

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
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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
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/s/ Jessie M. Helm
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1 Q Kent, were you aware that prior to the time the trial got
2 started that there was considerable effort between the lawyers on both
3 sides of the fence here to get down to a final [indiscernible] where we
4 wouldn't be squabbling over whether it was 11563 or some other
5 number. Were you aware of that?

6 A Yes, I was understanding that there was agreement about
7 what the final claims listing would be.

8 Q And the content of that 473?

9 A Yes.

10 Q Not that they were -- not that the Defendants were
11 acknowledging that they owed, but that the content, the amounts, the
12 CPTs, dah, dah, dah, dah, dah. Was it your understanding that both
13 sides got together and got to an agreed set that would be presented to
14 the jury?

15 A Yes, that was my understanding that they had agreed upon
16 what the disputed claim list universe was.

17 MR. LEYENDECKER: Thank you, Kent. That's all I have.

18 THE COURT: Any redirect?

19 MR. BLALACK: Nothing from me, Your Honor. Thank you.

20 THE COURT: Does the jury have any questions for Mr.
21 Bristow? Thank you in advance. And counsel, come on up.

22 [Sidebar at 1:20 p.m., ending at 1:22 p.m., not transcribed]

23 THE COURT: The lawyers asked me to thank you for the
24 question. There are two questions I get to ask them.

25 The first is did you consider not signing the notice of material

1 change/amendment to contract with MultiPlan?

2 THE WITNESS: Again, I believe at that point in time, we had
3 no control over whether the underlying benefit plans were required
4 based upon their language at the benefit plan where we're required to
5 access the rental network. Some do require them to access it and can
6 stipulate that. And so we didn't feel like it was a change at all because
7 the underlying benefit plan document and its arrangement is going to
8 govern whether they access the agreement or not. So whether the
9 amendment with MultiPlan states that or not, it wouldn't change
10 anything. So to us, it was really kind of a nonfactor of consideration.

11 THE COURT: Second question. If TeamHealth had not
12 signed it, what would be the resulting effect on the Plaintiffs' ability to
13 provide and receive reimbursement for out-of-network emergency
14 services?

15 THE WITNESS: Again, I think really it's kind of along the
16 lines of the same answer. We don't feel like it had any impact about
17 accessing the agreement or what rates they would pay because the
18 underlying benefit plan, my understanding is they dictate, you know,
19 how they will pay for out-of-network services. Obviously, we as the
20 providers, believe what they should pay is the usual and customary
21 charge.

22 But as far as accessing the rental network agreement that's
23 available to them, you know, we can't mandate that the underlying
24 benefit plan state that that's what they will do in their arrangement. We
25 have no control over that. That's between the benefit plan and the

1 health insurance company. But it doesn't change our position about
2 the -- we think we are due the usual and customary charge in an out-of-
3 network situation.

4 THE COURT: Any follow-up questions based upon the jury?

5 MR. BLALACK: No follow-up, Your Honor.

6 MR. LEYENDECKER: No, Your Honor.

7 THE COURT: Okay. May we excuse the witness?

8 MR. BLALACK: We do. Thank you, Mr. Bristow.

9 MR. LEYENDECKER: Yes, Your Honor.

10 THE COURT: Mr. Bristow, you may step down, and you're
11 excused.

12 Defendant, please call your next witness.

13 MR. ROBERTS: Your Honor, the Defendants would call Mr.
14 Sean Crandell.

15 MR. LEYENDECKER: Your Honor, I neglected to offer 473-H.

16 THE COURT: Is there any objection to 470- -- let's get on the
17 record for that.

18 THE MARSHAL: This way, sir.

19 MR. CRANDELL: All right.

20 THE MARSHAL: Sir, watch your step, please. Step up into
21 the stand, face the clerk over there.

22 THE CLERK: Please raise your right hand.

23 SEAN CRANDELL, DEFENDANTS' WITNESS, SWORN

24 THE CLERK: Please have a seat, and state and spell your
25 name for the record.

1 THE WITNESS: Sean Crandell. Sean, S-E-A-N, Crandell,
2 C-R-A-N-D-E-L-L.

3 THE COURT: Thank you. Go ahead, please.

4 MR. ROBERTS: Thank you, Your Honor. Your Honor, before
5 I proceed, I would move for the admission of Exhibit 4627. There was no
6 objection in the 267. I don't believe there's any objection.

7 MR. ZAVITSANOS: That's correct, Your Honor.

8 THE COURT: Exhibit 4627 will be admitted.

9 [Defendants' Exhibit 4627 admitted into evidence]

10 THE COURT: And then Mr. Leyendecker, just as we were
11 bringing the jury in, you moved to admit another exhibit?

12 MR. LEYENDECKER: It looks like it's 473-H, Your Honor.

13 MR. ZAVITSANOS: Like Harry?

14 MR. LEYENDECKER: Yes.

15 MR. BLALACK: We want to -- that's the summary?

16 MR. LEYENDECKER: Yes, sir.

17 MR. BLALACK: Yeah, no objection on that exhibit.

18 THE COURT: Thank you. 473-H will be admitted.

19 [Plaintiffs' Exhibit 473-H admitted into evidence]

20 MR. ROBERTS: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. ROBERTS:

23 Q Good afternoon, Mr. Crandell.

24 A Good afternoon.

25 Q My name is Lee Roberts, and I am an attorney for the

1 Defendants in this action. Have we ever met?

2 A No.

3 Q Have we ever talked on the phone?

4 A No.

5 Q Thank you for coming to testify to the jury today. I'd like to
6 cover few facts about your background first.

7 A Okay.

8 Q Could you tell the jury where you live?

9 A Oswego, Illinois.

10 Q Where in Illinois is that?

11 A It's about 50 minutes southwest of Chicago.

12 Q Are you married?

13 A Yes, I am.

14 Q Do you have any children?

15 A I have two daughters.

16 Q Did you receive a college degree?

17 A Yes, I did.

18 Q Okay. Where from?

19 A I received a undergraduate degree in business management
20 and technology from the University of Wisconsin-La Crosse, and I
21 received an MBA from Baylor University in Waco, Texas.

22 Q And was that at the School of Business there?

23 A Yes, sir.

24 Q And where did you start working after you graduated from
25 Baylor with your MBA?

1 A After I started -- after I graduated with my MBA, I -- first, I
2 started with a company called Texas True Choice after undergraduate
3 school. That was in Texas, which enabled me to go to Baylor. Once I
4 graduated from Baylor, I -- Texas True Choice was a PPO network in the
5 State of Texas, and we developed provider networks for, you know,
6 health plans and insurers.

7 As well as we also created the first children's health insurance
8 program network as well as a foster care Medicaid network for the State
9 of Texas as well. But I worked for -- Texas True Choice got acquired by a
10 company called Viant Health Payment Solutions. And Viant Health
11 Payment Solutions -- that's when I attended by MBA. And after I
12 graduated, Viant Health Payment Solutions was merged with MultiPlan
13 in 2010.

14 Q Okay. So when was that merger?

15 A 2010.

16 Q So you began working for MultiPlan at the time of the
17 merger in 2010?

18 A Correct.

19 Q And are you still an employee of MultiPlan?

20 A Yes, I am.

21 Q Before I go on and talk about your work history at MultiPlan.
22 You mentioned that Texas True Choice was a PPO?

23 A Yes.

24 Q Could you explain to the jury what that stands for and what it
25 is?

1 A Yeah, a PPO network is -- you know, if you have health
2 insurance benefits, there's really two sides. A PPO network is an
3 agreement with a provider, or a hospital, et cetera. And it's a collection
4 of providers that companies can offer to health insurance providers, to
5 say listen, we have an agreement with this physician, or this hospital.
6 And you can access it as an in-network benefit.

7 Okay, so usually in-network benefits are the preferred way to
8 go, just from a benefit plan design, et cetera. There are also other
9 networks in there. We had a Medicaid network, which was built on
10 behalf of the kids, the chip kids in the State of Texas. So they could go to
11 preferred providers, and the State could get discounts on those, as well.

12 Q When you first joined MultiPlan, what was your position?

13 A I was the Director of Network Analysis.

14 Q And what were your responsibilities in that first role?

15 A My responsibilities in the first role was I had a team that
16 supported the network development team. And that network
17 development team was responsible for maintaining that PPO network at
18 MultiPlan. And our team processed close to 7,000 requests on behalf of
19 the network development negotiators, to look at everything from
20 enhancing the network for the members, to contract renegotiations. As
21 well as dealing with terms like Medicare percentages and fixed rates that
22 the health insurers would pay.

23 Q And what was your role following Director of Network and
24 Analysis?

25 A I was promoted in 2013 to Assistant Vice President in

1 Healthcare Economics. And that role kind of expanded and gave me
2 additional responsibilities from what I already did. And it expanded into
3 a lot more of what I'll call data solutions wherein I kind of customized
4 advanced analytics on behalf of our clients.

5 Q And were you ultimately promoted from the Assistant Vice
6 President role?

7 A Yes. I currently serve as the V.P. of Healthcare Economics,
8 and I've served in that role since July of 2020.

9 Q And in your current role as Vice President of Healthcare
10 Economics, what are your current job responsibilities?

11 A In addition to what I kind of previously said of really
12 advanced analytics, data science, and data solutions, I also oversee our
13 information planning area, which is a host of analysts, developers, et
14 cetera, that communicate with all areas of our business. In business
15 intelligence and reporting of Multi-Plan operations.

16 Q Do you consider yourself a data guy?

17 A Yes, I do.

18 Q How many employees are on the MultiPlan Healthcare
19 Economics team under your supervision?

20 A Currently there are 74.

21 Q And how many of these employees report directly to you?

22 A Five do.

23 Q Who do you report to?

24 A I report to the CFO.

25 Q Where is MultiPlan headquarters?

1 A Manhattan, New York.

2 Q And how many employees does MultiPlan have all together
3 in all its departments?

4 A Approximately 2,200.

5 Q How long has MultiPlan been in business?

6 A MultiPlan has been in business as a cost containment
7 provider for over 40 years.

8 Q Is MultiPlan a publicly traded company?

9 A Yes, we are.

10 Q Explain what MultiPlan is. What does it do?

11 A MultiPlan is a -- again a cost containment company that
12 provides services to national health plans, local regional provider owned
13 health plans. Localized, what I'll call third-party administrators, which do
14 the same thing as the large national health plans. But they offer a lot
15 more customized type services. And utilize PPO networks, et cetera.

16 Q How many clients use MultiPlan services?

17 A There are over 700 clients that utilize our services. However,
18 those clients are then further broken down to smaller, what I'll call sub-
19 clients. But if you -- if you'll look at our whole spectrum of employers
20 and whatnot that we serve, we have over 100,000 different views of
21 employers that we serve with our services.

22 Q How do you use that term, sub-clients? Could you explain to
23 the jury what a sub-client is?

24 A Yeah. So for example a client may be set up as let's say a
25 large national health plan, okay. And underneath that large national

1 health plan, they might have 3, or 4, or 5 different regional plans that
2 they roll up to that -- that parent level. And then so each of those
3 regional health plan levels interact with an employer. And in the model
4 of a consultant is usually in charge of an employer. And they really put
5 the benefit plan with the actual carrier. And so every employer rolls up
6 to one of those health plans. So think of it as a large grid of just health
7 plans and sub-clients and then all of the employers throughout the U.S.
8 That 120 or over 100,000 different views of it within our system.

9 Q Is MultiPlan widely used by the largest insurers in the United
10 States?

11 A Yes, we are.

12 Q How widely used?

13 A If you look at the top 10 insurers in the U.S., we have all ten
14 of them use our -- some form of our services within their day to day cost
15 containment needs.

16 Q So does MultiPlan also have any direct relationships with the
17 self-funded sponsors of employee benefit plans?

18 A Yes, we do, but there's not that many.

19 Q Okay. The jury's already heard during this trial that
20 UnitedHealthcare and several other United affiliated entities, including
21 several of these Defendants, have contracts with MultiPlan. Are you
22 familiar with that?

23 A Yes.

24 Q What types of services does MultiPlan provide to the
25 Defendants, that use your services?

1 A We provide again -- in the out-of-network space we provide a
2 variety of services to the Defendant, including the network services that I
3 talked about earlier, which is the collection of, you know, over a million
4 providers within our network. You know, over 100,000 different facilities
5 as well. So their membership accesses those provider networks. In
6 addition to that, we do also offer analytic services, as well.

7 And within those analytic services, we have a whole host of
8 options available to clients. Some like negotiation services, which can
9 be done, both from a financial negotiation standpoint, as well as we have
10 like clinical negotiations that our negotiators really talk to the provider
11 about clinical issues that we see on the claims.

12 And then finally, we do have analytic based solutions as well, like
13 Data iSight. Data iSight is a analytic based solution that formulates a fair
14 and reasonable payment recommendation to our clients, to use to pay a
15 claim.

16 Q From 2017 to 2020, did MultiPlan offer those same services
17 to any of the UnitedHealthcare's competitors?

18 A Yes.

19 Q From that same period, 2017 to 2020, were any of the
20 services that you described that MultiPlan offered to UnitedHealthcare
21 not available to other health insurers and health plans in the market?

22 A No.

23 Q What benefits do you offer to potential clients?

24 A Depending on -- the thing that MultiPlan can offer from a
25 really containing costs for our clients, is a wide variety of options of

1 whatever each employer in the U.S. and each consultant that they utilize
2 to consult on their benefit behavior, have a strategy on how to manage
3 healthcare costs. And we have the ability to basically tailor our solutions
4 to whatever our client's needs are. Whether that's more network
5 focused or more analytic focused.

6 Q So let's go back and talk about Data iSight in more detail.
7 What is Data iSight? Just in general, a broad overview.

8 A Data iSight, in general, is under our analytic based solutions.
9 And what Data iSight is, is there was a need in the marketplace back in
10 early 2010, 2011, to really address what was a feasible allowable in the
11 marketplace on a professional side, to recommend as a payment. Okay.

12 So traditionally the market looked at things from a charge
13 standpoint. We were able to offer this product when we acquired NCN in
14 early 2000's as something that turned the game a little bit and looked at
15 things of what are people actually paying within the marketplace and
16 how can we configure an external data source to basically provide a
17 reimbursement amount for an employer to pay on behalf of their clients.

18 Q From the period, again of 2017 to 2020, did UnitedHealthcare
19 contract with MultiPlan to utilize the Data iSight pricing tool?

20 A Yes.

21 Q And during that same period, did MultiPlan contract with
22 other health insurers in the market?

23 A Yes.

24 Q And were any of those clients' competitors of United Health?

25 A Yes.

1 Q And did some of United's competitors also adopt Data iSight
2 during certain periods as a tool to manage other network costs?

3 A Yes.

4 Q Did some of them do it before United?

5 A Yes, they did.

6 Q Is Data iSight widely used in the industry during this period
7 of time?

8 A Yes, it is.

9 Q Why is Data iSight so widely used?

10 A I think Data iSight has been adopted by so many, whether it's
11 a national health plan or a local, regional TPA because it has kind of two
12 things. It has very defensible measures of how to value services. And
13 then in addition to that, it uses external data sources in, that's available
14 to everybody, of what people are actually paying for these services
15 within the market. Those two combined, I think are really two things that
16 you're giving a fair and reasonable rate to the market, and a
17 recommendation.

18 Q So if the Data iSight tool is used among various different
19 companies in the industry, do the recommended payments rate
20 generated by Data iSight tool vary depending on which client you're
21 running that calculation for?

22 A No.

23 Q Is the tool -- can the tool even factor in who the client is?

24 A No, it can't. The system that generates the methodology
25 cannot even factor in the client. It takes instruction.

1 Q Does the methodology factor in who the provider is, that
2 provided the service?

3 A No. It does not.

4 Q Does the tool factor in who the patient is and what health
5 plan they're a member of?

6 A No. It does not.

7 Q Would you say the tool is neutral or non-neutral?

8 A I would say it's a neutral -- the methodology itself is -- this is
9 what it is. It's a pure methodology. And the only time you would have
10 any type of variation is the one thing it does do is if services were
11 rendered in Fargo, North Dakota, versus San Francisco, California, it
12 does adjust for locality of where those services are rendered. That's the
13 only, what I'll call pure variation that you would see, because it adjusts
14 for basically what are -- what's being paid and what's the actual local
15 economics of that market, for that reimbursement amount.

16 Q Did UnitedHealthcare ever instruct MultiPlan to reduce out-
17 of-network rates generated by Data iSight?

18 A No.

19 Q During this same time period, 2017 to 2020, was the out-of-
20 network pricing recommended by Data iSight to United the same or
21 different as that recommended to UnitedHealthcare's competitors?

22 A It was the same.

23 Q Does UnitedHealthcare have access to MultiPlan's pricing
24 logic in an algorithm that is used to generate the Data iSight
25 recommended reimbursement for out-of-network services?

1 A No, they do not.

2 Q Why don't they?

3 A Because we don't give any access to any of our clients.

4 We've explained the methodology to them, but that's a proprietary asset
5 that we have as an organization. We talk to everyone about them. And
6 that's partially, you know, some of what I do and why I'm probably
7 talking to you here today.

8 Q So is that the same for all of your clients? Do any of your
9 clients have access to that pricing logic?

10 A None of them have access to the pricing logic.

11 MR. ROBERTS: Okay, Shane, right at the beginning we
12 admitted 4627. Can you put that up for the witness?

13 BY MR. ROBERTS:

14 Q This is a MultiPlan document entitled Data ISight
15 Professional Methodology. Do you see that?

16 A Yeah.

17 Q And could you explain to the jury what this is?

18 A This is a document that we send out to clients that first off,
19 looks at professional claims. And what I mean by professional is non-
20 facility. So it's like non-hospitals, no surgery centers. So this is really
21 focusing on surgical providers and those types of things that are billing.
22 But this addresses that segment of the market for them and explains our
23 methodology, summarized form.

24 Q Is this the methodology that would apply to the pricing of
25 emergency department physician claims?

1 A Yes.

2 Q Look at the first page, and the first sentence of the first
3 paragraph. It reads Data iSight determines a fair price for professional
4 claims using amounts generally accepted by providers as payment in full
5 for service. Do you see that?

6 A Yes.

7 Q What does that mean?

8 A That means that we're providing a solution that (a) is
9 accepted by providers within the marketplace; and it's basically -- it's
10 kind of -- how should I say this. It's almost like confirmation for us that,
11 you know, when we deal with all of these claims, we understand what
12 claims are being inquired upon, and we also understand what claims
13 have no issues at all.

14 Okay. So, you know, the first kind of leading statement looks at,
15 listen, for the services that we provide, this is a reimbursement amount
16 that is a fair and reasonable payment for services within a market.

17 Q You mentioned acceptance rates. Why are those important
18 to you?

19 A Well acceptance rates are a view of, are providers accepting
20 your payments? If they're not, and if they're inquiring about a payment,
21 we look at that as, you know, if there's a low portion of providers that are
22 accepting our rates, then that to me is not what a generally accepted
23 amount would be in the marketplace. And the way that we designed the
24 product, it looks at what's actually being paid in the marketplace. And
25 then it adjusts it according to wherever the rendering provider is.

1 Q So I'd like you to go toward the bottom of the first page. In
2 the section that begins bold face about the conversion factors. Do you
3 see that?

4 A Yes.

5 Q And could you read the first couple sentences in that section
6 to the jury?

7 A Okay. "CMS uses a conversion factor to convert the
8 geographically adjusted RBU for each service into a dollar amount. Or,
9 sorry into a dollar payment amount for Medicare reimbursement. Data
10 iSight is not Medicare based and does not use the CMS conversion
11 factor." Okay. Should I keep going?

12 Q Go ahead and read one more sentence.

13 A Okay. "Instead Data iSight calculates conversion factors
14 based on the allowed amounts from the co-group from the national
15 database of paid claims, that I talked about earlier." So that's how we
16 kind of differentiate ourselves from Medicare.

17 Q Conversion factors are mentioned several times there.
18 Could you explain to the jury what a conversion factor is, and how they
19 work?

20 A Yeah. So Medicare has one conversion factor. I think it's like
21 34.76. What we've done is we've taken those actual paid claims of what
22 are actually getting rendered within the database that we acquire, and
23 then we look at it and we group different conversion factors together
24 similar to how, really, how primary networks operate. Okay? So we
25 group surgical together. Okay? We group an evaluation and

1 management together. So that means that when -- whenever you go to
2 a doctor's office and get 99213, which is a typical office visit, that's in
3 that E&M category.

4 So we have seven different conversion factors, okay? And instead
5 of using one conversion factor for Medicare, we basically take all of that
6 payable data, what's been happening in a market, and then group each
7 one of the conversion factors, okay? ER is one of them. PT/OT is one of
8 them. Surgery is one of them. And then we combine all that data and
9 really look and grab the medians for each one of those categories and
10 roll it up into a conversion factor. So then we have a view of, hey, here's
11 what's being paid in a market.

12 And then we really take the fundamentals of what drives a lot of
13 even primary networks, okay, that people access on a primary basis and
14 not out-of-network. We take those values that insurers use, CMS uses,
15 the government uses, to value how much we mark-up that procedure by.
16 That's really the view. And then the last component of this is we
17 basically adjust it for wherever locality it is.

18 Q And that's the geo-based demo.

19 A That's correct.

20 Q So this mentions the RVU.

21 A Yes.

22 Q Can you explain what that acronym stands for and what it is?

23 A Yeah. So RVU is a relative value unit. And it's -- what it is is
24 a -- I'll call it a national standard that's set forth by the AMA of what does
25 it really mean, okay, for me to do this surgical procedure? Okay. How

1 intense is it? Do I need to have more educational background? Is it a
2 very complex thing? So there's a value established for that. Okay?

3 The second part of an RVU is just an adjustment that people make
4 of, listen, what does it take to run a practice? Okay? What is the
5 overhead expenses and et cetera, et cetera. And then the last
6 component of an RVU is really malpractice. Okay? So there's a smaller
7 factor that adjusts for, you know, there's a higher malpractice, you know,
8 expense with OBs versus, you know, a -- maybe a primary care, because
9 they have more risk. So the system basically adjusts for all that and
10 allows to stratify payments that way.

11 Q The database that you use to run your analytics, is it robust?

12 A Yes, it is.

13 Q And does the last paragraph on this page describe how large
14 that system is --

15 A Yes.

16 Q -- that database is?

17 A Yes.

18 Q Could you explain that to the jury?

19 A So we purchase data -- it's publicly available; anybody can
20 go purchase it -- from at the time, a company called IQVIA. It's -- it was
21 provided by PharMetrics. And what we do is we gather all that data.
22 And you know, a couple things we have to look at is is this data a
23 representation of what's actually in the market, okay? You know, the
24 things that we look at is we don't take out any outliers. We don't scrub
25 the data because that creates bias within a dataset. Okay?

1 So what we actually do is we go through it, put it in the
2 format that we can basically run our algorithms on, et cetera. But you
3 got to test it a little bit, too, because you know, our -- you want a sample
4 that represents the population of the U.S. So we look at things like,
5 listen, regionally, okay, here's the membership that comprises this data.
6 We then correlate that to the U.S. population, the commercial population
7 of people receiving benefits. And if there wasn't a strong correlation or if
8 there was nuances within the data, we basically wouldn't use it. We'd
9 address it. We'd try to basically look for something else.

10 And so there's a whole host of things that we do to make
11 sure that, again, we're representing a data source that's going to
12 produce a fair and reasonable payment, an acceptable payment in the
13 marketplace.

14 Q How do you know that these methodologies actually produce
15 a reasonable reimbursement?

16 A Kind of -- we -- well, we kind of touched on it before. It's two
17 things, is I like to know the process that we're using is -- I am -- I am not
18 a statistician. Okay? I'm very good at stats but I am not a statistician.
19 So we actually go out and have an outside statistical expert review our
20 processes to make sure that we're basically putting the right things in
21 place for our clients.

22 And then the second thing is really acceptance. If the provider
23 didn't accept these rates and they called and inquired, maybe they
24 understood it with an inquiry. And after they -- after -- maybe they
25 didn't. And -- but a higher acceptance rate -- you know, I think our book

1 is over 90 percent acceptance rate -- of the Data iSight payment across
2 the whole -- the whole scope of our clients that utilize our product.

3 Q Okay. From your -- excuse me. Before United Healthcare
4 decided to contract with MultiPlan, did you share how the Data iSight
5 tool worked to them?

6 A Yes.

7 Q Did you give them a high-level overview like this, more
8 detail, or --

9 A Yes.

10 Q -- something less detailed?

11 A This would be something along the lines what we would give
12 our clients, client-facing, would be something along the lines of this
13 document.

14 MR. ROBERTS: Okay. Shane, let's go to page two. And if
15 you could highlight the second paragraph under exceptions and blow
16 that up for us, beginning, "At the client's discretion."

17 BY MR. ROBERTS:

18 Q Now, this paragraph has an exception. "At the client's
19 discretion, overrides can be applied to the calculated Data iSight
20 reimbursement." Can you explain to the jury what an override is and
21 how they work?

22 A Okay. So how this is is think of it this way: as a client, I may
23 have to manage different expectations internally with my clients, et
24 cetera, about what price points I have within our product. Okay? So we
25 allow flexibility to say, listen, we're still within our Data iSight system

1 going to calculate what would the methodology produce. Okay? And
2 we allow clients to say, listen, really, to fit my benefit strategy and I want
3 to do this. Okay?

4 So we often do things with them to say, listen, you can apply this
5 type of cap and whatnot separate from our -- the methodology itself, but
6 it all -- it happens within the Data iSight system. We allow for that
7 flexibility in our operations.

8 Q And for emergency department physician services, are you
9 aware whether UnitedHealthcare gave MultiPlan an override?

10 A Yes, they did.

11 Q And do you know what the amount of that initial override
12 was?

13 A Yes. It was 350 percent of Medicare.

14 Q And do you know how long that override remained in place?

15 A I don't know the time, the overall tenure that it was in place.

16 Q Are you aware of whether it changed after a certain point?

17 A Yes. It changed to 250.

18 Q Okay. So explain to the jury how this worked. You're
19 generating a price using your pricing tool that you testified would be the
20 same regardless of the client, the provider, the member. But United is
21 giving you an override. So explain how that would work with an
22 override in place.

23 A Okay. So within Data iSight, the Data iSight system, again,
24 we're receiving a claim that's coming in. Okay? When that claim comes
25 in, it prices against the methodology, okay, and then it returns a price,

1 okay, for Data iSight. What would the methodology produce? Then,
2 once that's complete, the next step is to say, listen, does the client have
3 any other instructions or overrides for us to manage their out-of-network
4 costs? And so if, in this situation, United has an override, it also looks at
5 what is 250 percent of Medicare in the process. Okay?

6 And then, what it does is it compares the two. Let's say, okay, the
7 methodology produced this, and 250 percent of Medicare produced this.
8 Compare the two and then pay the higher of the two. Okay? Whatever
9 is the higher value for it.

10 Q So if the jury saw a bunch of claims that are priced at 350
11 percent of Medicare by Data iSight, what would that tell you about what
12 pricing your tool generated for that claim?

13 A It would tell me that the -- what we talked about before, the
14 methodology of all that data that we took for ER, and then threw it into
15 our methodology, adjusted, et cetera, if that's producing a lower amount
16 than what 350 percent of Medicare is. That's what that's telling me. So
17 your override was a higher payment than what our methodology would
18 have produced, our recommended payment to you.

19 Q What about if the jury saw a bunch of claims that were priced
20 at 250 percent of Medicare after the override changed to 250 percent
21 from United? What would that tell you?

22 A So that's pretty much the same type of setup to where,
23 again, the methodology produced this value. And then, 250 percent of
24 Medicare, if the vast majority of those claims were at 250, that tells you
25 the greater of the two payments was the override that was put in place.

1 Q Is United Healthcare the only one of your clients that's
2 implemented an override for ED services, for emergency department
3 services?

4 A No.

5 Q Is it common in the industry or unusual?

6 A It's common.

7 Q Does MultiPlan have a company definition of the reasonable
8 and customary rate to be paid for healthcare services?

9 A No, we don't.

10 Q All right. Based on your understanding, is there a single
11 definition of reasonable and customary that's common throughout the
12 industry?

13 MR. ZAVITSANOS: I'm sorry, Your Honor. Objection. Calls
14 for an expert narrative from somebody who's not been designated as an
15 expert.

16 THE COURT: Why don't you guys approach on that?

17 [Sidebar at 2:00 p.m., ending at 2:01 p.m., not transcribed]

18 THE COURT: So we think it'll be about another 20, 25
19 minutes before the direct. Is everybody good going that long without a
20 break? Yes? Thank you all. Thank you all very much. Go ahead please.
21 Objection sustained.

22 BY MR. ROBERTS:

23 Q So sir, I'd like to take you back to the acceptance rates that
24 you mentioned earlier to the jury. For in the period of 2017 to 2019 did
25 MultiPlan track how often out-of-network providers inquired of Data

1 iSight about the initial recommendation?

2 A Yes.

3 Q Submitted an inquiry? And what I'd like to do is --

4 MR. ROBERTS: Can we show just the witness, Shane, Exhibit
5 5103? Do you have the ability to do that?

6 [Counsel confer]

7 MR. ROBERTS: May I approach, Your Honor?

8 THE COURT: Please.

9 MR. ZAVITSANOS: Your Honor, so that we don't have to do
10 another bench conference, my objection to this exhibit is that it includes
11 areas and specialties outside of what's at issue in this case, okay. And
12 not relevant, Your Honor.

13 THE COURT: Good enough.

14 MR. ZAVITSANOS: And also, Your Honor, it's a summary.
15 And I do not have the underlying information to be able to test the
16 adequacy --

17 MR. ROBERTS: Your Honor, can we approach rather than a
18 speaking objection?

19 THE COURT: You may.

20 [Sidebar at 2:03 p.m., ending at 2:04 p.m., not transcribed]

21 BY MR. ROBERTS:

22 Q Do you have your notebook up there, sir?

23 A Yes, sir.

24 Q And before you look at that, can you tell the jury what the
25 acceptance rate was for emergency room providers in Nevada from 2016

1 to 2019? And you -- if you need to refresh your recollection just tell me
2 that and I'll let you look at the document.

3 A I'd like to refresh my recollection.

4 Q Okay.

5 A I carry a lot of numbers, but I -- sorry.

6 Q And those numbers are really small and maybe Mr.

7 Zavitsanos will let you borrow his magnifying glass.

8 MR. ZAVITSANOS: You've got to let me drive your fancy car.

9 THE WITNESS: I don't have one of those.

10 BY MR. ROBERTS:

11 Q All right. Here you go.

12 MR. ZAVITSANOS: And Mr. Roberts, will you just tell me
13 what line you're on please?

14 MR. ROBERTS: So I'm just asking the witness if he can look
15 at the document and whether it refreshes his recollection --

16 THE WITNESS: Which --

17 MR. ROBERTS: -- about --

18 THE WITNESS: Which document? I'm sorry.

19 BY MR. ROBERTS:

20 Q Oh if you open the binder in front of you.

21 A Yes.

22 Q Document marked 5103.

23 A Oh boy.

24 Q Now you understand why you need --

25 A Yes.

1 Q -- the magnifying glass.

2 A Yes.

3 MR. ZAVITSANOS: There's a light if you push the little
4 button.

5 THE WITNESS: Thank you.

6 MR. ZAVITSANOS: I'm very proud of that.

7 BY MR. ROBERTS:

8 Q Have you been able to find that, sir?

9 A Yeah. I read through it.

10 Q Okay.

11 A I'm sorry.

12 Q Did that refresh your recollection --

13 A Yes.

14 Q -- about what the emergency department acceptance rate of
15 the Data iSight recommended pricing tool was in Nevada during those
16 three years?

17 A Yeah. Hold -- let me get the context. I refreshed myself with
18 the actual fields, but let me -- can I have a pencil?

19 Q Can I give you a highlighter?

20 A That's even better.

21 Q Okay.

22 A So you want -- I'm sorry. ER you said?

23 Q Yes. I think it's spelled out as emergency room in the chart.

24 A For Nevada only?

25 Q For Nevada only, yes, sir.

1 A Team Health?

2 Q Yes.

3 [Pause]

4 MR. ROBERTS: Your Honor, I know we have a break coming
5 up soon. Maybe --

6 THE COURT: Is this a good time?

7 MR. ROBERTS: -- it'd be a good time to take a break while
8 the witness reviews the data?

9 THE COURT: Anybody object?

10 MR. ZAVITSANOS: Your Honor, I'm not going to speak for
11 the jury, but I would like an answer to this question before --

12 THE COURT: Let's get an answer to the question.

13 MR. ZAVITSANOS: -- before he goes outside on this.

14 THE COURT: And we need to do that, you're right.

15 THE WITNESS: So you want Nevada only, correct?

16 BY MR. ROBERTS:

17 Q Yes.

18 A Okay. Surgery. I'm sorry this is taking a long time. I just
19 can't -- okay.

20 Q All right. Whenever you're ready, but take as long as you
21 need.

22 A All right. So the -- I'm looking for, in this column it says,
23 Team Health TIN Nevada. In 2018 there was 291 claims successfully
24 processed through the Data iSight platform. And zero of those claims
25 were appealed in 2018 for those TINs.

1 Q So in 2018 that was 100 percent?

2 A Yes.

3 Q Now what about for 2019?

4 A 2019, there was 1700 claims successfully priced in 2019 and
5 359 of them were appealed or inquired on.

6 Q All right. And is that about 79.5 percent?

7 A Yeah. It's roughly 80.

8 Q Roughly 80?

9 A Yeah.

10 Q Okay. And again, that's Team Health Nevada only, correct?
11 No other providers, no other states?

12 A Correct. A Y and a Y in 2019.

13 Q What about 2017? Can you find that data for Team Health
14 Nevada only?

15 A No, I cannot. Wait, hold on. No. Well, yes, sorry. 2017 there
16 was 154 successful claims processed by Data iSight's system. One of
17 them was appealed.

18 Q So over 99 percent acceptance rate for 2017?

19 A Yes.

20 Q And finally can you find Team Health Nevada only for 2016?

21 MR. ZAVITSANOS: Your Honor --

22 THE WITNESS: Yes.

23 MR. ZAVITSANOS: -- I believe that's outside the claim
24 period. So I'm going to object on relevance, Your Honor.

25 THE COURT: And Mr. Roberts, I'm inclined to grant. Is there

1 some reason you need that data in?

2 MR. ROBERTS: Yes. One of the things that's being disputed
3 is whether this is a reasonable pricing tool. The witness has testified the
4 acceptance rate is relevant to reasonableness and therefore what was
5 accepted in 2016 would be relevant data.

6 THE COURT: I'm going to sustain the objection. Just it's
7 simply not relevant to the analysis in this case.

8 MR. ROBERTS: Okay. The witness --

9 THE WITNESS: All right.

10 MR. ROBERTS: -- has given all the relevant --

11 THE COURT: All right.

12 MR. ROBERTS: -- years, Your Honor. So I believe we can
13 take our quick, quick, break.

14 THE COURT: All right, you guys. Another short break and
15 thank you for understanding.

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

21 Don't conduct any research on your own. Don't consult
22 dictionaries, use the internet, or use reference materials. Don't post on
23 social media about the trial. Don't talk, text, tweet, Google issue or
24 conduct any other type of research with regard to any issue, party,
25 witness, or attorney involved in the case. Most importantly do not form

1 or express any opinion on any subject connected with the trial until the
2 matter is submitted to the jury.

3 It's 2:13. Let's be back sharp at 2:25.

4 THE MARSHAL: All rise for the jury.

5 [Jury out at 2:14 p.m.]

6 [Outside the presence of the jury]

7 THE COURT: Okay. The room is clear. Mr. -- why can't I
8 think of your name.

9 MR. BALKENBUSH: Whoa.

10 THE COURT: Whoa. Did you have something, Mr.
11 Balkenbush to put on the record?

12 MR. ZAVITSANOS: Your Honor, may I be excused for a
13 minute?

14 THE COURT: You may?

15 MR. ZAVITSANOS: Thank you.

16 MR. BALKENBUSH: Just briefly, Your Honor. I want to make
17 sure I understood the Court's clarification of Dr. Jones' designation, but I
18 looked through it but I --

19 THE COURT: Why don't you approach with it --

20 MR. BALKENBUSH: -- [indiscernible] make your markings on
21 it.

22 THE COURT: Approach with it and I'll explain.

23 MR. BALKENBUSH: Yes.

24 [Sidebar at 2:15 p.m., ending at 2:17 p.m., not transcribed]

25 [Recess taken from 2:17 p.m. to 2:26 p.m.]

1 THE COURT: Please remain seated. Are we ready to bring in
2 the jury?

3 [Counsel confer]

4 THE COURT: And your guy's bringing Mr. Crandell?

5 [Pause]

6 THE MARSHAL: All rise for the jury.

7 [Jury in at 2:27 p.m.]

8 THE COURT: Thank you. Please be seated.

9 Go ahead please.

10 MR. ROBERTS: Thank you, Your Honor.

11 BY MR. ROBERTS:

12 Q Sir, have you seen this data before that's been marked as
13 Exhibit 5103?

14 A I've seen this document, yes. It's from --

15 Q Okay. Do you know how we got a copy of this document?

16 A No, I don't.

17 Q Do you know whether any party to this lawsuit filed a
18 subpoena, served a subpoena on MultiPlan to get their document?

19 MR. ZAVITSANOS: Objection; Your Honor, he said he didn't
20 know and leading.

21 THE COURT: Objection sustained.

22 BY MR. ROBERTS:

23 Q If I could get you to get the notebook out in front of you sir
24 and turn to the next half, which has been marked for identification as
25 proposed Exhibit 5464. Do you see that?

1 A Yes.

2 Q Now if you could look under 2017, 2018 and 2019. Just the
3 lines Team Health Nevada only, could you review those for me and tell
4 me if the data in these columns matches the data that you just provided
5 to the jury based on the detailed spreadsheet?

6 A For which years? All of them?

7 Q '17, '18 and '19.

8 A Yeah, okay. Yes. That matches and then 2019 at, I said 80
9 percent so.

10 Q So you said 80 percent, and this has it at 79.5, but --

11 A It's close.

12 Q -- are you okay with that?

13 A Yes, I am.

14 Q Okay.

15 MR. ROBERTS: Your Honor, I'd move to admit Exhibit 5464
16 redacting the heading at the top year 2016 and the other information
17 except for Team Health Nevada only lines for those three years.

18 MR. ZAVITSANOS: Your Honor, we don't have an objection
19 to the numbers. The characterization we have an objection to. We will
20 work with counsel to make sure that it's a win-win. He gets what he
21 needs and --

22 THE COURT: Sure.

23 MR. ZAVITSANOS: -- hopefully we'll work --

24 THE COURT: So --

25 MR. ZAVITSANOS: -- on the language.

1 THE COURT: -- it'll be admitted with redaction to be done --

2 MR. ZAVITSANOS: Yeah.

3 THE COURT: -- in accordance with both sides being
4 agreeable.

5 [Defendants' Exhibit 5464 admitted into evidence]

6 MR. ROBERTS: Thank you, Your Honor. We'd be happy to
7 work with Mr. Zavitsanos --

8 THE COURT: 54 --

9 MR. ROBERTS: -- on that.

10 THE COURT: 5464?

11 MR. ROBERTS: Yes, Your Honor.

12 BY MR. ROBERTS:

13 Q All right. Mr. Crandell, one more topic before I turn you over
14 to Mr. Zavitsanos.

15 A Yeah.

16 Q What is the shared savings programs?

17 A That's a designation set forth by United. It's the program
18 that they offer for out-of-network services that we offer some of our
19 products and -- for various arrays for that program.

20 Q What are the components of the shared savings program
21 between UnitedHealthcare and MultiPlan?

22 A Well, the employer has the option to elect different packages
23 with their consultants on benefit renewal time, but we've configured
24 different products for our shared savings but primarily they focus on
25 network access, negotiations as well as extender type networks as well.

1 Q Does the program include wrap networks?

2 A Yes.

3 Q Does the program include fee negotiation services?

4 A Yes.

5 Q How long has MultiPlan participated in the shared savings
6 program with UnitedHealthcare?

7 A We've been doing it since we join -- I joined MultiPlan in
8 2010.

9 Q What about shared savings program enhanced, have you
10 ever heard of that?

11 A Yes.

12 Q Could you tell the jury what that is?

13 A Shared savings enhanced is the same shared savings setup,
14 but it adds in that Data iSight product that I talked about as well into the
15 portfolio that a client may access.

16 Q Does MultiPlan receive fees for these programs?

17 A Yes, we do.

18 Q And how are those fees typically based?

19 A Typically percent of savings.

20 Q What's the purpose of having a program where MultiPlan
21 participates in a percentage of savings?

22 A It's -- the purpose of that is it basically allows us to, if we
23 collect a percent of saved fees, it allows us to fund our operations as well
24 as, you know, across IT and then pay for the additional platforms that we
25 have to put together for all these very complex packages.

1 Q What is the purpose of the out-of-network programs that you
2 participate in like shared savings enhanced?

3 A The purpose of those programs again, an employer elects
4 whatever out-of-network program they'd like to receive. And it's based
5 upon what type of employer they are and whatnot that they really select
6 a package with United Healthcare or another client, tailored to their
7 needs, whether it's financial or something less aggressive. It's really --
8 that's the purpose of an out-of-network cost containment program.

9 Q Why not just charge a flat fee? Why would you have a
10 pricing structure that pays MultiPlan more money the more it cuts costs?

11 A We have a pricing structure that's stratified. If we had a per
12 claim fee, some of the operational setups and IT needs that we have, I
13 keep going back to, we have over 135,000 different client setups of
14 where we route claims to. It's a very complex process and whatnot and
15 flat -- a flat fee doesn't -- it -- A, it hasn't been the industry standard
16 since, you know, the inception of managed care, but it further aligns
17 funding these types of programs on behalf of the employers.

18 Q The jury has heard people in this courtroom compare
19 MultiPlan to an umpire who's supposed to be calling balls and strikes,
20 but it's being paid by one of the teams.

21 A Uh-huh.

22 Q Do you think that's a fair comparison?

23 A No, I don't. I mean, I look at -- we approach our operations
24 as unbiased partner, okay. And when I say that is if -- go back to what I
25 said about employers. You have, you know, over 100,000 employers

1 that we interact with, okay. You cannot force a decision upon these
2 employers that does not conform with what they want as a cost
3 containment solution, or even a benefit plan, you can't do that. Because
4 what happens, she'll get fired. Okay. We're not the only player in this
5 game. There are other -- we have competitors just like everybody else.
6 They will go find somebody else that will do the same thing that we do,
7 just in a different way.

8 Q Does it benefit MultiPlan to generate array, using Data iSight,
9 that's so low providers won't accept it?

10 A No, it does not.

11 Q Why not?

12 A Because we would have -- when you talk about acceptance
13 rates, you know, we have to staff for every single phone call that comes
14 in. If we have a product that is not defensible, and it does not reflect
15 what's currently in the marketplace, our staffing costs would be through
16 the roof, okay; that's why it's, you know --

17 MR. ROBERTS: All right. Thank you for your time, sir. Your
18 Honor, I'll pass the witness.

19 THE COURT: Okay. Cross-examination, please.

20 MR. ZAVITSANOS: Yes, Your Honor.

21 [Pause]

22 MR. ZAVITSANOS: May I proceed, Your Honor?

23 THE COURT: Please.

24 MR. ZAVITSANOS: Okay.

25 CROSS-EXAMINATION

1 BY MR. ZAVITSANOS:

2 Q Mr. Crandell, I'm going to outline the five areas that I'm
3 going to cover with you, okay?

4 A Okay.

5 Q Before I do that, I understood you to say that you have not
6 spoken with Mr. Roberts, right --

7 A That's correct.

8 Q -- before today? You live in Chicago, or outside of Chicago?

9 A Yes.

10 Q How did you know, and you came here voluntarily without a
11 subpoena, right?

12 A Correct.

13 Q How did you know to be here today, and that today was the
14 day that you were testifying --

15 A I was --

16 Q -- who told you that?

17 A I was told by my outside, counsel, Errol King, who's
18 MultiPlan's outside counsel.

19 Q Is he that guy in the back, with the silver hair, in the back
20 row; is that your lawyer?

21 A Errol King and Craig Caesar are MultiPlan external counsel.

22 Q So you have two lawyers here?

23 A Yes.

24 Q Do you know whether Mr. Roberts gave your lawyers the
25 script of what he was going to ask you, before you took the stand?

1 A No, I do not.

2 Q You certainly prepared for what you were going to say,
3 today, with your lawyers, right?

4 A Yes.

5 Q All right. Okay. So now here's what I want to do, here's the
6 areas I want to cover with you. Number, one, I want to talk about
7 Medicare. Number two, I want to talk about this proprietary formula
8 and whether there's anything to it or not. Number three, I want to talk
9 about whether you or your company actively mislead the public and
10 practitioners; and then number four and most importantly, the real
11 reason you're here. Okay?

12 A Okay.

13 Q All right. Let's start, let's start with Medicare.

14 MR. ZAVITSANOS: Now before I get to Medicare, let's pull
15 up Exhibit 3, page 7, Michelle. Actually, let's go to page 1, so that we see
16 what this is.

17 BY MR. ZAVITSANOS:

18 Q And the only reason I'm doing this, is because we got a
19 question from the jury earlier, and I just want to button this up. Okay.
20 This is the agreement regarding the wrap network between MultiPlan
21 and United Healthcare, right?

22 MR. ROBERTS: Objection. Beyond the scope.

23 THE COURT: Overruled.

24 BY MR. ZAVITSANOS:

25 Q Right, sir?

1 A I don't -- I don't deal within our actual client agreements with
2 -- I have no say in reviewing anything like that, it is a sales and marketing
3 function.

4 Q Well, you certainly talked wrapper networks with
5 Mr. Roberts, and you were able to answer some questions there. I'll
6 represent to you this is in evidence, and we've had other witnesses say
7 that's what this is. Okay, are you with me?

8 A Okay.

9 Q Okay. Now let's go to page 7 of this agreement.

10 MR. ROBERTS: Your Honor, I'd note for the record that this
11 document has been marked as AEO.

12 THE COURT: Okay.

13 MR. ZAVITSANOS: Okay.

14 THE COURT: Thank you.

15 BY MR. ZAVITSANOS:

16 Q Page 7, and we're going to look at Section 4.1.

17 MR. ZAVITSANOS: Hold up. Close that out, Michelle, let me
18 -- is it 4.1, Michael?

19 [Counsel confer]

20 MR. ZAVITSANOS: 3.1, excuse me. Michelle, previous page.
21 There we go. Okay. I was on the wrong page, page 6.

22 BY MR. ZAVITSANOS:

23 Q Okay. Now do you see where it says, "United at its
24 discretion, elects to allow access to this agreement and only for such
25 services that United elects." Do you see that?

1 A Yes, sir.

2 Q Okay. So this essentially says United can use the wrap
3 agreement or not, and its option, right?

4 A Correct.

5 Q Okay. And so if TeamHealth signs something six years later
6 or seven years later, that said the same thing, that would not be a
7 change, right? By definition, right?

8 MR. ROBERTS: Objection. Form. Vague.

9 THE COURT: Overruled.

10 BY MR. ZAVITSANOS:

11 Q Right.

12 MR. ROBERTS: Intimidation.

13 THE WITNESS: I'm having a hard time following the
14 connection here.

15 BY MR. ZAVITSANOS:

16 Q If TeamHealth signs something that said that United, that it
17 acknowledges that United is not obligated to use the wrap agreement
18 six years later, that would be consistent with what we're looking at up on
19 the screen, right?

20 MR. ROBERTS: Improper hypothetical to a lay witness.

21 THE COURT: Overruled.

22 BY MR. ZAVITSANOS:

23 Q Right?

24 A Yeah. I -- United has the ability, and again, like I said before,
25 with the wide variety of clients that they have --

1 Q Mr. Crandell --

2 A -- United adjudicate --

3 Q -- I've got get through this.

4 A Okay.

5 Q I'm sorry to cut you off.

6 A Sounds good.

7 Q I've got about an hour and a half, and I'm going to get in big
8 trouble if I go over now, okay?

9 A Okay. All right.

10 Q All right. So here's what I need to do. I'm just asking you,
11 sir, it's a real simple question, if TeamHealth signed an agreement --

12 A Uh-huh.

13 Q -- seven years later that said United has the discretion to use
14 the wrap agreement or not, if they sign such an agreement that would be
15 consistent with this one, right?

16 A Yeah. I'm not -- I'm not familiar with the terms of the actual -
17 -

18 Q You can't answer that question?

19 A No, I can't.

20 Q All right. Okay. So your office is out of New York?

21 A We have offices all over the U.S.

22 Q Your headquarters are New York --

23 A Correct.

24 Q -- on 5th Avenue?

25 A Yes.

1 Q Priciest real estate in Manhattan, right?

2 A I'm not familiar with real estate prices in Manhattan.

3 Q And MultiPlan, let's just be clear here, MultiPlan's business is
4 limited to the out-of-network world, right?

5 A No.

6 Q Well, the services it provided to United, during the relevant
7 time period was in connection with out-of-network claims, right?

8 A We provided out-of-network claims as well as other services,
9 like Tricare, which is a governmental military base program.

10 Q Those are not at issue here. I'm talking --

11 A Okay.

12 Q -- about commercial insurance.

13 A Okay.

14 Q That's what we're dealing with here.

15 A Okay.

16 Q The services you all provided were from out-of-network
17 services, right?

18 A I believe in that time period -- can you repeat the time period
19 again.

20 Q Yes, sir. It's '17 to January '20.

21 A Okay. We also do provide payment integrity services, for
22 United's in-network claims as well.

23 Q Okay. Fair enough. Now, let me ask you this, is it correct
24 that one of the ways that you have been able to secure, your clients, are
25 insurance companies, right, and TPAs?

1 A And local regional health plans, yes.

2 Q All right. One of the ways that you all secure clients, is by
3 being critical of Medicare, correct?

4 A I disagree.

5 MR. ZAVITSANOS: Let's put up Exhibit 299.

6 BY MR. ZAVITSANOS:

7 Q And this exhibit, 299 --

8 MR. ZAVITSANOS: 299, Michelle. Let's go to page 3.

9 BY MR. ZAVITSANOS:

10 Q And this is a MultiPlan document, right? You see down here
11 at the bottom, it says "MultiPlan"?

12 A Yes.

13 Q Okay. And this is --

14 MR. ZAVITSANOS: First page, Michelle.

15 BY MR. ZAVITSANOS:

16 Q This is a pitch to potential clients, like United, right?

17 A Uh-huh.

18 Q Yes?

19 A I don't know if this document has been shared with United.

20 Q Okay. Well, let's take a look. Let's go to -- and this is for non-
21 contracted claims, that would be out-of-network, right?

22 A Yes.

23 MR. ZAVITSANOS: Page 3. And let's pull up the clarity here.

24 Michelle, is that your highlighting, is that already highlighted? It's
25 already highlighted, okay.

1 BY MR. ZAVITSANOS:

2 Q So it looks like MultiPlan making a pitch to the insurance
3 clients, tells them that a Medicare-based reference point is inherently
4 misleading; do you see that? Sir?

5 A Yes.

6 Q Is that true?

7 A No.

8 Q Okay. Next sentence. "The average consumer" --

9 MR. ZAVITSANOS: All right, Michelle. Now let's do our
10 highlighting.

11 BY MR. ZAVITSANOS:

12 Q "The average consumer does not understand just how low
13 Medicare rates are. On its surface a policy to reimburse at a level well
14 above what Medicare pays, sounds fair, maybe even generous, when
15 compared to the traditional methodology which reimburses a percentage
16 below UNC," right? Do you see that?

17 A Yes, I see it.

18 Q Is that correct, or incorrect, sir?

19 A It's correct and incorrect, it all depends on the employer plan,
20 and what they select for their auto network reference.

21 Q So it's correct and incorrect. All right. Let's keep going.
22 Now, however, when a provider, not that's us, over here, we're the
23 provider, right? Right, we're the provider?

24 A Yes.

25 Q When a provider, anticipating low reimbursement from

1 payers, that's United, right?

2 A Yes.

3 Q Increases the charges to compensate the gap between an
4 elevated charge -- and how does MultiPlan describe Medicare
5 reimbursements, sir? What's the words that you use?

6 A The words are "Medicare reimbursement can be
7 significant" --

8 Q No, no, you skipped the ones that I want to talk about. Now
9 come on, you know what I'm talking about here.

10 A Okay. So it --

11 Q What are the words that you use to describe Medicare, sir?

12 A It says, "The gap between an elevated charge and the
13 barebones Medicare reimbursement can be significant, as show in
14 Table 1.

15 Q All right. Now, let's close out and let's take a look at what
16 Table 1 says. And this is the pitch that you're making to insurance
17 companies on the front end; right, sir? To get them to be clients?
18 "Don't come up with a Medicare base methodology, use MultiPlan
19 instead." Right?

20 A Actually, we do market to Medicare base methodologies
21 with --

22 Q Sir, I'm talking about commercial insurance, let's stay on
23 track here. This --

24 MR. ROBERTS: Your Honor, could counsel let the witness at
25 least finish his question. We can move to strike later, but the constant

1 interruption --

2 MR. ZAVITSANOS: Your Honor --

3 THE COURT: No more interruptions, please. If you think it's
4 non-responsive then so indicate. Overruled.

5 MR. ZAVITSANOS: Yes, Your Honor. My apologies.

6 BY MR. ZAVITSANOS:

7 Q Sir, I don't want to talk about other programs. Please listen
8 to my question, okay.

9 A Right.

10 Q I'm going to let you finish, okay? All right. Here we go. Now
11 so "Medicare versus usual and customary member impact;" do you see
12 that?

13 A Yes.

14 Q And you see where it says "80th percentile of usual and
15 customary"?

16 A Yes.

17 Q Okay. That's FAIR Health?

18 A I don't know. I don't know the source. There's no definition
19 of UCR or UNC.

20 Q So MultiPlan use UNC, but you just have no idea what that
21 means?

22 A Well, UNC could be based on FAIR Health, UNC could be
23 based on a Viant [phonetic] OPR product that we have. It's there's no
24 definition for me to counter what you're saying.

25 Q Okay. So MultiPlan used the term that you, as a -- what are

1 you, a vice-president?

2 A Yes.

3 Q That you don't know what that means?

4 A Oh, I know what it means.

5 Q Okay. So here we go. So 120 percent of Medicare, that's the
6 description that you're using for what is bad, right? In this document?

7 A In the document, yes.

8 Q Okay. So we got a \$5,000 bill, it's reduced to the 80th
9 percentile, 2582. If we cut it down to the 120 percent of Medicare, 748.
10 Okay? So of these two which one is better for the member? Sir?

11 A The 120 percent.

12 Q Okay. Then, the plan pays 60 percent. And by the way, have
13 you seen any of the SPVs that have been discussed during the last four
14 years we've been in this trial?

15 A No.

16 Q Okay. So, all right. So let's just say it's 60 percent, which
17 one is better for the member, the 80th percentile, or the 120 percent of
18 Medicare?

19 A If the provider doesn't balance bill the 120 --

20 Q Yeah.

21 A -- that the provider balances -- balance bills the 80th.

22 Q Member pays 40 percent. Which one is better for the
23 member?

24 A The 120 of Medicare.

25 Q Now let's say you got a doctor that is going to balance bill,

1 even though they've gotten the 80th percentile of usual and customary;
2 do you see that?

3 A Yes.

4 Q And by the way, do you know how many doctors in Nevada
5 that practice emergency medicine, that are out-of-network, actually
6 balance bill the member when they get the 80th percentile of usual and
7 customary?

8 A No, I do not.

9 Q Would it surprise you if it was less than one percent?

10 A It's a fact that I don't know.

11 Q Okay. All right. So if there's a balance bill, which one is
12 worse for the member?

13 A The 120 percent of Medicare.

14 MR. ZAVITSANOS: Okay. And, Michelle, highlight the last
15 one.

16 BY MR. ZAVITSANOS:

17 Q So at least according to TeamHealth, when it's making its
18 pitch, which one is better for the member?

19 A I would say 120 percent of Medicare with patient advocacy,
20 so there would be no balance bill.

21 Q My question, sir, is according to the people that put this stuff
22 out --

23 A Yes.

24 Q -- for the pitch to your insurance clients, according to this
25 chart, which one I the member better off with?

1 A The member is better off with the UNC, according to this
2 chart.

3 Q All right. Now, and if the doctor --

4 MR. ZAVITSANOS: Michael, calculator, please.

5 BY MR. ZAVITSANOS:

6 Q If the doctor does not balance bill under the 80th percentile,
7 so that we subtract 2417.10 from 3450.26 --

8 MR. ZAVITSANOS: What is that Michael?

9 [Counsel confer]

10 MR. ZAVITSANOS: 3450.26 minus 2417.10. I think I said,
11 TeamHealth, this is a MultiPlan document, right?

12 MR. ROBERTS: Your Honor, the witness has already said he
13 doesn't know, he's never seen it.

14 THE WITNESS: I've never seen this document.

15 BY MR. ZAVITSANOS:

16 Q Do you see the MultiPlan logo there?

17 A Yes, I do.

18 Q Do you doubt that it's a MultiPlan document?

19 A I don't know how our sales and marketing team operates in
20 client communications.

21 Q Do you know whether you all produce documents in this
22 case, do you think we made up that logo there?

23 A I mean, our logo is available. I don't -- I don't know how our
24 clients' private label things --

25 Q I mean, it's --

1 A It's a MultiPlan logo, though.

2 Q Yeah. It's possible that maybe somebody sinister over at
3 TeamHealth just made this up, and got it admitted into evidence, right? I
4 mean, that's possible.

5 A No, I don't think so.

6 Q Okay. So if the doctor accepts the 80th percentile and you
7 understand that's what we're asking for, right. So --

8 A Feel free to ask for what you want --

9 Q Yeah.

10 A -- it's on me to decide.

11 [Counsel confer]

12 BY MR. ZAVITSANOS:

13 Q Okay. So 1,033 and 16. According to this MultiPlan
14 document, sir, is the member four times worse off using Medicare plus a
15 little bit above it? Sir?

16 A Can you repeat the question, I'm not following the logic
17 here?

18 Q No, sir. I think it's -- I'm not going to get -- let's go to the next
19 page. Now what you're doing here, is --

20 MR. ZAVITSANOS: Let's go to page 5, please, Michelle.

21 BY MR. ZAVITSANOS:

22 Q Okay. Page 5. It's more effective methodology.

23 MR. ZAVITSANOS: Let's pull it down. Keep going. Keep
24 going. Keep going. Perfect.

25

1 BY MR. ZAVITSANOS:

2 Q So, this is when you all are out there promoting Data iSight,
3 this magical, proprietary super-secret formula that comes up with a fair
4 price, right?

5 A Yes.

6 Q And Data iSight actually breaks it down into two big
7 categories, facilities, which doesn't apply here, right?

8 A Okay.

9 Q Facilities are like hospitals, right?

10 A Correct.

11 Q And the next on is professional pricing, that would be
12 people, right?

13 A Those would be professionals, or doctors, or -- yes, people.

14 Q So for a facility, and I don't want to belabor this, you use
15 publicly available cost data, right?

16 A Yes.

17 Q But that's not available for professionals, so you use
18 something else, right?

19 A Yes.

20 Q All right, sir.

21 MR. ZAVITSANOS: Close it up, Michelle.

22 BY MR. ZAVITSANOS:

23 Q All right. Now emergency room doctors, a totally different
24 breed of doctors, right? Right?

25 A I'm not familiar with the differences between an orthopedic

1 surgeon and an ER doctor, regarding characterizations.

2 Q We just saw, okay, a criticism of Medicare and how it is bare
3 bones, according to this MultiPlan document, right? We just went over
4 it?

5 A Yes.

6 Q How will we know Medicaid, not Medicare, Medicaid is --
7 Medicare is bare bones, Medicaid is the bone marrow, it's even lower,
8 right?

9 A Correct.

10 MR. ROBERTS: Your Honor? I'm assuming we've now
11 opened the door?

12 MR. ZAVITSANOS: No, Your Honor. I'm going -- I'm --

13 THE COURT: Can you approach?

14 [Sidebar at 2:58 p.m., ending at 2:58 p.m., not transcribed]

15 BY MR. ZAVITSANOS:

16 Q Now you are familiar with something called, and the jury's
17 heard about it, called EMTALA, E-M-T-A-L-A, right?

18 A Can you say it again?

19 Q EMTALA, E-M-T-A-L-A. Do you see that?

20 A Yes.

21 Q Okay. Now there's -- do you know that there's a whole
22 bunch of doctors in this country who do not accept Medicaid?

23 A I don't know the composition of providers that do not accept
24 Medicaid.

25 Q Do you have a family doctor?

1 A Yes.

2 Q Does your family doctor accept Medicaid --

3 A I do not know what my --

4 MR. ROBERTS: Objection. Relevance.

5 THE COURT: Overruled.

6 THE WITNESS: I do not know if my family doctor accepts --

7 BY MR. ZAVITSANOS:

8 Q Okay. Do so --

9 A -- Medicaid.

10 Q -- let me get this straight now. EMTALA means, you have to
11 treat, okay?

12 A Uh-huh.

13 Q Are you with me?

14 A Yes. I'm not familiar with the term, but --

15 Q You're not familiar with EMTALA, and you're the vice-
16 president involved in out-of-network programs, that includes emergency
17 room doctors, and you've never heard of EMTALA?

18 A I understand that emergency room physicians have to treat
19 doctors, but I haven't heard of the term Impala [sic] or EMTALA.

20 Q Okay. Then how does it end. Why? Here we go. So first
21 they have to treat people that are Medicare, right?

22 A Yes.

23 Q Okay. Then they have to treat people that are on Medicaid,
24 right?

25 A Yes, sir.

1 Q Then they have to treat people that are uninsured, right?

2 A Correct.

3 Q And finally, one out of every four times they treat people
4 with commercial insurance, right?

5 A Correct. I don't --

6 Q And this guy over here, Dr. Scherr, he doesn't have a choice
7 like the family doctor, right? He's got to treat all four of these, right?

8 A Yes.

9 Q Okay. Now, Exhibit 513, please. All right. So pull out that
10 3.2 sentence. This is --

11 MR. ZAVITSANOS: Hold on. Close it off, Michelle. Let's pull
12 up -- all right. Let's pull up, Michelle, right here, this bottom part, all the
13 way across. All the way across. Keep going.

14 BY MR. ZAVITSANOS:

15 Q Okay. It says, "This data represents how commercial health
16 plans spend your premiums. This data includes employer-provided
17 coverage as well as coverage you purchase on your own. Data reflects
18 averages for the 2016 to '18 benefit years. Percentages do not add up to
19 100 percent due to rounding." And it's something called the AHIP,
20 copyrighted 2021. Do you see that?

21 A Yes, I do.

22 Q All right. Now, here's what I want to know, and I'm going to
23 ask this very precisely. Do you have a dataset within MultiPlan that
24 evaluates out-of-network payments from commercial insurers for
25 doctors that are subject to EMTALA? Does that category exist anywhere

1 within MultiPlan?

2 A What do you -- please define category.

3 Q Do you have a, like with Data iSight -- and Data iSight
4 includes all out-of-network, right? Right?

5 A Yes. It's for out-of-network. Correct.

6 Q Yep. Do you have a tool that looks -- listen to the variables
7 here -- out-of-network commercial insurance for doctors that are subject
8 to EMTALA? Does that product exist within MultiPlan? Show me what
9 the median or average reimbursement is.

10 A Yes. We use -- we have a separate conversion factor for Data
11 iSight for place of service 23, which are ER line items, 99282, 99283,
12 99284.

13 Q All right. Data iSight includes Medicaid, right?

14 A No.

15 Q Does it include Medicare payments?

16 A No.

17 Q Does it include in-network payments?

18 A Yes.

19 Q Okay. So I'm going to ask it again. Do you have a tool that is
20 available to evaluate, to assist this journey --

21 A Yep.

22 Q -- in evaluating out-of-network only, where the data put in is
23 from out-of-network payments only --

24 A We have a tool --

25 Q Let me finish, sir.

1 A All right. Sorry.

2 Q Out-of-network payments only, where the data is out-of-
3 network only --

4 A We have a tool --

5 Q Can I finish my question?

6 A Sorry.

7 Q The data that you have includes outliers and includes in-
8 network, right?

9 A Yes.

10 Q Okay. Is there a way to back out the in-network payments so
11 that we can look at out-of-network payments for emergency room
12 doctors subject to EMTALA and what is typically paid?

13 A Under our current methodology and data source, yes.

14 Q What about during the relevant time period?

15 A No.

16 Q Okay.

17 A It's a collection of both in-network and out-of-network
18 services.

19 Q Okay. So during the relevant time period, is it correct to say
20 that the only collection of data that MultiPlan has that shows out-of-
21 network payments to emergency room doctors from commercial
22 insurance is your wrap network, sir?

23 A No, sir.

24 Q During the relevant time period?

25 A Yes.

1 Q What other tool during the relevant time period where the
2 inputs are just out-of-network payments? What else is there during the
3 relevant time period where we could run this magical formula to see
4 what the average amount is?

5 A So again, MultiPlan is a provider of services. We do not pay
6 claims. We do not determine whether it's an in or out-of-network -- or in
7 out-of-network payments, okay. That, the payor does. The payor
8 adjudicates the claims. We have data in our network products that are
9 out-of-network. We also have the data source that we use for our Data
10 iSight product has both in and out-of-network claims in there so we can
11 establish what a full view of the market is, not a biased, partial view.

12 Q Did you bring with you, sir, when you were talking to your
13 lawyers -- and by the way, do you know if you have other lawyers
14 listening in from New York right now?

15 A I have no clue.

16 MR. ROBERTS: Objection to form. Compound.

17 THE COURT: Overruled.

18 BY MR. ZAVITSANOS:

19 Q Do you know if you have other lawyers listening from New
20 York right now, right? Do you know?

21 A I have no clue.

22 Q Did you bring with you, so that the jury can see, what the
23 average out-of-network payment was in Nevada in -- between -- for the
24 relevant time period from commercial insurers for physicians subject to
25 EMTALA? Did you bring that with you?

1 A No. I do not have that in my head.

2 Q Okay. Thank you, sir. Now, let's look at -- oh, by the way,
3 you do know this case right here is the first trial ever, anywhere in the
4 United States, to evaluate Data iSight being used as a tool for
5 emergency room out-of-network charges by commercial payors, right?

6 A I have no knowledge of any legal proceedings or anything
7 with our organization.

8 Q You're not aware -- you've not testified before in any case
9 involving this, right?

10 A No, I haven't.

11 Q Yeah. I mean, do you know why that's why we have all these
12 people watching on this BlueJeans link?

13 MR. ROBERTS: Objection to form. Argumentative and
14 irrelevant.

15 THE COURT: Objection sustained. Move on.

16 MR. ZAVITSANOS: Let me move on.

17 BY MR. ZAVITSANOS:

18 Q All right. Let's go to Exhibit 239. Okay, 239. Now, this is
19 United's document, okay? It's in evidence. Now, let's go to page 26.
20 And I'll represent to you that this is a document United put together as
21 talking points for its clients, okay?

22 A Okay.

23 Q All right. Let's see what they're telling their clients. Now, it
24 says here Data iSight uses a patented methodology and publicly
25 available data to evaluate and recommend reductions from a cost up

1 rather than charge down approach. Right?

2 A Correct. That's what it says.

3 Q Yeah. That cost up is just for facilities, not for professional
4 claims, right?

5 A Correct.

6 Q Okay. So that -- if that's what they're using to sell this
7 program to these ASO clients, that is a little bit incorrect, right, sir?

8 A I disagree because it doesn't really say facilities to the end
9 user. And again, I'm not within the marketing department, either.

10 Q Sir, there are only two --

11 A At United.

12 Q I'm sorry. I didn't mean to cut you off.

13 THE COURT: Don't interrupt.

14 BY MR. ZAVITSANOS:

15 Q My apologies. It goes to their clients, United, and it's telling
16 them we have this tool that looks at actual costs, and we're going to
17 come up with a fair number using that as the baseline. But you don't do
18 that on professional claims, right?

19 A On professional claims, we look at allowable data of what is
20 being paid in the marketplace.

21 Q Let's go to Exhibit 22. And --

22 MR. ZAVITSANOS: Is this in, Michael? Hold on, Michelle.
23 Pull it down.

24 THE COURT: It is.

25 MR. ZAVITSANOS: Okay.

1 THE COURT: I have it as in.

2 MR. ZAVITSANOS: Pull up the bottom email, Michelle. And
3 pull up the -- right here. This paragraph right here.

4 BY MR. ZAVITSANOS:

5 Q Now, this is before United started using Data iSight, right?

6 A Yes.

7 Q And you see where it says internally, it looks like Emma
8 Johnson at MultiPlan is trying to pitch this to United, and you all are
9 saying, "We felt it important to reiterate that Data iSight is not CMS."
10 That's Medicare, right? CMS is Medicare?

11 A Correct.

12 Q "Is not CMS based and is rather cost-based," right? See that?

13 A Yes, I do.

14 Q That's not true for professional claims, right?

15 A Yeah, but I don't think they're talking about professional
16 claims there. It's a cost- or an allowable-based.

17 Q Well, okay. Let's look at --

18 A I can't -- I can't --

19 Q Let's look at -- I'm going to move on because the jury can
20 read this on their time.

21 A Okay.

22 Q Let's go to Exhibit 413. And now, this is one of the
23 documents that's put out by Data iSight.

24 MR. ZAVITSANOS: And Michelle, can you please go to page
25 two? Pull this out.

1 BY MR. ZAVITSANOS:

2 Q And it looks like something else sent to us. I need the Data
3 iSight logo. Okay. And you see here, it says Ruby Crest Emergency
4 Medicine? See that, sir?

5 A Yes, sir.

6 Q All right. So the healthcare -- to determine the Data iSight --

7 MR. ZAVITSANOS: Hold on, Michelle.

8 BY MR. ZAVITSANOS:

9 Q "To determine the Data iSight reimbursement amount, the
10 first step is to gather some information about your client." All right. I'm
11 going to skip ahead. "That is, Data iSight's recommended
12 reimbursement takes into account characteristics about the services
13 performed by the provider, the costs of doing business in their area, and
14 other information about their business." Do you see that?

15 A Yes.

16 Q What information did you have about Ruby Crest's business
17 before you sent this to us, cutting this reimbursement to exactly 350
18 percent of Medicare, sir?

19 A The -- if this is a professional claim, which it looks like it is,
20 this is the explanation for it. We know what the AMA sets forth from a
21 relative value.

22 Q No, sir. My question --

23 MR. ROBERTS: Objection, Your Honor. Could the witness be
24 allowed to finish his answer?

25 MR. ZAVITSANOS: Oh, I'm sorry. I'll move on. Go ahead.

1 THE COURT: Yeah. Go ahead and finish.

2 THE WITNESS: So AMA sets forth a relative value. Again,
3 those three components I talked about earlier, which are work expense,
4 what does it actually take, as an equation to operate or do a specific
5 service. The second would be practice expense for that line item that
6 was billed. What is the allocated RVU for that component. And then the
7 last is the malpractice portion. Those are the costs of doing business.
8 Those are the three components that the AMA or the American Medical
9 Association sets forth.

10 BY MR. ZAVITSANOS:

11 Q Sir --

12 A Yes.

13 Q -- RVUs are a variable that's not mentioned here. This says
14 that you looked at the cost of doing business in their area. Do you see
15 that? Do you have -- do you know where Ruby Crest is, sir?

16 A No, I do not.

17 Q And by the way, the way you use your geozips, when you
18 look at what the relevant area is, there's one for the State of Nevada,
19 right? Just one.

20 A Locality? Yes.

21 Q Okay. So that means that if you have a clinic right next to the
22 Bellagio hotel and you've got another clinic 20 miles outside of Elko, you
23 assume the costs are the same, right?

24 A I don't know where Elko is, so.

25 Q Right. In any event, sir, you told us you looked at the costs.

1 You don't mention anything about RVUs here, right?

2 A Correct. You can --

3 Q Okay. And --

4 MR. ROBERTS: The witness was cut off again, Your Honor.

5 MR. ZAVITSANOS: I did not cut him off. He was -- he
6 answered yes.

7 THE COURT: Did you finish your answer?

8 THE WITNESS: I -- that's fine.

9 MR. ZAVITSANOS: Your Honor, the answer to my question
10 is yes, also.

11 THE COURT: I think you cut him off.

12 THE WITNESS: Yeah.

13 MR. ZAVITSANOS: If I cut you off, sir, please let me know,
14 and I'll let you finish.

15 THE WITNESS: Okay. That sounds good.

16 MR. ZAVITSANOS: Thank you, sir. Okay. Now, let's go on.
17 Let's go to the next page. Next page after that, Michelle. Page three. All
18 right. Let's pull this up.

19 BY MR. ZAVITSANOS:

20 Q So this is something you all sent to us, and it looks like you
21 ran the tool and it determined that our plan was -- right here,
22 Michelle -- \$609.28, running the tool. Right?

23 A Yes.

24 Q And once again, what you're telling in your little form here is
25 that you took the provider's costs of doing business into account. Do

1 you see that? Right, sir? The provider's costs? Right here, "provider's
2 costs of doing business into account." Do you see that?

3 A Yes, I do.

4 Q Okay. And that's not true, because professional claims are
5 not cost-based, right?

6 A The methodology took into account the costs or the RVUs
7 associated with this claim.

8 Q Well, once again, you don't say anything about RVUs. This
9 looks like the actual costs, the provider's costs. You know what
10 possessive is?

11 A Yes.

12 Q Like for example, Michael's iPhone. That refers to his
13 iPhone, right? Provider's costs means the costs of this provider, right?
14 Right?

15 A No, they're talking about the costs of rendering services.

16 Q Sir, what you did here, you all came up with this form
17 language and you stuck it on every claim whether it was facility or not
18 because you know most people don't go through the fine print, right?
19 And you got a little sloppy by not clarifying it, right? Right?

20 A No, I disagree here.

21 Q Okay. And do you have an explanation when it says here
22 that the Data iSight reimbursement amount determined for your claim
23 was \$609.28? Does that seem to you to suggest that this mythical,
24 magical, proprietary, behind the curtain formula came up with that
25 amount?

1 MR. ROBERTS: Objection to form. Argumentative.

2 THE COURT: Objection sustained.

3 BY MR. ZAVITSANOS:

4 Q Does this suggest that this proprietary tool came up with this
5 amount, sir, based on what's written there?

6 A The tool provides services on behalf of whatever -- how
7 a -- how the client sets up an override, the methodology produces an
8 amount. And then any other client or operational overrides are applied.

9 Q No, sir. No, no, no, no. That's not my question. Let me try it
10 again. We just got done looking at all this fancy-schmancy language
11 about what they look at. The cost of doing business, what Data iSight is.
12 And here comes the punchline. It says the Data iSight reimbursement
13 amount determined for your claim was 609.28, right?

14 A Yes.

15 Q The override is separate from the Data iSight tool, right?
16 That's a client-driven thing, right?

17 A Correct.

18 Q Can you explain to the jury, sir -- strike that. You know that
19 every single -- and I mean every single one in this case -- has this
20 language and every single time, it comes out to 350 or 250. And the
21 language is we got there by using the tool, right, sir?

22 A Well, I think they're referring to the Data iSight as a system.
23 It all happens within the same system.

24 Q The system. The system, of course. Where does it say here
25 that this number was not Data iSight, was not the tool, but was rather

1 the override, so that it comes out to exactly 350 percent of Medicare?

2 Where does it say that, sir?

3 A I do not see it here, but it is something that a provider can
4 always call in and ask about the reimbursement.

5 Q Yeah. And -- okay. We're going to get to -- and by the way,
6 during the entire time that you've been there, one provider called you,
7 and that was TeamHealth, right? During the relevant time period. Right,
8 sir? One. Right?

9 A I don't -- I don't know what document you're referring to or --

10 Q One time, you've gotten a call from a provider, sir, asking
11 about how this tool works, right? One time.

12 A Yeah. Inquiring, yes.

13 Q One time.

14 A That's what -- that's what the data says.

15 Q And you kept it high-level. You didn't tell them how it works,
16 right, sir?

17 A I did not answer the phone call.

18 Q Okay. Let's -- now let's move on. Let's go to the formula to
19 this. You used a lot of kind of fancy mathematical terms, right?

20 A In what question?

21 Q Well, talking about the formula, right? The proprietary
22 pricing logic, the patented term, the -- right? Yeah, the methodology. Do
23 you see here, it's got a bunch of really fancy-sounding things here, right?

24 A Those are industry standard terms.

25 Q Well, let's take a look. Let's go behind the curtain a little bit

1 and take a look, okay, and see what you're doing. And let me start by
2 asking you this: first of all, you didn't bring the tool with you so that I
3 could look at it and question you about it, right?

4 A No.

5 Q All right. Because you're not going to do that, right?

6 A That's not on me to decide.

7 Q Yes, sir. Okay.

8 MR. ZAVITSANOS: So UnitedHealthcare 267, is that in,
9 Michael?

10 THE COURT: I show it is. I show that it is.

11 MR. ZAVITSANOS: Okay.

12 MR. KILLINGSWORTH: It's -- John, it's conditionally moved.

13 MR. ZAVITSANOS: Yeah. Okay.

14 MR. ROBERTS: Your Honor, for the record, I show this as
15 initially designated AEO.

16 THE COURT: Okay.

17 MR. ZAVITSANOS: All right. Let's go to page two, please.

18 THE COURT: Mr. Zavitsanos, you heard Mr. Roberts' last
19 comment?

20 MR. ZAVITSANOS: Yes.

21 THE COURT: Thank you.

22 MR. ZAVITSANOS: Yes. Thank you, Your Honor. Page two.
23 All right. Now, let's pull up --

24 BY MR. ZAVITSANOS:

25 Q This is what UnitedHealthcare is telling its customers what

1 Data iSight is. Okay. And reference-based methodology, publicly
2 available data, cost up, CPT, HCPCS, multiplied by conversion factor. Do
3 you see all that?

4 A Yes, I do.

5 Q That sounds very, very, very complicated, right?

6 A Yes.

7 Q Sir, this is a total front. Would you agree with me, sir?

8 A No, I do not.

9 Q Well, what insurance want to do?

10 A Say -- I didn't hear your question.

11 Q Yeah. This is a total front. You buy some data that includes
12 everything, take the average, and that's it.

13 A No. We end up --

14 Q Okay? Go ahead.

15 A We end up taking the median, not the average of --

16 Q Let's take a look. Let's take a look. So here's Exhibit 380,
17 page 10. And we've asked some other witnesses whether they know
18 what that is. And I asked about this thing called a conversion factor. Do
19 you see that? The conversion factor?

20 A Yes.

21 Q Okay. So let's hold that. Oh, by the way, before you started
22 pitching Data iSight to UnitedHealthcare, 90 percent of your top 20
23 clients had wrap agreements, right?

24 A I don't know the exact client dynamics --

25 Q Okay.

1 A -- or percentages.

2 Q Let's look at Exhibit 82.

3 MR. ZAVITSANOS: Is 82 in?

4 MR. KILLINGSWORTH: I do not show it as in.

5 MR. ZAVITSANOS: Okay. Sir, will you grab the binder

6 behind you and grab Exhibit 82? May I ask counsel if he has an objection
7 to it?

8 THE WITNESS: Which one?

9 MR. ZAVITSANOS: 82.

10 MR. ROBERTS: Incomplete document, foundation, hearsay,
11 relevance.

12 THE COURT: Okay.

13 MR. ROBERTS: 4835.

14 MR. ZAVITSANOS: Please get it, please.

15 THE WITNESS: Grab it? Okay. So Exhibit 82?

16 MR. ZAVITSANOS: Yes, sir, to clarify.

17 THE WITNESS: Okay.

18 BY MR. ZAVITSANOS:

19 Q Okay. Well, let's not read what's in it. Does that have the
20 MultiPlan logo on it?

21 A Yes, it does.

22 Q Does it indicate that it was presented to United Healthcare in
23 March of 2017?

24 A I don't know if it was presented to them.

25 Q Does it indicate that it was presented to United Healthcare in

1 March of 2017?

2 A Yes. It says, "presented to UnitedHealthcare." But I don't
3 know if it was actually presented to them.

4 Q Okay. And if you go through it, does this appear to be data
5 from MultiPlan, including the data on page 7?

6 A Page 7?

7 Q Sir?

8 A Page 7, you said?

9 Q Yes, sir.

10 A Yes.

11 MR. ZAVITSANOS: Your Honor, we move for the admission
12 of Plaintiff's 82.

13 MR. ROBERTS: Objection, Your Honor. He's never seen the
14 document before.

15 THE COURT: You've laid an insufficient foundation at this
16 point. And I need to know what the relevance will be.

17 MR. ZAVITSANOS: The relevance is the percentage --

18 THE COURT: Well, no. You will --

19 MR. ZAVITSANOS: Okay.

20 THE COURT: -- elicit that.

21 BY MR. ZAVITSANOS:

22 Q Does this indicate the percentage of -- Mr. Crandell --

23 A Yes?

24 Q -- on page 7, does this indicate the percentage of your clients
25 that operated under wrap agreements, the top 20 clients as of 2017?

1 A Yes. It says -- it's allocated by top 5, top 10, and top 20. I
2 don't know how that's ranked. But it's giving a percentage of 80, 80, and
3 90 on the bottom line.

4 Q Okay. Does it also mention Data iSight on that page?

5 A Yes, it does.

6 Q Which is the -- what you've been talking about, right?

7 A Yes.

8 MR. ZAVITSANOS: Your Honor, I move for the admission of
9 Plaintiff's 82.

10 MR. ROBERTS: He still hasn't laid foundation for the
11 numbers, Your Honor. This witness is not the right person.

12 THE COURT: There's still an insufficient foundation.

13 BY MR. ZAVITSANOS:

14 Q Any reason to doubt the percentages that are laid out in
15 Exhibit 82, page 7, Mr. Crandell?

16 A I do not know the exact percentages as of this time for the
17 top five.

18 Q Was it generally high, sir?

19 A I --

20 THE COURT: Don't interrupt him, please.

21 MR. ZAVITSANOS: I'm sorry, Your Honor.

22 THE WITNESS: I'm sorry, I can't give you a basis. We have
23 over 700 clients. And of those 700 clients, there's thousands of different
24 configurations. I can't quote those off the top of my head.

25 BY MR. ZAVITSANOS:

1 Q Mr. Crandell, you came --

2 A Yes.

3 Q -- in here and told counsel for United --

4 A Uh-huh.

5 Q -- what the trends were in the industry and what the
6 competitors of United are doing with regards to Data iSight, right?
7 Right?

8 A I talked about the differences in methodologies that people
9 are adopting in the industry. Yes.

10 Q Right. And but you can't tell us what percent of your top 20
11 clients have -- had wrap agreements where -- that prohibited balance
12 billing --

13 A At a --

14 Q -- and a slight discount off the bill charge as of 2017?

15 A At a particular time period, no, I cannot recollect exactly.

16 Q Generally, sir?

17 A I'm an analyst. I don't speak in generalities. So --

18 MR. ROBERTS: Your Honor, in order to move things along,
19 I'll stipulate to the admission of page 7.

20 THE COURT: Okay. So page 7 will be admitted.

21 [Plaintiffs' Exhibit 82 admitted into evidence]

22 MR. ZAVITSANOS: Put it up, Michele.

23 THE COURT: Page 7 of Exhibit 82; is that correct?

24 MR. ZAVITSANOS: That's all I need, Your Honor.

25 BY MR. ZAVITSANOS:

1 Q All right. This is a MultiPlan document?

2 A It has a MultiPlan logo.

3 Q Yeah. And you see it says, "service usage by top clients?"

4 A Yes.

5 Q And at the bottom there it says, "service usage by top
6 clients?"

7 A Yes.

8 Q And at the bottom there it says, "networks." And you have
9 your top 20 clients. 90 percent had wrap agreements, right?

10 A It's stating that 90 percent of our top 20 clients have access to
11 a network.

12 Q And one of the recent client strategies was to eliminate
13 extender networks. You see that?

14 A Yes.

15 Q That's a wrap -- those are wrap agreements, right?

16 A Those aren't -- are -- an extender agreement is another
17 organization. It's not technically our agreements.

18 Q Okay. But it's a form of a wrap agreement, right?

19 A I don't know the exact specification of an external party's
20 network agreement and how it's designated.

21 Q Fair enough. But as of '17, more of your top 20 clients were
22 using wrap agreements than were using Data iSight, right?

23 A That's what this is saying. Yes.

24 Q Okay. Let's move on. Now, Exhibit 25, page 2, the jury has
25 seen this. This is in evidence. And it looks like at United -- at United, it

1 looks like the majority of the United clients, the ASO clients were on
2 usual, customary, and reasonable using the 80th percentile of FAIR
3 Health, right?

4 A This is a United document. I can't --

5 Q Yes, sir.

6 A -- I can't comment on the percent of overall United clients. I
7 do not have any access to their systems.

8 Q Well, MultiPlan was founded by people on the principle of
9 wrap networks, right?

10 A Yes.

11 Q Okay.

12 A It's on PPO networks.

13 Q Yes, sir. And now let's go to Exhibit 267. No, actually, hold
14 on. We're going to skip ahead. Oh, we were talking about that
15 conversion factor in that long script, right?

16 A Uh-huh.

17 Q That's data that you buy out of a market, right, that anybody
18 can buy?

19 A Yes.

20 Q Okay. And let's talk about what that conversion factor is. So
21 you claim that -- let's look at Exhibit 16.

22 MR. ZAVITSANOS: Is that in, Michael?

23 MR. KLLINGSWORTH: I show it as not in.

24 MR. ZAVITSANOS: May I ask counsel, Your Honor, if you
25 have an objection to Exhibit 16? And specifically, I want to ask about

1 page 11. It is a direct reply to what he raised.

2 MR. ROBERTS: Just a second. I'm trying to find the exhibit.

3 MR. ZAVITSANOS: Yes.

4 MR. ROBERTS: Thank you, sir.

5 BY MR. ZAVITSANOS:

6 Q Would you please look at Exhibit 16, while they're doing that,
7 please, and go to page 11?

8 MR. ZAVITSANOS: I had to show counsel, Your Honor. This
9 is the only page I'm going to use. I'm just trying to speed this along.

10 MR. ROBERTS: No objection, Your Honor. I'd note that it's
11 marked proprietary by MultiPlan.

12 MR. ZAVITSANOS: Okay. Michelle --

13 THE COURT: And 16 will be admitted.

14 [Plaintiffs' Exhibit 16 admitted into evidence]

15 MR. ZAVITSANOS: Thank you, Your Honor.

16 Page 11, Michelle.

17 BY MR. ZAVITSANOS:

18 Q Okay. So this is another MultiPlan document. And this is
19 talking about Data iSight practitioner. That's what you use for doctors
20 rather than facilities, right?

21 A Yes.

22 Q Okay. Pull this out, Michelle, the box. And right here it says,
23 "proprietary conversion factor." You see that?

24 A Yes.

25 Q Now, conversion factor, you went out and you bought off the

1 shelf data available in the public, right?

2 A Yes.

3 Q Proprietary, right? Okay.

4 A Define usage of proprietary.

5 Q Okay. Now, let's go -- 38. Okay. 38.

6 MR. ZAVITSANOS: Is that in? Let me ask counsel first. I
7 don't think it is, Your Honor.

8 MR. ROBERTS: It is not in.

9 THE COURT: It is not.

10 BY MR. ZAVITSANOS:

11 Q Would you look at Exhibit 38, please, yourself? Tell me if
12 that's the right paper on the methodology of how Data iSight would.

13 A Yes.

14 MR. ROBERTS: And we object to this document as to being
15 incomplete, partial, and foundation with this witness.

16 MR. ZAVITSANOS: Let me lay a foundation.

17 BY MR. ZAVITSANOS:

18 Q Is this the white paper that talks about the secret formula and
19 how it works?

20 A This is a white paper that describes the Data iSight
21 professional module. Yes.

22 Q You're familiar with this document, right?

23 A Yes.

24 Q Okay. And this is something that you work with, right?
25 You're a numbers guy, right?

1 A Yes.

2 Q Okay. And this is a Data iSight document, right?

3 A Yes.

4 Q And this relates exactly to the issue that you're discussing
5 with Mr. Roberts, right?

6 A What issues are you talking about?

7 Q The Data iSight issues of how it works, right?

8 A About the operational processes --

9 Q Yeah.

10 A -- et cetera?

11 Q Yeah.

12 A Not issues.

13 Q Is that right?

14 A I agree to it we talked through the operational processes. I
15 don't necessarily agree with the word issues.

16 Q Well, you talked about how it operates, right?

17 A Yeah.

18 MR. ZAVITSANOS: I move for the admission of 38.

19 MR. ROBERTS: No objection, Your Honor. I'd note for the
20 record it's been marked as confidential and proprietary.

21 BY MR. ZAVITSANOS:

22 Q Okay. Let's look at --

23 THE COURT: 38 is admitted.

24 [Plaintiffs' Exhibit 38 admitted into evidence]

25 MR. ZAVITSANOS: Sorry, Your Honor.

1 BY MR. ZAVITSANOS:

2 Q Let's look at the secret formula. Okay. Let's start here, first
3 paragraph. Okay. This module is available to address out-of-network
4 physician and other medical healthcare professional claims before
5 payment is made utilizing a unique, proprietary methodology that is
6 applied consistently in all professions, right? Right, sir?

7 A Yes. That's what it says.

8 Q Okay. Page 3. Okay.

9 MR. ZAVITSANOS: Michelle, please put up page 3. Let's go
10 to page 3. Now, let's pull this up.

11 BY MR. ZAVITSANOS:

12 Q This is the Medicare formula, right?

13 A Yes. It says the general formula for calculating Medicare
14 payments.

15 Q Okay. Now, let's pull this up. This is the Medicare formula,
16 right?

17 A Yes. It says the general formula for calculating Medicare
18 payments.

19 Q Okay. Now, I'm not going to go through each of these. But
20 we're going to put that up next to your proprietary formula. Let's go
21 next, please, to page 5.

22 MR. ZAVITSANOS: Let's go to page 5, please, Michelle. I
23 want to look at one thing. Actually, no. Let's put up the comparison.
24 Page 5. So let's pull up this formula here. This formula right here,
25 Michelle. Okay. And pull it up next to this formula, which is the seven

1 herbs and spices.

2 BY MR. ZAVITSANOS:

3 Q You know the seven herbs and spices are proprietary, right,
4 in KFC? Sir?

5 A Yes, I do.

6 Q Yes, sir. Okay. So now let's pull up -- now let's take a look
7 and let's compare. Okay.

8 MR. ZAVITSANOS: And Michelle, I know I have a hard time
9 seeing, but you're going to have to reduce that a little bit. Okay. Here
10 we go.

11 BY MR. ZAVITSANOS:

12 Q All right. Here we go. Now, okay. So let's start. Let's take a
13 look first at the Medicare formula. And I don't want to know what they
14 mean. I just want to know which one is different. Okay. So first,
15 Medicare starts with work RBU, right?

16 A Yes.

17 Q You start with work RBU?

18 A Uh-huh.

19 Q Next, times work GPCI. You use work GPCI, right?

20 A Yes. We adjust for locality.

21 Q Well, sir, I'm just talking about the formula now. I'm going to
22 get to the locality in just a minute. So far, the formula is the same, right?

23 A Yes.

24 Q Next, practice expense, right? Practice expense?

25 A Yes.

1 Q Okay. Which doesn't apply, by the way, to professional
2 claims, right?

3 A Medicare -- the --

4 Q No, right?

5 A No. The foundation of practice expense is a part of the AMA
6 and CMS formula that we use for our product.

7 Q I'm sorry, I didn't mean to cut you off. All right. Practice
8 expense, RBU, blah, blah, blah, the same, right?

9 A Yes.

10 Q Malpractice the same, right?

11 A Yes. All adjustments to account for industry standard
12 expenses.

13 Q Okay. So far, your secret formula is exactly the same as
14 Medicare?

15 A It has the same industry standard components of Medicare.

16 Q My question, sir, is the secret formula that you're pitching to
17 the world is proprietary so far is identical? Like in My Cousin Vinny,
18 identical, right?

19 A It has the same --

20 MR. ROBERTS: Objection. Asked and answered.

21 THE COURT: Objection's sustained.

22 THE WITNESS: It has the same components of an industry
23 standard defensible --

24 BY MR. ZAVITSANOS:

25 Q I'm going to get to defensible. What you're defending here

1 in this first trial, that's what you mean by defensible, is if somebody calls
2 you on it, you can put up something complicated like this and the people
3 are going to go woah, that looks -- that looks official? That's what
4 defensible means, right?

5 MR. ROBERTS: Objection. Compound and argumentative.

6 THE COURT: Objection's sustained.

7 MR. ZAVITSANOS: Michelle, pull up that for me.

8 BY MR. ZAVITSANOS:

9 Q Okay. So now, it looks like Medicare applies a conversion
10 factor, right?

11 A Yes.

12 Q And so do you. So far, apples-to-apples. This super-secret
13 formula is exactly the same as Medicare, right? The program that you
14 said is woefully deficient, sir.

15 MR. ROBERTS: Objection. Compound.

16 THE COURT: Objection sustained. You have to break it
17 down.

18 BY MR. ZAVITSANOS:

19 Q So far, at least the formula is identical, right?

20 A Yes.

21 Q Okay.

22 A The components of the formula are identical.

23 Q And then this conversion factor, you went and bought a
24 bunch of data off the shelf, and you plugged it in, right?

25 A We looked -- we purchased data.

1 Q Yeah.

2 A Defensible, large sets of data that is a true representation of
3 an allowable that is being paid and allowed in the marketplace.

4 Q Okay. I'm sorry, sir. My question was this super-secret
5 formula, which is available to anybody, this one, with a computer, the
6 only difference is you plugged in some public, available, off the shelf
7 data, and that's how you come up with your number, right?

8 A No. We come up with seven different conversion factors,
9 okay? We don't know how Medicare comes up with their \$36.01 here.
10 We have to take what's being paid in the market and translate it to
11 conversion factors.

12 Q Well, sir, my question is this conversion factor that is off the
13 shelf data, right, that's what -- that's what it's based on? You bought it
14 publicly. It's publicly available. Not proprietary.

15 A Yeah.

16 Q Okay. And so --

17 MR. ZAVITSANOS: And by the way, Michelle, go back to
18 page 5. Right here.

19 BY MR. ZAVITSANOS:

20 Q And that, sir, is why United took to this like a camel to water,
21 right here, right?

22 MR. ROBERTS: Is there a question, Your Honor?

23 THE COURT: Yeah. That wasn't a question. You'll have to
24 ask a question.

25 BY MR. ZAVITSANOS:

1 Q This is why United used Data iSight, because they can
2 specify what the outcome is going to be under the guise of a proprietary
3 formula that sounds fancy and defensible, right, sir?

4 MR. ROBERTS: Objection. Argumentative. Compound.
5 Foundation. Calls for speculation.

6 THE COURT: Objection sustained.

7 BY MR. ZAVITSANOS:

8 Q This is why United bought this, right, sir?

9 MR. ROBERTS: Objection. Calls for speculation.

10 THE COURT: It does.

11 BY MR. ZAVITSANOS:

12 Q This is how you pitch it? This is -- this is what you all pitch to
13 your insurance clients that the client can specify the overwrite, right, to
14 make sure that the outcome is always 100 percent of the time exactly
15 what the insurance company wants to pay, right?

16 A Disagree.

17 Q Isn't that what that says, the client can specify a high or low
18 override?

19 A The client has to be able to be -- like I said before, adapt to
20 what an employer wants from their out-of-network cost contingency.

21 Q Let's not talk about employers. Have you talked -- have you
22 spoken with any of the United employers in this case?

23 A No.

24 Q Okay. I want to know about MultiPlan and just MultiPlan.

25 A Okay.

1 Q This is why United ran right here because they can dictate
2 exactly how much they want to pay, right?

3 A I can't comment on behalf of United.

4 Q All right. Let's move on.

5 THE COURT: Actually, if you're going to transition to another
6 subject, this is a good time to take our last break of the day. So during
7 this recess, don't talk with each other or anyone else on any subject
8 connected with the trial. Don't read, watch, or listen to any report of or
9 commentary on the trial. Don't discuss this case with anybody
10 connected to it by any medium of information including without
11 limitation newspapers, television, radio, internet, cell phones, or texting.

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

17 Most importantly, do not form or express any opinion on any
18 subject connected with the trial until the matter is submitted to the jury.
19 Let's be back at 3:55. I know it's a short break.

20 THE MARSHAL: All rise for the jury.

21 [Jury out at 3:46 p.m.]

22 [Outside the presence of the jury]

23 THE COURT: It looks like the room is clear. Plaintiff,
24 anything for the record?

25 MR. ZAVITSANOS: No, Your Honor.

1 THE COURT: Defendants, anything for the record?

2 MR. BLALACK: Not at this time, Your Honor. We've got a
3 couple things to resolve. We can do that in just a minute before the jury
4 comes back in.

5 THE COURT: Great. Thank you.

6 MR. ROBERTS: And Your Honor, I'm going to assume the
7 answer is still the same that they opened the door to costs. We've heard
8 a lot about cost over the last hour. Cost of methodologies and --

9 THE COURT: No, because the answer wasn't -- it was not
10 relevant.

11 MR. ROBERTS: Thank you, Your Honor.

12 THE COURT: Uh-huh.

13 [Recess taken from 3:47 p.m. to 3:56 p.m.]

14 THE MARSHAL: -- back in session.

15 THE COURT: Thanks, everyone. Let's bring in the jury.

16 [Pause]

17 THE MARSHAL: All rise for the jury.

18 [Jury in at 3:58 p.m.]

19 THE COURT: Thank you. Please be seated.

20 Mr. Zavitsanos, please continue.

21 MR. ZAVITSANOS: Thank you, Your Honor. And may I ask
22 counsel if counsel has an objection to Plaintiff's Exhibit 34?

23 BY MR. ZAVITSANOS:

24 Q Would you please get to Exhibit 34, sir?

25 [Pause]

1 MR. ROBERTS: Just foundation, Your Honor.

2 And, counsel, if you're going to move any other exhibits, if
3 you could provide me a list, so I can have my paralegal start pulling
4 them for me?

5 MR. ZAVITSANOS: Of course.

6 MR. ROBERTS: It might speed things up.

7 MR. ZAVITSANOS: Yes. I don't know if I'm going to use all
8 of these, because I may cut off, but let me give you a list.

9 Can I do that, Your Honor?

10 THE COURT: Uh-huh.

11 MR. ZAVITSANOS: 16, 38. And some of these may be
12 admitted. 376, 460, and 492.

13 BY MR. ZAVITSANOS:

14 Q Okay. Would you look at 34, please?

15 A Yeah.

16 Q Got it?

17 A Yeah.

18 Q Does this appear to be a MultiPlan document discussing the
19 general characteristics of Data iSight?

20 A Yeah. It's titled Data iSight.

21 Q Okay. Would you look on the second page and see if that
22 includes -- and the third page -- in written form, some of what you
23 discussed with Mr. Roberts?

24 A Yes.

25 Q Okay.

1 MR. ZAVITSANOS: Your Honor, we move for the admission
2 of Plaintiff's 34.

3 MR. ROBERTS: No objection.

4 THE COURT: Exhibit 34 will be admitted.

5 [Plaintiffs' Exhibit 34 admitted into evidence]

6 BY MR. ZAVITSANOS:

7 Q All right. Let me get through this quickly. So this is a
8 MultiPlan document. And this is something that you provide to your
9 client, to your insureds' clients, right?

10 MR. ZAVITSANOS: All the way down, Michelle. I need the
11 fine print. In fact, I need just the fine print.

12 BY MR. ZAVITSANOS:

13 Q Right, sir?

14 A Yes. This looks like a presentation we would present to a
15 client.

16 Q Okay. So let's see what this says. Data iSight is MultiPlan's
17 solution for repricing medical bills when an agreement is not available.
18 By the way, do you know how many emergency room doctors in Nevada
19 are out-of-network?

20 A No, I do not.

21 Q Okay. If we take the Team Health -- the three Plaintiffs out of
22 the equation, do you know whether it's almost half?

23 A I don't know the exact specification.

24 Q Fair enough. All right.

25 MR. ZAVITSANOS: Pull that out again, Michelle, please.

1 BY MR. ZAVITSANOS:

2 Q Okay. So continue. With Data iSight, you can from
3 significant savings on non-contracted bills -- that's out-of-network, right?

4 A Yes.

5 Q Out-of-network?

6 A Yes.

7 Q And your client will lose the inquiries and appeals that
8 typically accompany usual and customary reductions, right? That's what
9 it says.

10 A Yeah. That's what the note is on the bottom.

11 Q Now one of the things you discussed with Mr. Roberts was
12 that Team Health did not appeal, right?

13 A That's what he asked me. Yes.

14 Q What do you think we're doing here? Do you think we'd
15 rather let you decide or let them decide? You understand some of the
16 claims run through Data iSight are at issue in this case? You understand
17 that?

18 A Yes, I do.

19 Q So are you saying that by not appealing somehow, that we
20 shouldn't look at whether these charges are reasonable value or not?
21 Are you saying that?

22 A I'm saying that's a -- that's a component of whether or not
23 the claims were appealed or not of a disputed payment or
24 reimbursement a month.

25 Q But MultiPlan is fair.

1 THE COURT: Watch the interruptions.

2 MR. ZAVITSANOS: I'm sorry, Your Honor.

3 BY MR. ZAVITSANOS:

4 Q MultiPlan is fair, right?

5 A You're kind of generalizing our entire company as fair. So
6 I'm not really understanding the context. Can you elaborate?

7 Q Yes, sir. I'm sorry. In connection with an appeal, MultiPlan is
8 fair, right?

9 A Our reimbursement is a fair and reasonable representation of
10 what's in the market.

11 MR. ZAVITSANOS: Page 2, Michelle.

12 BY MR. ZAVITSANOS:

13 Q And it's fair, even though --

14 MR. ZAVITSANOS: Pull this out. Actually, Michelle, pull out
15 flexible. Just flexible.

16 BY MR. ZAVITSANOS:

17 Q It's fair even though you tell your client you had set it up so
18 that it's guaranteed to fall below usual and customary.

19 MR. ZAVITSANOS: Will you highlight that, Michelle?

20 BY MR. ZAVITSANOS:

21 Q See that? See that?

22 A Yes, I do.

23 Q Yeah. Configurable means you can kind of set it so that,
24 guaranteed, it's going to be less than usual and customary, right?

25 A No. The Data iSight has the ability to customize based on a

1 client's specific out-of-network needs.

2 Q Well, so I'm just going by what you write. Configurable,
3 that's you. You can configure it, right?

4 A Yes, we can set it up in accordance to client out-of-network
5 benefit plan --

6 Q Yeah. I mean --

7 A -- strategies.

8 Q -- for example, you know those adjustable basketball goals,
9 right --

10 A Yes.

11 Q -- that have a height -- you can configure it so that the
12 basketball net is 14 feet high, so that nobody could dunk, right, if you
13 want to do that, right?

14 A You could, yes.

15 Q And that's what we're talking about here. You're configuring
16 it to make sure that your client's usual and customary amount is never
17 hit. That's what you're selling this [indiscernible], right, sir?

18 A We're selling it, again, as a -- every client has needs on an
19 out-of-network side --

20 Q Yeah.

21 A -- to adjust for. Every employer plan is different.

22 Q Now let's look at one other thing. Plaintiff's 34. And I want
23 to look at Plaintiff's 34 and compare it to 107A.

24 MR. ZAVITSANOS: Michael, what page is that, please? Oh, I
25 got it.

1 So let's put up Plaintiff's 34, page 7. And put it up next to
2 170A, page 17.

3 BY MR. ZAVITSANOS:

4 Q And let's see what else you tell the clients.

5 MR. ZAVITSANOS: 34, page 7 on the left, Michelle. Okay.
6 Michelle, will you please pull out number 1.

7 BY MR. ZAVITSANOS:

8 Q And there's another MultiPlan document that the jury saw
9 briefly during another witness.

10 MR. ZAVITSANOS: And, Michelle, I need you to pull up the
11 third bullet point under rationale. Okay. Now let's put -- okay. So let's
12 look at the one on the left first.

13 BY MR. ZAVITSANOS:

14 Q This is -- both of these are documents intended to go to the
15 client, right? Right.

16 A I don't know the origins of the document and if they were
17 ever intended to go to a client. I'm not in sales and marketing. I can't
18 comment on the intent of somebody.

19 Q And these documents say -- you've heard the golden rule, he
20 who has the gold makes the rules?

21 MR. ROBERTS: Objection. Argumentative.

22 THE COURT: Objection sustained.

23 BY MR. ZAVITSANOS:

24 Q This document basically says you can do whatever you want,
25 regardless of what the plan language says. We got your back. Right?

1 A I don't necessarily agree with that. I -- it -- the context of it, I
2 just -- I can't tell you.

3 Q Well, the first one, if the methodology is intended to --

4 MR. ZAVITSANOS: No, right here.

5 BY MR. ZAVITSANOS:

6 Q -- to compliment your benefit limit, we can negotiate --

7 MR. ZAVITSANOS: Circle the word "or reverse", Michelle.

8 BY MR. ZAVITSANOS:

9 Q Or reverse on appeal. You see that?

10 A Yes.

11 Q And then more explicitly, if the benefit plan language
12 requires the 60th percentile --

13 MR. ZAVITSANOS: Circle the word "requires", Michelle.

14 BY MR. ZAVITSANOS:

15 Q You see that word requires?

16 A Yes.

17 Q That means no discretion, right? Requires means no
18 discretion, right, sir?

19 A I don't know the exact definition of requires.

20 Q You're required to pay minimum wage, right?

21 A Yes.

22 Q So we can just pay them three dollars an hour. And if they
23 complain, all right, we'll pay minimum wage, right? Right?

24 A No.

25 Q Sir, you're basically saying you're going to ignore the plan

1 language.

2 A Again, I don't know --

3 Q And then -- let me finish, sir.

4 A Sorry.

5 Q MultiPlan is telling United and these other insurance
6 companies we will ignore the requirements in your plan documents, and
7 we can adjust it on appeal --

8 MR. ZAVITSANOS: Right here, Michelle.

9 BY MR. ZAVITSANOS:

10 Q -- as needed. Right? With your magic tool, right?

11 MR. ROBERTS: Objection. Argumentative.

12 THE COURT: Objection sustained.

13 BY MR. ZAVITSANOS:

14 Q You're telling your insurance clients that you're going to
15 ignore the plan language and adjust it on appeal as needed, right?

16 A No. I don't --

17 Q Let me rephrase.

18 A I don't agree with the statement, and I don't, A, know if this
19 ever went to a client.

20 Q Wait a minute now. You don't agree with this statement?
21 Let's look at the first page of Plaintiffs' 34.

22 A No. What I meant to say is I don't condone this type of
23 language, what this is. And I don't know the context it was used it, nor
24 do I know the discussions that actually happened on them.

25 Q 178, page 1. So you are a vice-president at MultiPlan. 178,

1 page 1.

2 A In Health --

3 Q You don't condone what is in this document, right, sir?

4 A That's not what I said. I don't condone that statement. Okay.

5 Q How many levels of review do you think this document went
6 through before you all presented it to United Healthcare?

7 A I do not know.

8 Q Would you tell the jury why you don't condone this
9 language? What's wrong with it?

10 A Just the context that it's used in.

11 Q What's wrong with it?

12 A It sounds like it's not used in the correct context. That's what
13 I --

14 Q Okay.

15 A I don't know the intention of it.

16 Q All right. Now you claim that Data iSight is completely
17 transparent, right?

18 A Yes.

19 Q Exhibit 376, page 3. Pages 2 and 3.

20 MR. ZAVITSANOS: Michelle, pull out the email beginning at
21 the bottom of page 2, top of page 3.

22 BY MR. ZAVITSANOS:

23 Q And then we're going to get to why you're really here, sir,
24 after this.

25 MR. ZAVITSANOS: Pull out from here to here. All the way

1 down, Michelle. Oh, you're going to do -- I'm sorry. Go ahead. Thank
2 you.

3 BY MR. ZAVITSANOS:

4 Q Okay. So the jury has seen this before. Take a second to
5 read it to yourself. I'm not going to read it out loud. The jury has heard
6 it. Does this appear to be an email, internal at MultiPlan, that a
7 gentleman by the name of Kent Bristow was trying to get to the bottom
8 of this, of how this magic formula worked?

9 MR. ZAVITSANOS: Highlight Kent Bristow, Michelle.

10 BY MR. ZAVITSANOS:

11 Q Is that what that looks like to you, sir?

12 A That looks like it's an email from Mike -- or from Mike
13 McEttrick to Susan and Mike.

14 Q Yeah.

15 A And it's basically saying that Kent Bristow has requested a
16 meeting with somebody from our organization knowledgeable about
17 Data iSight to learn more about the pricing methodology.

18 Q Exhibit -- okay. Now let's see what you said. 376, page 1.
19 Same document. Same email chain. Oh, by the way, I just saw a
20 Naperville address. You see that?

21 A Yes.

22 Q That's where McDonald's is. That's where they're
23 headquartered, right?

24 A No. It's actually Oprah.

25 Q Oprah. And McDonald's has the secret sauce for the Big

1 Mac, right? Right? And nobody knows that it's mayonnaise and
2 Thousand Island dressing, because that's a secret, right, sir?

3 A I can't comment on McDonald's secret sauce.

4 Q Okay. So let's move on here. And it says --

5 MR. ZAVITSANOS: Michelle, I need the lower email, please,
6 on page 1 at the bottom, please. I need -- I can't read that, Michelle. It's
7 the one -- hold on, Michelle. 176, page 1 is the July 10, 2019 at 7:50 a.m.
8 Okay. So --

9 BY MR. ZAVITSANOS:

10 Q Okay. Bruce Singleton to Michael McEttrick. Mr. McEttrick
11 was your boss previously, right?

12 A Yes, he was.

13 Q And this is the only time that you can remember a provider
14 ever calling to try to find out about Data iSight, right?

15 A Yeah. I've never had a provider request --

16 Q Except this one?

17 A Yeah.

18 Q We're trying to keep it eye level with Team Health.

19 MR. ZAVITSANOS: Can you highlight that, Michelle?

20 BY MR. ZAVITSANOS:

21 Q We're trying to keep it eye level with Team Health, meaning
22 we're not going to give them any information. We're going to give them
23 the pitch, right?

24 A I can't comment on Bruce's -- Bruce Singleton's intentions
25 on --

1 Q Okay. One more document --

2 A -- what he meant to say.

3 Q -- and then we're going to talk about why you're here. And
4 that is --

5 THE COURT: No more -- hey. No more interruptions.

6 MR. ZAVITSANOS: I'm sorry. My apologies, Your Honor.
7 Just trying to speed it along. I apologize.

8 THE COURT: You should apologize to the witness not me.

9 MR. ZAVITSANOS: Yes, Your Honor.

10 BY MR. ZAVITSANOS:

11 Q Exhibit 460. Hold on. I don't think that's it. 460. Would you
12 please get 460?

13 MR. ZAVITSANOS: I asked counsel. He has a composition of
14 this. Is that it?

15 MR. ROBERTS: Yeah.

16 [Counsel confer]

17 MR. ZAVITSANOS: Counsel, do you have any objection to
18 460?

19 MR. ROBERTS: 460?

20 MR. ZAVITSANOS: Yes, sir.

21 [Pause]

22 MR. ROBERTS: Objection. Hearsay.

23 MR. ZAVITSANOS: That -- let me lay the foundation, Your
24 Honor.

25 BY MR. ZAVITSANOS:

1 Q Can you please look at 460, sir?

2 A Yes, sir.

3 Q Does this appear to be a discussion -- first of all, does this
4 appear to be internal emails at MultiPlan talking about Team Health and
5 Data iSight and the processing of claims using Data iSight?

6 A It looks to be a network development discussion, but it has
7 Data iSight in there. Yes.

8 Q Okay. And does it discuss the reimbursement methodology
9 by United Healthcare using Data iSight to Team Health, sir?

10 A All right. Give me a second to read it.

11 Q Yes.

12 A Thank you.

13 Q I'll give you a little clue. Look at the first page.

14 A Sorry.

15 Q That's okay.

16 A So can you repeat the question again?

17 Q Yes, sir. Does this appear to be a discussion about Data
18 iSight clients submitted by Team Health for United insureds?

19 A Yeah. I see Team Health on here and Data iSight. I don't -- I
20 can't speak on behalf of the subjects that are in this, on what's actually
21 being discussed.

22 Q Yes, sir. Do you see at the bottom of the page some Bates
23 numbers with the Bates numbers beginning MP?

24 A Yes.

25 Q I'll represent to you that is a MultiPlan Bates number in

1 response to a subpoena. Okay. You with me?

2 A Okay.

3 Q Any reason to doubt the authenticity of these emails
4 produced by MultiPlan in this case?

5 MR. ROBERTS: We don't object to authenticity, Your Honor.
6 Just foundation and hearsay.

7 MR. ZAVITSANOS: Hearsay, Your Honor, is a statement
8 against interest, because he talked about --

9 THE COURT: No. No speaking objections. See if you can lay
10 your foundation.

11 MR. ZAVITSANOS: Okay.

12 BY MR. ZAVITSANOS:

13 Q You told Mr. Roberts that Team Health did not appeal, right?
14 Remember that chart on the bottom, right?

15 A Yes. That's what the data showed. Yeah.

16 Q Is this document -- does it -- is it within the date range?

17 A It looks like it's after the date range.

18 Q Okay. But often file claims during the date range, sir?

19 A One can conclude, yes, if it's in March 2020 --

20 Q Okay.

21 A -- it would have fallen into the date range.

22 Q Okay. And does this address some of the points that Mr.
23 Roberts was covering with you regarding overrides?

24 A I really don't understand what the context of the
25 conversation is here to assess to give you a valid statement of my

1 opinion of this.

2 Q Does this email discuss benchmark pricing?

3 A Yes, it does say benchmark pricing at 400 percent.

4 Q Did you discuss benchmark pricing with Mr. Roberts on your
5 examination?

6 A I don't know if I did.

7 MR. ROBERTS: I did not, Your Honor.

8 BY MR. ZAVITSANOS:

9 Q Does this also discuss Data iSight claims involving Team
10 Health?

11 A Yes, I do see Data iSight.

12 MR. ZAVITSANOS: Your Honor, at this time, we'd move for
13 the admission of Plaintiff's 460.

14 MR. ROBERTS: Same objections, Your Honor.

15 THE COURT: I don't think it can be admitted through this
16 witness.

17 MR. ZAVITSANOS: All right. All right. Let me move on.

18 BY MR. ZAVITSANOS:

19 Q Now let's talk about why you're here. You were not
20 subpoenaed, right?

21 A No.

22 MR. ZAVITSANOS: Can you please get Exhibit 492, please?

23 BY MR. ZAVITSANOS:

24 Q During the course of this lawsuit, while we were in trial, did
25 MultiPlan's CEO issue a press release addressing some of the issues that

1 have come up in this case?

2 MR. ROBERTS: Objection. 48.035. May we approach?

3 THE COURT: You may.

4 [Sidebar at 4:20 p.m., ending at 4:21 p.m., not transcribed]

5 BY MR. ZAVITSANOS:

6 Q Who is Mark Tabak?

7 A He's our CEO.

8 Q And you know right now, literally, as I'm asking you
9 questions, there are analysts in Wall Street watching your testimony,
10 right?

11 MR. ROBERTS: Objection. Calls for speculation.

12 THE COURT: Overruled. If it's within his knowledge, you can
13 answer.

14 BY MR. ZAVITSANOS:

15 Q You know MultiPlan is a public company, right?

16 A Yes.

17 Q MultiPlan is -- which means it issues stock on the exchange,
18 right?

19 A Yes.

20 Q And during the course of this trial, you know that some
21 evidence came out that United intends to terminate MultiPlan, right?

22 A I don't know the specifics of the evidence, no.

23 Q But you heard generally about that, right?

24 A Yes.

25 Q And in one day, while Mr. Haben was on the stand, your

1 stock price dropped like 10 percent?

2 MR. ROBERTS: Objection. Testimony by counsel.

3 THE COURT: Objection sustained. You have to ask a
4 question.

5 BY MR. ZAVITSANOS:

6 Q Do you know, based on the testimony that you all are going
7 to get terminated by United, whether or not your stock dropped by 10
8 percent in one day, causing MultiPlan to issue a press release that
9 everything is good with United?

10 A I don't know the origin of a press release or whatnot. That is
11 an executive team. I'm in the healthcare economics area. This is beyond
12 my purview.

13 Q Well, wait a -- did you hear about it? Did you hear about --

14 A Yeah, I actually did.

15 Q Okay. And did you take a moment to read this press release
16 issued by your CEO?

17 A No, I read some of it, but I didn't -- I didn't read the whole
18 thing. This is out of -- I can't control this.

19 Q Well, sir, let me ask --

20 A I focus on things I can control.

21 Q Let's just go through a couple of exhibits before we get back
22 to this. Let's go to 246, page 4. Do you know whether -- before we get
23 there, do you know whether MultiPlan told Wall Street that there's no
24 termination planned, and everything is good, to try and boost its stock
25 price back up?

1 A I don't know.

2 MR. ROBERTS: Objection. Foundation and argumentative.

3 THE WITNESS: Sorry.

4 MR. ROBERTS: And compound.

5 THE COURT: Objection sustained.

6 BY MR. ZAVITSANOS:

7 Q Do you know whether this -- do you know whether a press
8 release was issued in connection with the drop in stock price of
9 MultiPlan, sir?

10 A No, I do not. I'm not in investor relations.

11 Q Well, okay.

12 MR. ZAVITSANOS: We're looking at Exhibit 246, and let's
13 look at this timeline, right here, Michelle.

14 BY MR. ZAVITSANOS:

15 Q And it looks like according to an internal United document in
16 2023, the MultiPlan vendor contract will be terminated. Do you see that?

17 A Yes, I do.

18 Q Do you know whether your CEO, after this evidence was
19 introduced in this court, issued a press release saying that the MultiPlan
20 relationship with United Healthcare remains strong, that it's false, that
21 the contract is going to be terminated?

22 A I do not know the origin of it.

23 Q Do you know whether the company issued that kind of
24 statement to the investing public?

25 A I know it because it was on our website after a Zoom call, it

1 popped up.

2 Q Okay.

3 A And after every Zoom call it pops up.

4 MR. ZAVITSANOS: Your Honor, I move for the admission of
5 492.

6 MR. ROBERTS: Objection. It's hearsay. It says newspaper.

7 MR. ZAVITSANOS: Statement against interest, Your Honor.

8 THE COURT: It will be admitted as a statement against
9 interest.

10 [Plaintiff's Exhibit 492 admitted into evidence]

11 MR. ZAVITSANOS: 492. MultiPlan Corporation releases
12 stock holder update.

13 BY MR. ZAVITSANOS:

14 Q By the way, do you know what's happening to your share
15 price literally right now as we're talking?

16 A I don't watch it.

17 Q Okay. Okay. So this says November 15th, 2021; you see
18 that?

19 A Yes.

20 Q It's very seldom that you have evidence that actually
21 happens during the trial; would you --

22 A I don't know. I'm not familiar with trial proceedings.

23 Q Okay.

24 A Sorry, sir.

25 Q Let's take a look here. So you're on the New York Stock

1 Exchange, right? Do you see that?

2 A Yes.

3 Q Okay.

4 MR. ZAVITSANOS: Let -- Michelle go down. Let's -- right
5 here, Michelle. All the way down. All the way down.

6 BY MR. ZAVITSANOS:

7 Q Recent sworn testimony made clear United Healthcare's
8 position with respect to its relationship with MultiPlan, and further
9 supports our previous comments that the short seller assertions are
10 false; you see that?

11 A Yes.

12 MR. ROBERTS: Objection, Your Honor. We've got a third
13 party analyzing the testimony to the jury. It's for the jury to decide what
14 the testimony is.

15 THE COURT: It's sustained, and the jury will disregard the
16 last question.

17 MR. ZAVITSANOS: Let me move on, Your Honor. Let me --
18 let me go, let me get to -- okay. Close that up. Michelle, let's go to --
19 okay, second page. Right there, Hold on, hold on, Michelle. Scroll up,
20 please. Okay. Right here. From here to here.

21 BY MR. ZAVITSANOS:

22 Q One of the reasons you're here, sir, is because United asked
23 you to come, right?

24 A Yes.

25 Q And what you're trying to do here is hopefully, is salvage

1 your relationship with United by cooperating with them in this case,
2 right?

3 A I'm just doing what's being asked of me from a client
4 standpoint.

5 Q Right. And so when you issued this press release that the
6 false United Healthcare termination quotes narrative has been deployed
7 tactically by opportunistic short sellers seeking to profit at the expense of
8 MultiPlan shareholders; you see that?

9 A Yes.

10 Q We just looked at a document, I mean, do you -- selling short
11 means investors who are betting the stock's going to drop, right?

12 A Uh-huh.

13 Q Right?

14 A Yes.

15 Q We just looked at a document, sir, that said you all are going
16 to get terminated by 2023, right? We just saw it?

17 A Yeah, I saw the document.

18 Q Let's look at Exhibit 420 -- oh, hold on. Let's go the one more
19 question about this, then we're going to talk about two more documents,
20 and then I'm done. Next page. Page 3. Right here. The bottom line is
21 that MultiPlan's relationship with UnitedHealthcare remains strong, and
22 recent sworn testimony contradicts the false suggestion that UHC
23 intends to terminate the relationship; you see that?

24 A Yes, I do.

25 Q Let's look at that testimony.

1 MR. ZAVITSANOS: Let's pull up, Michelle, A7, page 200.
2 This is Mr. Haben, and we're going to start at line 7, and we're going to
3 go down to 17. A little further down. Perfect, Michelle. Thank you.
4 Okay.

5 BY MR. ZAVITSANOS:

6 Q And so what you just -- this is me questioning Mr. Haben.

7 A Uh-huh.

8 Q "And so what you decided to do, United Health Plan was in
9 2018, you decided to turn on MultiPlan, and go after them, get rid of
10 them, and set up a competing company, so that the 300 million that they
11 were making would now go to you, right?

12 "A We created another option for clients at a lower amount.
13 They could still adopt MultiPlan if they wanted to.

14 "Q But the motive for that was the 300 million dollars you were
15 paying, and you were multiplying, so that instead of it going into
16 MultiPlan's pocket, now you got the momentum going, it would go into
17 you all's pocket instead, right?

18 "A We wouldn't have to pay a fee for it."

19 Do you see that?

20 A Yes.

21 Q Does that sound 180 digress inconsistent with what your
22 CEO is telling Wall Street?

23 A All I can comment on is what I see from an analytic
24 standpoint and requests, when I talked about the 28,000 requests we get
25 a year, I've gotten more requests for United Healthcare in things that --

1 for us to analyze and help improve their benefit plans than I ever have
2 before in the last three months.

3 Q In the last three months?

4 A Yeah.

5 Q Right before this trial started?

6 A No.

7 Q Okay. All right.

8 A It has to do with --

9 Q Let's go to three -- is 320 calling Michael?

10 THE COURT: You didn't finish your answer; did you want to?

11 THE WITNESS: That's fine.

12 MR. ZAVITSANOS: Yes, and real quick, 323, Michelle, page

13 2.

14 BY MR. ZAVITSANOS:

15 Q Sir, have you seen this? Project Airstream, Naviguard. Do
16 you know what Naviguard is?

17 A Yes, I do.

18 Q Okay. 320 -- 324, page 2.

19 MR. ZAVITSANOS: Michelle, pull out problem and GAP, the
20 two. Actually, pull up problem, GAP solution.

21 BY MR. ZAVITSANOS:

22 Q Okay. I'll represent to you, sir, and try to finish agreements
23 here. This is April of '19. The problem, high out-of-network charges, the
24 GAP, MultiPlan or other rep networks perpetuate the problem; you see
25 that?

1 A Uh-huh.

2 Q The solution, a consumer protection NewCo to reduce out-of-
3 network spend and provide United Healthcare with a market-leading
4 monetized solution; you see that?

5 A Yes, I do.

6 Q And it's going to engage in negotiations post-event, right?

7 A Yes.

8 Q And it's --

9 MR. ROBERTS: Your Honor, this is a note, so just --

10 THE COURT: Be careful.

11 MR. ROBERTS: -- reminder to counsel, follow our protocols.

12 MR. ZAVITSANOS: I'm not reading any numbers, Your
13 Honor.

14 THE COURT: Thank you.

15 MR. ZAVITSANOS: And then at the bottom, Michelle, right
16 here, highlight that.

17 BY MR. ZAVITSANOS:

18 Q You're going to position this NewCo as a third party so that
19 United Healthcare can keep the revenue and growth potential, right?
20 You see that, sir?

21 A Yes, I see that.

22 MR. ZAVITSANOS: Okay. Next, let's go to 422, page 1.

23 Okay. This is 2019 again. Right here, Michelle. All the way down.

24 BY MR. ZAVITSANOS:

25 Q Does this appear to be an internal United discussion where

1 they're trying to see if they could swap out Naviguard from MultiPlan
2 without having to go back to the clients and getting them to sign off on it
3 based on how loose the language is in the planned benefits?

4 A Yeah, I can't comment on -- I don't deal with clients directly.
5 Like I don't even recognize anything like this. If this is a United
6 document, I don't -- I shouldn't really comment on this.

7 Q Last document, 478, which is in, page 1. Naviguard
8 frequently asked questions; you see that?

9 A Yes.

10 Q The key account, the national account sales strategy for
11 Naviguard is to roll out and support E&I sales strategy by providing a
12 better option for clients who have remained unreasonable and
13 customary; you see that?

14 A Yes.

15 Q All right. And they're going to out and start bidding in 2021.
16 Okay. Now let's go, please, to page 4. Who is Naviguard?

17 MR. ZAVITSANOS: Pull that out, Michelle.

18 BY MR. ZAVITSANOS:

19 Q Number 1, Naviguard is a UnitedHealth Group company
20 designed to bring value to our clients with aggressive reimbursement
21 strategies, we provide consumer support in negotiations with providers
22 to reduce the bill. That's what you do, right?

23 MR. ROBERTS: Objection. Beyond the scope of direct.

24 MR. ZAVITSANOS: Actually, Your Honor, it's directly
25 responsive to the --

1 THE COURT: Overruled.

2 BY MR. ZAVITSANOS:

3 Q That's exactly what you all do, right?

4 A Yes, we provide similar services.

5 Q Okay. Next page, 478, page 7. 478, page 7.

6 MR. ZAVITSANOS: Okay, Michelle, please pull out 15.

7 BY MR. ZAVITSANOS:

8 Q And it looks like UnitedHealth Group is thinking about
9 offering it to people other than United Healthcare. That's a possibility.
10 You see that?

11 A Yes.

12 Q Okay. And let's go to page 13, and we're going to end on
13 page 14. Page 13, number 16. Now here we go. What is the expected
14 success rate of negotiations? Talking about Naviguard. We are using
15 the success rate of OCM advocacy. Now that's you, right?

16 A It --

17 Q That's MultiPlan, right?

18 A We do not have any products called OCM. I believe that's a
19 United term that I can't comment.

20 Q Yes, sir. You, OCM uses Data iSight, and it has member
21 advocacy as part of the offering, right?

22 A Again, we offer 19 or so different packages on behalf of
23 United Healthcare clients.

24 Q Yeah. So they're looking at what you're doing, and using it
25 as a basis for what Naviguard is going to do, right?

1 A I can't comment on how -- what United put into this
2 document and the comparisons that they drew on it.

3 MR. ZAVITSANOS: Let's go to page 14, and put that up next
4 to 43, Michelle. Exhibit 43, next to -- Exhibit 478, page 14. Okay.

5 Michelle, please pull out number 2 on the left, and pull out background
6 on the right. Now here's the difference. The one on the bottom, yeah,
7 right there. Okay.

8 BY MR. ZAVITSANOS:

9 Q So the one on the right is from 2016, and it's talking about
10 that Data iSight is going to provide a legally sound process versus our
11 random calculated amounts; you see that? On the right? That's before
12 they started using Data iSight; are you with me, sir, on the right?

13 A Yeah, I'm with you. I really don't understand the context of
14 the two documents again because I don't work for United.

15 Q Well, let's find out. The one on the right is from late 2019,
16 and it says Naviguard pricing.

17 MR. ZAVITSANOS: Right here, Michelle.

18 BY MR. ZAVITSANOS:

19 Q Naviguard pricing is based on several things and tell me if
20 you get a sense of déjà vu as you're reading that. That sounds like you.
21 That sounds like Data iSight, right? The magic formula. Naviguard
22 pricing is based on several things, propriety reimbursement logic,
23 situation factors, site of service level of care, industry benchmarks, and it
24 is geographically adjusted. That sounds exactly like Data iSight, right?

25 A I can't comment on what pricing Naviguard offers.

1 Q That sounds exactly like Data iSight, right?

2 A Those are industry terms, yes.

3 Q I mean, does it seem to you, sir, that United figured out that
4 all you all do is just buy something off the shelf, so instead of paying you
5 300 million, they're going to do it themselves and package it under some
6 new company that sounds official?

7 MR. ROBERTS: Objection. Compound. Argumentative.

8 THE COURT: Objection sustained.

9 MR. ROBERTS: Calls for speculation.

10 MR. ZAVITSANOS: Well, let me break it down.

11 BY MR. ZAVITSANOS:

12 Q Based on what we've seen here, sir?

13 A Uh-huh.

14 Q Does it appear to you, number 1, that this termination is
15 going to happen by 2023 based on what we've seen?

16 A Is that a question to me?

17 Q Yeah, yeah. Does that seem to you like this termination plan
18 is on track?

19 MR. ROBERTS: Objection, Your Honor. Foundation and
20 counsel has selectively showed him portions of Haben's deposition.

21 THE COURT: Objection sustained.

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

23 THE COURT: Okay. So redirect, please.

24 MR. ROBERTS: Yes. Thank you, Your Honor.

25 THE COURT: When you're ready.

1 MR. ROBERTS: Thank you. Waiting for the witness to turn
2 around here, Your Honor.

3 THE WITNESS: Sorry. I want to make sure they're in order.

4 MR. ROBERTS: No problem, Mr. Crandell.

5 REDIRECT EXAMINATION

6 BY MR. ROBERTS:

7 Q Okay. Let's go back to some of the questions that Mr.
8 Zavitsanos asked you. First of all, I'm not going to pull up the document,
9 but there was a comparison made of between your formula and a
10 Medicare formula.

11 A Uh-huh.

12 Q Do you recall that?

13 A Yes.

14 Q And Mr. Zavitsanos asked you if you compared the Medicare
15 formula to Data iSight, the components of the formula are identical; do
16 you recall that?

17 A Yes.

18 Q But you said that doesn't mean it's identical, but he wouldn't
19 let you explain, remember that?

20 MR. ZAVITSANOS: Objection, Your Honor. Leading.

21 THE COURT: It's foundational. Overruled.

22 THE WITNESS: Can you repeat the question? I'm sorry.

23 BY MR. ROBERTS:

24 Q Let me just ask you and let's make sure. If the components
25 of your formula in Data iSight are the same as components of the

1 Medicare formula, then could you explain to the jury why you believe
2 they are not identical?

3 A They're not identical, they're similar in some fashions where
4 we take the defensibility of the AMA and CMS as a portion of what we
5 have, and then we combine that with something completely different.
6 What are people actually paying within a marketplace, using those solid
7 fundamentals that are industry, widely accepted, produced by the AMA
8 and CMS, and blending the two in a very complex view to provide a fair
9 and reimburse -- or fair and reasonable reimbursement amount
10 recommendation to our clients.

11 Q The Medicare formula that you were showed had a space for
12 a conversion factor; do you remember that?

13 A Yes.

14 Q Is the Data iSight -- are the Data ISight conversion factors
15 identical to the Medicare conversion factors?

16 A No, they're not.

17 Q Are your conversion factors publicly available?

18 A Our conversion factors are available to our clients or
19 whoever puts a request. I don't know the exact legality of what we can
20 disclose. That would be a legal question.

21 Q Did you purchase your conversion factors?

22 A No, we didn't.

23 Q And is the conversion factor the amount of money assigned
24 per RVU or is it something different?

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

1 THE COURT: Objection sustained. You can rephrase.

2 BY MR. ROBERTS:

3 Q Explain to the jury again what an RVU is?

4 A An RVU is the relative value that the AMA designates for a
5 particular service. There are over 15,000 or 18,000 pick CPT codes. They
6 differentiate what it takes for the work, the practice expense, as well as
7 the malpractice expense, to make sure that they're paying people in
8 accordance to relative -- for lack of a better term, relative value of the
9 service.

10 Q When Mr. Zavitsanos was asking you questions about how
11 you were considering costs, you kept mentioning RVU's in the answer.

12 A Uh-huh.

13 Q Can you explain to the jury why you were talking about
14 RVU's when he was asking you about relative costs?

15 A It's a part of the component of -- there's a practice expense
16 component of the RVU which is basically a calculation of -- for that
17 specific procedure, what is the cost or the expense that the provider may
18 encounter as part of the aggregate view. So they're -- what it takes to
19 keep the lights on, practice expense, rents, those types of things.

20 Q Could you explain to the jury the relationship, if any,
21 between the conversion factor and the RVU?

22 A They're both separate. I like to look at them as separate
23 components, all the defensible aspect really falls within the geographical
24 adjustment and the actual RVU, and our conversion factor, again, comes
25 from that data source that we array in a specific way which plays a vital

1 component in what we do, and those, again, those conversion factors
2 are arrayed in a way that primary -- or primary PPO networks, the
3 categories that they highlight in a lot of their contracts, there's a very
4 similar correlation to.

5 MR. ROBERTS: So Shane, could I have Exhibit 299, page 3?
6 And while you're pulling that up, I'm going correct a bad. Shane wasn't
7 here when I introduced everyone during voir dire. Mr. Shane Godfrey,
8 Las Vegas Legal Video. He's our hot seat operator. That's what that
9 chair's called. Okay. Now if you remember, Shane, could you highlight
10 that chart in the middle of the page?

11 BY MR. ROBERTS:

12 Q Mr. Zavitsanos was asking you some questions about this
13 chart?

14 A Uh-huh.

15 Q And he started to ask a question, and then he said that's
16 okay, let's move on, but let's ask that question. One, 2, 3, down, member
17 pays 40 percent, right?

18 A Uh-huh.

19 Q 80th percentile of UNC, how much does the member pay?

20 A The member pays at a 40 percent, \$1,033.16.

21 Q 120 percent to Medicare, how much does the member pay?

22 A 299.40

23 Q Assuming no balance billing, which is better for the
24 member? 80th percentile of UNC or 120 percent of Medicare?

25 A 120 percent of Medicare is.

1 MR. ROBERTS: Okay, Shane, let's go to PX-22.

2 BY MR. ROBERTS:

3 Q All right. You were asked right here in the second paragraph,
4 we felt it was important to reiterate that Data iSight is not CMS-based, it
5 is rather cost-based. Do you remember that question? And then he told
6 the jury they were going to read the rest of it on their own time. Right.
7 They're going to save you one thing to do on your own time. Look at
8 this sentence beginning professional reductions. Read that sentence to
9 the jury.

10 A "Professional reductions based on median reimbursement
11 levels when compared to a percentage of CMS."

12 Q So the very document he showed you, right after cost-based
13 clarified that professional reductions were based on median
14 reimbursement levels and not the cost up methodology. Right?

15 MR. ZANITSANOS: Leading. Argumentative.

16 THE COURT: The objection is sustained. You can reask.

17 MR. ROBERTS: Thank you.

18 BY MR. ROBERTS:

19 Q Does this email contend that professional Data iSight
20 reductions are based on the cost up methodology?

21 MR. ZANITSANOS: Same objection, Your Honor. Not
22 argumentative, leading.

23 THE COURT: It's leading. You can rephrase.

24 BY MR. ROBERTS:

25 Q How does this document indicate Data iSight professional

1 reductions are made?

2 A They're based off of median reimbursement levels.

3 Q Does it say anything about cost up methodology with regard
4 to professional clinics?

5 A No, it doesn't.

6 Q Exhibit 3A-H10. Okay. Court's indulgence. Jury's
7 indulgence. Just for a second. I may have written down the wrong page
8 number.

9 MR. ROBERTS: You can take that down, Shane, and put up
10 82-7.

11 SHAWN: 82 page 7?

12 MR. ROBERTS: Yes.

13 BY MR. ROBERTS:

14 Q Okay. Here we go. So if you recall, this is a chart where a
15 document which appeared to be from MultiPlan, was talking about the
16 products in use by various clients. Top 5, top 10, top 20, correct?

17 A Uh-huh. Correct.

18 Q Can clients have both wrap networks and Data iSight?

19 A Yes. We have clients with both wrap networks and Data
20 iSight.

21 Q And can the plan documents provide for one or the other?

22 A I'm not familiar with the requirements of a plan document.
23 But we have set-ups for both.

24 Q Is it fair to say that your top 5 clients have -- 80 percent of
25 them have wrap networks they can utilize and 80 percent of them have

1 Data iSight they can utilize?

2 MR. ZANITSANOS: Leading, Your Honor.

3 THE WITNESS: Yes.

4 THE COURT: It is leading. You can reask.

5 THE WITNESS: Sorry.

6 MR. ROBERTS: Thank you, Your Honor.

7 MR. ZANITSANOS: Actually, Your Honor, given the time, he
8 can lead.

9 THE COURT: All right.

10 MR. ROBERTS: Thank you. Thank you, Your Honor.

11 BY MR. ROBERTS:

12 Q Exhibit 16, page 11. So what I wanted to go and talk to you
13 about right here is this proprietary conversion factor.

14 A Uh-huh.

15 Q Is that proprietary?

16 A Yes.

17 Q Is it the same as Medicare?

18 A No, it's not.

19 Q Is it the same as Naviguard?

20 A I don't know what Naviguard is.

21 Q Is it shared with Naviguard?

22 A Not to my knowledge.

23 Q And practice expense RVU. Do you see that?

24 A Yes.

25 Q Right there at the 1, 2, 3 blocks from the left or the top?

1 A Yep.

2 Q What is practice expense RVU?

3 A That's the expense that the AMA designates to operate. Or
4 the overhead that goes along with running a physician practice or
5 professional practice.

6 Q Is that or is that not something that you referred to and told
7 the jury about when you were talking about extended costs?

8 A Yes.

9 Q 38-3. 38, page 3. And when you look at this, that is what
10 we talked about before, where the categories are the same, but are the
11 numbers that you plug into each one of these categories the same as
12 Medicare?

13 A The RVU's, yes. However, the conversion factors, no.

14 Q Okay. So you use RVU's from the Government studies, of
15 the cost of relative practice?

16 A That's from the AMA and the Government.

17 Q Okay. 413-3. One last one on the cost issue. Okay. If you
18 can pull up, let's see. That's good enough. So you recall Mr. Zavitsanos
19 reading this to you. They take your provider's cost of doing business
20 and the account by five times?

21 A Yes.

22 Q Let's try something fun. Let's read the whole sentence,
23 instead of just the end of it. Beginning with this amount. Can you do
24 that for the jury?

25 A Yes. In the beginning?

1 Q Yes.

2 A Okay. "The amount -- the amount was determined by taking
3 the data on your claim --"

4 Q No.

5 A I'm sorry.

6 Q Just that sentence. Okay. I don't mean to read the whole
7 thing.

8 A Okay.

9 Q Just read the whole sentence. That take your provider's cost
10 of doing business into account .

11 A Okay.

12 Q So let's begin with --

13 A Cost --

14 Q -- this amount --

15 A Okay. Sorry.

16 Q -- is then adjusted.

17 A "This amount is then adjusted based on the geographic
18 location and prevailing labor costs, so they take your provider's cost of
19 doing business into account."

20 Q So they take your provider's cost of doing business. Do you
21 think that refers to anything else in the rest of the sentence?

22 A No. Can you repeat the question?

23 Q Yes. How does the sentence indicate they're going to take
24 the provider's cost and put it in a single account?

25 A How does --

1 Q Possibly.

2 A It's based on. Okay. They're going to adjust is by location.
3 They're going to adjust it by what it actually costs in that practice
4 expense of -- and then the last component is cost of doing business.
5 And a component of that is malpractice expense as well. A large portion.

6 Q Is that anything like the geographical part he used, which he
7 just told the jury about?

8 A Yes.

9 Q 34-page 7. He kept saying you're an officer. Are you in the
10 sales department?

11 A No, sir.

12 Q Is the sales and marketing department under your
13 supervision?

14 A No, sir.

15 Q You're not -- I know the jury remembers that you disagree
16 with some of this document. But let me ask you a couple of questions.
17 To your knowledge, did any of the United Defendants ever buy a product
18 from MultiPlan, which was intended to compensate less than the plan
19 documents required?

20 A Not to my knowledge.

21 Q To your knowledge, did MultiPlan ever even implement such
22 a program with any of its products?

23 A Not to my knowledge.

24 Q Plaintiff's Exhibit 376. Okay. Let's go up to the top of this.
25 All right. What's the date of this document up here at the top? When

1 was it -- when was it sent to you?

2 A September -- or I'm sorry, geez.

3 Q I know they're long days for all of us.

4 A July 10th of 2019.

5 Q Okay. And let's go down toward the bottom where you were
6 asked about -- keep going. Okay. Keep a high level with Team Health.
7 Keep going. Keep going. Okay. Remember him talking about Kent
8 Bristow calling. And I think the question was asked, he was just trying to
9 figure out how this worked, right?

10 A Yeah.

11 Q Okay. July 10th, 2019. Do you know when Team Health filed
12 this lawsuit, which we're still sitting here for today?

13 A I don't know the exact date.

14 Q Okay. If I represent to you they filed it on April 15th, 2019,
15 was MultiPlan being cautious after MultiPlan was named in a lawsuit
16 against United?

17 A Sounds like it.

18 Q Do you know if Mr. Bristow is trying to figure it out, or do
19 you think he was getting the ammo for his deposition, I mean for this
20 litigation?

21 A Indicates that -- I can't comment on his behalf, but it does
22 seem a little bit odd.

23 Q And have you ever read the second amended complaint in
24 this case?

25 A No, I haven't.

1 Q Do you know if these conversations ended up in an amended
2 complaint?

3 A I don't know.

4 Q How long ago did UnitedHealthcare ask someone to testify at
5 this trial?

6 A Because when I --

7 MR. ZANITSANOS: Possible hearsay, Your Honor.

8 THE COURT: If it's within his knowledge, he can answer.

9 THE WITNESS: Yeah, I think it was in my deposition in like
10 the first 15 minutes of it.

11 BY MR. ROBERTS:

12 Q How long ago was your deposition taken?

13 A I can't recall off the top of my head.

14 Q Was it before the trial started?

15 A Yes, it was.

16 Q Was it before all this stuff started with the MultiPlan stuff?

17 A Yes, it was.

18 THE COURT: I'm going to ask counsel to approach.

19 [Sidebar at 4:58 p.m., ending at 4:58 p.m., not transcribed]

20 THE COURT: So we know somebody needs to leave at 5:00.

21 If they can get you out of here at 5:02, can you still listen? Yes. Thank
22 you. Go ahead, please.

23 BY MR. ROBERTS:

24 Q You were shown a few excerpts from Mr. Haben's testimony.
25 Do you know he testified in here for days and days and days.

1 A No.

2 Q Do you know if he said there was no current plan to
3 terminate MultiPlan?

4 A I have no knowledge.

5 Q Do you have any opinion about whether the Plaintiff's
6 brought up a three year old business plan which talked about
7 termination, in an effort to intentionally damage MultiPlan?

8 A No.

9 MR. ROBERTS: No further questions, Your Honor.

10 THE COURT: All right. Redirect [sic]?

11 MR. ZANITSANOS: I have nothing, Your Honor.

12 THE COURT: Does the jury have any questions for Mr.
13 Crandell? We have one, thank you. Will counsel please approach.

14 [Sidebar at 4:59 p.m., ending at 5:00 p.m., not transcribed]

15 THE COURT: I would like to thank Ms. Landau for the
16 question. One question, I get to ask it. And it pertains only to Nevada.
17 Just to be clear, when factoring in location, it is passed state by state, not
18 city by city. Oh, based, not -- sorry, based.

19 THE WITNESS: It's -- the locality is based on the Medicare-
20 defined localities. So I believe there's 126 different classifications all
21 across the United States that they have actuaries saying we should
22 process these geographical ZIP codes together. And it's a pretty widely
23 accepted contracting tools from both primary, as well as complimentary
24 networks. Does that help?

25 THE COURT: Thank you. Any questions based upon the

1 jury's question? Defendant?

2 MR. ROBERTS: Not for the Defendant, Your Honor.

3 THE COURT: Plaintiff.

4 RECROSS-EXAMINATION

5 BY MR. ZAVITSANOS:

6 Q One question. Sir, for Nevada, there's one geo ZIP, right?

7 A I don't know all 127 of them.

8 Q No, I'm asking just for the State of Nevada. There's only
9 one?

10 A I believe there's only one.

11 MR. ZANITSANOS: That's all then, Your Honor.

12 THE COURT: All right. So let me give you -- we're going to
13 start tomorrow again at 8:00 a.m. Tomorrow we're in Courtroom 3E,
14 down the hall where we did jury selection.

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

20 Do not conduct any research on your own. Don't consult
21 dictionaries, use the internet or use reference materials. Don't post on
22 social media during the recess. You can post on social media, but not
23 about the trial. Don't talk, text, tweet, Google or conduct any other type
24 of research with regard to any issue, party, witness, or attorney.

25 Most importantly, don't form or express any opinion on any

1 subject connected with the trial until the jury deliberates. Thanks for a
2 great Monday. Have a good night. We'll see you in the morning at 8:00.

3 THE MARSHAL: All rise for the jury.

4 [Jury out at 5:02 p.m.]

5 [Outside the presence of the jury]

6 THE COURT: It looks like the room is clear. Mr. Crandell is
7 headed to the door. I know we have a number of things to take up.

8 MR. ROBERTS: Did you excuse the witness, Your Honor? I
9 don't remember, I'm sorry. I wasn't paying attention.

10 MR. ZANITSANOS: We don't need him, Your Honor, so
11 we're good.

12 THE COURT: I did not in front of the jury, but I can indicate in
13 the morning that he's excused.

14 MR. ROBERTS: Thank you, Your Honor.

15 THE COURT: And ask you to call your next witness.

16 Okay. Now a couple of things from my end. They want to
17 know in Court admin, if you want daily billings on overtime for the staff,
18 or if you are willing to do it at the end of the trial. It is easier for them if
19 they can send one bill. And if so, where should it go?

20 MR. ZANITSANOS: Your Honor, for the Plaintiff, send it to
21 us. We're good doing it either way. And that will be paid within 3 days.

22 MR. ROBERTS: It's better for us at the end of the trial. And
23 that can go to Audra Bonney's attention at Weinberg, Wheeler --

24 THE COURT: No, no, no. It's just -- there's just going to be
25 one bill.

1 MR. ROBERTS: Pardon?

2 THE COURT: It's easier for them to send one bill.

3 MR. ROBERTS: Yes. It's easier for us, too. One bill's good.

4 THE COURT: But where does it go.

5 MR. ROBERTS: Audra Bonney --

6 MR. ZANITSANOS: She's saying one --

7 MR. ROBERTS: No one wants me in charge of making sure
8 this gets paid, Your Honor.

9 THE COURT: So it goes to Weinberg Wheeler?

10 MR. ROBERTS: Yes.

11 THE COURT: And the two of you will work that out?

12 MR. ZANITSANOS: Yes, Your Honor.

13 THE COURT: To Bonney. Okay.

14 MR. ROBERTS: Audra Bonney.

15 THE COURT: Okay. Next thing is, what's our schedule for
16 tomorrow?

17 MR. BLALACK: I'll preview what we've got on tap, Your
18 Honor. I believe we've got two depositions; you've now gone through
19 and ruled on. They're tee'd up to start with. That will be Ms. Harris and
20 then Dr. Jones. I think [indiscernible] indicated to me Mr. [indiscernible]
21 probably about 40 minutes. We then are going to want to propose one
22 of the two depositions, of about 20 minutes, 30 minutes, related our
23 discovery compliance efforts, and that's something that we really wanted
24 to do. And in light of the short conference discussion Sunday night, we
25 believe we need to present that evidence.

1 There may be objections, other than the fact that we've set
2 designations, we'll talk about that tonight. Either we'll have an objection,
3 but 100 percent, we'll have something to give you one way or the other
4 for you. Once that's done my expectation is we need to rest, and then I
5 think you have --

6 MR. ZAVITSANOS: Yeah. Can I ask a question, Your Honor,
7 of counsel? So Lee are you -- are you saying, this additional deposition,
8 you want to play that in front of the jury, or would you be willing to
9 submit it writing?

10 MR. BLALACK: No, I -- this is going to be evidence we're
11 offering for the Court, at our rebuttal to this presumption instruction that
12 it's going to be part of the charge --

13 MR. ZAVITSANOS: No, I got it. What I'm asking is, do you
14 need to -- from your standpoint, do you want to do that in front of the
15 jury, or do you want do that with Your Honor?

16 THE COURT: It'll have to be --

17 MR. BLALACK: No. We've got to be able to argue.

18 THE COURT: Sure.

19 MR. ZAVITSANOS: Okay. Got it.

20 MR. BLALACK: It's evidence.

21 MR. ZAVITSANOS: Got it.

22 THE COURT: And I would be inclined to allow you to do that.

23 MR. BLALACK: Thank you. So we'll work that out with
24 Plaintiffs, then I will give you something.

25 MR. ZAVITSANOS: So, Your Honor, once they're done,

1 Mr. Ahmad 15, 20 minutes max, we've got the share in rebuttal and it's
2 true rebuttal. I think they probably will have, I'm guessing here, 15 to 20
3 minutes, because it's very limited topic. Then I think we may have a
4 very, very slight honest difference of opinion about how much time is
5 needed for closing. I think counsel would like two hours; we would
6 propose an hour.

7 THE COURT: Well, you two can work that out between
8 yourselves.

9 MR. BLALACK: Well, we --

10 THE COURT: It's not -- I don't --

11 MR. ZAVITSANOS: You don't limit it?

12 THE COURT: I don't

13 MR. ZAVITSANOS: Okay.

14 THE COURT: Hold on, no. And but the one thing --

15 MR. BLALACK: We discussed two hours a piece.

16 THE COURT: Yes. And you had told me that, that's why I
17 was asking. The one thing we normally do is, all the closings in one day.
18 If I have to chop it up I will, so that they finish the closings on
19 Wednesday morning.

20 MR. ZAVITSANOS: So --

21 MR. BLALACK: I think, Your Honor, if we've got 40 minutes --
22 let's say we have an hour, an hour and ten minutes of video or
23 something like that. You all have 20 or 30 -- let's say -- I would imagine if
24 we started 8:00 we should be completely done with the proof by 10.

25 MR. ZAVITSANOS: I've got 10 objections.

1 MR. BLALACK: So if we take a break, and then we go to the
2 charge, you know, go to the housekeeping and then the charge, I don't
3 see why we couldn't do all the closings in the afternoon, so the jury has
4 the case, before close today.

5 THE COURT: I have a Wednesday calendar, that things have
6 been put off for two weeks, things that the Chief couldn't hear, it's at
7 9 o'clock Wednesday. So if you need more time Wednesday, you need
8 to let me know tomorrow, so I can try to reschedule some things.

9 MR. ZAVITSANOS: Well, I think, Your Honor, if we can go
10 until 5:00, I think Mr. Blalack is -- I think we're both confident we can
11 have the case to the jury by 5 o'clock tomorrow.

12 MR. BLALACK: Yes.

13 THE COURT: I'm just telling you, because --

14 MR. BLALACK: No, I hear you. I heard that there's been
15 some history here, and I'm not going to get into that, but that's --

16 THE COURT: No, no. I'm not calling anybody up, I'm just
17 letting -- I'm just warning you. Now IT needs to be set up in 3D in the
18 morning. Somebody from one of your teams called today --

19 MS. ROBINSON: We already figured that out.

20 THE COURT: Oh, they've got it figured out. Oh, okay, good.
21 Now, instructions and verdict form, are you going to have
22 that tomorrow?

23 MS. ROBINSON: So we -- sorry, Your Honor.

24 MR. POLSENBERG: What's the question?

25 THE COURT: Instructions and verdict form.

1 MR. POLSENBERG: Hopefully we're going to have them all
2 typed out.

3 THE COURT: Are we going to have it tomorrow?

4 MS. ROBINSON: So I -- was the Court asking the parties to
5 agree on the verdict form, because --

6 THE COURT: Yeah.

7 MS. ROBINSON: -- I did not know that?

8 THE COURT: We talked about that yesterday, at the end of
9 the day, about --

10 MS. ROBINSON: I don't think either of us [indiscernible] that.

11 MR. PORTNOI: Yeah. I think what we had discussed was
12 that we would raise the verdict form and have that as part of the last
13 element of correspondence. Now that's the impression that we had
14 formed.

15 THE COURT: Well, I had given you the impression that I
16 thought there should be a general verdict form, where they could find for
17 the Plaintiff, or for the Defendant, and then that nothing in the special
18 verdict forms was a problem --

19 MS. ROBINSON: I'm sorry. I'm having trouble hearing you ,
20 Your Honor, there's a lot of --

21 THE COURT: Nothing in the special verdict forms was
22 problematic to me.

23 MS. ROBINSON: On both sides? Because there's a lot of
24 objections that we had to the defendants.

25 THE COURT: All right. Good enough then. All right. So

1 we'll take that up. Are there things we need to take up before we get to
2 that.

3 MR. BLALACK: There are a couple of, Your Honor.

4 THE COURT: Yeah. Let's do that.

5 MR. BLALACK: So --

6 THE COURT: And why don't people sit down, because the
7 court recorder, I'm just concerned about the record.

8 MR. BLALACK: So let me hit the first issue, Your Honor. On
9 our side we, and I [indiscernible] on our side I think I've got two issues,
10 one related to any potential second phase proceeding, and two, we've
11 got a bunch of exhibits, evidentiary issues to try to get resolved. I think
12 we've resolved many of them, but I think we need to come up and talk
13 about where we are on that, and the ones we can't, we'll present to you
14 for a ruling and try to get the record resolved before we rest tomorrow.

15 One issue on the second phase, is Mr. Zavitsanos advised me
16 yesterday, or at noon today, I've lost track of the day, that if there is a
17 second phase, they would like to call Paradise as a witness in that phase.
18 I don't have any objection to that, but I would like to ask that she be
19 prevented to testify remotely, not physically here. She is traveling with
20 her family for Thanksgiving, tomorrow night and Wednesday.

21 She has agreed to make herself available to a place where
22 we could access her for testimony, under oath, live the whole thing. But
23 to have her, after she was here, flew back, and had to fly back for
24 whatever it would be 30 minutes, an hour, live examination in the
25 second phase on the day before Thanksgiving, we think it's

1 unnecessarily hard. She would be accessible to the jury for live
2 testimony. They've already seen her. They've already evaluated her
3 credibility and the like. So we've made that request to the Court --

4 MR. ZAVITSANOS: So, Your Honor, I don't want to be a
5 Scrooge here, I advised Mr. Blalack when she testified that she was the
6 person that we would want during phase 2. There is undoubtedly a
7 different dynamic, from the jury's perspective, is placed with a live
8 witness in the box.

9 THE COURT: And I understand that. And I'm going to
10 suggest to both of you that it doesn't make sense to do it on Wednesday,
11 if there is a second phase, only because nobody is going to listening,
12 they're going to home cooking dinner, getting the house ready for
13 Thanksgiving.

14 MR. ZAVITSANOS: Then in that case --

15 THE COURT: But on Monday the 6th, my first day back,
16 because I'll be gone a week, my trial settled today. So I'm not in trial on
17 Monday the 6th.

18 MR. ZAVITSANOS: That's perfectly acceptable.

19 THE COURT: Can the two of you talk about that tonight --

20 MR. BLALACK: Yes.

21 THE COURT: -- and we can revisit that tomorrow?

22 MR. ZAVITSANOS: Yes, Your Honor.

23 MR. BLALACK: We'll revisit that tomorrow, Your Honor.

24 THE COURT: And then Mr. Blalack, you have -- do you have
25 things that came up at the bench.

1 MR. BLALACK: Yes.

2 THE COURT: Do you want anything on the record?

3 MR. BLALACK: I don't -- not with -- I don't know if Mr.
4 Roberts said something he wanted to finish, that came up in his. In
5 mine, I don't believe there was any issue that was unresolved, that
6 would indicate a record needed to be made on it.

7 THE COURT: Good enough.

8 MR. BLALACK: So I think I just have a handful of -- we just
9 have a handful of evidentiary we need to resolve.

10 THE COURT: Okay.

11 MR. BLALACK: Do you want us to start, or is there
12 something else that Mr. Zavitsanos --

13 MR. ZAVITSANOS: I don't have anything else, Your Honor.

14 THE COURT: Good enough. All right. So are we ready now
15 to get into the discussion of the verdict form?

16 MR. ROBERTS: Well, I was going to run through these
17 evidentiary exhibits that we did.

18 THE COURT: Oh, you know, let me step out for a minute
19 while you do that.

20 MR. ROBERTS: That would be fine.

21 THE COURT: So I can get my book from yesterday.

22 MR. ROBERTS: Thank you, Your Honor.

23 [Recess taken from 5:12 p.m. to 5:16 p.m.]

24 THE COURT: Okay. Did you guys get the exhibits resolved
25 with Nicole?

1 MR. BLALACK: We got quite a few resolved, Your Honor --

2 THE COURT: And I'm not going to ask you --

3 MR. BLALACK: -- but not all --

4 THE COURT: -- I'm going to ask her.

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

6 THE CLERK: No, they're still talking.

7 THE COURT: Oh.

8 MR. BLALACK: Well, I hope, based on the content here,
9 hopefully we've got it down to a narrow -- what's at issue.

10 So, Your Honor, what I thought I'd do is just run through the
11 open items on the evidentiary questions to resolve, for the record, before
12 we rest tomorrow. So the first of these is -- there were quotes from the
13 Yale study which has been much discussed here, that were read to the
14 jury and relied upon by Mr. Deal in his live testimony, his expert
15 testimony, and we would like to move into evidence Defense Exhibit
16 5525, which is literally the language from this book.

17 And, Your Honor, it's clearly we just have the title to study,
18 with the names of the authors and the quotes, with the citations here as
19 the exhibit. We'd like to move those into evidence. I believe there was
20 an objection on hearsay grounds, at the time we were going through that
21 -- well, let's talk to the jury [indiscernible]. So we're ready to admit those
22 statements into evidence, NRS 51-255, which is the learned treatise
23 exception, perhaps the same Federal rule.

24 It says that -- it says, "Statements can be admitted into
25 evidence that are admissible or not hearsay, when they're called to the

1 attention of an expert witness on cross-examination or relied upon by
2 the expert witness in direct examination." And the statement is in the
3 published treatise, peer Article handbook on the subject of history
4 [indiscernible]. And then the only qualifier, is unless it's established that
5 the evidence is not from a reliable authority, we need to physical
6 evidence to call that into question, and that statement should be
7 admissible, as exceptions to the hearsay rule.

8 THE COURT: What was your cite again?

9 MR. BLALACK: NRS 51.0255.

10 THE COURT: Okay.

11 MR. BLALACK: Which is the Nevada treatise exceptions.

12 THE COURT: Okay. Because I pulled up 512 and it was
13 inspection of minds. Okay. Just let me look at it real quick, and --

14 MR. BLALACK: If the Court needs a case, Your Honor, the
15 Nevada Supreme Court in '96, and I'm not sure how to pronounce it,
16 *Prague*, P-R-A-G --

17 THE COURT: Well, *Prague*, yeah.

18 MR. BLALACK: *Prague*.

19 THE COURT: It's a local name.

20 MR. BLALACK: Which is 930 P.2d 103, which --

21 THE COURT: Good enough.

22 MR. BLALACK: -- discusses the application of the statutory
23 exception and the hearsay rule.

24 THE COURT: And the response, please?

25 MR. MCMANIS: Yes, Your Honor. This is not a learning

1 treatise. A treatise is, you know, a medical textbook or some type of, you
2 know, almanac, what's being relied upon by an expert, that's accepted
3 appeal. This is a hearsay article that's written. It is not -- it's not a
4 recitation of the story in Nevada, it includes some incredibly slanted
5 opinion and analysis with an agenda, and it is not -- it's absolutely not
6 the type of information that qualifies for an exception to the hearsay rule,
7 under the learned treatise exception.

8 THE COURT: No, it's going to overrule the objection,
9 because it meets the standard in 51.255. It was established as a reliable
10 authority by the testimony of the witness; it was an expert. So I overrule
11 the objection 5525 can come in.

12 MR. MCMANIS: Thank you, Your Honor.

13 MR. BLALACK: And then Mr. Levine is going to update you
14 on the state of what we've agreed to on the exhibits, that we
15 [indiscernible] and the few that are remaining that need to be resolved.

16 MR. LEVINE: Your Honor, I apologize in advance. There's a
17 number of exhibits here that we tried meet and confer about, and reach
18 agreement, and I think we've done a decent job of actually reaching an
19 agreement on a number of these items. There are in fact some others,
20 and then there are a few that there's still a dispute on that we'll raise
21 with Your Honor. now.

22 THE COURT: Both sides have shown the utmost and
23 professional courtesy, there's no reason to apologize.

24 MR. LEVINE: Okay. Well, thank you.

25 In terms -- there are a number of exhibits here, where we've

1 agreed to swap out the current exhibit with a slightly revised version of
2 the exhibit, and with that -- so the we've been characterizing that, is
3 conditionally admit the exhibit subject to swapping the exhibit out.

4 And those exhibits, and Jason, please tell me if you -- if I say
5 anything you do not agree with, are Exhibit 4002, Defense Exhibit 4002,
6 Defense Exhibit 4003, Defense Exhibit 4005, Defense Exhibit 4006. We
7 actually previously agreed we would swap that on the record.
8 Defense Exhibit 4008, Defense Exhibit 4455, Defense Exhibit 4166.
9 Defense Exhibit 4457, Defense Exhibit 4168, Defense Exhibit 4774. Those
10 are the ones with swap-outs, to I'm pointing right now. In addition to
11 that --

12 MR. BLALACK: Before you move on, can I ask the Court's
13 indulgence on one that I don't think we cleaned up earlier. There was an
14 exhibit, I think it's 163, I'm showing 163, which is the United Healthcare
15 website, which was shown to --

16 MR. LEVINE: 363 --

17 MR. BLALACK: 363.

18 MR. LEVINE: It's been redacted?

19 MR. BLALACK: Has that been redacted?

20 MR. LEVINE: We will --

21 MR. BLALACK: Do we have an agreement on that?

22 MR. KILLINGSWORTH: We'll send the redacted version
23 over --

24 MR. BLALACK: It's got the [indiscernible] stuff all over it,
25 Your Honor. So I'm fine with it going back, I just want to redact a portion

1 about the [indiscernible].

2 MR. LEVINE: So in addition to the exhibits I just mentioned,
3 Your Honor -- sorry, go ahead.

4 MR. MCMANIS: I just think it'll be easier if we split it up, that
5 is the correct list of the additional exhibits that --

6 THE COURT: Right.

7 MR. MCMANIS: -- we swapped out later on.

8 THE COURT: So the additional exhibits to be swapped out
9 will be 4002, 4003, 4005, 4006, 4008, 4455, 4166, 4457, 4168 and 4774.
10 There's also an agreement on the record to redact 363 and that will be
11 done tomorrow?

12 MR. BLALACK: Correct. Thank you, Your Honor.

13 THE COURT: We'll put it on the record tomorrow.

14 MR. LEVINE: Here's a list of exhibits we've agreed to admit,
15 unconditional. Exhibit 5527, Exhibit -- and these are all Defense exhibits,
16 4887, Exhibit 4894, and Exhibit 4891, Exhibit 4914, Exhibit 5321, and I
17 believe that's it from the agreement to admit.

18 [Counsel confer]

19 MR. MCMANIS: That list is correct.

20 THE COURT: All right. So the Court will unconditionally
21 admit 5527, 4887, 4894, 4891, 4914, and 5321.

22 MR. LEVINE: Okay, Your Honor. Then there are several
23 where we do have the difference of opinion, and then this could be the
24 last category where we actually haven't had a chance to talk yet. So --

25 MR. BLALACK: I suggest, Your Honor, not to belabor your

1 time. For the ones we've [indiscernible] probably do those, and we can
2 try, and we can try to resolve the others.

3 MR. LEVINE: In the morning, yes. I think that's --

4 THE COURT: Thank you. Because we've got to have a
5 verdict tomorrow.

6 MR. LEVINE: Yes, okay. So the ones that are in dispute --

7 THE COURT: Do we have to put that on the record now?

8 MR. LEVINE: Well, we could do it altogether in the morning,
9 if you prefer, Your Honor.

10 THE COURT: Well, we're eating into the time, and we don't
11 have the jury verdict form yet. So -- and what if you guys talked about
12 that tonight? Is it something you can talk about tonight?

13 MR. LEVINE: These are ones that we have talked about, the
14 few that I will mention now, but then there are others that we'll talk
15 about tonight to try to reach an agreement, if that's okay.

16 MR. BLALACK: But I think these are ripe for resolution --

17 THE COURT: Okay. I got it.

18 MR. BLALACK: -- one way or the other.

19 MR. LEVINE: There are four exhibits, 4969, 4970, 4971, 4972,
20 which were produced, documents were produced by plaintiffs, they're
21 plaintiffs' chagemasters, and the objection that plaintiffs have made to
22 these exhibits is that the prejudice outweighs the probative; 48035.

23 Your Honor, our view on this is that these chagemasters are
24 -- that this case is about what Plaintiffs seek here is billed charges. Their
25 chagemasters list the charges for the services they provide. And we

1 would submit that that's highly relevant. And I'm not sure how it's
2 prejudicial at all actually.

3 THE COURT: Any response?

4 MS. LUNDVALL: Yes, Your Honor. These chargemasters
5 cover periods of time that are not part of this case. They're not in the
6 2017 to 2020 period. They are not the charges that are at issue in this
7 case. And for those reasons, we believe they're irrelevant.

8 THE COURT: Now, was there any testimony?

9 MS. LUNDVALL: I'm sorry?

10 THE COURT: Did anyone testify about them in a way that
11 would make them useful?

12 MS. LUNDVALL: No, Your Honor. I don't believe so.

13 MR. BLALACK: Actually, I think Mr. Bristow's testimony
14 covered some of these incidences.

15 MS. LUNDVALL: But I would also add, Your Honor, while
16 some -- the chargemasters have blocks of years which they're
17 associated. Some of the blocks do include periods that are part of this
18 lawsuit.

19 THE COURT: What I would suggest is that I would probably
20 move to admit the ones for which you can show there was testimony to
21 lay a foundation if it's during the relevant time period. So check on that
22 and let me know tomorrow.

23 MR. BLALACK: We'll do that, Your Honor. Thank you.

24 MS. LUNDVALL: Moving on, Your Honor, there are two
25 spreadsheets related to acceptance. One that was produced by

1 MultiPlan and to which Plaintiffs did not object until last night, at which
2 time they objected on relevance grounds. And another one -- even
3 though that had been in our exhibit list for many weeks. And another
4 one that was produced by the Defendants themselves, related to the
5 acceptance rates associated with their rates generated through the NLP
6 program. Their objection is prejudice outweighs probative. You know,
7 this case -- yeah. And you know, the data is from the relevant time
8 period. And you know, this case, they've taken -- they've taken a lot of
9 shots at the case of MultiPlan, the Data iSight acceptance rates and the
10 validity of that rates -- of the Data iSight tool. We think the validity -- the
11 acceptance speaks to the validity.

12 We've had witnesses testify, Mr. Haben, Ms. Paradise, who
13 said that was important in their decision to use Data iSight. In the ENRP
14 case, you know, rates are generated using the DPNRP program. They
15 have a very high acceptance rate. And we would argue that is relevant --
16 highly relevant to the validity of those rates.

17 THE COURT: Response?

18 MR. BLALACK: So I'll take these in turn, Your Honor. The
19 first spreadsheet that was mentioned, which I believe is 51-3 is a
20 MultiPlan spreadsheet. It is hearsay. It was not proven by the MultiPlan
21 witness who was here on the stand today. And it does not apply to any
22 of the current issues in the case. That addresses 51-3.

23 With respect to 4679, although it is produced by Defendants,
24 it has not been used with any witness in this case. There is no identity
25 within the document as to who was appealing, why they appealed, or the

1 reasons for acceptance or denial of those appeals. And because of that,
2 because no witness has testified about that or a laid a foundation about
3 that or a laid a foundation for any of that, there is no basis to admit the
4 document.

5 THE COURT: And again, let's leave this until tomorrow.
6 Unless there is testimony that lays the foundation, I will deny the
7 admission.

8 MS. LUNDVALL: So we'll put that in the same category as
9 the other one, if there's testimony.

10 THE COURT: No. If -- when there's a stipulation. But when
11 there isn't, I have to follow the rules.

12 MS. LUNDVALL: Okay, Your Honor. I believe two more.
13 There -- Exhibit 5323 is a Medicare physician fee schedule. Plaintiffs
14 have objected to this on the basis of relevance. And prejudice outweighs
15 probative. You know, we've had a lot of testimony, as we're all aware,
16 about how -- about the percentage of Medicare that may be indicative of
17 a payment rate, reasonable, et cetera. The anchor for those -- that
18 testimony is -- were the Medicare rates themselves. This document
19 indicates on a yearly basis what the rate is and what the CPT -- for each
20 CPT code. And we could limit this to just the CPT codes that are at issue
21 in this case. That's fine. But in order to anchor that testimony in
22 something -- in a metric that is meaningful, the rates on the fee schedule
23 would be what we submit, highly relevant to this case.

24 MR. BLALACK: One, Your Honor, this is hearsay. It's not
25 been used or proven up with any witness. Two, this is squarely within

1 Your Honor's limited rulings on the amounts under Medicare. And it's
2 really just a back door around that. For that reason, we think it should be
3 excluded.

4 THE COURT: And I'm going to sustain --

5 MS. LUNDVALL: Your Honor, I'd like to --

6 THE COURT: Go ahead.

7 MS. LUNDVALL: I would only say that they haven't objected
8 on hearsay grounds. That's the first I'm hearing it's hearsay. In terms of
9 the in limine ruling, we understand there's some contours to that in
10 limine ruling that have evolved during the course of the case. And we
11 believe that this fee schedule, just like the percentage of Medicare
12 testimony is within those contours -- well within those contours.

13 THE COURT: And the objection will be sustained. There's
14 been no direct testimony that would infringe on the prior ruling with
15 regards to the motion in limine.

16 MR. BLALACK: Your Honor -- is that the end of your list?

17 MS. LUNDVALL: That is the end of the list for today.

18 MR. BLALACK: Your Honor, before you move on to the
19 charge, you mentioned the IT setup for any other conference room
20 change. Shane mentioned that he wasn't sure what we were referring
21 to.

22 MR. BALKENBUSH: Yeah. I've yet to speak with anybody
23 about setting up.

24 THE COURT: We'll be in 3D tomorrow.

25 MR. BLALACK: Is he allowed to go down and start doing that

1 now?

2 THE COURT: Yes.

3 MR. BLALACK: Okay. Then I think we're ready.

4 MS. LUNDVALL: Your Honor, as we move into the charge
5 conference, you had asked for a redacted copy of your order to use in the
6 jury instructions.

7 THE COURT: And will someone from the Defense side
8 confirm for me if that is correct and accurate?

9 MR. PORTNOI: I received it as I came into the courtroom.

10 MS. LUNDVALL: Well, I gave it to Mr. Polsenberg a couple
11 hours ago.

12 THE COURT: But did anyone confirm with you that the
13 redactions were acceptable?

14 MR. PORTNOI: No. The redactions are not acceptable, Your
15 Honor.

16 THE COURT: Okay. Good enough.

17 MR. PORTNOI: We don't believe that -- first off, we don't
18 believe any of the instructions to be an instruction. It's still what the jury
19 needs to know, and add that instruction into that, and not simply give the
20 jury a lengthy pro lib document that is -- for instance, includes
21 information about the rates through the limine ruling. It causes the jury
22 to ask a lot of questions of what was in the discovery record and that --
23 or what the parties had discovery on and wonder, what is RFP 6, what is
24 RFP 19. Why are we talking about all of these numbers and what was in
25 there? It's an incomplete document unless we also provide the jury all of

1 the requests for production that are referenced in that. And then what's
2 the jury going to do with that?

3 So I don't -- first off, we believe we shouldn't be providing
4 the jury that document, understanding that Your Honor has already ruled
5 on that. I would limit the redactions only to the Court's findings that are
6 -- that are at the end. These are the findings that are heading around the
7 paragraph 31, I believe, and onward. And with respect to the same
8 subsequent sanction, where there are multiple sanctions, there's a
9 paragraph B. And I think that that really gives the jury what they need to
10 know with respect to this, assuming that Your Honor wants to give that.
11 I think the front matter relative to the history -- aids in the history. It
12 simply is A, incomplete. At the same time, it's extremely long and
13 causes the jury --

14 THE COURT: I haven't seen it yet.

15 MS. LUNDVALL: Very briefly, Your Honor --

16 THE COURT: So I still have to read it.

17 MR. PORTNOI: Yes, Your Honor.

18 MS. LUNDVALL: Very briefly, Your Honor. We appreciate
19 the concession by counsel. But in fact, the Court has already ruled what
20 to do. And therefore, what we're trying to do is to comply with the
21 Court's order. The second is that any concern that he had dealing with
22 orders in limine, we've redacted those portions. So we're not in
23 violation of any of the orders of limine. Third, what we did was to try to
24 put into context this Court's ruling, as well as include the portions that
25 have been wanted in by Mr. P. So with that then, Your Honor, that gives

1 you a little context.

2 THE COURT: So let's pick this up in the morning.

3 MR. BLALACK: Yes, Your Honor.

4 THE COURT: All right. Now, what's next?

5 MS. ROBINSON: So I was going to go through with Mr. P's
6 permission, we had already -- we've done a lot of work on the --

7 MR. POLSENBERG: Your Honor, excuse me. If I could
8 address the order issue.

9 THE COURT: Of course.

10 MR. POLSENBERG: I think it's improper to give the jury a
11 court order, especially since it's the only order they have in this trial. It's
12 probably the only order they've seen in their entire lives. And I think it
13 creates undue influence. You know, even in -- I've argued a lot of cases
14 on sanctions. I know that the supreme court wrestles with a lot of these
15 and what the -- what should go to the jury. You know, in the Goodyear
16 case, Judge -- and trust me, Trust Laura [phonetic] was hopping mad at
17 us. But she didn't say anything to the jury about something being done
18 intentionally wrong. So I don't think it's appropriate for the Court to give
19 the jury an order saying that you would have found that we acted
20 willfully.

21 THE COURT: Well, you know, how do -- then how do I
22 instruct the jury because it's going to be -- it's fair game.

23 MS. LUNDVALL: And Your Honor, from that perspective,
24 Bass Davis requires the Court to make a finding of either negligence or
25 willfulness so that we know what type of instruction that will be given to

1 the -- to the jury. That was reaffirmed in the FT v. Hyatt case. And so
2 therefore, the Court is doing exactly what it is obligated to do under Bass
3 Davis.

4 MR. POLSEMBERG: No, I don't think so. Judge, it's --

5 THE COURT: Give me a case to read overnight then.

6 MR. POLSEMBERG: Judge, the standard -- and counsel
7 keeps forgetting I was on the Hyatt case. The standard of willfulness
8 versus negligence is for you to decide which instruction to give, whether
9 to give a rebuttable presumption or the mere statutory inference. It
10 doesn't mean that you tell the jury, oh, the Defendants intentionally
11 misbehaved and engaged in misconduct. That throws prejudice into this
12 jury. I mean, we've got this far in this trial. That's going to be the issue
13 on appeal. So I don't think you should get into what the basis is at all for
14 why you're instructing the jury.

15 THE COURT: And this all comes up after 5 p.m. when my law
16 clerk is gone. And you guys knew about this all day? Why didn't you
17 give me a heads up?

18 MS. LUNDVALL: From this, Your Honor, what this is is a
19 reargument --

20 THE COURT: It is.

21 MS. LUNDVALL: -- of what we had decided yesterday.

22 THE COURT: But I'll go reread Bass Davis tonight and FTC v.
23 Hyatt. I'll talk to the law clerk about it. And we'll have to take it up
24 tomorrow.

25 MS. LUNDVALL: Thank you, Your Honor.

1 MS. ROBINSON: So I have some good news.

2 THE COURT: Okay.

3 MS. ROBINSON: We've reached a lot of agreement on the
4 homework you gave us on instructions.

5 THE COURT: Good.

6 MS. ROBINSON: There's just a couple of very small issues
7 that we needed to take up with the Court.

8 THE COURT: Okay. Direct me and I'll be ready.

9 MS. ROBINSON: So with respect to the contract introduction
10 instruction, that's the model instruction 13.0, the Court had instructed the
11 parties to agree on language, describing the breach of contract claim as
12 an introduction to the breach of contract. We all -- we have agreed on
13 language with only one issue, which is that the Plaintiffs wish to refer to
14 implied contract and the Defendants wish to refer to an implied in fact
15 contract. We believe that implied is proper, both because it's less
16 legalistic, it's easy to understand, and that's the language that the model
17 instructions use.

18 THE COURT: And where will I find --

19 MR. PORTNOI: I don't think we -- unfortunately, Your Honor,
20 I believe this is also something that we have yet to submit. But I can
21 make this a little easier, which is simply that we'll agree to use implied
22 contract so long as my opposing counsel agrees that there will never --
23 there will not be in the future some inference that we conceded to some
24 other kind of implied contract. I don't know what it would be. That's
25 really all we care about on that one.

1 MS. ROBINSON: Agreed. The implied contract claim is
2 implied in fact contract claim. Agreed.

3 THE COURT: Okay.

4 MR. PORTNOI: So we'll submit that it's agreed at this point.

5 THE COURT: Whoever's doing your closing, make sure that
6 they're aware of this.

7 MS. ROBINSON: Understood. Just making a note.

8 THE COURT: All right. So what are the objections to the
9 Plaintiffs' proposed verdict form?

10 MR. PORTNOI: The special verdict form?

11 THE COURT: No. Just the general verdict form.

12 MR. PORTNOI: Well, I think, Your Honor, that their general
13 verdict form then goes all the way through to ask subsequent questions
14 such as damages, which are really cause the jury to have to do it twice in
15 terms of the general verdict form. Really, we have two competing with
16 the special verdict form.

17 MS. ROBINSON: So what we submitted on the 16th -- I don't
18 know if you looked -- what we have is general verdict on damages. And
19 then we do have a chart about the stop payment, which is not a damages
20 question. So there's really no way to address it for damages. And then
21 we have a chart regarding the predicate on punitive damages. We've
22 actually withdrawn number 6. And that's all we've got. What follows --
23 the special verdict form that follows is the proposed special verdict form
24 from the phase two, that would be punitive damages.

25 MR. PORTNOI: Your Honor, it seems to me given that the

1 special verdict form has asked the jury to talk about damages and talk
2 about the individual claims, what I understood really was you have a
3 general verdict for Defendants, yes, no, do you have a general verdict for
4 Plaintiffs, yes, no. If you're -- you know, basically, if you don't have a
5 general verdict for the Defendants, then you go to the special verdict
6 form and start going through the claims. But other than really, you
7 know, refer to -- so Mr. Polsenberg has a better experience than I do.

8 MS. ROBINSON: So this is -- I'm not sure. Yeah, that's
9 different. So this is what we filed the first time, which is --

10 MR. POLSENBERG: This is what you filed on the 19th.

11 MS. ROBINSON: This is the 19th. This is the 16th. We filed
12 two. So on the 16th, we filed the one that just says here is what we find
13 for Plaintiffs' damages, and the blanks are per Plaintiff, per Defendant,
14 which I think both sides agree is necessary. And then we have a chart
15 for the PPA -- for the prompt payment, and we have a chart for the
16 predicate [indiscernible] for punitives. And that's all we've got because
17 we would withdraw it.

18 MR. POLSENBERG: We would -- just for the record, you
19 would withdraw what?

20 MS. ROBINSON: Number six. I already said that on the
21 record. This is a bad faith. We're not pursuing bad faith as a basis for
22 punitive damages. Only the [indiscernible].

23 MR. POLSENBERG: Here's the problem, Judge. Under
24 *Allstate v. Miller*, we've got to have the jury answer enough questions so
25 that if there's anything that's reversible on appeal, the Supreme Court

1 can look to see whether that was a basis of the jury's decision and
2 whether it was the only basis of the jury's decision. Otherwise, there
3 would have to be a new trial, which is why we have more detailed
4 questioning as to all the causes of action and the parties.

5 MR. PORTNOI: What's also confusing, Your Honor, is that
6 Plaintiff's general verdict form would have the jury go through and write
7 down damages for every cause -- for every Plaintiff against each
8 Defendant. And then when they got to Plaintiff's special verdict form,
9 they would have to do it again.

10 MS. ROBINSON: No. The following verdict form is only for
11 punitives. I don't understand what you're saying.

12 MR. PORTNOI: No, the way you did it on the 19th, you put
13 the --

14 MS. ROBINSON: Oh, but that's -- we're not talking about that
15 one.

16 MR. PORTNOI: Can I finish?

17 MS. ROBINSON: I'm sorry. Go ahead.

18 MR. PORTNOI: I'm talking about that one.

19 MS. ROBINSON: Okay. I'm sorry.

20 MR. PORTNOI: The way you did it on the 19th, you asked
21 about the causes of action first, and then asked about the damages. And
22 we have a few more questions on the causes of action so that we don't
23 face a new trial under *Allstate v. Miller*. There are a number of reasons
24 we have to have the jury ask all those questions. So they should after
25 asking -- or answering the questions on what causes of action they're

1 finding for the Plaintiff, then, they should award the damages. They
2 shouldn't just award an amount of damages upfront and then go back
3 and say what causes of action there are.

4 THE COURT: I've just never seen it like that, Mr. Portnoi,
5 ever, in my 10 to 12 trials. I'm sure you've done more, every year. So --

6 MR. PORTNOI: Well, it -- I got to tell you, the evolution of
7 verdict forms in Las Vegas is amazing. We've gotten -- and largely as a
8 result of *Allstate v. Miller*, which in *Allstate v. Miller*, I as the Defendant
9 asked for the jury to be asked what causes of action they're finding for.
10 And there were three bad faith causes of actions. Supreme Court said
11 two of them didn't really exist, but one of them did. But because we
12 can't figure out what the jury found for and because I asked for the jury
13 to be asked what they found for and what they didn't, Supreme Court
14 reversed the whole thing and a whole new trial.

15 THE COURT: Now, let me just back up here. The
16 Defendant's general defense verdict form, is there any objection to that?
17 Because I'm hearing that both of you want to have a Plaintiff's verdict
18 and a Defense verdict form.

19 MS. ROBINSON: I don't think so. I'm struggling to put my
20 hands on it right now, but I don't think so. Thank you. No, I think this is
21 the form -- this is the -- it's consistent with the form, so on that
22 understanding that it's consistent with the form and the jury instructions,
23 we don't have an issue for it.

24 THE COURT: All right. So that will be approved in its current
25 form. It was filed on 11/16/21. Now, the Plaintiff's proposed verdict

1 form, I understand that you are proposing to remove paragraph six.

2 MS. ROBINSON: Correct.

3 MR. PORTNOI: We -- again, we've had --

4 MS. ROBINSON: This is the one filed on the 16th.

5 THE COURT: The 16th.

6 MR. PORTNOI: So the superseding one on the 19th, we're
7 withdrawing.

8 THE COURT: I think it just went away. Did it go away?

9 MS. ROBINSON: If we can agree on this one, yes.

10 Otherwise, we, you know, the other one is -- that was just an alternative
11 we proposed to meet some of the objections that we have had.

12 MR. PORTNOI: Judge, sorry, I do transcripts for a living. If
13 we agree on this one, which one is that?

14 MS. ROBINSON: The 16th. November 16th.

15 THE COURT: November 16th at 4:57.

16 MR. POLSENBERG: Well, do you have an extra copy of that
17 one?

18 MS. ROBINSON: I have a copy of it.

19 MR. PORTNOI: So Your Honor, so there's a superseding
20 verdict form. In that case, we assumed that the one on the 16th had
21 been withdrawn.

22 MS. ROBINSON: Sorry.

23 THE COURT: So take a minute.

24 MS. ROBINSON: I believe in the introductory, I said I -- in the
25 introductory remarks on the 19th, I said Plaintiff's proposed was formed

1 as an alternative to the general verdict form Plaintiffs have already filed.
2 So I did not mean it to be superseding.

3 MR. PORTNOI: Yeah. And I obviously missed that.

4 MS. ROBINSON: This is my only copy. So, that.

5 MR. PORTNOI: Okay. Your Honor, it simply is the case, as
6 Mr. Polsenberg has said, this doesn't -- this wouldn't provide any
7 information, even about whether the jury had found on contract, on
8 unjust enrichment. Which, by the way, Your Honor, if you remember, we
9 discussed this earlier. Those are alternative claims. They can't actually
10 even be found together. So we wind up in a place where we're sending
11 alternative claims to the jury without knowing which alternative claim
12 they're working with.

13 So that all, you know, that creates a -- that creates a debate
14 and a horribly messy record on appeal. And it just -- again, Your Honor,
15 it's -- this is their general verdict form. This is not their special verdict
16 form. I know you had said you wanted to start with the general verdict
17 form and then go to a special verdict.

18 THE COURT: But you believe it has to be special in every
19 respect?

20 MR. PORTNOI: I certainly believe that we could have
21 discussions about how detailed it has to be, Your Honor, but I do believe
22 that we need to at a minimum ask the jury about the four claims in this
23 case.

24 THE COURT: I have the *Allstate v. Miller* case up. Give me a
25 moment just to look at it. "It has to be clear which theory the jury

1 concluded that Allstate breached the implied covenant of good faith and
2 fair dealing. So you're going to have to revise your general verdict form.

3 MS. ROBINSON: So it was with that in mind --

4 MR. PORTNOI: This one, Judge, is a little more complicated
5 because if I recall *Allstate Miller*, it was one plaintiff and one defendant.
6 Which is why we have the graphs where the jury can say for each plan
7 and each Defendant. Yes or no for each column about that.

8 THE COURT: So can we stair-step it? All right. So can we
9 stair-step it so that it's clear it's yes or no for each Plaintiff versus each
10 Defendant?

11 MS. ROBINSON: So Your Honor, if you --

12 MR. PORTNOI: I had Dimitri do that. Yes, Your Honor. I had
13 Dimitri do yes or no checkboxes.

14 THE COURT: Ms. Robinson, would you like to respond?

15 MS. ROBINSON: Yes, I would, Your Honor. So that is why.
16 In anticipation of this objection was why we filed an alternative form on
17 the 19th. And so that's where we break out all four causes of action with
18 an opportunity for the jury to answer yes or no for each pair of Plaintiff
19 and Defendant as to each cause of action.

20 THE COURT: I just have to pull it up. And the 19th, you
21 objection to that? Because it seems to be doing exactly what you're
22 asking here.

23 MR. PORTNOI: Well, we have a few objections here, Your
24 Honor. One objection is in ours, we broke out, in addition to the
25 elements of contract. Now, we believe that is important.

1 THE COURT: But you can do that -- can't you do that later?
2 After -- this is, like, a threshold issue.

3 MR. PORTNOI: Later, I don't understand, Your Honor.

4 MR. POLSENBERG: But the reason it's important, Judge, is
5 because whether a contract is formed comes up different ways on the
6 different causes of action. You can't just ask the jury to find that there
7 was a breach. They have to find that there was a contract. Plus, if there
8 is a contract, Plaintiffs can't prevail on unjust enrichment. And if there
9 isn't a contract, they can't prevail -- our theory is they can't prevail in the
10 Unfair Claims Practices Act. So we need to get the jury to determine that
11 particular issue --

12 THE COURT: I got it.

13 MR. POLSENBERG: -- so that I know what I no longer have
14 an appeal on because the jury understood or what I do have an appeal
15 on because the jury didn't understand.

16 MS. ROBINSON: So Your Honor, I don't believe it's
17 necessary to have a special question on every single element of every
18 cause of action unless there's a really serious question raised about
19 whether or not there is evidence for that element. I don't feel that's --

20 THE COURT: I don't think every element needs to be. I think
21 the causes of action need to be set out.

22 MS. ROBINSON: Correct. Which is why we set up the
23 causes of action here, which will enable. Now, there's -- we are not
24 asking the jury to -- we are -- we put one damages question. We are not
25 asking the jury to multiply or give us extra damages. And this will allow

1 the Supreme Court to look at this and say, okay, if we rule that a breach
2 of -- that implied contract was required for the insurance claim, then we
3 can see whether or not one existed. You know, whether -- how the jury
4 found on that. And if we -- and if the jury finds, you know, yes on
5 contract, yes on unjust enrichment, we're entitled to elect our remedy.
6 And that will give us a chance. If we elect unjust enrichment and go up
7 on appeal and Nevada Supreme Court says, well, you could have done
8 implied contract but not unjust enrichment, then we had an opportunity
9 to elect the valid claim.

10 I think this covers all of those problems. I have a very, very
11 long list of objections to the 29-page document that they filed, which
12 would ask the jury to -- and this is, you know, this is not assuming
13 duplicate, but just to pull out -- 255 boxes and answer an essay question
14 regarding why they would be interested in granting punitive damages.
15 It's incredibly, unnecessarily time-consuming, confusing, and it assumes
16 the jury is not reading and following the Court's instructions regarding
17 how a cause of action should be determined.

18 You've given -- you're going to give the jury an explanation
19 of how you find breach of contract. If the Defense feels that the jury
20 cannot follow your instructions, I don't know how they feel that they can
21 follow 255 boxes and an essay question. That's even more confusing.

22 THE COURT: I think it's very confusing, frankly.

23 MR. POLSENBERG: Judge, two things on that. Number one,
24 I had Dimitri probably double the number of boxes so that there would
25 be a yes and a no. But they --

1 MS. ROBINSON: I was only having one for each.

2 MR. POLSENBERG: Judge.

3 MS. ROBINSON: Sorry. Go on.

4 MR. POLSENBERG: And they -- all right. So their format is, I
5 mean, it's an easier form, so we can go with that. But you can't have one
6 list of damages because the calculation of damages is different for
7 different causes of action. We talked about that yesterday. Unfair claims
8 practices act does not give you the same damages breach of contract
9 gives you.

10 THE COURT: Let's finish the arguments and I'll announce a
11 ruling in the morning. Let's come back at -- let's 7:45 so that I can read
12 *Allstate, Vas Davis [phonetic] FTC v. Hyatt*. I'm leaning toward the
13 Plaintiffs November 19th verdict form. So let's have your final
14 comments on that.

15 MR. PORTNOI: I'll make two brief points, Your Honor. One
16 point is if there's any additional question we think is really critical to add
17 into Plaintiff's verdict form, it is the formation of the contract as well as
18 the breach of the contract. That really improves the quality of the appeal
19 because it's possible that the jury checks no under the breach of implied
20 contract claim but the jury did think there was a contract. They just
21 didn't think it was breached. And that's important on appeal because
22 remember, if they believe that there is a contract, that still means that
23 unjust enrichment is unavailable under Nevada law. So we do believe
24 that's an important question.

25 The other point that's very important on the verdict form is

1 that their punitive damages still references unjust enrichment.
2 There's -- Your Honor has set the motion to amend the pleadings on
3 hearing at 10:30, which I think will probably be in the middle of closing
4 argument. We have our brief -- we weren't expecting a brief to come in.
5 So we're -- our brief will come in tonight to Your Honor on that point.
6 We'll be prepared to argue that brief tomorrow. But that's also -- I think
7 that's really just something we can call an open issue that I want to flag
8 until Your Honor has ruled.

9 THE COURT: All right. So --

10 MR. SMITH: Your Honor?

11 THE COURT: Go ahead, please.

12 MR. SMITH: I'm sorry, Your Honor. I just wanted to add one
13 point to what Dimitri said. On punitive damages, even if Your Honor
14 rules against us on the unjust enrichment issue, we still think it's
15 important under *Allstate v. Miller* that we understand on what theory the
16 jury chose to award punitive damages, whether it was the unjust
17 enrichment theory that we think is improper or on the Unfair Claims
18 Practices Act. And that gets to the second point on punitive damages,
19 which is their last question is just whether there's oppression, fraud, or
20 malice. And then it takes them immediately in the second phase to
21 awarding a number. We think it's important that the jury actually make
22 the choice. Did they choose to award punitive damages because in the
23 instructions and under Nevada law, it's clear that the Plaintiff is never
24 entitled to punitive damages even if they meet the standard of clear and
25 convincing proof on all these elements.

1 THE COURT: All right. So the tentative ruling tonight is yes
2 or no on causes of action, not on elements of causes of action, to break
3 out if there is a contract formed and if there was a breach, and if there
4 are punitive damages, under which theory or which cause of action will
5 they consider.

6 MR. PORTNOI: Will be mooted depending on how the
7 motion to amend plays out tomorrow.

8 THE COURT: Good enough. And --

9 THE CLERK: Counsel, can I get your name, please?

10 MR. SMITH: Abraham Smith, bar number [indiscernible]. I
11 apologize.

12 THE COURT: Somebody got a haircut. All right, everybody.
13 Have a great night. See you tomorrow, 7:45.

14 MR. GODFREY: I'm sorry, Your Honor, one more thing.

15 THE COURT: Yes?

16 MR. GODFREY: I have a clean laptop for the jury to go back
17 to the jury room. It's been reviewed by --

18 THE COURT: It has to be reviewed by IT as well.

19 MR. GODFREY: Okay.

20 THE COURT: So we'll put a ticket in for that tomorrow.

21 MR. GODFREY: Can I leave it with the clerk for that process
22 or should we [indiscernible]?

23 THE COURT: You know, when you leave it with her, she's
24 responsible for it. So I just can't put that sort of pressure on these guys.
25 They're working their butts off.

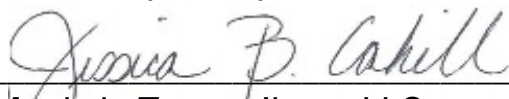
1 MR. GODFREY: Okay. A supervised schedule to review it.

2 THE COURT: We'll put a ticket in with IT. Thank you.

3 [Proceedings adjourned at 6:01 p.m.]

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

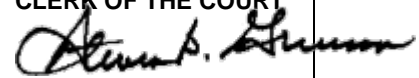


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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

Defendants.

CASE#: A-19-792978-B
DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
TUESDAY, NOVEMBER 23, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 18

APPEARANCES:

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

For the Defendants:

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K. LEE BLALACK, ESQ.
JEFFREY E. GORDON, ESQ.
DANIEL F. POLSENBERG, ESQ.
COLBY L. BALKENBUSH, ESQ.
DIMITRI D. PORTNOI, ESQ.
ADAM G. LEVINE, ESQ.
ABRAHAM G. SMITH, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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1 Las Vegas, Nevada, Tuesday, November 23, 2021

2

3 [Case called at 7:48 a.m.]

4 [Outside the presence of the jury]

5 THE MARSHAL: Department 27 is now in session.

6 Honorable Judge Alf Presiding.

7 THE COURT: Thanks everyone. Please be seated. Okay,
8 calling the case of Fremont v. United. Let's take appearances for the
9 record.

10 MS. LUNDVALL: Good morning, Your Honor. Pat Lundvall
11 with McDonald Carano here on behalf of the healthcare providers.

12 THE COURT: Thank you.

13 MR. ZAVITSANOS: John Zavitsanos on behalf of the
14 healthcare providers.

15 MR. AHMAD: Joe Ahmad, Your Honor, also on behalf of the
16 healthcare providers.

17 MS. ROBINSON: Jane Robinson on behalf of healthcare
18 providers.

19 MR. LEYENDECKER: Kevin Leyendecker on behalf of the
20 healthcare providers.

21 MR. MCMANIS: Good morning, Your Honor. Jason
22 McManis on behalf of the healthcare providers.

23 MR. KILLINGSWORTH: Michael Killingsworth on behalf of
24 the healthcare providers.

25 THE COURT: Thank you.

1 MR. PORTNOI: Dimitri Portnoi on behalf of Defendants.

2 MR. GORDON: Good morning, Your Honor. Jeff Gordon on
3 behalf of the Defendants.

4 MR. POLSENBERG: Good morning, Your Honor. Dan
5 Polsenberg.

6 MR. ROBERTS: Good morning, Your Honor. Lee Roberts
7 also on behalf of Defendants.

8 MR. LEVINE: Good morning, Your Honor. Adam Levine on
9 behalf of the Defendants.

10 THE COURT: I can't see everybody.

11 MR. SMITH: Abe Smith for Defendants.

12 THE COURT: Thank you.

13 MR. BALKENBUSH: And good morning, Your Honor. Colby
14 Balkenbush on behalf of the Defendants.

15 MR. ROBERTS: And Lee Blalack will be on his way shortly.

16 THE COURT: Good enough. All right. So Plaintiffs, where
17 do you want to start this morning?

18 MS. ROBINSON: Well, I think we've made a lot of progress
19 on the jury instructions and there's just a couple of open issues that I
20 thought we had to address.

21 THE COURT: And I assume you guys got my proposed?

22 MS. ROBINSON: We did.

23 MR. PORTNOI: Your proposed adverse inference instruction.
24 Yes, Your Honor.

25 MS. ROBINSON: Yes, Your Honor. That's acceptable for

1 Plaintiffs, Your Honor.

2 MR. PORTNOI: Defendants continue to object for the reasons
3 stated on the record, but we don't have a reason to argue with that.

4 THE COURT: Very good.

5 MR. PORTNOI: And also for the reasons in our trial brief on
6 the issue.

7 THE COURT: Thank you for referencing that instead of giving
8 me the long explanation.

9 MR. PORTNOI: We've got a lot to do today.

10 MS. ROBINSON: So one open issue was that we had agreed
11 on language for 13.0, it would be description of the contract dispute.
12 And I didn't know -- I hesitated to file anything this morning because I
13 didn't want to create additional confusion. We can handle it any way
14 you'd like. I've already handed this to the Defendants, but we do have a
15 Word document and a printout of or agreed language. However, the
16 Court would prefer, although eagle eye Mr. Portnoi noticed that I missed
17 a tab indent.

18 MR. PORTNOI: As a general matter, Your Honor, because
19 Ms. Robinson and I think we understand generally where the instructions
20 sit. A few tiny disputes this morning. We were suggesting that Ms.
21 Robinson, myself, and Ms. Bonnie, while video is playing, go off and
22 compare a Word document that we can give to the Court after -- right at
23 10:00 to instruct so that we have -- so we are in place where we think we
24 agree, and we know -- we all know. Because we just don't want to delay
25 and have the jury waiting for any kind of disagreement about, oh no, the

1 Judge will this, the Judge will that.

2 THE COURT: I think 3A is available.

3 MR. PORTNOI: Okay.

4 THE COURT: And we'll know when the Marshal -- I think he's
5 outside now.

6 MS. ROBINSON: There was at least one issue that we were
7 not able to reach agreement on as far as the instructions and that's the
8 punitive damages language. So the Court may recall that we had a
9 dispute about what should be told to the jury about the effect of their
10 verdict or their finding on the predicate of any. And the Court had
11 suggested the following language: If you find that punitive damages are
12 appropriate, I will further instruct you. That's obviously find from the
13 Plaintiff's perspective. I know they had proposed an additional six
14 words.

15 MR. PORTNOI: Yeah. We proposed seven words. You will
16 hear additional evidence, and I will further instruct you. This continues
17 to just let the jury know without trying to flag that there's a big phase of
18 something afterward, but just so they're absolutely clear because there
19 have been these jury's that you get into the habit of claim, damages,
20 claim, damages, and you just write a number.

21 THE COURT: I have no objection to the additional language.

22 MS. ROBINSON: My concern about alerting the jury to an
23 additional phase is I just don't want them to be distracted from the
24 question in front of them by the effect of what they do. And so, to alert
25 them that if you find that punitive damages are appropriate, I will further

1 instruct you, I think it's very clear that, you know, this is not the end of it,
2 but it doesn't tell them there's going to be additional evidence.

3 In addition, both in the verdict forms that have already been
4 submitted and the one that we're going to raise -- that I'm going to raise
5 with you in a moment, punitive damages is at the very end after
6 damages have already been discussed. And so, you know, I don't think
7 that -- I just don't think -- you know, it's a yes or no question and it's not
8 a numbers question. I think -- I just want to keep the jury focused on
9 what's in front of them.

10 MR. POLSENBERG: No, that's not true. I mean, she accused
11 me of stuff on Sunday.

12 THE COURT: Stop. No attacks.

13 MR. POLSENBERG: Okay. I'm not trying to do this so that
14 the jury says oh, we'll have to come back to another phase so we're not
15 going to award punitives (sic). That's not my purpose at all. My purpose
16 is exactly on *Wyeth v. Rowatt* and the 2011 jury instructions were written
17 in a way to make clear to the jury that we don't have the situation we had
18 in *Wyeth v. Rowatt* and had to bring the jury back and redo everything.

19 THE COURT: All right. I'm going to overrule your objection.
20 Would you like to state anything further for the record?

21 MS. ROBINSON: No. I've already stated my intentions.
22 Thank you, Your Honor.

23 THE COURT: Thank you.

24 MR. PORTNOI: Two other housekeeping, Your Honor. If you
25 may recall, you asked Ms. Robinson and I to come up with a written

1 stipulation on the preservation of the record. I've shared this with Ms.
2 Robinson. She agrees it's correct. May I approach?

3 THE COURT: Please.

4 MS. ROBINSON: And yes, on the record, I do agree with
5 that.

6 MR. PORTNOI: So that perhaps could be entered as a Court
7 exhibit and then we would agree that that's a -- that is our stipulation.

8 MS. ROBINSON: We realized that in the manner that we
9 went over the instructions on Sunday, the record says have 33 and this
10 will save everybody, I think.

11 THE COURT: Good enough. Reduce that to a stipulation?

12 MR. PORTNOI: Oh, you want something that's actually
13 signed?

14 THE COURT: I do.

15 MR. PORTNOI: Yes, we'll do that.

16 MS. ROBINSON: So I think that's all the instructions
17 questions.

18 MS. PORTNOI: Well we did the one with the [indiscernible]
19 which is actually on a somewhat different issue. I was working with Mr.
20 McManis last night on the Yerich deposition. There's a single objection
21 left in it after our discussions. We would like to -- if I may approach? We
22 would like to play first if there's a chance after we do verdict form that
23 you could look at it quickly.

24 THE COURT: I might do it right now. Where is it?

25 MR. PORTNOI: It's -- I think if you go to the tab you'll see the

1 objection and response.

2 THE COURT: But which objection?

3 MR. PORTNOI: May I approach again to help you?

4 THE COURT: Just mark it.

5 MR. PORTNOI: So these are identical objections, that's why.

6 So it's one objection. It's just repeated twice.

7 THE COURT: Okay. I'll do it right before the jury comes in.

8 MR. PORTNOI: Thank you.

9 MS. ROBINSON: So Mr. Portnoi and I did some negotiations
10 last night on the verdict form. But this morning or overnight I worked on
11 what I believe is a verdict form that addresses the Court's concern the
12 conduct underlying punitive damages. It breaks out breach of contract
13 and formation of contract, but it also -- the only other difference is that it
14 adds a separate damages question for each cause of action. And I think
15 that addresses some of the concerns that Mr. Polsenberg has as well
16 about whether or not the damages questions, you know, have different
17 measures of damages.

18 Now we believe -- we're going to argue they're the same, but
19 I'm hearing what he's saying. And so, we have proposed this.
20 Now -- and again, I didn't file it because I was worried about more
21 confusion, but I have handed it and emailed it to opposing counsel.

22 The only other thing that I would add, and if I may approach
23 and hand it to you, is that if we do it this way, I would request an
24 instruction that is designed to let the jury know that each damages
25 question should be considered separately and independently and the

1 jury should imagine that we're -- shouldn't, you know, be wondering are
2 we going to get everything? Should we divide it among the three? And
3 so, that instruction is designed to sort of elevate the confusion that may
4 be caused by having multiple damages questions on parallel theories.
5 So if I may?

6 THE COURT: Please. Give me a second and then I'll want
7 the response.

8 MR. POLSENBERG: I'm pretty good with this. This is a result
9 of something that I had agreed to a week or so ago where we would set
10 up different damages for the different causes of action and then they,
11 after the trial, probably at the time of judgment, could elect which
12 remedy that they wanted. But I was saying that the damages are
13 different.

14 In fact, what we were arguing is that the implied
15 contract -- originally we said the implied contract, if they find for that,
16 they don't address the others. And Jane raised the issue of well, what if
17 the implied contract is reversed on appeal? Then we'd have to go back
18 and try all the other damages issues. So this is just like *Allstate v. Miller*
19 where we're putting in alternatives to keep from having to try it over
20 again.

21 MS. ROBINSON: So only for the record I would state that it
22 is not -- it is our position that the jury could find an implied contract in
23 unjust enrichment and that doesn't mean the unjust enrichment is
24 invalid. I just wanted to clarify our position for the record. But other
25 than that, yeah.

1 MR. PORTNOI: Well, and I just want to be clear, and I think I
2 understand what you're saying but just to make sure Ms. Robinson is
3 saying that agreeing with Mr. Polsenberg that once the jury delivers a
4 verdict, not before, there will be an election of remedy so that we don't
5 then get an argument after hearing that they're the same
6 damages --

7 MS. ROBINSON: Right.

8 MR. PORTNOI: -- that we can add them all together.

9 MS. ROBINSON: Right. So the way that I have handled
10 parallel theories in the past, and I've, you know, obviously not in
11 Nevada. But the way that I've handled it in the past is there is a
12 judgment that says, you know, finding for the Plaintiffs on this theory. In
13 the event this theory is overturned, finding for the Plaintiffs on this
14 theory. In the event this theory is overturned, finding for the Plaintiffs on
15 this theory. And that way it can be rendered without a retrial.

16 MR. POLSENBERG: Exactly.

17 THE COURT: The waterfall approach.

18 MR. POLSENBERG: And my understanding of Nevada law is
19 they elect their remedy at the time they enter the judgment. They don't
20 have to do it at the time we have the verdict.

21 THE COURT: So with that said, this proposed instruction will
22 be given. And is this then an agreed special verdict form?

23 MR. PORTNOI: It's not quit agreed. We did reach agreement
24 on a number of -- first off I want to --

25 MS. ROBINSON: I'm not making them give up their

1 objections.

2 MR. PORTNOI: Yeah, so exactly. So part of the stipulation
3 that Your Honor will enter is that you have refused the many questions
4 in our special verdict form. So I'm not going to say that that's an agreed
5 instruction, but it is the subject of much negotiation that has gotten us to
6 a much closer place. And so in terms of verbiage, we're very close. I
7 think Mr. Polsenberg may have some questions.

8 MR. POLSENBERG: I do. The punitive side too, which I think
9 are under this one or 15 and 15.

10 MS. ROBINSON: Oh, do I have the -- you know, it was very
11 late at night.

12 MR. POLSENBERG: Yeah, that's fine. I didn't catch it until
13 this very second.

14 THE COURT: So the --

15 MS. ROBINSON: That's correct. The last one should say 16
16 and not 15.

17 MR. POLSENBERG: Okay.

18 MR. PORTNOI: So if the --

19 MS. ROBINSON: You guys are both catching my typos this
20 morning. I'm very impressed.

21 MR. POLSENBERG: I just did it this very second. I'm a little
22 blurry myself.

23 The problem I have is you can't just under Nevada law, you
24 can't just ask a jury whether Defendants acted with malice, oppression,
25 or fraud. Under 42.005, section 3, the jury has to make a finding whether

1 such damages will be assessed. The jury doesn't have to award punitive
2 damages. So it's not just something where you say was there malice,
3 oppression, and fraud? You actually have to say, and you find that
4 punitive damages will be assessed. So we have to add that line.

5 MS. ROBINSON: So, I mean, my response to that would just
6 be that would be -- they would have the -- they would obviously be free
7 to give a zero punitive damages.

8 MR. POLSENBURG: No, this is the law. And it's in 211
9 verdict forms.

10 MS. ROBINSON: Is it in the 2018? That's all I have here?

11 MR. POLSENBURG: I don't know. I don't see 2018.

12 MS. LUNDVALL: Your Honor, if I could weigh in on this
13 under the argument that's being made by Mr. Polsenberg, it would
14 deprive them of any opportunity to argue for zero punitive damages in
15 phase two.

16 MR. POLSENBURG: I'm just reading the statute, Judge.

17 MS. LUNDVALL: Well, what I'm suggesting is that because
18 as far -- it values what he contends is the law with which we disagree,
19 then it would deprive them from arguing for a zero finding then in phase
20 two.

21 MR. POLSENBURG: As we say in Massachusetts, we can
22 drive off that bridge when we get to it.

23 So the statute is very clear that the jury has to make a finding
24 whether punitive damages would be assessed, so we need to add that
25 line.

1 THE COURT: Which part of 42.005?

2 MR. POLSENBERG: Subsection 3.

3 MS. ROBINSON: Sorry, let me get out the statute.

4 MR. PORTNOI: While they're looking up the statute, Your
5 Honor, I would also --

6 MR. POLSENBERG: She's looking up the statute as well.

7 MR. PORTNOI: That's fine. I'll wait a minute.

8 THE COURT: Do you guys want to just bring in the jury and
9 go talk about this stuff?

10 MR. POLSENBERG: If you say add it, then we can go in the
11 hallway and Audrey can help us come up with a final set. If you say
12 don't add it, we can do the same.

13 THE COURT: The language has to be compliant with
14 42.005(3).

15 MR. PORTNOI: The last issue then -- and we'll figure out
16 what that should look like and if there's -- if there needs dispute at a
17 break, we'll bring it up.

18 And then the last issue that we have is just that we still have
19 punitive damages questions on unjust enrichment and -- as well as
20 unfair claims practices. We filed our opposition to the motion to amend
21 pleadings last night. I don't know when Your Honor wants to take that
22 up, but that -- whether or not they're two punitive questions or one
23 punitive question is dependent on that issue.

24 THE COURT: Good enough. We will -- I had to give 24
25 hours' notice, so we'll take it up after 10:15.

1 MR. PORTNOI: I mean, I'm happy to waive that 24 hours'
2 notice given that we filed a brief. But I also know -- don't know if
3 you -- however Your Honor wants to handle it given that the jury is here.

4 THE COURT: As I told you guys for the last time I admitted I
5 hadn't read something, it ended up in the blog.

6 MS. ROBINSON: I was just going to say, I'm not going to
7 blog it, Your Honor. I promise.

8 THE COURT: And it was something filed after I took the
9 bench, so I do need a chance to review it.

10 MR. PORTNOI: Sure. Was it the Las Vegas Law Blog?

11 THE COURT: Oh, yeah.

12 MR. PORTNOI: So we'll hold on that until Your Honor asks
13 us for it. I think Mr. Levine has informed me that the few remaining
14 exhibits issues, some of them may be resolved as the morning goes on
15 while video is playing. So I think he has suggested to me that those
16 quick issues may make the most sense at a break.

17 THE COURT: All right. So let me look at this deposition
18 transcript and as soon as I do that, I'll hand it back to you and then we'll
19 bring in the jury.

20 MR. POLSENBERG: Thank you, Your Honor.

21 MS. LUNDVALL: Thank you, Your Honor.

22 MR. ZAVITSANOS: Your Honor, can I raise just one slight
23 housekeeping matter?

24 THE COURT: Of course.

25 MR. ZAVITSANOS: We had talked about timing if there is a

1 phase two. Here's where we come down on that. I think on this die of
2 the room, our preference would be -- we've drawn kind of a sharp line in
3 the sand. If there's a verdict before 1:00 tomorrow, we would like to
4 proceed forward with phase two even if that means that Ms. Paradise
5 would not appear by video. If it's after 1:00, then you know, we can
6 proceed the way Your Honor suggested. Now this is obviously subject
7 to the Court's schedule and subject to the Court's decision, but I'm just
8 letting you know that's kind of where we stand now.

9 THE COURT: When do you think the jury will go out to
10 deliberate?

11 MR. ZAVITSANOS: Today? Well, if Mr. Blalack really does
12 take two hours, I'm thinking we're going to finish the evidence by
13 10:00ish, 10:15. So I'm guessing late afternoon, Your Honor.

14 THE COURT: I don't think they'll be out more than an hour.

15 MR. ZAVITSANOS: Well, if that's the case then a --

16 THE COURT: And we can work -- I can arrange to have staff
17 here overtime, for them to come in tonight. The only problem is
18 tomorrow at 9:00, I've got a calendar, things at 9:00, 9:30, 10:00, 10:30
19 and 11:00, so.

20 MR. ZAVITSANOS: Yes, Your Honor.

21 THE COURT: So talk to each other about that and let me look
22 at this deposition transcript. We're almost ready to bring in the jury.

23 Mr. Portnoi, you had one more thing?

24 MR. PORTNOI: No.

25 THE COURT: Okay.

1 [Pause]

2 THE COURT: Okay you guys, whoever is heading up this
3 issue come on up and let me explain if you need an explanation. We
4 need a Plaintiffs' lawyer up here please.

5 MR. PORTNOI: Your Honor, as I read it, you're sustaining
6 both sides, which I don't necessarily understand.

7 THE COURT: So I think the answer comes in without
8 reference to the attorneys.

9 MR. PORTNOI: The issue is -- it is a reference to an attorney.

10 UNIDENTIFIED SPEAKER: Does this have to --

11 MR. PORTNOI: Do you mean that --

12 THE COURT: Those were the things that were given to me.

13 UNIDENTIFIED SPEAKER: Okay. I'll just take them all.

14 MR. PORTNOI: The issue is with the missing, you know, six
15 lines is simply and unfortunately --

16 UNIDENTIFIED SPEAKER: Well, I don't --

17 MR. PORTNOI: -- is simply the reference to the fact that Mr.
18 Wong, who is sitting at counsel table, his emails weren't searched
19 because he's an attorney. So that is the issue so that's why the
20 [indiscernible] doesn't include that language.

21 UNIDENTIFIED SPEAKER: And I don't think that is the entire
22 scope of what's been cut out and there's no privilege objection at the
23 time. It's -- what the answer says is it lists what was searched and then it
24 says, but we didn't search everybody period. And then it mentions --

25 THE COURT: Plaintiff's objection is sustained.

1 MR. ZAVITSANOS: Thank you, Your Honor.

2 THE COURT: Okay. Now, Marshal Allen, let's bring in the
3 jury.

4 THE MARSHAL: Your Honor, you ready?

5 THE COURT: Yes.

6 THE MARSHAL: All rise for the jury.

7 [Jury in at 8:10 a.m.]

8 THE COURT: Thank you. Please be seated. Good morning
9 everyone. Welcome back to Courtroom 3D, and we're entering the home
10 stretch here, so let's make it a great day. All right, so did we excuse Mr.
11 Crandell yesterday?

12 MR. BLALACK: We did, Your Honor.

13 MR. ZAVITSANOS: Yes, Your Honor. We excused.

14 THE COURT: Very good. So Defendant, please call your next
15 witness.

16 MR. BLALACK: Yes, Your Honor. We're going to call David
17 Yerich by video, and I believe Shane is just finalizing the transcript based
18 on our discussion and then we'll play it.

19 [Pause]

20 THE COURT: So I hope you let that noise distract you this
21 morning.

22 UNIDENTIFIED SPEAKER: Oh, there we go.

23 THE COURT: Okay.

24 UNIDENTIFIED SPEAKER: There we go.

25 THE COURT RECORDER: Just a reminder, this is the

1 courtroom that's really sensitive with the phones and microphones.

2 MR. BLALACK: Whenever you're ready, Shane.

3 [Video deposition of David Yerich begins at 8:15 a.m.]

4 BY MS. LEBLANC:

5 Q You had said the data volume. What was the volume of data
6 that was responsive to the litigation hold request that you had before
7 you?

8 A So again, I -- I want to remind you, if you remember how we
9 discussed how we preserve data, the answer I am going to give you is
10 the entirety of the data that was indexed for the matter that was related.
11 We can start there.

12 I broke it into two separate categories because the notice of the
13 deposition specifically outlined seven individuals. And I believe you
14 know who those are. The data that was indexed for those seven
15 individuals came to 7.73 million documents, which equates to 2,232
16 gigabytes, which you could also think as two terabytes of information for
17 those seven.

18 The other individuals that I mentioned come to ten individuals, and
19 those individuals -- these are data, now, I do want to clarify, not
20 everybody who was placed on the hold necessarily would have had data
21 collected. But in this case, it would not include Ryan Wong and
22 individuals like that. But for the ten individuals who were also on the
23 hold and for whom data was collected, that additional information came
24 to 1.66 million documents or 1.5 -- 1,500 gigabytes, also 1 -- you could
25 consider that 1.5 terabytes. That is the information that we indexed in

1 our on-premise system for this matter, for the custodial data.

2 Q Okay. And I see also that your note also -- that your note
3 also reflects a data filter of January 1, 2016, to January 31, 2020. And
4 then a topic that said search terms. Are those all of the search terms that
5 were utilized in pulling the universe of documents that you just
6 referenced?

7 A That is the comprehensive list for all search terms that were
8 utilized in this matter, yes. I do not have that document up as it is a
9 printed document. So if you wish to discuss that, I would ask that you
10 could put that one up to display for me.

11 Q So with respect to the notes that are displaying now, that are
12 you notes, where it says, 2019-44900 Fremont, what does that mean?

13 A If you recall on the previous discussion we had on this, you
14 gave me a case number. And I indicated that that was not the case
15 number that we use internally to refer to this matter. This is the internal
16 case number that my team utilizes.

17 Q Okay. And under roster, what is the information under roster
18 mean?

19 A So roster is the staffing of the document review for the
20 custodial document review.

21 Q And -- okay. So are these dates, 1/28/21?

22 A Yes. So those are dates. The first part was 1/28/21, 2/7, 3/12,
23 4/1, 4/4 through 4/11, and 4/18 are all dates, correct.

24 Q And are all those dates in 2021, after January 20th of '21?

25 A Yes.

1 Q And when you say these are staffing, for example, the first
2 one, 1/28/21, it looks like it says 9 and then 1L training; is that correct?

3 A That is correct. Yes.

4 Q What does that mean?

5 A Nine is the number of first-level reviewers, and 1L training
6 refers to the fact that the first-level review training began on 1/28.

7 Q Okay. Is that the first date the documents were reviewed by
8 the first-level reviewers?

9 A For -- as -- as you're well aware, there were documents that
10 were transmitted and would have been reviewed prior to this. But this
11 does begin the custodial document review that we discussed that
12 Haystack performed, yes.

13 Q Okay. And then on 2/17, there was a developing prediction --
14 I'm sorry, developing redaction and privileged-log workflows; is that
15 correct?

16 A Right. It was actually 2/7. And yes, there was the
17 development -- this case had a fairly complex redaction workflow
18 requirement and as well as privlog workflows.

19 Q And then on 3/12, it looks like 1L training 44. What does that
20 mean?

21 A As more data was loaded into the matter, it became quite
22 aware that nine reviewers would not be sufficient. So additional first-
23 level reviewers were brought in, at which point, the training had to be re-
24 given as they were new to the review. So at that point --

25 Q Does the 44 indicate --

1 A -- there were 44.

2 Q I'm sorry, I didn't mean to interrupt you. The number 44, is
3 that 44 additional reviewers or is that a total of 44 reviewers?

4 A A total of 44 reviewers.

5 Q And then on April 1st, there was an additional training, and
6 there was, at that time, a total of 77 reviewers?

7 A That is correct.

8 Q And then on April 4th through 4/11 or April 11, there were a
9 total of 110 reviewers; is that correct?

10 A That is correct. Now, some of those reviewers may have had
11 different -- I'm not stating that all of those are -- at this point, there was a
12 lot of QC areas. There was redaction areas. So not 110 necessarily were
13 always on first-level review during that entire time.

14 Q And it has a date of 4/18, custodial team review something
15 post-production. What is that word?

16 A The custodial team was released post-production. So the
17 production happened on the 15th and on the 18th, the team was
18 released.

19 Q Okay. And if we continue to scroll down in your notes, are
20 these the custodians that were searched and the amount of information
21 that was returned on these custodians?

22 A So these are the custodians that were searched that were
23 specifically noticed under 20U that were searched. There is additional --

24 Q Okay.

25 A -- custodians that were searched separate, but as you broke it

1 out differently in your notice, I tried to reflect that here.

2 Q I think according to your notes, were these custodians
3 searched beginning 1/28/21 or prior to that date?

4 A So the 1/28 date reflects the review. There's two searches, if
5 you will, that we -- in order to provide the data to Haystack, the data was
6 initially searched at UnitedHealth Group by our team. And then that was
7 -- data was sent to Haystack and loaded in the review tool. There were
8 actually multiple loads of the data to the review tool, and that reflects the
9 different staffing number that you saw as the data volumes continued to
10 grow.

11 Q What was the date that the data was first searched?

12 A The date that the data was first searched, I -- the data was
13 sent -- the first set of data was sent to Haystack on January 8th.

14 Q What does it mean, 187K total objects?

15 A So within Relativity, there are workspaces. This is where the
16 information is sent and placed for a document review. And in the
17 workspace for this Fremont review, there were 187,000 total objects that
18 were loaded into the workspace.

19 Q And what does the 79,000-reviewed mean?

20 A Of the 187,000 objects that were loaded into the workspace,
21 79,000 objects were reviewed by first level.

22 Q And first level with Haystack, is that what that's referring to?

23 A Yes.

24 Q Okay. So this is after the information was sent to Haystack
25 for further review after the custodian -- I'm sorry, after the search terms

1 had been applied, this reflects the search by Haystack; is that right?

2 A Review by Haystack.

3 Q I'm sorry, review by Haystack. So this is -- so let me restate
4 my question so that the record is clear. After the document search was
5 conducted and the search terms were applied, this reflects the
6 documents that were reviewed by Haystack?

7 A If you don't mind, I might try to just rephrase that slightly to
8 make sure that --

9 Q Go ahead.

10 A -- I understand what you're saying. So the -- the process is
11 that we collected the information internally. And as we talked about, that
12 was the kind of combined 7.73 million and 1.66 million. That was all of
13 the information that was collected. That information then had the search
14 terms applied to it. The result of the documents that hit on the search
15 terms were then sent to Haystack. The other columns that we discussed
16 are the processing at Haystack to load them into the review. That had a
17 total number of documents of 190 -- or 2,119. Through the processing
18 process where you have Dedupe and other things, and maybe
19 documents that aren't actual documents because they were attached but
20 they weren't real, those are 187,000 total objects. Of that 187,000 total
21 objects loaded into the Relativity workspace for this review, 79,000
22 documents were reviewed.

23 Q And out of those 79,000 that were reviewed, is it fair to say
24 that according to your notes here, 54,716 were found to be responsive,
25 24,423 were found to be nonresponsive?

1 A That is correct.

2 Q And then this -- this is the search terms that were applied to
3 the date filter of January 1, 2016, to January 31, 2020; is that right?

4 A That is correct. There was one slight change that isn't
5 reflected on here for Dan Schumacher, as he had switched roles. But it
6 was so minor that it -- I didn't feel it needed text or notations.

7 Q Okay. And when it says custodians all, what does that
8 mean?

9 A That this was applied to all the custodial data. And they're --
10 in different reviews, you may apply different search terms to different
11 custodians. In this case, this set of search terms was applied to all of the
12 custodians. And that's why I am just mentioning it to you, the separate
13 part for Dan Schumacher.

14 Q Searching only the parent emails, what does that mean?

15 A So if you had an email string, and within the string, the -- let
16 me look at this real quick here, hold on. It would be the top-level emails.
17 So if an email contained another email as an attachment, this only
18 searched for the email, the top-level email. It would not have included a
19 search of these names for an attached email to that email.

20 Q Okay. I understand. Were litigation hold updates sent out
21 over the course of time after the initial litigation hold was sent?

22 A So we send and -- and we discussed this last time. We send
23 reminders on a quarterly basis to individuals to remind them of their
24 legal hold obligations. Is that what you're referring to or something
25 different?

1 Q Yes. That's what I am referring to. Just were you able to
2 confirm that those reminders were sent out on a regular basis for this
3 litigation?

4 A Yes, I was.

5 Q They were sent out on a quarterly basis after the initial
6 litigation hold?

7 A Yes. We used a system as previously discussed called
8 Exterro Legal Hold. And we have configured the system to send out
9 quarterly reminders to custodians related to their litigation holds. It isn't
10 specific to a -- a exact hold. It's for all holds that a custodian is on. So
11 they -- they would receive reminders for each hold that they're on on a
12 quarterly basis.

13 Q And for those reminders, do they -- does it, for example,
14 specifically list either the United case number that you have identified in
15 your notes or a case file, so it reminds the recipient specifically of either
16 the case or the issues for which they are to maintain documents?

17 A So the quarterly reminder is an email that informs the
18 individual that they are subject to hold. That email contains a link, and
19 from that link, they can then see the previous holds that they've been on
20 that were released as well as current holds that they are still subject to.
21 They can go in and -- and review the hold if they choose to for any of the
22 holds that they're on.

23 Q And the litigation hold for this case, would it have referenced
24 -- what would it reference, the parties, the United case number, or other
25 information to allow the custodian to identify the documents that he or

1 she should be maintaining?

2 A So the litigation hold, we use a standard template so that if
3 you're on a number of holds, it'll be understandable to you what --
4 what's important for this hold. And I have reviewed the hold that went
5 out for this matter. Now, this is from memory. There were
6 approximately 15 different areas of documents and information that
7 were included that needed to be, you know, preserved, for the matter of
8 this. It gives a description of what the hold is -- what the legal matter is
9 about. And then it provides a description of the types of documents that
10 are subject to the hold that we're asking the user to be aware -- you
11 know, be aware of.

12 [Video ended at 8:27 a.m.]

13 MR. BLALACK: I think that's it, Your Honor.

14 THE COURT: Okay. Very good. Defendant, please --

15 MR. BLALACK: I don't believe the Plaintiffs have anything
16 else -- anything else on that?

17 MR. ZAVITSANOS: That's correct, Your Honor. We have
18 nothing.

19 THE COURT: Okay.

20 MR. BLALACK: Call our next witness, Your Honor?

21 THE COURT: Please.

22 MR. BLALACK: Rena Harris, by video.

23 [Video Deposition of Rena Harris begins at 8:27 a.m.]

24 MR. BALKENBUSH: Would the reporter please swear in the
25 witness?

1 COURT REPORTER: Would you raise your right hand for me,
2 Ms. Harris?

3 [WITNESS SWORN]

4 REPORTER: Thank you.

5 MR. BALKENBUSH: Good morning, Ms. Harris. We met
6 earlier, but just for the record; my name is Colby Balkenbush. As you
7 heard, I represent the Defendants in litigation pending in Nevada
8 between UnitedHealthcare and entities affiliated with TeamHealth, your
9 former employer. I'll be taking your deposition today.

10 DIRECT EXAMINATION

11 BY MR. BALKENBUSH:

12 Q To get started, can you just state and spell your name for the
13 record, please?

14 A Rena Harris, R-E-N-A H-A-R-R-I-S.

15 Q And then how long did you work at Kindred Healthcare?

16 A Two years.

17 Q So from approximately August 2013 to August 2015?

18 A Yes, August/September. Probably, to --

19 Q Okay.

20 A -- October 2015.

21 Q Okay. You don't recall there being a gap between your
22 employment at Kindred Healthcare and your employment at
23 TeamHealth?

24 A Probably two weeks. Would two weeks count? Because I
25 wanted to take some time off before I started at --

1 Q Makes sense.

2 A -- at TeamHealth, yes.

3 Q Makes sense. And how did you obtain your position at
4 TeamHealth?

5 A I actually, I -- when I was at Kindred Healthcare, we would get
6 this newsletter called Med Facts that we get every Monday. And there
7 was a position there for a senior contract manager at TeamHealth. And
8 -- and I applied, and I really liked working for the providers -- for the
9 provider's side. And so TeamHealth is a provider. And so I submitted
10 my application and my resume and got a call.

11 Q Excellent. And do you recall who interviewed you at
12 TeamHealth?

13 A Yes, Brad Blevins.

14 Q Okay. Anyone else other than Mr. Blevins?

15 A I'm trying to think of Kent Bristow. I think Kent -- okay, so
16 Brad Blevins, Kristopher Smith with a K, he's a CFO.

17 Q Okay.

18 A And I think Kent Bristow, senior VP. But I definitely
19 remember Brad Blevins and -- and Kristopher -- Kristopher Smith. But
20 not -- I don't remember about Kent Bristow.

21 Q And Brad Blevins, he was a vice president of managed care
22 at the time?

23 A Yes. Yes, he was. Yes.

24 Q Okay. And other than senior contract manager at
25 TeamHealth, did you have any other titles while you worked there?

1 A No.

2 Q Okay. And once you were hired at TeamHealth, and -- well,
3 let me ask you this. October 2015, that sounds about right for when you
4 were hired there?

5 A Yes.

6 Q Okay. Once you were hired there, who did you directly
7 report to?

8 A Brad Blevins.

9 Q Okay. And did the person you reported to at TeamHealth
10 change over time or was it always Brad Blevins?

11 A No, it changed quite a few times.

12 Q Okay. What changes do you recall? I know it's a little --

13 A So there was Brad Blevins, and then Mark Kline, K-L-I-N-E,
14 and then David Greenberg. Then right before I left, it's Brent Davis.

15 Q And those four names you mentioned, did you understand
16 them all to be vice presidents of managed care?

17 A Yes.

18 Q Okay. And the order you listed them in, I have Brad Blevins,
19 Mark Kline, David Greenberg, and then Brent Davis. Is that in
20 chronological order --

21 A Yes.

22 Q -- for how you reported to them?

23 A Yes.

24 Q Okay. Can you go ahead and describe your job duties as
25 senior contract manager at TeamHealth?

1 A I negotiated on behalf of our medical groups. I had several
2 states, did the ER contracting, did the contracting for -- with health plans
3 for our different lines of business. So I did -- I did contracting on our
4 medical groups behalf that are staffed in the different hospitals.

5 Q Understood. And you said you did several states. Do you
6 recall what states you were involved with?

7 A It's Arizona, it's on my -- it's on my LinkedIn page. Arizona,
8 California, Colorado, Idaho, Kansas, Nevada, New Mexican (sic),
9 Oklahoma, Oregon, Texas, Washington, and Wyoming.

10 Q So it looks like, I guess, other than Oklahoma and Texas --
11 well, Oklahoma, Texas, and Kansas, many -- many states in the west
12 region, it looks like?

13 A I had the west region, yes.

14 Q Okay. Okay. And then you said you believe you left
15 TeamHealth in 2020. Do you recall the approximate month you left?

16 A August 2020.

17 Q Okay. And what was your reason for leaving TeamHealth?

18 A I wanted a change of pace because I had been at TeamHealth
19 for over five years doing the professional contracting. And with Centene,
20 I got a great opportunity to do the contracting there and to do the state
21 prison system in California. So it's been quite challenging and -- and
22 interesting to do state prison contracting.

23 Q And do you believe you left TeamHealth on good terms?

24 A I hope so.

25 Q And who is your -- I guess no reason to believe, you -- you

1 left voluntarily once you took at job at Centene, correct?

2 A Yes.

3 Q Okay. How long approximately have you been working in
4 the healthcare industry?

5 A 20 years.

6 Q And approximately how many years have you worked on the
7 -- or did you work on the provider side of that equation? And you can
8 feel free to look at your LinkedIn page if that will help.

9 A Nine years.

10 Q So nine years working on the provider side. And again, I
11 know it's tough, it's probably been a while ago, but do you recall
12 approximately how many of those nine years on the provider's side you
13 would have been involved in contract negotiations with payers?

14 A All nine years.

15 Q All nine years. Okay. And then approximately, how many
16 years do you believe you worked -- have worked on the hospital side of
17 the equation?

18 A All nine years, because I did the hospital and also
19 professional side. I did both.

20 Q Oh, sorry. All nine years you worked --

21 A For the hospital.

22 Q You worked nine years on the hospital side as a -- in addition
23 to nine years on the --

24 A So nine -- as being -- as contracting for a hospital.

25 Q Sorry. And I'm drawing -- I should have been clear. I'm

1 drawing a distinction between a time when you worked actually, you
2 know, for a provider, negotiating provider agreements with payers
3 versus when you may have worked at a hospital negotiating agreements
4 between the hospital and commercial payers.

5 A Okay.

6 Q Does that -- did that make sense?

7 A Yes. Okay. Nine years working for the hospital negotiating
8 with payer contracts.

9 Q Okay. And just to clear -- when you say payer contracts,
10 you're referring to negotiations between hospitals and insurers like Blue
11 Cross, United, Aetna, Anthem, et cetera?

12 A Yes.

13 Q Is that correct? Okay. And then is it accurate that you've also
14 spent time working for health plans?

15 A Yes.

16 Q And negotiating contracts on behalf of health plans with
17 providers?

18 A Yes.

19 Q Okay. And your understanding for Sierra Health Plan of
20 Nevada would have been that the -- once the termination was effective
21 and the notice went into effect, there would have been no contract
22 whatsoever between Sierra and Fremont at that point, correct?

23 A Correct.

24 Q Ms. Harris, do you agree that it is inappropriate to bill
25 services provided by one medical provider under the tax identification

1 number of a different unrelated medical provider? Do you understand
2 my question?

3 A Yes.

4 Q Go ahead and answer.

5 A I think it is wrong.

6 Q And why do you think it's wrong?

7 A You're contracted with a certain entity and that entity bills,
8 and that entity should be used according to that tax ID number.

9 Q As a hypothetical, if there was an emergency medical
10 provider in Los Angeles that was billing its claims under the tax
11 identification number of an emergency provider in San Francisco that
12 was unrelated to it, would you agree that would be inappropriate? Did
13 you understand my question?

14 A Yes.

15 Q Would you agree that the example I gave you, an emergency
16 provider in LA billing services under the tax identification number of an
17 emergency provider in San Francisco, that would be inappropriate
18 behavior?

19 A I would feel it's inappropriate.

20 Q And the reason you'd feel it's inappropriate is for the same
21 reason you gave me earlier, that services should be billed under the tax
22 identification number of the provider that actually provided the services;
23 is that correct?

24 A Yes.

25 Q Do you agree that it would be wrong for Fremont Emergency

1 Services to bill services it provided under the tax identification number
2 of Ruby Crest? Do you understand my question?

3 A Yes.

4 Q Go ahead and answer.

5 A It's inappropriate.

6 Q And please go ahead and tell the jury why that would be
7 inappropriate.

8 A Ruby Crest was not the rendering physician.

9 Q And therefore, services provided by Fremont Emergency
10 Services should only be billed under Fremont Emergency Services' tax
11 identification number; is that correct?

12 A That's correct.

13 Q Would you agree that it would fraudulent for Fremont
14 Emergency Services to bill services it provided under the tax
15 identification number of Ruby Crest Emergency Medicine? Do you
16 understand my question?

17 A Yes.

18 Q Go ahead and answer my question.

19 A I think it's inappropriate.

20 Q If you were making the decisions at TeamHealth as far as
21 how services provided by a particular TeamHealth provider should be
22 billed, would you ever personally authorize one emergency medical
23 provider to bill its services under the tax identification number of a
24 different unrelated emergency medical provider? Did you understand
25 my question?

1 A I don't give any approval for anything.

2 Q My -- understood. My question is if -- it's a hypothetical. If
3 you were in charge of determining how services would be billed by
4 TeamHealth owned or affiliated medical providers, would you personally
5 ever authorize a TeamHealth owned or affiliated medical provider to bill
6 its own services under the tax identification number of an unrelated
7 medical provider?

8 A I would have my superior make that decision.

9 Q Because you personally would never order that; is that
10 correct?

11 A No.

12 Q Have you seen Exhibit 35? Does this refresh your
13 recollection that Mr. Greenberg ordered you to begin billing Fremont
14 Services under the tin for Ruby Crest? Do you understand my question?

15 A Yes.

16 Q You can go ahead and answer it.

17 A Looks like it.

18 Q And so we're clear here, you understand Exhibit 35, which is
19 an email thread between you and Mr. Greenberg, a VP of managed care
20 at TeamHealth, to be confirming that Mr. Greenberg has previously
21 given you an instruction to begin billing services provided by Fremont
22 Emergency Services under the tax identification number of Ruby Crest; is
23 that correct?

24 A Yes, per the request of David Greenberg.

25 Q And we previously discussed that billing services provided

1 by one provider under the tax identification number of another provider
2 would be wrong, correct?

3 A I stated it was inappropriate.

4 Q And in fact, is it correct that this email from Mr. Greenberg
5 appears to be now asking you if not only did you set up Fremont's
6 services to be billed under Ruby Crest's tax identification number, but he
7 is also asking you if you have set up Team Physicians of Nevada to bill
8 under Ruby Crest's tax identification number; is that correct?

9 A Looks like it, yes.

10 Q Exhibit 36 begins with Bates Number FESN7635. Have you
11 had an opportunity to look through that document now, Ms. Harris?

12 A Yes.

13 Q And do you agree that this email is a true and correct copy of
14 an email thread involving various TeamHealth employees, the -- some of
15 which emails you were copied on or sent to?

16 A Yes.

17 Q I want to direct your attention to this January 15, 2019 email
18 from David Greenberg to James Hart West [phonetic] that also copies
19 you and Janine Rourke [phonetic]. Do you see that?

20 A Yes.

21 Q And Mr. Greenberg states: We have set up a sub tin for Ruby
22 Crest for Fremont and UHC claims. Will the Fremont/UHC claims we put
23 a hold on get released now under RCEM automatically since we didn't
24 place those on hold for RCEM? Or do we have to notify you to release
25 those claims? Thanks.

1 You see that?

2 A Yes.

3 Q And do you understand RCEM to mean Ruby Crest
4 Emergency Medicine?

5 A Yes.

6 Q And do you agree, having now looked at a number of
7 documents and email threads here, that it appears that, in fact, not only
8 did David Greenberg authorize the billing of Fremont Emergency
9 Services medical services under Ruby Crest tin but, in fact, Fremont's
10 medical services were billed under Ruby Crest tax identification number?

11 A It looks like that?

12 Q Did you understand my question?

13 A Yes.

14 Q And so, if I'm understanding, Mr. Greenberg sends an email
15 to James Heartless and copies you and Janine Rourke, asking if Fremont
16 claims will now be billed under Ruby Crest tax identification number. Is
17 that how you understand this email?

18 A It looks like that.

19 Q Okay. And then that's a January 15, 2019 email at 8:43 a.m.
20 And then if we scroll up through Exhibit 36, we reach another email from
21 Mr. Greenberg on January 17, 2019, to James Heartless and yourself,
22 where he states, did we get this resolved? Were claims released under
23 RCEM for the UHC services at Fremont?

24 Do you see that?

25 A Yes.

1 Q And so, now Mr. Greenberg is following up again to make
2 sure that Fremont's services are going to be billed under the tax
3 identification number of an unrelated entity named Ruby Crest; is that
4 correct?

5 A Looks like it.

6 Q Have I mischaracterized the document in any way to you?

7 A No.

8 Q Who was James Hart West at TeamHealth?

9 A He is the Alcoa billing coordinator.

10 Q So he would have been involved in the TeamHealth billing
11 department?

12 A He's in the Alcoa billing center.

13 Q Would -- and Janine Rourke, do you know what her position
14 was at TeamHealth?

15 A She was also in the billing center, Alcoa billing center.

16 Q And an April Roga, do you know what her position was at
17 TeamHealth?

18 A She does the physician changes in the system.

19 Q Okay. Understand. Okay. And so, if I'm understanding this
20 correctly, we're looking at emails from Mr. Greenberg to TeamHealth's
21 billing department to yourself, a TeamHealth senior contract manager,
22 and to April Roga, an individual at TeamHealth involved with physician
23 redesignations, he -- trying to make sure that he can implement this
24 redesignation of Fremont services, so they'll be billed under Ruby Crest
25 tax identification number. Am I understanding that correctly?

1 A Yes.

2 Q Did you understand my question?

3 A Yes.

4 Q Having looked through the various documents we've looked
5 at here today, do you agree that Mr. Greenberg's instruction and acts
6 were inappropriate?

7 A David was a VP. He has the jurisdiction to do what he wants
8 to do.

9 Q Does he have the jurisdiction to commit fraud?

10 A I don't want to answer that.

11 Q How do you personally define fraud?

12 A Action you should not be doing.

13 Q Would a fair definition of fraud be lying in order to obtain a
14 financial benefit?

15 A One would assume. Yes.

16 Q And we discussed earlier how you and others at TeamHealth
17 had discovered that Ruby Crest was being paid at 95 percent of billed
18 charges. Do you recall that?

19 A Yes.

20 Q And so, was the idea here that Fremont would bill its services
21 under Ruby Crest tax identification number so that it would be at 95
22 percent billed charges?

23 A Looks like it.

24 Q And Exhibit 37 appears to be an email thread between you
25 and Mr. Greenberg and a few others at TeamHealth. Is that accurate?

1 A Yes.

2 Q And does Exhibit 37 appear to be a true and correct copy of
3 an email thread between you and others at TeamHealth?

4 A Yes.

5 Q Do you recall, Ms. Harris, where Ruby Crest provides services
6 in Nevada?

7 A What I remember, northern Nevada.

8 Q And I'll represent to you that it operates out of a Elko,
9 Nevada, which is in northern Nevada. Does that sound familiar to you?

10 A Yes.

11 Q And I'll represent to you that the hospital that Ruby Crest
12 operates out of in Elko, Nevada is more than 50 miles away from the
13 nearest major hospital. Does that also sound accurate to you?

14 A I don't know.

15 Q Okay. Where did you understand Fremont Emergency
16 Services to operate?

17 A Las Vegas.

18 Q Do you understand Las Vegas to be in southern Nevada?

19 A Yes.

20 Q So Fremont operates in southern Nevada. Ruby Crest
21 operates in northern Nevada. Opposite ends of the state; is that correct?

22 A Yes.

23 Q Do you agree, based on your experience working for
24 TeamHealth and working for other employers in the healthcare industry,
25 that rates of reimbursement for emergency services often differ between

1 rural and urban areas?

2 A Yes.

3 Q And do you agree that often, although not always, rural
4 hospitals will receive higher rates of reimbursement than urban
5 hospitals, because they have fewer patients and, therefore, need to
6 collect more per visit to stay in business?

7 A To my understanding, yes.

8 Q Did you understand my question?

9 A Yes.

10 Q And would you agree that another potential reason for a
11 difference in rates of reimbursement between services provided in urban
12 areas versus services provided in rural areas is that there can be more
13 competition between emergency medical providers in urban areas than
14 in rural areas?

15 A Can you repeat the question?

16 MR. BALKENBUSH: Court reporter, can you read back my
17 question?

18 THE COURT REPORTER: And would you agree that another
19 potential reason for a difference in rates of reimbursement between
20 services provided in urban areas versus services provided in rural areas
21 is that there can be more competition between emergency medical
22 providers in urban areas than in rural areas?

23 THE WITNESS: Yes.

24 BY MR. BALKENBUSH:

25 Q In light of the differences that we've just discussed between

1 emergency medical services that are provided at rural hospitals versus
2 emergency medical services that are provided at urban hospitals, do you
3 agree that it would be particularly inappropriate to bill emergency
4 services provided by an urban emergency provider under the tax
5 identification number of an unrelated rural emergency provider?

6 A At the end of the day, the patient is being seen at an
7 emergency care. That should be the main focus.

8 Q And I understand. But I do want to ask that you answer my
9 question.

10 MR. BALKENBUSH: Can you read back my question, court
11 reporter, please?

12 THE COURT REPORTER: In light of the differences that we've
13 just discussed between emergency medical services that are provided at
14 rural hospitals versus emergency medical services that are provided at
15 urban hospitals, do you agree that it would be particularly inappropriate
16 to bill emergency services provided by an urban emergency provider
17 under the tax identification number of an unrelated rural emergency
18 provider?

19 THE WITNESS: Yes.

20 BY MR. BALKENBUSH:

21 Q And did you understand my question?

22 A Yes.

23 Q But unfortunately, that is exactly what David Greenberg
24 ordered TeamHealth employees to do here, isn't it?

25 A David Greenberg was the vice-president.

1 MR. BALKENBUSH: Can you please read back my question,
2 court reporter?

3 THE COURT REPORTER: But unfortunately, that is exactly
4 what David Greenberg ordered TeamHealth employees to do here, isn't
5 it?

6 THE WITNESS: Yes.

7 BY MR. BALKENBUSH:

8 Q During your time at TeamHealth, were you involved -- were
9 you -- did you have the experience of being involved in multiple
10 situations where a TeamHealth affiliated emergency medical provider
11 was out-of-network with a major commercial payer?

12 A Yes.

13 Q Did you understand my question?

14 A Yes.

15 Q And when a TeamHealth affiliated or owned emergency
16 provider is out-of-network with a commercial payer, what rates typically
17 would TeamHealth expect that emergency provider to be paid?

18 A It can vary.

19 Q Okay. And you say it can vary from provider to provider and
20 also from commercial payer to commercial payer?

21 A Yes.

22 Q Okay. And we've talked about a UCR rate. Do you recall
23 that?

24 A Yes.

25 Q We talked about looking at rates that other commercial

1 payers pay and using that as a benchmark; is that right?

2 A Yes. I'm not an expert.

3 Q Based on your experience at TeamHealth, would you agree
4 that it would be unusual for a TeamHealth emergency provider that it
5 out-of-network with a particular payer to be paid its full billed charges by
6 that particular payer?

7 A It's not the expectations, no.

8 Q And that that is -- it would not have been TeamHealth's
9 expectation that the out-of-network emergency provider would be paid
10 its full billed charges?

11 A No.

12 Q Okay. Did you understand my question?

13 A Yes.

14 Q Now there were some questions by Mr. Ruffner [phonetic]
15 also earlier United reaching out to your employer. And essentially, it
16 was implied that somehow you were coerced to appear today through
17 that. So I want to ask you an important question. You're doing a lot of
18 testimony today. We've been on the record well over seven hours. Has
19 any of the testimony that you've given today, whether in response to my
20 questions or Mr. Ruffner's questions, been changed or impacted by the
21 fact that United reached out to your employer, Centene, in an attempt to
22 convince you to appear for today's deposition?

23 A No. I stated to what I recall when I was working at
24 TeamHealth.

25 Q Do you understand that, as citizens in this country, we all

1 have an obligation to provide testimony in civil cases when we are
2 served with a valid subpoena?

3 A Yes.

4 Q And do you understand that by appearing here today, that
5 you have fulfilled that obligation you have as a citizen of this country?

6 A Yes.

7 Q There was also some implication earlier that, potentially, I
8 had misled you on prior phone calls or in prior communications prior to
9 today's deposition. Do you feel that, in any of the prior phone calls you
10 and I had, I misled you in any way?

11 A No. You were very cordial. You were very cordial, and I
12 knew what I had to do. But I just don't like to take time off from work if I
13 don't have to.

14 [Video deposition ended at 8:55 A.M.]

15 MR. BLALACK: I believe that's our portion, Your Honor.

16 THE COURT: And there were no counter designations?

17 MR. MCMANIS: I believe we do have some more counters,
18 Your Honor.

19 THE COURT: Okay.

20 [Continued video deposition was played in open court at 8:56 a.m.
21 and transcribed as follows:]

22 BY UNIDENTIFIED SPEAKER:

23 Q And then I'll be referring oftentimes to United during this
24 deposition. There's a number of United affiliate entities that are
25 defendants in the Nevada litigation. But when I use the term United, I'm

1 generally referring to all those entities. And if I need to, if we're talking
2 about a specific health plan, like Sierra Health or Health Plan of Nevada,
3 I'll try to be specific, so you know which health plan I'm talking about. Is
4 that fair?

5 A Yes.

6 Q Mr. Jefferson's email from the first page bleeds onto the
7 second page. And he states in the second paragraph, will you please
8 confirm that it is not TeamHealth's intent to balance bill our members?

9 Do you see that?

10 A Yes.

11 Q Okay. And then you respond on the first page that, Hi, JC.
12 We will not balance bill the member.

13 Do you see that?

14 A Yes.

15 Q So as -- after June 30, 2017, is it accurate that Fremont would
16 not have expected United to suddenly start paying Fremont's full bill
17 charges?

18 A I don't know United Healthcare's billing practices or policies.
19 Is that clearly stated? So I don't know what expectations are there to be
20 expected when they're non-par.

21 BY MR. RUFFNER:

22 Q Ms. Harris, as Mr. Balkenbush just said to you, I know that
23 you've been sitting here for quite a long time today, starting at 9 a.m.
24 Pacific and it's not almost [indiscernible] Pacific. I am very appreciative
25 of your time today. I have just a few questions for you. I'm going to do

1 my best to make them very quick so that we can get you out of here
2 really soon. And this process will be over for you.

3 Let me start by just making sure -- can you hear me okay?

4 A Yes.

5 Q Ms. Harris, did you tell your employer about the subpoena
6 prior to the attorney telling you what they had received?

7 A No.

8 Q How did it make you feel that United or its counsel contacted
9 your employer?

10 A Shocked and scared.

11 Q Can you elaborate?

12 A I did not want my new employer that I just started working in
13 September 2020 to find out that I need to discuss my previous
14 negotiation when I was at TeamHealth.

15 Q Did United or its counsel ask you if it was okay to contact
16 your employer?

17 A I don't recall that conversation.

18 Q And prior to today, have you had any conversations with Mr.
19 Balkenbush?

20 A I did one -- one or two times, yes, on the phone.

21 Q Okay. Do you recall when that first conversation was?

22 A Maybe about two months ago when I first got subpoenaed.

23 Q And what do you remember discussing?

24 A That I'm being deposed, United Healthcare is the defendant, I
25 need you to show up. I told Colby that I was concerned that I don't want

1 to take time away from work because I just started, and I asked how
2 many hours; and he said it probably take a whole day. And I asked if I
3 have to take PTO -- paid time off, and he said yes.

4 Q Anything else that you remember?

5 A No. I -- actually, I did get another phone call asking me to --
6 to testify and again, I said that I do not want to take time off from work.
7 If I could do -- I'm willing to do like after 4 p.m., but I understand it'll take
8 -- it will probably go into the night. I asked for weekends and you guys
9 don't do weekends. So I asked -- so I just left it saying that it's hard for
10 me to take time off and I cannot be away very long for my current job.

11 Q Do you have any feelings about the fact United went to court
12 and filed a petition compelling you to come here for a deposition?

13 A I wasn't comfortable in coming because it was a previous
14 employer, but I felt like I had to come.

15 Q Understood. And I appreciate that. Just a follow-up
16 question. How does it feel knowing that United went to court and took
17 legal action to require you to come here today?

18 A I feel impartial. It's a business. You have your own defense.
19 Colby has his own defense.

20 [Video ended at 9:01 a.m.]

21 MR. MCMANIS: That concludes our portion, Your Honor.

22 THE COURT: Thank you. Okay. So any rebuttal --

23 MR. BLALACK: No further from us, Your Honor.

24 THE COURT: All right. Defendant, please call your next
25 witness.

1 MR. BLALACK: That'll be Dr. Jones, by video, Your Honor.

2 [Video deposition of Daniel Carl Jones beings at 9:02 a.m.]

3 UNIDENTIFIED SPEAKER: And will the court reporter please
4 swear in the witness?

5 [WITNESS SWORN]

6 BY MS. LLEWELLYN:

7 Q Good morning, Doctor.

8 A Good morning.

9 Q Could you please start by stating and spelling your full name
10 for the record?

11 A Daniel Carl Jones, D-A-N-I-E-L C-A-R-L J-O-N-E-S.

12 Q There are three plaintiffs in the litigation we're here to
13 discuss today. I'd just like to briefly ask you about your knowledge of
14 each. Are you aware of Fremont Emergency Services Mandavia, Ltd.?

15 A No.

16 Q Have you heard of Team Physicians of Nevada Mandavia?

17 A No.

18 Q And sir, I'm assuming you have heard of Crum, Stefanko,
19 and Jones doing business as Ruby Crest Emergency Medicine; is that
20 correct?

21 A Yes.

22 Q Okay. And where is Northeastern Nevada Regional located?

23 A It's in Elko, Nevada.

24 Q Did you join Ruby Crest in 2005 or was it later than that?

25 A No, it -- it was -- it was in 2005.

1 Q Are you still employed by Ruby Crest?

2 A We subsequently sold to TeamHealth and so I'm employed
3 by TeamHealth.

4 Q Understanding that you were first employed as an
5 emergency physician for Ruby Crest, is that still your title now that you
6 work for TeamHealth?

7 A Yeah, currently I am a -- a TeamHealth employee and
8 working as an emergency room physician.

9 Q You said Ruby Crest was subsequently sold to TeamHealth
10 after you joined. Do you recall that Ruby Crest was sold to TeamHealth?

11 A 2015.

12 Q How many employees did Ruby Crest have when you started
13 there in 2005?

14 A We had three employees.

15 Q Do you know how many employees currently work at Ruby
16 Crest?

17 A No, I don't.

18 Q Is it your understanding that everyone employed by Ruby
19 Crest is -- are employees of TeamHealth?

20 A Yes.

21 Q Dr. Jones, just before we went off the record, I asked about
22 your opinion as to whether Northeastern Nevada Regional is a rural
23 hospital. How would you define what a rural hospital is as opposed to
24 say, an urban hospital?

25 A A rural hospital would be outside of -- a certain mileage away

1 from a tertiary or larger hospital setting.

2 Q Is there a difference in terms of the volume of patients that
3 are generally seen at a rural hospital versus an urban hospital in your
4 experience as an emergency room physician?

5 A Yes.

6 Q And how might you define that difference in terms of patient
7 volume?

8 A I'm sorry. In terms of patient volume?

9 Q Yeah. Patient volume at a rural hospital, how does it differ
10 from patient volume at urban hospitals just in a general sense?

11 A Typically, there's a -- a lower volume of patients.

12 Q A lower volume of patients at urban hospitals; is that correct?

13 A At the -- I'm sorry. At the rural hospital.

14 Q My mistake there. Okay. So just to be clear, your testimony
15 is that generally speaking, there is a lower volume of patients at rural
16 hospitals versus urban hospitals?

17 A That is correct.

18 Q Dr. Jones, are you aware that when submitting claims for the
19 payment of emergency room services to an insurer, claims are submitted
20 using the provider's tax I.D. number?

21 A I am aware.

22 Q Would you agree that it would be inappropriate for an
23 emergency provider to submit claims to an insurer payor under a
24 different tax I.D. number than its own?

25 A Yes.

1 Q And understanding your counsel's objection, if I could give
2 you a more concrete hypothetical. Would you agree that it would be
3 inappropriate for Ruby Crest to submit claims to United under the tax I.D.
4 number for Fremont Emergency Services?

5 A Answer to the question is yes.

6 Q And vice versa, would you agree that it would be
7 inappropriate for Fremont Emergency Services to submit claims for
8 reimbursement to United under the tax I.D. number for Ruby Crest?

9 A Answer to the question is yes.

10 Q If Fremont Emergency Services submitted claims for
11 reimbursement to United under the tax I.D. number for Ruby Crest,
12 would you consider that to be fraudulent practice?

13 A Answer to the question is yes.

14 Q Thank you.

15 BY MR. RUFFNER:

16 Q Dr. Jones, good morning. I'm going to ask you a few
17 questions on the record today. Are you ready to proceed?

18 A Yes, I am.

19 Q Earlier you were asked some questions about Fremont's
20 billing involving a TIN. Do you have any personal knowledge of
21 Fremont's billing?

22 A I do not.

23 Q Do you have any personal knowledge of what TIN or TINs
24 Fremont uses at any point when it bills?

25 A No, I do not.

1 Q Do you know what a sub-TIN is?

2 A No.

3 Q Have you ever reviewed any of Fremont's bills to see what
4 TIN it uses at any point ever?

5 A No.

6 Q Are you licensed as a lawyer in the state of Nevada?

7 A I am not.

8 Q Do you have any formal accredited, legal training or
9 education?

10 A No.

11 Q Do you know what the legal elements of fraud are in
12 Nevada?

13 A I do not.

14 Q What do you consider yourself an expert on what fraud is in the
15 state of Nevada?

16 A No.

17 Q Let me first ask you, do you know whether Fremont has ever
18 billed under a TIN other than its own?

19 A I do not know.

20 Q If it did do that, do you know why it did it?

21 A No.

22 Q And when you said earlier that you thought it could be fraud,
23 were you saying that it meets the elements of fraud in the state of
24 Nevada as a legal conclusion?

25 A No.

1 Q And you'd agree with me that's because you don't even
2 know what fraud is legally in the state of Nevada, correct?

3 A Correct.

4 Q Do you know at any point what TIN was used on Ruby
5 Crest's bills?

6 A No.

7 Q Do you know whether Ruby Crest ever used more than one
8 TIN on its bills?

9 A I do not know.

10 Q Do you know at any point in time, whether Ruby Crest uses
11 or used a sub-TIN?

12 A I do not know.

13 Q If Ruby Crest billed under more than one TIN, is it fair to say
14 that you would not know why it did that?

15 A That is correct.

16 Q And that's because you have no personal knowledge as to
17 why that was done, correct?

18 A Correct.

19 Q And when you answered Ms. Llewellyn's question earlier
20 about whether if Ruby Crest billed under a TIN other than its own,
21 whether that would constitute fraud, you'd agree with me that you don't
22 know whether or not Ruby Crest ever did that, correct?

23 A Correct.

24 Q And you'd agree with me that not knowing what the legal
25 elements of fraud are, you were not giving a legal opinion that that

1 would actually constitute fraud in the state of Nevada, correct?

2 A Correct.

3 Q And when you answered those questions earlier about fraud
4 pertaining to Fremont and Ruby Crest, you were answering about
5 unknown hypotheticals, correct?

6 A Correct.

7 Q Not actual situations that you have any personal knowledge
8 of, correct?

9 A Correct.

10 BY MS. LLEWELLYN:

11 Q Dr. Jones, you testified a moment ago that you are not aware
12 of the definition of fraud in a legal sense in the state of Nevada; is that a
13 fair characterization of your testimony?

14 A That's correct.

15 Q How would you define the term fraud?

16 A Lying for the purpose of obtaining money.

17 [Video ended at 9:14 a.m.]

18 MR. BLALACK: I believe that's it, Your Honor.

19 THE COURT: Okay. And there were no -- all the counter-
20 designations were played?

21 MR. BLALACK: I believe -- I don't know if they have anything
22 else.

23 MR. MCMANIS: I believe we have a short --

24 [Video deposition of Daniel Carl Jones played at 9:15 a.m.]

25 BY MR. RUFFNER:

1 Q -- for the purpose -- Dr. Jones, do you know whether Fremont
2 ever lied for the purpose of as you say, obtaining money?

3 A I do not know.

4 Q And would you agree with me that you have no personal
5 knowledge of Ruby Crest lying for the purpose of obtaining money?

6 A That's correct.

7 [Video ends at 9:16 a.m.]

8 MR. BLALACK: We have no redirect designations, Your
9 Honor, so I think that should --

10 THE COURT: Very good.

11 MR. BLALACK: Could counsel approach at this point, Your
12 Honor?

13 THE COURT: You may.

14 [Sidebar at 9:16 a.m., ending at 9:17 a.m., not transcribed]

15 THE COURT: All right. So we are going to take a recess.
16 And this is going to be a little longer because we have some things to
17 finish up. We started earlier this morning. We have a few things still
18 hanging. So I'm going to bring you back at 9:40, which is 23 minutes.

19 During the recess, don't talk with anyone or each other or
20 anyone else on any subject connected to the trial. Don't read, watch, or
21 listen to any report of or commentary on the trial. Don't discuss this
22 case with anyone connected to it by any medium of information without
23 limitation newspapers, radio, internet, cell phones, texting.

24 Do not conduct any research on your own relating to the
25 case. Don't consult dictionaries, use the internet, or use reference

1 materials. Don't post on social media about the trial. Don't, talk, text,
2 tweet, Google issues or conduct any other type of research with regard
3 to any issue, party, witness, or attorney involved in the case.

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

6 Thank you for your attention this morning. Another early
7 morning. See you at 9:40.

8 THE MARSHAL: All rise for the jury.

9 [Jury out at 9:18 a.m.]

10 [Outside the presence of the jury]

11 THE COURT: Do you guys want a short recess before we
12 start back?

13 MR. BLALACK: Your Honor, it's up to you. I'm going to
14 allow Mr. Levine on our side to be the [indiscernible].

15 THE COURT: Okay.

16 MR. ZAVITSANOS: We're okay, Your Honor.

17 THE COURT: All right.

18 MR. BLALACK: I don't see Michael. Is he in here?

19 [Counsel confer]

20 MR. BLALACK: Here he is.

21 [Court and bailiff confer]

22 THE COURT: So let's just take a five-minute recess. It's 9:20.
23 I'll be back at 9:25. You guys can talk to the clerk.

24 [Recess taken from 9:20 a.m. to 9:27 a.m.]

25 [Outside the presence of the jury]

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THE COURT: You guys ready to proceed?

MR. LEVINE: We are, Your Honor.

THE COURT: Great.

MR. LEVINE: Okay. A number of document issues, our favorite issue here. We're trying to wrap these up before we rest. The parties have met and conferred about a lot of documents. I'll try to be clear for Your Honor and the clerks.

The first category of documents are documents where the parties have agreed both to admit these documents and in some cases admit them in a redacted form that we'll submit to the Court shortly. Those documents are -- check me on this, Michael -- Defense Exhibit 4875, Defense Exhibit 4944, Defense Exhibit 4863, Defense Exhibit 5177, Defense Exhibit 4893, Defense Exhibit 4777, Defense Exhibit 4874, Defense Exhibit 4896, Defense Exhibit 5175, Defense Exhibit 5180, Defense Exhibit 5174, Defense Exhibit 5242, and we have agreement on a redaction to Defense Exhibit 4760, and in redacted form to be admitted. Also related to this set of documents, we have an agreement on Exhibit 4971, to be admitted in redacted form, but we don't have those redactions ready quite yet. We'll have them soon.

Good so far?

MR. KILLINGSWORTH: 4760, which one is that again? I think it's just --

MR. LEVINE: That's the one that we looked at this morning that you -- that we redacted.

1 MR. KILLINGSWORTH: Okay.

2 THE CLERK: Are these in addition to yesterday's list?

3 MR. LEVINE: These are in addition, yes.

4 THE COURT: Mr. Killingsworth, is that correct?

5 MR. KILLINGSWORTH: Yeah. I would just like to note
6 specifically which ones have redactions, just so we're clear.

7 MR. LEVINE: Sure.

8 MR. KILLINGSWORTH: So I'm going to prepare a list. So
9 4875 is with redactions, 4944 is with redactions --

10 THE COURT: Hold on. Hold on. Okay. Ready.

11 MR. LEVINE: I can say this if it's helpful to you. The first five
12 I listed are all with redactions. And to repeat what those are for clarity,
13 that's 4875, 4944, 4863, 5177, and 4893. And then the other two that
14 have redactions, I think I mentioned on the record, but I'll say it again
15 just so we have it all in one place, are 4760 and 4971.

16 THE COURT: But 4971, you don't have the redactions done,
17 so we're not admitting it yet.

18 MR. LEVINE: I think we have an agreement on -- could be
19 conditionally admitted maybe is the way to handle that one.

20 THE COURT: Is that correct?

21 MR. KILLINGSWORTH: We're agreeable to that.

22 THE COURT: All right. So we will admit some that are
23 redacted, some that are not, but 4875, 4944, 4863, 5177, 4893, 4777, 4874,
24 4896, 5175, 5180, 5174, 5242, and 4760; we will conditionally admit 4971.

25 [Defendants' Exhibits 4875, 4944, 4863, 5177, 4893, 4777, 4874,

1 4896, 5175, 5180, 5174, 5242, 4760, and 4971 admitted into evidence]

2 MR. LEVINE: Right. Thank you, Your Honor.

3 THE COURT: 5117? I don't have a -- oh, 5177.

4 MR. LEVINE: All right. The next category to discuss, Your
5 Honor, is -- and there's some others to admit, which I'm going to get to,
6 but I'm just trying to keep them in the right buckets -- are a set of
7 interrogatory and interrogatory answers. It's -- there are three sets of
8 responses from Plaintiffs, one for each of the Plaintiffs. There's one
9 Q&A, or one interrogatory and response that we would ask to be
10 admitted as a Court's -- Court Exhibit and read to the jury. And what it
11 relates to on behalf of each Defendant is an admission that there was no
12 oral contract.

13 And Ms. Harris testified about that on behalf of some of the
14 entities. There was an objection to her testimony in that regard that
15 Your Honor overruled. You know, we were just asking that, you know,
16 this is obviously an applied contract case, among other causes of action.
17 There was statements made in opening about there was no deal before,
18 you know, no deal in place.

19 There can, you know, be confusion among the jury about,
20 you know, whether there was a written contract, whether there was an
21 oral contract. And the question to them whether there was an implied
22 contract. We just want to make sure that is clear for the jury. There
23 were no oral or written contracts. This clearly states it on behalf of the
24 three Plaintiffs, that they acknowledge that there was no oral contract,
25 and we just want to make that real -- make that explicit.

1 The objection I understand that Plaintiffs have made to this is
2 relevance. And you know, that's why we think it's relevant.

3 THE COURT: Thank you. And?

4 MR. MCMANIS: Yes, Your Honor. A few responses.
5 Number one, we're not arguing that there's an oral contract. Your Honor
6 is not going to instruct that there's an oral contract finding in the case.
7 So this is irrelevant. Two, to the extent that Defendants feel the need to
8 be able to argue that, as Mr. Levine just said, they have that evidence in
9 the record already. And I don't think they need these interrogatories to
10 do that.

11 And if I could just -- I think it's important to see what the
12 interrogatory actually asks, which is, "To the extent Fremont," it's the
13 same for the other two Plaintiffs, as well, "contends that any of the
14 Defendants orally promised/committed to reimburse Fremont at a
15 particular rate," and it goes on. That's simply not a contention in the
16 case. And I think reading these to the jury will add confusion because
17 they're not going to be instructed on an oral contract and it's simply
18 misleading.

19 THE COURT: And your response, please?

20 MR. LEVINE: Again, this is the same issue that was already
21 teed up with Ms. Harris. Ms. Harris only spoke to it on behalf of one set
22 of the parties. And so we would like to have it clear as to all three
23 Plaintiffs that they acknowledge that there was no oral contract, that that
24 ambiguity should just be put aside when the jury is deliberating.

25 THE COURT: But oral contract is not at issue here. It's about

1 an implied contract or implied in fact.

2 MR. LEVINE: That's absolutely right. Nor is written contract.
3 And we just -- it is easily confused, in our view, whether there was an
4 oral contract unless it is clearly stated to the jury that there was no oral
5 contract in connection with an implied contract.

6 THE COURT: I'm going to --

7 MR. LEVINE: And so to alleviate that confusion that we're
8 trying to -- that we were --

9 THE COURT: I'm going to sustain the objection. I find that
10 the introduction of discovery at this time would be cumulative, that oral
11 contract is not at issue, so it's not relevant to the jury, and there's the
12 potential for confusion.

13 MR. LEVINE: Okay, Your Honor. Thank you.

14 THE COURT: Next bucket?

15 MR. LEVINE: The next bucket is there are four exhibits that
16 are Plaintiffs' expert summaries of Plaintiffs' billed charges in Nevada
17 related to the five CPT codes at issue. They are -- I'm holding them right
18 here. They are Nevada Market Analysis about CPT code 99285, and so
19 on as to the other five -- other four relevant CPT codes. They summarize
20 the Plaintiffs' billed charges as Plaintiffs' expert summarized them. It's
21 the expert that did not justify -- it's expert -- Mr. Phillips, but it was relied
22 on by Defense experts for their testimony in this case. So we would
23 submit that this is relevant and on point in terms of Your Honor's prior
24 orders as it relates to the Nevada market and the particular CPT codes at
25 issue.

1 THE COURT: And the response?

2 MR. MCMANIS: Yes, Your Honor. These are hearsay related
3 to an expert who did not testify. Certainly to the extent that their expert
4 relied on these, he testified about them, that does not make the
5 underlying hearsay admissible evidence. So these summaries, as
6 they've called them, were created, I believe, before even the claims were
7 all the way narrowed down to what they are today.

8 THE COURT: And were they used in Mr. Deal's testimony?

9 MR. LEVINE: They were relied on by Mr. Deal and Mr.
10 Mizenko.

11 THE COURT: Were they shown to the jury? Because I
12 thought --

13 MR. MCMANIS: They were not, Your Honor.

14 MR. LEVINE: These particular summaries --

15 THE COURT: I thought we had -- yeah.

16 MR. LEVINE: -- were shown to the jury. What they relied on.
17 They relied on these summaries in their opinions that were presented to
18 the jury. In addition, as to the hearsay issue, all this is is a summary of
19 voluminous data that are Plaintiffs' business records. So I think it falls
20 squarely within a hearsay exception.

21 MR. MCMANIS: It's not a straight summary, Your Honor.
22 The expert performed analysis to reach certain of these opinions that are
23 contained within these charts.

24 THE COURT: And you've laid no foundation, you've made no
25 effort to admit them? No. I'm sorry. If you need to talk to each other.

1 MR. BLALACK: I was just going to.

2 MR. LEVINE: As Mr. Blalack has said, Mr. Leathers' analysis
3 is just a summary and calculations based on the underlying data.

4 THE COURT: Right.

5 MR. LEVINE: Which this is also a summary of that data.

6 THE COURT: Is there some reason you didn't move for
7 admission of these with the witness, with Mr. Deal?

8 MR. LEVINE: I mean, there was a lot of mathematical data
9 we went through with Mr. Deal, and we -- this is not a particular chart we
10 showed to him. It's just he relied on it in connection with his testimony.

11 THE COURT: I understand, but if you had moved to lay a
12 foundation and introduce it with Mr. Deal. We don't have anything in the
13 record that allows me to admit it at this time.

14 MR. LEVINE: Well, the fact that -- I mean, they're not making
15 a foundation objection, but a hearsay objection and a relevance
16 objection.

17 THE COURT: Right.

18 MR. LEVINE: So --

19 THE COURT: Then hearsay and relevance is sustained.

20 MR. LEVINE: Okay. I would note that they didn't make a
21 foundation objection before, either, so that's the part where I know
22 foundation was laid with Mr. Deal initially.

23 THE COURT: I'm still the gatekeeper.

24 MR. LEVINE: Next bucket, Your Honor, is what we call the
25 swap out documents. There's some documents that were

1 conditionally -- some exhibits that were conditionally admitted but
2 needed to be swapped out to --

3 THE COURT: And is that for redaction?

4 MR. LEVINE: It was for not so much redactions as a
5 reduction of the data in the set that's submitted to just claims at issue,
6 disputed claims and the like. So we have agreement in terms of what
7 will be swapped out on conditionally admitted Exhibits 4002, 4003, 4005,
8 and 4774. To state it more eloquently, 4774.

9 THE COURT: Okay. Is that correct?

10 MR. KILLINGSWORTH: We're just looking at that. Your
11 Honor, that is accurate for 4002, 4003, and 4005. As to 4774 --

12 MR. LEVINE: Why don't you get back to us?

13 MR. KILLINGSWORTH: Yeah. I'll get back to the Court about
14 4774. I just want to make sure we're on the same page.

15 THE COURT: All right. So there's agreement as to what we
16 call the swap out docs, two thousand -- I'm sorry, 4002, 4003, 4005. And
17 both parties are reviewing 4774?

18 MR. KILLINGSWORTH: Yes.

19 THE COURT: Okay. Marshal Allen?

20 [Defendants' Exhibits 4002, 4003, and 4005 admitted into evidence]

21 MR. LEVINE: And then there are several other swap out
22 documents where we're in general agreement, we just have not
23 created -- there needs to be some small tweaks to the swap out
24 documents before they can be actually submitted to the Court. And
25 those are 4455, 4166, 4457, and 4168 will be presented -- you know,

1 providing those to the Court after there's approval from Plaintiffs on
2 those.

3 Final category, Your Honor. Summaries exhibits. There are
4 a number of summary exhibits -- well, there's several that we've agreed
5 should be admitted, three in particular. Those are 5365, 5530, and 5464.
6 The last of those, 5464, we've agreed would be admitted in redacted
7 form.

8 MR. MCMANIS: Your Honor, I believe that these documents
9 are figures that were created --

10 MR. LEVINE: Sorry, Jason, to interrupt. Those first three
11 are -- we've agreed would be admitted. I haven't argued about the other
12 one.

13 MR. MCMANIS: Oh, I'm sorry. I'm sorry. I misheard.

14 MR. LEVINE: Yeah. Yeah.

15 THE COURT: Is that correct? Or do you need a moment?

16 MR. LEVINE: So as to the three, 5365, 5530, and 5464, we
17 have agreement.

18 MR. KILLINGSWORTH: Your Honor, we have agreement with
19 5365, we have agreement with 5530, and we have agreement with 5464.

20 THE COURT: All right. So summary exhibits to be admitted
21 will be 5365, 5530, and 5464.

22 [Defendants' Exhibits 5365, 5530, and 5464 admitted into evidence]

23 MR. LEVINE: As to the other summary exhibits, I could talk
24 about them in categories. You know, the main question with summary
25 exhibits is whether they are accurate and faithful to the documents that

1 they're summarizing. In our exchange with the Plaintiffs' counsel about
2 their objections to the remaining summary exhibits that we're seeking to
3 admit, their concern was that they were graphical in nature and
4 not -- and therefore not summaries.

5 You know, that, in our view, is not a basis to object to a
6 summary exhibit. There's no question as to their accuracy. You know, I
7 could point out that some of these are actually tables. Others are
8 graphic depictions of pie charts, but they are accurate depictions of pie
9 charts. For example, this exhibit, which is 5632. The vast majority of
10 these, and there are about 12, are summaries of the disputed claims data
11 that was just finalized in the last week or so that have to be updated
12 based on the final disputed claims list.

13 There were no objections asserted, but you know, they now
14 suggest that there's a -- you know, they're graphical instead of, you
15 know, a bland table or the like. And then, there's some other ones that
16 they didn't object -- they had for a long time that they didn't object to.
17 They appear to be objecting based on the same reason, that they're
18 graphical.

19 And then, there's one I want to talk about separate from the
20 other, and that is a summary of -- the histograms that we saw Mr.
21 Mizenko present. I'll mention it in a second. But why don't we save that
22 for last and you can discuss, Mr. McManis, the other ones first and then
23 we'll get to that.

24 THE COURT: Do you want to give me numbers?

25 MR. LEVINE: Sure. The ones we are seeking to admit are

1 Exhibits 5423, 5523, 5524, 5527, 5528, all of which have been on the
2 exhibit list for quite some time and never had objections. And then, the
3 ones that are updated versions of previous exhibits that are tied to the
4 new disputed claims file are the following: 5530, 5531, 5532, 5536, 5538,
5 5539, 5545, and 5546. And then for completion, the last one, I will talk
6 about separately related to the histograms is 5424.

7 THE COURT: Okay.

8 MR. KILLINGSWORTH: And Your Honor, I believe he
9 mentioned 5530, but I think we disagree to that one.

10 MR. LEVINE: Oh, sorry. But -- sorry. I did mention 5530. My
11 fault. That one has been admitted.

12 THE COURT: So 5530 has been admitted already today?

13 MR. KILLINGSWORTH: Yes.

14 MR. LEVINE: Yeah. I had mentioned it earlier when I was
15 mentioning --

16 THE COURT: Got it.

17 MR. LEVINE: -- discussing the ones that were admitted, so.

18 MR. MCMANIS: So Your Honor, the problem that I have with
19 these is the vast majority of these are not summaries in any way, shape,
20 or form. As an example, this is a map of facilities. These are
21 demonstrative exhibits. To the extent that they're not in violation of a
22 limine order, I know some of them have some Medicare comparisons
23 from Mr. Deal's report. But to the extent that they don't violate another
24 order, I certainly don't have any problem with them using these charts,
25 enclosing as demonstratives, or anything of that nature.

1 But the argument is effectively that if we create a
2 demonstrative, so long as it's accurate, we can then admit it into
3 evidence. And that's simply not how it works. These are, like, these are
4 graphs that they can show to the jury. They're not summaries of data,
5 summaries of voluminous records that are admissible as summaries. I
6 mean, as another example, we have kind of a frequency chart here.
7 These are not the tables that both sides have been admitting, and I think
8 we've worked well together on that. These just don't fall into that
9 category, Your Honor.

10 THE COURT: Your response, please?

11 MR. LEVINE: I think we have worked well together on this,
12 Your Honor. But do they fall in a different -- they -- some are graphs,
13 some are bar charts, some are simply tables. They all are summaries of
14 voluminous data that, you know, that are correctly categorized that way.
15 You know, they -- can a summary also be a demonstrative at the same
16 time? There is some overlap between those two. And then there are,
17 you know, there are documents that are just demonstratives.

18 I think in this case, we're talking about summaries and
19 summaries that could also be at the same time demonstratives. That's
20 the category of summaries that we're talking here. But there has been
21 no suggestion from Plaintiffs' counsel now or in our communications
22 beforehand that there was anything inaccurate about these summaries,
23 and that really is the lynchpin to whether these should be admitted.

24 THE COURT: Now, I go back to my concern that you didn't
25 offer them with the witness and lay foundation for them. I've got no

1 problem for you using them as demonstratives in your close, but I'm
2 going to sustain the objection to admission.

3 MR. LEVINE: Okay. Well Your Honor, I would just ask one
4 follow-up question on that, if you would allow. There were -- there are
5 seven or eight of these that were only recently available to be created
6 because the disputed claims list was just finalized in the last week. We
7 actually updated the demonstratives over the, you know, the last, I think,
8 two days. That's when we provided it. So those are those updated
9 versions.

10 THE COURT: I know you guys -- I know you've all worked
11 around the clock for weeks. So you can use them in the close, but they
12 won't be admitted.

13 MR. LEVINE: Okay, Your Honor.

14 THE COURT: You can ask to mark them as a Court's Exhibit
15 so that in the event there's an appeal, it'll be a part of the record.

16 [Court's Exhibits 5423, 5523, 5524, 5527, 5528, 5531, 5532, 5536,
17 5538, 5539, 5545, and 5546 admitted into evidence]

18 MR. LEVINE: Okay. Thank you. And let me address the last
19 item, then, if you would, Your Honor, the histograms. Those were used
20 with the witness. Okay? This is Exhibit 5424. You know, these -- you
21 know, Plaintiffs have already agreed to admit the underlying FAIR Health
22 data on which this summary, 5424, was based on. There's no suggestion
23 that it is not accurate. Again, it was used extensively with the witness.
24 And you know, it is a central issue to the case, the reliability of the FAIR
25 Health database, and we would ask that the jury have access to it in their

1 deliberations if they want to see it, therefore, be an admitted exhibit.

2 THE COURT: Response?

3 MR. MCMANIS: Yes, Your Honor. As you may recall, we had
4 this argument on the bench that these are hearsay charts created by an
5 expert. Yes, they were used in front of the jury. Yes, both experts used
6 a number of demonstrative slides in front of the jury. That in and of
7 itself is not the test. What I would say is that the data that was used in
8 the creation of these histograms, there's a spreadsheet of charges, it's
9 about 1 page, 54 lines. The purported summary is 108 separate pages
10 of -- it actually breaks it up. It actually goes in the reverse direction of
11 what a summary is contemplated as under the rule.

12 So again, no objection to using these in closing as
13 demonstratives. We may do the same thing. We've admitted the
14 summary analysis that actually calculates the percentages that has been
15 shown a few times. We agreed to admit that because I believe that is a
16 proper summary. But the charts themselves I don't think fall into that
17 category.

18 THE COURT: All right. So I'll deny their admission. Again,
19 we'll make them Court's Exhibits and you may refer to them in the close.

20 [Court's Exhibit 5424 admitted into evidence]

21 MR. LEVINE: Okay. Thank you, Your Honor.

22 THE COURT: Now, you guys make sure you get with the
23 clerk with regard to what is a court exhibit and what isn't. And then, I
24 have to give you a break because we've been here two hours now. So
25 do that. And as soon as you're ready, let the marshal know to tell the

1 jury ten more minutes and then take ten minutes.

2 [Recess from 9:51 a.m. to 10:08 a.m.]

3 THE COURT: Thanks everyone. Please remain seated. Okay.
4 Let's have updates.

5 MR. KILLINGSWORTH: Your Honor, real quick, there's just
6 three exhibits that the parties had agreed on and are ready to move into
7 the record. And that's Plaintiffs' 473-X, 473-Y and 473-Z.

8 THE COURT: Is that correct?

9 MR. LEVINE: That is correct.

10 THE COURT: Thank you.

11 MR. KILLINGSWORTH: Thank you, Your Honor.

12 THE COURT: Yes.

13 MR. KILLINGSWORTH: Thank you.

14 THE COURT: 473-X, 473-Y and 473-Z will be admitted. Okay.

15 Next update.

16 [Plaintiffs' Exhibits 473-X, 473-Y and 473-Z received into evidence]

17 MR. PORTNOI: Just that we're -- so we are down to one
18 small issue on one instruction that I think Mr. Smith would talk about
19 and then we will still have the motion to amend the pleadings.

20 THE COURT: Good enough.

21 MS. ROBINSON: And also a statement on the record about
22 the finding.

23 MR. PORTNOI: Yes.

24 MS. ROBINSON: So the issue that we're still debating in the
25 jury instruction, we have two competing, I guess there was a

1 misunderstanding between the parties regarding, sorry, I'm trying to pull
2 up the instruction, and I'm not seeing --

3 UNIDENTIFIED SPEAKER: Number 39.

4 MS. ROBINSON: Number 39. I'm sorry I had the old version
5 of the form because --

6 THE COURT: What tab is that in the binder from Sunday?

7 MS. ROBINSON: So this is not something -- this is -- I think
8 it's not clear on the record. So I can just show you the two competing
9 instructions that we prepared. We had misunderstood -- or we had a
10 misunderstanding about the additional language that would be there.
11 So what we argue this morning is the "you'll hear further evidence." It's
12 at the very last paragraph, Your Honor. That's the only difference.

13 And as you see, during our email exchange there was a
14 misunderstanding, as sometimes happens during emails. And so we
15 thought we had reached an agreement on two alternatives. We thought
16 we had reached an agreement, but he hadn't and so --

17 THE COURT: I think the shorter version is better. But I
18 certainly want to give you guys -- I'll keep an open mind to any
19 argument.

20 MR. POLSENBERG: Your Honor, as Janice points out, this
21 was the issue *Wyeth v. Rowatt*. This is why, you know, when we
22 discussed, it seemed like we were in agreement on this initial section.
23 At this time you only to decide whether one or more Defendants were
24 engaged in wrongful conduct. The only issue I thought we had was
25 whether we were going to specifically tell the jury that they were going

1 to hear evidence versus just being instructed. So I think it's clearly
2 appropriate. It's part of the pattern, the 2011 Pattern. And I think that it
3 would be inappropriate to just tell the jury that they're going to be
4 instructed, without telling them what their task is, in this phase of the
5 case

6 MS. ROBINSON: So I would just respond that the -- our
7 previous instruction, which is the 2018 form instruction, it's telling them
8 what their task is. That the Court has already ruled that they will be told
9 that they will -- I think -- I don't have my copy now, but --

10 THE COURT: You can take this.

11 MS. ROBINSON: Oh, thank you. And that the shorter
12 language is better, and we don't need to pile on.

13 THE COURT: I'm going to go with the shorter version.

14 MS. ROBINSON: Thank you, Your Honor.

15 THE COURT: Now where are we with jury instructions?

16 MS. ROBINSON: So everything else is done. The only thing
17 is that I just wanted an agreement on the record about the form of -- we
18 agreed with Mr. Polsenberg that we will add language to say that the
19 jury is making a finding that punitive damages should be assessed. And
20 I just want an agreement that --

21 MR. POLSENBERG: We're not stipulating that punitive
22 damages should be assessed.

23 MS. ROBINSON: I would never suggest that -- I'll finish my
24 sentence and then we can make sure that we're all clear on the same
25 page. The question is, and I just need to pull up the verdict form, but the

1 question is the wording for the jury's finding. And I've got so many
2 stacks of paper here. I don't know if I have the final that we agreed to.
3 Nope, that's not it. Do you have a copy of the final verdict form I could
4 take a look at? Thank you. So the language that we agreed to is at the
5 end of both questions 15 and 16, it says, "and if you find that you will
6 assess punitive damages against the Defendant." And I just want an
7 understanding on both sides, that that is sufficient to constitute a finding
8 consistent with the statute? I'm not -- I understand that -- Mr. Portnoi is
9 going to say that they believe that this should be granulated out . And I
10 understand that objection. That's not what I'm talking about.

11 I'm just saying there's a question raised by some people on
12 my team regarding whether or not, "and do you find that you will assess
13 punitive damages against the Defendant," We wanted to make sure that
14 there was an agreement, since we agreed on the language, that it would
15 be sufficient to constitute a finding under the statute. It would not be
16 insufficient.

17 MR. POLSENBERG: I picked this language because it
18 parallels the language in the statute. And the language even in the
19 shorter version of instruction 39 that says if you find that punitive
20 damages are appropriate and find that you will assess punitive damages,
21 et cetera. So I think that's the question we need to ask the jury to have
22 them say that they are going to a second phase on punitive damages.

23 MS. ROBINSON: So I think I heard agreement.

24 THE COURT: I think I heard agreement.

25 MS. ROBINSON: Okay, thank you, Your Honor.

1 THE COURT: So with the rulings today are the jury
2 instructions resolved?

3 MR. PORTNOI: The jury instructions are resolved.

4 THE COURT: Subject to all objections.

5 MR. PORTNOI: Subject to all objections. With respect to the
6 special verdict form, there is either one too many questions, or the right
7 number of questions, depending on the outcome of the motion to amend
8 the pleadings.

9 THE COURT: Good enough. Do you guys want to finish your
10 proof this morning and argue this later? We've got -- we've had the jury
11 out for an hour.

12 MR. PORTNOI: I'll do the motion to amend whenever Your
13 Honor would like to, because we ultimately -- we have agreement on
14 everything in the special verdict. It's just going to be a question of do we
15 need question 16 or do not need question 16.

16 THE COURT: Got it. All right. Is the order of the jury
17 instruction agreeable to both of you?

18 MS. ROBINSON: Yes, Your Honor.

19 MR. POLSENBERG: Yes, Your Honor.

20 THE COURT: Okay. Let's bring in the jury.

21 MR. POLSENBERG: Thank you, Your Honor.

22 THE COURT: We have 158 people on the phone, just FYI.

23 MR. ZAVITSANOS: I'm sorry, Your Honor.

24 THE COURT: We have 158 people on BlueJeans, FYI.

25 THE MARSHAL: All rise for the jury.

1 [Jury in at 10:16 a.m.]

2 THE COURT: Thank you, please be seated. To the note from
3 Ms. Herzog. Thank you for your note. We don't believe that there's an
4 issue.

5 JUROR HERZOG: Okay.

6 THE COURT: Okay. Defendant. And just to let everyone
7 know that we have been working in here, and we're doing our best to be
8 polite with regard to your time.

9 Defendant please call your next witness.

10 MR. BLALACK: Your Honor, subject to the clerical issues we
11 discussed about certain exhibits being resolved, then Defense rests.

12 DEFENSE RESTS

13 THE COURT: Thank you. Plaintiff do you have a rebuttal
14 case?

15 MR. ZAVITSANOS: We do, Your Honor. Mr. Ahmad is going
16 to handle that.

17 MR. AHMAD: Yes, Your Honor, we would call back to the
18 stand, Dr. Scott Scherr. And Your Honor, I'm not sure if he can be seen
19 behind the screen.

20 THE COURT: Can everyone see Dr. Scherr? All right, so
21 we're going to need to adjust the monitor. Oh, everyone can. Great.

22 MR. AHMAD: Everyone. Okay.

23 THE COURT: Dr. Scherr, you're under the same oath you
24 took previously. There's no reason to re-swear you.

25 DR. SCHERR: Yes, Your Honor.

1 SCOTT SCHERR, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

2

3 THE COURT: Go ahead, please.

4 MR. AHMAN: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. AHMAD:

7 Q Welcome back, Dr. Scherr.

8 A Thank you.

9 Q I know -- well, first of all, have you sat through the entire -- all
10 the days of evidence throughout the entire case?

11 A Yeah, it's been a long month, to say the least. And like I said
12 in the beginning, it's much different than my pace. So I don't know how
13 you guys do it. I've been living off of energy drinks just to sit there, so.

14 Q Well, some of these energy drinks were supplied by us, in
15 fairness.

16 A Well, thank you. Thank you.

17 Q Yes. And well, I guess, I'm sure you have a lot of reactions,
18 but I want to focus on one particular piece or one particular witness that
19 the Defense called in their case-in-chief, and that was Dr. Deal to testify
20 about the reasonable value.

21 A I don't think he was a doctor. Right.

22 Q I apologize. You are correct. Mr. Deal was called to testify
23 about the reasonable value of the services that you and the other
24 emergency room doctors at the various facilities, Fremont Emergency
25 Services, Ruby Crest, and I think it's Banner and Churchill, which is the

1 Team Physician facility, correct?

2 A That's correct.

3 Q Okay. And you are familiar with all of those facilities?

4 A I am.

5 Q He used this term willing buyer and willing seller, Mr. Deal
6 did, as a model for his testimony about what the reasonable value of
7 your services are. Do you have a reaction to that?

8 A To be respectful to the Court, I need to kind of watch my
9 words a little bit. I also think he compared my service to going into a
10 department store to buy a pair of pants. Which was a slap in the face of
11 myself and my colleagues that are on the front line every day.

12 In terms of willing seller and willing buyer, we are in no way near
13 being a willing seller. I completely disagree with that. We, as
14 emergency room physicians are there on the front lines 24/7, seven days
15 a week, seeing patients, regardless of their ability to pay. Our number
16 one prior is the patient. Our number one priority is the community. And
17 I feel that he undervalued the service that we provide for this
18 community.

19 Q He talked, and I want to follow up with a question, willing
20 seller. You understand that you treat everybody, you actually have to
21 under the law?

22 A Yeah, we, you know, ER providers, we treat everybody
23 regardless of their ability to pay. That's, you know, I think we discussed
24 EMTALA here in Court. You know, and honestly we're proud of being
25 frontline workers here in our community. We're proud to serve this

1 community, serve our patients. And how he compared us to a pair of
2 pants in a transaction was a slap in my face.

3 Q He also mentioned that the buyer -- well, he said willing
4 buyer, willing seller. But then he said it was a forced transaction. And I
5 want to focus on the willing buyer part. Specifically, he referenced an
6 ambulance that could take a left turn to one facility or a right turn to
7 another facility, and that this was somehow random. Do you remember
8 that testimony?

9 A Yes, I do.

10 Q Is it random?

11 A No, no, far from random. And that kind of goes a little bit
12 towards his credibility of knowing what we actually do. Just for an
13 example, here in the Las Vegas community, the 3 out of the 14 hospitals
14 here in Las Vegas, Sunrise, Mountainview and Southern Hills, we
15 receive about 40 percent of all EMS traffic in the Valley. And it's not a
16 forced transaction because we receive that amount of patients because
17 of the services that we provide. The reputation that we have. Sunrise
18 Hospital is a Level 2 trauma center. So if you're shot, you're going to
19 want to go to a trauma center. Also a burn center. We have multiple
20 areas that we specialize in.

21 We focus on my hospitals here in the Vegas Valley, and we
22 pride ourselves on seeing patients as soon as they walk in the door. It's
23 important for our EMS colleagues to not wait in the hospital when they
24 drop off a critical ill patient. And our, what we call our off-load times is
25 less than 10 minutes at all three of those sites. And it's less than 10

1 minutes because we have an ER doctor standing in the ambulance bay to
2 greet every single one of those critical patients that come in.

3 Having an off-load time of less than 10 minutes means that
4 the EMS crew is able to get back out into the community and take care of
5 the next patient. And that's vitally important for our community.

6 Q Now let me ask you this. Is there any other facility, other
7 than Sunrise, for example, which has that level of trauma and a burn
8 center?

9 A Yeah, so University Medical Center, our colleagues down the
10 street, they have a level 1 trauma center, and a burn center. Only
11 difference between a level 1 trauma center and a level 2 trauma center is
12 that the level 1 trauma center provides and does research. Yeah, same
13 exact services, same exact coverage model. We see very similar
14 volumes and types of patients.

15 Q Are they the only other ones in the Las Vegas area?

16 A There is one other trauma center. It's a level 3 trauma center.
17 St. Rose Siena, but yeah. I mean it's actually kind of amazing that a
18 Valley this big, with the number of visitors that we have, that we only
19 have two trauma centers, and Sunrise being the closest trauma center to
20 the Strip.

21 Q What about urgent care? How would that come into play if
22 an ambulance is making that right turn or left turn?

23 A Ambulances do not go to urgent care.

24 Q Why not?

25 A Because typically if you're in an ambulance, you need the

1 qualifications of a board certified emergency provider.

2 Q Does urgent care -- those urgent centers, do they have
3 emergency -- board certified emergency room doctors?

4 A No. We're -- you know, we're not considered an urgent care.
5 I think he put a picture of ingrown toenail on there. Which again, kind of
6 elicited some emotions. We're not an urgent care. The majority of the
7 patients that we see in all of our emergency departments are critically ill
8 or in need of our service.

9 Q And urgent care is not subject to EMTALA, I take it?

10 A They are not subject to EMTALA. They will not in fact see
11 you until your bill is paid.

12 Q Now you mentioned the toenail fungus. You referenced --
13 something came up in the Defense case-in-chief. They picked one bill, I
14 think a 99281 or something other than a 99284 or 85, with toenail fungus.
15 Is that typical?

16 A I think it was an ingrown. I think it was an ingrown toenail,
17 which could be caused by toenail fungus, I guess. But no, it's -- it's not
18 typical. In fact those types of complaints comprise, you know, probably
19 around 10 percent of the things that we see. But, you know, well north
20 of 80 to 90 percent are patients that are sick, are critically ill, have chief
21 complaints that can make one think that you know, they may need to be
22 rushed into surgery. They may, you know, have to go to the cath lab or
23 things like that. I mean that's the majority of what we see.

24 Q So how many patients, you know, typically come in with life-
25 threatening conditions?

1 A The majority. So if you're, you know, look at Sunrise
2 Hospital, they average about 320 to 350 patients per day. Take 10
3 percent off of that, and the rest of them are higher level of acuity or sick
4 patients with potentially life-threatening illnesses.

5 Q Thank you, Dr. Scheer.

6 A Thank you.

7 MR. AHMAD: I'll pass the witness.

8 THE COURT: Cross examination.

9 CROSS-EXAMINATION

10 BY MR. BLALACK:

11 Q Good morning, sir.

12 A Good morning.

13 THE CLERK: I'm sorry. Everyone on BlueJeans needs to
14 please mute yourself and remain muted.

15 BY MR. BLALACK:

16 Q Dr. Scheer, my name is Lee Blalack. I'm an attorney
17 representing the Defense in this case. I don't think you and I have ever
18 met, correct?

19 A Correct. I've seen you every day.

20 Q And I've seen you in between energy drinks, we both pass
21 each other in the hall.

22 A And we both have the great looking haircuts, so --

23 Q All right. Let me -- let me follow up on a few points that you
24 raised with Mr. Ahmad. I just want to make sure I understand your
25 testimony. My memory from your trial testimony is that you indicated