'm so sorry. I didn't mean to
15 interrupt. I was -- I had a response, but I had -- I had misunderstood that
16 he was done, but I'll let him continue.

17 THE COURT: This is a fairly informal process, and --

18 MS. ROBINSON: Okay.

19 MS. LUNDVALL: Your Honor, we do have a position as far as
20 on that source. What Mr. Dimitri -- or what Mr. Portnoi, excuse me, is
21 suggesting is that if the jury finds, on the implied in fact contract, then
22 they should just stop with their analysis. Well, in fact, that that should
23 not be the case because, for example, once it -- if this goes -- case goes
24 up, and which it likely will, is that in the event that they -- Nevada
25 Supreme Court reverses and remands, if we have both of the

1 instructions, then there can be limited amount of work on remand versus
2 a brand-new trial then with only one of the claims being instructed upon.
3 So the jury needs instruction on both claims in our opinion.

4 THE COURT: I would tend to agree with Ms. Lundvall on that
5 issue.

6 MS. ROBINSON: If I may approach, Your Honor, I just had
7 some authority on that?

8 THE COURT: Let's give Mr. Polsenberg a chance to respond.

9 MS. ROBINSON: Sure. Of course.

10 MR. POLSENBERG: Yeah. I understand Pat's point. We
11 can -- though I do know logically it makes more sense. I've been in cases
12 where we've instructed on contract, implied contract, quantum unjust
13 enrichment. It's just a logical order, but we can tell the jury that they
14 have to go through and answer all the questions.

15 THE COURT: Well, and we'll get -- that's why I want to do the
16 instructions before we do the verdict form.

17 MS. ROBINSON: I do have -- I just was going to offer the
18 Court some authority on -- but I get the sense you're already familiar.

19 THE COURT: Go ahead. I cut you off.

20 MS. ROBINSON: Just, you know, this -- the question of
21 whether we need to elect and stop the jury, that's not appropriate. The
22 jury can answer, even inconsistent theories and that we would elect
23 afterwards.

24 MR. POLSENBERG: I get --

25 MS. ROBINSON: So I don't think it makes sense to cut the

1 jury off.

2 MR. POLSENBERG: You know, I think I just said we don't
3 have to.

4 MS. ROBINSON: Oh, okay. I'm sorry.

5 THE COURT: All right. So let's talk about this unjust
6 enrichment instruction.

7 MS. ROBINSON: So as I say, just turning to the standard
8 instruction, 13.12, the difference that we had -- I made Plaintiffs instead
9 of the Plaintiff. Same with Defendants. And then I had inserted direct or
10 indirect. That's recognized in Topaz Mutual, which we cite in our
11 authority. The other part, as I said, I had just said this is called unjust
12 enrichment because it was the only way I could think of to bridge the
13 jury to a damages instruction that I identified unjust enrichment.

14 THE COURT: Any response, please?

15 MR. PORTNOI: So Your Honor, we have a competing
16 instruction, which is on page 23 of our contested instruction.

17 THE COURT: Let me pull that up real quick because I'm -- my
18 desk up here is getting really messy. I think I have it right here. And
19 what page will that be on?

20 MR. PORTNOI: That would be at page 23 of our contested
21 instructions, Your Honor. Let me know when you're there. I don't want
22 to talk while you're trying to find something.

23 MS. LUNDVALL: Page 23 or instruction 23?

24 MS. ROBINSON: Page 23.

25 MR. PORTNOI: Look at it at the bottom, it says -- I see page

1 23.

2 MS. ROBINSON: Oh, see, I was wrong. I had two versions of
3 their --

4 THE COURT: I have two versions of yours, too.

5 MS. ROBINSON: Here it is.

6 THE COURT: I'm going to have to pull it up on the computer.

7 MS. ROBINSON: A different page 23.

8 MS. LUNDVALL: Okay. So I have to --

9 THE COURT: I have for Sunday, I have --

10 MS. ROBINSON: It's 23 of 44.

11 THE COURT: -- everything being organized, so --

12 MR. PORTNOI: The best made plans. Well, I can certainly
13 explain the differences and what --

14 THE COURT: Go ahead.

15 MR. PORTNOI: -- went -- the first piece that is -- that we have
16 is the fact that we think that the instructions have to open by pointing out
17 that in this case throughout, what's going to be complicated is the jury
18 has to be aware that this isn't a case about the Plaintiffs potentially
19 conferring a benefit upon the Defendants. They have to find that a single
20 Plaintiff confer a benefit upon a single Defendant. Maybe they'll find
21 multiple different valiances. So the reason our instruction opens with
22 the Plaintiffs -- and we sense that this might be the first claim, or it would
23 be the transition from another claim. We had read the Plaintiffs,
24 Fremont, Ruby Crest, or Team Physicians, may recover the reasonable
25 value of a benefit conferred by -- on one or more of the Defendants.

1 THE COURT: Okay.

2 MR. PORTNOI: You had United Healthcare, UMR, Sierra, or
3 Health Plan of Nevada ifs. That's Nevada if. So that's the first pieces
4 that we really have to make clear, or else we're going to have the notion
5 that the jury is able to undifferentiated fashion, treat the Plaintiffs as a
6 lump, and treat the Defendants as a lump, which isn't -- doesn't work for
7 how unjust enrichment has to operate.

8 THE COURT: And I'm aware that there are briefs on this
9 issue.

10 MR. PORTNOI: There are trial briefs on the -- there's some
11 trial briefs on the unjust enrichment. I don't think that there is a -- I don't
12 think there's a brief on this particular issue that I've just raised.

13 MS. ROBINSON: So just to respond to his point about
14 lumping, I think both sides have -- certainly, we have proposed verdict
15 form. We're not going to ask for Plaintiffs get this, you know, from all
16 Defendants. We have broken out every single Plaintiff and every single
17 Defendant.

18 So you know, we're not suggesting to the jury that you
19 can't -- that you don't have to match every single Plaintiff with every
20 single Defendant. And I think that's pretty clear. What -- what -- this
21 instruction is very confusing the way that it's written.

22 In addition, the entire second half of the instruction is just the
23 issue that we discussed. Instructing the jury on the law regarding, you
24 know, we affected their verdict, and also, you know, they should stop, or
25 you know, everything rests on the implied in fact contract; I just don't

1 think that that is appropriate for an instruction to the jury.

2 MR. PORTNOI: I agree with the second half of the instruction
3 has been ruled on, so I --

4 THE COURT: Right.

5 MR. PORTNOI: So long as we agree that we preserve our
6 record, or you know, I agree with that; however, I still believe that the
7 verdict form should match the instructions. It's very confusing to the
8 jury if they get in and there's a verdict form and it doesn't actually -- and
9 it looks completely different from what they were just instructed. That's
10 a -- that is a prejudicial error, and really just a problem that's going to
11 make the jury send back a lot of questions. It's going to make it hard for
12 us to get out of here before Thanksgiving, so that's why I believe that the
13 instruction should hopefully match that.

14 And otherwise, with the, you know, one, two, and three that
15 are listed here, that also reflects the fact that, you know, once we start
16 talking about the fact that we are -- it is the Defendant on whom a
17 Plaintiff conferred the benefit, knew of the benefit conferred, is a -- as a --
18 I attempt to say as close to the pattern as possible, while rate -- while
19 fighting that what we are doing is talking about we have to have a
20 Plaintiff and a Defendant. We have to get to that match for unjust
21 enrichments purposes. So that -- otherwise, I'm trying to say -- we are
22 trying to say is faithful as possible to the pattern.

23 THE COURT: I am going to reject the Defendant's unjust
24 enrichment request for instruction. Do you have anything more for the
25 record?

1 MR. POLSENBERG: Yes, Judge. I think instead of adding
2 lines to the pattern like this is called unjust enrichment, why don't we
3 just use traffic signals? In other words, I will now instruct you on
4 Plaintiff's claim for unjust enrichment, and that can be the instruction
5 before this.

6 THE COURT: Then I --

7 MR. POLSENBERG: And we can do that for every single one
8 of their claims.

9 THE COURT: I read the intro at the top, so I think the last
10 sentence is just not necessary.

11 MS. ROBINSON: That's fine. I just wanted to -- that's -- yeah,
12 as long as we achieve that purpose, that's fine by me.

13 MR. POLSENBERG: Right. And let me also object to the --
14 they're adding to the pattern by putting direct or indirect. If we're going
15 to stay true to the -- to the patterns, where -- at least where necessary,
16 then I think we should just be making wholesale changes. Right, the
17 direct and indirect aren't in here. And you know, I've done jury
18 instructions in maybe 75 cases, and I've -- it's pretty typical to put in the
19 proposed instruction that we're talking about, what the modifications
20 are. So that's marked right there in the text. So if you take something
21 out, you put in brackets. And if you add something, you underline it.

22 MS. ROBINSON: I don't think either party did that in this
23 case.

24 MR. PORTNOI: That's correct.

25 THE COURT: That's unusual in my opinion.

1 MR. POLSENBERG: A pox on both their houses.

2 THE COURT: So -- all right.

3 MR. ROBERTS: If that is helpful to Your Honor, I think we
4 would -- Ms. Robinson and I could obviously prepare something that is
5 easier to look at before and have that to you if that -- if that's something
6 that is helpful to Your Honor.

7 MS. ROBINSON: Or we could just walk you through. Either
8 way is fine.

9 THE COURT: The instructions that go back to the jury will
10 not have the cites. I use the cites for reference in settling the
11 instructions. So the two of you are going to agree on a language for the
12 unjust enrichment instruction, is that what I heard?

13 MS. ROBINSON: I'm not sure that I --

14 THE COURT: Because the last sentence will be removed.

15 MS. ROBINSON: Correct.

16 THE COURT: The question now is whether or not direct or
17 indirect will be in. The Defendant says, you know, it's not in the pattern.
18 Plaintiff says this is a correct statement; you have to have the law. You
19 want one last bite of the apple?

20 MS. ROBINSON: Yes, Your Honor. I do think it's a correct
21 statement of the law, and I think it would be helpful to the jury, because
22 in this case, there's going to be argument, I assume. In fact, we've
23 already heard argument that it -- you know, the benefit is going to the
24 insured -- to the insured -- the employer or the -- sorry -- the patient. And
25 in fact, and I don't want to confuse the jury because indirect or a direct

1 benefit can be recognized for unjust enrichment.

2 MS. LUNDVALL: And if it helps, Your Honor, when we
3 argued the motion to dismiss, we had argued Topaz as including indirect
4 benefit. And that was the Court's ruling. And so it would be consistent,
5 then, with the previous order that you issued on the motion to dismiss.
6 As you well know, that went up and there was no fuss about it, then,
7 from the Nevada Supreme Court.

8 THE COURT: Okay. So I will -- Mr. Polsenberg, you have an
9 issue now for appeal again.

10 MR. POLSENBERG: Thank you, Your Honor.

11 THE COURT: I won't strike the direct or indirect because it's
12 a correct statement of Nevada law. Let's go to page seven.

13 MS. ROBINSON: So I know this is going to be an issue of hot
14 debate. There is not a pattern instruction that I'm aware of on unjust
15 enrichment. And basically, what I did here is the -- if you look at the first
16 line of the unjust enrichment instruction, it says, "Plaintiffs may recover
17 the reasonable value of the benefit." To me, that almost in itself is
18 intended as instruction. And so I tried to, artfully or not, rephrase that
19 exact statement of the law, "Plaintiffs may recover the reasonable value
20 of the benefit conferred on the Defendants."

21 There is a lot -- I'm just going to go ahead and anticipate
22 some of the argument that we're going to hear. The problem with the
23 restatement with all the different options that are provided is that only
24 one of them is supported by the evidence. There is the cost to the
25 Claimant of conferring the benefit. There's no evidence of that because

1 that has been excluded.

2 The market value of the benefit. I think the problem with this
3 statement is that we've just heard from Mr. Deal that a market --
4 whatever the courts are considering when they talk about a market value
5 is willing buyer and willing seller. We know that we don't have that here.
6 And so I think that's a very confusing -- in fact, really, all this testimony
7 has established, there is, you know, so much confusion over what the
8 prices should be in a market where there's a compulsory service
9 provided and then a seeking of reimbursement afterward. It's just
10 completely different.

11 And then the final one is the price the Defendant has
12 expressed a willingness to pay if the Defendant's acceptance of the
13 benefit may be treated as valid on the question of price, I just don't know
14 how that ties into the evidence that's been presented in this case. So the
15 problem is I think it's just very confusing to the jury to present a number
16 of options that haven't been supported by any evidence. And in
17 contrast, the instruction that we have offered is just a restatement of
18 what's already been said in the standard instruction, which is they may
19 recover the reasonable value of the benefit conferred on the Defendants.

20 THE COURT: And the response, please?

21 MR. PORTNOI: Your Honor, again, neither of these is a
22 pattern instruction, so we're left without a pattern instruction for
23 damages in unjust enrichment in Nevada. However, what we do know
24 from *Certified Fire* is that *Certified Fire* does say that the proper measure
25 is determined by restatement 49. And so giving restatement 49 is

1 equivalent to giving a pattern instruction. It is equivalent to giving what
2 the -- what the Nevada Supreme Court said is the law. And for instance,
3 there's -- just to be clear, you know, we -- everything -- much of what we
4 put in here was designed to be directly quoted -- is either directly quoted
5 from the restatement 49 or it's directly quoted from *Certified Fire*. For
6 instance, "The actual value of recovery is usually the lesser of the market
7 value and the price the Defendant has expressed a willingness to pay."
8 That's a direct quote from the Nevada Supreme Court in an unjust
9 enrichment case.

10 And we do have -- we do know what the price the Defendant
11 has expressed a willingness to pay; that has been -- that -- Mr. Deal and
12 Mr. Leathers have given -- have presented claims files that show -- and
13 have described them -- that show how much the Defendants have
14 expressed a willingness to pay, how much they have paid. They
15 made -- there may be decisions that how much we've expressed a
16 willingness to pay to other providers may be relevant to that. And you
17 know, again, we've seen some evidence with respect to cost and we've
18 seen some evidence -- certainly, Plaintiffs have said frequently that they
19 believe that a substantial value of benefit was provided to advance the
20 purposes of the Defendant. That's been said many times. And the jury
21 is competent to measure that.

22 Mr. Polsenberg may be starting to stand up now.

23 MS. LUNDVALL: Well, let's be clear, Your Honor, what
24 they're doing is they're trying to set you up. They're trying to suggest
25 that if you give the jury instruction that they want, then in fact that

1 there's some type of error.

2 THE COURT: No, no. I can tell you that the jury instruction
3 proposed by the Defendant here is way overbroad. It doesn't fit the facts
4 of this case and it basically is -- contains argument for things that should
5 be in the verdict form. But you can't recover on the implied in fact
6 contract and the unjust enrichment claims. You know, you might set
7 those out in separate jury instructions, but the way that the Defendant
8 framed the unjust enrichment instruction here is just way overbroad.

9 MR. PORTNOI: Oh, I think Your Honor may be looking at the
10 wrong instruction because we were -- we moved -- well, I thought we
11 had moved on to the measure of damages. So that would be page 25 of
12 50 -- of 44.

13 THE COURT: Oh. And this is why. I'm embarrassed that
14 we're on the record when I said that. Okay. I --

15 MR. PORTNOI: And to be clear on that point about what's in
16 that, I think I already said on the record, we believe that's been resolved.
17 So we are -- with that, that's fine.

18 THE COURT: Good enough. I have no problem with
19 the -- seven as proposed by the Plaintiff.

20 MR. PORTNOI: And again, we would say we believe that is
21 an incorrect statement of the law and is clearly too minimal and does not
22 actually correctly state the law under *Certified Fire*.

23 THE COURT: Good enough. Do you have anything more for
24 the record?

25 MR. PORTNOI: No, Your Honor.

1 THE COURT: Okay. Let's go over to the contracts instruction
2 on page eight.

3 MS. ROBINSON: Thank you, Your Honor. So there's -- this is
4 a modified from the standard 13.11. 13.11 stops at ascertainable
5 agreement. We did add the -- everything that follows from that. So,
6 "Even if the parties did not agree on a price term, you may find the
7 parties formed," that whole paragraph there is added from *Certified Fire*.
8 I know that there's just been a lot of dispute about whether or not a price
9 term is necessary, and so we just wanted to forestall any argument that
10 without a price term, you can't find that there has been an agreement.

11 THE COURT: Well, I think my ruling today on the request for
12 directed verdict should be instructive. I don't believe the price term is
13 necessary in an implied contract. So I don't have any problem with the
14 13.11, but I don't think the additions are appropriate.

15 MR. PORTNOI: Your Honor, before we get to 13.11, I would
16 also point out that Defendants have proposed that all of the contract
17 instructions, the pattern contract instructions should be given. So that
18 includes 13.0, 13.2 --

19 THE COURT: Right. And I just think that they are way too
20 broad. Way over the top.

21 MR. PORTNOI: You think the pattern instructions are too
22 broad?

23 THE COURT: No, no. The proposals from the Defendant.

24 MR. PORTNOI: Your Honor, again, these are the pattern
25 instructions in any contract claim. The jury should be instructed on what

1 an offer is, what an acceptance is, what contractual intent is, what
2 consideration is. This is --

3 THE COURT: Well, we'll get there. We're only now at the
4 basic contracts. We'll get there.

5 MR. PORTNOI: Oh, okay. I was pointing out that only
6 Defendants have proposed those pattern instructions. I -- the implied in
7 fact instruction, that is the pattern without modification. Obviously,
8 Plaintiffs have proposed adding something that says price term is not
9 necessary. Defendants have proposed something that says a price term
10 is a material term.

11 THE COURT: And I've just indicated that I think the pattern
12 instruction should be given without the additional information.

13 MR. PORTNOI: And I understand. So we believe it's helpful,
14 but we've made our record.

15 THE COURT: Good enough. Did you have something more
16 to add on that?

17 MS. ROBINSON: I'll just make a little record here, Your
18 Honor, and just say that we believe that the paragraph about the price
19 term is both legally correct and it would be helpful to the jury in case
20 there's going to be argument that if there wasn't an agreement on a
21 price term, there was not a contract. And then the second part, the, "In
22 Nevada, implied in fact contracts and expressed contracts stand on equal
23 footing," is in part a response just to the Defendants' continuing
24 characterizations that we don't have a contract with any of the Plaintiffs.
25 It's been repeated over and over again, and it's a little frustrating

1 because I think that they don't have an express contract. But we don't
2 want to give the jury the impression that implied contracts are not
3 equally enforceable and valid under the law. So that is the reason why
4 we would propose that. We think it's both legally correct and helpful.

5 THE COURT: Thank you. Let's go to page nine.

6 MR. PORTNOI: Your Honor, just so I understand the ruling --

7 THE COURT: Yes, of course.

8 MR. PORTNOI: Is your ruling to give 13.11 unmodified?

9 THE COURT: That's correct.

10 MR. PORTNOI: Okay.

11 MS. ROBINSON: Thank you, Your Honor. So the
12 modification, I don't know if the Defense is going to argue that there was
13 a modification to our agreement or not. And I just offer this instruction
14 sort of in case that there is an argument that there's been a modification.
15 The way that this deviates from the pattern instruction is that the pattern
16 instruction creates -- has a line about an oral agreement may modify a
17 written contract. That's the second line of the first paragraph. I don't
18 think that -- I mean, that refers to an express contract. So I'd remove that
19 because I just didn't think that that was reflected in the evidence in this
20 case because everything is going to be implied.

21 What we had added was the idea that for modifications to be
22 valid, there has to be additional consideration. And the reason that we
23 did that is because what the jury has seen is evidence that, you know,
24 there was payment amounts and then those payment amounts have
25 gone down. And that, you know, if all there is is just -- if there's going to

1 be argument that there's a course of dealing, that the payment amounts
2 went down, down, down, that that somehow indicates that there's been
3 an acceptance of a modification, we wanted to show the jury that there
4 has not been any return consideration given for that. You know, and we
5 don't think that would be a valid modification.

6 Now of course, we would also argue that we never
7 consented and there's nothing to suggest we did. We're here suing
8 because we didn't consent. But that's the reason why we offered that.
9 Everything else, I think, is in the pattern instruction.

10 THE COURT: And the response, please. Do you --

11 MR. PORTNOI: I don't think that modification is in this case.
12 We haven't proposed a modification instruction. I just don't think this is
13 a modification of contract case.

14 THE COURT: All right. Given the fact that there is a
15 statement that modification is not going to be argued, this -- page nine
16 will not need to be given.

17 MS. ROBINSON: Thank you, Your Honor.

18 THE COURT: Page ten.

19 MS. ROBINSON: This -- so -- and I realized that my footnote
20 on this is not entirely accurate about the revision, so I'm just going to
21 walk the Court through the revision of the standard.

22 THE COURT: Hold on. I'm pulling it up right now.

23 MS. ROBINSON: So you'll see the standard is much, much
24 longer. And I can explain once you've pulled it up.

25 THE COURT: It's scrolling. This is very user-friendly.

1 MS. ROBINSON: So basically, our proposed instruction ends
2 right before -- the middle of the first paragraph or about two thirds of the
3 way through the first paragraph because I just deleted consequential
4 damages. We're not seeking consequential damages and I didn't think
5 that that was -- I just thought that would be confusing to the jury. It's not
6 supported by the evidence.

7 Everything else, I excluded because it just doesn't seem
8 relevant to this case. So the first -- the second paragraph, which is the
9 first we excluded, was that enforceable as to future performance,
10 divisible, we don't have a divisible -- that just doesn't seem like the kind
11 of contract that's being argued in here. Terminable at will, all of these,
12 basically, measure -- damage is measured as the date it was breached,
13 special circumstances, none of that is really relevant to this case. And so
14 that's why we had not included those paragraphs in the standard
15 instruction.

16 MR. PORTNOI: Just a moment to consult with Mr.
17 Polsenberg.

18 THE COURT: Of course.

19 MR. PORTNOI: Thank you.

20 THE COURT: And you know, just because I indicated I
21 thought some of the Defendants' were overbroad doesn't mean that I
22 don't have an open mind. I change my mind based upon argument
23 regularly.

24 MR. PORTNOI: Absolutely. And we'll continue to try to
25 change your mind, Your Honor. I did not take that any other way.

1 THE COURT: Good enough. So take a moment. Let me
2 know when you're ready.

3 [Pause]

4 MR. PORTNOI: Your Honor, is it possible we could reserve
5 this particular instruction and bring it up tomorrow? It may be possible
6 that we can, on further reflection, come to an agreement and not use the
7 Court's time today.

8 THE COURT: I have no problem with that. Let me just give
9 you my impression.

10 MR. PORTNOI: Yes, Your Honor.

11 THE COURT: The first paragraph seems to -- the first
12 paragraph seems to apply. The following paragraphs seem to assume
13 that it's a written contract, and that's my comment. So Ms. -- is it
14 Williams?

15 MS. ROBINSON: Me?

16 THE COURT: Your last name, yeah.

17 MS. ROBINSON: Robinson.

18 THE COURT: Sorry. Robinson.

19 MS. ROBINSON: No, it's only -- they're both in the top ten
20 most common names.

21 THE COURT: Sorry.

22 MR. POLSENBERG: Polsenberg.

23 THE COURT: Are you willing --

24 MR. PORTNOI: Portnoi.

25 THE COURT: Oh, yeah. How about my name, right?

1 MS. ROBINSON: What's your name?

2 THE COURT: So what -- are you willing to defer this to talk to
3 Mr. Portnoi?

4 MS. ROBINSON: Of course. Of course.

5 THE COURT: Okay. So we'll take this up tomorrow.

6 MR. PORTNOI: Your Honor, I think that's the last of Plaintiff's
7 proposed contract instructions. And I just wonder, I mean, A, I don't
8 know if that means we're at a point where we should stop, just given
9 security's desire, or --

10 THE COURT: We have five more minutes.

11 MS. ROBINSON: Oh.

12 MR. PORTNOI: Otherwise, I would wonder if it makes sense
13 to look at the other contract pattern instruction that we have proposed.

14 MS. ROBINSON: So -- sorry. I didn't mean to -- but we do
15 actually have one more.

16 MR. PORTNOI: Oh, I'm sorry. I didn't --

17 MS. ROBINSON: It's 13.47, the following one on page 11.

18 MR. PORTNOI: I'm so sorry. I really thought we were done.

19 MS. ROBINSON: I mean, I guess that could apply to all of
20 our damages, and I'd be fine with that, but that is technically taken from
21 the contracts portion of the -- I mean, of the NJI. So this is just, I think,
22 the pattern instruction about damages, 13.47. I don't think there's any
23 modification. Certainly not an intentional modification, unless it's a typo.

24 MR. PORTNOI: I don't think we have a -- so as long as it is
25 represented to be the pattern, we don't have an objection to this

1 instruction.

2 THE COURT: Thank you. So 13.47 will be given. Now, this
3 gets me to the Unfair Insurance Practices Act. Let's --

4 MS. ROBINSON: Okay. Oh, I'm sorry, Your Honor. I just
5 was agreeing with Mr. Portnoi that maybe we should finish their
6 contracts.

7 THE COURT: Okay. Let me pivot over to that, then. And
8 what page will that start?

9 MR. PORTNOI: So our contract instructions start on page 9
10 of 44 is what I see running down the bottom.

11 THE COURT: I'm there.

12 MR. PORTNOI: Of our November 15th filing.

13 THE COURT: I'm there.

14 MR. PORTNOI: So this is 13.0. 13.0 contemplates having
15 some description of what the contract is, which is in the pattern
16 instruction, I believe. Mr. Polsenberg will probably remember when the
17 first version of this was written in 1947.

18 MR. POLSENBERG: Excuse me.

19 MR. PORTNOI: But my understanding is that it's here
20 because really, the jury has to understand what the theory of the contract
21 is and what the theory of the defenses to the contract is to be able to
22 really have a target of what that is. So we do believe a version of 13.0
23 should be given. Certainly, you know, I believe Ms. Robinson has argued
24 that ours is, you know, lengthy and we've done our best. And obviously,
25 we would expect -- we would have expected Plaintiffs to propose a

1 counter to this so that we could potentially integrate their view of what
2 they allege the contract to be. And we're open to that, but we do believe
3 that some introductory instruction along the lines of 13.0 is needed.

4 THE COURT: The thing is that the jury instructions are not
5 supposed to editorialize, and the Defendant's proposed here does that.
6 And we've got a pattern instruction on point. So with that being said,
7 Ms. Robinson.

8 MR. PORTNOI: Well, the issue is 13.0 is the pattern
9 instruction. And if you look at it, it has things like, "The Plaintiff claims
10 that Defendant breached the contract by," and then it says, "briefly state
11 alleged breach." So I am attempting to obviously fill in the brackets,
12 though I obviously agree that we should, you know, we would have to
13 have some discussion about, you know, some of the details in there.

14 MS. ROBINSON: So my response to that is that this is a very
15 complex case. Now, if that -- the jury has sat through -- will have sat
16 through weeks of evidence where the parties are describing exactly what
17 they believe their claims and defenses are. That being said, trying to
18 reduce all of that to a narrative description of the parties' claims and
19 defenses seems to me both an incredibly difficult -- well basically,
20 impossible to do without -- it would be a very, very time-consuming and
21 difficult task and would probably still result in error.

22 And I just don't think it's necessary. It is a pattern instruction
23 in the sense that there is an instruction that invites a narrative about the
24 parties' claims and defenses. I just think in a case of this nature, it's just
25 -- it does invite editorializing. And it's going to be very, very difficult to

1 draft something that's totally neutral that doesn't exclude any of the
2 parties' arguments or evidence in this case.

3 MR. PORTNOI: Yeah, I --

4 MS. LUNDVALL: Nearly going to be impossible to try to
5 come up with a neutral statement on what the parties' positions are.

6 THE COURT: So what I'm going to do is tell you that the
7 pattern instruction will be given. You'll propose language to each other
8 to fill it in. To the extent you can agree, great. If you can't, I will
9 determine the language.

10 MR. PORTNOI: I think that's appropriate, Your Honor. Thank
11 you.

12 MR. POLSENBERG: Thank you, Your Honor.

13 THE COURT: Okay. And I think that pretty much uses up our
14 time for the day.

15 [Proceedings adjourned at 5:51 p.m.]

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

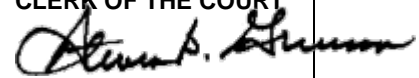
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DISTRICT COURT
CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES
(MANDAVIS) LTD., ET AL.,

Plaintiffs,

vs.

UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

Defendants.

CASE#: A-19-792978-B

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
MONDAY, NOVEMBER 22, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 17

APPEARANCES:

For the Plaintiffs:

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JOHN ZAVITSANOS, ESQ.
JASON S. MCMANIS, ESQ.
JOSEPH Y. AHMAD, ESQ.
MICHAEL A. KILLINGSWORTH, ESQ.
KEVIN LEYENDECKER, ESQ.

For the Defendants:

D. LEE ROBERTS, JR., ESQ.
K. LEE BLALACK, ESQ.
JEFFREY E. GORDON, ESQ.
COLBY L. BALKENBUSH, ESQ.
DIMITRI D. PORTNOI, ESQ.
CECILIA PLAZA, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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1 Las Vegas, Nevada, Monday, November 22, 2021

2

3 [Case called at 8:03 a.m.]

4 [Outside the presence of the jury]

5 THE COURT: Thanks everyone. Please be seated. Good
6 morning.

7 MR. ZAVITSANOS: Good morning.

8 MR. BLALACK: Good morning, Your Honor.

9 THE COURT: Can we bring in the jury?

10 MR. AHMAD: I believe so, Your Honor.

11 THE COURT: Did you guys get back to Nicole on exhibits?

12 MR. BLALACK: Whatever we need to do, we just need to
13 make sure you get a copy.

14 THE CLERK: You were supposed to look at them over the
15 weekend because you -- both sides have been sending me additional --

16 MR. BLALACK: I know we have been doing that.

17 MR. GORDON: And we have -- we've looked at them, and we
18 sent them some emails. Some we agree on, some we're still working
19 through. Clearly, Your Honor, we probably have to build in some time
20 today for those that we can't reach agreement on. We have to present --

21 THE COURT: There's no time to build in. You can do it after
22 5.

23 MR. BLALACK: That's fine.

24 THE COURT: I'm not going to jam you up on putting your
25 case on.

1 MR. BLALACK: That's fine.

2 MR. GORDON: That's fine, Your Honor.

3 MR. PORTNOI: Your Honor, do you also want to take up
4 now, or at 5, the motion for relief of amended pleadings?

5 THE COURT: This afternoon. Come on up.

6 MR. ROBERTS: Should we make our appearances, Your
7 Honor?

8 THE COURT: You know, I was going to save time and not do
9 it, but --

10 MR. ROBERTS: Oh, okay.

11 THE COURT: -- since we have the time. I'm going to call the
12 case in of Fremont v. United. Plaintiff's appearances then Defendants.

13 MR. AHMAD: Yes, Your Honor. Joe Ahmad for the Plaintiff
14 healthcare providers.

15 MR. ZAVITSANOS: John Zavitsanos, Your Honor.

16 MR. MCMANIS: Jason McManis.

17 MR. LEYENDECKER: Kevin Leyendecker.

18 MR. KILLINGSWORTH: Michael Killingsworth.

19 MS. LUNDVALL: And Pat --

20 THE COURT: Thank you. And for the defense?

21 MR. ROBERTS: Lee Roberts for the Defendants, Your Honor.

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

24 MS. PLAZA: Cecilia Plaza on behalf of the Defendants.

25 MR. GORDON: Jeff Gordon. Good morning, Your Honor, on

1 behalf of the Defendants.

2 MR. BALKENBUSH: Colby Balkenbush on behalf of the
3 Defendants as well, Your Honor.

4 THE COURT: Thank you.

5 MR. PORTNOI: Dimitri Portnoi on behalf of the Defendants.

6 MS. LUNDVALL: And Pat Lundvall from McDonald Carano
7 on behalf of the Plaintiffs. Apologies for being late, Your Honor.

8 THE COURT: No problem. I walked in at 7:59, so.

9 [Pause]

10 THE COURT: All right. So Juror number 1 is not here. And
11 Juror number 2, Cindy Springberg, has a cold or maybe a sinus
12 infection. Doesn't feel great, but she's here. And he's going to call Juror
13 number 1 right now.

14 MR. BLALACK: Your Honor, while we're waiting, for
15 planning purposes, our next witness, after Ms. King finishes, which is
16 probably another hour, well, I should say a couple hours between direct
17 and cross, redirect, will be Mr. Bristow. And the plan, I think, is for us to
18 play a video on direct and then bring -- he'll come in live on cross. So
19 we can talk about that more at that time, but I just wanted you to -- I
20 know we got you the final designations, the clips --

21 THE COURT: Right.

22 MR. BLALACK: -- late yesterday, so it may be that Your
23 Honor --

24 THE COURT: I didn't get to it last night. It's in my office. I
25 brought it this morning.

1 MR. BLALACK: Okay.

2 THE COURT: I will do it.

3 MR. BLALACK: You -- okay. Because I'm just trying to game
4 out if we need to have a Plan B for after she is done because the plan
5 would be to play the video.

6 THE COURT: So are the clips of the deposition I need to rule
7 on, is that Bristow?

8 MR. BLALACK: Correct.

9 THE COURT: Oh. Well, I hate to do it up here. I guess I can
10 go get it and --

11 MR. BLALACK: I can do it however you want, Your Honor.

12 THE COURT: Yeah.

13 MR. BLALACK: I mean, it's just --

14 THE COURT: Let me go get it. I'll be right back.

15 [Recess taken from 8:08 a.m. to 8:11 a.m.]

16 THE MARSHAL: Department 27 is back in session.

17 THE COURT: Thanks, everyone. Please remain seated. And
18 let's bring in the jury.

19 MR. ZAVITSANOS: Did the juror make it Your Honor, do you
20 know?

21 THE COURT: Yes.

22 MR. ZAVITSANOS: Okay.

23 THE MARSHAL: All rise for the jury.

24 [Jury in at 8:11 a.m.]

25 THE COURT: Thank you. Please be seated. Okay. Mr.

1 Blalack.

2 MR. BLALACK: Thank you, Your Honor.

3 THE COURT: Mr. Roberts.

4 MR. ROBERTS: Thank you, Your Honor. Good morning.

5 JURORS: Good morning.

6 MR. ROBERTS: Good morning, Karen.

7 THE WITNESS: Good morning.

8 KAREN KING, DEFENDANTS' WITNESS, PREVIOUSLY SWORN

9 DIRECT EXAMINATION CONTINUED

10 BY MR. ROBERTS:

11 Q So let's go back to where we left off on Friday afternoon.

12 And we were talking about your work both for your own consulting firm
13 for Aon and for Marriott International in the area of self-funded
14 employee health benefit plans. Do you recall that?

15 A I do.

16 Q Okay. Let me -- I had one more question to ask you with
17 regard to your background and foundation. How many times have you
18 been through the competitive bidding of an employee health plan TPA
19 contract?

20 A I would say I have been through the competitive bidding RFP
21 process approximately 60 times.

22 Q And of those 60 times, how many times were you acting as
23 the consultant for the insurance company or TPA bidding on the
24 contract?

25 A How many times was I working for the TPA?

1 Q For the insurance company.

2 A Never.

3 Q Okay. Who did you typically represent?

4 A My client was always the employer and the employee --
5 employees of that employer. That's who I worked for. That confused
6 me.

7 MR. ROBERTS: Your Honor -- Thanks. Are you done?

8 THE WITNESS: I'm done.

9 MR. ROBERTS: I didn't mean to cut you off.

10 THE WITNESS: Thank you.

11 MR. ROBERTS: Your Honor, at this time, I would move to
12 qualify the witness as an expert in employee benefit plans, self-funded
13 employee health benefit plans, and the market for TPA contracts.

14 MR. AHMAD: No objection, Your Honor.

15 THE COURT: The witness may testify.

16 MR. ROBERTS: Thank you, Your Honor.

17 BY MR. ROBERTS:

18 Q So a little bit of background, hopefully I'm not being too
19 repetitive about some of the things the jury's heard, but in your
20 experience, how do most people obtain their health insurance?

21 A Most people obtain their health insurance through their
22 employer.

23 Q And what are the most common types of health benefit plans
24 that employers implement?

25 A Employers have a choice of two types of plans. They can

1 either offer a fully insured plan where the risk is taken by the insurance
2 carrier and the plan is more off the shelf. It's designed by the insurance
3 company, that's fully insured.

4 What's much more common and what covers about 70 percent of
5 employer-based coverage is a self-funded plan design. In a self-funded
6 plan design, the employer designs the plan. They take the risk. So if the
7 employer charges too much for the plan, then they -- you know, they
8 have miscalculated and it's not good for them. If they've -- if they've
9 charged too little for the plan, then they assume more loss than they
10 expected.

11 With a self-funded plan, the risk is shared between the employer
12 and the employees. The employer typically will fund about 70 percent or
13 -- you know, somewhere in that range of the funds towards supporting
14 the plan, and the employees will typically fund approximately 30
15 percent. So when I was working as a consultant for these TPA -- for the
16 RFPs, my client was the employer and the employees because I was
17 acting in the best interests of both.

18 Q And tell the jury again what an RFP is?

19 A An RPF is a process where you go through creating a large,
20 it's called a request for a proposal. You create a large document that
21 includes many, many, many aspects of what an employer is looking for
22 in hiring either a TPA or an insurance carrier.

23 Q What are the advantages of a fully-insured plan to an
24 employer?

25 A The advantages of a fully-insured plan to an employer is

1 there's less work. The insurance company will create the policy. They
2 will do the government filings. They really pretty much do everything.
3 And in return, the employer just pays the premium. So the employer has
4 much less work to do.

5 Q What are the advantages to an employer of a self-funded
6 plan?

7 A There are clearly many advantages to a self-funded plan.
8 That's why about 70 percent of employers offer self-funded plans. With
9 a self-funded plan, the employer is not subject to state mandates, which
10 is big. If you're an employer and you're in many, many states, you don't
11 want to have to comply with every single state mandate. You can design
12 the plan however it best fits your employees' needs and your
13 organization's needs. You're not subject to state premium taxes, FICA,
14 SUTA, all those other taxes. You just have a whole lot more flexibility.
15 However, you do have to -- you have to write your plan document. You
16 have to make sure that you are complying with the ACA and things like
17 that. So it's more work, but it's much more cost effective for both the
18 employer and the employee.

19 Q In your experience, why do employers with self-funded plans
20 need a TPA?

21 A Well, they need a TPA because it's difficult in this day and
22 age to pay your own claims. So the TPA pays the claims. It's -- it would
23 be extremely difficult for an employer to set up their own network of
24 providers, hospitals, physicians, x-ray, lab. So the TPA handles the
25 claims processing. They handle the credentialling. They handle the

1 networks. They really do quite a bit of that work, especially the work
2 that's national in scope. It would be difficult for a nation -- national
3 employer to do all that themselves.

4 Q All right. Karen, I believe you mentioned that an employer
5 with a self-funded plan has more flexibility to customize plan benefits?

6 A Yes, that's definitely one of the advantages.

7 Q What types of benefits can be customized in your
8 experience? In other words, what are the things that vary among the
9 plans --

10 A Oh, okay.

11 Q -- that the employers choose?

12 A Well, there's lots of things that can vary. They can obviously
13 vary the very basic things like deductible, copays, out of pocket. They
14 can also vary what they actually cover. They do have to comply with
15 federal guidelines. Like, they can't decide not to cover maternity claims,
16 but they can -- they can decide the degree to which they cover all kinds
17 of benefits within certain guidelines. They can decide how they cover
18 out-of-network programs for example. So they have a lot of latitude.

19 Q Let's go back to the TPAs. How do employ -- how do
20 employers typically select a TPA?

21 A Most employers who are self-funded will use a consultant
22 because it's difficult for an employer to have the understanding of the
23 whole marketplace. So they'll hire a consultant. In my experience as a
24 consultant, I would usually meet with my clients, my employer clients,
25 several times during the year in setting strategy. So we would look back

1 over the prior year to see what went well, what didn't go well. We'd look
2 at their claims experience. Was it moving forward as expected or was it
3 higher than they expected? We would look at innovations that are out in
4 the marketplace. We would benchmark them against their peers to see if
5 they were offering competitive plans according to their peers. Because
6 one of the things that employ -- the reason that employers offer benefit
7 plans is they want to be able to hire good employees. So they'll look to
8 see what are -- what are their peers offering.

9 And once we've gone through that process, we'll start setting
10 strategy. And we'll look to see what should we change for the coming
11 year. What should we continue to do? And if the results aren't so good
12 or they're dissatisfied with their current TPA, then we might decide to go
13 out to bid and create an RFP.

14 Q Is there usually a -- the best TPA, and then that person would
15 be the best for every employer?

16 A Absolutely not. No. There is a best-fit TPA for each
17 employer. And what's a good fit for, say, a manufacturing client that's
18 located in one state is going to be a very different fit than for, say, a
19 technology client who's operating in all 50 states. So you -- the purpose
20 of the RFP is to describe in the -- in the questionnaire, the things that the
21 employer is looking for, and then have the -- each TPA respond how they
22 expect to fulfill those requirements.

23 Q What kind of specific goals or needs might clients have that
24 would affect their choice of a TPA?

25 A Well, again, it's -- there's a best fit for each client. So clients

1 are going to have different goals and objectives. Some clients are going
2 to want to have a very hands-on approach. They're going to want a TPA
3 that's going to provide lots of customer service to their employees, that's
4 going to -- you know, walk them through all the decision-making and
5 that's going to offer a very broad network because they don't want their
6 employees to have to think too much about picking a provider. Other --

7 Q Are --

8 A Go ahead.

9 Q Are some employers more cost-focused than others?

10 A Yes. Yes. Some employers' cost is their number one focus.
11 And they are going to offer whatever they can that's going to keep their
12 cost as low as possible. Other employers are in a very competitive
13 marketplace, a very competitive area, trying to hire employees. So
14 they're going to offer, say, a more comprehensive plan. It's much like
15 salaries. You know, if you're really trying to hire a very unique type of
16 employee, you might be offering higher salaries than someone who
17 doesn't have any trouble hiring employees.

18 Q As a consultant for employers, do you evaluate the financial
19 performance of TPAs?

20 A Yes, that's one of the critical things that we do.

21 Q And how do you go about doing that?

22 A Well, often what we will do is we will include in the RFP two
23 years of claims history. So we'll go back 24 months and say here's all
24 the claims that they had. Here's the utilization. Here's what it cost to
25 adjudicate those claims, and then we will give that claims history to the

1 different TPAs that are bidding. This is all de-identified. They can't tell
2 who has incurred what claims. But we'll give them those D identified
3 claims and ask them, had this been your client, how much would these
4 claims have cost you? So basically what they do is they run all those
5 claims through the claims -- the type policy that they're recommending,
6 the networks and everything, and they tell you, had this been our client,
7 this is what it would have cost.

8 Q Do you also continue to monitor financial performance after
9 a contract is placed?

10 A Absolutely. That's one of the most important things that we
11 do. With a self-funded claim, usually there's an actuary who's a highly-
12 trained mathematician who every -- at least every quarter, and times
13 every month will evaluate all the claims that are being adjudicated and
14 compare that to what we expected the claims to cost. These are called
15 projections.

16 So they will project forward to say, are we on target Are we
17 charge is right amount for this plan? Are -- the goal is to be right on
18 target. It's hard because you're projecting, you're guessing into the
19 future. So they will -- the actuary will say, are we on target? Are we
20 above, are we below? And then they will do that every month or every
21 quarter during the plan year. And then in usually August of the prior
22 year, we will set rates for the coming year. So we'll look at the claims
23 history.

24 They actually go back again 24 months, weighing the most recent
25 12 months heaviest, and they will say, okay, if this is what we've had up

1 until now and we're going to make these changes to the plan design
2 going forward, say, we're going to change our out-of-network
3 reimbursement level or we're going to put in a wellness vendor or, you
4 know, whatever they're going to change, we're going to the deductibles,
5 then this is what we need to charge in rates for the coming plan year. So
6 they'll do that in August for January through December.

7 Q Do you ever audit how claims are paid?

8 A Yes.

9 Q And what is the purpose of that?

10 A Because you trust but verify. So usually in most full-service
11 consulting agreements there will be a component called a pre-
12 implementation audit and a post-implementation audit. So pre-
13 implementation audit is something that you usually do when you first
14 hire a TPA. And that audit is performed after they have programmed the
15 system but before they've started paying claims. So the audit will look
16 to see have they interpreted the plan design, the plan document correctly
17 in their claims system? And they'll run through test claims to see if that
18 has happened. If they haven't, then they fix it. And this is ideal because
19 you fix it behalf any claims have been paid incorrectly.

20 In a regular audit, you will look -- you will look back to see how
21 were claims adjudicated. Were they adjudicated correctly? Did they use
22 the correct network contracts? Did they pay according to the plan
23 design? And then this you find errors; you will ask the TPA to correct
24 those errors. If they've underpaid employees, you'll ask them to pay
25 them more. If they've overpaid employee, then we have interesting

1 conversations about who's going to pay for that.

2 Q Are you unique in the industrial in performing these types of
3 audits?

4 A No.

5 Q How often does this happen?

6 A In the industry?

7 Q Yes.

8 A I would say with larger consulting firms, it's very, very
9 typical. With smaller firms, with brokers, it might be less typical. But, in
10 my experience, with -- can self-funded plans, it's very typical.

11 Q So let's say one of your clients, an employer group with a
12 self-funded plan is dissatisfied with their TPA, too many interesting
13 conversations, how would they go about selecting a new TPA?

14 A Well, we would -- we would go through the strategy session
15 again, we would decide what we're looking for, we would decide what
16 kind of plan design we want. I mean do we want to continue with the
17 current plan design, or do we want to change to some other, you know,
18 set of offerings, and then we would, you know, create an RFP and send it
19 to -- usually about five different TPAs. We also include the current TPA
20 because sometimes the current TPA gets serious and decides, Oh, I
21 better do a better job or I'm going to lose this client. And sometimes
22 they'll charge you less because you've got out to bid.

23 We do recommend that employers test the market about every
24 three to five years to make sure that they're not overpaying.

25 Q How would you go about selecting the five or so TPAs that

1 would receive the request for proposals?

2 A It depends on the client as to which is going to be a good fit.
3 And because we're -- you know, consultants are in the marketplace all
4 the time. We have a pretty good understanding of which TPAs are going
5 to be, you know, a fairly good fit for this client. You wouldn't want to
6 pick a regional TPA to serve a national client. So if you have -- if it's a
7 national client, you're going to pick the national TPA. And then
8 sometimes you'll look at the industry as well. Some TPAs will specialize
9 in certain industries.

10 For example, I had a hospital system client who was going to bid,
11 and there are certain TPAs that really specialize in hospital systems.
12 They're very unique and paying their claims are -- they're unique. And
13 so you would choose from those TPAs that really specialize in hospital
14 systems. And then you offer them to --

15 Q In your --

16 A Let me finish.

17 -- then you offer them to your clients. You say, here's five or
18 six that we recommend. The client reviews them. They can either add
19 or delete from that list. You get them to sign off on it. It's the client's
20 choice in who we actually go to. And then you proceed with the RFP.

21 Q How often, if at all, do employers focus on a TPA's out-of-
22 network reimbursement method in selecting the TPA?

23 A You always focus on that because out-of-network costs,
24 claims costs are always higher than in-network. So when you are
25 creating a RFP, you want your TPA to offer innovative cost-effective

1 solutions that will provide the employer and the employees with the
2 most value for the dollars that they're spending.

3 Q Okay. You've got five TPAs selected for the request for
4 proposal. What's the next step? How do you go about narrowing that
5 down?

6 A Well, we send them the RFP. We look at all much their
7 responses. We usually create a side-by-side comparison. So we'll look
8 at all different components of the questionnaire and we'll show the
9 employer side by side how each one of the TPAs responded. Oftentimes
10 we'll give a value to the responses. You know, this was a really good
11 response, this was not a good response, this was a medium response,
12 and we'll go through that whole document with the employer. Usually
13 we don't make a recommendation at that stage, but they will often ask
14 us, you know, which one do you think we should choose as a finalist?
15 And if partnership with the employer, we'd pick a final -- we'd pick some
16 finalists. Usually two or three finalists.

17 And then the finalists will come into a finalists meeting, and they
18 will make a presentation to the employer. The employer has the
19 opportunity to ask questions. And ideally after that, they will -- they will
20 choose their new vendor.

21 Q So we've got the finalists. Is that more writing with your
22 clients that you're working for, telling the TPAs what you want and them
23 responding? How does that work?

24 A Okay. So we've got the finalist -- we've chosen the TPA. The
25 TPA will then create a programming document that we will go through.

1 It usually takes several months to go through item by item by item by
2 item how is this claim going to be paid? The RFP's going to be a pretty
3 high-level description of how you want to the claim to be -- the claim to
4 be set up. But the item by item by item by item discussion takes literally
5 months; discussions between the consultant, the TPA and the employer
6 will -- where you will look at the ramifications of each single point, and
7 then you will -- after you've finished that, then you have all the
8 components needed for your plan document. And then they will
9 program the system based on all of that information, and hopefully will
10 go live by January 1.

11 Q You mentioned before the focus on out-of-network
12 programs. Have you observed any high level transferships in the
13 industry as far as how self-funded plans are designed to reimburse out-
14 of-network providers?

15 A Yes. You know, the industry's constantly changing. It's
16 never static. And over the last ten years or so, there's been a shift in
17 how out-of-network claims are reimbursed. About ten years or so ago,
18 out-of-network claims did not have the focus that they do today. Out-of-
19 network providers were often, you know, solo practitioners who just
20 were resistant to joining a network. They just didn't want to. And so
21 they would, you know, charge something for their out-of-network claims,
22 and the claims would be paid based on, you know, fees, a percent of fees
23 being offered.

24 Over time, there has arisen this growth in firms that -- you know,
25 that are owned by private equity, and they will --

1 Q Before you continue, let me just ask. You mentioned paying
2 a percentage of bills. Is there a term for that type of payment
3 methodology in the industry?

4 A Paying usual and customary --

5 Q Charge based?

6 A -- or reasonable -- charge based, yes. Charge based.

7 Q What is a charge-based methodology?

8 A Charge based is you look at what the vendor has charged,
9 and you pay a percentage of that charge.

10 Q And over the last ten years, have you seen employers going
11 toward charge-based methodologies or --

12 A No.

13 Q -- going away from?

14 A No. They're definitely going away from charge based,
15 because there's no -- there's no arm's length transaction? Charge based.
16 It's just the vendor coming up with a charge and charging it versus the
17 normal transaction where there's some kind of a contracting phase
18 between the vendor and the payer.

19 Q So if employers are moving away from charge-based
20 methodologies, what are they demanding in its place?

21 A They're demanding something that is more a reasonable
22 cost, a payment for reasonable cost for the services rendered based on a
23 variety of different criteria.

24 Q The jury has heard a lot about out-of-network cost control
25 programs that have been implemented by United --

1 A Uh-huh.

2 Q -- over the period of time in dispute. In your experience, is
3 United the only one who's been implemented these out-of-network cost
4 control programs in the industry?

5 A No. In my experience, it's universal to have out-of-network
6 cost control programs offered by TPAs. We would not consider a TPA
7 that did that have some kind of a program to control out-of-network
8 reimbursements.

9 Q And when you say, we would not consider, what are you
10 talking about?

11 A As a -- as consulting firms, giving advice to our employers.

12 Q Has United led the way in implementing out-of-network cost
13 control programs, in your experience?

14 A In my experience, United actually lagged for a while in
15 coming with cost control programs. And one of the things we do when
16 we finish an RFP is we have -- we offer to speak to the bidders who didn't
17 get chosen, and we'll give them feedback as to why they didn't get
18 chosen. They find of extremely valuable, because obviously they want
19 to be chosen. And if I had a bidder with no out-of-network programs,
20 that would be some feedback I would give them. I would say, you know,
21 you need to have some kind of programs in place because you're not
22 going to get chosen unless you do.

23 Q So you mentioned several times that there's employer
24 demand for these out-of-network cost control programs. Having been
25 through this process of competitive bidding for TPA contracts over 60

1 times, wouldn't you expect that if employers were actually demanding
2 these aggressive cost control programs, there would be a paper trail on
3 it?

4 MR. AHMAD: Objection, Your Honor. Leading.

5 THE COURT: It was leading. So rephrase.

6 BY MR. ROBERTS:

7 Q Wouldn't you expect to see a paper trail based on your
8 experience in the RFP process if employers were demanding out-of-
9 network cost control programs?

10 MR. AHMAD: Your Honor, I think it's the same question.

11 THE COURT: I think it's the same question.

12 MR. AHMAD: And I'm not sure how there would be a basis
13 to say whether there would be documentation or not.

14 THE COURT: Can you rephrase?

15 MR. ROBERTS: I'll rephrase.

16 BY MR. ROBERTS:

17 Q In your personal experience, having done this over 60 times,
18 do you or do you not usually see a paper trail of what the employers are
19 demanding in their program?

20 MR. AHMAD: Your Honor, I'm sorry, but that -- I'll still have
21 to object as leading.

22 THE COURT: I'm going to overrule it.

23 THE WITNESS: As I explained, the process that we go
24 through with employers is to walk through a series of strategy sessions
25 at the beginning of the year or the end of the prior year. During those

1 strategy sessions, I will go in with oftentimes a PowerPoint, bring my
2 actuary, bring the rest of my team, and we will go through looking at
3 bench marking, trends, their experience. During that conversation, we
4 will discuss what they want, and we'll take notes. But they don't usually
5 write us and tell us, this is what we want, it's part of a discussion that we
6 have and it's very, very normal for us.

7 I mean as consultants, you don't -- you don't tell your client
8 what they -- what they want, what they need, and they don't tell you.
9 You partner together to come up with solutions. So that's the way it
10 would normally happen. And then when they would tell us what they
11 were looking for, we would incorporate those needs and objectives and
12 goals into the RFP or into our interaction with the current vendor if they
13 decide not to go out to bid.

14 BY MR. ROBERTS:

15 Q We've heard a lot about plan documents. So you get to the
16 end of this process. And you need plan documents, right?

17 A Uh-huh.

18 Q In your experience, who usually drafts those plan
19 documents, the employer through its consultant or the insurance
20 company that's going to service the TPA?

21 A Creating a plan document is the plan sponsor's
22 responsibility, which is the employer. And the employer will often look
23 to the consultant to assist with creating that plan document.

24 MR. ROBERTS: Your Honor, I would pass the witness at this
25 time.

1 THE COURT: Okay.

2 MR. ROBERTS: Thank you, Your Honor.

3 THE COURT: Cross-examination, please?

4 MR. AHMAD: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. AHMAD:

7 Q Ms. King, my name is Joe Ahmad. I don't think we've met
8 before. You can call me Joe.

9 A Okay.

10 Q I'll probably --

11 A You can call me Karen.

12 Q I'll -- well, I'll probably call you Ms. King --

13 A Okay.

14 Q -- since the way we're meeting each other is in the
15 courtroom --

16 A Okay.

17 Q -- with me asking questions of you. It's kind of a funny way
18 to meet people, but at least for me it happens. And I'm going to ask you
19 some questions that I wouldn't normally ask people when I meet them
20 out of this setting. And the first one is --

21 MR. AHMAD: Pull it up. And I'm not sure -- that's not me,
22 I'm pretty sure. It was a great method of cross-examination, whatever it
23 is, but --

24 THE WITNESS: It comes from the sky.

25 MR. AHMAD: Yeah.

1 BY MR. AHMAD:

2 Q But I don't know that I heard; on an hourly basis, how much
3 is United being charged per hour for your work in this case?

4 A I am being compensated at \$750 an hour.

5 Q Okay. You personally --

6 A Uh-huh.

7 Q -- correct?

8 A Right.

9 Q And United is being charged twice that?

10 A That's correct.

11 Q \$1,500 an hour --

12 A That's correct.

13 Q -- correct?

14 A Uh-huh.

15 Q Didn't they fight with you at all about the \$1,500 per hour?

16 A I was asked what my rate was. I told them what my rate was.

17 Q And --

18 A They --

19 Q And you told them it was 1,500?

20 A I worked through another firm that often will ask me to
21 provide services. It's another consulting firm. I'm not employed by
22 them, but they will make referrals to me.

23 Q Okay. I mean but did they ask that the rate be lowered or
24 anything like that?

25 A That would have been a discussion that they would have had

1 with that firm. I'm not aware of whether there was a discussion or not.

2 Q Okay. Now, I'd -- as far as United goes, I was a little bit
3 unclear on this; I take it you have worked with United before, at least in
4 this capacity where you're working with an employer as a consultant and
5 then you're taking various insurance company proposals, right?

6 A Well, I would -- what we've been talking about here is not an
7 insurance company. We've been talking about a TPA. So when I've
8 worked with United in I would say 95 percent of the times, I'm working
9 with United as a TPA. There have been maybe one or two cases where
10 I've worked with them as an insurance company, but that's very rare.

11 Q Okay. Fair -- and I appreciate you pointing that out. You
12 have worked with United as a third-party administrator, correct?

13 A That's correct.

14 Q And when we talk about United, it's not just United that
15 you've worked with in the past, there's another United entity called the
16 UMR?

17 A That's correct. That's a --

18 Q And you have worked with them as well in the past --

19 A I have.

20 Q -- is that right?

21 A Yes.

22 Q Now, if I understand this right, you have never testified as an
23 expert, at least in court; is that right?

24 A That's correct.

25 Q You did rely on some materials for your opinions today that

1 United sent you; is that right?

2 A United didn't send me anything directly. The law firm of
3 O'Melveny & Myers did.

4 Q Okay. O'Melveny, United's law firm, sent you materials to
5 consider, correct?

6 A Yes.

7 Q And one of the materials I noticed that you looked at was
8 from the Brookings Institute; is that right?

9 A I may have looked at something from the Brookings Institute.
10 I don't really recall. It wasn't one that I really focused on if I did.

11 Q Okay. United provided that?

12 A I didn't get anything directly from United. I got everything
13 through O'Melveny.

14 Q I'm sorry. O'Melveny provided that?

15 A I would -- I -- if that's on my list. I don't actually recall looking
16 at some --

17 Q Well, you have your report in front of you.

18 A Yeah.

19 Q I think it is on --

20 A I don't.

21 Q -- your list.

22 A It -- that's fine.

23 Q Okay.

24 A I mean there were many, many, many, many documents. So
25 it's difficult for me to recall exactly which ones I focused on.

1 Q Did United share with you that they had one of their
2 executives provide confidential input into that [indiscernible]?

3 MR. ROBERTS: Objection. Beyond the scope.

4 THE COURT: Overruled.

5 THE WITNESS: I don't recall a discussion about that.

6 BY MR. AHMAD:

7 Q You did have direct discussions with United and UMR,
8 correct?

9 A I --

10 Q Not just with the O'Melveny people, right?

11 A Yes, I did have discussions with some of the other people
12 who work for United and UMR.

13 Q And then Bradley, I believe, in United?

14 A Jolene Bradley, yes.

15 Q A Ms. Ziemer or Zymer [phonetic] from UMR?

16 A I don't recall that it was a woman. I thought it was a man,
17 but --

18 Q Oh, I think it's a man.

19 A Oh, okay.

20 Q I'm --

21 A Yes, I did talk to him.

22 Q Okay, great. And I think you said earlier you talked to
23 O'Melveny a lot. I noticed that you talked to them and had discussions
24 with them while reviewing your report; is that right?

25 A Yes. I was explaining to them some of the things that I just

1 explained during this discussion, my experience and my perspective on
2 the healthcare marketplace.

3 Q Yeah. And one of the things though that you didn't discuss
4 and you're not here to provide an opinion is the reasonable value of the
5 services at issue here, the reasonable value of the services that Fremont
6 Emergency, Ruby Crest, Team Physicians provided?

7 A That was not within the scope of what they asked me to
8 opine on.

9 Q And in fact, I mean none of your opinions can help us
10 determine what the reasonable value for those services?

11 A I can talk to you about what the marketplace considers to be
12 an acceptable payment for out-of-network services, and it is not charges.
13 But I can't tell you the exact dollar amounts that things should be. That
14 would be -- that would require an economist, and I'm not an economist.

15 Q And I understand that. And that's what you're not here to do
16 that, are you? For example, you would not be able to tell us what the
17 appropriate percentage of Medicare should be for emergency room care
18 in Nevada.

19 A I could tell you in general what is used for reference base --
20 that's called reference based pricing. I can tell you in general what I've
21 seen in the marketplace that TPAs use as a --

22 Q Well, what about emergency room care in Nevada or just
23 emergency room care?

24 A I have seen different percentages of Medicare used as a
25 reference base for pricing --

1 Q But you're not an expert --

2 A -- emergency room care.

3 Q You're not an expert in that. And what the appropriate
4 percentage would for the reasonable value perspective.

5 A I believe that there is another person who has served as an
6 expert witness in that regard, who's more knowledgeable than I am
7 about medical economics.

8 Q Okay. So that person is not you. That's somebody else that I
9 think the jury has heard from, correct?

10 A Mr. Deal.

11 Q Is that right?

12 A Yes.

13 Q I take it you don't have any criticism of Mr. Leathers, our
14 corresponding expert?

15 A I have some opinions about Mr. Leathers' testimony, but I
16 don't know that that's relevant.

17 Q Okay. Well, I may get into that, because I'm not -- I'll take
18 your word that it's not relevant, but I may touch upon that, on some
19 things that I think might be relevant. One of the issues I was curious
20 about was that you had a long discussion, I think, about the various
21 programs that employers might be interested in, right?

22 A A long discussion with whom?

23 Q With Mr. Roberts?

24 A Oh, yes. Yes.

25 Q Okay. And I'm just curious. I heard a lot about how these

1 plans vary, correct?

2 A Yes.

3 Q It's important to be customizable when you're offering
4 programs to an employer.

5 A Absolutely.

6 Q Some employers want to have generous health benefits for
7 their employees, correct?

8 A I would say all employers want value for the dollars that they
9 spend. They don't necessarily want to spend more than they're getting
10 in return for that investment.

11 Q Well, I mean would it be fair to say that they want to be more
12 generous in their health benefits?

13 A Some employers will offer a plan design that is richer than
14 others. The plan design not what they've spent.

15 Q Okay. I was trying to read from your report. Do you have it
16 in front of you?

17 A Actually, I have Mr. Mizenko's information in front of me.

18 Q Well, that's not going to do a lot of good here.

19 A That's not my name. Alexander Mizenko is not my name.

20 Q Well, I'll do this. I'm going to -- I'll try to quote from it.

21 A Okay.

22 Q And I'll hand it to you. I didn't know you didn't have it.

23 Some employers use their benefit plan as a defining best in the marked
24 differentiator compared to their peers, so they can attract and retain top
25 quality difficult to hire employees. And then others offer less generous

1 benefits that will meet but not exceed their competitive plan design?

2 MR. ROBERTS: Your Honor, may I approach and give the
3 witness a copy of her report?

4 THE COURT: You may.

5 MR. AHMAD: Sure, absolutely.

6 [Counsel confer]

7 THE WITNESS: Does somebody want this back?

8 MR. AHMAD: That'll work.

9 THE WITNESS: This is not me.

10 BY MR. AHMAD:

11 Q Otherwise, it's going to turn into a [indiscernible].

12 A Thank you. I do recall that.

13 Q Okay. It's at the bottom of page 8.

14 A 8. Okay.

15 Q And I guess my point is some employers want to offer more
16 generous health benefits than others.

17 A Uh-huh, yes.

18 Q And some employers will use that as a differentiator to
19 attract top quality talent in a hiring market that's pretty tight?

20 A Yeah. I can explain that. So some plan designs might
21 reimburse an out-of-network doctor's visit at 60 percent, which is not
22 uncommon at all. And some employers might say well, I would like to
23 have a plan design that's a little bit richer than that. So I'll reimburse
24 out-of-network doctor's visits at 70 percent. But that's not talking about
25 the value of that service. That's talking about the percentage that the

1 plan design is paying.

2 Q Sure. And -- but you just said something I think it pretty
3 important. The plans don't necessarily dictate that the TPA pay
4 reasonable value for the services. They don't --

5 A Actually, the plans do talk about what the value -- how the
6 out-of-network service is going to be valued, whether it's going to be
7 based on a schedule, whether it's going to be based on reference based
8 pricing, whether it's going to be based on median, you know, par.
9 There's different ways that those out-of-network services can be valued,
10 and that information is in the plan document.

11 Q And I understand there's very different ways that the out-of-
12 network program can reimburse. But is it always true that the plan says
13 the provider has to be reimbursed at reasonable value of their services?

14 A I can't speak to always.

15 Q Well, let's talk about one program. You're familiar with
16 reasonable and customary, correct?

17 A That's a term that refers to paying something that's
18 reasonable. Yeah.

19 Q Okay. But there are other ways of reimbursing other than
20 reasonable and customary; isn't that right?

21 A There are a whole variety of ways of reimbursing. Yes, you
22 could reimburse based on the schedule. You could say --

23 Q Yes.

24 A -- when you go to the emergency room, we're going to pay
25 you \$200.

1 Q Correct. Just a fixed fee. And that fixed fee could be
2 anything, correct?

3 A Well, subject to the law, yeah.

4 Q Sure.

5 A The Affordable Care Act.

6 Q Yes. And I understand that. But there's nothing in the plan --
7 you know, I'll set aside reasonable and customary. There's nothing in
8 the plan, necessarily, that requires that TPA pay reasonable value for
9 their services. In fact, that's why the jury is here today. That's what
10 they have to determine, correct?

11 A I'd have to see the plan design to see what it said. There's
12 not like a universal plan design. There's different options. That's why
13 people -- that's why employers often want to be self-funded, so that they
14 can choose from a variety of options what's the best fit for them.

15 Q And you know, you said you'd like to see that plan design at
16 issue, but I have to ask, because we've had a lot of conversation about
17 what might be in a plan and how they vary. You haven't seen the plan
18 language that pertains to the 11,000 plan division.

19 A Well, I don't think there's one plan language. I suppose
20 there's maybe thousands.

21 Q There's probably a lot, yes. Have you seen any of them?

22 A I think I briefly saw one, but I certainly haven't seen all of
23 them. And that wasn't what I was engaged to do. I was engaged to
24 discuss trends in the marketplace, what employers, why employers
25 might choose a self-funded plan, how plan documents are used to

1 adjudicate claims. I wasn't asked to look at specific claims. That was not
2 part of my engagement.

3 Q Well, you'd agree with me though that instead of taking
4 about trends or what some employers demand or want, we could
5 actually see what an employer is demanding by looking at the plan
6 length, right?

7 A Probably, yeah.

8 Q And yet, we haven't seen those?

9 A I don't know what you've seen or not seen.

10 Q But you haven't seen it. Represent to you we haven't seen all
11 the plans at issue either.

12 A Uh-huh, okay.

13 Q Would that be the place to look if you wanted to know, with
14 respect to the plan -- excuse me -- the claims at issue?

15 A Well, I think what's at issue here though is there's different
16 parts of a visit. There's the billed charge, which is what the vendor has
17 billed. There's the allowed charge, which is what is considered to be the
18 reasonable value for that service. And then there's the payment. And
19 you're talking about the payment. And I think what's at issue here is the
20 allowed charge if I understand what's at issue.

21 Q Well, I was --

22 A So the allowed charge is going to be based on what is
23 reasonable in the marketplace.

24 Q Well, except that -- I don't necessarily agree with that
25 rendition because you understand that the allowed charge --

1 MR. ROBERTS: Objection to form, Your Honor. Testimony
2 by counsel.

3 THE COURT: Objection sustained.

4 BY MR. AHMAD:

5 Q The allowed charge is just what the insurance company
6 picks.

7 A No, it's not.

8 Q Do we have any say in that number?

9 A The allowed charge is how the plan document says an
10 reasonable value should be arrived at. It's not what the insurance
11 company picks.

12 Q I just --

13 A It's what the employer and -- tells the TPA -- not the
14 insurance company -- tells the TPA this is how we want reasonable value
15 to be arrived at.

16 Q Okay. But reasonable value term may or may not be in the
17 plan language, that term reasonable value.

18 A In my experience, it would be extraordinarily rare for a plan
19 document not to have some kind of reasonable value language. It would
20 extraordinarily rare for a plan to say just pay whatever is billed.

21 Q No, no, no.

22 A We just don't see that.

23 Q And I'm not saying that. I'm saying these programs will have
24 a method of determining the reimbursement rate. And that rate could be
25 reference based.

1 A Could be reference based, yes.

2 Q It could be a percentage of Medicare?

3 A Which is a type of reference base. Yes.

4 Q It could be Fair Health.

5 A It could be.

6 Q Correct.

7 A Could be.

8 Q And those amounts of reimbursements, would you be
9 surprised, can vary a lot?

10 A Oh, that wouldn't surprise me at all. No.

11 Q Okay. And so, ultimately, what the reasonable value of those
12 services could be any of those numbers somewhere in between or none
13 of them, correct?

14 A So you're saying that the reasonable value could be different
15 based on how the plan design --

16 Q Well, no. What I --

17 A -- describes the reasonable value?

18 Q What I'm saying is if you actually look at the services that
19 were written --

20 A The services that were written?

21 Q Yes. The provider provided service.

22 A Oh, okay.

23 Q Somebody comes into the emergency room.

24 A Uh-huh.

25 Q And I don't want to lose sight of the fact that these are -- you

1 know, these are actual people that come into the emergency room. And
2 a doctor, like some of the doctors here, provide care. And if a jury
3 determines what that reasonable value is, that may or may not have
4 anything to do with what the employer and the insurance company have
5 put in their plan.

6 A I'm sorry. I'm not following you.

7 MR. ROBERTS: Objection. Calls for speculation.

8 THE COURT: Overruled.

9 BY MR. AHMAD:

10 Q Did you understand that the jury was here to make a
11 valuation of the services provided in this case?

12 A Without regard to what the plan document says? Is that
13 what you're saying?

14 Q Well, yes. Were you aware of that?

15 A That they can overrule the plan document?

16 Q Yes. Were you aware of that?

17 A It doesn't seem to be reasonable to me, because the TPA is
18 supposed to be adjudicating according to the terms of the plan
19 document. And the plan document should determine how the plan is
20 paid.

21 Q So is it your thought that when the employer and the
22 insurance get together, they should be able to pick a number that the
23 provider is being paid?

24 MR. ROBERTS: Objection to form.

25 THE COURT: Overruled.

1 BY MR. AHMAD:

2 Q Is that your thought?

3 A Well, let me ask you this question. If you were going to
4 decide how much you needed to fund a plan, and you didn't know how
5 that plan was going to operate, how could you possibly fund the plan if it
6 was up to somebody else how the payments were going to be made?
7 What if somebody decided the deductible wasn't reasonable? How
8 would you possibly be able to fund a plan if you couldn't describe how it
9 was going to be paid?

10 Q And I understand from your perspective. But from a
11 reasonable value perspective, in terms of what the jury is being asked to
12 do, do you understand that the provider is not at the table when the
13 employer and insurance company are getting together to put plan
14 language together, right?

15 A I understand they're not at the table, but they are operating
16 in a marketplace.

17 Q Well, I understand that, but they're not part of that equation.

18 A They're not at the table. That's true.

19 Q And guess what? They have to treat under the law, and they
20 have to treat everybody, right?

21 A They do.

22 Q Does it seem fair that they're not even at the table for this?

23 A They're operating in a marketplace which includes things like
24 Medicare and Medicaid, who's telling them what's going to be paid. So I
25 would think, as a provider in a marketplace, they would take into

1 consideration what is being accepted as reasonable value in a
2 marketplace.

3 Q Well, let me talk about that. So you remember reasonable
4 and customary, right? We talked about that earlier.

5 A I remember we talked about it.

6 Q And that reimburses at a percentage of Fair Health?

7 A Not necessarily.

8 Q Often does?

9 A Sometimes does.

10 Q Sometimes 80th percentile but can be a different percentage?

11 A Could be 50th percentile.

12 Q Could be 80th percentile?

13 A Could be 50th.

14 Q Okay.

15 MR. AHMAD: Well, can we look at Exhibit 25, page 2?

16 [Counsel confer]

17 BY MR. AHMAD:

18 Q And I apologize for coming up this close. It says and this is
19 usual customary -- usual and customary receivable historically known as
20 HIAA and then R and C, reasonable and customary. Do you see that?

21 A I do. I have no idea what this document is. You're just
22 showing me a little piece of it.

23 Q Okay. Well, would you be surprised that the 80th percentile
24 was the predominant way of compensation by United back in 2016?

25 MR. ROBERTS: Objection. Misstates the evidence.

1 THE COURT: Overruled.

2 THE WITNESS: I don't know what United Healthcare
3 predominantly paid in 2016. But I know, in 2016, in the marketplace, that
4 was not the trend that I was seeing.

5 BY MR. AHMAD:

6 Q Well, you know, let's talk about, you know, this trend,
7 because I've heard a lot of discussion about how others are charging
8 more over the last few years. Do you remember that?

9 A You'll have to explain that a little bit closer with others. Who
10 are you referring to?

11 Q Yeah. You talked about providers, out-of-network providers
12 raising their rates over the last 5 to 10 years; correct?

13 A Yes. We've seen the inflation or the medical trend of out-of-
14 network rates at about double the in-network trend, inflation.

15 Q And I've heard a lot about that. And we keep talking about
16 this general trend. But I want to focus on what we charge, Fremont
17 Emergency Service, Ruby Crest, Teams Physicians. Do you have any
18 idea if we are keeping up with the rest of the providers in our rate
19 increases?

20 A No.

21 Q Do you think it should be held against us that others, sound
22 physicians, are charging a lot more, increasing their rates a lot more
23 than we are? Do you think our reimbursement should be going down
24 because of that?

25 MR. ROBERTS: Objection. Compound.

1 THE COURT: It's compound. Rephrase.

2 THE WITNESS: Yeah, I would -- I couldn't follow that.

3 MR. AHMAD: Sure.

4 BY MR. AHMAD:

5 Q Do think it -- first of all, do you think it's fair to reimburse
6 less -- us less because there are other providers charging more?

7 A I think that there is a reasonable market rate for the services
8 being provided. And that reasonable market rate should be what is
9 provided for those services. I don't know that one entity is being paid
10 less than the other.

11 Q Would you be surprised that our rates have gone up about
12 four percent per year in that time period?

13 A What time period are you talking about?

14 Q I'll use this, since 2016.

15 A Your rates have gone up four percent per year. Depends on
16 what the starting point was. The starting point may have been much
17 higher. Have they gone up compared to the median part rate or did they
18 start up here and median part was down here.

19 Q Did you look?

20 A No. That was not something I was asked to do.

21 MR. ROBERTS: Your Honor, can we approach, please?

22 THE COURT: You may.

23 [Sidebar at 9:11 a.m., ending at 9:14 a.m., not transcribed]

24 THE COURT: All right. So I understand this is a good time
25 for our morning recess. Let's take a short one, because it's only been an

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

11 Most importantly, don't form or express any opinion on any
12 subject connected with the trial until the matter is submitted to you.

13 And it's 9:15. I'm going to ask that you be back at 9:20. I
14 know that's only five minutes.

15 THE MARSHAL: All rise for the jury.

16 [Jury out at 9:15 a.m.]

17 THE COURT: You may.

18 MR. ZAVITSANOS: So Your Honor, before the trial began,
19 we had extensive briefing and argument regarding a number of rates.
20 The Court's ruling was crystal clear. As the trial has progressed and as
21 the evidence has come in, there have been now multiple instances
22 where the Defendants have blatantly violated the Court's order in limine.
23 And not just blatantly violated it, did so in a totally nonresponsive way.
24 Where Mr. Deal raised -- in fact Mr. Deal actually gave an opinion. You
25 know, he's their expert, and he gave an opinion on what the percentage

1 of Medicare for in-network is and why we should be tied to that.

2 We asked the Court yesterday during the charge conference,
3 and I was not here, but Mr. McManis was there, for an instruction in the
4 charge, instructing the jury that in-network rates are not relevant, and the
5 Court overruled that.

6 Then today, this lady who is on the stand right now, their
7 other expert witness, who did not raise any of this in deposition, again
8 in non-responsive fashion, on three separate occasions, in response to
9 Mr. Ahmad's questions, talked about how out-of-network needs to be
10 compared to in-network. And it was words to that effect. And I don't
11 want to misstate what she said, but it was clear that she was drawing a
12 reference to in-network rates. And Your Honor, that is a -- these are
13 repeated violations of the Court's order in limine, and I got to say I'm
14 pretty upset right now, because this was an issue that came up the other
15 day.

16 I thought the Court was very clear with the lawyers that this
17 was not an issue and yet, here we go again. And Your Honor, just from
18 the cheap seats, sitting back there, this is nothing other than a Hail Mary.
19 And I know Mr. Ahmad has an additional point to make.

20 MR. AHMAN: Well, I would just point out, Your Honor, that I
21 believe the expert, and I can certainly show Your Honor this testimony,
22 was asked about four different times, whether she had any thoughts or
23 opinions regarding the reasonable value of the charges or services in
24 this claim. Never mentioned anything about, you know, it has to be
25 guided by the TPA, the plan language, anything. Nothing about it.

1 Consistently said that is not within the scope of my report. That's it. I
2 mean it was asked about four different times.

3 And so, you know, I thought that's the answer that I was
4 going to be given. And I thought at the end of the testimony an
5 appropriate instruction regarding that should be given.

6 MS. LUNDVALL: Your Honor, I just want to add one
7 additional point. Every attorney has a duty to inform the witness as to
8 the scope of the Court's order, and to be protective of those.

9 And as an example, when we questioned Ms. Hare as to
10 whether or not that was so informed, her testimony was she wasn't.
11 And so to the extent that this is an issue that falls squarely within the
12 obligation of an attorney preparing the witness for testifying.

13 THE COURT: And the response, please.

14 MR. ROBERTS: Yes, first of all, Your Honor, I was not the
15 initial prep session with Ms. King, but Ms. Plaza who is here with me
16 today, did do that prep. And she informed me that she did review all of
17 the Court's motions in limine with the witness during that initial prep
18 session.

19 I did not reinforce those when I met with the witness for the
20 reason that the testimony that I elicited from this witness was limited to
21 the market for TPA Services, to the trends in the industry, and all of these
22 general things that I talked about on the scope of direct. I did not prep
23 her and did not expect them to ask her what she thought reasonable
24 rates of reimbursement were. Why would they do that if it's beyond the
25 scope of their report?

1 They elicited her personal opinions, and she gave them. This
2 is not something that was prepped.

3 THE COURT: You'll get a chance.

4 MR. ROBERTS: And if he read the deposition, and she said
5 that's beyond the scope of my report, why would he come in here and
6 ask her about it? I did not review these things with her, and I had no idea
7 they would ask her, because as she said, she's not an economist. As to
8 Leathers, if they've got a two page list of the documents she reviewed
9 prior to her deposition, the Leathers report is not there, of course, she'd
10 have no opinion about Leathers. But she's watched Leathers at trial
11 while she's been waiting to testify. So now she has an opinion about it.
12 And I don't understand why they would elicit the opinion of one expert
13 out of the field with another.

14 This was a deliberate strategy to go beyond the scope of a
15 report to bring up all of these things that irrelevant to her opinion. Now I
16 will go out, and I will caution her again about these issues, but I think
17 they should be instructed to move on, and not go beyond the scope.
18 We're stuck for time here, and this is our case. She's got a 20 page
19 report, and I can -- very limited for the purposes of moving efficiently
20 through this process. And they've gone way beyond the scope, Your
21 Honor.

22 THE COURT: You do need to talk to her. In reply, please.

23 MR. AHMAD: Your Honor, if I may. I was doing what is fairly
24 common, confirming that she was not here to testify about something,
25 and just making that clear. She equivocated a little bit, like I said -- and

1 we asked this question four times in her deposition. And as far as
2 moving on, I would have been done by now, if it would have been very
3 clear, other than the testimony she tried to give, somehow reasonable
4 value has to be determined by the Plaintiff.

5 But with that, Your Honor, I'm essentially done. But I do
6 think we need an instruction because of the testimony that she gave,
7 which was not given in her deposition that in-network cannot be
8 considered, which is absolutely the law of this case.

9 THE COURT: She can be instructed by counsel -- Defense
10 counsel on that. Now --

11 MS. LUNDVALL: Your Honor, one last thing --

12 THE COURT: Sure.

13 MS. LUNDVALL: -- as far as to add to this. Because this is
14 more than one witness that has done this, we would revisit -- request
15 then a curative instruction to the jury that advises them that in-network
16 rates are not relevant to their inquiry on reasonable value.

17 THE COURT: I think we did that yesterday; didn't we?

18 MS. LUNDVALL: Understood. But this was before this new
19 violation that has come up.

20 MR. AHMAD: If I may, Your Honor, and I understand the
21 Court's ruling, I may need to confirm with her, and if she just gives me a
22 simple no, I'm not, that she is not here to give any opinion on a
23 reasonable value of the services, and she says, no I'm not, then I think,
24 you know, we're done.

25 THE COURT: All right.

1 MR. ROBERTS: Okay. And I think she already said that, Your
2 Honor. And the typical way you ask those questions is, isn't it true the
3 reasonable value of services is beyond the scope of your report. And
4 then she says, no. You don't ask her, her opinion on the reasonable
5 scope of services. And then expect a surprise when she gives you an
6 answer.

7 THE COURT: Right.

8 MR. AHMAD: Well, except, though, Your Honor, I would like
9 to ask that, and we asked it in her deposition, and all she -- all she said
10 was it's outside my report.

11 THE COURT: All right. So Marshal Allen, why don't you tell
12 them three or four more minutes. Three or four -- can you guys take a
13 break in three or four minutes?

14 MR. ZAVITSANOS: Yes, Your Honor.

15 THE COURT: It's 9:24. I'll be back at 9:28. And anybody
16 who's not here, we're going to start without you.

17 [Recess taken from 9:24 a.m. to 9:28 a.m.]

18 THE COURT: Thanks everyone. Please remain seated.

19 MR. BLALACK: Your Honor, we need to -- we need to talk
20 about -- may we approach, Your Honor?

21 THE COURT: You may.

22 MR. BLALACK: So somebody just announced --

23 [Sidebar at 9:28 a.m., ending at 9:28 a.m., not transcribed]

24 THE COURT: This is the Judge. There's someone on
25 BlueJeans who is a court reporter. Will you please --

1 THE MARSHAL: All rise for the jury.

2 THE COURT: Will you please unmute yourself and identify
3 yourself?

4 THE COURT REPORTER: I don't know how to unmute
5 myself. Oh, there I am. I'm sorry. I'm not too familiar with the program
6 at all.

7 THE COURT: And your name please?

8 THE COURT REPORTER: Silvia S-I-L-V-I-A.

9 THE COURT: And are you reporting the trial?

10 THE COURT REPORTER: Yes. They gave me the link this
11 morning to join the meeting.

12 THE COURT: Who gave you that link?

13 THE COURT REPORTER: I'm thinking Weil Gotshal. I got it
14 forwarded from my office Veritext.

15 THE COURT: The name again?

16 THE COURT REPORTER: Veritext. It's the agency that does
17 the reporting, that hires court reporters.

18 THE COURT: Okay.

19 THE COURT REPORTER: And I'm sorry, maybe I'm in the
20 wrong case. Is this Fremont Emergency Services?

21 THE COURT: Yes, it is. But we can only have one official
22 transcript and that is done in the courtroom. So it's improper for you to
23 be reporting this case today.

24 THE COURT REPORTER: Okay. I'm fine with that. I'm just
25 doing what I'm told.

1 THE COURT: Will you let them know? Let them know that
2 you've been instructed to discontinue and if they have issues they
3 should contact my office.

4 THE COURT REPORTER: Okay, Judge. I will tell them that.
5 And that's A-M-I-T, Nancy Amit?

6 THE COURT: It's Allf, A-L-L-F. And the phone number here is
7 (702) 671-3629.

8 THE COURT REPORTER: Thank you. Sorry about that.

9 THE COURT: And they would ask for Fran.

10 MR. BLALACK: Your Honor, could we ask just for a general
11 statement to the world that is on there, because we've had these AEO
12 conversations. I don't know if people are now bringing court reporters to
13 BlueJeans and --

14 THE COURT: So I did --

15 MR. BLALACK: -- essentially creating new transcripts, but I'd
16 like some sort of instruction that there should be nobody transcribing
17 this trial.

18 THE COURT: Earlier this morning, Brynn confirmed with me
19 that we had 37 people on BlueJeans. Is anyone else out there reporting,
20 or recording, or providing a transcript to any one of these proceedings.

21 THE COURT RECORDER: We're at 51.

22 THE COURT: We're at 51? If there's anyone out there, you
23 are ordered not to do that. You're allowed to sit in. If this courtroom
24 was big enough you could sit in, but there's only one official transcript.
25 No one else should be out there making transcripts. And if I find out

1 about it, I'll deal with it appropriately.

2 THE COURT REPORTER: Okay, so I'm just going to sign off.

3 THE COURT: Thank you.

4 THE COURT REPORTER: Thank you. I'm sorry about that.

5 Have a good day everybody. Happy Thanksgiving. Bye-bye.

6 MR. ZAVITSANOS: Your Honor, for the Plaintiffs, I have no
7 idea who that is. Weil Gotshal is a very large national firm, 2,000 to
8 3,000 lawyers. I have not -- we have not engaged them. They are not
9 associated with us. This is -- I don't know if it's MultiPlan or somebody
10 else.

11 THE COURT: It doesn't matter.

12 MR. ZAVITSANOS: I don't know, but it's a little disturbing
13 honestly.

14 THE COURT: Anything else for the record?

15 MR. BLALACK: Not on this issue, Your Honor.

16 MR. ROBERTS: We have not associated Weil Gotshal.

17 THE COURT: All right. So the Marshal will bring in the jury
18 now. That was a 17-minute break.

19 THE MARSHAL: All rise for the jury.

20 [Jury in at 9:32 a.m.]

21 THE COURT: Thanks everyone. Please be seated. And thank
22 you again for your courtesy. Five minutes became 17 minutes. We had
23 a matter to take up outside your presence. Go ahead please, Mr. Ahmad.
24 BY MR. AHMAD:

25 Q Thank you, Your Honor. Let me ask this way to sum up.

1 You're not offering any opinions about the value of the services offered
2 by Plaintiffs that are at issue, correct?

3 A That's correct. That's outside the scope of what I was asked
4 to offer an opinion on.

5 Q Okay. And you actually haven't looked at any of the claims at
6 issue?

7 A That's correct.

8 Q You haven't looked at all the plans at issue?

9 A That's correct.

10 Q No idea what reimbursement program applies?

11 A For these particular claims, no.

12 MR. AHMAD: Last thing. Is 513, Exhibit 513 in?

13 MR. ROBERTS: No.

14 THE COURT: 513?

15 BY AHMAD:

16 Q Ms. King, do you mind looking behind you at Exhibit 513?

17 A I don't know what you're saying.

18 Q Oh, there are notebooks back there and they are numbered.

19 You see the one that goes, I think it's volume -- yeah, that's it. Sorry,
20 they're heavy.

21 A Okay.

22 MR. ROBERTS: Your Honor, can you confirm this exhibit has
23 been admitted since it's being displayed to the jury?

24 THE COURT: I don't think it has been.

25 MR. AHMAD: I'm treating it as if it's not been admitted yet.

1 THE COURT: I don't show it on my list. It's not admitted.

2 MR. AHMAD: That's why it's not up on the screen.

3 MR. ROBERTS: Thank you.

4 BY MR. AHMAD:

5 Q Ms. King, do you have in front of you Plaintiff's Exhibit 513?

6 A I do.

7 Q And I think you see a chart. Kind of a dollar bill broken down
8 in terms of where healthcare costs go. Do you see that?

9 A I do.

10 Q Are you familiar with the breakdown of where healthcare
11 costs typically go?

12 MR. ROBERTS: Objection. Beyond the scope of a report.
13 Beyond the scope of direct.

14 THE COURT: Overruled.

15 THE WITNESS: Generally, yes.

16 BY MR. AHMAD:

17 Q Does 3.2 percent for both facility and physician emergency
18 room costs -- does that sound about right?

19 A It sounds within the range of reasonable, yeah.

20 MR. AHMAD: Okay. Your Honor, I would at this time move
21 the admission of Plaintiff's Exhibit 513.

22 MR. ROBERTS: Objection. No foundation for the document
23 and no foundation for the other 12 numbers on this document other than
24 the one which the witness testified to.

25 THE COURT: Overruled. Exhibit 513 will be admitted.

1 [Plaintiff's Exhibit 513 admitted into evidence]

2 MR. AHMAD: Thank you. I'll pass the witness.

3 BY MR. AHMAD:

4 Q Oh, yes. And I'm sorry, you see, I think, the 3.2 cents up
5 there for emergency room? Do you see that?

6 A Oh, yes. I see it.

7 MR. AHMAD: Thank you. I'll pass the witness.

8 THE COURT: Redirect, please.

9 REDIRECT EXAMINATION

10 BY MR. ROBERTS:

11 Q Do you have your report up there, Karen?

12 A I do.

13 Q And can you tell the jury how many single-spaced pages
14 your report was?

15 A It was 19.

16 Q Would it be fair to say that we haven't gone into detail into
17 everything you've talked about in your report here in front of the jury?

18 A We have not gone into detail; is that what you said?

19 Q Yes, we have not.

20 A Yes. It was fair to say we have not.

21 Q Okay. So look for Exhibit B to your report. That should be a
22 list of materials considered and/or relied upon.

23 MR. AHMAD: I may have left exhibit B here.

24 MR. ROBERTS: Thank you.

25 MR. AHMAD: Sure.

1 THE WITNESS: I see it.

2 BY MR. ROBERTS:

3 Q Okay. Is there about two -- one-and-half page's single space
4 of documents you've listed here that you review, correct?

5 A Yes.

6 Q Okay. Did you review everything on this list?

7 A I believe I did, yes.

8 Q Did you rely upon everything on this list for the opinions you
9 gave to the jury today when I was asking you questions?

10 A I relied on what's on this list as well as my experience over
11 the last 30 years.

12 Q Okay. And let me ask you one last question. If you turn to
13 the second page, we'll go to the back, go about halfway through the
14 second page. Could you read the full website that begins
15 <https://www.brookings?>

16 A Yes. Do you want me to read that?

17 Q Yes. Just read the full document so the jury knows the full
18 name of the document that Mr. Ahmad was referring to on cross-
19 examination.

20 A It's

21 [https://www.brookings.edu/research/adozenfactsabouttheeconomicsofth](https://www.brookings.edu/research/adozenfactsabouttheeconomicsoftheushealthcaresystem)
22 [eushealthcaresystem.](https://www.brookings.edu/research/adozenfactsabouttheeconomicsoftheushealthcaresystem)

23 Q Okay. So that's not a Yale study, right?

24 A It doesn't sound like one, no.

25 Q Did you rely upon this website for any of the opinions that

1 you gave to the jury today?

2 A I can't recall to be honest.

3 MR. ROBERTS: Okay. Thanks very much, Ms. King. I
4 appreciate it.

5 THE COURT: Is there any recross?

6 MR. AHMAD: No, Your Honor. Thank you.

7 THE COURT: All right. Does the jury have any questions of
8 Karen King? If so, this would be your time. I see no takers. May we
9 excuse the witness?

10 MR. ROBERTS: Yes, Your Honor.

11 MR. AHMAD: Yes, Your Honor.

12 THE COURT: All right. Ms. King, you may step down and
13 you're excused.

14 Defendant, please call your next witness.

15 MR. BLALACK: Your Honor, can we approach real quick on
16 that question?

17 THE COURT: You may.

18 [Sidebar at 9:40 a.m., ending at 9:42 a.m., not transcribed]

19 THE COURT: Thanks everybody. We have a technical issue.
20 We don't want to have another recess because we don't want to waste
21 your time, so thank you for understanding.

22 MR. BLALACK: We can start the first one.

23 THE COURT: As soon as Mr. Leyendecker gets back.
24 Defendant, please call your next witness.

25 MR. BLALACK: The Defendants call Mr. Kent Bristow by

1 video.

2 MR. ZAVITSANOS: And Mr. Bristow just entered the
3 courtroom, Your Honor.

4 THE COURT: Thank you and welcome.

5 KENT BRISTOW, DEFENDANTS' WITNESS, BY VIDEOTAPE
6 BY MR. BLALACK:

7 Q Good morning, Mr. Bristow. My name is Lee Blalack. I'm
8 counsel for the Defendants in this case, and I'm going to be questioning
9 you today. And, obviously, your counsel will have an opportunity to ask
10 you some questions at the end of my examination if he desires. But let
11 me start by asking you just to state your name and place of employment
12 for the record.

13 A Yes. My name is Kent Bristow, and I'm employed by
14 TeamHealth.

15 Q And could you give the -- for the record, your job title,
16 please?

17 A Yes. My job title is Senior Vice President for Revenue
18 Management.

19 Q And next question is, have you heard the term -- the acronym
20 TIN before?

21 A Say it one more time please.

22 Q TIN, T-I-N.

23 A Yes.

24 Q What is a TIN?

25 A That is a tax ID number.

1 Q And is that a term that you use, your team uses in your work
2 for TeamHealth?

3 A Yes. We do use it sometimes.

4 Q And what is the relevance of a TIN for your business?

5 A It can be an identifier for a group that we bill services out
6 under.

7 Q When TeamHealth reports and bills healthcare services for its
8 physician groups, it will usually do so by an identifier that identifies the
9 physician as affiliating with a specific TIN or tax identification number?

10 A That's correct.

11 Q All right. You have to consult the actual language of the plan
12 to know what the in-network benefits were for the facility and what the
13 out-of-network benefits were, if any, for the professional service, correct?

14 A True.

15 Q Let me ask it this way. For the period starting let's say in
16 2106 up to present, has TeamHealth participated in both of those
17 MultiPlan graph or rental networks?

18 A Yes, I believe so.

19 Q Okay. Does TeamHealth participate in both of those
20 networks today?

21 A Yes.

22 Q All right. So, Mr. Bristow, if you would, take a look at the
23 document marked for identification as Exhibit 7 to your deposition. It's a
24 one-page document. And if you would just read that document quickly
25 to yourself and when you're done let me know and I'll ask you a few

1 questions about it.

2 [Mr. Bristow reviews document]

3 A Okay.

4 Q So sir, first of all, do you recognize the document marked for
5 identification as Exhibit 7 to your deposition?

6 A I have not seen it in quite some time. But yes, I do recall it.

7 Q In fact, if you look at the bottom of the page, you'll see
8 signatures. Am I correct, sir, on the right-hand side there's a signature
9 there that is your signature?

10 A Yes.

11 Q To the left of the signed as well, it appears to be in July of
12 2016. Is that how you read it, sir?

13 A Yes.

14 Q And there's a gentleman's name who sent the notice
15 regarding the material change or amendments to contract by the name
16 of Bruce Singleton. Do you see that?

17 A Yes.

18 Q Do you know Mr. Singleton?

19 A I do.

20 Q Who is Mr. Singleton?

21 A As it states here, he's the senior VP with MultiPlan.

22 Q That's a good point, sir. And if you go to the top of the page
23 as you note, the addressee for this letter is to a Ms. Jennifer JJ. Shrader .
24 Do you see that?

25 A Yes.

1 Q VP of Managed Care. And I think you said earlier that Ms.
2 Shrader is on your team and reports directly to you?

3 A Yes.

4 Q Did she report directly to you in June of 2016 when this
5 material change -- notice of material change and amendment to the
6 contract was submitted and signed?

7 A Yes.

8 Q Was Ms. Shrader the person at TeamHealth who was
9 responsible for the MultiPlan relationship?

10 A Yes, I would say she was primary contact.

11 Q So she was the primary point of contact, but then when it
12 came time to sign a material change or amendment to the contract,
13 ultimately, that was you who signed the document; is that right?

14 A Yes.

15 Q Do you understand, having reviewed this document anew,
16 that this was an amendment being made to the master agreements that
17 you had with MultiPlan at the time?

18 A I see it as being a notice of change, yes.

19 Q Okay. And in the very first paragraph, Mr. Singleton writes,
20 we are writing to inform you of trends happening in the health insurance
21 market. Health insurers and other payers, including our clients, are
22 taking a more active role in managing their access to provider networks
23 and establishing maximum reimbursement policies when members
24 access MultiPlan's complementary network as they with their own
25 network or other leased networks. Do you see that, sir?

1 A Yes.

2 Q What did you understand the reference to maximum
3 reimbursement policies to mean?

4 A That they were somehow going to try and initiate some caps
5 on what levels of payment they might be willing to pay.

6 Q Okay. And in this context, what Mr. Singleton was notifying
7 Ms. Shrader, and then ultimately, you as signatory to the notice, was that
8 these clients were taking a more active role in applying maximum
9 reimbursement policies when members of the health plan access
10 MultiPlan's complementary network. Do you understand what Mr.
11 Singleton was referring to when he referred to MultiPlan's
12 complementary network?

13 A Not within the network that we participate in as a provider.

14 Q So like the wrap rental networks you referred to earlier?

15 A Yes.

16 Q Okay. So then if you go down to the first bullet, he says,
17 your agreement with MultiPlan is governed by each client's specific
18 benefit plan. Do you see that?

19 A I do.

20 Q And you agree with that statement, correct?

21 A I don't know if I agree with that statement. It's in here, I do
22 acknowledge that. But I don't know that I necessarily agree with it.

23 Q Well, whether you agree or not, you signed an amendment, a
24 notice of material change amendment to the base master agreement that
25 contained that statement, correct?

1 A Yes.

2 Q Okay. And then it says, in addition, clients that are
3 contracting with MultiPlan to utilize the complementary network are not
4 required to access the terms of your agreement, including the
5 complementary network contract rates for a specific client if the contract
6 rate for that client exceeds the maximum amount of reimbursement
7 eligible under the terms of the benefit plan or the client's or MultiPlan's
8 reimbursement policies. Then it's got an open paren and in quotation
9 marks, ("maximum reimbursement policy") close quotes, close paren.
10 Do you see that, sir?

11 A Yes.

12 Q What was your understanding of that statement?

13 A I -- I just think it's saying that they can't mandate that the
14 health insurance companies access their network.

15 Q So do you agree that that second sentence, MultiPlan was
16 advising TeamHealth that MultiPlan's clients that were contracted with
17 MultiPlan to use that wrap or rental network, were not required to access
18 the rates that were in the agreements between providers like
19 TeamHealth and MultiPlan?

20 A Yeah, if that what it says. But again, we -- we have no
21 control over their arrangement with -- with health plans.

22 Q So you see it says, MultiPlan clients and their customers? Do
23 you see that?

24 A Yes.

25 Q Do you understand that the reference to the customers of the

1 MultiPlan clients is referring to the ASO customers of health insurers and
2 their members?

3 A Yes.

4 Q Okay. So it says, MultiPlan clients and their customers are
5 not required to access every network offered or to access every provider
6 participating in the network they do access. I think that's a statement
7 just restating what you said a moment ago, correct?

8 A Correct.

9 Q Okay. And then he goes on to say, In the event that they
10 elect not to access your agreement meaning MultiPlan clients and their
11 customers, the terms of your agreement will not apply. Do you see that?

12 A I do, but let me-- let me clarify my last answer to the
13 question. Again, we don't know what MultiPlan's clients' requirements
14 were. So I can't stipulate that they weren't obligated to access the
15 network or not. We have no visibility, had not seen any of those
16 agreements, were not aware of those agreements, whether they required
17 it or not.

18 Q Well, before you signed this document, sir, did you contact
19 Mr. Singleton and ask him to explain any of the language in this letter?

20 A I can't recall if I would have talked to him or if J.J. would
21 have talked to him. I would have guessed one of us would have. I don't
22 recall any specific discussions.

23 Q Do you remember having any information from Mr.
24 Singleton about anything in -- in Exhibit 7 that caused you any concern
25 before you signed this document?

1 A I -- I can't recall. I think there were some other events going
2 on at that time with MultiPlan and our contract that were related to this.
3 And so -- but again, I cannot remember the specifics of the dynamics that
4 were going on at that time. Because I think we were also trying to
5 accomplish something else with MultiPlan and our contract at that time.
6 And so I just cannot remember all the specific discussions that may or
7 may not have taken place.

8 Q But whatever those discussions were, as you sit here today,
9 you don't have any memory of any concerns about any of the specific
10 language in Exhibit 7. Am I right about that?

11 A I -- I wouldn't say that I didn't have any concerns. But again, I
12 felt like -- I think our thinking at the time was that we weren't sure this
13 really changed anything. Either the plans had obligations to access the
14 rental networks according to their agreements or they didn't, but this
15 really wouldn't have changed the game.

16 Q But whatever your views were, you signed this document in
17 June -- June of 2016, comfortable with this content, correct?

18 A I did sign the agreement.

19 Q Okay. And just to put this in context, TeamHealth was
20 essentially, a customer of United during this period, correct?

21 A I guess it depends on who you determine as the customer,
22 but we had a -- a business relationship with them, yes.

23 Q Well, a customer in the sense that they contracted with you
24 as a vendor to administer your -- your health -- your TeamHealth health
25 plan, correct?

1 A Yes.

2 Q And you paid them a fee for that service, correct?

3 A Correct.

4 Q And prior to January 2020, for the period at issue in this
5 lawsuit in the state of Nevada, UnitedHealthcare was the administrator of
6 the TeamHealth employee health plans, correct?

7 A Prior to 2020?

8 Q Yes.

9 A Yes.

10 MR. BLALACK: Okay. Your Honor, can we approach with
11 counsel with a question before we play the next video?

12 THE COURT: Yes, of course.

13 [Sidebar at 9:58 a.m., ending at 9:59 a.m., not transcribed]

14 [Pause]

15 [Video Deposition of Kent Bristow continues]

16 BY MR. BLALACK:

17 Q So today, we are going to be receiving testimony from Team
18 Physicians, a Plaintiff in this case, the corporate testimony of Team
19 Physicians.

20 It's my understand that you have been designated by the
21 Plaintiff, Team Physicians, to be its corporate representative and testify
22 today; is that right? Is that your understanding?

23 A Yes. That's my -- that's correct, yes.

24 Q Do you agree with me that there are commercial insurers
25 other than UnitedHealthcare that TeamHealth contends are unilaterally

1 reducing out-of-network payments for emergency physician services that
2 result in reimbursement rates below contracted in-network rates?

3 A Yes.

4 Q Okay. So the phenomenon that TeamHealth contends is
5 improper in this lawsuit is a scenario that TeamHealth is experiencing
6 with other commercial health insurers as well, correct?

7 A And with some particular payers in certain markets, yes. But
8 again, we're also moving to hold them accountable to a different
9 standard as well.

10 Q Okay. Sir, the document marked for identification as Exhibit
11 -- Team Physicians Exhibit 18, is a printout from the Nevada Secretary of
12 State's website providing entity information on an entity named Team
13 Physicians of Nevada - Scherr P.C. Do you see that, sir?

14 A Yes.

15 Q So my first question is, Team Physicians of Nevada - Scherr
16 P.C., is there any relationship between that entity and Team Physicians -
17 Mandavia that is a Plaintiff in this lawsuit?

18 A Yes. It's one and the same. Again, I think I was referring to
19 the name earlier of the group, but it's just recently changed.

20 Q Okay. Now, you'll see underneath Dr. Scherr's name, there is
21 a person named Jennifer Behm, B-E-H-M, do you see that?

22 A Yes.

23 Q I think you mentioned Ms. Behm last week when we talked.
24 Who is she?

25 A She is the executive vice president over the west region

1 operations.

2 Q The west region operations of TeamHealth?

3 A Yes.

4 Q And then underneath that, there is an individual named John
5 R. Stair, do you see that?

6 A Yes.

7 Q Who is Mr. Stair?

8 A John Stair is in-house counsel with TeamHealth.

9 Q Okay. And then there is an officer listed as John Berry. Who
10 is Mr. Berry?

11 A John is over our taxation services area of TeamHealth.

12 Q And then sir, if you look over to the next page, you'll see
13 there is a director listed and a treasurer listed. Do you see that?

14 A Yes.

15 Q And

16 Q You'll see again as the director, Dr. Scherr is listed and then
17 there's a treasurer listed as Kristopher Smith. Do you know Mr. Smith?

18 A Yes.

19 Q Who is Mr. Smith?

20 A So Chris is the CFO over the chief financial officer over the
21 west region operations.

22 Q And when you say west region operation, do you mean the
23 TeamHealth west region operations?

24 A Yes.

25 Q Okay. So am I correct, sir, that all of the officers and the

1 directors listed in the filings of Exhibit 18 are employees of TeamHealth,
2 sir?

3 A Yes.

4 Q So sir, the document marked for identification to your
5 deposition is Team Physicians Exhibit 25. It's entitled "Notes for
6 Healthcare Providers' Corporate Representative Deposition"; is that
7 right?

8 A Yes.

9 Q And then am I summarizing it accurately to say that it
10 appears to have an identification of subject matters and then notes
11 written in bullet points underneath those subject matters?

12 A Yes.

13 Q And are the notes reflected in this Exhibit 25 solely related to
14 Team Physicians or to all three Plaintiffs?

15 A There are a couple of references that would include
16 addressing points related to Ruby Crest. So I think there's a couple of
17 them that are specific to Ruby Crest. But otherwise, they would be
18 applicable to Team Physicians.

19 Q Okay. And are any of the -- to your knowledge, is -- are any
20 of the notes intended to address topics involving Fremont?

21 A Some of the topics would also address Fremont, certain
22 topics would not.

23 Q If you would look at the document marked for identification
24 as Exhibit 29, which was produced to the defense by the Plaintiffs in this
25 case, it is Bates stamped FESM001390. Have you seen that document

1 before, sir?

2 A Yes, I have.

3 Q Okay. What does that document describe?

4 A It -- it's a document that's kind of just a general description of
5 the process and consideration for how we set our charges.

6 Q Is the setting of the chargemaster, the process you're
7 describing here, is that an entirely internal TeamHealth function, and I'll
8 include within that, you know, vendors or consultants you might rely on,
9 but entirely done by TeamHealth?

10 A People with TeamHealth, again, looking at these non-
11 TeamHealth data sources, yes.

12 Q There's not a regulator of TeamHealth coming along and
13 saying that's too high or that's too low, correct?

14 A Again, a regulator would be in the form of FAIR Health
15 independently established database.

16 Q No, like a government regulator. There's no government
17 regulator who comes along and says your chargemaster is too high or
18 too low, correct?

19 A Not that I am aware of as a government regulator, no.

20 Q Okay. In the last sentence under the heading of Emergency
21 Medicine, it says, once the chargemaster is set, it is subject to annual
22 review and/or increases as each billing area contract permits. Do you
23 see that?

24 A Yes.

25 Q What does that mean?

1 A It means typically, we will do an annual review of the
2 chargemaster and implement price increases if appropriate, and if
3 permitted for the billing area.

4 Q And how are the -- how is the amount of that increase
5 determined?

6 A Again, as a general rule, I would say we were increasing, on
7 -- on average, our fees five percent each year.

8 Q Okay. So we're back today to take the testimony of corporate
9 representative of -- and I'm using the shorthand name Ruby Crest. Do
10 you understand Ruby Crest is the trade name of one of the Plaintiffs in
11 this case?

12 A Yes.

13 Q And are you here as the designated Ruby Crest, to give
14 testimony on its behalf?

15 A Yes.

16 Q Now, sir, is Ruby Crest an emergency medical services group
17 practice that TeamHealth helped create or that TeamHealth acquired?

18 A It was a group that really kind of merged with and/or --
19 and/or acquired back in few years ago.

20 Q Okay. Sir, the document marked for identification as Ruby
21 Crest Exhibit 4 is entitled, TeamHealth acquires Ruby Crest emergency
22 medicine. It's dated February 12th, 2015. And the date line, from
23 Knoxville, Tennessee. Have you seen this before?

24 A Not that I recall. I may have in the past, but not that I recall
25 specifically.

1 Q Okay. And I take it you -- do you have knowledge of when
2 TeamHealth acquired Ruby Crest?

3 A Yes.

4 Q Okay. And will you tell me when that happened?

5 A February of 2015.

6 Q Okay. Got it. All right. So for the period -- where it says pre-
7 dispute period, you'll see some dates that read, 1/1/15 to dash 6/30/17.
8 Do you see that?

9 A Yes.

10 Q How -- now, looking at the -- that period, that pre-dispute
11 period, you have a number -- you have analysis of claims paid at certain
12 various levels of billed charges. Do you see that?

13 A Yes.

14 Q So if my math is right, of the 1,160 UHC claims, about --
15 United paid -- the United Defendants paid about seven percent of those
16 claims in full billed charges. Does that sound right to you?

17 A Yes.

18 Q Do you agree with me, sir, that there is no fee schedule set
19 by Nevada state law or Nevada state government that requires the
20 payment of a specific amount, specific rate for emergency services
21 [indiscernible] basis?

22 A I am not aware of a specific fee schedule, no.

23 Q All right. And you're not aware of any statute that specifies
24 the particular methodology, statute or regulation, as specified in the
25 particular methodology that must be used to reimburse emergency

1 services on an out-of-network basis for a commercial health plan?

2 A A methodology?

3 Q Yes. Usual and customary, for example. That's not written
4 in any statute or regulation in Nevada, correct?

5 A I'm not certain.

6 Q Sitting here today, in your experience as senior officer for
7 TeamHealth and all you've done to prepare to give testimony in this
8 case, you're not aware of any statute or regulation issued by the Nevada
9 state government that says that commercial out-of-network emergency
10 services must be reimbursed as usual ask customary or usual and
11 customary and reasonable charges, correct?

12 A I'm not aware of an explicit methodology, but I'm certainly
13 aware that there is an implied fact provision for the services to be
14 covered and paid at the usual and customary rates.

15 Q That's what you're referring to in this complaint, correct?

16 A Yes.

17 Q Okay. But that's not -- you couldn't go pick up a statute book
18 or regulation and find of language, correct?

19 A Find what language?

20 Q That -- that commercial reimbursement for an out-of-network
21 emergency claim must be made at usual and customary rates or usual
22 and customary charges?

23 A Not that I'm aware of.

24 Q Okay. Now, if you go down to paragraph 237, you'll see a
25 statement that then alleges, the Defendants failed to failed to reimburse

1 the healthcare providers at the usual and customary rate within 30 days
2 of the submission of the claim. Do you see that?

3 A Yes.

4 Q I want to make sure I understand the allegation and precisely
5 what it means. Is the allegation in that sentence that the claims that are
6 disputed in this case were not adjudicated and paid at all within 30 days
7 or is the allegation that they were adjudicated and paid within 30 days
8 but not at the usual and customary rate?

9 A The latter. That they were not paid at the usual and
10 customary rate within 30 days.

11 Q So there's no allegation, at least with respect to the disputed
12 claims, that the claims were not adjudicated and paid what you contend
13 was a -- a particularly low rate but paid within the 30-day period?

14 A That's correct.

15 Q All right. Sir, under the statement, the healthcare providers
16 have an implied agreement with the tenants. Do you see that?

17 A Yes.

18 Q Did Plaintiffs have an implied agreement with all commercial
19 health insurers and health plans whose members receive emergency
20 services from the plans on an out-of-network basis?

21 A On an out-of-network basis, yes, to the extent that they're not
22 otherwise accessing one of our negotiating discount arrangements.

23 Q So if they haven't -- if they're not of network and they haven't
24 accessed a wrap or rental network agreement and they receive an out-of-
25 network emergency claim from that one of the Plaintiffs, that is pursuant

1 in Plaintiffs view to an implied agreement under Nevada law?

2 A Again, with the exception of to the extent that there are
3 otherwise out-of-network agreements or negotiated discount
4 agreements that might be separate and apart and distinct from rental
5 network and wrap agreements.

6 Q Okay. Kind of the one off kind of negotiations you were
7 describing earlier?

8 A Yes.

9 Q Okay. All right. How long has United had this implied
10 agreement with the Plaintiffs?

11 A With Plaintiff Ruby Crest as far back as we have been
12 providing services there.

13 Q Is that because Ruby Crest has always been out-of-network
14 with the United Defendants?

15 A Yes. That's my understanding.

16 Q And -- and you'd agree, sir, that during that period, the
17 amount that Plaintiffs -- Plaintiff Ruby Crest has charged for the same
18 service, same CPT code has increased each of those years, correct?

19 A Yes, at least for the period in the dispute period. Yes.
20 Correct.

21 Q Did this implied agreement between the United Defendants
22 and Ruby Crest include an agreement by the Defendants to pay for those
23 increase -- annual increases of billed charges each year?

24 A Again, there is an implied agreement that they would pay the
25 usual and customary rates as long as they were within the acceptable

1 standard of how United would define and others would define what's
2 usual and customary.

3 Q So if the rates went up 5 percent, 10 percent, 15 percent a
4 year, the United Defendants would still be obligated under this implied
5 agreement with Ruby Crest to pay those increased rates each year so
6 long as it didn't exceed some definition of reasonableness that you are
7 describing here?

8 A Well, one, I said we only increased our prices five percent
9 each year. Again, the measurement, as long as they -- by United's own
10 admission, the standard is that they're usual and customary within the
11 80th percentile of the FAIR Health database or other like providers of like
12 services in the same geographic market.

13 Q Now, first of all, who is the administrator of the TeamHealth
14 plan effective January 1, 2020?

15 A So, again, primarily it is Aetna. And then a caveat, there's --
16 there's carve-outs for like a market or two. But Aetna is the primary
17 provider of our --

18 Q Okay.

19 A -- administrative services.

20 Q Okay. Is there a market somewhere where the United
21 Defendants are still the administrator?

22 A No, not United.

23 Q Okay. And after United ceased being the administrator and
24 Aetna became the administrator, the provider wouldn't get full bill
25 charges in that instance if it was above the 80th percentile rate up?

1 A They would get the lesser of the 80th percentile of billed
2 charge.

3 Q Okay. Mr. Bristow, do you recall that for the file that we
4 called the disputed claim file that Plaintiffs had produced four versions of
5 that file?

6 A That's correct.

7 Q Okay. And, according to my records -- tell me if this sounds
8 right based on your preparation to testify today -- the third version of the
9 claims file -- disputed claims file had 22,915 disputed claims on it and the
10 fourth version of the disputed claims, the operative version, has 19,065
11 disputed claims on it?

12 A Yes, that sounds right.

13 Q Okay. Okay. Which means that, according to my math,
14 roughly 3,798 claims were removed by Plaintiffs from the third to the
15 final version of the list?

16 A That sounds correct.

17 Q I think this is obvious, but what -- what is the purpose of this
18 file, sir?

19 A The purpose of this file is to identify all of the disputed
20 claims at issue in this lawsuit.

21 Q Okay. And do you know how this file was created?

22 A So, yes. It was created by pulling information out of our
23 billing operation system.

24 Q And what is that system?

25 A It -- it goes by different names, but I generally refer to as IDX.

1 And I think some also -- people also refer to it as GE Centricity.

2 Q If we see both of those names, is it referring to the same
3 system or are those different systems over time?

4 A They're typically a synonymous term.

5 Q Okay. So is it fair to say that the IDX and/or GE Centricity
6 system contains data regarding the claims for reimbursement that
7 TeamHealth has submitted to health insurers, including the United
8 Defendants in this case?

9 A Yes.

10 Q And that Mr. Ocasio and/or with the help of Ms. Vinci
11 [phonetic] extracted the data that was reflected in FESM 020911 to
12 populate the spreadsheet?

13 A Yes.

14 Q And do you know what the -- you told me where the data is
15 housed. Do you know what the source of the data itself or the source
16 that it is for this information?

17 A It's based on inputs into that system based on the
18 submission and the processing of payment and posting of -- of the
19 claims back in -- from the health plan.

20 Q Is the data that is housed in the IDX dash GE Centricity
21 system, is that data housed there based on manual entry of the data or
22 based on some electronic transmission into the system?

23 A Most of which is the electronic these days, but, again, there --
24 there can be certain elements when claims are reprocessed or
25 readjudicated or certain claims, you know, occasionally can drop on a

1 paper claim or pay on -- on a paper basis. But, by and large, most of it is
2 electronic --

3 Q Okay.

4 A -- but I can't represent that every claim represents here is
5 input electronically.

6 Q Are there particular fields of data that are routinely made that
7 are -- that are reflected in the spreadsheet we're looking at, FESM
8 020911?

9 A I'm sorry. I just want to make sure. The input into the
10 spreadsheet or input into the system?

11 Q Into the system from which the spreadsheet drops?

12 A So obviously you have to key in information related to what
13 codes you're billing as those are assigned by our coders. But otherwise
14 -- again, most of the payments I believe are posted electronically, but
15 there can be some that -- that get posted manually.

16 Q Okay. So --

17 A And that would be the one element that would have probably
18 less -- well, more instances of a manual touch than all the other elements
19 being mostly electronic.

20 [Video deposition of Kent Bristow ended at 10:23 a.m.]

21 UNIDENTIFIED SPEAKER: Your Honor, may we approach?

22 THE COURT: You may.

23 [Sidebar at 10:23 a.m., ending at 10:23 a.m., not transcribed]

24 THE COURT: Okay. You guys, we're -- rather than having
25 you sit and watch them through the technical things, we'll take a short

1 break.

2 During this recess don't talk with each other or anyone else
3 on any subject connected with the trial; don't read, watch, or listen to
4 any report of or commentary on the trial; don't discuss this case with
5 anyone connected to it by any medium of information, including, without
6 limitation, newspapers, television, radio, Internet, cell phones, or texting.
7 You may not talk, Tweet, Google, post social media, or conduct any
8 other type of book or computer research with regard to any issue, party,
9 witness, or attorney; don't form or express any opinion on any subject
10 connected with the trial until the matter is submitted to you. It's 10:24.
11 We will be ready sharp at 10:35.

12 THE MARSHAL: All rise for the jury.

13 [Jury in at 10:24 a.m.]

14 [Outside the presence of the jury]

15 THE COURT: Okay. The room the clear.

16 Plaintiff, anything for the record?

17 MR. LEYENDECKER: No, Your Honor.

18 THE COURT: Defendant, anything for the record?

19 MR. BLALACK: One thing, Your Honor. So we've got one --
20 one video left, which we're working on right now with Plaintiffs as soon
21 as we get done. At that point, I believe the intention is for Plaintiffs to
22 ask Mr. Bristow to testify live on cross and then obviously we will have
23 any redirect.

24 We filed a trial brief earlier today on the scope of cross issue,
25 and I want to make sure we bring it up because, depending on how the

1 examination is handled, I'll bringing up [indiscernible]. As laid out in
2 that brief, obviously anything we covered in our direct is fair game for
3 Plaintiffs to cover with Mr. Bristow. But this is not an opportunity for
4 them to put on the examination with Mr. Bristow they would have put on
5 if they had called him in their case-in-chief. Okay?

6 Originally that name is one of their expected call witnesses.
7 He's the corporate rep. And, in fact, we will all planning to hear
8 Mr. Bristow in their case. For whatever reason, they decided not to do
9 that. And that's fine. But having made that choice in not bringing in
10 Mr. Bristow live to testify in response to the questions and testimony we
11 designated and not to counter-designate this, they need to be held to the
12 scope of the direct as the rule contemplates.

13 And so I'm just wanting to make sure we have a alignment
14 on that because I'm going to be objecting to anything that goes beyond
15 the scope --

16 THE COURT: Very good.

17 MR. BLALACK: -- of direct.

18 THE COURT: I will review the trial brief during the recess. I
19 signed an order shortening time on the Plaintiffs' motion to modify pre-
20 trial. I've set it for tomorrow at 10:15 or 10:20 because you're entitled to
21 24 hours' notice.

22 MR. BLALACK: Thank you, Your Honor.

23 THE COURT: So I have indicated we'd take it up at 5, but I
24 didn't know at that point there would be an OST later in the in-box. Did
25 you have a response with regard to the scope of the cross?

1 MR. LEYENDECKER: I understand their point of view. I don't
2 anticipate going beyond the subjects that -- that are covered in the three
3 or four days.

4 THE COURT: Okay.

5 MR. LEYENDECKER: And if he feels like I do, then he, you
6 know, can raise an issue with it. But I --

7 THE COURT: Okay.

8 MR. BLALACK: There won't be an issue.

9 THE COURT: Have a good break, everybody.

10 MR. BLALACK: Thank you.

11 MR. LEYENDECKER: Thank you, Your Honor.

12 [Recess taken from 10:26 a.m. to 10:35 a.m.]

13 [Outside the presence of the jury]

14 THE COURT: All right. Do you have an update for me on the
15 court reporter?

16 MR. ZAVITSANOS: Yes, Your Honor. So Mr. Lyle [phonetic],
17 who literally can find a needle in a haystack, has determined that Weil
18 Gotshal, which is a 1,500-person firm, represents MultiPlan in a case
19 where they have been sued for fraud for failing to disclose certain things
20 by these investors. And here's the concern. MultiPlan is going to testify
21 in this case. MultiPlan is involved in other litigation.

22 And I'm deeply concerned that the Weil Gotshal lawyer
23 listening to me right now is advising the MultiPlan witnesses. I'm not
24 including these lawyers here in the courtroom. I'm deeply concerned
25 that they are advising the MultiPlan witness on what's going on here,

1 and what he needs to say in connection with this other lawsuit where
2 this is a -- there's going to be a little bit of overlap in terms of what they
3 have been doing here and what they have been doing in this other case,
4 as the Court will see when the MultiPlan witness takes the stand.

5 And Your Honor, I mean, they've gone so far as to hire a
6 court reporter to transcribe. Which I believe the only purpose of that
7 would be to show the witness on what was said so that they could
8 literally fall in the sidewalk crack because, as the Court will see, they're
9 caught between a rock a hard place here. So this is real -- I've never
10 seen this before. I've never encountered this before. I know they're
11 listening to me right now as I'm talking. So I -- and I don't know what to
12 do about it. I'm at a loss.

13 MR. BLALACK: Can I be heard, Your Honor?

14 THE COURT: Of course.

15 MR. BLALACK: I know nothing about anything he just said,
16 so I don't really have any response to that. I will say that according to
17 our search, Weil Gotshal also represents Blackstone, which is the owner
18 of TeamHealth. So it's entirely plausible that everything that Mr.
19 Zavitsanos said is right. It's also entirely plausible that Weil Gotshal is
20 doing it on behalf of Blackstone without his knowledge. Or it's entirely
21 possible it's something else entirely. I don't know.

22 THE COURT: We can voir dire the witness outside the
23 presence of the jury before the testimony takes place.

24 MR. BLALACK: That's how he -- I'm confident he won't know
25 anything.

1 THE COURT: Thank you. Let's bring in the jury.

2 MR. LEYENDECKER: I believe the tapes are still being edited,
3 Your Honor.

4 UNIDENTIFIED SPEAKER: How much time --

5 MR. GODFREY: Probably need about five more minutes.

6 THE COURT: About five more minutes?

7 Oh, the marshal. Just let her know we need five more
8 minutes. Go ahead and be at ease, and I'll be back at 10:45.

9 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

10 [Recess taken from 10:37 a.m. to 10:49 a.m.]

11 [Outside the presence of the jury]

12 THE COURT: Please remain seated.

13 MR. BLALACK: Your Honor?

14 THE COURT: Yes.

15 MR. BLALACK: We've got the video ready, but there's one
16 ruling we're not -- that may not --

17 THE COURT: Come on up.

18 MR. BLALACK: Mr. Leyendecker can't really decide how to
19 handle it, so.

20 THE COURT: Can I see what I wrote?

21 THE CLERK: Do you want a bench conference on it?

22 THE COURT: No.

23 MR. LEYENDECKER: Do you have the transcript too, Your
24 Honor? If not, I'll share with you on my screen.

25 MR. BLALACK: Here is your ruling, Your Honor. It's this one

1 here. And Shane tells -- there's the transcript. Shane tells me that this
2 section --

3 THE COURT: Did I write on the -- I think I may have -- I wrote
4 on the transcript. You guys are under a lot of pressure.

5 [Pause - Court and counsel confer]

6 THE MARSHAL: All rise for the jury.

7 [Jury in at 10:53 a.m.]

8 THE COURT: Thank you. Please be seated. And thank you
9 to the members of the jury again for your patience with our technical
10 issue. All right.

11 MR. BLALACK: We can now play the final video, Your Honor.

12 THE COURT: Yeah.

13 [Video deposition of Kent Bristow continues]

14 Q So we're back together again to take additional testimony.
15 At this time, as I understand it, you've been designated to be a corporate
16 representative on behalf of Plaintiff, Fremont Emergency Services
17 (Mandavia), Ltd.; is that right?

18 A Yes.

19 Q Plaintiff's theory that they were entitled to flow bill charges
20 for the services that they billed for United, that was on an out-of-network
21 basis, was limited by a determination of whether those charges were or
22 were not reasonable. Is that a fair summary of your statement of the
23 Plaintiff's position?

24 A Yes.

25 Q Okay. And when we discussed how to define what was and

1 wasn't reasonable, I understand -- I understood you to say that the FAIR
2 Health database at the 80th percentile represented what Plaintiffs
3 believed was a standard by which to measure the reasonableness of
4 charges; is that right?

5 A That's correct. And again, if you look at our charges, again,
6 on a weighted average basis across all the codes, you will find that we
7 are well under the 80th percentile of FAIR Health in the geo zip for the
8 Clark County area. In fact, I believe we're below the 60th percentile
9 when you look at a weighted average of all of our codes that we bill.

10 Q And I appreciate that, but my question is slightly different.
11 I'm trying -- you just [indiscernible] on an aggregate basis. I'm asking on
12 a code by code basis if your charges exceed -- Plaintiff's charges exceed
13 the standard you identified in the FAIR Health database. Are Plaintiffs
14 still pursuing full recovery of those charges and damages in this case?

15 A I would say we'll -- again, we still believe those charges to be
16 reasonable. But yes, we would concede that if it's a bottom 80th
17 percentile, we would limit it to the 80th percentile.

18 Q I'm sorry --

19 A Because that is the standard that we referenced as being
20 reasonable.

21 Q Yes. So are you taking the position that the measurement up
22 against FAIR Health has to be done on a collective aggregate basis to
23 decide how to judge whether the charge is reasonable? Or are you
24 saying that you're entitled -- are you taking the position that that's an
25 assessment that's made on a code by code, facility by facility basis?

1 A I believe it should be viewed on a weighted average basis
2 and also on the codes.

3 Q Okay. Right, but I'm -- right now, I'm asking about a single
4 line to understand your position of what you're going to tell the jury
5 when we get to trial. And I want to know whether you're telling them
6 that you're going to be seeking for row 2, 700 -- I had to go back to \$779
7 for Fremont at Sunrise ED, Nevada even though it exceeds the 95th
8 percentile of the FAIR Health database because on an aggregate basis,
9 TeamHealth's charges are below, according to you, the 60th percentile of
10 FAIR Health?

11 A Yes.

12 Q Okay. So let's now, sir, turn to Fremont -- the Plaintiff,
13 Fremont. And you mentioned that TeamHealth acquired Fremont -- I
14 think you said sometime in 2015; am I right about that?

15 A Yes, I believe it was the later part of '15.

16 Q And am I correct, sir, that unlike Plaintiffs Team Physician
17 and Plaintiff Ruby Crest, that Fremont physicians staffed more than one
18 emergency department; is that right?

19 A Yes.

20 Q How many did they staff?

21 A Today?

22 Q We'll start with today, and then we'll go backwards.

23 A I believe today; we staff five emergency rooms.

24 Q At the time of the acquisition in October of 2015, how many
25 emergency rooms did Fremont staff?

1 A My recollection is six, but I'm not absolutely certain.

2 Q Okay. So sir, the document marked as Fremont Exhibit 6, I'll
3 represent to you is a printout of the Fremont chargemaster that I showed
4 you in electronic form earlier. And then to the extent the amount on the
5 chargemaster for each of those codes was changed during the period at
6 issue -- strike that.

7 During the period for which the data was collected. This is April 1,
8 2016 through December 31st, 2017. Those different charges over time
9 are reflected.

10 A Yes.

11 Q How often does Fremont change the charge for an individual
12 CPT code on this chargemaster?

13 A As we've talked about, typically, we do that once a year.
14 Again, we did encounter a special project back in -- I think it was June of
15 2017 in which we did a recalibration midyear of some of the nonfrequent
16 procedure codes.

17 Q Okay. When I look at Exhibit 6, I see dates like April 1st,
18 2016. And then I see May 1st is another date where changes appear to
19 have been made. November 1st, 2016; June 1, 2017; June 15, 2017;
20 12/14/2017. So literally, in the span of a year and a half -- little over a
21 year and a half, there appear to be five different changes being made to
22 certain codes; do you see that?

23 A Yeah, I agree. It is not -- it does not reflect five changes
24 being made. As we've talked about, there was a certain projected done
25 in June '17 to recalibrate certain procedure codes across the landscape.

1 But if you look outside of that, there's only one otherwise change being
2 made to the fees during the course of the calendar year.

3 Q And what date are you referring to?

4 A So if you look at ER at the Lakes, the first increase it shows is
5 in November of 2016. In June of '17, it does show the recalibration
6 project that I referenced. Kind of a one-time project. And again, it was
7 increased the next year. So once in 2016 and once in 2016.

8 Q W? the addition of the special project you referred to?

9 A Correct.

10 Q So for ER at the Lakes, the chargemaster prices for the codes
11 listed increased three times during that span of time?

12 A Again, outside of the special recalibration project, they
13 were -- they were increased once for the year for [indiscernible].

14 Q Let's just use an example. Let's look at 10060, the very first
15 code for ER at the Lakes. Do you see that, sir?

16 A Yes.

17 Q So if I read this correct, on November 1st, 2016, the charge
18 for that code was increased to be \$716 for that code, correct?

19 A Actually, I would not say it was increased. That may have
20 been the first time we uploaded fees. I can't remember when that site
21 started, but that may have been the start of that site when fees were just
22 initially loaded.

23 Q But you don't know that sitting here today, correct?

24 A I believe it to be the case.

25 Q Based off what?

1 A Because we were matching the fee schedule for what we had
2 in place in some of the other sites. So if you look at MountainView back
3 in April of '16, that was \$716 for 10060.

4 Q Right.

5 A So I believe when we started up ER at the Lakes and
6 provided the first date of service, we set a matching fee schedule upon
7 the startup of that site. And so thereafter, it was adjusted in June for the
8 recalibration project. And then otherwise, really, the first increase for
9 most of the codes didn't happen until December of '17.

10 Q So the 10060 code was increased from 716 to 734 on June 1,
11 2017; is that right?

12 A Yes.

13 Q And then it was increased again to 771 the end of that year
14 on 12/15/2017; is that right?

15 A Again, in keeping with our methodology of really just
16 adjusting it once a year outside of the special recalibration project.

17 Q Is the answer to my question yes?

18 A Yes. Again, both of the reasons I stated why.

19 Q And then for MountainView, if you look at the same code on
20 4/1/2016, that was \$716 for that charge, correct?

21 A Correct.

22 Q And then it was increased to 752 the following summer in
23 June of 2017; is that right?

24 A Yes.

25 Q June 1 of 2017, correct?

1 A Yes.

2 Q And then it was reduced to 707 in June 15, 2017?

3 A Yes, for the recalibration project.

4 Q And then it was increased back up to 742 at the end of that
5 year on 12/15/2017; is that right?

6 A Yes.

7 Q And then if you look at MountainView ED, go down, you'll
8 see a code 31500; do you see that?

9 A Yes.

10 Q You'll see that in April 1st of 2016, that code was -- the
11 charge for that service was \$795; is that right?

12 A Yes.

13 Q And then in June 1st of 2017, it was increased to 835; is that
14 right?

15 A Yes.

16 Q And then two weeks later, it was increased to \$1,023 for that
17 service; is that right?

18 A Yes.

19 Q And then later that fall -- that December, end of the year, it
20 was increased to \$1,074; is that right?

21 A Yes.

22 Q Okay. So at least for 31500, between April 1st of 2016 and
23 12/15/2017, that charge increased four times; is that right?

24 A Again, yes, because of the special considerations on the
25 recalibration project that otherwise -- it didn't -- it only increased three

1 times.

2 Q Okay. Do you remember concluding that one solution for
3 that reimbursement problem was to transfer the billing for the Fremont
4 physicians that would be reimbursed at that point through tax
5 identification number with Fremont to the tax identification number
6 associated with Ruby Crest?

7 A I do recall because of the impending threat that they were
8 going to be implementing the benchmark pricing effective, you know,
9 January of 2019. We did consider an alternative, trying to access what
10 we thought was a contract in place between United and Ruby -- to United
11 through the Ruby Crest entity.

12 Q Okay. And these agreements that you're describing; tell me
13 about those. What agreements are you talking about?

14 A Again, I'm not an attorney and I can't give you all the
15 structural details. But that there was a leasing agreement set up
16 between Fremont Emergency and Ruby Crest that would allow Ruby
17 Crest to utilize the FES providers or Fremont providers to see and treat
18 and bill for the United members.

19 Q Okay. And when did Fremont and TeamHealth explore this
20 arrangement to move the billing for these Fremont providers through
21 Ruby Crest?

22 A My recollection of considering that arrangement was at the
23 end of 2018. Again, before the expected implementation of United's
24 benchmark pricing program for out-of-network services.

25 Q And were those -- those agreements you described, were

1 they actually prepared?

2 A To my understanding, yes.

3 Q Did you see them?

4 A I don't recall personally seeing them.

5 Q Okay. And are there any business personnel for TeamHealth
6 that were involved in the process of creating these agreements and
7 putting them in place?

8 A Just interacting about evaluating the option of doing this
9 with myself and David Greenberg with counsel.

10 Q Were any of the physicians for Fremont whose services were
11 rendered in Clark County, but they were billed out of the Ruby Crest tax
12 identification number informed that TeamHealth was going to be billing
13 their services through a Ruby Crest tax identification number?

14 A Not to my recollection.

15 Q Okay. Do you know whether any of those physicians would
16 have objected to having their services billed out through a tax
17 identification number that is not associated with Fremont?

18 A I don't know.

19 Q And that's because you never inquired?

20 A That's correct. It's not a practice we normally pursue.

21 Q Okay. In your preparation to get test -- I mean, as courtroom
22 representative of Fremont, Ruby Crest and the other plaintiff, did you see
23 any of the documentation that you just described a little while ago that
24 authorized the arrangement that you described for billing Fremont
25 services for Fremont physicians through Ruby Crest?

1 A I did not specifically review those documents in preparation
2 for my deposition, no.

3 Q Okay. Exhibit 21 is an email produced by Plaintiffs to
4 Defendants in this case, that was Bate stamped, FESM07062.

5 A Okay.

6 Q Okay. Now in this document marked for identification,
7 Fremont Exhibit 21, it starts with an email from Jason Heuberger to you
8 and Ms. Shrader, Jennifer Shrader. Do you see that, sir?

9 A [No verbal response].

10 Q And then you forward that to Mr. Greenberg on December
11 11th, 2018, right?

12 A Yes.

13 Q And then in response Mr. Greenberg writes, In Nevada -- in
14 Nevada, rather, I think you had thought to subtune Fremont to another
15 non-par entity (team physicians of Nevada Mandavia, it was about 560
16 percent the first six months of '18). Makes sense, but we would need to
17 watch it to see if the non-par rates change. We don't have sub-TINs in
18 Nevada, so we should check if we can sub-TIN in Nevada too
19 (underlined). Then he writes, who can track down the sub-TIN questions.
20 Do you see that?

21 A Yes.

22 Q Now my first question, sir, the term sub-TIN, do you know
23 what that means?

24 A Yes.

25 Q What does that refer to?

1 A Again, it's when we can take two forms, but when we have a
2 contract in place with a group and a health plan, and we to want also
3 have access to that health plan contract with a group that's not
4 contracted, sometimes we'll do an arrangement, as I described before,
5 we had the intention with Fremont with Ruby Crest, to gain access to
6 that participating contract.

7 Other times we can use a sub-TIN in order to -- if a hospital or a
8 plan is only willing to have a contract, let's say if there's a group, with
9 many sites, but they really only want to extend that offer, you know, to
10 one site, and so sometimes they'll ask it, and we'll establish a sub-TIN to
11 isolate a particular site for a group.

12 Q Okay. Is -- I've seen this phrase "sub-TIN" in other
13 documents, is that a shorthand way that you and your colleagues and
14 TeamHealth refer to the process you just described?

15 A Yes.

16 Q Okay. Now the concept that was being discussed in this
17 email from Mr. Greenberg to you, is about sub-TINing Fremont to
18 another non-participating entity, and at this point the target that was
19 contemplated was Team Physicians in north, I guess, west Nevada,
20 correct?

21 A Yes.

22 Q Okay. And as Mr. Greenberg notes in his email, the concept
23 of engaging in this sub-TIN process was your original idea, correct?

24 A That's what he states.

25 Q Okay. And you agreed with that, right?

1 A I don't recall that, but I don't have a reason to disagree with
2 it.

3 Q Okay. Sitting here today, you wouldn't dispute
4 Mr. Greenberg's assertion that the idea to do a sub-TIN of Fremont to
5 another non-party entity was right here?

6 A No, I would not.

7 Q Okay. And in his -- in the parenthesis he writes: [Team
8 Physicians of Nevada Mandavia was about 560 percent the first six
9 months of '18]. Do you see that?

10 A Yes.

11 Q Do you know what he meant by that reference?

12 A I believe he'd be referencing the rate of reimbursement for
13 that group.

14 Q So he's saying that this non-par physician group, and
15 Plaintiff in this case Team Physicians, was being reimbursed at about 560
16 percent of Medicare in the first six months of 2018; is that how you read
17 it?

18 A Yes.

19 Q And is that percentage he's referencing relating to
20 reimbursement by United Health Plans at that rate, or generally?

21 A I believe he's referencing United differently.

22 Q Okay. So he's saying, United is reimbursing Team
23 Physicians in the first six months of 2018 at about 560 percent of
24 Medicare?

25 A Yes.

1 Q So the -- what was then contemplated here, at least at this
2 point, December of 2018, was to, if possible, sub-TIN Fremont to Team
3 Physicians, so that those Team Physicians, providers who were being
4 reimbursed at much lower out-of-network reimbursement rates, would
5 now, after being sub-TIN to Team Physicians, be reimbursed at
6 something closer to the rates that you received with Team Physicians, in
7 the other part of the State?

8 A So again, it's just something we were kind of bandying
9 about, but ultimately did not ever follow through anything about this
10 particular suggestion.

11 Q But that was the concept at this point in time, correct?

12 A Yes.

13 Q Okay. And then he says, we should check if you can sub-TIN
14 in Nevada. Do you see what he says; do you see that?

15 A Yes.

16 Q Do you know what he -- was that -- strike that. Do you know
17 why he was saying we need to check if we can sub-TIN in Nevada?

18 A I don't recall specifically what that's in reference to.

19 Q Did you give him direction on who to talk to, to track down
20 the sub-TIN questions?

21 A I don't recall.

22 Q Okay. Did you direct it to counsel?

23 A Again, ultimately we had some discussions with counsel,
24 about we're getting Ruby Crest, I don't know about this particular
25 suggestion that we didn't pursue.

1 Q All right. Sir, if you would take a look at the document
2 marked for identification as exhibit -- Fremont Exhibit 21, and I will
3 identify --

4 A 22.

5 Q I'm sorry, 22. And for the record the Bate stamp for that
6 document is FESM012976 to 012977. Now in the first email, which is
7 from you, dated December 21st, 2018 to Mr. Carman and Paula Dearolf?

8 A Yes.

9 Q A copy to others, including, Mr. Greenberg, you write, below
10 is a comprehensive list of entities that are out-of-network with United,
11 but we need to consider holding claims for effective one 119 days of
12 service while we contemplate considerations for potentially redirecting
13 the billing. Do you see that?

14 A Yes.

15 Q Okay. And if you look at the listing of 10s at the chart, you'll
16 notice which is blacked out, you will notice that there were two of the
17 three Plaintiffs listed, the Fremont Plaintiff and Team Physicians of
18 Nevada, correct?

19 A Yes.

20 Q What does that mean -- what does it mean to redirect the
21 billing?

22 A It really means assessing whether we can attach to another
23 existing provider agreement in place.

24 Q Is that a shorthand for sub-TIN, the sub-TIN process you
25 described earlier?

1 A That could be a form of it.

2 Q Is there another way to do it, beside that?

3 A Or to see if we could -- and, you know, work with Plaintiff to
4 get the [indiscernible] added to the contract.

5 Q Okay. But one aspect of redirecting the billing would be the
6 sub-TIN process that you described earlier?

7 A Yes.

8 Q Okay. Now after you wrote that email you and
9 Mr. Greenberg had an exchange on the 27th, and then the 28th of
10 December; do you see that?

11 A Yes.

12 Q And Ruby Crest is the third Nevada Plaintiff in this case,
13 correct?

14 A Correct.

15 Q Who was not listed on the chart, that was in your email to
16 Mr. Carman and Ms. Dearolf, correct?

17 A Correct.

18 Q Now you wrote back to Mr. Greenberg, yes, wrestling with
19 whether to do that, or just sub-TIN all of the Fremont sites under the
20 other Nevada entity that is not contracted, but is getting better
21 reimbursement at Team Physicians of Mandavia." Do you see that?

22 A Yes.

23 Q And you then write, and we should also check if that entity is
24 doing better out-of-network, with Sierra Health Plan of Nevada, that
25 Fremont, and as well, those are United affiliated health plans, even

1 though I think they operate independently. Then you say, what I want to
2 do for sure is to sub-TIN all -- there's something blacked out -- that out-
3 of-network to something else, effective 1/1, so let's get that change in the
4 works. Do you see that?

5 A Yes.

6 Q Now why did you want to check to see if that entity is doing
7 better out-of-network with Sierra Health and Health Plan of Nevada?

8 A I don't think this is what we covered before, we just didn't
9 understand how they were paying claims that were billed, all
10 reimbursement levels we were seeing with Fremont Emergency,
11 compared to, again, our experience elsewhere in Nevada, and in
12 Colorado markets as well.

13 Q So in essence where it says, and we should also check if that
14 entity is also doing better with out-of-network with Sierra Health and
15 Health Plan of Nevada, that Fremont, as well. So which entity are you
16 referring to, give me your best sense?

17 A I think, again that sentence is referring back to Team
18 Physicians of Mandavia.

19 Q Okay. Which at that point was unanticipated?

20 A Correct.

21 Q So the document marked for identification as Fremont
22 Exhibit 23. Okay. So first of all, sir, you'll see in the initial email from
23 you to a number of individuals on your team, there's a reference to
24 UHCOON action plan; do you see that?

25 A I do.

1 Q And what was the UHCOON action plan?

2 A Just as it says here, it was some action items to evaluate and
3 consider.

4 Q About what?

5 A I don't recall.

6 Q So you understood that as of January 9, 2019, Mr. Greenberg
7 was inquiring of you to confirm which other Plaintiff was going to be the
8 recipient of the sub-TINs from Fremont, correct?

9 A Yes.

10 Q So you had concerns that United might find the sub-TINing
11 process described here, that was under consideration objectionable?

12 A That was a possibility.

13 Q Okay. And is there a reason you didn't tell them that,
14 because you knew they would object?

15 A I don't know what -- how they would react, we didn't know.

16 Q And so my question is, is the reason that they were not told,
17 United was not told of his, sub-TINing process is because TeamHealth
18 was concerned that United would in fact object to it?

19 A Again, we didn't give advance notice, specifically in Nevada,
20 but each and every claim we submitted clearly identified what we were
21 doing, the providers of all the sites and service involved, so it was very
22 transparent. Again, we didn't give them advance notice, but we gave
23 them notice on every claim that we submitted.

24 Q Okay. Exactly what information are you referring to on the
25 claim form, sir?

1 A The claim form identifies the provider of record, as well as
2 their MPI number. It also identifies the site of service, where that service
3 was rendered, as well as the address for that site where the care was
4 rendered, in addition to all the other information about the CPT codes, as
5 well as the charges, as well as the information about the insured, and the
6 patient that was treated.

7 Q Okay. So in other words, United could pick up an individual
8 claim form and see that a provider that is based in Clark County is
9 rendering their service to a member in Clark County, but they billed on
10 the TIN, associated with Ruby Crest, or Team Physicians in another part
11 of the city?

12 A Yes.

13 Q Okay. Now in response Mr. Greenberg wrote, RCEM is 95
14 percent charges with low chargemaster, do you see that?

15 A Yes.

16 Q Who is RCEM?

17 A That's referring to Ruby Crest Emergency Medicine.

18 Q So Mr. Greenberg was noting that reimbursement for United,
19 as he understood it, was 95 percent of charges, but with a low
20 chargemaster?

21 A Yes.

22 Q So Mr. Greenberg then wrote back, I think we said leave as is
23 the one non-par that had a site, and see if any changes, and move the
24 other under Ruby Crest, right? And in response your write, yes.
25 Ultimately, you may also move the other site too. " Do you see that?

1 A Yes.

2 Q What are you telling Mr. Greenberg in that response?

3 A That we were just planning to implement the change for
4 Fremont sites under Ruby Crest.

5 Q And then would revisit the question of whether to move the
6 other site, as well, at a later date?

7 A Yes.

8 Q Okay. All right. Mr. Bristow, the document we marked for
9 identification as Fremont Exhibit 24 is an email, from Mr. Greenberg, and
10 it says, Kent cell. Do you see that?

11 A Yes.

12 Q Okay. Now my first question is, Kent cell, is that referring to
13 you, your cell phone?

14 A That's -- I'm not sure that says Kent cell, I just recognized it's
15 to my email address, though, my company email address.

16 Q Okay. And I guess my question is, first of all, have you ever
17 seen this Exhibit 24 before?

18 A Yes.

19 Q Okay. And just for the record, the Bates number of Exhibit 24
20 is FESM07402. Now the subject of this email is UAC, correct?

21 A Yes.

22 Q Dated January 9, 2019, which is the same date as the other
23 email we were just looking at, which is Exhibit 23, correct?

24 A Yes.

25 Q Okay. Now looking back at this email it says, for action plan

1 please consider. Do you see that?

2 A Yes.

3 Q Is Mr. Greenberg referring to the United out-of-network
4 action plan that's referenced in Exhibit 23, to your knowledge?

5 A Yeah. I don't know the correlation to that document. I think
6 it's just steps we were planning to take it up to sub-TIN.

7 Q Well, he wrote you on the same day as your email, where
8 you labeled something as United -- UnitedHealthcare out-of-network
9 action plan. Is that what you understood them to mean, at the time you
10 got the email?

11 A Well, again, it's the action plan associated with this particular
12 situation?

13 Q Meaning the UnitedHealthcare work reimbursement?

14 A That one means the consideration of using sub-TIN in
15 Nevada.

16 Q Okay. So was Mr. Greenberg highlighting that if we do this,
17 if TeamHealth does this sub-TINing of Fremont physicians to Ruby Crest,
18 it might be necessary for some of those physicians who are the subject
19 of that sub-TIN, to have a chargemaster, more than one chargemaster
20 rate, depending on the health plan involved?

21 A It looks like that's the question he's raising or asking.

22 Q Okay. And do you know if in fact as part of the sub-TIN
23 process that was being implemented, dual chargemasters were ever
24 created?

25 A No, not to my knowledge.

1 Q Okay. Sir, the document marked for identification is Fremont
2 Exhibit, I believe 25, is an email string from -- involving Mr. Heuberger,
3 yourself and others, including Mr. Greenberg, running from February
4 22nd, 2019, through March 5th, 2019; do you see that? We'll just orient
5 here, we want the date range here, it starts with an email from
6 Mr. Heuberger to you, of February 22nd, 2019; do you see that?

7 A Yes.

8 Q And the subject is UACED for Ruby Crest?

9 A Yes.

10 Q And in it, it says, Kent, attached is the Ruby Crest data you
11 asked for [January date of service] including the Fremont entity, since
12 they are using Ruby Crest as the sub-TIN for UAC [indiscernible] do you
13 see that?

14 A Yes.

15 Q And after reviewing the information provided by Mr.
16 Heuberger your wrote back -- strike that. You wrote to Mr. Greenberg.
17 Hmm. You wrote H-M-M. Not saying they'd pay 80 percent for Fremont
18 sites, or we sure sub-TIN in the set up and operating properly for these
19 claims; do you see that?

20 A Yes.

21 Q So my question, after you looked at the information provided
22 by Mr. Heuberger, and you examined the reimbursement rates for the
23 Fremont physicians that had been sub-TINed to Ruby Crest, you noticed
24 that reimbursement rates for those physicians were not at the
25 percentages that you were expecting?

1 A Correct.

2 Q Okay. And that caused you to wonder whether the sub-TIN
3 process that you had authorized had in fact been implemented as
4 planned?

5 A Correct.

6 Q And so you made an inquiry to Mr. Greenberg to check into
7 it, and see if that had actually occurred, correct?

8 A Effectively, yes.

9 Q Okay. And when Mr. Greenberg forwarded the request to
10 Ms. Harris, and Ms. Harris then forwarded the request to others, and Ms.
11 Harris noted in her email of February 22nd, can you take a look at the
12 attached, to get a handful of patients, and tell me when we drop the
13 claim, and to confirm that we're using Ruby Crest as the sub-TIN for
14 Fremont;" do you see that?

15 A Yes.

16 Q Okay. And after some back and forth that occurred over a
17 number of days, an email was written in the middle of the page, on
18 February 27th, 2019, to Ms. Kaitlin Jonas from -- I'm not sure how to
19 pronounce the person's name; is it Serise [phonetic]?

20 A I'm not sure either.

21 Q Okay. Serise Miller, and she said, Kathleen, and she
22 proceeds to describe -- review invoices. And then she says in number 2,
23 these claims paid non-par, meaning, non-participating. I've attached the
24 email we discussed showing that that non-par issue with Ruby Crest was
25 known back in 2017; do you see that?

1 So when that information as then passed along to Ms. Harris,
2 correct, by Ms. Jonas?

3 A Yes.

4 Q Who then contacted Mr. Greenberg on February 28th, and
5 informed him of what she had learned?

6 A Correct.

7 Q And Mr. Greenberg then contacted you on March 4th, 2019,
8 to say that well, we're seeing claims for Fremont going out under Ruby
9 Crest in Nevada, correct?

10 A Yes.

11 Q So what he's confirming to you is that the sub-TIN process
12 that had been requested was in fact in place?

13 A Yes. I reversed it.

14 Q Okay. and in fact, at the top of the email you said, but, quote:
15 "Agree, if we continue to see no benefit of doing sub-TIN of Fremont
16 through Ruby Crest, then let's turn off the sub-TIN," correct?

17 A Correct.

18 Q And your testimony is that those Fremont physicians who
19 had been sub-TIN to Ruby Crest in the first part of 2019, that was -- that
20 practice ceased, and they stopped being billed through Ruby Crest after
21 that?

22 A Correct.

23 Q When did that practice cease, as to Fremont?

24 A So I think it would have been -- I don't know definitively, but I
25 imagine soon after, you know, this exchange of emails.

1 Q And after you made the switch to turn the sub-10 off, did you
2 notify any of the providers that their claims were now going to be billed
3 back through Fremont as they had been before?

4 A No, we did not.

5 Q Okay. Did you ever notify United that the claims that had
6 been submitted for these providers after this process was turned off
7 were going back to go be submitted through Fremont?

8 A By way of the new claims being submitted going forward
9 under Fremont, showing the provider name and number as well as the
10 site of service and the site address, that's the way they would have been
11 informed because each and every claim that was submitted would
12 identify that.

13 Q Okay. Apart from the individual -- the information on the
14 individual claim form, any other communications that TeamHealth had
15 with United over that fact?

16 A Not that I recall.

17 Q Okay. And do you recall that TeamHealth investigated doing
18 a sub-10 of Fremont to Ruby Crest for the members who would be
19 treated by Fremont physicians by -- who were Sierra members and
20 Health Plan of Nevada members, just like had been done for the United
21 Healthcare members?

22 A I don't recall that there was any investigation. I recall there
23 was a mention of that but not an investigation that I'm aware of.

24 Q Okay. So the document marked for identification as Fremont
25 Exhibit 37 is an email exchange between Ms. Harris and Mr. Greenberg,

1 copied to a number of other TeamHealth officials. Now, in response to
2 receiving Ms. Harris' letter, Mr. Greenberg writes, thanks, Rena. You
3 haven't heard back from Alcoa about the Fremont sub-TIN to Ruby Crest
4 over (UHC claims) inquiry yet, have you? Do you see that?

5 A Yes.

6 Q Do you remember that the reference that Mr. Greenberg is
7 making there to checking to see whether the Fremont sub-TIN to Ruby
8 Crest (UHC claims), the UHC inquiry yet, have you is referring to the
9 investigation that occurred at your request to see if the sub-10ing of
10 Fremont for United claims to Ruby Crest had in fact been put in place?

11 A It could be. But again, I can't make that direct correlation
12 based on that reference.

13 Q But it goes on to say, let's discuss subbing them to RC, too.
14 Do you see that?

15 A Yes.

16 Q And the RC that's referenced there is Ruby Crest?

17 A Yes, obviously so.

18 Q So you understand that Mr. Greenberg, in his message to
19 Ms. Harris, was saying that he wanted to discuss with her sub-TINing the
20 Fremont physicians for that health plan, to have them -- their services
21 billed out of Ruby Crest like the United physicians?

22 A I think he's just saying let's discuss that situation, as well.

23 Q That it was the same? Let's explore the same kind of
24 arrangement with respect to the Health Plan of Nevada members as we
25 are putting in place for the United members.

1 A I -- I think he's just saying let's discuss Ruby Crest being
2 subbed for Health Plan of Nevada, as well.

3 Q And then, Ms. Harris writes back, and she says, I sent your
4 information to Alcoa last Friday. Let's give them until the middle of this
5 week to respond. And then she says, they know this inquiry is coming
6 from Kent. Do you see that?

7 A Yes.

8 Q That's you, correct?

9 A Yes.

10 Q Okay.

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

12 THE COURT: Okay. Very good. So cross-examination?

13 MR. LEYENDECKER: The Plaintiffs would call Mr. Kent
14 Bristow live, Your Honor.

15 KENT BRISTOW, DEFENDANTS' WITNESS, SWORN

16 THE CLERK: All right. Please have a seat and spell your
17 name for the record.

18 THE WITNESS: My name is Kent, K-E-N-T, Bristow,
19 B-R-I-S-T-O-W.

20 THE COURT: All right. Everyone see Mr. Bristow okay?
21 Thank you. Go ahead, please.

22 CROSS-EXAMINATION

23 BY MR. LEYENDECKER:

24 Q Good morning, Kent. Would you introduce yourself to the
25 jury and give them a little bit about your background?

1 A Sure. So you've heard my name. I live in Knoxville,
2 Tennessee, and I'm married 25 years and we have three children. Two
3 boys that are in college and then I have a daughter who's a freshman in
4 high school. And I work for TeamHealth, and I've been there for about
5 24 years.

6 Q Now, were you sitting over here behind me during the whole
7 time that your video was playing?

8 A Yes.

9 Q And what were you thinking?

10 A A little odd. I don't particularly enjoy watching myself on the
11 video.

12 Q Okay. Any idea or sense of why the Defendants didn't call
13 you to the stand like some of the other witnesses?

14 A I don't know the answer to that.

15 Q Okay. You said you -- you're at TeamHealth. Tell us how
16 long you've been at TeamHealth.

17 A As I said, about 24 years.

18 Q Okay. And how long were you an accountant before that?

19 A So I worked for a couple different firms, probably a
20 combination of about seven years before I joined TeamHealth.

21 Q Before we get into the discussion of the sub-10, I just want to
22 ask for a clarification because there was a point -- I don't remember
23 which tape it was -- but there's a reference to our charges and the 60th
24 percentile of FAIR Health. Do you think that may have been a mistake as
25 opposed to the 80th percentile? Do you remember that part of the tape

1 or not?

2 MR. BLALACK: Object to form. Leading.

3 THE COURT: Overruled.

4 THE WITNESS: I do remember that in reference to the
5 Fremont Emergency Services charges.

6 BY MR. LEYENDECKER:

7 Q And were you -- was the 60th -- was the reference to the 60th
8 right or was it a mistake and you were thinking 80? That's what I was
9 trying to figure out.

10 A No. It's correct. It was actually below the 60th percentile on
11 a weighted basis.

12 Q Okay. Okay. So the question there was something along the
13 lines of led to our charges being below the 60 percentile of FAIR Health.

14 A Correct.

15 Q And you were affirming yes, that was correct.

16 A Yes.

17 Q For whatever the particular charges were that you all were
18 discussing.

19 A Correct.

20 Q Okay. Let me -- I want to put the thing in context, and the
21 thing being the sub-10 issue. And so what I'd like to have Michelle do is
22 put up on the screen something Mr. Blalack told the jury in his opening
23 statements at pages 90, lines 25 through 91 and line 7.

24 And so during opening statements, Kent, Mr. Blalack told the jury,
25 "So, ladies and gentlemen, later in the trial, you will hear that my clients

1 are asking you to find that we've established a proof of unclean hands by
2 the TeamHealth Plaintiffs. And if you agree that we've met that burden
3 of proof," I'm not going to take you back to the burden of proof, but, "if
4 we've met that burden of proof by a preponderance of evidence, you can
5 deny their claims for recovery even if you think we've underpaid them
6 under Nevada law."

7 And so here's my question: although Mr. Blalack didn't say it, he
8 seemed to be suggesting that if they could establish unclean hands in
9 the jury's eyes, they could zip us out on the whole case. Do you see that,
10 sir?

11 A Yes, I see that.

12 Q So just to put the sub-TIN issue in question, how many of the
13 11,563 claims involved this sub-TIN issue?

14 MR. BLALACK: Object to the foundation of the question.

15 THE COURT: Overruled.

16 THE WITNESS: I think the number is 254.

17 BY MR. LEYENDECKER:

18 Q So 254. Let's see if I have an empty page here. If not -- 254
19 of 11,563 for our sub-10 claims. Is that right, sir?

20 A Yes.

21 Q And ballpark, what was the total charges on those 254
22 claims?

23 A I believe it's about \$300,000.

24 Q Okay. And ballpark, about how much was allowed?

25 A I believe it was right about \$100,000.

1 Q Okay. And do you understand that the Plaintiffs in this case
2 are seeking, first of all, they contend that their billed charges are
3 reasonable.

4 A Yes.

5 Q And that the billed charges represent the reasonable value of
6 services.

7 A Yes.

8 Q And in total, the Plaintiffs are seeking about \$10.4 million in
9 damages.

10 A Right. Yes.

11 Q Okay. And so if we're putting the sub-10 in context, about
12 200,000 -- if the charges were 300 and the allowed was 100, is it fair to
13 say, then, about 200,000 of the \$10.4 million is implicated by this sub-10
14 situation?

15 A That's correct, yes.

16 Q Okay. Now, one thing I don't think the jury has heard or seen
17 yet is an actual claim form, and so I'd like to spend a few minutes just
18 looking at a claim form and orienting the jury about the information,
19 some of which you discussed in your transcript there, but give them a
20 little bit of background on that.

21 MR. LEYENDECKER: So could I get any objection, Counsel,
22 to Plaintiff's Exhibit 307?

23 MR. BLALACK: Just foundation.

24 MR. LEYENDECKER: Okay.

25 BY MR. LEYENDECKER:

1 Q Kent, are you familiar with what's known as a Form 1500?

2 A Yes, I am.

3 Q And tell the jury what's the Form 1500.

4 A Also known as a HCFA Form, 1500. But basically, it's a
5 standard form in the industry that's required for providers to complete
6 information. There's different boxes of fields you have to fill in and
7 submit this as a part of your claim to health insurance companies in
8 order for them to accept and adjudicate your claim.

9 Q Now, as a practical matter, when we're -- when TeamHealth
10 is doing the billing for the Plaintiff's claims in this case, do they submit
11 an individual claim Form 1500 for every single claim?

12 A No, not necessarily. Because in this day and age, just about
13 all -- virtually all of the claims are submitted electronically and are done
14 so in batches of claims. So you're not submitting, like, one by one. But
15 you'll accumulate a batch of claims and then you'll submit that
16 electronically to a data clearinghouse so that it's in, like, a secure,
17 protected environment to protect patient information. And then
18 ultimately, that clearinghouse will receive that information and, you
19 know, translate it or forward it on to the health insurance companies.

20 Q So is it fair to say on occasion, an actual form is submitted
21 and other times, it's put together as a bigger collection.

22 A On occasion, they'll be -- necessary to submit a paper claim,
23 in which you'll, you know, translate the information out of the system
24 onto a paper claim form, the 1500 Form, and submit that to health
25 insurance companies.

1 Q And are you aware one way or another whether the
2 Defendants have produced some of the claim form, 1500s, that were part
3 of the claims at issue in this case?

4 A Yes, I believe they have.

5 Q You're -- you've seen some of that in getting ready for
6 the -- here and your deposition or for getting ready for court?

7 A Yes, I've seen a couple of them.

8 MR. LEYENDECKER: Your Honor, at this time, we would
9 move to admit 307.

10 MR. BLALACK: No objection.

11 THE COURT: Exhibit 307 will be admitted.

12 [Plaintiffs' Exhibit 307 admitted into evidence]

13 BY MR. LEYENDECKER:

14 Q Okay. I want to go through a little bit of this. It's kind of hard
15 to read. But let's start at the top. And tell us -- looks like we've redacted
16 out the patient's information. But tell us the kind of information that
17 we're seeing here, for example, in boxes 1, 2, 4, 5, 6, and 7.

18 A Well, box one is meant to indicate what type of insurance
19 they might have if they have insurance. So in this case, it's -- I think it's
20 selecting "other". And then the box next to it is asking for the insured's
21 ID number.

22 So in that case, to the extent a patient has insurance, you would,
23 you know, like off their insurance card. You would, you know, identify
24 what their membership number is or their subscriber number and put
25 that in that field. And any additional elements are just identifying who

1 the patient is, as far as their name, their date of birth, and maybe what
2 their address is, and also any kind of relationship they may have with the
3 actual subscriber to the insurance. If it's -- if it's different, say, if it's a
4 child to the person who holds the policy.

5 Q Let me ask you, Kent, where in this -- the top part of this
6 Form 1500 that has the patient name and those kind of demographics,
7 where is that information? Where do we get that information?

8 A That information is really received by us from our hospital
9 clients. So they capture all of the demographic information about a
10 patient and all of their information when they register at the hospital,
11 and they register in the ED. And then after the visit is over, they will
12 subsequently collect all that data and, you know, kind forward that to us
13 electronically.

14 Q Okay. And does it come along with -- at what point in time
15 does any particular claim get assigned a unique style claim number?
16 We've seen claim numbers on some of these lists. When does that
17 happen?

18 A Ultimately, when we've married up all the information about
19 the, you know, the patient's information as well as information from the
20 medical record, because you have to take the medical record, and we
21 have coders who will, you know, code the chart and decide what the
22 appropriate codes to bill are. They'll marry all this information up, and
23 again, run edits against it to make sure t's good information. And then
24 ultimately, as we've talked about, submit that information electronically
25 to that data clearinghouse as a part of a batch of submitted claims.

1 Q Let me ask you, at different points throughout the case, did
2 the lawyers -- let me back up. The jury has heard information about the
3 claim totals being 22,000 and then 15,000 and then this -- whatever the
4 number was. Were there times when the lawyers reduced the number of
5 claims in the case?

6 A Yes.

7 Q And ultimately, it got down to this 11,563?

8 A Correct.

9 Q Did anything about the quality or reliability of the data on
10 these 11,563, was that changed or compromised or got lost in the shuffle
11 over the course of the reductions?

12 MR. BLALACK: Object to form. Compound.

13 THE COURT: It is compound. Break it down.

14 BY MR. LEYENDECKER:

15 Q Sure. Step one. Were there times when the lawyers asked
16 you to eliminate certain claims from the case?

17 A Yes. We were asked to adjust the file to remove certain
18 claims. Yes.

19 Q Did that process -- and ultimately, that got down to the
20 11,563 at issue.

21 A Right. Yes.

22 Q And did anything about the reduction of the overall number
23 of claims somehow change or cause the data, the claim CPTs, the
24 charges, et cetera, did that somehow compromise the data that's related
25 to the 11,563?

1 A No, it would not have changed that data in any way.

2 Q Okay. Now, back on this Form 1500, do you have a sense of
3 about how many of the 11,000 and change in this case were actual Form
4 1500s versus submitted electronically in groups?

5 A Yes. I believe we identified a column to note whether they
6 were electronic or whether they were paper, and I believe it was less
7 than 400 of the claims were submitted on paper.

8 Q Okay. Any idea why? You know, I assume in the modern
9 world, most of this stuff gets submitted electronically.

10 A Correct.

11 Q Sitting here today, do you have any idea why there was 350
12 or 400 of these actual individual claim forms submitted as opposed to an
13 electronic data transfer?

14 A It can be for various reasons. But I don't know specifically
15 about these set of claims what would have driven that request or need to
16 submit them on paper.

17 Q As between -- I think I heard this already. But as between
18 sending individual claim forms or sending batches of the same
19 information, what's the predominant way of claim submission in modern
20 healthcare?

21 A So again, the vast majority, I think 98 percent of our claims
22 on average are submitted electronically in a batch format.

23 Q Okay. Let's go back to this Form 1500.

24 MR. LEYENDECKER: And Michelle, can we come down to
25 the middle? I want to explore if you can.

1 BY MR. LEYENDECKER:

2 Q There's been a suggestion that somehow, our claims data is
3 not reliable. And what I want you to do is -- and you touched on this.
4 But walk through how do we get from the first step where the hospital
5 sends us some demographics to where we get to the point we're going
6 to submit a bill or batches of bills to a particular payer. How does that
7 happen?

8 MR. BLALACK: Object to form, Your Honor. Beyond the
9 scope of direct.

10 THE COURT: Overruled.

11 THE WITNESS: So again, you know, the patient information
12 is captured by the hospital and sent to us electronically. We also receive
13 the actual medical record of the patient, the service delivered. And
14 coders take that medical record, and they evaluate based on the
15 documentation provided, what codes -- or what services were provided
16 and therefore, what codes, you know, need to be billed.

17 And so that's input into the system. And then, you know, it'll
18 go retrieve, all right, this was at, you know, this ED site, and for this
19 code, here's charge. And so it matches that up. And so ultimately,
20 again, all the appropriate fields required on the HCFA 1500, you know,
21 are pulled together into one, you know, kind of electronic template and
22 submitted in the batch form.

23 BY MR. LEYENDECKER:

24 Q And then, once the batch claims are submitted to a -- did you
25 say not the insurance company, but to a clearing -- what did you say?

1 Clearing room?

2 A Effectively a vendor data clearinghouse.

3 Q Okay. What happens after the claims get sent to the
4 clearinghouse?

5 A I don't know all the behind the scenes of what happens from
6 that point forward. I know, you know, they run maybe their information
7 through different protocols, and then they forward that information or
8 make it available on to the health insurance companies.

9 Q At some point, do we get some information back from the
10 payor?

11 A Yes. So once they've reviewed the information on the claim,
12 ultimately, they will issue us a provider remittance advice
13 that -- regarding, you know, their determination on the claim.

14 Q And what kind of information is in the provider remittance
15 advice that we get back from the payors?

16 A It'll contain a lot of the information that's also reflected on
17 the HCFA 1500 form fields that we're submitting. But in addition,
18 obviously, they will be indicating how much they are allowing on the
19 claim. And then, to the extent there's also any kind of patient
20 responsibility determinations, whether it's a deductible or coinsurance or
21 a copayment, that information will come back, as well.

22 Q So when we submit the claim in these batches you're
23 describing, it has the date of service?

24 A Yes.

25 Q The doctor name?

1 A Yes.

2 Q Hospital name?

3 A Yes.

4 Q The CPT determined?

5 A Yes.

6 Q Okay. Part of the bill, the charges?

7 A Correct.

8 Q Does it have the allowed amount?

9 A When we submit our bill, no.

10 Q Okay. How about any indication of what the coinsurance or
11 the deductible are?

12 A No. We don't have that information about each member.

13 Q And do those, the allowed and the coinsurance, are
14 they -- did you say those come back as part of the provider remittance
15 advice?

16 A Correct. Yes.

17 Q And then, do you all do anything to try and provide those or
18 combine those two things together in your system?

19 A Yes, because we have a unique claim identifier number that
20 gets submitted with each claim in a batch. And when that comes back in
21 the form of a provider remittance advice on that claim, it also references
22 that same claim number identifier that we submitted, so that we can
23 match up those claims and then properly put it back into our system, as
24 well as the outcome.

25 Q So when I hear that, I think big picture. The claim I.D. allows

1 us to match our original information with the information coming from
2 the insurance company, so that we can have it all contained within the
3 same record. Am I thinking of that right?

4 A Yes.

5 Q All right. Now last week, did I ask you to check for the
6 provider remittance advices on a -- and give you a list of 290 claims?

7 A Yes, you did.

8 Q Okay. Tell us what you found on those 290 claims I asked
9 you to check on.

10 A Yeah, so I contacted one of my analysts, Tylona Minci
11 [phonetic], and she researched those claims.

12 MR. BLALACK: Objection, Your Honor, hearsay.

13 THE COURT: You don't have to talk about what you did.

14 THE WITNESS: I'm sorry. So I --

15 THE COURT: The objection is sustained.

16 THE WITNESS: I instructed her to look up the provider
17 remittance advices on those claims. And then she sent me a file back of
18 those that she located.

19 BY MR. LEYENDECKER:

20 Q So what did you learn when you learned when you looked
21 for the provider remittance advices on the 290 claims, the list that I gave
22 you? What did you learn?

23 A We found that we had over 270 of those available in our
24 system.

25 Q Okay. So the jury has heard a variety of suggestions about

1 the reliability of our claim records. Given the example that I just gave
2 you, what does that tell you about whether our claim system and our
3 data records are reliable, in light of your little mini project on those 290
4 claims?

5 A Again, for me it just reaffirmed that our data in the claims
6 files is extremely accurate.

7 Q Now if I were to now tell you that those 290 claims are claims
8 that the Defendant's expert said he couldn't find in United's -- proof of
9 those claims in United's records, what, if anything, does that tell you
10 about United's claims system?

11 A I can't comment about that. I don't -- I don't know. I just
12 know it reaffirms, you know, the confidence we have in our data.

13 Q You know, while I'm on that, let me -- sitting here today, do
14 you have a sense of whether -- if I took all 11,563 claims and totaled up
15 our charges in our file, and the allowance in our file, do you have any
16 sense of what you would expect to find if the Defendant said well, here's
17 our version of those claim files, and you totaled those two things up.
18 What would your sense be?

19 A I would expect them to be extremely comparable. You know,
20 there could be minor differences, but on a very small scale. But I would
21 by and large say because it's largely electronic exchange of information
22 back and forth that it would, you know, marry up to, you know, nearly
23 100 percent.

24 Q Now do you -- are you here to tell the jury we're absolutely
25 perfect record keepers all the time, 100 percent of the time?

1 A No, certainly not.

2 Q You think United is an absolute perfect record keeper all the
3 time, 100 percent of the time?

4 A I wouldn't think so, no.

5 Q Okay. Any part of you thinks that something about our claim
6 file, as it relates to the 11,563 claims, that we are way off the mark in
7 terms of the total charges, or the total allowed amounts?

8 A Not at all. I think the vast majority would be spot on. Again,
9 there may be a couple of instances here or there that claims involving,
10 you know, reprocessing of claims or the manual submission can lead to
11 a slight difference on a few claims, but otherwise -- it really should be
12 very much the same.

13 Q You just used a new term, I don't think I've heard it before.
14 You said reprocessing claims. What do you mean?

15 A So on occasion we will submit a claim and to the -- through
16 the electronic process, and for whatever reason, you know, health
17 insurance plan may adjudicate the claim and issue a remittance advice
18 and then later come back and realize there's something they need to
19 change or do differently, and they'll effectively reprocess the claim and
20 send another provider remittance advice. So on those occasions, you
21 know, it doesn't happen very often, but that could potentially result in
22 some very, very minor differences.

23 Q Okay. Okay. Let's go back here to the middle of our Form
24 1500 And just walk through a few more pieces of it. I think you said here
25 in Box 14. Tell the jury what's in Box 14.

1 A That is the date of the service that was provided. The patient
2 received the treatment.

3 Q And we've got Box 21 is highlighted, too. Tell us something
4 about the diagnosis. What's that, sir?

5 A Those are just the final determination of what the patient's
6 diagnosis was. And there's it looks like in this case three different codes
7 that were identified.

8 Q Any idea what those diagnosis codes are for this patient?

9 A Actually yes, I did look up just one in particular. And I think it
10 has to do with -- I think the first one has to do with some kind of oral
11 cavity bite.

12 Q Okay.

13 A And I think the second one has to do with presenting for
14 unspecified convulsions.

15 Q Convulsions?

16 A Convulsions.

17 Q Okay. Let me get a little bit lower, if I can. Now we see date
18 of service. The Box 24. I want to look at these. The Box 24, I think it's
19 right here and down. Okay. Box 24(a). Tell the jury what Box 24(a) is
20 again.

21 A Again, I think that's the same thing. It's just the date of
22 service that the patient was treated for.

23 Q And 24(d), what's that?

24 A That is the CPT code that was determined and submitted on
25 the claim.

1 Q So in this case we have a date of service of January 31st of
2 2019 involving a 99285 claim?

3 A Yes.

4 Q And boxes (f), what's that?

5 A That's just the charges associated with that particular code.

6 Q Okay. \$1360.

7 A Yes.

8 Q And what is (j) rendering provider I.D. number. Tell us what
9 that is.

10 A So that's a unique identification number associated with
11 each provider. It's also referred to as an NPI. I think it's a National
12 Provider Identifier.

13 Q So if I look at the NPI down here in Box 31, Heber Phillips.
14 Was there a correlation between that and the rendering provider?

15 A Yes. It's -- well, it's kind of hard to see. You can note that it's
16 the same provider ID number in box up above, to the one that's down
17 below.

18 Q The 120563286?

19 A Yeah, 1205063286, yes.

20 Q Okay. And is that the doctor that -- or perhaps the nurse
21 practitioner that performed the service on this date?

22 A Yes. That's the healthcare professional identifier number.

23 Q And then box 32 is what, sir?

24 A 32 is the site of service. Where the service took place. So in
25 this case it was performed at Sunrise Hospital Medical Center here in Las

1 Vegas.

2 Q And then tell us what Box 33 is.

3 A So Box 33 is the provider under which this claim was
4 submitted. In this case, this was Ruby Crest Emergency Medicine.

5 Q Okay. Do you understand this is one of the 254 sub-TIN
6 claims, sir?

7 A Yes.

8 Q So we have identified today the CPT, the doctor, the facility
9 base, Sunrise here in Clark County, but then we submit it under the Ruby
10 Crest TIN.

11 A Correct. Yes.

12 Q And tell us again, what does TIN stand for?

13 A Tax identification number.

14 Q Okay. Now you have any sense of how similar or dissimilar
15 the information on the actual claim 1500 matches up within our system?
16 What's your -- what's your testimony there?

17 A It would be exact because our system is essentially the
18 source of all of the data that's reflected on this claim.

19 Q I'd like to look at some examples of these TIN claims and
20 claims in that same period of time. And so I'd like to use at this point, a
21 demonstrative, Exhibit 473-H, with the witness?

22 MR. BLALACK: Your Honor, I have no problem with counsel
23 showing the demonstrative. I will object to the exhibit, because it's my
24 belief it does not accurately reflect some of the data in the underlying
25 data fields. But he can walk through it, and we can argue about

1 admissibility later.

2 MR. LEYENDECKER: Something other than the cents on the
3 dollars?

4 MR. BLALACK: Correct.

5 MR. LEYENDECKER: Okay. Okay, Michelle, you have the
6 first example? Let's zoom in. There, stop. Can you go -- oh, you know
7 what, I'll tell you what, I don't think we can, because --Brynn, may I have
8 the Elmo, please?

9 BY MR. LEYENDECKER:

10 Q Okay. Kent, tell us -- this is -- do you understand 473 is the
11 Plaintiffs' claim file?

12 A Yes.

13 Q All right. And on this summary example, you see we have
14 the date, it's Fremont and the two Ruby Crests?

15 A Yes.

16 Q All right. And then tell us, big picture, what does this
17 example say to you? You see on the far right hand column, there's a no
18 and then two subjects. Tell the jury what that means to you.

19 A So it's just three examples of claims for the same healthcare
20 professional, all billing the same code all at the same charge. But two of
21 the claims were billed under the sub-TIN structure that we've been
22 talking about where one of them was not. But that illustrates just the
23 three different allowed levels for each of these claims.

24 Q So on January 15, Dr. Phillips billed a 285, with charges of
25 1360, and allowed how much?

1 A 315.25.

2 Q Okay. And then seven days later, also at Sunrise, similar
3 claim, similar charge?

4 A Yes, the same.

5 Q And then in sub-TIN the allowed amount is higher. You see
6 the 609?

7 A Yes.

8 Q And do you understand the basic suggestion by the
9 Defendants in the case is that by doing the sub-TIN, we were trying to, I
10 don't know force them to pay more than they were paying. Something
11 along those lines?

12 MR. BLALACK: Object to form. Leading.

13 THE COURT: You can rephrase.

14 BY MR. LEYENDECKER:

15 Q Kent, what's your understanding of the complaint about the
16 sub-TIN?

17 A I'm not sure. Maybe other than they felt like they would have
18 paid less if we hadn't done this.

19 Q Okay. So in this first example, though, we have -- we have
20 one situation -- fair to say we have one situation with Dr. Phillips, where
21 they paid more on January 22nd than they paid on the 15th. Do you see
22 that?

23 A Yes.

24 Q But then what happens, you know, nine days later on the
25 31st, with Dr. Phillips, on the same claim?

1 A It's much lower. It's actually a lower payment than the other
2 two examples.

3 Q Okay. If you go to the next one -- next example here, it
4 involves Dr. Walker?

5 A Yes.

6 Q Date of service, oh, maybe six weeks or so apart?

7 A Correct.

8 Q Sunrise Hospital?

9 A Right.

10 Q The first one is a sub-TIN and the second one is not; do you
11 see that?

12 A Yes.

13 Q Same CPT as before?

14 A Correct.

15 Q Right. In this situation, did they allow more or less for the
16 sub-TIN than the non-sub-TIN claim with this doctor?

17 A They allowed more on the sub-TIN claim.

18 Q Okay. Are there other examples, like this third one, Kent,
19 where there was a different result with the sub-TIN billing situation?

20 A So again, if you look at this one, again it's the same provider,
21 both at Sunrise Medical Center. Within, what a week of each other.
22 Same charges, same codes billed, and effectively it was the same
23 allowable determination, whether it as a sub-TIN or whether it was not.

24 Q Okay. Let's look at another. What about Dr. Chan? What do
25 we see with Dr. Chan?

1 A Dr. Chan, again at Sunrise Medical Center. One was billed
2 out as a sub-TIN, and one was not. But again, using the same code and
3 the same charges, they allowed the same amount.

4 Q Okay. And were the sub-TIN always resulting in either a little
5 bit more with the sub-TIN than the non-sub-TIN, or were there times
6 when it worked in the other direction?

7 A It worked in different directions, yes. In this case you'll see
8 that one with Dr. Farr, again, within a few days period here charges
9 being the same, codes being the same, the allowable amount for the
10 sub-TIN actually was lower than when we did not use the sub-TIN.

11 Q Okay. And I've got one more here from -- this one also
12 involves Dr. Farr as well. But it's a little different day of service. Do you
13 see that?

14 A Yes.

15 Q And what does this last temp illustrate?

16 A Again, within one day of each other, at the same site, for the
17 same code, for the same charges, the claim that was through the sub-TIN
18 was allowed a lower amount than when it was not.

19 Q Okay. So big picture, is it fair to say that of the 254 claims
20 that involve this sub-TIN, sometimes the Defendants allowed a little bit
21 more, sometimes they allowed the same, and sometimes they allowed
22 less?

23 A Yes. I think that's an appropriate characterization.

24 Q Okay. We saw a reference in the videotape about shutting it
25 off or turning it off. Do you remember that reference?

1 A Yes.

2 Q Okay. And about how long are we processing these claims
3 from Clark County through the Ruby Crest TIN?

4 A Again, not exactly, but I think we did it over the course of a
5 60 day period. And then when we determined it wouldn't really result in
6 any noticeable difference in the outcome, that was when we elected to
7 turn it back off.

8 Q Let me ask you about a couple more topics, and I'm almost
9 done. I wanted to ask are you familiar in your role with the out-of-
10 network allowed amounts by the Defendants in Nevada versus how
11 those compare to what they allow in other states?

12 MR. BLALACK: Object to form, Your Honor.

13 THE COURT: Rephrase.

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

15 THE COURT: You may.

16 [Sidebar at 12: 12 p.m., ending at 12;12 p.m., not transcribed]

17 THE COURT: Gentlemen, come on back.

18 [Sidebar at 12:12 p.m., ending at 12:13 p.m., not transcribed]

19 THE COURT: So it turns out this is a good time for our lunch
20 break today.

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

1 Do not conduct any research on your own. Don't consult
2 dictionaries, use the internet or use reference materials. Don't post on
3 social media, talk, text, tweet, Google or conduct any other type of
4 research with regard to any issue, party, witness, or attorney involved in
5 the case. Most importantly, don't form or express any opinion on any
6 subject connected with the trial until the matter is submitted to you.

7 It's 12:13, let's go to 12:45.

8 THE MARSHAL: All rise for the jury.

9 [Jury out at 12:13 p.m.]

10 [Outside the presence of the jury]

11 THE COURT: 12:45. Is there anything you want to put on the
12 record then?

13 MR. BLALACK: Not -- the only issue we've got, Your Honor,
14 is -- Mr. Balkenbush is going to want to argue one issue related one of the
15 depositions we have left to resolve. I think we could just probably take 5
16 or 10 minutes.

17 THE COURT: So let's be back at 12:40.

18 [Recess taken from 12:14 p.m. to 12:45 p.m.]

19 [Outside the presence of the jury]

20 THE COURT: Please remain seated. The Court will come to
21 order. All right. So Mr. Blalack, I thought you were going to be here at
22 12:40? I was here and nobody was here.

23 MR. BLALACK: Oh, I'm sorry, Your Honor. I thought
24 Mr. Balkenbush, was here.

25 MR. BALKENBUSH: I apologize, Your Honor. The walk took

1 me a longer getting over here.

2 THE COURT: All right. Talk fast.

3 MR. BALKENBUSH: This should be very -- it's not an
4 argument really, Your Honor, it's a point of clarification. So yesterday
5 evening you provided your rulings on the Rena Harris and Dr. Jones
6 deposition designations.

7 THE COURT: Right.

8 MR. BALKENBUSH: Rena Harris designations didn't make
9 sense to us. The Dr. Jones' designations, there's an internal
10 inconsistency, that I think we need you to clarify.

11 THE COURT: Go ahead.

12 MR. BALKENBUSH: So what we provided to you is a chart,
13 of our designations and the other side's objections. Now, if I may, Your
14 Honor, I'll approach and show you. And on the chart you ruled that you
15 sustained all of plaintiffs' objections, which would essentially take Dr.
16 Jones out of the case, but on the actual transcript, where we highlighted
17 the objection to portions of the testimony that corresponded to the chart,
18 you wrote that you overruled on their objection.

19 THE COURT: Oh, so --

20 MR. BALKENBUSH: So either -- he is -- we're not going to be
21 able to call him as a witness, other than to state who he is, or we're
22 going to be able to [indiscernible].

23 THE COURT: Bring it up, and I'll resolve it at the next break.
24 Thanks.

25 MR. BALKENBUSH: So this is the chart where you wrote

1 sustained, Your Honor.

2 THE COURT: Yeah. And --

3 MR. BALKENBUSH: And then at the very beginning I tabbed
4 the pages where --

5 THE COURT: I'll look at it.

6 MR. BALKENBUSH: Okay.

7 THE COURT: Yeah. Okay. Thanks.

8 MR. BALKENBUSH: Thank you, Your Honor.

9 THE COURT: And are we now ready to bring in the jury?

10 MR. BLALACK: Yes, Your Honor.

11 THE COURT: Thank you.

12 [Pause]

13 MR. ZAVITSANOS: And, Your Honor, I think we're close. I
14 think we may finish today.

15 THE COURT: You may finish today? You have to finish
16 today.

17 MR. ZAVITSANOS: Yeah. I think we will finish today.

18 THE COURT: I do have 3A for tomorrow -- I mean, 3D.

19 [Pause]

20 THE MARSHAL: All rise for the jury.

21 [Jury in at 12:48 p.m.]

22 THE COURT: Thank you. Please be seated. Mr.
23 Leyendecker, please continue. We all hope you had a nice lunch.

24 MR. LEYENDECKER: Thank you, Your Honor.

25 CROSS-EXAMINATION CONTINUED

1 BY MR. LEYENDECKER:

2 Q Kent, just a few more questions here. Earlier today the jury
3 saw Plaintiffs' Exhibit number 513, and I'd like to put them up and ask
4 you a couple of questions about it.

5 MR. BLALACK: This is admitted, correct?

6 MR. LEYENDECKER: Yes. Yes, sir. I'm sorry, Brynn,
7 [indiscernible] from the Elmo to the -- back to the regular [indiscernible].

8 BY MR. LEYENDECKER:

9 Q Okay. This was a chart about where the healthcare data
10 goes, and I think there was a discussion about the 3.2 cents for
11 emergency room costs; do you see that Ken?

12 A Yes, I do.

13 MR. LEYENDECKER: Let's go over to page 2, Michelle, I want
14 to just orient him. There's a little detail on page 2, and let me just have
15 emergency room costs right up right there, please.

16 BY MR. LEYENDECKER:

17 Q Okay. Kent, what does it say here is included under the
18 emergency room cost, that first box?

19 A There we go. "Physician and facility non-drug related
20 payments for emergency room visits, and ambulance transportation."

21 Q Okay. Let's go back to that first page. So, physician cost,
22 facility cost, ambulance cost?

23 A Yes.

24 Q Now do you, in light of what you do, and how long you've
25 been doing it do you have a sense of where the doctors -- the typical

1 doctor charge relates to a typical facility charge, in connection with an
2 emergency room visit?

3 MR. BLALACK: Objection. Foundation.

4 THE COURT: Overruled.

5 THE WITNESS: Yes. In my experience it's very common for
6 the facility charge to be greater than the professional for this charge.

7 BY MR. LEYENDECKER:

8 Q So is the three -- by the way, do you have some sense of
9 whether that 3.2 cents is kind of consistent with what you understood to
10 be how much of a healthcare dollar, and where it's going?

11 A Yes. I think that's been pretty consistent over time, or what
12 I've seen in other documents.

13 Q And so if the 3.2 cents includes the facility and things like
14 ambulances, what's your sense of how much of the actual ER clinician
15 doctor/nurse practitioner is making up of that 3.2 cents; more than half,
16 less than half, about half? What's your sense of that, sir?

17 A It would be less than half, you know, just given that the
18 facility charge is generally greater than the professional charge, and then
19 you got to take into account, also backing out the ambulance services as
20 well.

21 Q Okay. And how about the air ambulance, is that, in your
22 experience, is the air ambulance included, for example, under
23 ambulance charges?

24 MR. BLALACK: Objection to the foundation of this witness
25 testifying about this document.

1 THE COURT: Lay a foundation.

2 BY MR. LEYENDECKER:

3 Q Kent, do you have a background of what generally the
4 industry considers ambulance charges?

5 A What the --

6 Q With -- let me back up here.

7 A Yeah.

8 Q I'm thinking of where the healthcare dollar goes. Does your
9 20 plus years of experience give you some background as to whether the
10 industry treats the ambulances that are driven, that you see on the road,
11 versus ambulances that are by helicopter or plane, do you know whether
12 those all bundled together under the quote/unquote "ambulance
13 charge"?

14 A Yes. I think they would be all included together.

15 Q Okay. Let me ask you one last question, and that is on the
16 sub-TIN issue, did any of the Defendants ever call, or write and say,
17 would send of the money back on those 254 sub-TIN claims?

18 A No. I never was aware that they contested those claims
19 submitted.

20 Q So to your knowledge did they ever say we want you to send
21 us back 6,000 or 8,000, or some number of dollars that they allowed as
22 part of those 254 claims?

23 A No, not to my knowledge.

24 Q Thank you, Kent. Those are all my questions.

25 THE COURT: And redirect, please.

1 MR. BLALACK: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BLALACK:

4 Q Good afternoon, Mr. Bristow?

5 A Good afternoon.

6 Q Good to see you again. We visited several times back in
7 May.

8 A Yes.

9 Q I took your deposition, do you recall?

10 A Yes, we did. Yes.

11 Q So I just have a few questions to follow-up on some of the
12 points that Mr. Leyendecker asked you about. All right?

13 A Okay.

14 Q All right. So let's start with that document we just looked at,
15 probably the simplest thing to do, which is Plaintiffs' Exhibit 513.

16 MR. BLALACK: Can you bring that up?

17 BY MR. BLALACK:

18 Q Sir, this chart has an acronym in the lower right-hand
19 column, it says AHIP, do you see that?

20 A Yes.

21 Q Do you know who AHIP is?

22 A I believe it stands for the America Health Insurance Plans, or
23 Association of Health Insurance Plans.

24 Q Okay. When's the first time you saw this document?

25 A I have seen it before. I don't recall when the first time I saw it

1 was.

2 Q Okay. What data is this analysis based on?

3 A I've had to refresh myself with the document.

4 Q Sitting here today do you know what information was relied
5 upon to prepare the estimates of cost, across the healthcare dialogue
6 that is reflected here?

7 A Again. I'd have to refresh myself with the entirety of the
8 document.

9 Q And sitting here today you don't know what that is?

10 A I do not.

11 Q Okay. The data that was relied upon by AHIP, but it didn't
12 come from TeamHealth, correct?

13 A That's correct.

14 Q And you're just not sure, sitting here today, where it did
15 come from, correct?

16 A Without reviewing the document, that's right.

17 Q So when you're asked questions about what makes up this
18 3.2 cents you're not sure what information that the people who prepared
19 this analysis relied on to come up with that number, correct?

20 A I don't know the exact source of the data, no.

21 Q Okay. Thank you. That's all I have on that.

22 Now let's talk about the disputed claims list. Sir, did you have a
23 role in developing the disputed claims list the plaintiffs have been relying
24 on in this litigation?

25 A Yes, I did.

1 Q Would you tell the jury what your role was?

2 A My role would have been interacting with our team of
3 analysts, and giving, you know, guidance and direction about the
4 analysis and the claim set, that we wanted to run and pull out of our
5 system, related to this case.

6 Q Okay. And when you say, your people, who are you referring
7 to?

8 A Primarily, that would have been involved Eddie Ocasio, who
9 works on our team, and depending on the course of time we've had two
10 different analysts, in the role underneath Eddie, Ted Lonomincie
11 [phonetic] being one of them.

12 Q Okay. Now when I deposed you in, I believe May, do you
13 recall at that time there had been four versions of the plaintiffs' disputed
14 claims list, at that time?

15 A I don't recall, specifically.

16 Q Okay. I'll also represent to you, sir, that in your deposition
17 we talked about --

18 MR. BLALACK: Your Honor, may we approach, briefly?

19 THE COURT: You may.

20 [Sidebar at 12:56 p.m. ending at 12:57 p.m., not transcribed]

21 THE COURT: Okay. The objection is overruled.

22 [Counsel confer]

23 BY MR. BLALACK:

24 Q Mr. Bristow, my memory -- and I'll represent to you is that in
25 May when we discussed the preparation of plaintiffs [indiscernible], at

1 that time plaintiffs had served four versions of that list, as of May. Does
2 that ring a bell?

3 A Like I said, I don't remember the specific number at that time.

4 Q Do you remember that one of the earlier versions, version 3,
5 had 23,000 plus disputed claims on it?

6 A I don't remember that specific version, but I do, you know,
7 remember a number in that ballpark.

8 Q Okay. So in one of those early versions there was initially an
9 allegation of 23,000 disputed claims. How did you and your team go
10 about deciding which claims were going to be put in dispute on this
11 disputed claims list, that had that many [indiscernible]?

12 A Well, again, I can't remember specifically that version, and
13 what -- like what time period that represented, so I'm a little bit
14 handicapped in answering that question right now, not knowing
15 specifically what that version was.

16 Q Okay. Well, let's do it this way. Whether it was version 1, 2,
17 or 3, do you recall at some point there was a version that had 23,000
18 claims on it, give or take, right?

19 A Ballpark, yes.

20 Q Okay. Using whatever version that was how did you all go
21 about deciding which claims you were going to include on that list, and
22 which ones you were going to take off?

23 A Well, we would have started with possibly identifying who
24 the health insurance company defendants are.

25 MR. LEYENDECKER: Your Honor, this is relevance, and to

1 the extent it calls for discussions with attorneys.

2 MR. BLALACK: I'm not asking for any communications with
3 counsel, I'm just asking what criteria they used to develop their list that
4 they put --

5 MR. LEYENDECKER: And the limine as it relates to claims at
6 issue, Your Honor.

7 THE COURT: Overruled.

8 BY MR. BLALACK:

9 Q Please proceed.

10 A Okay. Other criteria outside of just determining who the
11 Defendant health insurance companies were, obviously matching it up to
12 the Plaintiff provider -- healthcare provider groups, that the claims were
13 billed for. It would involve criteria around the dates of service, the time
14 period for the claims that we were looking at. It would have involved
15 only looking at claims that had been adjudicated and paid on.

16 And I think we also took some other steps to make sure we
17 were excluding, you know, governmental claims, related to, you know, a
18 person's age, to make sure they weren't like Medicare age-eligible, and
19 also looked at the various allowed levels to make sure again, from a
20 governmental allowable standpoint. If it was below a certain threshold
21 we would not have included it, to make sure we weren't picking up
22 governmental claims.

23 Q Okay. So if I understand your testimony, you were trying to
24 find obviously claims that were adjudicated by one of the Defendants in
25 the case; is that right?

1 A Yes.

2 Q That had been adjudicated as covered service and payable,
3 not denied?

4 A Correct.

5 Q But for a commercial member, not somebody being --
6 participating in the government program?

7 A Correct.

8 Q And that were being reimbursed on an out-of-network basis,
9 and an out-of-network relationship, correct?

10 A Correct.

11 Q Okay. So based on that criteria you all went out, went into
12 your claims data and did your very level best to identify the claims that
13 met that criteria, so to provide them for purposes of discovery in the
14 case, right?

15 A Yes.

16 Q Okay. Now by the time we met for your deposition in late
17 May, that last version, version 4, we're down to about 19,500 disputed
18 claims. That's the one I was questioning you about on the video that
19 you watched earlier today. Do you recall that?

20 A Yes.

21 Q So sometime during this interview process, even though you
22 all felt like you had done a good job of capturing all of the claims you
23 wanted to contest in the case, somewhere between the third and fourth,
24 you all decided that there were some claims on that list shouldn't be,
25 correct?

1 A Again, I don't remember what the drivers were for the
2 differences.

3 Q Whatever the drivers were, you dropped almost 3500 claims,
4 correct?

5 A Yes.

6 Q Okay. Now subsequent to your deposition are you aware
7 that a new list was created in the period of July, that reduced this
8 number of 19,500 to 12,500?

9 A Again, I don't remember the specific number, but I do recall
10 it, yes, there were some additional claims that were removed.

11 Q Did you participate in the process of deciding which claims
12 that were originally on the 19,500 would be taken off, down to the
13 12,500?

14 A Again, at some point there were some guidance and
15 decisions by the attorneys about which claims to remove.

16 Q Okay. Did you feel when this list was provided to us, and we
17 were given testimony on this list, you were giving testimony on this in
18 May, that this was an accurate and fulsome list of the claims you wanted
19 to contest it again?

20 A Based on the information that was available to us at that
21 time, yes.

22 Q But subsequently in version 5, you ended up at the 12,500,
23 right?

24 A Yes.

25 Q Okay. Now are you aware that after that list in July a new list

1 was created in August, that reduced this 12,500 to just a little over
2 12,000?

3 A I don't recall that version, no.

4 Q Did you participate in this process of reducing claims from
5 the version 5 to version 6?

6 A I don't recall specifically.

7 Q Is the first time you're hearing about that?

8 A I'm just saying I don't recall.

9 Q And then, we got to the final list, the one that is Plaintiffs'
10 Exhibit 473, about which the jury has heard a lot of testimony, which
11 ended up at 11,00, I forget the exact number, 500 and some odd claims.
12 Were you involved in the decision to take another 500 claims off the list
13 from version 6 to version 7?

14 A I don't believe I was involved with that.

15 Q Is this the first time you heard about that?

16 A No. It's not the first time I've heard about it, I still know that I
17 was involved in that process.

18 Q Whether you were involved or not involved, you're aware
19 that from the earlier versions where you had 23,000 disputed claims in
20 the case, you were able to cut that at about half, in the subsequent 5 or 6
21 ones, correct?

22 A Yes.

23 Q Okay. And are you confident now -- you seem more
24 confident now that this 11,500 claims actually represents the claims that
25 you all are really disputing in this case?

1 A Yes.

2 Q So there's not any of these that need to come up, like the
3 other list?

4 A Not that I'm aware of, no.

5 Q Now you told Mr. Leyendecker that the process of removing
6 these claims, you didn't say anything about -- I believe the phrase was,
7 didn't change or compromise the quality of the data supporting this list
8 of claims. Do you remember that testimony?

9 A Yes.

10 Q Did you have the same level of confidence in the quality of
11 the data on version 3, as you do on version 7?

12 A At that time, based upon the knowledge and information we
13 had, yes.

14 Q What about version 4, as compared to version 7?

15 A Again, I don't remember the details of each version.

16 Q But you were equally confident in versions 3, 4, 5, 6 and 7, as
17 you are in the version you have today, correct?

18 A Based on the information we had at hand, at that time, yes.

19 Q Now it sounds like Mr. Leyendecker asked you to do some
20 homework, to prepare for your testimony today, by doing an analysis
21 that's been claims from the disputed claim's list, and looking at provider
22 remittance advices, am I right about that?

23 A Yes.

24 Q Let me be clear, I just want to make sure the jury
25 understands what it is you did, and how you did it. You mentioned there

1 were 254 claims -- excuse me, he mentioned there were 290 claims that
2 you were asked to review; do you remember that?

3 A Yes.

4 Q Did you physically review, to provide remittance advices for
5 every one of those claims?

6 A I did, yes.

7 Q Okay.

8 A Not every detail, but I saw the list of the entire 270 claims
9 that were remittance advices that were produced.

10 Q And that's a little different question than the one I'm asking,
11 sir. So I'm not asking you if you looked at a list that had claims
12 information on 290 claims. I'm asking whether you personally,
13 physically pulled out a PRA, provide remittance advice for each one of
14 those claims in review?

15 A I have seen each of those remittance advices. To what extent
16 have I reviewed every single element of that, no, I have seen them all,
17 laid my eyes on them all, yes.

18 Q Okay. And these were collected by someone at your
19 direction?

20 A Yes.

21 Q And who was the person?

22 A Tylona Minci.

23 Q Okay. You mentioned Ms. Minci a moment ago, right?

24 A Yes.

25 Q Did she bring those to you and say, these are the ones you

1 asked for?

2 A Yes.

3 Q And then you physically went through each one?

4 A Electronically, yes.

5 Q Okay. Now -- and how many others would you say you had
6 a copy of in your possession?

7 A I believe 271.

8 Q Out of 290?

9 A Yes.

10 Q All right. Sir, I can -- I will tell you that the Defendants in this
11 case asked for copies of all records in the possession of TeamHealth
12 about the disputed claims, and we received no -- provided --

13 MR. LEYENDECKER: Your Honor --

14 BY MR. BLALACK:

15 Q -- remittance advices on those claims.

16 THE COURT: Hang on. There is an objection.

17 MR. LEYENDECKER: May we approach, Your Honor?

18 THE COURT: You may.

19 [Sidebar at 1:08 p.m., ending at 1:10 p.m., not transcribed]

20 THE COURT: The objection was sustained.

21 BY MR. BLALACK:

22 Q All right. I want to talk a little bit about this sub-TIN issue, sir.
23 And I want to make sure the jury has clarity on what it involve and who
24 was involved. I think you've testified that the sub-TIN -- the idea to do a
25 sub-TIN relationship between providers associated with Fremont and the

1 Ruby Crest entity; that was your idea?

2 A Certainly --

3 MR. LEYENDECKER: Cumulative, Your Honor.

4 THE COURT: It is. Is it foundational?

5 MR. BLALACK: Yes, it is.

6 THE COURT: Then overruled.

7 BY MR. BLALACK:

8 Q Now, who did you direct to execute this plan?

9 A So my recollection would have been that David Greenberg
10 and I would have, you know, gave -- I gave -- ultimately, I gave David
11 Greenberg that direction to make that happen.

12 Q Do you recall that you and Mr. Greenberg then had
13 communications with an employee named Rena Harris of TeamHealth,
14 instructing her to implement the plan?

15 A I can't recall if I gave direction to Rena or if I was involved in
16 that, but certainly David would have. Yes.

17 Q And Rena Harris was someone who was twice removed from
18 you. There was -- Mr. Greenberg was the vice president under you, and
19 then Ms. Harris reported up to Mr. Greenberg and others at his level?

20 A Correct.

21 Q Now, just so the jury is clear. What this involved, this was a
22 plan that was implemented beginning in 2019, January of 2019 until
23 April of 2019, correct?

24 A Again, I can't remember the specific date. I almost want to
25 say it ran through early March, but I can't remember the specific date.

1 Q Okay. And as I think you mentioned, the objective of
2 the -- what was the goal of the sub TIN plan?

3 MR. LEYENDECKER: Cumulative, Your Honor. Beyond the
4 scope.

5 MR. BLALACK: We covered this in his --

6 THE COURT: Overruled.

7 THE WITNESS: It was to protect against the benchmark
8 pricing program that was going to be put in place.

9 BY MR. BLALACK:

10 Q And the way that you all were attempting to do that was
11 obtain reimbursement while services rendered by physicians in Clark
12 County associated with Fremont by billing those services out through
13 Ruby Crest's tax identification number in Elko, correct?

14 A Just through their group number, yes.

15 Q Correct. And you were doing that because at the time, you
16 all mistakenly believed there was a basis for reimbursement at 95
17 percent of charges at Ruby Crest?

18 A That's correct.

19 Q And so the goal was if we take these services that were
20 actually performed in Clark County, bill them out through Ruby Crest,
21 we'll be getting reimbursed at a higher percent of charge, correct?

22 A Yes.

23 Q At some point though in March, you learned to your surprise
24 that that assumption about the 95 percent of charges was incorrect,
25 right?

1 A That's correct.

2 MR. LEYENDECKER: Your Honor, this is cumulative and
3 beyond the scope.

4 MR. BLALACK: I'm following up exactly on what he covered.

5 THE COURT: Overruled.

6 BY MR. BLALACK:

7 Q And when you learned that you had made a mistake, that
8 you weren't going to be able to be reimbursed at 95 percent of charges,
9 it was then that you terminated the sub TIN relationship, right?

10 A When we didn't see a noticeable difference on how they
11 were paying out-of-network for those claims, we made the decision to
12 turn it off.

13 Q Okay. So the only reason you stopped it and the only reason
14 it involved 254 claims is because you learned in March that you were
15 mistaken when you believed there was a basis for being reimbursed at
16 95 percent of charges, right?

17 A Again, my recollection is just that we didn't see a difference
18 in the processing of the out-of-network whether we used the sub-TIN or
19 did not, and that was the reason we turned it off.

20 Q Because you weren't getting the payments at the levels you
21 were hoping for, correct?

22 A The levels that we thought we were due, yes.

23 Q The 95 percent of charges?

24 A Again, yes.

25 MR. BLALACK: Now, let's look at the Plaintiffs' Exhibit 307,

1 please. I don't believe this is 307. Isn't 307 the claim form?

2 MR. LEYENDECKER: I thought 307 was the claim form, yes.

3 MR. BLALACK: Do you have that? Plaintiffs' Exhibit 7?

4 MR. LEYENDECKER: 307.

5 MR. BLALACK: 307.

6 MR. GODFREY: I don't believe I do.

7 BY MR. BLALACK:

8 Q Sir, while we're waiting for this exhibit to come through from
9 Plaintiffs, can you tell me -- I think you said there was no advanced
10 communication with the Defendants in the case about this arrangement,
11 but that you had disclosed the location of where the services were
12 provided on the claim form; am I right about that?

13 A Yes.

14 Q Okay. And what you're referring to is the portion of the claim
15 form where it literally says, "site of service"?

16 A Yes.

17 Q But there was no emails, no letters, no phone calls, nothing
18 like that to say, hey, we've got this arrangement we set up between
19 Fremont and Ruby Crest, and we're going to be billing out services
20 rendered in Clark County through a provider TIN in Elko. Nothing like
21 that?

22 A Again, we felt like it was adequate what we were, you know,
23 submitting on each and every claim as far as the identification of what
24 we were doing.

25 Q Answer my question. It's like not like that -- like I described?

1 A No.

2 Q Now, on this claim form --

3 MR. BLALACK: This is 307. Thank you very much.

4 BY MR. BLALACK:

5 Q If you come down to the bottom, you'll see here it's got the
6 physician's name here, Doctor -- I don't know if it's Heber or Phillips.

7 And then it's got billing provider info on the right-hand side; do you see
8 that?

9 A Yes.

10 Q And it says, "Ruby Crest Medicine." Does Dr. Heber -- is he
11 an employee of Ruby Crest Emergency Medicine or an independent
12 contractor of Ruby Crest Emergency Medicine?

13 A He would be contracted directly with Fremont Emergency;
14 and then through a leasing arrangement, be contracted over to Ruby
15 Crest.

16 Q So the only way Doctor Phillips has any relationship at all
17 with Ruby Crest is through this leasing arrangement you described that
18 TeamHealth set up between Fremont and Ruby Crest?

19 A I believe that's the primary driver of the connection, yes.

20 Q And did Doctor Phillips know he had been leased to Ruby
21 Crest?

22 A No, it's not typical practice that we would discuss with our
23 doctors the details of the billing arrangements.

24 Q That's not something you all share with them?

25 A No, that's not something they generally are concerned with.

1 They trust us. And, you know, proved in experienced to submit the
2 claims on their behalf for their services so they can focus on providing
3 the care they provide. They rely upon us to, you know, perform that
4 service for them.

5 Q Sir, do you know what fields on a claim form like this are
6 relied upon by a health plan or a health insurer to reimburse claims?

7 A I can't tell you what health insurance policies are or our
8 views about that are now.

9 Q Okay. Now, you indicated that -- let me ask this. I assume
10 you think it was entirely appropriate and proper for TeamHealth to set up
11 the sub-TIN scheme between Fremont and Ruby Crest; is that right?
12 That's your testimony to the jury, correct?

13 A Well, I'm certainly not agreeing with you that it's a scheme. I
14 do -- I think it's appropriate the way we set up the structure to do it, yes.

15 Q Did Rena Harris, your employee, your subordinate, object to
16 you and Mr. Greenberg about doing this?

17 A No, not to my knowledge.

18 Q She never told you that she thought it was inappropriate to
19 do that?

20 A Not that I was aware of, no.

21 MR. BLALACK: All right. Thank you.

22 THE COURT: Any recross?

23 MR. LEYENDECKER: One question, Your Honor.

24 RECROSS-EXAMINATION

25 BY MR. LEYENDECKER: