

Case Nos. 85525 & 85656

In the Supreme Court of Nevada

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

Appellants,

vs.

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

Respondents.

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Case No. 85525

UNITED HEALTHCARE INSURANCE COMPANY;
UNITED HEALTH CARE SERVICES, INC.; UMR, INC.;
SIERRA HEALTH AND LIFE INSURANCE COMPANY,
INC.; and 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,

vs.

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

Real Parties in Interest.

Case No. 85656

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CERTIFICATE OF SERVICE

I certify that on April 18, 2023, I submitted the foregoing appendix for filing *via* the Court's eFlex electronic filing system.

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1 MR. ROBERTS: Okay.

2 PROSPECTIVE JUROR 224: Yet.

3 MR. ROBERTS: Thank you, Ms. Dudley.

4 PROSPECTIVE JUROR 252: 252. I'd go with B. And then for
5 a person, I'm going to go with Andre Agassi. He grew up here. He's a
6 good -- great tennis player. And then he's helping out with the
7 community. He helps out the community.

8 MR. ROBERTS: Thank you, sir.

9 PROSPECTIVE JUROR 014: 014. I don't pay property taxes.
10 My husband does. But I think they're pretty fair, considering. I mean,
11 we -- we grew up in California. Me and my husband both did. It's okay
12 as far as taxes go.

13 And then, my person -- I'm going to tell you I have anxiety. I
14 was like, I don't know who I'm going to pick. I don't know public figures.
15 But the one person that I finally settled on this morning was Marc-Andre
16 Fleury. I think he was really a family-oriented person. He was kind. He
17 loved kids. You know, he -- as far as I could tell, he's an honest person.
18 He's just an all-around great guy. And he really took his game seriously.
19 Not just like taking it seriously, but he took it hard on himself when he
20 didn't -- you know, couldn't stop the goal. And, like, I think that's
21 awesome that he really cared that much.

22 MR. ROBERTS: Vegas Knights?

23 PROSPECTIVE JUROR 014: Yeah. Hockey in general.

24 MR. ROBERTS: Very good. Mr. Leopold, tell me.

25 PROSPECTIVE JUROR 020: As far as taxes --

1 MR. ROBERTS: Whichever question you want first.

2 PROSPECTIVE JUROR 020: -- property taxes, C. I rent, so.

3 As far as -- I spent a lot of time trying to figure out who I admire most.

4 But a name that kept coming up in my mind was Samuel Clemens.

5 Other than being a fantastic author, when he saw something wrong, he
6 spoke out. He said something. He didn't just let it go.

7 MR. ROBERTS: Have you read all of his books?

8 PROSPECTIVE JUROR 020: Oh, more than once. And to my
9 nephew.

10 MR. ROBERTS: Thank you, Mr. Leopold.

11 PROSPECTIVE JUROR 270: Okay. 270. I do pay property
12 tax. And I think it's fair, especially considering -- I mean, they could
13 always be lower, and I would be happy with that. But I think it's fair
14 considering what other people pay in other states. It's very -- it's fair.

15 I am also a Ruth Bader Ginsburg fan. I wish I had done more
16 research and watched more about her while she was alive instead of
17 after she died. And what she did at the time, especially, you know -- it's
18 just amazing. It's just amazing. It's heroic. And she had, you know, a
19 great support around her with her husband. And you know, she lost her
20 parents when she was very -- when she was relatively young. And I just
21 think that it was bold for her at that time to have done what she did. I
22 wish I would have read more about her or watched more things on her
23 when she was alive.

24 MR. ROBERTS: Thank you, Ms. Herzog.

25 PROSPECTIVE JUROR 270: Uh-huh.

1 MR. ROBERTS: Ms. Wynn, badge number?

2 PROSPECTIVE JUROR 254: Badge number 254. C, I don't
3 pay property taxes. I also rent. And one person that I do admire is
4 Gabrielle Union.

5 MR. ROBERTS: Could you explain?

6 PROSPECTIVE JUROR 254: Well, for one --

7 MR. ROBERTS: I don't know anything about her as an
8 individual.

9 PROSPECTIVE JUROR 254: Okay. Well, the first thing that
10 comes to mind is the first movie she ever played in, Bring It On. And her
11 name just happened to be Isis. I found out during the movie when they
12 yelled it out. But as following her through the movies she's been in, her
13 current life, she speaks up. And that's one thing that I admire. And that
14 she -- I feel she doesn't take sides. She cares for both. And like, even
15 her family life that she goes through, and all the issues that they have
16 had that are brought to the public, she doesn't mind speaking out. I will
17 say this week -- or starting last week, I finally was able to -- I bought the
18 book a year ago almost. And I started reading it and learned about her
19 life, what she went through. And I could relate to some of the things. So
20 I admire her for being who she is and what she stands for. So that's one
21 of the reasons I chose her out of a lot of the people that I admire.

22 MR. ROBERTS: Thank you for putting so much thought into
23 that. I appreciate it. Mr. Ramsey, badge number?

24 PROSPECTIVE JUROR 219: 219. Mine would be Martin
25 Luther King, Jr. And I think just for enforcing -- or not enforcing, but

1 engraining that -- the importance of vision, of a dream. And property
2 taxes, the only reason that I say A is I would take a discount any day.

3 MR. ROBERTS: Mr. Reese, badge number?

4 PROSPECTIVE JUROR 094: 094. Property taxes, B. I believe
5 they are fair. Person I admire would be Rosa Parks. Had the courage to
6 stand up for her rights and the rights of all the black people regardless of
7 the consequences.

8 MR. ROBERTS: Thanks, Mr. Reese. And last, let's see, Mr.
9 Cabrales.

10 PROSPECTIVE JUROR 041: 041. On property tax, C. Most
11 admired person is Socrates. He was principled. He was questioning. He
12 was courageous. He was full of integrity.

13 MR. ROBERTS: Thank you. Thank you, sir. Your Honor,
14 would this be a good time?

15 THE COURT: It's a good time.

16 MR. ROBERTS: Thank you.

17 THE COURT: It's -- can everybody be back at 1? Does that
18 give you enough time for lunch? Okay.

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

25 Don't conduct any research on your own relating to the case.

1 Don't consult dictionaries, use the internet, or use reference materials.
2 Don't talk, text, Tweet, Google, or conduct any other type of book or
3 computer research with regard to any issue, party, witness, or attorney
4 involved in the case. Most importantly, do not form or express any
5 opinion on any subject connected with the trial unless you're selected for
6 the jury and the jury deliberates.

7 You guys have been great again today. Thank you. See you
8 at 1:00.

9 THE MARSHAL: All rise for the jury.

10 [Prospective jurors out at 12:07 p.m.]

11 [Outside the presence of the prospective jurors]

12 THE COURT: Okay. The room is clear. Plaintiff, do you have
13 anything for the record?

14 MR. ZAVITSANOS: Just a minor thing, Your Honor, just as a
15 housekeeping thing. Whenever we do seat a jury, if Your Honor would
16 not mind asking if there are any, like, dietary restrictions or allergies
17 since the lawyers are going to be providing lunch.

18 THE COURT: Okay.

19 MR. ZAVITSANOS: That just occurred to me, so.

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

21 MR. BLALACK: We agree.

22 THE COURT: Okay. Let's take up the issue at 10 to 1 on the
23 media -- the objection on the media request. And I have some
24 preliminary thoughts. I'm keeping my mind open to both sides. I -- what
25 concerns me is the attorneys' eyes only and the trade secrets. The rest

1 I'm not so concerned about. I -- you know, you guys chose a public form
2 for -- to resolve your disputes. So that's where I'm leaning. And we'll
3 argue it at 12:50.

4 MR. ZAVITSANOS: I understand.

5 MR. ROBERTS: Thank you, Your Honor.

6 MR. ZAVITSANOS: Thank you, Your Honor.

7 MR. BLALACK: Thank you, Your Honor.

8 [Recess taken from 12:08 p.m. to 12:58 p.m.]

9 [Outside the presence of the prospective jurors]

10 THE CLERK: -- session. Honorable Nancy Alf presiding.
11 Thanks everyone. Please remain seated.

12 MR. ZAVITSANOS: Thank you, Your Honor.

13 THE COURT: So Defendant, your motion, please.

14 MR. BALKENBUSH: Thank you, Your Honor and did you
15 intend to hear the objection to media request or your --

16 THE COURT: That's correct.

17 MR. BALKENBUSH: Okay. Thank you. Move this candy out
18 of the way, so I'm not temped. Colby Balkenbush for the Defendant,
19 Your Honor. At the outset, what I want to make clear to the Court is by
20 our objection, we're not seeking to completely close the courtroom to
21 the media. That's essentially a dark trial. That is not the intent. The only
22 thing we're seeking to protect, Your Honor, is our attorney's eyes only
23 material. And so I'm sure Your Honor recalls in the protective order that
24 this Court entered back in June, 2020 that we cited in our objection, there
25 are two categories of documents, confidential documents and then

1 attorney's eyes only documents.

2 The confidential documents, we are not requesting that the
3 media be prohibited from videotaping those or livestreaming those
4 when they're being referenced, just the attorney's eyes only documents.
5 And so those are the documents that we referenced in our brief, Your
6 Honor, that involved rates that we pay to other providers both in-network
7 and out of network, the details of our costs, out of network cost
8 management programs are run, parameters, negotiation parameters that
9 we've given to certain out of network management programs.

10 And the purpose -- the reason that we're fighting for this,
11 Your Honor, is we are very concerned that with the livestream of this
12 trial, when those are being aired, not only other providers who negotiate
13 with us, but also our direct competitors, other commercial payers, are
14 going to have inside view of exactly how we run these programs. And
15 Your Honor and the jury's going to hear during this trial from one of our
16 experts, Karen King, who's going to testify to how competitive the ASO
17 market is for securing contracts, Your Honor, to run self-funded
18 employer programs.

19 And one of the key aspects of those negotiations is always
20 the out of network cost management programs that a particular
21 commercial payor can offer. And so what we're really concerned about
22 is that being aired to the world to see during this trial. Now, with that
23 said, I guess I want to just take a step back and make sure that the Court
24 understands where we -- these proceedings stand as far as the
25 protection of these documents. Supreme Court Rule 230 requires that

1 the Court make particularized findings, if it's going to limit access to the
2 courtroom. Weigh -- balance the interest of the public versus the privacy
3 interests of a party, but in our view, Your Honor, this Court has actually
4 already done that when it entered the June, 2020 protective order.

5 In fact, if you look at that order, paragraph 28 states, quote,
6 "Particularized harm will occur, due to public disclosure of confidential
7 information to be protected under this protective order, given the
8 important privacy and business interests at issue here. And two, when
9 balancing the public and private interests, a protective order must issue,
10 because the public's interest is disclosure is substantially outweighed by
11 the party's important privacy, proprietary and business interests."

12 So there is certainly a presumption in favor of open court
13 proceedings, but in our view, Your Honor, with the protective order in
14 place, the Court has already analyzed that issue and found that at least in
15 regard to attorney's eyes only documents, the balance weighs in favor of
16 protecting those to exposure to our competitors.

17 And I -- the second issue, I want to address, I think opposing
18 counsel may raise this argument that essentially, yes, the protective
19 order was in place during the pretrial phase, but now that the parties
20 have elected to go to trial, that this protection ceases to exist. But if you
21 read through the protective order, it's clear that both parties
22 contemplated these protections would exist through trial. Paragraph 20
23 of the order specifically addresses trial and states that a party who
24 intends to use protected materials shall give the other party three
25 business days' notice of its intent to use that material at trial and then

1 states that the Court may take the appropriate measures to protect that
2 material from disclosure to any individuals not listed in paragraph 12 of
3 the protective order.

4 And paragraph 12 is what lists which individuals are entitled
5 to view protected material. And under paragraph 12, among the -- it lists
6 the counsel, witnesses, the Court. It also lists jurors. So our view is the
7 fact that jurors are listed there indicates that when the parties entered
8 that order, they contemplated it was going to be in effect, even for trial. I
9 also want to point out in that protective order, in paragraph 14, it
10 contemplates what happens to documents that have been disclosed after
11 the litigation ends and it contemplates the parties either destroying them
12 or returning them to each other.

13 So again, there wouldn't be a need for that paragraph, Your
14 Honor, if all protection ceased at trial and everybody's attorney's eyes
15 only documents were exposed for the world to see. So our view is that
16 the order clearly contemplated this protection going from the pretrial
17 phase through the trial phase. And so I think the question that the Court
18 is faced with today is is there a reason to revisit the findings in the June
19 2020 protective order.

20 And I think what we would submit Your Honor is, if anything,
21 the reasons in support of that order are stronger today than they were
22 when it was entered. But back when it was entered, there had not been a
23 significant amount of reimbursement data, out of network
24 reimbursement data, negotiation parameters and the like produced.
25 Since then, there's been tens of thousands of documents that relate to

1 that produced and in reliance on the language in that order. And I think
2 what Plaintiffs are essentially asking for is a wholesale rescinding of the
3 order and all of that -- all of those documents being exposed for the
4 world to see.

5 So we think that would be fundamentally unfair to United,
6 Your Honor, that produced all these documents in reliance in the
7 language of that order to have them be aired for all their competitors and
8 other providers to see. And I do want to point out we filed a supplement
9 to our objection, Your Honor, last night and attached a press release that
10 TeamHealth released on Friday, October 29th and the last paragraph of
11 that press release is really illuminating, because what it says is -- it says,
12 quote, "The Nevada trial should be the most significant view behind the
13 managed care curtain in recent history, all of which has been largely
14 attorney's eyes only going into trial."

15 So they're telegraphing to the Court why they're opposing or
16 why they're in favor of allowing media in the courtroom. They want to
17 expose all of United's attorney's eyes only material that's been protected
18 throughout this case, that we painstakingly filed motions to seal on to
19 ensure it wouldn't be viewed by the public. They want to air that to the
20 world and make sure it's livestreamed to all United's competitors. So I
21 think the Court should be skeptical of any other reason given by the
22 Plaintiffs, given that press release.

23 And then I just want to -- I want to point out, too, you know,
24 that there's two ways we've seen this play out. We handled the David
25 Copperfield case previously before judge Denton, where this same issue

1 came up and we attached an order from the Supreme Court on that
2 issue. And there were really two ways to deal with it. One was to close
3 the courtroom to media when attorney's eyes only type material is being
4 used and the other is to not close the courtroom, allow the media to
5 videotape the proceedings and then permit redactions of the video
6 recordings after the fact, just to redact portions where attorney's eyes
7 only material was discussed.

8 And we would be fine with either of those options, Your
9 Honor, whatever the Court feels would be appropriate. In the
10 Copperfield case, the Court closed the courtroom temporarily during
11 those proceedings and did not allow the media in when trade secrets
12 were being discussed. And conversely, at the Supreme Court level, the
13 Supreme Court just allowed the proceedings to be videotaped and then
14 the parties to redact the material after the fact. So either one of those
15 would be fine with us.

16 And then I think just in closing, Your Honor, I want to point
17 out that the issue of media in the courtroom does have -- there's another
18 element to it that's come up during voir dire and Your Honor heard there
19 were a number of jurors who expressed concern about media coverage.
20 And I have just in my notes, looks like -- and I know a couple of them
21 have been excused now, I believe, but one of them said, quote, "This
22 makes me feel very uncomfortable." Another one said, "I'm going to be
23 very uncomfortable with that."

24 And that does give us just general concern, Your Honor,
25 you know, especially, as the Defendants here. We're insurance

1 companies. The concern that if a juror has a microphone shoved in their
2 face when they walk out, it's going to be a lot more uncomfortable for
3 them to say that they didn't pay the Las Vegas doctors than if they hit an
4 insurance company with a large multimillion dollar verdict. So I think
5 that does kind of militate in favor of the defense. But I just want to point
6 that out. I know some of them have been excused, but you know, if
7 three of them said it, that means there may be, you know, six or seven of
8 them in there who may have that same concern that just aren't voicing
9 in.

10 And then just addressing the opposition that was filed this
11 morning by the Plaintiffs. I think first of all, I think there is a concern that
12 they should be estopped from now reversing course and trying to
13 essentially ask that the protective order be rescinded. The Plaintiffs
14 agreed to this protective order that protected their material as well. They
15 successfully defended against some attempts by the Defendant to de-
16 designate their material from attorney's eyes only to a lesser
17 designation.

18 And so for them now to say that that -- all those protections
19 are gone, and everything showed be aired at trial and media should be
20 allowed to air this, I don't think is appropriate at this point. But just
21 looking at the substantive points they make, if the Court wants to
22 entertain that. They cite to a number of statutes. They cite to NRS 1.090,
23 and it says, quote, "The sitting of every court of justice shall be public
24 except as otherwise provided by law." And in the portion of that statute
25 they cited, Your Honor, the only portion they quoted was, "The sitting of

1 every court of justice shall be public." But the sentence doesn't end
2 there. It says, except as otherwise provided by law. And as we pointed
3 out, Supreme Court Rule 230 provides there are exceptions to that, and
4 we believe those were set out in the protective order.

5 They cite a number of other rules. Nevada Rule of Civil
6 Procedure 77 and Nevada Rule of Civil Procedure 43. But again -- and I
7 think they're kind of citing this for the argument that there's just -- a
8 courtroom -- a courtroom must always be open to the media. There are
9 no exceptions. Clearly that's not the case. And even if you were to read
10 the rules that way, under the rules of statutory instruction, Your Honor is
11 supposed to read statutes to not be in conflict and to harmonize them.
12 Clearly Supreme Court Rule 230 provides an exception to -- that allows
13 the Court to temporarily close the courtroom, if needed to protect trade
14 secrets. So with that, Your Honor, unless you have any questions, I will
15 rest. Thank you, Your Honor.

16 THE COURT: Thank you. The opposition, please.

17 MS. LUNDVALL: Thank you, Your Honor. Pat Lundvall on
18 behalf of the healthcare providers. In 2006, I tried a case before Judge
19 Jessie Walsh that took us almost five months to try. It was before our
20 state had enacted the Supreme Court rules that are at issue under this.
21 And I will tell you that part of the reason we were five months in trial was
22 because of literally -- the adversity that we went through because of a
23 party who had designated materials similar to what United has done in
24 this case as being confidential and the claim and the contention by that
25 party then to try to get people out of the courtroom, witnesses,

1 documents, et cetera, et cetera.

2 It was after that and after all the scandals that plagued as far
3 as this judicial district that our Nevada Supreme Court enacted the
4 commission. They looked at the filings that were being made in this
5 particular depart -- not department, but in this particular district that
6 were secret, done in private out of the public eye. And they enacted
7 then, the very rules that are issue under this --

8 THE COURT: I was on the Board of Governors during all of
9 that for the State Bar.

10 MS. LUNDVALL: Then I'm preaching to the choir on this,
11 because this was, in many practitioner's standpoint, one of the worst
12 things that we could do was to have secret private proceedings that
13 inured to the benefit of a select few, rather than having things be open
14 and to the public, as what we are requesting in this action. And those
15 rules then were to bring all of the districts in line to ensure that they met
16 what was existing statute at the time, new rules of civil procedure at the
17 time and constitutional law of the state.

18 And as a result of that, there is this strong presumption of
19 openness within all court proceedings. And you have to hit a very, very
20 high hurdle by which to overcome that strong presumption. Contrary to
21 what Mr. Balkenbush has said, we did not misquote anything within our
22 briefs that spoke to that strong presumption and included the idea that
23 unless otherwise provided by law, there is a strong presumption of
24 openness. And so with that, the question becomes is whether or not that
25 they have met their burden.

1 And therefore, let's get into this particular case. When you
2 look at what United has done during the course of discovery, they
3 produced to us over 61,000 piece of information. Of that 61,000 pieces of
4 information, 63 percent of that was designated AEO. 63 percent of it was
5 designated attorney's eyes only. When he described -- which counsel
6 has described it in their briefs, they described it as great breadth of what
7 needs to be protected. What they are describing is this case. The cost
8 management controls that they've tried to put in place for out of network
9 providers. That is exactly what this entirety of this case is and that's
10 what they contend should be outside of the public eye.

11 And so what they are suggesting is that by painting with
12 some type of a broad brush during the course of discovery, that that
13 entitles them to somehow have a private trial that does not allow any
14 members of the public then to see what's going on. So when you take a
15 look then at what we did and what we tried to accomplish during the
16 course of discovery, each and every time we challenged their AEO
17 designation, what did they do? They did one of two things. They folded
18 on the designation or when it was challenged and we brought it to the
19 Court's attention, the Court then overruled them as to what their
20 designations were.

21 And so the extent that at least you got a glimpse or a peek at
22 the breadth by which they are trying to use these AEO designations,
23 what you can look at, though, also with their trial exhibit list from both
24 sides. When you take a look at the designation of United's documents,
25 there's hardly a single document by which that they contend as an

1 exhibit that should be permitted to be examined in open court. And
2 what that means is that the breadth of what they are asking for is nearly
3 the entirety of this trial to be done in private.

4 Also, one of the things you take a look at, looking at the
5 sincerity then, of their request in this regard. The protective order did
6 have a provision that said if we get to trial, then there'd be negotiation as
7 to what, if anything, was going to happen then with any of these
8 materials. We made an offer three times to United, all of which went
9 completely in response, crickets, that if there was a document that was
10 current and specific and that did indicate that it was some type of a trade
11 secret, that we could work that out. In response to that, what did we get
12 from them? Nothing. Crickets. They didn't want to as far as have any
13 discussion as far as on that issue and they never responded to the offers
14 that we made in an effort to try to suggest that if there was something
15 that was current and specific for which they needed to be -- have special
16 protection, then we could deal with it, and they did not respond to that.

17 In addition, when the first request for broadcast was made,
18 there was a response by United and that was response was the filing of
19 the lawsuit. And when you look at that lawsuit, they pushed it out over
20 the airwaves everywhere. Since then, people have -- somebody has
21 gone into the Wikipedia page for TeamHealth and made modifications to
22 make reference then to allegations of what a bad company they are and
23 all the different things that they're doing. New commercials have arisen
24 as far as in the public airwaves then.

25 And so there has been this response from a public

1 standpoint where United is out there trying to man the airwaves and
2 trying with their surround sound idea that they did during the course of
3 the Yale study and the Brooking Institute study to try to make us look
4 bad. And so one of the things that they're now trying to do is to have
5 that out there, but not to allow anyone else to take a look at whether or
6 not there was any accuracy, if there was any truth to the allegations or
7 not.

8 In presenting the motion, one of the things that Mr.
9 Balkenbush intended is that there was an expert and that that expert
10 would speak to how competitive the market is in which United practices.
11 But what he did not tell you is that their only expert says that the outlier
12 cost management program -- the cost management programs for the
13 out-of-network providers, that they're being done by everybody and that
14 this isn't anything that's unique within the industry. And that also, that
15 their experts say that they're doing the same thing that everyone else is
16 doing so how can that be a trade secret?

17 Last, Your Honor, I would point out this. There have been
18 two trials that have preceded this one that deal with similar issues. One
19 was in Arkansas. One was in Texas. And neither one of those courts
20 had any type of sealing of the courtroom. Neither one of those courts
21 did anything that would prevent the public from being able to see the
22 people's business. And therefore, we would ask this Court to allow the
23 public to see the people's business unadorned, unfiltered, uncensored
24 because one of the things that they have not been able to do is to
25 present and to identify with narrowness, with specificity, and to

1 articulate then the genuineness of their request that narrow, isolated,
2 specific piece of some information may arise so high to the level of being
3 a trade secret that it can't be aired public, otherwise it would cause some
4 type of financial harm to them.

5 The broad brush with which that they've painted throughout
6 the course of discovery is continuing throughout the course of this trial.
7 And the fact that they rejected sincere efforts at trying to maintain any
8 legitimate cause for concern also would suggest to the Court that this
9 request that they're making is not a legitimate one either. And so
10 therefore, we would ask the Court to deny their objection then to the
11 media request.

12 THE COURT: And the plaintiff has given notice of intent to
13 use -- has the three-day notice been triggered at this point?

14 MS. LUNDVALL: The three-day notice --

15 THE COURT: Right. In paragraph 20 of the stipulated
16 protected order.

17 MS. LUNDVALL: We -- all within the exhibit list then would
18 fall into that three-day notice then, Your Honor. Yes.

19 THE COURT: Good enough. All right. Thank you. Reply,
20 please?

21 MR. BALKENBUSH: So let me start, Your Honor, with
22 addressing the issue that Ms. Lundvall raised --

23 THE COURT: I'm sorry. I just need to confer for a moment.

24 [Court and Marshal confer]

25 THE COURT: I'm sorry for the interruption. Please go ahead.

1 MR. BALKENBUSH: No problem, Your Honor. Thank you.

2 So let me just start with addressing this argument that she
3 raised that essentially it's this argument that United has over designated,
4 that we've designated material that is not truly attorney's eye only and
5 not truly a trade secret and therefore, if this Court imposes some
6 reasonable limitations on media access to the trial, that that is going to
7 present problems as far as allowing any media access to the trial. The
8 entire trial is going to be shot essentially.

9 So I think our response to that, Your Honor, is that first of all,
10 the protective order has a specific process in place for challenging
11 attorney's eyes only designations. And in fact, it provides that the party
12 who makes the designation bears the burden of bringing a motion to
13 protect the designation if the other side challenges it. That is all they
14 have to do is send us an email and say Bates number 1 through 10,000,
15 we believe all of these are not appropriately attorney's eyes only
16 documents. All of them should have no confidential designation, and we
17 request you de-designate them.

18 Under the protective order, once they do that, it triggers a 21-
19 day time frame. We have to file a motion within 21 days and then we
20 bear the burden of protecting that litigation. And they have done that
21 four or five times, Your Honor, where they send us an email, and they
22 say we don't believe these are actually confidential or attorney's eyes
23 only. We filed a motion and each time the special master granted --
24 denied our motion and de-designated the documents.

25 So the process works. And in fact, there's nothing

1 preventing them from filing a motion now to designate whatever
2 documents they believe have been improperly designated attorney's
3 eyes only and aren't truly trade secrets. But there's no question that
4 they agreed to the language in the protective order that states what is
5 attorney's eyes only. They agreed information related to rates of
6 reimbursement that we make to other providers and that they accept
7 from other commercial payors is attorney's eyes only. They agreed to
8 that. They agreed that's a trade secret.

9 Now, there's a factual question if they think we've designated
10 something that's not true -- it's not truly related to you know, rates of
11 reimbursement or outlier cost management programs. But they've been
12 free to challenge that this entire case, and they've shown that they know
13 how to challenge it by doing it four or five times and winning.

14 So this argument that you know, somehow the Court should
15 waive -- essentially, waive all the attorney's eyes only designations
16 without them having ever availed themselves of the method in the
17 protective order for them to challenge it, I just -- I don't think it's
18 appropriate.

19 Again let me address too, this idea that this is not really a
20 trade secret, this outlier cost management program. You heard Ms.
21 Lundvall say that, you know, our expert is going to testify that many
22 other commercial payors have outlier cost management programs, and
23 that therefore, this isn't really a trade secret because everyone has it.
24 But in fact, that is the reason -- that is one of the reasons we're very
25 concerned about media coverage when we're talking about outlier cost

1 management systems, Your Honor. Because there are so many other
2 competitors that use these, the process by which these programs
3 operate, the parameters they use, those are trade secrets. Those are
4 what other commercial payors would love to know because we're in
5 competition with them for other self-funded insurance plans.

6 So that is actually an argument in favor of retaining it, not in
7 favor of waiving all the protection without them ever having brought a
8 motion to de-designate.

9 And then I just want to reference -- you know, Ms. Lundvall
10 referenced that you know, it could take a long time, this, you know, five
11 month trial she had to deal with. But you know, again, we have this
12 David Copperfield case in front of Judge Denton, Your Honor. Judge
13 Denton initially -- and this is not -- I want to make clear, I'm not citing this
14 for persuasive authority. It's an unpublished Court of Appeals decision.
15 But I think it's important for context because the Nevada Supreme Court
16 ultimately, in the appeal of the case, did win live streaming of the issues
17 related to the trade secret.

18 And in that case, Judge Denton initially disagreed with us
19 and believed that the courtroom should remain open and should not be
20 closed at all to media. But the Court of Appeals reversed, and the
21 Nevada Supreme Court implicitly affirmed that when on appeal, they
22 allowed -- they required the media to videotape the proceedings and
23 then allowed redactions after the fact so that the trade secrets that were
24 discussed at the Nevada Supreme Court would not be aired to the public.

25 So other courts do allow this and, you know, if their position

1 was going to be from the start, Your Honor, that this is the people's
2 business, none of this should be aired to the public, they didn't have to
3 enter into this protective order. They entered one back in October of
4 2019, here in federal court before it was remanded, and they entered the
5 June 2020 one, which is almost identical to the one issued in federal
6 court, as well. So nobody forced them to do that.

7 They could've taken the position then that this is a public
8 court proceeding. Everything is going to be aired. That their -- the rates
9 they accept from other commercial payors are going to be aired, the
10 rates we pay are going to be aired, that they were free to take that
11 position, but they took the position that this should be strictly protected.
12 And I don't think they should be allowed to walk back from that now and
13 get this Court to essentially completely eviscerate the protections of the
14 protective order that both parties willingly entered into.

15 So we would request the Court take some limited -- and put
16 some limited protections in place for just when attorney's eyes only
17 documents are shown. Again, we're not asking that confidential
18 documents be protected, the lower designation, just attorney's eyes
19 only. Thank you, Your Honor.

20 THE COURT: Thank you. You know, this is the first time I've
21 had to deal with this issue. So I --

22 MS. LUNDVALL: Your Honor, may I make one point of
23 order?

24 THE COURT: Of course.

25 MS. LUNDVALL: Mr. Balkenbush suggests that this is the

1 first time that we have raised this issue that somehow that the protective
2 order was a discovery tool, was a case management tool, and that it was
3 not going to apply during the -- during the jury trial. I stood at this very
4 podium in opposition to their motion for an order to show cause to hold
5 myself and my firm in contempt, and that was our principle argument
6 that that protective order was a case management order applicable
7 during discovery. And because that we couldn't ask jurors to sign
8 protective orders, that that was Exhibit number 1 why it is that that case
9 management order should not be applicable then throughout the course
10 of the trial. So to suggest that somehow that this is a newfound
11 position, that's my point of order, Your Honor. Thank you.

12 THE COURT: Understand. Mr. Balkenbush, it's your motion.
13 You have the last word.

14 MR. BALKENBUSH: Thank you, Your Honor. I'll be -- just in
15 response to that, I'll say, if they -- if what they wanted is the order to just
16 apply to pretrial proceedings, there was an easy remedy for them to
17 handle that. They could have refused to enter into paragraph 20, which
18 expressly discusses use of AEO material at trial, requires them to give
19 three business days' notice of their intent to use it, it requires us to do
20 that too. And then specifically states that the Court may take appropriate
21 measures to ensure that individuals other than those listed under
22 paragraph 12 don't see attorney's eyes only material.

23 And again, paragraph 12 lists jurors under it. If this was
24 intended to just be pretrial, why would it list jurors under it? So we
25 would request that the Court just protect our attorney's eyes only

1 material and impose some limited restrictions on the dissemination of
2 that. Thank you, Your Honor.

3 THE COURT: And I can't really totally rule on everything now
4 because I don't know what's going to be offered. But I suggest we take it
5 up on a piecemeal basis. I can tell you right now that I will not seal
6 anything that's admitted. It's not going to happen. I'd be inclined no
7 attorney's eyes only to close the room and have a redacted transcript,
8 but it's going to have to be taken up on a case-by-case basis. And I
9 realize that's going to affect how the plaintiff puts on their case. So --

10 MS. LUNDVALL: And Your Honor, it's also going to impact
11 as far as the time that is going to be involved. And I use this as a classic
12 example. These folks wrote a letter to Congress -- to Congress. Sent it
13 to Congress about balance billing. And you know what, when they
14 produced it to us in this case, they marked it as attorney's eyes only. A
15 public document that was sent to members of the public, and they
16 marked it as attorney's eyes only. That is a classic example of what they
17 have done and the length of time that it's going to take as we take up
18 one by one by one, each and every one of the documents that they've
19 identified.

20 Moreover, from this perspective when they talk about this
21 wholesale idea that somehow that we have the ability by which to
22 challenge, each and every time that we did challenge, like I said, that
23 they either dropped it or it was overruled. And each and every time that
24 there was massive expense that was associated with that. And so to the
25 extent that we have identified -- we've given them our three-day notice

1 by including these documents on our exhibit list. We've given them the
2 opportunity then by which to suggest that somehow that they need to
3 take special action on each one. They are the ones that have not
4 complied then with and taken any action.

5 The suggestion by Mr. Balkenbush that somehow that we
6 still have the opportunity by which to employ the mechanism under the
7 protective order, what he failed to tell the Court though is that that
8 mechanism mandates for the 21-day period of time available to them
9 that it was supposed to be maintained then as AEO protected. So what
10 they're suggesting then is somehow that that process and that procedure
11 then allows them that same protection during the time of the trial.

12 And so with that, Your Honor, then what we're trying to do is
13 to simply herald to the Court the length of time and the difficulty. And
14 that with a suggestion that because they do have our exhibit list, if the
15 Court is going to insist then on some type of an exhibit-by-exhibit
16 issue --

17 THE COURT: I can tell you I won't seal any exhibit that gets
18 admitted. I think I made that clear. What I'm concerned about is the
19 testimony, the foundation that will be laid. And let me ask of the
20 Defense team, whoever has the answer, in Texas, and was it Arkansas,
21 the other state? Was it the exact same issue teed up in those other
22 litigations?

23 MR. BALKENBUSH: Your Honor, we were not a party to
24 those other cases so I can only speak from reviewing the transcripts. Mr.
25 Zavitsanos --

1 THE COURT: Mr. Zavitsanos --

2 MR. BALKENBUSH: -- might be able to say. But I will say
3 this, Your Honor, while the dispute about out-of-network reimbursement
4 was at issue I believe in one of the trials, the claims were slightly
5 different because the programs that are at issue in this case are very
6 much a focus of their pleadings and where I don't believe they were in
7 the other case.

8 THE COURT: Thank you. Mr. Zavitsanos?

9 MR. ZAVITSANOS: So counsel is correct. The Arkansas case
10 was materially different, that was a contract case. In Texas, these
11 programs -- and I'm using air quotes on that because when the first
12 witness gets on the stand -- this is just an attempt to cut
13 reimbursements. And that was not part of the Texas case, but the rates
14 they were paying, what they were doing, how they were driving rates
15 down, what their reimbursement rates were, all of that was admitted. All
16 of that was broadcast. All of that was disclosed. Nothing was sealed.
17 There was an attempt early on to close off some of that -- not all of it --
18 some of it, much narrower than what we have here, and that was denied.

19 And here's the real problem Your Honor, that we told them
20 who the first witness is going to be. That gentleman, I anticipate -- and
21 I'm just kind of previewing this right now. I've got him. He's going to
22 be on the stand for three days. I'm going to cross-examination for three
23 days. And it's going to be the single longest witness in the trial. And
24 here is my concern. If I get a little rhythm going, and I start making some
25 points, they're going to pull this lever to take the air out of the room so

1 that we can take up this ceiling issue to try to obstruct whatever
2 momentum we get going, maybe meet with the witness during the
3 break, and this is -- I mean, this is a tactic, and I just -- I mean, Your
4 Honor, the documents they're trying to seal are where they are
5 exchanging notes with the other insurers about how they're going to
6 drop the rates, where they're keeping up with each other on what they're
7 doing. And they're marking this AEO. Okay. So look, I challenge
8 counsel to identify one document right now that they claim is a AEO. Let
9 me see if it's on the exhibit list.

10 THE COURT: Well, you're going to have to talk to them
11 before you call that witness because I won't allow you to interrupt the
12 presentation of the case, but I am going to look at protecting your rights
13 as to the AEO things, if necessary.

14 MR. BLALACK: And just to be clear, Your Honor, I don't
15 really appreciate the characterization of what her motives are, by
16 opposing counsel. I'm here to try the case straight up. We have right to
17 AEO protection under the Court's order, which is all that Mr. Balkenbush
18 is seeking to enforce. It's straightforward, and it's got no tactical, larger
19 implications, notwithstanding the assertion here. I suggest if the Court
20 enforces the order as written, the parties act in good faith, the concerns
21 that are expressed on this side shouldn't be there.

22 MR. BALKENBUSH: I would just add --

23 THE COURT: And that's all I'm telling you guys, is that I'm
24 going to. The Court may take such measures as it deems appropriate to
25 protect the claimed confidential nature, et cetera, et cetera.

1 MR. BLALACK: Exactly.

2 THE COURT: But if --

3 MR. BALKENBUSH: I would --

4 THE COURT: -- it gets admitted it's in the public domain.

5 MR. BALKENBUSH: Can I -- just a point of clarification, Your
6 Honor, that prior to admission then, there will need to be a discussion
7 before they reference it. For example -- because our concern, Your
8 Honor, for example, is that they're -- rather than admit it they're
9 referencing it in their opening statement --

10 THE COURT: I just asked them to confer with you.

11 MR. BALKENBUSH: Okay.

12 THE COURT: So let's close this argument down now. You've
13 got a venire outside. It's 1:35, I told them to come back at 1:00. We have
14 another panel that's available if we need it. So I know the issue will
15 come up again.

16 So, Mr. Roberts, without holding you to it how much longer
17 will you need?

18 MR. ROBERTS: I should be under an hour, Your Honor.

19 THE COURT: Great.

20 MR. ROBERTS: And I don't see, right now any causes -- any
21 cause challenges --

22 THE COURT: That was my --

23 MR. ROBERTS: -- by us.

24 THE COURT: Without holding you to it.

25 MR. ROBERTS: So we may not need that next panel, I'm

1 very hopeful of that.

2 THE COURT: Okay. Great. Let's bring in the venire.

3 MR. ROBERTS: And then we had the decision on how we're
4 going to exercise the strikes. Will there be a break where we can take
5 that up before --

6 THE COURT: Yeah.

7 MR. ROBERTS: -- we have to exercise strikes?

8 THE COURT: We'll take a break before you do that. Yes.

9 MR. ROBERTS: Okay.

10 MR. BLALACK: Thanks, Your Honor.

11 MR. ZAVITSANOS: Your Honor, one last thing, just as a
12 housekeeping matter. Will Your Honor be available to address some of
13 the other issues after we -- okay. Thank you.

14 THE COURT: I was hopeful that you would -- we'd be able to
15 swear in the jury today.

16 MR. ZAVITSANOS: Yes.

17 THE COURT: So --

18 MR. ZAVITSANOS: Well, we're hopeful --

19 THE COURT: And if we have to take up the issue about what
20 you can show during your opening, we'll either come early or have time
21 at the end of the day.

22 MR. ZAVITSANOS: Yes, Your Honor. Because this a big
23 issue.

24 THE COURT: I understand.

25 MR. ZAVITSANOS: It's a big issue. So --

1 THE COURT: I'm going to tell you both, after five days of jury
2 selection they've figured out what both sides want. Although I'm sure
3 you're quite aware of that yourselves.

4 MR. ZAVITSANOS: Your Honor, I think you figured that out a
5 long time ago.

6 THE COURT: No. I think they did -- they did.

7 [Pause]

8 THE MARSHAL: All rise for the jury.

9 [Prospective jurors in at 1:39 p.m.]

10 THE COURT: Thank you. Please be seated. But before you
11 start, Mr. Roberts, let me just tell you guys. It isn't that we disrespect
12 your time, but we had matters to take up outside your presence that I
13 thought would take shorter than they did. So thank you for your
14 professional courtesy, because you had to wait. Now please go ahead.

15 MR. ROBERTS: Thank you, Your Honor. Marshal, could we
16 have a microphone? Let's go ahead and start up at the top with Ms.
17 Gonzaga.

18 So thank you for giving us all of this time, I promise we're
19 almost done. Before the next break I'm going to be done, and hopefully
20 this process is going to winding down. Thank you for your patience,
21 Your Honor, I appreciate the opportunity.

22 You talked about burden of proof quite a bit, this first couple
23 of days here, and not speaking about the law, but your own personal
24 feelings, as Mr. Zavitsanos explained, a certain amount was billed, we
25 paid a certain amount, and they had the burden of proving we should

1 have paid more.

2 Do you think, personally, that the insurance company should
3 have to prove that the amount paid was reasonable?

4 PROSPECTIVE JUROR 074: 074, I would say yes.

5 MR. ROBERTS: Okay. And why is that?

6 PROSPECTIVE JUROR 074: Just because it depends on the
7 type of service that the patient received.

8 MR. ROBERTS: Okay. And when it comes to deciding the
9 case based on the instructions that the Court gives you, can you take that
10 belief about the way the law should be, perhaps, set it aside and decide
11 the case the way the Judge instructs you to?

12 PROSPECTIVE JUROR 074: Yes.

13 MR. ROBERTS: And you could hold them to their burden?

14 PROSPECTIVE JUROR 074: Yes.

15 MR. ROBERTS: Okay. Thank you. Ms. Springberger [sic],
16 same question.

17 PROSPECTIVE JUROR 141: Can you repeat it, sorry?

18 MR. ROBERTS: And I'm sorry, Ms. Springberg.

19 PROSPECTIVE JUROR 141: That's okay

20 MR. ROBERTS: I put the E-R on the end.

21 PROSPECTIVE JUROR 141: I've been called that before, it's
22 fine.

23 MR. ROBERTS: My question is this, putting aside what the
24 law is, the Judge will instruct you on the law, do you think insurance
25 companies in a case like this should have to prove that the amount they

1 paid was reasonable?

2 PROSPECTIVE JUROR 141: Outside of this environment, I
3 would say, yes.

4 MR. ROBERTS: Okay.

5 PROSPECTIVE JUROR 141: Inside the courtroom and follow
6 the Judge's rules.

7 MR. ROBERTS: Okay. And you'll hold them to their burden
8 of proof?

9 PROSPECTIVE JUROR 141: Thank you.

10 MR. ROBERTS: Ms. Landau, badge?

11 PROSPECTIVE JUROR 283: 283.

12 MR. ROBERTS: Thank you.

13 PROSPECTIVE JUROR 283 Yes. I do think that they should
14 prove that they're reasonable.

15 MR. ROBERTS: And if the Judge instructs you that we don't
16 have to, in theory if we didn't put on any evidence at all, we just -- they
17 didn't --

18 PROSPECTIVE JUROR 283: Then I would just go based on
19 the evidence provided to me by the -- just follow what the judge
20 instructs.

21 MR. ROBERTS: Okay. And you can hold them to their
22 burden?

23 PROSPECTIVE JUROR 283: Yeah.

24 MR. ROBERTS: Even though you personally think we maybe
25 shouldn't have to prove that --

1 PROSPECTIVE JUROR 283: Yes. I believe --

2 MR. ROBERTS: -- what we did was reasonable.

3 PROSPECTIVE JUROR 283: Yes.

4 MR. ROBERTS: Thank you, Ms. Landau.

5 Mr. Walker.

6 PROSPECTIVE JUROR 450: Badge 450.

7 MR. ROBERTS: Thank you, sir.

8 PROSPECTIVE JUROR 450: For the insurance, the payout,
9 that was the question; they should have paid it all.

10 MR. ROBERTS: So my question is, putting aside what the
11 law is --

12 PROSPECTIVE JUROR 450: Okay.

13 MR. ROBERTS: Partially, do you think an insurance company
14 should have to prove that the amount of paid was reasonable, they paid
15 less than the bill charges?

16 PROSPECTIVE JUROR 450: Yes. [Indiscernible].

17 COURT RECORDER: Can you speak up, please?

18 PROSPECTIVE JUROR 450: That is based on the type of
19 service that was provided. Now as far as the Court goes, go based off of
20 what's presented, and on the direction under Her Honor, and --

21 THE COURT: So if the Court instructs you that as a
22 Defendant you don't have to prove anything in this trial, the Plaintiff has
23 the burden of proof; can you follow that instruction?

24 PROSPECTIVE JUROR 450: Yes.

25 THE COURT: Okay. Thank you.

1 PROSPECTIVE JUROR 494: 494, I do not believe you have to
2 prove anything, the burden of proof is on the Plaintiff. If that contradicts
3 what the actual law is I'd be willing to follow the law, regardless of my
4 personal beliefs.

5 MR. ROBERTS: Thank you, Mr. Zabinski.

6 PROSPECTIVE JUROR 522: 522. Yes. In the sense that the
7 insurance is setting the price, and the doctors provided the service. So it
8 would be behooving to figure -- to say why it's going to cost you that.
9 But as according to the law, whatever the Judge said, I would be able to
10 follow that.

11 MR. ROBERTS: So even if we never said why, never tried to
12 prove it?

13 PROSPECTIVE JUROR 522: Correct. We can still follow the
14 directions.

15 MR. ROBERTS: And hold the Plaintiffs to their burden.?

16 PROSPECTIVE JUROR 522: Yes.

17 MR. ROBERTS: Thank you, Ms. Friedrich. Ms. Ross?

18 PROSPECTIVE JUROR 093: 093. I think on a personal level I
19 would say you have to prove it, but not like in this case is, you know,
20 they have to prove it [indiscernible]. So I would just follow the law and
21 apply the evidence [indiscernible].

22 MR. ROBERTS: Thanks very much, Ms. Ross. Ms. Carr.

23 PROSPECTIVE JUROR 049: 049. My brain knows that there
24 are two sides to the story. You have reasons for why your side is saying
25 what they have, by -- the Plaintiffs are saying what they want, this X

1 amount of money, but I know that those are not the rules for what the
2 lawsuit is. So, yes, I could follow whatever rules are set out, that we'll
3 actually be deliberating on.

4 MR. ROBERTS: Thank you, Ms. Carr. Mr. Torres. 738

5 PROSPECTIVE JUROR 738: I will follow the instructions of
6 the Honorable Judge. I'm going to listen to both sides again, and I will
7 go with the person who has more proof.

8 MR. ROBERTS: Can you hold one to their burden of proof, or
9 are you going to make us prove?

10 PROSPECTIVE JUROR 738: It's on the Plaintiff.

11 MR. ROBERTS: Okay. Thank you, sir. Mr. Nesci.

12 PROSPECTIVE JUROR 593: 593. Could you please clarify?
13 They provide a service, they send you the bill that you paid, without --
14 less than the face amount of the --

15 MR. ROBERTS: Correct.

16 PROSPECTIVE JUROR 593: But with a quote/unquote,
17 explanation of benefits where you explain, or you just say here's what
18 we're giving you. So if you're locked up --

19 MR. ROBERTS: I'm not going to get into the specific
20 evidence.

21 PROSPECTIVE JUROR 593: Okay.

22 MR. ROBERTS: My question is, first of all, putting aside
23 what's -- the Court is going to instruct you on the law, do you think that
24 we should have to prove that the amount to be paid was reasonable?

25 PROSPECTIVE JUROR 593: Yes.

1 MR. ROBERTS: Okay. But you can set that aside and make
2 them prove the amount should have been higher.

3 PROSPECTIVE JUROR 593: If the Judge's orders are that, the
4 instructions, they could follow the instructions of the Judge.

5 MR. ROBERTS: Okay. Thank you, sir.

6 PROSPECTIVE JUROR 593: You're welcome.

7 MR. ROBERTS: Mr. Rucker?

8 PROSPECTIVE JUROR 593: Yeah. As stated, they will have
9 to prove, the Defendant won't have to prove anything. And closely
10 follow the instructions of, Your Honor, you know, you have to do that.

11 MR. ROBERTS: Yes, you do, we all do. Thank you, sir. Mr.
12 Meyer?

13 PROSPECTIVE JUROR 532: 532. Without knowing anything,
14 I would prefer to have you explain, or to prove. But I definitely could
15 follow the rules of whatever the Court dictates.

16 MR. ROBERTS: Okay. Thank you, sir.

17 PROSPECTIVE JUROR 095: 095. So the first question, I think
18 personally, I'm going to prove what's reasonable, but I think absolutely
19 follow what the Judge says.

20 MR. ROBERTS: Even if we don't prove it, that they didn't --

21 PROSPECTIVE JUROR 095: Absolutely.

22 MR. ROBERTS: -- prove it, but they didn't prove that we
23 should pay more.

24 PROSPECTIVE JUROR 095: Correct. Yes.

25 MR. ROBERTS: What do you do? We don't prove it, or they

1 don't prove it?

2 PROSPECTIVE JUROR 095: Well, then there's not a
3 preponderance of evidence. So --

4 MR. ROBERTS: Very good.

5 PROSPECTIVE JUROR 095: We've been listening.

6 MR. ROBERTS: Ms. Hortillas.

7 PROSPECTIVE JUROR 114: 114. The same thing, I just
8 follow the instructions of the Judge.

9 MR. ROBERTS: Okay. Thank you. Ms. Trambulo?

10 PROSPECTIVE JUROR 116: Yeah. I mean, personally I'd
11 want to understand how you guys came to that determination of what
12 was paid out, but I can also follow what the Judge says. So --

13 MR. ROBERTS: Thank you.

14 PROSPECTIVE JUROR 224: 224, Kelsey Dudley. I'd like to
15 follow what the Honorable Judge says, seeing as she's kind of the heart
16 and soul of the courtroom. I'm the type of being that likes to understand
17 both sides of the story, probably to a fault. I understand that the burden
18 of proof relies on that, but I still couldn't -- I'd like to get that you would
19 want to get your own evidence to help your side of the case, just for
20 everyone to understand [indiscernible].

21 MR. ROBERTS: Thank you, Ms. Dudley.

22 PROSPECTIVE JUROR 252: 252. I'd say it's the Plaintiff's job,
23 for burden of proof. You got to do that to prove it to me.

24 MR. ROBERTS: Very good. Thank you. Mr. Roberts.

25 PROSPECTIVE JUROR 014: 014. I -- you are talking about

1 the context of you're going just [indiscernible] --

2 MR. ROBERTS: So first of all --

3 PROSPECTIVE JUROR 014: -- right?

4 MR. ROBERTS: Your personal opinion, if the insurance
5 company pays less than those charged, we have to prove to you that the
6 amount we take is reasonable?

7 PROSPECTIVE JUROR 014: As a jury, I don't think so,
8 because it's their job to prove that -- you know, they're asking for all this
9 money, so they have to prove what they deserve. I don't think
10 [indiscernible]. It's you guys' obligation to explain -- you know, explain
11 your side of this because [indiscernible]. And, I mean, there are some
12 things that contradicted that, but -- and I'd told us -- I would be able to
13 follow it.

14 MR. ROBERTS: Thank you, Ms. Forrester. Mr. Leopold?

15 PROSPECTIVE JUROR 020: 020. Real simple, it either is or it
16 isn't. If the Judge says one way, we [indiscernible].

17 MR. ROBERTS: Well, what do you think you should --

18 PROSPECTIVE JUROR 020: Well, if I were one of the
19 providers I'd like to know why you came to us. But from my standpoint,
20 it really doesn't matter.

21 MR. ROBERTS: Thank you, sir.

22 PROSPECTIVE JUROR 270: All right. Juror 270. I think as a
23 citizen I would want to know why. As a juror I'd follow the instructions. I
24 think it's two different things. My curiosity would wonder why, but I'm
25 not sure of the evidence. Personally, personally I would want to know

1 why.

2 MR. ROBERTS: What if you never know why? Can you set
3 that aside and solely decide the case --

4 PROSPECTIVE JUROR 270: Yeah.

5 MR. ROBERTS: -- based on whether they've proven it? Okay.

6 PROSPECTIVE JUROR 270: Yes. Are you done with me?

7 MR. ROBERTS: I am.

8 PROSPECTIVE JUROR 270: Okay. It's just [indiscernible].

9 MR. ROBERTS: We'll turn it over to Ms. Wynn. All right.

10 PROSPECTIVE JUROR 254: 254. I would want to hear both
11 sides. And of course if the Plaintiff if they proved it, then follow the
12 Judge's orders. If they haven't proven, but followed the Judge orders.
13 So I have to hear both sides, see the evidence, and then be able to make
14 a decision from there, based on what we're told by the Judge
15 [indiscernible].

16 MR. ROBERTS: Personally, you're setting the rules. If we
17 never explain why do you think we should lose the case? Why we paid
18 less?

19 PROSPECTIVE JUROR 254: If the Plaintiff proves that they
20 deserve it, then on their -- [indiscernible] as a juror, they've proven their
21 case, they honor it. If they haven't proven it, I still have to follow what
22 the Judge says and make a decision from there.

23 MR. ROBERTS: Very good, I appreciate it. Mr. Ramsey?

24 PROSPECTIVE JUROR 219: 219. I agree with the way the
25 system is set, the burden of proof is with the Plaintiff, and I would follow

1 the Court's instructions.

2 MR. ROBERTS: If you could do it, if you're making the
3 rules --

4 PROSPECTIVE JUROR 219: My personal opinion -- yes, sir.
5 My personal opinion is the system is set. I agree with the way the
6 system is set, the way the systems go.

7 MR. ROBERTS: Our world thinks it's the greatest justice
8 system in the world, right?

9 PROSPECTIVE JUROR 219: We do.

10 MR. ROBERTS: Mr. Reese?

11 PROSPECTIVE JUROR 014: 014. Yes. Personally, I think you
12 need to prove your side. There's two different -- two people, two groups,
13 on an opposite side of an issue, and if only one side present theirs, and
14 you don't present yours, then there's -- in other words, I think you need
15 to prove why you paid less, and if not, if you don't, the Judge
16 [indiscernible] to a certain direction with this, then why are we here, you
17 know. The judges could make the that decision.

18 MR. ROBERTS: Well, let's just, hypothetically. You get to the
19 end of the case, we haven't proven why we paid less, or what we paid
20 was reasonable. But the Plaintiff hasn't proven, that we should have
21 paid more, what do you do?

22 PROSPECTIVE JUROR 014: Well, if the Plaintiff presented the
23 case and you don't, then I think the proof is on their side, because you're
24 the Defendant.

25 MR. ZAVITSANOS: Your Honor, can we approach for one

1 second.

2 THE COURT: In fact, why don't we just step out in the hall?

3 MR. ZAVITSANOS: Yes. Thank you.

4 [Sidebar at 1:54 p.m., ending at 1:56 p.m., not transcribed]

5 THE COURT: Okay. Thank you again for your professional
6 courtesy.

7 MR. ROBERTS: All right. Mr. Reese?

8 PROSPECTIVE JUROR 094: Yes.

9 MR. ROBERTS: Let's make this real easy. If the judge
10 instructs you that the Plaintiffs have the burden of proof --

11 PROSPECTIVE JUROR 094: Yes.

12 MR. ROBERTS: -- and they don't meet it in your mind. They
13 don't convince you that it's more likely true than not true, that they
14 should have been paid more, can you give us a defense verdict?

15 PROSPECTIVE JUROR 094: Yes.

16 MR. ROBERTS: Okay. Thank you, sir. All right. The end of
17 the line. Mr. Cabrales?

18 PROSPECTIVE JUROR 041: 041. Personally, I think anyone
19 who makes a claim has the burden of proof why they make that claim.
20 That includes any complaint who says that their actions are justified. I
21 want to see that justification, but I will adhere to the law of the
22 instructions of the judge.

23 MR. ROBERTS: Okay. And we're not making a claim here,
24 right? In your mind when you say that, you think anyone making a
25 claim, but it sounded like you were talking about us.

1 PROSPECTIVE JUROR 041: If what you are saying is that
2 what you paid is reasonable, that to me sounds like a positive claim.

3 MR. ROBERTS: What if the judge were to instruct you that
4 we had no duty to prove what we think was reasonable?

5 PROSPECTIVE JUROR 041: Then I will follow what the judge
6 orders.

7 MR. ROBERTS: Okay. Thank you, sir.

8 So let me ask just a quick question to the group. And I know
9 we've been going through this for a while. Has anyone heard anything
10 about this case, maybe, since you were asked about it the first time?
11 Anyone heard anything about this case through a friend, someone
12 blurted it out, the news was on by accident, anyone heard anything?

13 IN UNISON: No.

14 MR. ROBERT: Nothing? Okay. Very good.

15 So we sort of talked a little bit about burden of proof now.
16 We've talked about liability. But in addition to liability, if you find that
17 United is liable to the Plaintiffs, then you also have to find that the
18 Plaintiffs met the burden of proof on the amount. And it could be the ten
19 and a half million Mr. Zavitsanos told you about. It could be zero, it
20 could be something less. Is everyone okay holding them to their burden
21 of proof on the amount of damages as well as liability? Anyone not okay
22 with it? Who has more than two kids?

23 Now, I think something Ms. Carr said brought this up. And
24 you mentioned that your -- two sides to every story. Was that you that
25 said that? So you have more than one kid, you've got two kids. The first

1 one runs in screaming and tells you what happened. Has anyone
2 experienced a change in story when the second kid runs in?

3 PROSPECTIVE JUROR 049: Exactly.

4 MR. ROBERTS: So I would -- it wouldn't be fair to make a
5 decision based solely on what the first kid told you, right? So what I
6 would ask you, is everyone okay with committing to waiting to hear all
7 the evidence, all of the instructions of the Court, wait until all of the
8 evidence comes in before you make a decision about who is right and
9 who is wrong here? Because the Plaintiffs gets to go first. The Plaintiffs
10 get to go last if they want to. But everyone can wait until all that
11 evidence comes in; is that fair? Thank you.

12 Almost done here. And I am going to ask you all the ultimate
13 question one more time. And that is, if the Plaintiffs don't meet their
14 burden of proof despite the fact they're providing medical services at
15 emergency rooms in your home town, I want to see a show of hands
16 from everyone who say if they don't meet their burden of proof, I can
17 enter a defense verdict and send them home with nothing.

18 What about you, Ms. Hortillas?

19 PROSPECTIVE JUROR 114: What was that again, I'm sorry?

20 MR. ROBERTS: If the Plaintiffs don't meet their burden of
21 proof, they don't prove to you that they are owed more money than they
22 have received, can you send them home with nothing?

23 PROSPECTIVE JUROR 114: Yes, I can.

24 MR. ROBERTS: Okay. The record will indicate that the -- that
25 the juror has nodded yes.

1 Thank you for all of your time. Thank you for your honesty.
2 We appreciate how much time and effort everyone has devoted to this
3 long process. It helps us get a fair jury, and we all really appreciate it.

4 Is there anyone who has anything else they think I need to
5 know, or the Court needs to know? Maybe I had asked a question up
6 front here and never asked you in the back? Anything out there I
7 missed? All right. Thank you so much.

8 THE COURT: Do you pass the panel for cause?

9 MR. ROBERTS: I pass the panel for cause, Your Honor.

10 THE COURT: Very good, thank you.

11 MR. ROBERTS: Thank you.

12 THE COURT: This will be a good time for a recess. And this
13 will be a fairly long one because we're getting to the next step of jury
14 selection. So I am going to say 2:30. It'll be a half hour.

15 During this recess, don't talk with each other or anyone else
16 on any subject connected with the trial. Don't read, watch, or listen to
17 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 phone, or texting.

20 Don't conduct any research on your own relating to the case.
21 Don't speculate about the witnesses, about the legal issues or the
22 lawyers. And so you can't consult dictionaries, use the internet, or use
23 reference materials. Don't talk, text, tweet, Google, or conduct any other
24 type of book or research with regard to any issue, party, witness, or
25 attorney involved in the case. Most importantly, do not form or express

1 any opinion on any subject connected with the trial unless you are
2 selected for the jury and unless the jury deliberates.

3 Thank you again for understanding that it's hurry up and wait
4 today. If you will be ready at 2:30, thank you.

5 THE MARSHAL: All rise for the jury.

6 [Prospective jurors out at 2:04 p.m.]

7 [Outside the presence of the prospective jurors]

8 THE COURT: Okay. So we are going to, at this point, talk
9 about how you are going to do your strikes. The last four are alternates?

10 MR. ROBERTS: Yes, Your Honor.

11 THE COURT: All right. Plaintiff, why don't you explain the
12 way that you understand the strikes to work?

13 MR. ZAVITSANOS: Your Honor, the way I understood it was
14 that we strike first. The defense then strikes. We then strike again, but
15 we cannot go -- we can't back-strike. We can only go forward, not
16 backward. And the same would then hold true for the defense.

17 I know there may be some discussion about this. The only
18 thing I will say is that that is the way I understood Your Honor did it. As I
19 mentioned, I think, last week I think it was, I did come out to watch Your
20 Honor do another voir dire -- I've got to say it the correct way, not the
21 other way. I did watch the way Your Honor did her voir dire in the case
22 right before ours. And for what it's worth, Your Honor, I did rely on that,
23 and I structured my questioning to the panel around that methodology.

24 And so -- and I don't want to tip my hand too much about
25 why I did it the way I did it, but I did understand there were no back-

1 strikes, and so there were certain modes of questioning that I asked with
2 that assumption in mind. And so our strong preference would be to do it
3 the way I observed in the last trial and the way Your Honor explained it, I
4 believe, early on in this case.

5 THE COURT: Thank you. Mr. Roberts?

6 MR. ROBERTS: Thank you, Your Honor. And I don't think I
7 have ever picked a jury with you.

8 THE COURT: I don't think you have.

9 MR. ROBERTS: I don't think I have, but I have picked two to
10 four a year in this jurisdiction since 2002. And the way that it's always
11 been done in my experience is that under the statute, 16.030 and 040,
12 that we exercise our four peremptory strikes against the potential jurors
13 in the box. And there's nothing in the statute which says that you have
14 to do them in order and that you waive your right if you strike Juror 5
15 before Juror 1.

16 And then we did do a little fishing over the weekend, and I
17 think this may be the oldest case I have ever cited in Nevada, and that is
18 the case of *State v. Pritchard*, 15 Nevada 74 (1880), no parallel Pacific
19 Reporter cite that I could find, where d the court said that the right to
20 challenge any juror peremptorily is absolute at any time before the juror
21 is sworn. And that no circumstances can bring that right within the
22 discretion of the court so long as it is confined to a -- to the number of
23 peremptory challenged allowed by law.

24 And it seems to me that under the statute and under the
25 wording of this case, we have our right to exercise peremptory strikes

1 against the box in any order in which we want to. Now, if we waive,
2 then I agree, it's waived. But as long as we exercise our strike when we
3 are given the opportunity, there's nothing in Nevada law that would
4 require us to make them in numerical order.

5 THE COURT: What was the statute cited? I have the NRS up.
6 I have the case up, too.

7 MR. ROBERTS: Thank you, Your Honor. It's -- make sure I've
8 got this right, 16.030 Section 4 and 16.040 Section 1, both of which
9 indicate strikes are exercised against the persons on the panel or
10 alternatively, the jurors, but don't say anything about the order in which
11 they have to be exercised.

12 MR. ZAVITSANOS: And Your Honor, I would like a brief
13 reply.

14 THE COURT: You may. Give me just a second to read this.

15 MR. ZAVITSANOS: Yes, Your Honor.

16 THE COURT: Okay. Go ahead, please.

17 MR. ZAVITSANOS: So Your Honor, I have not looked at the
18 case Counsel was talking about. I'm going to -- I am going to take him at
19 his word. He's an honorable gentleman, obviously. And I am just going
20 to go by the excerpt that he read. Nothing that Counsel just read is
21 inconsistent with the way Your Honor does it. What Counsel just read is
22 whether or not you have the right to strike somebody for a peremptory
23 and that there are no limitations on it. It does not address the mode of
24 the way you're going to do the strikes.

25 I don't -- I did not hear anything that touched on that. It

1 touched on whether you have an absolute right to make a strike, not the
2 mode that you're going to do it. So I don't -- there's nothing inconsistent
3 with what Counsel said with the way Your Honor does it.

4 THE COURT: Good enough.

5 Mr. Roberts, that's just the way we were taught and the way I
6 have always done it in this court is not to allow any back strikes. So I am
7 going to overrule your objection on that issue. Now, do you have the
8 paper ready?

9 All right. So usually, I step out for this to give you guys a
10 chance. But keep -- be mindful that if I bring them in at 2:30, you can still
11 continue to do your strikes, and I can get some of the pretrial stuff out of
12 the way.

13 MR. ROBERTS: Yes, Your Honor.

14 MR. ZAVITSANOS: I am not going to speak for him. I
15 anticipate they've had a lot of discussion over the weekend about who
16 they are going to strike. We've done the same. So I don't -- I don't think
17 we need more than 15 minutes.

18 THE COURT: Well, after five days --

19 MR. ZAVITSANOS: Yes.

20 THE COURT: -- I think you guys knows where everybody
21 stands.

22 MR. ZAVITSANOS: Yeah. I mean, we -- I think --

23 THE COURT: At this point --

24 MR. ZAVITSANOS: -- they could do ours, and we could do
25 theirs.

1 THE COURT: I could do all of yours. Okay.

2 MR. ROBERTS: And Your Honor, if I could just say one
3 thing --

4 THE COURT: Of course.

5 MR. ROBERTS: -- quickly for the record.

6 THE COURT: Certainly.

7 MR. ROBERTS: You know, our firm has an office in Florida
8 and in Florida, you can back strike. But a back strike is defined in those
9 cases as exercising a strike against the panel after you have been
10 through the whole strike process. Where you hold the strike and use it
11 after the entire jury panel has been picked, and that is not what we're
12 asking to do here.

13 THE COURT: I understand.

14 MR. ROBERTS: I just want to make sure that it's clear that we
15 are not asking for back-strikes, as least as defined by the Florida cases.

16 THE COURT: I understand. All right, guys.

17 MR. ROBERTS: Thank you, Your Honor.

18 THE COURT: I'll be back as soon as you're ready or at 2:30.
19 Thank you.

20 MR. ZAVITSANOS: All right. Thank you, Your Honor. Are
21 we excused, Your Honor?

22 THE COURT: You have to stay here and do your strikes.

23 MR. ROBERTS: Oh, okay.

24 THE COURT: Yeah. I'm just going to go in my office.

25 [Recess from 2:12 p.m. to 3:00 p.m.]

1 [Outside the presence of the prospective jurors]

2 THE COURT: Were we ready to bring in the venire?

3 MR. ZAVITSANOS: Yes, Your Honor.

4 THE COURT: Okay. Are you ready?

5 MR. BLALACK: Yeah.

6 THE COURT: Thank you.

7 [Pause]

8 THE COURT: Are we on the record?

9 THE CLERK: Yes.

10 THE COURT: Plaintiff, do you have any objection to the
11 grounds for any strike by the Defendant?

12 MR. ZAVITSANOS: No, Your Honor.

13 THE COURT: Defendant, do you have any objections to any
14 of the grounds for strikes by the Plaintiff?

15 MR. BLALACK: No, Your Honor.

16 THE COURT: Thank you.

17 [Pause]

18 THE MARSHAL: All rise for the jury.

19 [Prospective in at 3:03 p.m.]

20 THE COURT: Thank you, everyone. Please, be seated.

21 Okay. Thank you, again, for your patience. At about 2:45 I
22 realized the lawyers have not had a break since before 1:00. So thank
23 you again for your courtesy.

24 THE CLERK: Will the following people please stand? Nerissa
25 Gonzaga, Cindy Springberg, Katelyn Landau, Zerrick Walker, Angelo

1 Torres, Catherine Ross, Dina Hortillas. Did I say that, right?

2 JUROR 007: Yes.

3 THE CLERK: Okay. Elizabeth Trambulo, Michael, Cabrales,
4 Paul Reese, Isis Wynn, and Valerie Herzog. Please, raise your right hand
5 all of you.

6 [The jury was sworn]

7 THE CLERK: Okay. Have a seat.

8 THE COURT: Thanks, everyone.

9 So if your name wasn't called, and you were not selected for
10 the jury, please do not feel slighted for not having been chosen as a
11 juror. We have followed very complex rules with regard to jury
12 selection, and the process itself is very important. And we have followed
13 those rules. The important thing to remember is that, yes, you were all
14 qualified to serve on a jury, and I hope that you want to do that after
15 having seen how exciting it is to have yourself looked at.

16 I hope you all get that chance because truly this is truly the
17 bedrock of our society; the justice system.

18 So those of you whose names weren't called, you're now
19 excused. You may talk about the case if you wish to, but you may not
20 talk about it with anyone from the jury until after they came to a
21 decision. So thank you, all.

22 [Prospective jurors excused]

23 [Pause]

24 THE COURT: Will you please re-order the jury?

25 THE MARSHAL: Sure, ma'am.

1 [Pause]

2 THE COURT: Hang on a second. Another judge is looking
3 for something that he left in this courtroom. I don't see it.

4 Okay. All right. So I'm going to go through some of the
5 pretrial instructions for you guys to further instruct you on your duty as
6 jurors. Now, some -- the case starts when the Plaintiff files a complaint
7 with the clerk. And what I'm going to do now is introduce the trial. This
8 is no substitute for the actual detailed instructions on the law that you
9 will receive at the end of the case and before you retire to consider your
10 verdict.

11 This is a civil case commenced by a plaintiff against a
12 defendant. After five days of jury selection, you guys I think learned a lot
13 about what the lawyers were saying. I was very impressed by the way
14 you could answer those questions.

15 Do either of the counsel desire to have the pleadings read or
16 would you waive the reading?

17 MR. ZAVITSANOS: Waive the reading.

18 MR. BLALACK: Agree, Your Honor.

19 THE COURT: All right. So the -- reading the complains has
20 been waived.

21 The lawyers will tell you about their case after I finish these
22 instructions, and we'll -- that will be tomorrow morning when they do
23 opening arguments or opening statements.

24 Now, if you -- at this point, you have no way of knowing
25 whether or not you're going to recognize a witness when they come into

1 the room, so that's why you're instructed not to talk to each other about
2 the case while it's pending. No one should try to talk to you about the
3 case at any time, and if that occurs, let me know immediately. But if you
4 do see that you recognize someone -- and it could be somebody who
5 lives on your street or from your place of worship or from the grocery
6 store. Just let us know about that right away. It happens quite
7 frequently, so don't be upset if that happens to you.

8 If it turns out that you're acquainted with any of the facts of
9 the case and you didn't realize it before now, let us know through the
10 Marshal as well. The way that you communicate with us during the trial
11 is through Marshal Allen. He will be present at all times when court is in
12 session. And if for some reason he can't be here, another marshal would
13 sit in.

14 During the course of the trial, the attorneys for both sides,
15 the parties, and court personnel; we are not permitted to talk to you.
16 And it's not that we're being antisocial, it's simply that we are bound by
17 a code of ethics because we want the jury to make its decision based
18 upon what you see and hear of the witnesses and the evidence, not
19 based upon anything outside of the courtroom.

20 When you come in every day, please wear your juror badges.
21 It will help you get through security. And also, I will request that you not
22 talk to other people in the hall or elevators because if, in fact, you spoke
23 to someone who is a witness, that would be prohibited. So kind of talk
24 among yourselves on the recesses, please.

25 Now, it -- again, and some of this is repetitive, but we all

1 have the same script so that we can do things similarly.

2 If you recognize a witness or you realize that you're familiar
3 with the case, just -- again, just tell us. Don't be afraid to tell us. There's
4 -- it happens often, and you should not be worried about it. But we do
5 need to know.

6 Now, you are not to visit the scene of any of the acts or
7 occurrences that are mentioned during the trial. And it's not because we
8 don't want you to know about the case, but it could be that the place
9 mentioned and testimony may be different from today than it was in the
10 prior -- and that's more often, like, in a motor vehicle accident because
11 those intersections can change, roads can be widened.

12 So don't do any research on your own, including going to the
13 site of anything. You can't do any research with regard to the case. And
14 it seems like a simple instruction, and it's so simple. Sometimes people
15 make an error, and they don't understand a term and they want to
16 Google it. At the end of each witnesses' testimony, you'll be given the
17 chance to ask questions as a group, and that would be your chance to
18 that. Again, we want you to form all of your impressions based upon
19 what you see and hear in this courtroom.

20 So it seems -- so you can't, like, ask your friends who are
21 experts in the area, and you can't get on the -- this is kind of an old
22 script. Can't get on the information highway.

23 So don't do any kind of computer research. You cannot post
24 on social media with regard to your trial experience until after the jury
25 has deliberated and reached a verdict.

1 So you can't put Facebook, Twitter, email, text, phone, or
2 another means of communication because we want you to bring your
3 every day, commonsense. And so you're limited to the documents and
4 evidence and testimony evidence here at the time of trial.

5 The parties may sometimes raise objections to some of the
6 testimony or evidence. Sometimes I sustain objections, or I direct you to
7 disregard certain testimony. Please don't consider any evidence to
8 which you have been asked to disregard. And it's the duty of the lawyers
9 to object to evidence which they think might not be properly offered.
10 And never be prejudiced against them or their clients for their objections.

11 I never intend -- I never have any interest in who wins the
12 case. My job is to make sure they get an equally fair shot in this case.
13 So if I say or do anything that infers that I favor one side or another, I
14 don't, so please disregard that as well.

15 If you ever can't hear me or you can't hear a witness, let us
16 know because we want you to hear and see everything in this
17 courtroom.

18 Then you will be given the chance to ask questions of
19 witnesses at the conclusion of their testimony, but if your question is
20 asked, don't give it undue weight. And if your question isn't asked, don't
21 give it undue weight because some things are just objectionable -- some
22 questions can't be asked.

23 Now, I take notes during the trial of the witnesses' testimony.
24 It's because I will have to decide legal issues outside of your presence,
25 and so I want to make sure that I have my notes in order because I know

1 what's coming on the next break.

2 Don't ever -- don't ever assume that I take favor with either
3 side. I just take notes so I can be prepared.

4 Now, I have a rule here that -- in the old days, you could
5 bring water in. Now, we can't because we have to have our faces
6 covered -- our nose and mouth covered at all times in the courtroom, but
7 if you need a break for any reason -- you can bring your water in and out,
8 you just can't drink it in the courtroom.

9 If you need a break for any reason. Ask for one and we'll -- I
10 will always give you a break, even if we just took break ten minutes ago
11 because no one should be distracted by discomfort during the trial.

12 The trial proceeds in this way: First, the Plaintiff will make an
13 opening statement outlining the case. After the Plaintiff does that,
14 Defendant has the right to make an opening statement, or they may
15 differ that until their case-in-chief. Neither is part -- neither is required to
16 make an opening statement.

17 Opening statements are a synopsis or an overview about
18 what the attorneys believe the testimony will be. Opening statements of
19 attorneys are not evidence because the attorneys are not witnesses to
20 any of the facts or controversy in this case.

21 After the opening statement, the Plaintiff will then introduce
22 evidence and call witnesses. At the conclusion of the Plaintiff's case, the
23 Defendant has the right to introduce evidence if they so desire.

24 After the Defense rests, the Plaintiff has the right to call
25 rebuttal witnesses if they choose to do so.

1 And at the conclusion of all the evidence, I will instruct you
2 on the law. Do not be concerned with the wisdom of any rule of law
3 stated in the instructions which I will read to you at the conclusion of the
4 trial regardless of any opinion you may have as to what the law ought to
5 be. It would be a violation of your oath to base a verdict upon any other
6 view of the law than that given to you by the Court. And please
7 understand that I don't make the law. The law in each state is created by
8 the legislature, and it may be modified by the Nevada Supreme Court.
9 But I don't make law, I just tell you what laws apply to the case.

10 After the instructions on the law are read to you, each party
11 will have the right to argue orally to you in support of their case. That's
12 called the closing argument. What is said in closing argument is not
13 evidence. The arguments are designed to summarize and interpret the
14 evidence for you and to show you how the evidence and the law relate to
15 one another.

16 Since Plaintiff has the burden of proof, at the end of the case,
17 they get to argue to you twice. They start, there's a response, and then
18 they do a reply.

19 After the attorneys present the arguments, you will retire,
20 you will select your foreperson, and you will deliberate the case and
21 arrive at a verdict. Faithful performance by you of your duties is vital to
22 the administration of justice. It is your duty to determine the facts and
23 determine them from the evidence and the reasonable inferences that
24 arise from such evidence. And in so doing, do not indulge in guesswork
25 or speculation.

1 The evidence which you are to consider will consist of the
2 testimony of witnesses and exhibits admitted into evidence. The term
3 witness means anyone who testifies in person or by way of a deposition.
4 And it may include the parties to the lawsuit.

5 A deposition is simply an examination of the witness at a
6 prior date under oath with the attorneys present where the testimony
7 was taken down in written format. And those written questions and
8 answers would be read during the trial.

9 Admission of evidence is governed by rules of law. From
10 time to time, it may be the job of -- the duty of the attorneys to make
11 objections and my duty as the judge to rule on those objections and
12 decide whether a certain question may be asked or not. Please don't
13 concern yourself with the objections made by the attorney or by my
14 rulings. Please don't consider any testimony or exhibits to which an
15 objection is sustained, or which is ordered stricken.

16 Further, you must not consider anything which you may
17 have seen or heard when court is not in session, even if what you see or
18 hear is said by one of the parties or by one of the witnesses. In every
19 case there are two types of evidence; direct and circumstantial. Direct
20 evidence is testimony about a -- by a witness about what they saw or
21 heard or did.

22 Circumstantial evidence is testimony or exhibits which are
23 proof of a particular fact from which if it is -- that fact is proven, you can
24 infer the existence of a second fact.

25 If a witness testified that they just came in from out -- outside

1 and it was raining, that would be direct evidence. If that same witness
2 came in and didn't say anything about the rain but walked in wet, you
3 could infer that they walked through the rain.

4 You may consider both direct and circumstantial evidence in
5 this case. The law permits you to give equal weight to both, but it's up
6 to you to determine how much weight to give any particular piece of
7 evidence.

8 No statement, ruling, remark, or facial expression which I
9 may make -- which you can see from here up -- during the course of the
10 trial is intended to indicate my opinion as to what the facts are. I -- I
11 don't decide the facts. That is for the jury to do. And you are the ones
12 who have that responsibility. You alone must decide upon the
13 believability of the evidence and its weight or value.

14 In considering the weight and value of any testimony, you
15 take into consideration their appearance, attitude, behavior, the interest
16 of the witness in the case, the relationship of the witness to any party to
17 the case, the inclination of the witness to speak truthfully or not, the
18 probability or improbability of the witness' statements, and all other
19 facts and circumstances. You may give the testimony of any witness just
20 such weight and value as you believe that witness is entitled to receive.

21 Let me remind you one more time. Don't talk to each other
22 about the case or anyone who has anything to do with it until the end of
23 the case when the jury goes to deliberate. Don't let anyone else talk to
24 you about the case. And if someone should try to talk to you about the
25 case while you were serving as a juror, report that to me immediately.

1 There are some media requests. I have the Court's media
2 policies here. And if anyone wants to read those, feel free, but the media
3 has been instructed by our public information officer that you guys are
4 off-limits during the trial. And while I'm not going to explain how on the
5 record, in case someone else is hearing, we will make sure that if you
6 want privacy at the end of the deliberation you will receive that to get to
7 your cars without being subject to any press.

8 Don't make up your mind about what the verdict should be
9 until you go to the jury room to decide the case and you discuss the
10 evidence with your fellow jurors.

11 It is important throughout the trial to keep an open mind. At
12 the end of the trial, you'll have to make a decision based upon what you
13 recall of the evidence. You will not have a written transcript for your
14 deliberation. We have a court recorder and not a court reporter. So if
15 there's some testimony you think you might want to hear again in the
16 deliberation room, write down the name of the witness, the exact
17 minute, date and time, and we'll see if we can do a replay for you. But
18 keep in mind, you will not have a transcript during the deliberation.

19 And I urge you guys to pay close attention to the testimony
20 and exhibits as the trial proceeds. And if you will give the lawyers and
21 their clients the same attention that you have given to me, that -- that will
22 make it a great result because you've been so attentive and so -- such
23 good listeners throughout this process. At the -- so I do urge you to
24 continue to pay close attention. And that concludes my remarks.

25 Plaintiff, are you invoking the exclusionary rule?

1 MR. ZAVITSANOS: No, Your Honor.

2 THE COURT: Defendant?

3 MR. BLALACK: We are invoking the rule, Your Honor.

4 THE COURT: All right. Good. I'm going to ask counsel to
5 approach.

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

7 THE COURT: Okay, everyone has their juror -- their juror
8 badges now? There we go. All right. And Ms. Torres did you have a
9 juror badge?

10 JUROR 05: Yes.

11 THE COURT: Okay. Good enough. Just making sure. We
12 are going to excuse you for the day. Tomorrow we'll start at 9:30. You
13 have a question, Ms. Wynn?

14 JUROR 11: Do we get a letter to take to our employers if we
15 have been selected?

16 THE COURT: I can certainly get them for you. And if you
17 want to wait for those. I didn't think about it, because I wasn't sure
18 whether they were going to be done today. But I can get one done for
19 all of you. Give me just a second.

20 [Pause]

21 THE COURT: It will take a few minutes. Yes, Ms. Herzog.

22 JUROR 12: I think it was Thursday we got a schedule for this
23 week.

24 THE COURT: Uh-huh.

25 JUROR 12: And there was no court on Thursday or Friday.

1 THE COURT: That's correct.

2 JUROR 12: Is that still the case

3 THE COURT: Yes.

4 JUROR 12: Okay.

5 THE COURT: Okay. Are there any questions while we're
6 waiting? Yes, Ms. Springberg.

7 JUROR 2: Do we know about future weeks, if there are days
8 that the Court will not be in trial?

9 THE COURT: I can. I know that next week, Thursday the 11th
10 is a holiday. And we're expected -- there are no other days that we
11 should expect to be dark. We do expect to have a verdict -- or you to
12 deliberate and have a verdict by Tuesday the 23rd of November. That's
13 two days before Thanksgiving. We've kind of talked about that already,
14 though.

15 So for anyone who needs the letter to come from us to your
16 employer, write your name and to whom it goes to on that letter, so that
17 my assistant can do that right away.

18 And what I'm going to suggest is that let me give you the
19 admonition. And those of you who need letters for your employers, just
20 wait a few a minutes and the Marshal will run them out to you.

21 So during the recess -- we'll meet tomorrow at 9:30. You're
22 instructed do not talk with each other or with anyone else on any subject
23 connected with the trial. Don't read, watch, or listen to any report of or
24 commentary on the trial. Don't discuss this case with anyone connected
25 to it by any medium of information, including without limitation,

1 newspapers, television, radio, internet, cell phones, texting. Don't
2 conduct any research on your own relating to the case.

3 Don't consult dictionaries, use the internet, or use reference
4 materials. You may not go on social media with regard to your jury
5 experience until after it is over. Don't talk, text, tweet, Google or
6 conduct any other type of book or computer research with regard to any
7 issue, party, witness, or attorney involved in the case.

8 Do not form or express any opinion on any subject
9 connected with the trial until the matter is submitted to the jury. Thank
10 you so much for your attention. Have a good night. We'll see you
11 tomorrow.

12 THE MARSHAL: All rise for the jury.

13 [Jury out at 3:27 p.m.]

14 [Outside the presence of the jury]

15 THE COURT: Okay. The room is clear. Give me a minute
16 just to go talk -- it's a temp JEA. My assistant of 15 years has been on
17 medical leave since May. So I'll be right back.

18 MR. ZAVITSANOS: Yes, Your Honor.

19 MR. ROBERTS: Yes, Your Honor.

20 [Pause]

21 MR. ZAVITSANOS: So -- and I just confirmed with Ms.
22 Lundvall, the rule obviously does not apply to opening statements
23 because that's not evidence, right.

24 MR. BLALACK: I mean the only issue we wanted to raise on
25 the rule, Your Honor -- and Mr. Roberts tells me there might be some

1 debate on this, is that the rule does not apply to a corporate
2 representative or to an expert.

3 THE COURT: That's correct.

4 MR. BLALACK: If there's consent on that an agreement on
5 that.

6 MR. ZAVITSANOS: I have no problem with that.

7 THE COURT: 30(b)(6) witnesses and experts are allowed to
8 sit in.

9 MR. ZAVITSANOS: Yeah.

10 MR. BLALACK: Okay.

11 [Counsel confer]

12 MR. ZAVITSANOS: I'm sorry, I blame myself, Your Honor.
13 So I think while they're conferring, I think we're going to start the
14 lunches tomorrow.

15 THE COURT: Oh, I forgot about the dietary restrictions.

16 MR. ZAVITSANOS: And I forgot that, I'm sorry.

17 THE COURT: No, I did.

18 MR. ZAVITSANOS: No, I take -- I take responsibility for that
19 too. I should have reminded Your Honor.

20 THE COURT: Let's -- I want everybody's attention. Let's give
21 them just a moment.

22 [Counsel confer]

23 MR. ZAVITSANOS: Your Honor, a couple of things --

24 THE COURT: Sure.

25 MR. ZAVITSANOS: -- before we get started on the ones that

1 would need the Court's guidance. Number one, we did arrange to
2 acquire a bigger monitor.

3 THE COURT: I see it.

4 MR. ZAVITSANOS: Okay. So if it's okay, while we are --

5 THE COURT: Are you our tech person?

6 MR. ZAVITSANOS: -- and I don't need to distract Court, but if
7 our tech person quietly sets up while we address this, would that be
8 okay with the Court, or would you rather us do it --

9 MR. BLALACK: I have no objection. I do think we need to get
10 a guidance and a decision on where these are going to be situated.

11 THE COURT: You know, the Marshal does a lot of that, and
12 he's not in the room right now. So I would suggest that we see if we can
13 find a place for that one. I always make sure that all of the jurors and the
14 witness can see whatever. And I give the witness permission to move
15 about if they need to stand at the monitor.

16 MR. ZAVITSANOS: The witness does have a monitor I see
17 on the stand.

18 THE COURT: Yeah. He does.

19 MR. ZAVITSANOS: So I don't think that's going to be an
20 issue, this is really --

21 THE COURT: Sometimes it is. Based on the size of this
22 monitor compared to that one.

23 MR. ZAVITSANOS: I see. Got it.

24 THE COURT: The benefit of the one here is that it's touch
25 screen. So they can highlight --

1 MR. ZAVITSANOS: I see.

2 THE COURT: -- certain parts or whatever they're looking at.

3 MR. ZAVITSANOS: I see.

4 THE COURT: And Brynn always has to instruct them on how
5 to erase that.

6 MR. ZAVITSANOS: Got it.

7 THE COURT: The tap, yeah.

8 MR. ZAVITSANOS: So my request is, if it's okay, if our
9 assistant here is just arranging things very quietly while we take up
10 these issues.

11 THE COURT: Right.

12 MR. ZAVITSANOS: Otherwise we can come back later.

13 THE COURT: No, no, it's okay. But when it gets to moving
14 things in the courtroom, I'm not going to do that without the Marshal
15 here.

16 MR. ZAVITSANOS: Yes. Yes.

17 THE COURT: Because this is his territory.

18 MR. ZAVITSANOS: Got it.

19 MR. BLALACK: Yeah, and our only interest, Your Honor, is
20 where it can be and that it's proper.

21 MR. ZAVITSANOS: Yeah, I'm not asking about that right
22 now. I'm just saying taking things down. Okay, Your Honor. Thank you.

23 THE COURT: Now I need to let you guys know my schedule.
24 I have tomorrow at noon an executive committee meeting that I must
25 attend as the presiding civil judge. So we'll need to take a whole hour

1 tomorrow. In fact a little bit longer because we only have one working
2 elevator back here. You guys think you have it bad; we have it just as
3 bad back here. So it took me like nine minutes one day to get up to the
4 tenth floor. So we'll have to break by 11:50 and start after 1:00.

5 MR. ZAVITSANOS: So, Your Honor, just -- okay, on that
6 point, I anticipate that on our side, depending on what the Court decides
7 on these issues around these exhibits, our opening I expect is going to
8 be about an hour and a half. That kind of jams them a little bit because
9 Your Honor needs to be available at noon. If we -- if the jury's here at
10 9:30 and say we get started a quarter to --

11 THE COURT: You always start ten minutes late, no offense.
12 It's just because there's always something we have to talk about.

13 MR. ZAVITSANOS: So I'm assuming then --

14 THE COURT: I'll adjust it so that the Defendant has all the
15 time they need right after lunch.

16 MR. BLALACK: Yeah, we -- the parties agreed we wouldn't
17 go over an hour and a half each. So we might finish less. But I think we
18 have --

19 MR. ZAVITSANOS: All I'm saying Lee is that there's a
20 possibility that Your Honor needs to go in the middle of your opening
21 and --

22 THE COURT: No, no. I --

23 MR. ZAVITSANOS: -- I'm just raising that.

24 THE COURT: If we have to, I'll make sure that he doesn't get
25 broken up.

1 MR. BLALACK: Thank you, Your Honor. We'll just start after
2 lunch.

3 MR. ZAVITSANOS: Yeah.

4 THE COURT: Yeah. And so if you guys don't start lunch
5 with them tomorrow, they'll have a lunch. We could do it the next day
6 and from here on out, a half hour.

7 MR. ZAVITSANOS: I think we're arranging to bring lunch in
8 tomorrow, Your Honor.

9 THE COURT: Oh, you are.

10 MR. ZAVITSANOS: And you know I'll -- we'll try to have a
11 few options and then I'll try to remember tomorrow to ask, the Court can
12 inquire about any kind of allergies or --

13 THE COURT: And is it okay with both of you if I tell them that
14 your clients have agreed to do this, to streamline the trial?

15 MR. ZAVITSANOS: Yes, Your Honor.

16 MR. BLALACK: That's correct. It's okay with us.

17 THE COURT: Good. Okay. What else?

18 MR. ZAVITSANOS: Okay.

19 MR. ROBERTS: We have a number of -- Your Honor, if this is
20 a good time, I did want to briefly make a record on the conference we
21 had during voir dire out in the hallway.

22 THE COURT: Please do.

23 MR. ROBERTS: I was inquiring I believe it was of Juror
24 Reese on the front row --

25 THE COURT: Uh-huh.

1 MR. ROBERTS: -- regarding the burden of proof. And as I
2 explained in the hallway, the reason I felt that line of questioning
3 regarding the burden and could he rule for us, even if we submitted no
4 evidence and no explanation was because at this time, it's my
5 understanding that we're not allowed to say that our reimbursement rate
6 was based on our median in-network reimbursements --

7 THE COURT: That's right.

8 MR. ROBERTS: -- or any other standard based on in-network
9 reimbursements. And under the apprehension that our witnesses may
10 not be able to give a reason for the rates they pay under the rules
11 articulated by the courts, I needed to know if anyone was going to hold
12 that against us and could rule for us if the Plaintiffs did not meet our
13 burden -- meet their burden, even though you know, we submitted no
14 explanation for the rates we actually pay.

15 And I'm not complaining about any limitation by the Court.
16 That came out, and I think Mr. Reese was a little confused probably
17 because my questions were not very good. But I got his assurance that
18 he could be fair and apply the burden of proof and I'm happy with that.

19 But in the back one of the arguments raised was that the
20 issue was very complex because while on the implied contract claim,
21 Plaintiffs agreed with my position, on the unfair insurance practices
22 claim, they disagreed and said we do have to articulate a reason. And if
23 we don't have a reason then that's bad faith.

24 Well, that just I believe highlights our position, Your Honor,
25 that based on the claims that they make, our witnesses need to be able

1 to say what they base their reimbursement rates on, even if the Court
2 disagrees that that was a valid basis. And even if the Court instructs the
3 jury that they -- that that's not a valid basis for payment, I think in order
4 to defend the unfair practices act, our witnesses have got to be able to
5 say why they paid the rates that they did, even if it involves network
6 reimbursement rates.

7 THE COURT: Thank you.

8 MR. ROBERTS: Thank you, Your Honor.

9 THE COURT: And there was a response in the hall. Would
10 you like to --

11 MR. ZAVITSANOS: Yes, Your Honor. So as I understand it,
12 counsel just made an offer of proof. And so I don't necessarily have a
13 response, other than just to correct one thing he said. I don't think I said
14 what counsel said I said. I think there's a little bit of a misunderstanding.
15 I think what I said was we have some vigorous disagreements about
16 what the charge is going to look like, and that the elements of the unfair
17 claim settlement practices claim that we have some vigorous
18 disagreement about that. And the way that counsel had phrased the
19 question was essentially asking that they commit to the law.

20 Now the other thing I will say is that I think he did get the
21 question out to a couple of other folks. And then he did not -- and then I
22 think he corrected it when he got back in, and he framed the question
23 correctly, and he asked the rest of the panel. And I did not object to that.

24 THE COURT: Thank you. Did you have anything further?

25 MR. ROBERTS: No, nothing further, Your Honor.

1 THE COURT: Thank you.

2 MR. ROBERTS: Thank you.

3 THE COURT: All right. Are we read to work our way through
4 housekeeping?

5 MR. BLALACK: I believe we are, Your Honor.

6 THE COURT: Let's do it.

7 MR. BLALACK: So, Your Honor, I don't know what is next --
8 we have a couple of things. We have the pretrial conference where we
9 filed the joint pretrial memo, Your Honor. Which if there are issues that
10 you want to discuss we can. I think for the parties' perspective, although
11 I provided commentary primarily what remains to be discussed are the
12 items in XI, which are, you know, various sundry issues the parties have
13 discussed and wanted to raise with the Court before the trial
14 commences.

15 THE COURT: All right. I need to get there. I turned around
16 some of your orders today, so you know on breaks.

17 MR. BLALACK: Thank you, Your Honor.

18 THE COURT: A lot of -- a lot of pages on this docket. And
19 what's the date of the filing of the pretrial?

20 MR. BLALACK: Your Honor, it was filed October 27th at 10:31
21 p.m.

22 THE COURT: Thank you. Okay. Just -- I'm opening it now.
23 And where's the first issue that I should focus?

24 MR. BLALACK: Your Honor, if you go to Roman numeral 11,
25 page 16, you'll see a header that reads, "Other matters the parties desire

1 to bring to the attention of the Court."

2 THE COURT: Okay. I'm there.

3 MR. BLALACK: Okay. So Your Honor, you'll notice there's
4 about four or five items listed there to discuss. Some of these have been
5 resolved by agreement already. For example, lunches, which we've
6 already discussed with the Court. Press coverage, issues like that that
7 have already been presented.

8 THE COURT: Can we take them starting at the top?
9 Deposition clips.

10 MR. BLALACK: Correct.

11 THE COURT: They need to be --

12 MR. BLALACK: So what I was -- the ones that I think were
13 part of discussion, Your Honor, deposition clips at trial, demonstratives,
14 and the identification of witnesses during trial.

15 THE COURT: Uh-huh.

16 MR. BLALACK: And then I believe the demonstrative issue
17 ties into the pre-admission of exhibits issue that Plaintiffs wish to
18 discuss. So the first issue, Your Honor, are deposition clips at trial. It is
19 the Defense position stated there that the parties should take depositions
20 of designated testimony, counter designations, objections. The Court
21 will rule. And then once those rulings are made, the deposition --

22 THE COURT: Let me just clarify. This is direct, not
23 impeachment?

24 MR. BLALACK: This would all be, yes, testimony admitted,
25 offered by both parties after rulings on evidentiary objections by the

1 Court, when all of those issues have been resolved. And now the
2 question being presented is only how is the video being shown to the
3 jury. Our position is that each side's designation should be cut in from
4 the video and presented in the natural order in which the question was
5 presented during the testimony at one time. So everyone -- the jury's
6 advised that video deposition is about to be played. The video goes on.
7 It plays through from the first clip to the end. And then it's done.

8 I'll let Mr. Zavitsanos explain, but I think their position is they
9 want to play their clips. And then when -- just like it was -- the witness
10 was live. And then we would respond with our clips. We don't think that
11 is an efficient way to present the testimony, one. And two, we think
12 because of how -- the cuts of the testimony, it'll be almost incapable of
13 hearing to the jury because they'll give an answer, and then it'll
14 completely skip to a different topic. The answers won't be in sequence
15 to questions. So we just think it'll be very, very difficult for the jury to
16 follow. So for that reason, Your Honor, we think our -- we request that
17 Your Honor adopt our method. But Plaintiffs disagree.

18 MR. ZAVITSANOS: May I respond, Your Honor?

19 THE COURT: Please.

20 MR. ZAVITSANOS: Okay. So Your Honor, a couple things.
21 So here's why we do not agree to that. When you have live witnesses, I
22 put on a witness, counsel then goes. I then go again. Counsel then
23 goes. Juries tend to identify who's calling a witness. They kind of
24 identify, okay, this is the Plaintiffs' part, this is the Defense part. We very
25 well may want to -- for a video deposition, we may want to play only one

1 question and one answer because we want to make that impact.

2 If we are forced to take that question and answer and bury it
3 in a 45-minute clip where the witnesses think that we called them --
4 because most of these depositions are going to come up during our part
5 of the case -- during the Plaintiffs' part of the case. And so first of all,
6 we're going to get penalized because the clip is very long. Second of all,
7 the limited excerpt that we would want to play, gets a buried in a much
8 longer thing. People stop -- people stop listening after about 20 minutes.
9 I mean, I think that's what most of the empirical studies show. And I --
10 you know, we've had a number of trials where we literally have played
11 just one question and one answer, and that's it. And we do that for
12 effect.

13 And so I think -- I think the depositions should be treated
14 exactly the same way as the witnesses. And I will say this. These are
15 excellent lawyers on the other side, and we work very well with one
16 another. We are -- I am confident we will avoid duplication. There's not
17 going to duplication. Okay. I mean, he doesn't want that. I don't want
18 that. But I want to be --

19 THE COURT: The best lawyers don't have to say everything
20 three times. That's all I'm going to say.

21 MR. ZAVITSANOS: I'm sorry?

22 THE COURT: The best lawyers don't have to say everything
23 three times.

24 MR. ZAVITSANOS: Exactly.

25 THE COURT: Okay.

1 MR. ZAVITSANOS: Exactly. And so that's exactly right. In
2 fact, I think juries kind of punish people for doing that. So I want to be
3 the master of what we present to the jury. Okay. I want -- I want to have
4 100 percent control over that, just like they do. So that's our response.

5 THE COURT: Now, I tend to agree that the Plaintiffs should
6 control how they put their case on, but I'll keep an open mind to your
7 reply.

8 MR. BLALACK: Thank you, Your Honor. The issue here is we
9 all want to be the master of the presentation of the evidence, the best
10 kind. But this is not going to be a live examination. And it can't be
11 replicated as a live examination because you're presenting testimony
12 that was recorded at another place in time, examined by a different set
13 of lawyers at a different point in time. And by cutting it up in the way
14 we're contemplating, we're going to sacrifice clarity and understanding
15 of the jury because what they're going to see is question and answer,
16 and then they might not hear the next three questions and answers that
17 naturally follow, until -- for 30 minutes later until the video that we
18 designated that's around the answer they get.

19 So you're going to have question and answer. Topic's going
20 to change, go to something else. And then 30 minutes later, they're
21 going to come back and hear the Q and A that was responsive and
22 around that. And by that time, the connection that existed in the
23 transcript at the time will be completely lost on them. And so what
24 you're going to do is -- yes, the lawyers will feel good about how they
25 presented it. But the jury will suffer because they will not get the

1 testimony as it actually was presented at the deposition. And that's the
2 sacrifice that I think we're going to be burdening the jury with for what I
3 submit is not an adequate enough reason.

4 THE COURT: Thank you. I am going to adopt the Plaintiffs'
5 proposal. However, if after the first deposition it appears to me to be
6 disjointed or confusing to the jury, I simply could change my mind.

7 MR. ZAVITSANOS: I understand, Your Honor.

8 MR. BLALACK: Thank you, Your Honor.

9 With respect to the next issue, Your Honor, is
10 demonstratives. I'm not sure if we still have a disagreement on this or
11 not. But we had -- the parties had discussed not exchanging
12 demonstratives. And it -- and for example, in advance of openings. I
13 think we concluded it would be better to follow the typical practice of
14 exchanging them in advance and having the opportunity to identify any
15 objections in advance so that we don't have -- we can limit the number
16 of times lawyers are getting up and making objections in the midst of the
17 opening.

18 We think that makes sense here. So I don't -- and I think our
19 proposal was to exchange those like tonight so that the parties could
20 review them, and if there are any issues, raise them to the Court in the
21 morning. I don't know where you all are on that now. But that's our
22 position.

23 MR. ZAVITSANOS: So Your Honor, I -- you know, there's an
24 ever-increasing movement of foot to force lawyers to share everything
25 with the other side. And I -- we're in trial. We have the benefit of the

1 Court's guidance on these limine rulings. I don't -- I don't think we have
2 stepped off the fairway with any of the direction or rulings that Your
3 Honor has given us. And I don't think they have either. And so I -- we
4 are acutely aware of what the -- of what the Court has said is in, and
5 what the Court has said is out.

6 But my concern is this. If you -- I mean, the -- we've put a lot
7 of work into the openings, just like they have. And what's going to
8 happen is we're going to have an hour and a half hearing tomorrow
9 arguing about why we're using this word, why we're using this graphic,
10 why we're using this. And if we have something in the opening, and
11 they object, and you sustain it, we get penalized because Your Honor is
12 making a ruling in front of the jury right off the bat, and we're in a hole.
13 And we're very mindful of that.

14 What we had proposed was we would exchange them
15 tomorrow morning. And that way, they're not reorienting what they're
16 going to do, and we're not reorienting what we're going to do. I mean,
17 we're here. And you know, there has to be some element of kind of
18 tactics and judgment or whatever that we don't have to show to the
19 other side. And I -- that's my thought. So --

20 THE COURT: Is -- does the Plaintiff has a -- have a
21 PowerPoint then?

22 MR. ZAVITSANOS: We have -- yes, a pretty extensive
23 PowerPoint that frankly -- that a lot of it is -- includes language from
24 some of the exhibits that we want to take up in a little bit. That is mostly
25 what it -- what it contains. That's mostly what it contains.

1 THE COURT: Okay. I usually just have you guys look at each
2 other's PowerPoints right before --

3 MR. ZAVITSANOS: Yeah.

4 THE COURT: -- you do your opening. So --

5 MR. BLALACK: That -- this is -- I'm fine if what we're going to
6 do is get a preview, we're each going to get a chance to see them in
7 advance and raise an objection in advance, I'm fine with that. I'm not
8 seeking to gain some proposing tonight.

9 THE COURT: Right.

10 MR. BLALACK: I certainly wasn't seeking to gain tactical
11 advantage, given we're going in the morning.

12 THE COURT: I didn't take it that way.

13 MR. BLALACK: So if the Court is more comfortable with us
14 doing it first thing in the morning, that's fine. I just think otherwise, we
15 do risk some delay with objections, sidebars, and other things that --

16 MR. ZAVITSANOS: And Your Honor, I'm happy -- I'm sorry,
17 Your Honor. May I respond?

18 THE COURT: Please.

19 MR. ZAVITSANOS: I'm happy to meet counsel here any time
20 he wants tomorrow morning. I mean, I'll be here as early as he'd like.
21 And we'll get it done in the morning, and he'll get to see this in the
22 morning.

23 THE COURT: Good enough. Okay. So that takes care of the
24 second issue.

25 MR. BLALACK: Correct.

1 THE COURT: Takes us to lunches. That is resolved?

2 MR. ZAVITSANOS: Yes.

3 MR. BLALACK: That is -- that is resolved, Your Honor. And
4 then the last issue --

5 MR. LEYENDECKER: Your Honor, just one minor
6 housekeeping -- Kevin Leyendecker. One housekeeping on that. I
7 thought Mr. Blalack and I had talked about this demonstrative exchange
8 rule in kind of opening but having a different one once we go forward in
9 the case. Where traditionally, again, if I put something up there and you
10 clip my wings for it, then I'm going to pay the price for that. So I
11 understand opening. My preference would be going forward that we not
12 exchange.

13 MR. BLALACK: We have no objection to that. I do think
14 there's a difference between a demonstrative for closing and a
15 demonstrative for opening.

16 THE COURT: Got it.

17 MR. BLALACK: All right. Your Honor, the last issue in this
18 list that I think is open is the timeline for each side to notify the other
19 side of which witnesses will be called for the subsequent later days. And
20 we have proposed a rule by which each side would notify the other party
21 on the morning before the next trial day which witness or witnesses
22 they're going to call the next day if they're in Nevada.

23 THE COURT: I normally do that at an afternoon recess.

24 MR. BLALACK: Okay.

25 THE COURT: So --

1 MR. BLALACK: What time would that be, typically, Your
2 Honor?

3 THE COURT: It depends, you know.

4 MR. BLALACK: Okay.

5 THE COURT: Sometimes when I see you guys changing
6 subject matters, I'll just call one because you'll have more attention.

7 MR. BLALACK: Okay. The one request I'd make though to
8 modify that is just the out of state problem we've got, which is bringing
9 people in from out of state. Now, I don't think it's going to be an issue
10 this week because opposing counsel has kindly told us the whole week's
11 going to be devoted to this single witness. So it resolves our issues for
12 this week. So I don't think we have anything to discuss.

13 But I think for -- to the extent they're going to call additional
14 of our witnesses who are located out of state where we have to make
15 more challenging logistical arrangements to get them here, make sure
16 they've taken care of all of their affairs, you know, Your Honor, just an
17 afternoon's notice, or even a 24 hours' notice is just not sufficient for us
18 to be able to pull that off candidly. So we'd ask for something more
19 reasonable, like 72 hours or something like that.

20 MR. ZAVITSANOS: May I respond, Your Honor?

21 THE COURT: Please.

22 MR. ZAVITSANOS: Yeah. So Your Honor, I think what I'm --
23 our position on this is -- so this week, again, the first witness is going to
24 take this week into next week. I would like an opportunity maybe to visit
25 with Mr. Blalack at the end of this week when we're done with the

1 evidence. And what I'm -- my preference would be I would give him a
2 list of those folks that we are almost certain not to call. Okay. And if I
3 change my mind on them, then I'm willing to give him three days' notice
4 on that. However, I mean, let's not kid ourselves. These -- both
5 companies recognize the importance of this case. There's no -- I mean,
6 they know exactly who we're going to call because of which depositions
7 are the longest.

8 THE COURT: They have -- they have to know the order
9 though because they're getting prepared.

10 MR. ZAVITSANOS: Yeah. No, no. I understand. And all I'm
11 saying is, I think these folks that he's concerned about traveling, they're
12 going to be here anyway, getting ready. And I -- you know, I'd like to
13 give it to him the morning -- the morning -- if it's an out-of-town person,
14 one day before. Okay.

15 Now, if he tells me -- if he tells me that person is not here
16 and is going to have to travel, I will take him at his word, obviously. And
17 okay, then we might switch up the order. But I don't -- I don't want to
18 give them three days to have them here, when they're here already, you
19 know, prepping them for what's coming. So that's all. I mean, we're on
20 trial.

21 MR. BLALACK: Well, if I can address that, Your Honor. I'm
22 not bringing anybody here in their case who I'm not told is going to be
23 called in their case, for sure. Right. And so everyone who fits into that
24 bucket, who are all the people they've subpoenaed. And that would be
25 whether someone's in Nevada, or for that matter, much less Minnesota

1 or New York, or wherever. I'm not bringing them here until I know that
2 they are going to be needed and will be called because I'm not going to
3 burden them with that exercise. So that's a null set of people who are
4 coming here and just kind of hanging out waiting for -- to testify.

5 So the plan will be once he tells me I want this person two
6 days from now, three days from now, is I'm going to bring them out.
7 And -- but I just need enough heads up to know. For example, we have --
8 last week, he gave me five names. I believe one or two of those people
9 are no longer on the witness -- list of witnesses in the joint pre-trial
10 memo because they've withdrawn them. So their view's -- you know,
11 like in any trial, their strategy's going to change. Who they really want
12 versus who they thought they might want may change.

13 I just want a heads up so that I can adjust logistically to get
14 the right people here, and as opposed to having 24-hour notice and
15 calling somebody and saying -- they say, well, I'd love to help you out,
16 but I don't have childcare, or I've got an elderly somebody I've got to
17 take care of. I just need a little more heads up for people outside of the
18 state to make those kinds of arrangements.

19 THE COURT: All right. So Mr. Zavitsanos, you're going to
20 have to work with Mr. Blalack because --

21 MR. ZAVITSANOS: Yes.

22 MR. BLALACK: - he's got the burden of arranging travel.

23 MR. ZAVITSANOS: And Your Honor, I am -- just -- just so it's
24 clear, I am not -- I do not -- I have too much respect for him to try to jam
25 him. I'm not doing that. If I could just indulge the Court. If we could just

1 bookmark this and revisit this at the end of this week.

2 THE COURT: Well, it won't matter until next week, right?

3 MR. ZAVITSANOS: Yes.

4 MR. BLALACK: Correct.

5 MR. ZAVITSANOS: That's right.

6 THE COURT: Because you don't intend to finish with your
7 three-day witness this week?

8 MR. ZAVITSANOS: Correct.

9 MR. BLALACK: Correct.

10 THE COURT: All right. Well, let's revisit it then Wednesday
11 afternoon.

12 MR. ZAVITSANOS: Okay. Give us an opportunity to visit
13 because I think -- yeah. I think I have an idea that might satisfy him and
14 will take care of the issues I'm concerned about, so. But if we could just
15 get started with the first witness, I think -- I think I've got a solution.

16 THE COURT: All right. And instead of asking in the
17 afternoons, I'll try to remind everybody every morning.

18 MR. BLALACK: Thank you, Your Honor.

19 MR. ZAVITSANOS: Thank you.

20 MR. BLALACK: So I think that takes care of if there's -- unless
21 there's something in the joint pretrial memorandum Your Honor wants
22 to discuss, I think that --

23 THE COURT: Anything about press coverage?

24 MR. BLALACK: Well, that's in our view, tied up. The remote
25 -- the access -- press access motions have already been presented to the

1 Court. So I think -- I don't know that there's a need to address that
2 further.

3 THE COURT: Okay.

4 MR. BLALACK: So from our perspective, unless there's
5 something else in the joint pre-trial memo --

6 THE COURT: Oh, I was going to tell you guys, I've been
7 trying to clear my motions calendars so that I can give you full days. It
8 looks like I'm going to have one thing Wednesday morning at 9. It's
9 something -- a TRO that came up. And on the 10th, Judge Bell more
10 than likely will do my morning calendar. So that's what we're trying to
11 do on our part.

12 MR. BLALACK: Okay. Thank you, Your Honor. We
13 appreciate it.

14 THE COURT: And then you need to talk to the marshal about
15 logistics. The brought in a monitor. And I just explained to them that
16 before anyone goes to the monitor, I make sure everybody can see. And
17 if they can, the witness can step down.

18 And Andrew, I wonder, would it be possible to remove this
19 monitor from the courtroom for a while?

20 THE MARSHAL: Sure, if you want.

21 THE COURT: You could put it in my office.

22 THE MARSHAL: Sure. Sure.

23 THE COURT: Okay. Or your -- or the tech person, maybe
24 the --

25 MR. ZAVITSANOS: Yeah, sure.

1 THE COURT: What else did you all want to take up today?

2 MR. ZAVITSANOS: Your Honor, one last thing before Mr.
3 Leyendecker raises his issue.

4 THE COURT: Yeah.

5 MR. ZAVITSANOS: I assume there's no issue with more than
6 one person delivering the opening statement. That way we can break it
7 up.

8 THE COURT: That will depend on what Mr. Blalack tells me.

9 MR. BLALACK: I will be flying solo, Your Honor. So they
10 might be out numbering me, but if they want to bring in a party, that's
11 up to them.

12 MR. ZAVITSANOS: All right.

13 THE COURT: Okay.

14 MR. ZAVITSANOS: Thank you.

15 THE COURT: There's your answer.

16 MR. ZAVITSANOS: Okay.

17 MR. BLALACK: I think the last issue, Your Honor --

18 THE COURT: Yeah.

19 MR. BLALACK: -- is the preadmission of exhibits.

20 THE COURT: All right.

21 MR. BLALACK: Mr. Leyendecker is here for the Plaintiffs. I'll
22 address just some -- in response to his argument, some tactical issues.
23 But I've asked Adam Levine with my team to join us if we get into the
24 details when the time is [indiscernible].

25 THE COURT: Good enough. Do we have more appearances

1 for the record today?

2 MR. BLALACK: He has not made an appearance yet, Your
3 Honor, so he probably should do so.

4 MR. LEVINE: Good afternoon, Your Honor. Adam Levine for
5 the Defendants.

6 THE COURT: Thank you and welcome.

7 MR. LEVINE: Thank you.

8 THE COURT: Anyone else from your team need to be
9 introduced?

10 MR. LEVINE: Mr. Portnoi.

11 THE COURT: Mr. Portnoi.

12 MR. POLSENBERG: Dan Polsenberg for the Defendant, Your
13 Honor.

14 THE COURT: Thank you, Mr. Polsenberg. And I see Shane is
15 here for tech.

16 MR. GODFREY: That's correct.

17 THE COURT: We know you so well, Shane.

18 MR. GODFREY: Shane Godfrey for the record, Your Honor.
19 Thank you.

20 THE COURT: And are there more people on your team that
21 you need to introduce?

22 MR. ZAVITSANOS: Oh. I'm sorry, Your Honor.

23 MR. LEYENDECKER: Yes. Justin Fineberg.

24 MR. ZAVITSANOS: Mr. Fineberg is --

25 MR. FINEBURG: Good afternoon, Your Honor.

1 THE COURT: Thank you. Welcome.

2 MR. FINEBURG: Thank you very much. It's a pleasure to
3 meet you in person and thank you for allowing me to enter into the case
4 pro hac.

5 THE COURT: Anyone else from your team you need to
6 introduce?

7 MR. ZAVITSANOS: No. I don't think so, Your Honor.

8 THE COURT: Good enough. Okay. Mr. Leyendecker.

9 MR. LEYENDECKER: Yes, Your Honor. The first thing I'd like
10 to do, the parties have conferred a number of times. We have swapped
11 exhibit lists, swapped on those, including where there are objections and
12 where they're agreed. And so the first thing I'd like to do -- and I
13 understand the Defendants may not be in a position to say thumbs up or
14 thumbs down right now. But I have a list of 70 exhibits, Plaintiff's
15 exhibits, that by my cross-fertilization of where they had objections and
16 where they don't, that these are unopposed. I have given them to Mr.
17 Levine, and he's advised me that he doesn't think he can double check
18 my math in real time, but that he thought he could do that perhaps by
19 days' end.

20 And so whether I offered this now and ask the Court to admit
21 them or first thing in the morning, I expect that I'm going to have about
22 70. He may identify one or two, perhaps, that I've gotten wrong. But the
23 first order of business would be to admit these 70 or so exhibits that I
24 understand the Defendants do not have an objection to.

25 THE COURT: Mr. Levine, are we putting you on the spot or

1 are you ready to go?

2 MR. LEVINE: Your Honor, Mr. Leyendecker handed me this
3 piece of paper with, I don't know, upwards of a hundred items on it. I
4 have not cross-checked it. I don't even have my computer here to
5 cross-check it against our exhibit list. I'll take him at his word that what
6 he's listed here are exhibits --

7 THE COURT: No. No, no. You need to have a chance to look
8 at it. We can do this in the morning.

9 MR. LEVINE: I'm happy to address it then, Your Honor.

10 MR. BLALACK: And Your Honor, there definitely are a
11 number of exhibits -- some background. Mr. Leyendecker provided us
12 115 documents from their exhibit list that they wanted to use in their
13 opening, asked us to review, and asked Mr. Levine to do so. He did. We
14 confirmed that there were a number of those exhibits to which we had
15 no objections at all. And then there were some we had objections that
16 we withdrew.

17 So to the extent there are any objections -- any exhibits to
18 which we didn't object or to which we've withdrawn objections, those
19 are simple. They can be admitted, and he can refer to them in the
20 opening. To the extent there's a dispute, it's only about anything where
21 we still have a pending objection.

22 MR. LEYENDECKER: All right. To be clear, there's not -- the
23 115 were the 115 that I thought would allow the case to get going and
24 examination to get going of the first witness so that we're not starting
25 and stopping and starting and stopping. As it turns out, Your Honor, I

1 think there's only about 22 to 25, either all or mostly all of them on the
2 list that I gave the Defendants that are actually referred to in the opening.
3 And of those 22 on that list, there's 7 that they've agreed to. And I think
4 Mr. Levine probably could confirm those seven pretty easily. And there
5 were about 15 that I'd like to engage Your Honor about, and they fall into
6 two categories.

7 THE COURT: Do you have a list for me?

8 MR. LEYENDECKER: I have a list that I can read off. I was
9 taking handwritten notes to try to -- may I approach, Your Honor?

10 THE COURT: You can tell me what they are.

11 MR. LEYENDECKER: They are Exhibits 25, 26, 37, 43, 73 I
12 believe has been agreed to, 74 I also believe has been agreed to, 79, 94,
13 which I believe has been agreed to, 100, 146, agreed to, 147, agreed to,
14 154, 175, 193, 213, 243, 246, 267, 287, agreed to, 363, 368, agreed to, and
15 509, which is an exhibit that was on and then off and then back on. And
16 so that one, they may not have put their eyes on just yet, Your Honor.

17 THE COURT: And Mr. Levine, are you prepared to discuss
18 these, or do you need some time?

19 MR. LEVINE: Your Honor, I'm -- he's listing these out for me
20 for the first time --

21 THE COURT: For the first time.

22 MR. LEVINE: -- right here in real time. And so I mean, there
23 are one or two that I recognize just by their numbers, and I could discuss,
24 but if we're going to discuss these particular exhibits, I recommend we
25 do it in the morning.

1 THE COURT: All right.

2 MR. LEYENDECKER: Well, let me try this, Your Honor,
3 because I think that the framework for each of the 17 that are not agreed
4 to is very simple in straightforward. They fall into two categories of
5 documents.

6 THE COURT: You know, you could really use your time well
7 talking to him about this.

8 MR. LEYENDECKER: I have. We've tried three times and
9 they've said we're just agreeing to disagree.

10 THE COURT: I got it.

11 MR. LEYENDECKER: All right? I mean, I -- we've gone, well,
12 several times over several weeks, and we just -- it's because they have a
13 point of view, for example, that while on the one hand, they will agree
14 and have agreed to be clear, we have been exchanging these exhibits
15 lists for weeks, Your Honor. The precise number and the ones I just
16 identified as being on the opening, that's correct. It's the first time I
17 identified those. But the majority of those are on the 115 that I sent to
18 them a week or so ago.

19 So back to my big picture observation. There are two kinds
20 of exhibits that are -- I just identified that they're not agreed to: those that
21 relate to the Yale study, and there's -- and I can give you those numbers.
22 That's number 37, number 79, number 100, and number 509. The rest
23 that are contested all relate to reimbursement methodology, the out of
24 network or the SSP programs. That's it.

25 So in -- and on those two categories of exhibits, Your Honor,

1 they make three principle objections. Relevance, which I think the limine
2 motions and rulings have spoken to both the Yale and reimbursement
3 methodologies. Second, they say probative value is outweighed by the
4 prejudice. Same thing. The limine rulings have spoken to the two
5 categories I just described. The third objection they make is foundation
6 to the document. The threshold for defeating a foundation objection to a
7 document is very low. That's 50.015. All the proponent has to do is offer
8 some evidence that would allow a juror or jurors to conclude it is what it
9 purports to be. It's a United memo about the Shared Savings Program.

10 Now, what's interesting about this category is on foundation,
11 they will at times -- for example, Exhibit number 295 is an exhibit they
12 have agreed to, Your Honor. It's a February 2019 email that contains a
13 discussion that essentially says who's in charge of the out of network
14 program and responsible for figuring out the methodology. And the
15 exhibit itself identifies Mr. Haben and Ms. Paradise. Not objected to. But
16 yet, when I look at Exhibit 243, which is one of the ones on my opening,
17 it's an email from Ms. Paradise to Mr. Haben about reimbursement
18 methodologies, and they say foundation.

19 And so while normally, or typically, lawyers prove up the
20 foundation on a document by asking the witness to identify it, that's not
21 the only way. There are lots of ways. It's a very low bar. And so given
22 that I have exhibits that they have agreed to, and the one I picked out for
23 Your Honor as an example, 295, which identifies Mr. Haben and Ms.
24 Paradise as in charge of those programs, that means necessarily any
25 other email produced by the Defendant, right, on those programs

1 satisfies the hurdle for authenticity under either 52.015 -- oh, I have two
2 cases for you. I put them in the brief. That's the *Thomas* case, 114
3 Nevada 11.27. For the *U.S. v. Tank* case, 200 F.3d 627. It's a 9th Circuit
4 case.

5 So the foundation objection, Your Honor, very low threshold.
6 I think the Defendants are trying to conflate whether a witness has
7 foundation to speak to a document with the foundation objection to the
8 document itself. But as I just described at 30,000 feet, every single
9 reimbursement methodology, out of network, SSP-style program
10 document, and there's a bunch of them on our list, are clearly within
11 both Mr. Haben, who will be the first witness, and Ms. Paradise, also
12 subpoenaed to testify on the case.

13 So just to refresh on that 295, I have an exhibit, an email
14 they're agreeing can come in that identifies those two as in charge. But
15 they want to object to the foundation of emails between those two. Or
16 emails that aren't between those two, but they cover a reimbursement
17 OON, you know, style of methodology situation. I think the foundation is
18 established by the mere fact that they are agreeing to ones that show
19 that they know.

20 Okay. Second example on foundation. There are what I'll
21 call United Exhibit number 94 is an example. Ninety-four is a
22 PowerPoint-style presentation. ASO benchmark pricing. Ninety-four, the
23 Defendants agree to. This PowerPoint presentation does not say who
24 wrote it. It doesn't say who received it. But it's clearly a United
25 document, PowerPoint, not from so-and-so to so-and-so but a

1 PowerPoint on the reimbursement methodology subject. There are
2 others that are just like that that although they agree on some, others
3 they won't. And what I'm telling Your Honor, as an example, they agree
4 on 94, they agree on 368, they agree on 367. These are all what I'll call
5 non-email, United-produced documents that are addressing
6 reimbursement out of network, cost-saving-style program issues.

7 But at the same time, there are others, like 25 and 26 -- 25
8 and 193, also United PowerPoint-style presentations, that they say no
9 foundation on. And so for the same reason I described on the email
10 examples, the foundation for what I'll call the non-email
11 PowerPoint-style reimbursement methodology, that's satisfied, too,
12 given the low threshold.

13 Now, as I say, the Yale studies are 37, 79, 509, and 100. The
14 rest are reimbursement methodology. And so I think in light of the low
15 threshold and in light of the fact that they are agreeing and have agreed
16 to the admissibility of other reimbursement methodology style
17 documents, emails, and PowerPoints, then that, in my view, the Court
18 ought to admit those. At a minimum, though, you have the authority
19 under 47.070 to conditionally admit them if you think that I'm not going
20 to -- if you think right now there's not enough, given what they've
21 already agreed can come in. And so either way, I ought to be able to talk
22 about them and show snips of them in the opening.

23 Now, last topic, Yale. There's a handful of the Yale studies in
24 here. Of course, Your Honor has already addressed that in terms of the
25 limines. It's relevance or probative value, the whole nine yards. So the

1 only real question there is, again, foundation. But I have the same
2 scenario. United documents, including the highest-level person in the
3 company who was examined about some of them in his deposition. So
4 the Yale study might be a little bit different than the reimbursement
5 methodology in that I think there's a few of those. But there's no
6 question there will be a videotape of Mr. Schumacher and Rosenthal,
7 and they're all over those documents produced by United. Again, easily
8 going to surpass the foundation threshold that's required to get them
9 into the case.

10 So where does that leave me? What I would ask the Court to
11 do, Your Honor, is to admit -- overrule the foundation, relevance,
12 probative value outweighed by prejudice objections from the documents
13 I just described. I'm happy to go through them one at a time to prove to
14 the Court that they are, in fact, covered by this reimbursement, out of
15 network, Shared Savings Program concept or the Yale study concept.
16 We can do that if Your Honor would like. But I'm representing to the
17 Court that that's the case. And again, if I put one in there that you have
18 said, no, no, my limine, then I'm going to pay the price for that.

19 Now, they make one other objection, and it's an objection
20 that I haven't seen before in the way that they make it. And that
21 objection is this is an incomplete document. And so I said to Mr. Levine,
22 well, okay. If you think I'm taking out page four of a seven-page
23 document, and it's incomplete for that reason, then I understand that,
24 and I'll fix that. But I don't think that's how they're making it. I think
25 they're saying, well, maybe there's an email, right, that goes with that

1 attachment and maybe the email has three attachments, and you're not
2 putting them all together. You're just putting, for example, the
3 PowerPoint presentation by itself.

4 Well, I have examples. In fact, the first one I gave you is just
5 that, where they're offering on their exhibit list -- let me get it for
6 you -- 94, no objection. PowerPoint-style, what I would say
7 reimbursement methodology document, that was attached to an email.
8 But on their list, they have the exact same document without the email.
9 So I don't think -- if their incomplete document objection is because I've
10 left out page three, so to speak, that's fine. We'll get page three in there.
11 But if the objection is, well, you should have put the email, then that's
12 new to me and that's contrary to what they're doing in their own
13 exhibits.

14 So that's where it is, and we'd like to get those admitted. Or
15 at a minimum, conditionally admitted, the ones that I described as being
16 in the opening, Your Honor.

17 THE COURT: Thank you. Mr. Levine, are you prepared to
18 respond?

19 MR. BLALACK: Your Honor, can I start and then ask Mr.
20 Levine, because I think there's two things from our perspective. There's
21 the global legal issues related to what Mr. Leyendecker just said, and
22 then there's the details that Mr. Levine is much better suited to present.
23 So let me kind of set the table from our perspective.

24 So first, what this request is is a motion in limine to preadmit
25 exhibits, which this Court has a procedure for doing. It wasn't filed in a

1 timely way. And as a result, we didn't have the opportunity to go
2 through the orderly exercise that would have occurred. If this had been
3 filed on whatever the deadline was, September 20th, September 21st?
4 My guess is some of these, we would have settled by agreement, others
5 we would oppose, we'd have briefed it. Your Honor would have had a
6 chance to go into the details, could have heard argument on it in specific,
7 and issued rulings. And we'd all have clarity well before 4:20 on the
8 afternoon before opening statements.

9 This is a shortcut effort to do what a motion in limine to
10 prove that it would seek to do and do it in 24 hours. That procedure
11 doesn't work for us for a couple of reasons. Most importantly, as Mr.
12 Levine explained, there's a lot of complexity in this list where things that
13 are presented as if they're undisputed and self-evident, when you
14 actually get into the exhibits, they're not. I'll have him explain a few
15 examples in a moment. But even more fundamentally, most of this
16 discussion was about foundation.

17 But the argument that was just made related to authenticity.
18 Is the document what it reports to be? And Mr. Levine can correct me if
19 I'm wrong, but I don't believe most or I don't know if any of the
20 objections that are at issue on these documents are authenticity
21 objections. We're not fighting about whether it can be admitted because
22 there's no evidence it is what it reports to be. The question is is there a
23 foundation? Someone with personal knowledge who can testify to what
24 the purpose of what the document is and lay a foundation for why it's
25 being admitted and for what purpose. I don't know what purposes all of

1 these documents serve. What I've heard is -- today is it relates to the
2 Yale study, and two, it relates to out-of-network programs.

3 It is absolutely true, Your Honor, that based on the in limine
4 rulings, there are some things that are going to be admissible about the
5 Yale study. Some things about out-of-network programs are going to be
6 admissible because the Court denied motions in limine would have
7 made all of that stuff inadmissible. But that doesn't mean every single
8 document that relates to the Yale study, and every single document that
9 relates to an out-of-network program is ipso facto in evidence.

10 There are -- depends on why it's being offered to prove what,
11 for what purpose, and what other considerations relate to what that
12 document contains in it, including hearsay and a host of other things. So
13 that requires individualized analysis on the document basis. And
14 normally, the way that would get resolved is there would be a witness on
15 the stand, the document would be put in front of them, I'd ask -- we'd ask
16 them foundational questions and then get answers.

17 And the objections and issues would either be resolved or at
18 least the Court would have in front of it a good understanding of what
19 the circumstances are to make an evidentiary ruling. And opposed to
20 what we're doing here is talking about a list that no one has in front of
21 them. There's no one that we don't know. We don't have like -- we're
22 not all looking at the same document saying, oh, I get this. This is why
23 we're offering this, and here's the foundation, and here's the burden.

24 So I object to the process that we're pursuing in trying to pre-
25 admit these exhibits. We're glad to continue to meet and confer. We've

1 reached agreement on some; we've withdrawn objections on others.
2 Once they show the ones they want us to look at, I'm glad to continue
3 doing that. But the notion that the Court should just be given a list of
4 numbers and told these relate to out-of-network programs in Yale,
5 therefore, they're in evidence -- that, I would object to, Your Honor.

6 So with that, I'll ask Mr. Levine to give you a little context
7 about the meet and confer that ensued this last week or last week on the
8 115 so you get a sense of what I'm talking about.

9 MR. LEYENDECKER: Your Honor, before he does that, I'd like
10 to just quickly respond to what Mr. Blalack's --

11 THE COURT: Motion, opposition, reply.

12 MR. LEYENDECKER: Okay. All right.

13 MR. LEVINE: Good afternoon, Your Honor. Nice to meet you
14 in person.

15 A little context, and then we can decide whether we resolve
16 these issues tonight or tomorrow morning. The parties have
17 cooperatively exchanged exhibit lists, provides their exhibit list, provides
18 their objections to the exhibits on the other party's list. Last -- I believe it
19 was Tuesday afternoon, so a little less than a week ago -- we received
20 from Plaintiff's counsel a list of 115 exhibits from their list to which we
21 had objected, and we actually had not objected to all of them. When it
22 was presented to us, it was presented as these are 115 documents from
23 our list that we want to use in opening or earlier in the case, and will you
24 consider? You know, let's meet and confer about you withdrawing your
25 objections.

1 We looked at the list of 115. There were a number of them
2 that we had not objected to at all, so admissibility was fine. And then we
3 had a meet and confer call to discuss the 115. Went through the
4 exhibits; not all of them, but we started at the first one. The first one was
5 the Ingenix settlement. Dead bang down in the middle of the plate
6 covered in this action. Mr. Leyendecker said, all right, let's go to the
7 second one. What's wrong with this one? The second one was a senate
8 committee report on the Ingenix settlement.

9 Went to the third one. Third one was a draft initiative from
10 2014, where the custodian on the document was Rebecca Paradise.
11 Okay. Rebecca Paradise will be testifying this case. It had never been
12 shown to Ms. Paradise at her deposition. There was no email attached
13 to it indicating she had received this email in 2014. In fact, in 2014, Ms.
14 Paradise was not even in a position to be involved out-of-network
15 programs. So we have a foundation objection to it.

16 Could they lay foundation with Ms. Paradise at her -- when
17 she appears here at trial? It's possible. I frankly don't think they'll be
18 able to do it, but we cannot withdraw our foundation exhibit just because
19 they had informed us that she was the custodian on the document. And
20 so it went on and on. There were exhibits on that list that were
21 incomplete, and Mr. Leyendecker says, what do you mean by
22 incomplete? There's a document -- I can show you, Your Honor, or I'll
23 just -- if Your Honor is interested, I can show you.

24 But it's a document that looks like this. Exhibit 323 on the
25 list. It was among the 115 key exhibits they wanted to talk about last

1 Tuesday. That document is a redacted version of this document. So it's
2 just this portion. That's all it was. So we maintain our foundation
3 exhibit to that -- objection to that. We did, however, look at all of the
4 115, and we withdrew many of the objections we had. Some entirely,
5 some partially. And that's -- and we sent them an email about this on
6 Thursday with those revisions.

7 The next I heard from Mr. Leyendecker was moments before
8 we came up here, when Mr. Leyendecker had a new list that had -- and I
9 have no reason to think it's not accurate -- a list of documents on their
10 exhibit list to which we have no objection. He asked me to check if that
11 was accurate. I, of course, assume it's accurate, but I will check it to
12 make sure when we get home -- when we get back to the office tonight,
13 and we'll be able to let you know in the morning.

14 Then Mr. Leyendecker stood up here, and I heard for the first
15 time what you heard for the first time that there were additional exhibits
16 or some reduced number of exhibits. I don't know if they're fully from
17 the 115 universe or some new universe that, in addition to this list, he
18 says they want to use in their opening, and he would ask us to withdraw
19 objections to them. And he started to argue about some of those
20 exhibits. I have not reviewed those exhibits, and I would ask as to those
21 exhibits that I and my team get to review them, and we'll be able to let
22 Mr. Leyendecker know whether we withdraw our objections to them.
23 And if not, be able to present it to Your Honor in the morning.

24 THE COURT: Thank you. And your reply, please?

25 MR. LEYENDECKER: Yes, Your Honor. I'm not asking them

1 to withdraw any objections. And 30 minutes ago when I conferred with
2 counsel, it was clear to me that we were in an agreement to disagree,
3 and Your Honor was going to have to break the ties on these issues. So I
4 appreciate the sponsor of, well, let's continue to work offline. But it's
5 been stop sign to stop sign, and we are at the agreement to disagree
6 point of view.

7 Number two, Mr. Blalack told you that I should have filed a
8 limine to admit these. Well, what maybe he wasn't aware of is the
9 parties had agreed to take up exhibits after the limines. The objections
10 to exhibits were not shared until after deadline to file the limines. So
11 that's just a nonstarter. We had an agreement to take them up after
12 limine, so that's what I'm doing. I get that they don't -- that maybe
13 they're feeling like I'm whipsawing them. I've been trying for some time.

14 There is a tie that needs to be broken on whether the
15 foundation objection to a document is going to be granted because Mr.
16 Haben says, well, my name is not on this out-of-network cost
17 management program, and I don't know what that is. Objection, Your
18 Honor, foundation; don't let the document in. That is not the test for
19 satisfying foundation of a document. But that's what the Defendants are
20 trying to do writ large throughout these. And not only on ones where
21 their names aren't on them.

22 As I pointed out in my beginning, they want emails that are
23 from Paradise to Haben, and they say, foundation. So, you know, I do
24 have a point of view about how well-taken those foundation objections
25 are. I do think they can be established writ large on the small number of

1 exhibits that I've identified for the opening. And so I'm going to ask Your
2 Honor to do that in the morning.

3 THE COURT: So let me kind of give you guys some direction
4 as to where I'm going. In my mind, it makes perfect sense to
5 conditionally admit them and let the Plaintiff use them in the opening.
6 Because if they say they will seek to admit it, and it doesn't get admitted,
7 it's very prejudicial to the Plaintiff. So that's what I'm thinking. And we
8 can take this up tomorrow at -- if it's possible for you to confer with
9 regard to the 70.

10 MR. BLALACK: Okay. Thank you, Your Honor.

11 MR. ZAVITSANOS: Your Honor, can I make one -- I'm not
12 going to get into the weeds here. I want to kind of preview one there for
13 the Court so Your Honor can just be thinking about it because I'm
14 virtually certain this is going to come up. May I? And it relates to the
15 issue we're talking about right now.

16 THE COURT: Sure.

17 MR. ZAVITSANOS: So the Defendants here have really a
18 very unusual understanding of the foundation rules. And I think
19 what -- so Mr. Haben and Ms. Paradise, they are -- throughout the
20 documents, they are the two highest ranking people for the so-called
21 program that United was running.

22 THE COURT: I've heard their names for years.

23 MR. ZAVITSANOS: Yes, exactly.

24 THE COURT: Yes, okay.

25 MR. ZAVITSANOS: And so Your Honor denied the motion to

1 quash. The Supreme Court affirmed Your Honor.

2 THE COURT: Or refused to review it.

3 MR. ZAVITSANOS: Yes. Excuse me, Your Honor. Correct.

4 So according to the Defendants, Commissioner Haben takes
5 the stand and says, I don't remember this or I'm not sure I got it. Their
6 position is I get to neither question him about it nor does it come in.
7 Now, what is that? That effectively is them allowing the witness to
8 unilaterally grant the motion to quash. That's really what we're talking
9 about here. And I am previewing for the Court this issue is going to
10 come up over and over and over and over again.

11 THE COURT: This is the second or third time you've brought
12 that argument up in pretrial.

13 MR. ZAVITSANOS: That's right. And, well, if you think I'm
14 bringing it up a lot? Wait until you hear their objections. And so I just
15 want to preview that for the Court because Mr. Haben, I'm going to go
16 through the entire program with him whether he's on the document or
17 not because he was the head of the program.

18 Okay. And so I just -- you know, I know this is going to come
19 up, and I don't want to have these 30-minute breaks during the cross
20 where they're repeatedly raising this type of thing. Now, I know that -- I
21 know that we filed a brief this morning, I think, on the conditional
22 admission. So again -- and we did get --

23 THE COURT: Right. You did. And I have researched it over
24 the weekend.

25 MR. ZAVITSANOS: Yes, Your Honor. And we did get the

1 Court's guidance on that, but. And if Your Honor would like, I mean,
2 we're happy to do a bench brief on this. I mean, this is -- but this is most
3 unusual the position that they're taking. And I -- anyway, I --

4 THE COURT: Which is why I signaled that I'm inclined to
5 conditionally admit. Did you have a response?

6 MR. BLALACK: Yes, Your Honor. I don't think it's unusual.
7 And I think what we're proposing is just applying the Rules of Evidence.
8 That's what we're proposing to do. Apply the Rules of Evidence as
9 understood in this state, and for that matter, virtually every state. Which
10 is what type of factual information do you need to be able to offer it into
11 evidence? A document.

12 The issue is not the authenticity of the document. That is not
13 what we're debating because it's not -- nobody -- these objections aren't
14 going to be the document isn't what it purports to be. That's not what
15 we're debating. The relevancy of a document is a function of foundation.
16 It's a function of -- and personal knowledge. Does the person who's
17 being asked about the document have any knowledge, foundational
18 knowledge, about the document? That's what foundation is, and it's
19 been applied that way forever. So we're not arguing for a new Rule of
20 Evidence.

21 Likewise, the question of relevance, as the Court well knows,
22 a document can be relevant for one purpose, and inadmissible for
23 another purpose. It may very well be that many of the documents on Mr.
24 Leyendecker's list, we end up not having a relevance objection to
25 because by the time it's presented, we can see what they're trying to

1 prove it for. We agree that that's fair game; no problem. But that's not
2 what we're debating here. We're debating doing it now without any
3 context, without any factual setting, and not even the documents; just
4 the numbers and a representation of what they are. That's not
5 appropriate procedure in our view, Your Honor.

6 THE COURT: I think we've kind of exhausted the subject
7 today. I've given you a tentative ruling. And you guys, don't find that
8 you love to fight so much that you don't try your case. It's all I'm going
9 to say.

10 Now, anything else to take up today?

11 MR. LEYENDECKER: No, Your Honor.

12 MR. BLALACK: Not for us, Your Honor.

13 THE COURT: No? Have a good night, everybody. See you at
14 9:20, please, for the ruling.

15 MR. ZAVITSANOS: Excuse me, Your Honor?

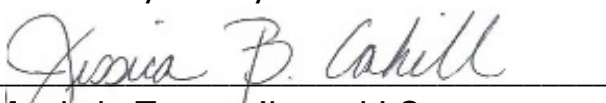
16 MR. POLSENBERG: Thank you, Your Honor.

17 THE COURT: Please be here at 9:20 so we can finalize this
18 issue.

19 MR. ZAVITSANOS: Yes, Your Honor.

20 [Proceedings adjourned at 4:33 p.m.]

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

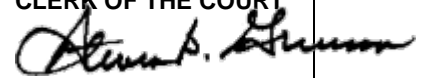
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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

Defendants.

CASE#: A-19-792978-B

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
TUESDAY, NOVEMBER 2, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 6

APPEARANCES:

For the Plaintiffs:

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RECORDED BY: BRYNN WHITE, COURT RECORDER

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FOR THE DEFENDANTS

MARKED

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None

1 Las Vegas, Nevada, Tuesday, November 2, 2021

2
3 [Case called at 9:24 a.m.]

4 [Outside the presence of the jury]

5 THE COURT: Thanks everyone. Please be seated. Calling
6 the case of Freemont Emergency v. United Healthcare. Let's take
7 appearances from the Plaintiffs first please.

8 MS. LUNDVALL: Good morning, Your Honor. Pat Lundvall
9 from McDonald Carano here on behalf of the healthcare providers.

10 MR. ZAVITSANOS: John Zavitsanos on behalf of the
11 healthcare providers.

12 MR. LEYENDECKER: Kevin Leyendecker on behalf of the
13 healthcare providers.

14 MR. AHMAD: Joe Ahmad also on behalf of the healthcare
15 providers.

16 MR. MCMANIS: And Jason McManis on behalf of the
17 healthcare providers.

18 THE COURT: Thank you. For the Defendant, please.

19 MR. BLALACK: Lee Blalack, Your Honor, on behalf of the
20 Defendants.

21 MR. ROBERTS: Good morning, Your Honor. Lee Roberts on
22 behalf of the Defendants.

23 MR. GORDON: Good morning, Your Honor. Jeff Gordon on
24 behalf of the Defendants.

25 MR. POLSENBERG: Morning, Your Honor. Dan Polsenberg

1 for the Defendants.

2 MS. FARJOOD: Good morning, Nadia Farjood on behalf of
3 the Defendants.

4 THE COURT: Thank you. Okay. We have the issue now still
5 with regard to the Plaintiffs 70 proposed exhibits.

6 MR. LEYENDECKER: Yes, Your Honor. As I explained
7 yesterday, I created from the Defendants the most current list of where
8 they had objections to our list of 70 that I believe accurately reflect the
9 ones that they don't have objections to. Mr. Levine told me that he
10 would be able to get to that last night. I haven't heard from him. And
11 when I just asked Mr. Blalack this morning, is Mr. Levine coming to tell
12 the Court whether my homework was right or wrong, he said, no he's
13 not, and I'm not prepared to answer on those 70.

14 So I'm here to represent to the Court that to the best of my
15 ability, I took their objections to our exhibits and identified the ones
16 where there were no objections and that's what the 70 is. And those are
17 the 70 that I would offer to the exhibits in my hand, Your Honor.

18 THE COURT: Thank you. Mr. Blalack?

19 MR. BLALACK: Your Honor, I do -- I'm checking with Mr.
20 Levine right now on whether -- what the answer is of these 70 discreet
21 exhibits that Mr. Leyendecker just referenced, and I'll provide an answer
22 to the Court momentarily when I get a response.

23 I think more generally, based on the argument we heard
24 yesterday, my understanding is the Court had basically decided it wasn't
25 going to engage in an individualized document by document review of

1 objections. It was going to conditionally admit whatever they were
2 going to be proposing and what we were going to be proposing and that
3 then there would be the possibility that something might not get into
4 evidence later and that would have the consequences it would have. So
5 that's the way, based on the discussion yesterday, we're proceeding.
6 Unless there's some discreet, you know, specific issue that the Court
7 wishes to resolve further.

8 THE COURT: Thank you. Is there a response?

9 MR. LEYENDECKER: Yes, Your Honor. There are two
10 different issues. There are the exhibits that neither side has not objected
11 to, and I told Mr. Levine if you want to prepare a list of ours, of our non-
12 objections to yours, that's no problem. We're ready to admit those. The
13 issue of contested exhibits is the conditional tentative order you -- that
14 Your Honor gave us yesterday. But the non-objected to 70 is a discreet
15 list, and I'm offering to admit those, because based on my representation
16 to the Court, there are no objections to those. They had an opportunity.
17 They said they were going to double check my work, and now they're
18 here saying well we don't know.

19 MR. BLALACK: We lodged objections to the exhibits.

20 THE COURT: I don't want to prolong this argument because I
21 want to bring the jury in right at 9:30. So I'll give Mr. Blalack a chance to
22 regroup there.

23 MR. BLALACK: Yes, Your Honor. Mr. Levine has indicated to
24 me that several of these are objected to, 286, 426, and then there's 15
25 exhibits that he says we objected to that the Plaintiffs claim we didn't.

1 THE COURT: I didn't have 286 or 426 on the list of 70. So
2 rather than prolonging the argument here, I'll go ahead and tentatively
3 admit the 70 that was my tentative ruling.

4 MR. BLALACK: And that's why, Your Honor, I
5 didn't --

6 THE COURT: So they'll be conditionally admitted today.
7 Please approach to the Court.

8 MR. LEYENDECKER: Let me hand those. We'll mark this as
9 Exhibit 1 to this hearing, Your Honor.

10 THE COURT: Yes, thank you.

11 MR. BLALACK: And, Your Honor, that's why I didn't address
12 the 70, because it was my understanding whether they were contested or
13 not, the Court was basically going to treat all the exhibits as
14 conditionally.

15 THE COURT: Well, it was tentatively yesterday, now that's a
16 final ruling. So they are conditionally admitted.

17 MR. BLALACK: Okay. And just so I can make my record,
18 Your Honor, we think the conditional admission process is not of an
19 appropriate procedure for the opening. And so, I just wanted to make a
20 record that -- I understand the Court's ruling, but I want to make my
21 record that we think that's not the proper procedure to follow and the
22 exhibits that haven't been actually admitted should not be shown to the
23 jury because the bell can't be un-rung later. But I wanted to state that
24 objection for the record.

25 THE COURT: Okay.

1 MR. LEYENDECKER: Last housekeeping. I would move to
2 conditionally admit the exhibits identified yesterday afternoon,
3 specifically as being in the opening. Conditionally admit those as well,
4 Your Honor.

5 THE COURT: And did you want to make a record?

6 MR. BLALACK: I think our position on those is the exact
7 same, Your Honor.

8 THE COURT: All right. So those will also be conditionally
9 admitted. Anything else to take up before we bring in the jury?

10 MR. BLALACK: One thing, Your Honor. We've got opening
11 statement issues to talk through in terms of the presentations. The
12 parties have exchanged drafts, and we're reviewing those I think on both
13 sides and that there may be issues that we need to raise with the Court.
14 But I believe that -- Mr. Zavitsanos approached me about one of the in
15 limine rulings related to prohibition of evidence on Medicare, which the
16 Court granted. And I think we're trying to work out some -- I think there's
17 some desire on their part to talk about Medicare and, you know, what
18 our view on that is, and we're trying to work out an understanding where
19 we had a line.

20 I mean, our view is we're going to want to make an offer of
21 proof on it all. But in terms of where we can do this in a way that there
22 would be no objection, we wouldn't have to stand up and object. So
23 we're going to try to come up with an agreement on that.

24 THE COURT: Thank you.

25 MR. ZAVITSANOS: Brief response, Your Honor. So I think

1 we are more than 90 percent in agreement on where the line is. And the
2 reason I say that is because as the Court will see, and the Court has seen,
3 I'm sure, there's been a lot of the briefing already, the word Medicare is
4 probably on at least half of the documents in this case. And so, it's not
5 possible to try the case without that word coming out. So -- and I
6 recognize that and I -- and so, I think a little leeway on our side is
7 appropriate. And I did confer with Mr. Blalack. And like I said, I think on
8 90 percent of the issues, we're in agreement. It may be 100 percent. We
9 just need to kind of put a fine point on it.

10 So with the Court's permission, maybe when we are done
11 with our opening statement, I can visit with counsel, and we can
12 hopefully get to 100 percent and then put something on the record. It's
13 not going to be -- I don't know if we're going to reach a 100 percent
14 clarity. We'll just have to kind of take it as we go in terms of the
15 objections, but I think this will actually expedite things, so.

16 MR. BLALACK: And I concur, Your Honor. And possibly we
17 won't reach 100 percent agreement, but we could reach an agreement in
18 a way that would reduce the number of objections and dramatically
19 reduce the offers of proof. Because at current plan, we got very
20 substantial offers of proof on these topics. So if we could reach
21 agreement and narrow the areas where there's disputes about how and
22 when Medicare rates could be referenced, that would be to everyone's
23 benefit. And so the process that my colleague is suggesting is suitable
24 for us.

25 THE COURT: Good enough. Thank you for your professional

1 courtesy to each other.

2 MS. LUNDVALL: Your Honor, one additional thing is that the
3 parties were required to exchange their demonstratives. We had an
4 agreement that we would be here this morning by 9:00, by which to do
5 so. We were here, and offered as far as two counsel for United, our
6 PowerPoint presentation. We got theirs a little bit late, and I'm still going
7 through it, but I can tell you that there is a significant number of issues
8 for which that we believe fall within the scope of the motion in limines
9 and the Court's orders on the motions in limines for which -- that we're
10 going to need to take that up before they display any of those slides
11 before the jury.

12 THE COURT: Good enough. All right. What other
13 housekeeping matters do we have?

14 MR. BLALACK: We're looking at theirs as well, Your Honor,
15 so I suspect we've probably got a few issues on our side as well that
16 we're just identifying.

17 MS. LUNDVALL: Well to the extent that they have any
18 objection, I'd like to know before we begin opening statement and to be
19 able to resolve any of those issues so that we do not have to be
20 interrupted.

21 THE COURT: So do you guys need another few minutes or --
22 yes?

23 MR. BLALACK: I think we do, Your Honor.

24 THE COURT: All right. So the Court will just be in recess
25 until you guys are ready to go. And the staff will let me know when to

1 come back.

2 MR. BLALACK: Thank you, Your Honor.

3 [Recess taken from 9:33 a.m. to 9:53 a.m.]

4 THE COURT: Thanks, everyone. Please remain seated. Is
5 there an update?

6 MR. BLALACK: Yes, Your Honor. We've shared decks. I
7 think the -- we have some things to work out separately on this Medicare
8 issue, Your Honor, but I think the principal issue I have, Your Honor, is
9 that there are excerpts of actual transcripts that are going to be -- they're
10 not paraphrasing like the witness will testify that, but actual excerpts of
11 transcripts of testimony that has not been admitted in the case, into
12 evidence.

13 And so my understanding from Mr. Roberts is that a more
14 typical practice here for opening is to not present the actual transcript to
15 the jury, but to represent to the jury what the testimony will show, which
16 we don't have an objection to, but the actual present -- well, I'll do that.
17 I'll be showing slides where I'm saying a witness will testify that X
18 occurred, as opposed to showing, you know, an actual excerpt of the
19 transcript with Q and A, which could certainly occur in evidence. That
20 could be presented in evidence, the video, but not in the presentation of
21 the demonstrative, and I just think that's concerning on that issue.

22 THE COURT: And the response, please?

23 MS. LUNDVALL: Your Honor, what I'm trying to understand
24 is this, we have -- and maybe it might be easier for us to show you what
25 they contend is objectionable. May I approach?

1 THE COURT: Please. Both of you have permission to move
2 about. Everyone has permission to move about the courtroom.

3 MR. BLALACK: Thank you, Your Honor.

4 MS. LUNDVALL: Thank you, Your Honor. That particular
5 demonstrative is a snippet of testimony that will be presented before the
6 jury during the course of this case, and what they're objecting to is that
7 somehow that this snippet is -- should not be able to be displayed. And
8 so from this perspective, if the jurors were able to hear it, if the jurors,
9 when they see it on the screen, they see it runs at the bottom of it, we --
10 or we should be able to make reference to it as a demonstrative during
11 our opening.

12 THE COURT: Thank you. And a reply, please?

13 MR. BLALACK: Your Honor, this is a -- I'll defer to Mr.
14 Roberts on this issue, I'm really deferring to his local knowledge and
15 practice.

16 MR. ROBERTS: And Your Honor, I instructed my team to
17 take out the transcript pictures that they put in their PowerPoint, and the
18 way the rule has been explained to me by other judges is that the oral
19 testimony, a deposition is read into evidence, and it's treated like other
20 oral testimony, and showing the jury a written transcript of oral
21 testimony emphasizes that testimony of their -- over other oral testimony
22 that they might see, and when they disputed this this morning I did some
23 quick research, and I found a case, Eastern District of California, 2007, 74
24 Federal Rule Service, Federal Rules Evidence Service 1052, *Buckley v*
25 *Evans* [phonetic], which explain that "the preferable practice is not to

1 send the written transcript statements or interrogatories to the jury
2 room, but that the moving party read them into evidence. This avoids
3 emphasizing such testimony at the expense of oral testimony for which
4 the jury would not have a transcript."

5 And I believe that that general rule is followed in this
6 jurisdiction, at least in my experience here.

7 THE COURT: You know, our experiences have been so
8 different, so I'm going to overrule the objection, and certainly, the ruling
9 applies reciprocally.

10 MR. BLALACK: Okay. Thank you, Your Honor. Then, well,
11 you may see some transcript excerpts in my opening.

12 THE COURT: Certainly.

13 MR. BLALACK: And then I think the last issue that we have
14 on our side is there's a slide in their presentation that I'm not sure what
15 number it is, the number 2, which is a listing of payments from United to
16 ER providers in other states, not Nevada, and they're preparing it for
17 Nevada, which we object to because nothing about our payment rates in
18 other states are relevant to what's determined in Nevada, and if it is,
19 then there's a whole lot of other evidence that we're going to want to get
20 into evidence to contextualize those other rates in other states, and the
21 jury -- and I'll have something on it, so this shouldn't be in evidence, and
22 therefore, we object to it.

23 THE COURT: The response, please?

24 MS. LUNDVALL: May I approach, Your Honor --

25 THE COURT: Yes.

1 MS. LUNDVALL: and be able to allow you to see this. If you
2 recall, they had, United had offered a motion in limine suggesting that
3 number one, that we should not be able to offer any evidence of out-of-
4 network payments made to other providers. The Court denied that.

5 THE COURT: Uh-huh.

6 MS. LUNDVALL: Second is that they, I believe, had a motion
7 in limine, and it was part of their motion for partial summary judgment
8 speaking to the fact -- that they claimed that evidence from outside the
9 State of Nevada that it should not be able to be presented to the jury
10 either and the Court denied that as well.

11 And so to the extent that this is simply a comparison that
12 shows where Nevada is in comparison to other states, and the out-of-
13 network reimbursement rates that they afford to other states but that
14 they don't afford to Nevada. Thank you.

15 THE COURT: And in reply, please?

16 MR. BLALACK: Your Honor, I don't think the Court has ruled
17 that evidence of conduct occurring in other states is necessarily relevant
18 and admissible as it relates to the claims of this case. So I take issue
19 with the notion that any of the in limine rulings have made some
20 affirmative decision on every piece of evidence about what's happening
21 in Florida, Texas, South Carolina, and New York is all of a sudden fair
22 game. If that's true, then the scope of the case is going to get a lot larger
23 than it currently is.

24 So we don't think that's what your prior rulings in limine is,
25 and we think it's really prejudicial to -- and I think, frankly, it's

1 misleading, because each of these markets is unique in its own way. It
2 has its own rate structures, its own set of competitors. They're
3 independent separate markets, and so preparing what are the typical
4 charges and typical rates in Nevada, while that might be fair game, it's
5 not fair to compare it to Alaska and Oregon to suggest that there's an
6 apple-to-apple comparison.

7 THE COURT: And again, the objection will be overruled for
8 the same reason that -- reasons I gave during the motions in limine.

9 MR. BLALACK: Thank you. I think that addresses our issues,
10 Your Honor. I'll leave it over to Mr. Leyendecker for his consent.

11 THE COURT: Thank you.

12 MR. LEYENDECKER: The first issue, Your Honor, is that there
13 are a half a dozen or so slides, the first one, if I may show Your Honor, is
14 on slide three, where it's got a high level Blackstone relationship.

15 THE COURT: And Mr. Blalack, so you can see what I'm
16 looking at?

17 MR. BLALACK: Yes, Your Honor, I'm tracking.

18 MR. LEYENDECKER: A high level relationship of Blackstone
19 to the Plaintiffs team held, and I understand that to be within the buoys
20 of your limine ruling. But they continue on several other slides to layer
21 on top the Blackstone, the Blackstone, the Blackstone providers, ta-da, ta-
22 da, ta-da, and I think that's, as I described to Mr. Blalack, reveling in it
23 beyond what I understood Your Honor said was okay.

24 MR. BLALACK: All right. Your Honor, if I could respond?

25 THE COURT: Please.

1 MR. BLALACK: Your Honor, on the record, said we could do
2 the following. We could establish the relationship between Blackstone
3 and Team Health, and the relationship between Team Health and the
4 three staffing companies in Nevada, and then the relationship between
5 the staffing companies in Nevada and the ER providers within the
6 contract that provided the service. And the only thing these slides do is
7 literally walk through that sequence.

8 The first, to salvage the relationship and only the
9 relationship. There's nothing else on here about Blackstone's finances,
10 nothing about any of their operations, or any of the kind. It simply just
11 says Blackstone, and establishes who -- introduces who Blackstone is,
12 nothing more than that, shows its connection to Team Health. The next
13 slide then shows Team Health's connection to the staffing company,
14 which is the next step in the chain. And then the next slide shows the
15 Team Health connection to Nevada.

16 So it's literally exactly, and it was constructed very precisely
17 to stay completely within those lines. And Your Honor, before your in
18 limine rulings, I had a whole bunch slides that were going to get into the
19 financial relationships, the flows of funds, how claims payments were
20 divvied up between these parties. All that's out to be compliant with the
21 Court's orders.

22 So from our perspective, Your Honor, this is simply just
23 establishing the connections that Your Honor identified in the in limine
24 rulings.

25 THE COURT: And reply, please?

1 MR. LEYENDECKER: I made my point. The only other
2 observation I make is on the very first slide, which I said was okay, I
3 neglected to point out that the second bullet says, "the world's largest
4 private equity firm," and I think that goes a bit too far in light of the
5 rulings. That's it.

6 THE COURT: No, I am not going to exclude this. I'll overrule
7 your objection.

8 MR. BLALACK: Thank you, Your Honor.

9 MR. LEYENDECKER: The next one, Your Honor, is to slide
10 number 36. It's a summary of Mr. Schumacher and begins with
11 essentially a reference to the negotiations that Your Honor has said
12 should be kept out per the limine rulings. And I don't think a party can
13 open their own door by essentially getting into those discussions that
14 took place between Mr. Schumacher, that involved the "because we can"
15 comment.

16 MR. BLALACK: The answer here, Your Honor, is very simple.
17 If the Plaintiffs are not going to offer evidence of Mr. Schumacher's
18 statements in those discussions into evidence, fine, I'll take this out. But
19 if they're going to offer evidence of discussions my client made to them
20 that forms a basis of their claims, I'm entitled to explain where the
21 conversation happened, who participated, what was the context of the
22 conversation, why did my client say what he said, what was said back to
23 him, you know, in every trial, what was the circumstance of this
24 conversation that one side is focusing on.

25 I have no intention -- my understanding is that the

1 negotiations of the parties are out, which is my plan is to stay out of
2 them, and as much as I disagree with that ruling, but if they're going to
3 get into evidence of communications that occurred as part of those
4 negotiations, then I have to have the capacity to respond, and that's all
5 this is doing.

6 And again, Your Honor, if you read the slide, it makes clear,
7 all he said -- all I'm saying is where did the meeting happen, which is the
8 first, who participated, which is the first bullets, and the second is what
9 the allegation was against Mr. Schumacher and what his explanation
10 was. That's it.

11 THE COURT: Any response, please?

12 MR. LEYENDECKER: Very briefly. This is no different than
13 emails going back and forth in negotiations, and more importantly, we're
14 not, certainly not in opening, going to get into the "because we can" and
15 the discussions that took place. I don't think it's going to happen later,
16 but it's certainly not happening in opening.

17 MR. BLALACK: Well, if they're not going to address the
18 "because we can" issue in opening, I will modify this slide.

19 MR. LEYENDECKER: Well, I think the whole thing though,
20 Your Honor, opens the door on the negotiations which are taboo per
21 your limine rulings.

22 MR. BLALACK: Well that -- well, great.

23 THE COURT: So at the end of their closing, you'll make the
24 adjustment if necessary.

25 MR. BLALACK: That's good. Thank you, Your Honor.

1 MR. LEYENDECKER: The next one is also on the negotiation
2 point, it's slide number 42, and there are three bullets on here, one of
3 which deals with the substantive issue. The first two invoke various
4 negotiations that were going on in Nevada, and for the same reason I
5 squawked about the prior slide, I think the two bullet points indirectly
6 opening the door on those negotiations and should come off.

7 MR. BLALACK: Well, Your Honor, again, this is simply -- the
8 juror won't -- the jury won't -- will not know who this person is. They'll
9 have no idea why I'm talking about this person. So the first two bullets
10 are literally describing who the person is. Her title and role was as the
11 lead contract negotiator for Team Health in Nevada. She's the one who
12 had communications with my -- who is basically communicating with my
13 client on their business relationship.

14 So all I'm saying here is who she is, what her title was, and
15 job function, and then in effect, if you look at the bottom here, we
16 actually use her title. That's from her title from her business card, is
17 contractor negotiator, so you can't even describe who she is without
18 describing that she's a contract negotiator.

19 And I specifically used, in the second bullet, engaged in
20 multiple discussions with defendants about reimbursement rates without
21 saying contract negotiations so that -- to try to address any concerns
22 plaintiffs would have, to keep it more general and generic. And so that's
23 simply -- these two bullets are simply to say who is this person, why
24 does she have any relationship to this dispute, and then what will she
25 testify? That's it.

1 THE COURT: Reply, please?

2 MR. LEYENDECKER: I don't have anything beyond what I've
3 said. The subject is okay because the two I think open the door.

4 THE COURT: I think the third bullet is objectionable, but we
5 can revisit it after the Plaintiff opens.

6 MR. BLALACK: The third bullet, Your Honor?

7 MR. LEYENDECKER: The third bullet is the one that relates to
8 the substantive issue.

9 THE COURT: Right.

10 MR. LEYENDECKER: The first two are the ones that invoke
11 the negotiating. Those are the two that I'm complaining about.

12 THE COURT: Oh, okay. So then take out the first two.

13 MR. BLALACK: Okay.

14 MR. LEYENDECKER: I think this is my -- there's a slide
15 related to Mr. Phillips, which -- who we're not calling, and he's going to
16 remove that, so that slide [indiscernible].

17 THE COURT: Thank you.

18 MR. LEYENDECKER: And the last one is slide 46. This is
19 another Rena Harris slide where she's evidently testified about
20 something not being implied by a contract. There is a timely objection
21 on the record as to foundation. It's calling for a legal conclusion, and so I
22 think that's an improper question and answer to play.

23 THE COURT: So --

24 MR. BLALACK: Your Honor, this is an entirely appropriate
25 question, and they've got about 20 pieces of testimony in their deck right

1 now that we objected to during the deposition, so if the rule's going to
2 be that testimony can't be described to the jury as what they can hear,
3 because at the time of the deposition the opposing party lodged an
4 objection, then we need to go back and get -- pull out the slides and
5 going to go through them one by one because all of those have timely
6 stated objections on the record.

7 The rule for this ought to be exactly the same as the rule for
8 theirs, which is we make a representation the testimony will be this, if at
9 trial you don't admit it, then they can get up and make hay out of it.

10 MR. LEYENDECKER: Your Honor, I'm not -- the timeliness of
11 the objection is not what matters. He's asking a lay witness for a legal
12 conclusion about what does or doesn't constitute an implied contract
13 under Nevada law, and there's no foundation. I was simply pointing out
14 that objection was made then, and that's the difference between the
15 typical objection form that makes it somewhere else.

16 THE COURT: I'm going to overrule the objection.

17 MR. BLALACK: I think that's it, Your Honor.

18 THE COURT: Okay. Now are we ready to bring in the jury?

19 MR. ZAVITSANOS: Your Honor, can I ask a housekeeping
20 question?

21 THE COURT: Of course.

22 MR. ZAVITSANOS: So I'm being told that people on
23 BlueJeans can hear when I'm speaking with Mr. Ahmad here at the table.

24 MR. ZAVITSANOS: Is there a way that we can turn off this
25 mic unless we're addressing the Court?

1 THE CLERK: There's a little button right in front of it, if you
2 press and hold it.

3 MR. ZAVITSANOS: Ahh-ahh, okay. Oh, if --

4 THE CLERK: I think you have to hold it the whole time.

5 MR. ZAVITSANOS: Ahh-ahh, got it. Okay. Joe, hold it the
6 entire trial.

7 MR. AHMAD: Can I take it up with me while I do my
8 opening?

9 MR. ZAVITSANOS: Okay. Thank you.

10 THE COURT: Okay. Let's bring in the jury.

11 [Pause]

12 THE COURT: And can both parties represent that you don't
13 have any witnesses on BlueJeans?

14 MR. ZAVITSANOS: Yes, we will, Your Honor.

15 THE COURT: Other than 30(B)(6) or experts?

16 THE COURT RECORDER: There's over 72 people on
17 BlueJeans, so it's really hard for me to manage.

18 MR. ZAVITSANOS: Your Honor, the only thing I will say is,
19 as I asked yesterday, I don't believe the rule applies to opening
20 statements, so there may be, there may be folks watching the opening
21 statements, but we will make sure that once the evidence starts --

22 THE MARSHAL: All rise for the jury, please.

23 MR. ZAVITSANOS: -- nobody will be on.

24 THE COURT: Thank you.

25 [Jury in at 10:10 a.m.]

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007627

1 THE COURT: Thank you. Please be seated. Good morning,
2 everyone. Calling the case of Freemont Emergency Services v. United
3 Healthcare Insurance Company, noting the presence of counsel, and
4 good morning to the jury. Welcome to Tuesday.

5 Now there -- I would like to point out that there is media in
6 the room. I have printed out our court rules with regard to media, and I
7 need to instruct the media that should you violate any of the rules, I will
8 revoke your right to be here. Thank you.

9 Okay. Does the Plaintiff wish to present an opening
10 statement?

11 MS. LUNDVALL: We do, Your Honor.

12 THE COURT: Go ahead, please.

13 MS. LUNDVALL: Thank you, Your Honor.

14 PLAINTIFFS' OPENING STATEMENT

15 MS. LUNDVALL: May it please the Court, and ladies and
16 gentlemen of the jury. You have an opportunity do something very
17 special in this case. While jury service is generally pretty cool, this case
18 offers you just a little more. You see, most cases are about money,
19 passing money from one pocketbook to another. In business cases,
20 they're about passing money from one corporate pocketbook to another,
21 but this case is about a little bit more, and it's about the quality of
22 healthcare in Nevada, not simply here in southern Nevada, but across
23 the State of Nevada, particularly about the quality of emergency medical
24 care --

25 MR. BLALACK: Objection, Your Honor.

1 MS. LUNDVALL: -- here in Nevada.

2 MR. BLALACK: Objection. Argument.

3 THE COURT: Please approach.

4 [Sidebar at 10:13 a.m., ending at 10:13 a.m., not transcribed]

5 THE COURT: And for the record, the objection was
6 overruled.

7 MS. LUNDVALL: As I indicated, ladies and gentlemen, this
8 case is about a little bit more. It's about the quality of medical care
9 across the state of Nevada, particularly emergency medical care across
10 the state of Nevada.

11 And more directly, you're going to hear us ask the question
12 as to whether or not Nevadans, in particular, deserve at the very
13 minimum to be treated the same as others across the state of Nevada
14 when it comes to reimbursement for emergency medical care paid to
15 physicians and other health care practitioners.

16 And let me tell you what I mean by that. The evidence in this
17 case is going to show -- and you're going to get the opportunity to look
18 at a comparison, state by state. And I know we have 50 states in the
19 nation, okay. But to put them all on this slide makes this slide too busy.
20 So what I did is I picked some at the top, picked some in the middle and I
21 identified where Nevada fit. And that's key.

22 So where does Nevada fit in that scheme? South Carolina at
23 the very top is reimbursed for emergency room visits by United, at the
24 very top, at the average of \$1,034. You know what's at the very bottom?
25 Nevada. The very bottom at an average of \$344 per visit to emergency

1 medical rooms.

2 This case is going to give you an opportunity if you believe
3 that it's deserved, to pull Nevada up from the bottom of that list. Now let
4 me give you another comparison which you'll also going to see when
5 you examine the evidence. This slide is another comparison, and this
6 slide focuses specifically upon how much United is paying to other
7 emergency room providers in the state of Nevada compared to how
8 much that they are paying our clients.

9 Other emergency room providers in the state of Nevada are
10 being paid on average, \$528 per visit. Our folks, in contrast, even though
11 we are providing over 20 percent of the services, statewide, for
12 emergency room visits are only going to be paid \$247. And the
13 evidence, ladies and gentlemen, is going to reveal that that disparity is
14 the result of intentional discrimination being practiced by United against
15 the emergency room providers that we represent in this case.

16 At the end of this case, we're going to ask you to say enough
17 is enough. We're going to ask you to say make them stop short
18 changing us, short paying us, to reimburse us what we are entitled to be
19 paid. We are going to ask you to reimburse us and to allow us to be
20 reimbursed our billed charges. We are going to demonstrate that our
21 billed charges are reasonable, usual, and customary within the industry.
22 And we're going to ask you then to pay us the difference between those
23 billed charges and what they have paid us at that low rate, that
24 difference. Those will be the extent of our -- what we call our
25 compensatory damages.

1 Those compensatory damages, ladies and gentlemen, will
2 begin to make us whole. But we're also going to ask you to punish
3 United at the end of this case for their oppressive, egregious, and
4 discriminatory treatment that they have practiced against the folks that
5 were forced to bring this lawsuit. So let me talk about the parties in this
6 case. Let me tell you about who we represent.

7 The first company that you're going to learn about is Team
8 Physicians. Team Physicians is a group that provides emergency room
9 services in Fallon, Nevada. Fallon, Nevada is in northern Nevada. It is
10 home -- its principal claim to fame, so to speak, is that there is a military
11 air training facility. It was built originally in 1942, and in 1996, the Navy
12 made it their Top Gun military training service. You may be familiar with
13 that or if you watch movies, you may be familiar with top Gun, the
14 movie. Much of that movie was filmed near Fallon, Nevada.

15 If you buy onions at Wal-Mart, you're going to learn that
16 many of those onions were farmed in fields between Fallon and
17 Carrington, Nevada. There are folks that are the first to appear for Team
18 Physicians. They provide emergency room services at the only hospital
19 in Fallon.

20 The second company that we represent is called Ruby Crest,
21 or who we refer to as Ruby Crest. Ruby Crest was named for the Ruby
22 Mountains. They're located near Elko, Nevada.

23 Elko is even more remote than Fallon. It takes you three and
24 a half hours to get from Elko to Salt Lake City. It takes you five hours to
25 get from Elko to Reno, and it takes you seven hours to get to Las Vegas

1 from Elko. It is even more remote, like I said, than Fallon. And what you
2 learn that, ladies and gentlemen, is to be able to attract quality
3 physicians to remote locations, you have to pay them fairly. And herein
4 southern Nevada, we have to pay them fairly as well, because the
5 competition is so very strong for quality physicians here in southern
6 Nevada. And it's a fact of life. In general, you get what you pay for. If
7 you want quality physicians, you have to pay them fairly.

8 Now, we also represent Freemont Emergency Services.
9 Fremont Emergency Services provides emergency room delivery and
10 eight different hospitals across our valley. The first one is the ER at
11 Aliante in North Las Vegas. The next one is the ERR at the Lakes. It's on
12 Fort Apache.

13 The second or the third is Mountain View Hospital on Tenaya
14 Way. Dignity Health has three campuses in Henderson: St. Rose, St.
15 Martin and the Siena campus here in Henderson. They also provide
16 services at Southern Hills in Summerlin, and they also provide services
17 at Sunrise Hospital and Sunrise Hospital as some of you may know, is
18 smack dab in the middle of our city. It's on Maryland Parkway and it's
19 basically the site, Ground Zero, for every major tragedy that happens in
20 our community. People are treated there.

21 What you're going to learn is that these three entities have
22 been shortchanged by United on over 11,500 claims. That's what is at
23 issue in this case.

24 Now let me tell you a little bit more about the deliveries of
25 emergency room services. These are the common conditions that are

1 treated in emergency rooms across our state. With the advent of the
2 urgent care centers that are on what seems like about every third block
3 in our community, the types of delivery of emergency care is -- this is
4 typical. Gone are the days where anyone who's got insurance is going
5 to the emergency room for sniffles or a cold or you know, some people
6 used to refer to it as maybe somebody had a hangnail. Those types of
7 days, with the advent of urgent care or people who have commercial
8 insurance, those day are gone. They treat serious conditions in the
9 emergency rooms that we staff.

10 These are the typical CPT codes and there's only three that
11 are at issue. A CPT code is a type of a code that is assigned for the level
12 of care that is needed for the person who is presenting themselves for
13 treatment. And there's really only three that you're going to see across
14 the course of this case. Level 3, Level 4, Level 5. And this slide then
15 describes those various levels.

16 So let me give you an example. And let me put the full slide
17 up here. The type of claim, one of which is the 11,500 claims that are at
18 issue is a Level 5 claim . It's a claim that posed an injury for harm as a
19 threat to life. This one in particular was a gunshot. Our bill charge; it
20 was sent to United for payment was \$1,428. What they sent to us was
21 \$254.

22 Now, thank goodness for computerized programs. You're
23 not going to have to see a medical file for each one of those 11,500
24 claims. What we're going to present to you in large part are Excel
25 spreadsheets that identify in the chronical and then highlight this

1 information, so that you can see it in summary fashion. Excel
2 spreadsheets aren't very fancy. They're not sex, drugs and rock and roll.
3 They don't have a lot of bells and whistles. But what they will do is that
4 they will give you an illustration of what is at issue in this case. And it
5 will allow you then to summarize the evidence of all the different
6 treatments done that we provided to insurers of United and for which
7 they shortchanged us.

8 Now let me clear up what is a common misconception. It
9 was mentioned during the jury selection phase of this but because we're
10 entering a new phase, I want to make sure that we highlight it. And that
11 is this. The folks that we represent, the ER providers, they are not
12 employees of the hospitals. The hospitals are not in this courtroom. The
13 hospitals provide one type of service.

14 The emergency room providers provide a different type of
15 services. We contract with the hospitals. We enter into a contract that
16 says we will provide emergency room services for every single person
17 that walks through the door of that hospital presenting themselves with
18 an emergency situation.

19 Now you may be thinking why is it that hospitals want to
20 enter into a separate contract with emergency room providers? Well, I
21 mean as far as I can give you some examples as to why they don't.
22 There is a federal law and there is a state law. And that federal law and
23 that state law is reflective of the public policy, not only of the state of
24 Nevada but across our nation. And it's called the Emergency Medical
25 Treatment and Labor Act. Similar statute that is found under Nevada

1 Revised Statutes. And what does that say? It's a public policy that says
2 any person in our nation, any person in our nation, any person in the
3 state of Nevada that has an emergency and then comes through the
4 doors of the emergency room, is to be provided stabilizing care,
5 regardless of whether or not they can pay. Regardless of whether or not
6 they have insurance.

7 If you walk through an emergency room door, the first thing
8 that's going to be done is you're going to be assessed and you're going
9 to be giving stabilizing care before anyone makes any inquiry about your
10 ability to pay, if you have insurance or whether or not that the providers
11 that is giving the medical care is able to be paid for the provision of
12 those services. And that's a public policy that is apparent in this case.

13 Now not only in my opinion is it ethically and morally right to
14 treat people, you're going to understand that under this law, you're
15 obligated legally to treat every person regardless of their ability to pay.
16 And if you don't, there's a criminal sanction that is imposed upon you.
17 So maybe you're starting to get a little idea as to why some of the
18 hospitals then do not wish to take on that kind of liability, but we have.

19 How often are we obligated to provide that stabilizing care?
20 24 hours a day, seven days a week, 365 days per year.

21 Now let me highlight here something that I think is an
22 important piece to understanding the motivation of the parties in this
23 case, in particular, United.

24 These are all examples of physicians who are not subject to
25 EMTALA. EMTALA, the Emergency Medical Treatment and Labor Act.

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1 transaction for them after they have provided the stabilizing care then to
2 the patient.

3 Now you're going to learn from some of the testimony that
4 you're going to see in this case is that this relationship is likened by
5 some, to like a union. If you belong to a union, you have a union boss
6 that goes to your employer and tries to negotiate for better working
7 conditions or better pay. Others, if you're involved in the hospitality
8 industry, you know that there's a front of the house, and you know
9 there's a back of the house. Okay, the back of the house in the
10 hospitality industry is supposed to be making the front end of the house
11 look good.

12 Well, that's what TeamHealth does for the emergency room
13 providers. They handle the back of the house stuff. If in fact you don't
14 have experience with either of unions or the hospitality industry, think of
15 it when you go to the average doctor. And when you step to the counter
16 to check in, there's always businesspeople that are always running
17 around. Those business people are handling the business transactions,
18 the business side.

19 And so our clients, the emergency room providers have
20 chosen to affiliate them in this company called TeamHealth. TeamHealth
21 basically does the paperwork and does a lot of additional support and
22 provides a lot of clinical advice and suggestions for the best provision of
23 medical care, which allows the emergency room providers then to
24 provide the best medical care then available to the patients that walk in
25 the door.

1 You're going to hear from a gentleman by the name of Dr.
2 Jody Crane. Dr. Jody Crane will tell you a little bit about TeamHealth.
3 He will describe -- and Dr. Crane is TeamHealth's chief medical officer.
4 He'll describe a little bit about the origins of TeamHealth itself. How it
5 was founded by physicians. It is led by physicians, and it is designed to
6 care and to assist physicians.

7 And he describes very principally that the reason that
8 TeamHealth exists, is to try and improve the quality of the care that the
9 medical providers and the emergency room medical providers can
10 deliver them to patients. And you're going to hear examples from Dr.
11 Crane of different strategic pillars that TeamHealth employees so as to
12 ensure that they are providing appropriate affiliation and appropriate
13 health and assistance to the -- to the emergency room providers.
14 Everything from trying to improve clinical quality, clinical operations,
15 includes patient experience. They're also providing leadership in the
16 form of continuing education. Things of that nature.

17 So now let me talk -- turn to the folks that we are suing. The
18 folks that we had to bring the claim against. United Healthcare is
19 member of its subsidiaries or its wholly owned companies. They have
20 over 33 million members. They write in administering insurance across
21 50 states and they're in 150 countries. They are the largest insurance
22 underwriting or administering coverage across our nation. And they are
23 also the largest either writing or administering among insurance here in
24 the State of Nevada.

25 Now one of the things that I think is kind of funny is when

1 you're a juror, you get to learn something. And what you're going to
2 learn is insurance 101. The more premium dollars you collect and the
3 less premium dollar that is spent paid out on claims. And one of the
4 things that we learn, if you pay less, you pay for it.

5 Now one thing that is unique about this case is that United
6 does not contest that the folks that we provided medical services have
7 coverage with them. They do not contest that we did the work. They do
8 not contest that we deserve to be paid for the work that we did. What
9 they contest only is the amount of which to be paid. It is their outward
10 position that they are entitled to pay us whatever it is that they feel
11 without having to prove if its reasonable.

12 But what you're going to learn, ladies and gentlemen,
13 throughout the course of this case, is that we discovered internal
14 documents, internal documents, documents from United, that
15 acknowledge and admit that they have an obligation to pay our full billed
16 charges. Think about that. That their outward position is that they can
17 pay us whatever they want. They say we don't think you have a
18 contract. We don't think we have any obligation by which to identify the
19 amount that we're paying or the reasons for what we're paying.

20 But inwardly, they acknowledge, and they admit that they
21 have a duty and an obligation to pay a full bill charges. And there are
22 other conditional and internal documents will demonstrate, as will be
23 described by my colleagues in a little more detail, is that the efforts that
24 they were taking so as to figure out how to pay us less than our full
25 billed charges and to figure out how to intentionally discriminate against

1 TeamHealth so that they didn't have to pay TeamHealth their full bill
2 charges. And how they were intentionally discriminated against the ER
3 providers in this case. They shortchanged us on over \$11,500. When we
4 asked why? They went lower and lower and lower. Essentially, what
5 they told us is if you don't like it, then sue us. So we get -- and in this
6 courtroom, ladies and gentlemen, you will be able to decide what they
7 can and can't do.

8 Now let me examine a little bit about why it is that I think that
9 they're so cocky about the fact that they're not going to pay us full bill
10 charges. What they are doing is they're taking advantage of two things
11 that you're going to learn about in this case. Number one, they're taking
12 advantage of the fact that EMTALA, the federal law, the state law,
13 obligates us to treat everybody that walks through the door without
14 regard to whether or not that they can pay or if they have insurance.
15 They know we have a duty and an obligation to treat everybody.

16 You know there's an old adage about shoot me once, shame
17 on you. Shoot me twice, shame on me. In other words, in the practice
18 of law if I have a client that hires me, but they don't pay me, then shame
19 on them. But if they come back to me the next day and say, all right, I
20 want you to do more work for you, and I don't do anything to protect
21 myself, then shame on me for not being able to protect myself and
22 continuing to do work. But the emergency room providers don't have
23 that option. They have a duty and an obligation to treat everybody that
24 comes through the door. So it's after the fact then, after we've provided
25 the services that we are submitting payment to them, and that's where

1 they are shortchanging us.

2 The second thing that they're taking advantage of is this.
3 There's really only two ways to protect yourself when you are an
4 out-of-network provider like the emergency room medical writers in this
5 case. And those two ways are you bring a lawsuit, which is what we did,
6 or we balance bill the patient. In other words, if they -- if we sent them a
7 bill for \$1,400 and they only paid us \$300 or \$245 on that bill, that
8 differential in most circumstance could be balanced billed then to the
9 patient, but our emergency room providers have a policy. Not to
10 balance bill. Not to push off those additional charges on to the patient.
11 That is our policy. They know that that's our policy and they're taking
12 advantage of that policy.

13 So think about this. What they are doing is they're taking
14 advantage of two policies that protect individuals who have an
15 emergency and that need medical care for which -- that we are providing
16 and that they know that we have a policy of not to balance bill.

17 Now there's two things that I want to discuss very briefly
18 before I pass literally the baton on to my colleagues. It's FAIR Health.
19 FAIR Health you're going to learn in verified detail about in this case.
20 FAIR Health is a nonprofit organization. They came as a result of
21 something bad. Sometimes out of bad things come good things and
22 FAIR Health is something good. FAIR Health is a --

23 MR. BLALACK: Your Honor, may we approach?

24 THE COURT: You may.

25 [Sidebar at 10:42 a.m., ending at 10:44 a.m., not transcribed]

1 THE COURT: Thank you, everyone, for your -- for your
2 courtesy. Go ahead, please.

3 MS. LUNDVALL: All right. Back to where I was. As I just
4 said, you're going to hear about FAIR Health. And as I had indicated,
5 sometimes good things come out of bad. FAIR Health is something that
6 is good. It is something that you're going to hear about in this case at
7 length. FAIR Health is a nonprofit organization that was created so as to
8 gather information and to create a database and make information in
9 that database hopefully transparent so that charges -- billed charges,
10 expenses, things that are being sent to and gone back and forth between
11 healthcare providers, including the emergency room healthcare
12 providers, and payors, that that information is open and public. It
13 basically is a database by which you can see what the prices that you're
14 paying for the healthcare services that are being [indiscernible]. Okay?

15 Two things about FAIR Health that are important to this case.
16 Number one, is that the emergency room providers use FAIR Health to
17 set their billed charges. They use FAIR Health, they use this database,
18 they use this database -- it's even used by state, the state of Connecticut
19 and the state of Massachusetts use FAIR Health, and they obligate
20 providers by which to FAIR Health in -- in setting charges. But our
21 emergency room providers use FAIR Health to establish their billed
22 charges. And when you listen to the testimony, you will learn that those
23 billed charges are usual, reasonable, customary within the industry.

24 Now, the second thing you're going to learn about in this
25 case and why FAIR Health is important is this, United had an obligation

1 to use FAIR Health for a certain period of time. They had the duty. They
2 had an obligation to use FAIR Health. And then they stopped. And when
3 they stopped, that's when all reimbursement rates started declining.
4 When their duty to use FAIR Health was lifted from them, that's when
5 different business plans began being implemented, being discussed and
6 then implemented so as to drop the reimbursement rates to emergency
7 medical providers.

8 Now, the other thing I'm going to discuss is this: Those of us
9 who live in the desert are all familiar with brush fires. A brush fire, while
10 a little fire, it will detract your attention from the big flame that's going
11 on. The big flame that's going on are the 11,500 claims that they've
12 short-changed us on. What United will want to do, and what we've
13 learned is what United had planned to do is get you to distract your
14 attention with brush fire.

15 They are alleging that 254 of those claims were submitted
16 under the wrong tax identification number. A TIN. That's what they call
17 a sub-TIN. Tax identification number. Their contention is is that the
18 services that were being provided here in Southern Nevada were being
19 submitted under the tax identification number of folks of Ruby Crest
20 affiliate up in Elko. And they're going to allege that those 254 claims are
21 evidence of fraud. And they define fraud as trying to get more money
22 than what you are entitled to.

23 What they will not tell you and what we're going to have to
24 flush out with the exhibits and what we're going to have to flush out on
25 the evidence and the testimony is this: Is that every single one of those

1 254 claims that were submitted identified the provider as being from
2 here in Southern Nevada, it identified the location of the provider as
3 being here in Southern Nevada, and it used the price that was applicable
4 for that particular claim here in Southern Nevada. And what they also
5 won't tell you is the Ruby Crest price is actually lower than the
6 Freemont -- than the Freemont price, than the Southern Nevada price. In
7 other words, there's geographic adjustments based upon lots of different
8 metrics that go into those geographic adjustments that we will discuss.
9 But it was cheaper under the claim in Ruby Crest up in Elko than what
10 was here in Southern Nevada. So all of those claims then that were
11 submitted as far as under a sub-TIN issue did not result in any more
12 payment to us. And, in fact, if it would have been paid at face value, it
13 would have been less money.

14 So what I'm suggesting to you, Ladies and Gentlemen, is that
15 there is no fraud as they will claim. We believe it is a brush fire to try to
16 detract your attention from the main event, and that main event is 11,500
17 claims. And when the Judge gives you the jury instructions at the end of
18 this case, you're going to be able to decide who was actually cheating or
19 trying to put their thumb on the scales of justice.

20 And, with that, I'm going to turn it over to my colleague,
21 Mr. Ahmad, to describe the next phrase then of our presentation. Thank
22 you.

23 MR. AHMAD: Thanks, Pat. Do I need a microphone, Nicole?

24 THE CLERK: Yes, please.

25 [Pause]

1 [Counsel and Clerk confer]

2 MR. AHMAD: How is that? Can everyone hear me? Great.
3 Well, good morning. My name is Joe Ahmad. I'm here as the second
4 part to a three-part series. You have heard from my colleague Pat
5 Lundvall. I will speak. My name is Joe Ahmad. And after I am done,
6 Mr. Kevin Leyendecker, another one of my colleagues, will finish this up.

7 On behalf of our team, there are two other members I'd like
8 you to meet. I think some of you had met Dr. Scott Scherr who's with us
9 today, one of our medical directors, and also with us is Dr. Suzanne
10 Rosenthal [phonetic], who is our assistant program director of our
11 residency program.

12 And I'd like to continue on and talk about, in a little bit more
13 detail, about some things that you already heard, and it goes to the
14 central issue of why are we here. In short, we are here to get our unpaid
15 balances. That's what we are here for. We will demonstrate throughout
16 this case that those charges are reasonable, and yet we were paid far
17 less than what our billed charges were.

18 Now, a little bit more about our system. I think you heard
19 from Ms. Lundvall that we have to treat, unlike every -- other doctors,
20 and actually unlike urgent care centers. Urgent care centers can reject
21 patients based on their ability to pay. We cannot. We treat everyone.
22 That means we treat the uninsured and we treat those that pay at a
23 government rate, which you will hear is less than -- far less than
24 reasonable value, patients with Medicaid and Medicare, and then, of
25 course, we have those who have insurance, such as United. And in this

1 case, United has taken the amounts that we have billed and paid
2 80 percent less. And so while United has the ability and the right to
3 insure who it wants to insure, they can choose who they want to insure,
4 we have to take their -- all their members, in fact, everyone. And then
5 when we provide the service, we bill it, and then we find out what they
6 have selected to us as payment.

7 So no law requires them to sell health insurance, but if they
8 do, one thing we will demonstrate is they should pay the reasonable
9 value of the doctors, nurse practitioners who provided these services
10 and had been waiting for full payment.

11 Now, you're going to hear some terms in this case. You'll
12 hear terms such as reasonable and customary. Sometimes abbreviated
13 as R and C. You will hear usual, customary, and reasonable or also
14 abbreviated as UCR. Why will you hear those terms? Because these are
15 terms that United uses. These will be in United documents. They will
16 discuss what reasonable value is. You will see, for example, out of
17 network benefits. That's us. We are out of network. You will
18 sometimes, by the way, see out-of-network abbreviated OON. They say
19 they will pay the lower of the actual billed charges or what is the
20 reasonable and customary amount. Also the usual, customary, and
21 reasonable amount. You will see in this case we agree with that. If the
22 billed charges are greater than reasonable, we should get what's
23 reasonable. And United knows very well what is reasonable.

24 They have or had a system to pay what is reasonable. And
25 how do we know? Well, you heard about FAIR Health. United and

1 others use FAIR Health. Use this database of charges from not just
2 United, but I think approximately 60 or more insurance companies. So it
3 is a large database of information. And they use what's called the 80th
4 percentile to calculate what is reasonable.

5 And you'll hear about FAIR Health and its reliability. How it's
6 objective. It is a third-party. Its information is audited. Outlier claims
7 are removed. Erroneous statements checked for. And you don't have to
8 take our word for it. United's own retained expert -- and in this case you
9 will hear from a number of experts that are retained by the various sides.
10 Their expert verified that the data in the FAIR Health database is reliable
11 and objective.

12 Now, one thing you will not hear is that FAIR Health, they
13 just maintain the information, the database. And it is absolutely true.
14 And you will hear that FAIR Health does not make any judgment on what
15 is reasonable. FAIR Health has the database. Whether they may provide
16 this database, this is United and others that when they were paying the
17 reasonable amount selected the 80th percentile of that database.

18 You will see, for example, John Haben, United's
19 Vice President of Out-of-Network Programs, talking about how
20 reasonable and customary physician program price them at the FAIR
21 Health 80th percentile. You will see that in United's documents.
22 Reasonable and customary for out of network, FAIR Health 80th
23 percentile. We will demonstrate to you in this case that 80th percentile is
24 reasonable, United has acknowledged it is reasonable, and that our
25 billed charges on average are at or actually a little bit under FAIR Health

1 80th percentile. Reasonable and customary; usual, customary, and
2 reasonable, as those terms are used even in United documents, they
3 have acknowledged is the 80th percentile of FAIR Health. And that we
4 will demonstrate that we are at or below on average the 80th percentile
5 of FAIR Health.

6 Now, one thing you will see is charges by code. And you see
7 a code up here, 99285. You've heard about the different levels of
8 severity. You can look at the last number, 5. That is level 5. That is the
9 highest severity. And by the way, yes, we see a lot of those. As you will
10 hear from our doctors, particularly Dr. Scherr, our hospitals are very
11 busy. Sunrise is the biggest emergency room in the state of Nevada.
12 They get about 150 ambulances per day.

13 So you will see a lot of 99285, and other charges. And you
14 will see that our charges are in line with FAIR Health. We will prove that.
15 And that will be our proof of what is reasonable. We will also show that
16 our charges are in line with what others charge. Actually, others charge
17 slightly more. So we will demonstrate reasonable, 80th percentile FAIR
18 Health, our billed charges. Well, we're actually a smidge lower than that.

19 So what happened? United was at 80th percentile, paying
20 that as reasonable and customary. Well, in this case, you heard a little
21 bit about these internal memos shared at the highest level at United.
22 You will see a five-year scheme that United developed. That scheme
23 was to move away from reasonable and customary into something much
24 lower. Why? To generate more revenue. And they did this in two ways.
25 You will hear about fully insured programs where United is actually

1 coming out of pocket for the payment. They pay the claims. So
2 obviously if they pay less, they keep more.

3 [Cell phone ringing]

4 MR. AHMAD: I hope that's not my phone. No. I don't have
5 that ring.

6 The other way they do it, is if they act as a third-party
7 administrator for someone else who actually pays the charges out of
8 pocket. That is called self-insured. For example, if you have a
9 particularly large employer, they may accept the responsibility of
10 essentially insuring the claims themselves. And they will hire someone
11 like United to act as a third-party administrator.

12 And in this five-year scheme, you will see that United
13 develops programs where they will take. As one of their fees, they
14 developed a fee that will take a cut of the amount that they pay less than
15 the bill charge. They take 35 percent. They did not tell us about this cut.
16 They did not tell us that that was happening.

17 What you will see is they developed a myriad of programs.
18 That's what they did tell us about. Why? These programs were
19 developed to get them off of reasonable and customary. One of those
20 programs you'll hear about is SSP or SSPE, Shared Savings Plan
21 Enhanced. Shared Savings because of course, now United is going to
22 take a cut, 35 percent of those savings for the Employer. But in order to
23 get that cut, they have to be under reasonable and customary. The more
24 they are under reasonable and customary, the more they are cut.

25 So the goal is to get them off of reasonable and customary,

1 get them off of fair health. Why? Generate additional savings by not
2 running claims through U&C, usual and customary, and driving their
3 seat back in an OON, out-of-network, to more aggressive pricing. And
4 you will see the evidence of the five-year scheme, which moves further
5 and further down from reasonable and customary, driving, as they
6 would say, additional savings and additional money for United.

7 And like I said, they came up with programs to cover up and
8 cloud what they are doing. Those aren't my speaker notes. That's
9 actually what is on the internal United document. And there's a list --
10 well, there's sort of a list of some of the programs that they came up
11 with. And you will hear about many of these programs designed to
12 cloud what is really going on.

13 One example is something called Data iSight. A small
14 percentage of these claims were paid, allegedly, using Data iSight.
15 United would send us and send their members, too, that -- when we
16 sent -- submitted a bill and they came up with a payment that was much
17 lower, they told us that they were using -- or they sent it out to a
18 company called MultiPlan that was using this patented reference-based
19 methodology, or proprietary methodology, Data iSight. That's what they
20 told us.

21 You can imagine, we tried to figure out how does Data iSight
22 come up with their numbers. These numbers are, as you will see, far
23 less than reasonable and customary. No one could explain that. And to
24 this day, I don't think anyone will come to court and explain how Data
25 iSight would arrive at its numbers. Now, sure, this is a small percentage

1 of claims. But it is an example of how the process was kept up. And we
2 could not figure out how this Data iSight process worked.

3 Another part of the scheme is United came up with their own
4 percentages. And they used what is a percentage -- it will sound like a
5 high percentage, such as 350 percent and 250 percent of CMS. What is
6 CMS? Medicare. Number one, United came up with a system where
7 they would essentially forget about -- they may tell you it's Data iSight.
8 But what you will see in reality is it is a number that United picks. The
9 300 -- or 350 or 250. And they did something else. They made a
10 conscious effort. Instead of talking about percentages of our billed
11 charges, knowing that that would sound rather snippy because it would
12 be a tiny fraction of billed charges, they made a conscious decision to
13 change the narrative by using percentages of Medicare because it would
14 sound higher. And that's what they did.

15 And again, they would claim it was being used -- that
16 proprietary methodology was coming up with the number, when in fact,
17 they instructed Data iSight to pay at a certain rate. And they were told it
18 was Data iSight reference-based methodology. We learn in this case
19 that the number came from United, at a number they selected, a number
20 designed to save and make them quite a bit.

21 And so that is why we are here. To get our bill charges. To
22 get what is reasonable value. To get what we will show is at or slightly
23 lower than fair. I'm going to turn it over to Mr. Leyendecker, who will
24 finish this up. Thank you all.

25 MR. LEYENDECKER: Thank you, Joe.

1 Good morning. Here's a dirty little secret about lawyers. We
2 like the sound of our own voices. And the thing we like more after we
3 work really hard --

4 MR. AHMAD: Hey, Kevin. If you want to hear your own
5 voice, or have them hear it --

6 MR. LEYENDECKER: I think I'm loud enough. How do I turn
7 this off?

8 The thing we like almost as much as the sound of our own
9 voice, is to show just how good of a job we've done stifling through all
10 the pieces of paper, right, getting it all organized. And I know we're
11 overloading you all with a bunch of information. So before I show you a
12 few more snippets of the documents that are inside of United's files, I
13 just want to take a moment and get us back out to what I call 30,000-foot-
14 high elevation.

15 We've got a dispute. As you heard Ms. Lundvall, we provide
16 the service. They know they have to pay for the service. Just the core of
17 the dispute is, are they paying the fair amount, the reasonable amount of
18 services. So that's at 30,000-feet. All right. I'm going to show you how
19 United, and its clients interacted. They were sly at the moment. What
20 that world looked like before they started scheming. And make no
21 mistake about it, we do think they were scheming. Okay.

22 I'm then going to show you a few slides on the impact of that
23 behavior on the patients, on the employers that -- whose insurance
24 money they're spending, and on my clients. All right. And then to wrap
25 it up, I'm going to show you and talk to you a little bit about the legal

1 claims at issue in the case. Your Honor at the end is going to give you
2 the formal instructions. My version, which you're going to see is sort of
3 translated to plain English. But be clear, Your Honor's going to give you
4 the instructions, but we're going to cover those two.

5 So without further ado, okay, what's really going on? What
6 is United and the employers -- how were they adjudicating and paying
7 claims before they started what we say, scheming? And in that world, as
8 you heard from Mr. Ahmad, usual and customary, UCR, a variety of
9 acronyms, right. What those stand for are reasonable and customary
10 charges. And before they started doing what we're unhappy about,
11 right, there's a reference to FAIR health. You're going to hear a lot of
12 evidence, FAIR health is fair, any type of FAIR health are reasonable
13 charges.

14 And before things went south, United -- a majority of their
15 ASO clients -- ASO stands for administrative services only. And I didn't
16 realize it until I started this case, but most of the health insurance in the
17 country is through the employer. And so when you see ASO,
18 administrative service only, that's United acting as the administrator for
19 employer paid for health insurance. And what this document shows is is
20 that a majority of those employers were paying based on this UCR
21 concept.

22 Now, how do you change the narrative about what should be
23 going on in healthcare? The first thing you do is you start manipulating
24 public opinion. And what you're going to hear evidence about is in this
25 case, United set about on a strategy, right, to get national story that

1 quotes United statistics and spokespeople, and list supportive third
2 parties to speak out, creating a surround sound approach. And one of
3 the things United did was to interact with a professor at Yale University,
4 Zack Cooper.

5 All right. So let's feed somebody information, highly
6 recommendable person, Yale University. And he's going to be our
7 talking point. We're going to do it at the national and the local market.
8 Right. Everything we're doing to support the Cooper work. But their
9 support is going to remain behind the scenes. So like at election time,
10 when you see eyes in one direction or the other and it's like, Americans
11 for America. Right. What is that? You know there's something going on
12 behind the scenes. Well, United's strategy of manipulating the public
13 opinion was to get spokespersons, like this gentleman professor at Yale,
14 feed him the information, but remain behind the scenes. All right.

15 Here's an email, Mr. Cooper corresponding with folks at
16 United. "I've had extensive discussions with reporting team at the New
17 York Times. Their one request is the ability to identify team health. But
18 we've taken steps to make sure that UHG" -- that's United Healthcare
19 Group. That's the umbrella over the whole enchilada -- "is not named."
20 Okay. They give you an article. Mr. Cooper writes an article. It gets
21 picked up in the New York Times. All right. Internally, we're talking
22 about it. There he is, Zack Cooper, story in the New York Times. Dan
23 Rosenthal, very high-ranking United executive at the time this happens.
24 Nice. Good job. Okay. Change the narrative, then change the
25 programs.

1 And so what I'm about to show you is a handful of these
2 programs. And they're all targeted at eliminating the thing the
3 employers were perfectly happy, and content, and it worked just fine,
4 which is paying that UCR. Now, I'm going to predict that you're going to
5 hear a lot of information from the United side of this case about oh, the
6 cost, the ER doctors' charges are out of control, skyrocket -- skyrocketing
7 charges. But I want you all to pay really close attention because what I
8 think you're going to hear is the charges were actually level or going
9 down, and everything was working just fine. But if you want to
10 manipulate the public opinion, you've got to have a good story -- behind
11 the scenes good story. Okay.

12 Benchmark pricing, one of the dozens of these programs
13 targeting non-par. Let me stop right there. Whenever I see a word that's
14 a little unusual, I want to explain that. Non-par means non-participating.
15 You have participating doctors in networks, and non-participating. So
16 non-par is the same as out of network. Target out-of-network spend,
17 that's at 100 percent of billed charges. Right. That's the world that the
18 employers were happy with, but the world United wants to change.

19 Outlier cost management, same thing. Claims that don't
20 have any non-par program are paid at billed charges. They know this.
21 This is what they want to change because they claim things are out of
22 control. But as you're going to see in a few minutes, we don't think
23 that's why they changed them.

24 Certificate of coverage. Those of you that have ever checked
25 your insurance for like the fine print and the detail of what's what, you're

1 looking at what's called a certificate of coverage. And here's an example
2 from 2018. That's the contract between the patient with the insured and
3 United, where it spelled out what's going to be covered, how's it going
4 to be paid, et cetera, et cetera. And in 2018, this certificate of coverage
5 says, okay, for emergency health services provided to a non-network
6 provider -- there's another word. Non-par, non-network, those are all the
7 same as out of network. So ER out-of-network. The eligible expense is
8 the agreed upon rate, right, or the higher of the usual reasonable or
9 customary amount, the median amount negotiated with network, or 110
10 percent of CMS. That's a reference to Medicare. 110 percent of
11 Medicare.

12 2018, the greater of usual UCR in these other two. 2019,
13 same company. Look what happens. We've got items two and three.
14 But we have removed item one, number one UCR. Okay. Data iSight we
15 heard from Mr. Ahmad. Third-party extensively patented, proprietary
16 system for gathering and figuring out what's fair. Right. This is how
17 United inside thinks of iSight. Right. Legally sound process. Let that
18 soak in. Inside their offices, they're recognizing that iSight third-party
19 can be a legally sound process to generate a reasonable discount off the
20 charge. And they're debating, are we going to use that, or our own
21 random calculated amounts.

22 As you saw, you're going to hear from Mr. Haben, the first
23 witness in the case. And let me forewarn you, we're going to cover East
24 Coast to West Coast, North America to South America. You're going to
25 hear soup to nuts over the course of probably three days from Mr.

1 Haben. And so I'm going to ask you to just -- the whole story is going to
2 be unveiled there. So as best you can, remain patient and focused. It's
3 going to be very entertaining and very interesting. All right.

4 He's acknowledging right here. He's going to acknowledge
5 what that last slide just showed. We're going to tell you a little bit more.
6 Okay. Is United concerned about their members? Members is another
7 word for patient, or the person that has the insurance. "Maybe one
8 omission happened." That's what I'm calling a scheme, their omission. I
9 think it's a scheme. "Moving more claims to OON," that stands for out-
10 of-network. "Moving more claims to out of network program solutions
11 that have more member responsibility, greater member liability." This is
12 their document. Look at the acronym right here they got out to the side.
13 You're going to get to judge what you want to do about that.

14 Okay. This is my favorite part, honestly. This last piece right
15 here. You see, for me, you don't have to go look for a loophole if you
16 write it in your own agreement with your members. So that when they
17 call and they're squawking about why am I paying more of the bill, the
18 person answering that call is going to say, well, just go look over there
19 on page 48 in section 71, a little high, sub 2. We've told you in the fine
20 print, you might have to pay more when we process them through these
21 programs. Do they care about members?

22 Okay. Here it is. Brass tacks. 2016, United was paying about
23 99 percent of the money that was going to the healthcare providers, DR
24 providers. It's going down and down and down and down, and in 2019,
25 they're down to only paying 82 percent of the bill, right? And look what

1 happening to the patients. This is the document I just showed you.
2 You're going to hear the evidence for this, ladies and gentlemen. Do
3 they care about their members? How about the employer clients? All
4 right? That's another document you're going to see.

5 This document, I'm going to take a moment to just explain it.
6 It's a little more detailed. It's an example claim where there's a 60
7 percent coinsurance. The bill charge is a thousand. The reasonable and
8 customary would be \$600. So in a world where they're paying a
9 reasonable and customary, a discount off that full bill charge, a
10 reasonable discount, the pay would be \$600. That's the world they used
11 to be in. And in that world, the employer's 60 percent is \$360. All right?
12 The rest would come from the patient, their copay, whatever the case
13 may be. As Ms. Lundvall told you all, we don't balance the bill
14 [indiscernible]. But if you adjudicate it at a reasonable discount off the
15 top, then fine, we'll go on down the road.

16 But in the new world, all right, where they can take a 35
17 percent fee, same claim, the employer pays more. Now, in the world
18 where they want to go and where they went, where the employer pays
19 more, the doctor is going from 600 to 300. So the doctors get less, the
20 patients have to pay more of the bill, and the employers have to pay
21 more of the bill. All right?

22 Mr. Haben. All right. You're going to hear from him. He's
23 going to acknowledge the net effect of these programs is we're cutting
24 more than half. All right. Patient pays more of the share. Now, they're
25 going to tell you, okay, if I lower the bill, then the patient's percentage is

1 going to lower the overall dollars to the patient, and that's
2 mathematically true. But they're putting a greater percentage of the
3 responsibility on the patient. You all are going to get to decide whether
4 you think that's good corporate citizen behavior.

5 Okay. Thirty-five percent. All right. There it is. Thirty-five
6 percent of the savings. Well, what's the savings? The savings is the
7 difference between the bill charges and the allowed amount. So in one
8 world, it's okay to make your own fee as a function of the bill charge.
9 That's United's world. But in the doctor world, no, no, no. We want to
10 give you a fee based on Medicare. That's what's at stake here, folks.
11 And this is what they've been doing.

12 2017, those are the average amounts per claim that ER
13 Providers -- and make no mistake, those are doctors, those are nurse
14 practitioners, those are physician's assistants. Those are the people, the
15 providers and staff, in the ERs here in and around Las Vegas, up
16 northeast, northwest. Down to 187. And so you bet your boots that at
17 some point, we're going to say enough is enough. And that's why we're
18 here.

19 Now, let that sink in for a moment. How can the bill charge
20 be the reasonable value of the service if the vast majority of the time, my
21 clients are not paid the bill charge? Okay. That's a fair question. You
22 know why 99 percent of the time we don't get paid the bill charge?
23 Because 99 percent of the time, insurance companies, everyone besides
24 United, pays us a fair and reasonable discount off what they owe. And in
25 the real world, if somebody pays you a little bit of a discount on what's

1 fair, you're just going to go on down the road. It's not worth the time it
2 takes to fight about it. But if you're going to do this, then you're going to
3 have a fight. And that's why we're here.

4 So -- okay. How much did they make in 2020? If I shift it
5 from the world they used to use with their employers to the new world,
6 in 2020 alone? These are the claims. Four basic claims. And as I told
7 you all, Your Honor is going to give you the technical legal instructions
8 and descriptions of what those claims are. I'm going to talk about the
9 first one, unfair insurance practices, in a little bit of detail. And then I'm
10 going to touch on the others.

11 So what's -- I believe Your Honor is going to tell you all that
12 unfair insurance practice is failing to effectuate a fair and equitable
13 settlement of claims when liability has become clear. Pretty
14 straightforward. United pays us on average 247. That's what they paid
15 all the other ER providers in the valley. Think about that, manipulating
16 public opinion. And the one thing the New York Times wanted; can we
17 name TeamHealth to keep us [indiscernible].

18 Now, are we doing our part? As Ms. Lundvall told you all,
19 they asked us, are you going to balance bill our patients? And we said,
20 no. No, ma'am, no, sir. We're not going to do that. And we didn't. All
21 right? We're doing our part of that, too. Is liability clear? They paid on
22 every single claim in this case. Do you think they did that because they
23 thought they didn't owe us any money? No. They know they owe. The
24 fight is not whether there's an agreement of whether they have to pay
25 us. The fight is whether the amount they paid is the reasonable value of

1 the service.

2 The damages, the difference between the usual, reasonable
3 and customary, UCR, and what they paid. They told us think about it.
4 We say in this case, if you're going to get down the road all these years
5 and not do what everybody else does and have, you know, a reasonable
6 discount off what you know you owe, then you owe us the full amount.
7 That's the bill charge. All right.

8 Unjust enrichment. That's another legal claim. That's
9 essentially accepting a benefit without paying a reasonable value. The
10 benefit is we are discharging their obligation to pay for the healthcare for
11 their insurance as a benefit to them by not balance billing their
12 members. That's a benefit to the Defendants, because when doctors
13 send a big bill to the patient, to the member, a lot of times, the patient
14 will call the insurance company and be unhappy about that. Why didn't
15 you pay more? All right. Well, when we don't balance bill our patients,
16 that saves them -- you're going to hear member abrasion. That saves
17 them from all those phone calls of unhappy members. That's a huge
18 benefit to them.

19 Implied contract. Implied contract is a legal concept that
20 focuses on the conduct of the parties. They're -- if you stop and think
21 about it, you realize all of you all have implied contracts all day long.
22 You go -- Thursday night is Mexican food night with my wife now that
23 my kids are grown. And so we like to go to Mexican restaurants. And I'll
24 say I want a margarita on the rocks. All right. I'm not asking how much.
25 But when I tell the waitress or the waitperson that I want that and they

1 bring it, there's an implied agreement that I'm going to pay for it. It's
2 just that simple. Okay?

3 Prompt pay, another legal claim. Judge is going to give you
4 the instruction. My version in plain English is paying only part of the
5 claim that you know you owe. And so our view on that is yes, you paid
6 the claim, but you only paid a part of what you owe. So we're going to
7 at the end of the day tell you that they violated the prompt pay statute.
8 Now, one of the simpler, nicer things about this case is I expect all the
9 various legal claims will be analyzed with a very similar damage model,
10 which is what's the kind of UCR, what do they pay, you know, what's the
11 typical underpayment. So whether that's unjust enrichment or implied
12 contract, prompt pay or unfair insurance practices, I believe we're going
13 to be able to evaluate all of that from this same basic model, all right?

14 And so when you take the number of claims at issue and the
15 amount that we say they've underpaid us, that's the ten and a half
16 million dollars. A smidge under that, but that's the ten and a half million
17 dollars we've been talking about for several days. But that's going to be
18 your choice.

19 Okay. As I suggested a few minutes ago, John Haben, the
20 United employee in charge of this whole deal, all these out of network
21 programs, first witness in the case. There's a lot to cover with him. All
22 right? I believe you're going to find it interesting, very entertaining at
23 times, but it's going to be three days. So give us some time to get it all
24 out. I appreciate your time this morning. Thank you very much.

25 THE COURT: Will the counsel please approach?

1 [Sidebar at 11:35 a.m., ending at 11:36 a.m., not transcribed]

2 THE COURT: All right. So we are going to take a long lunch
3 today because the Defendant will give their opening this afternoon. I
4 don't want it to get cut up by the lunch break. So lunch is being
5 provided for you during the trial. The two parties jointly are providing
6 box lunches for you during the trial. If you have any dietary restrictions,
7 please let the marshal know, or if you have any preferences or
8 restrictions.

9 I'll give you the admonishment, but we won't be back until
10 1:15 today. And during the recess, do not talk with each other or anyone
11 else on any subject connected with the trial. Don't read, watch, or listen
12 to any report of or commentary on the trial. Don't discuss this case with
13 anyone connected to it by any medium of information, including without
14 limitation newspapers, television, radio, internet, cell phones, or texting.

15 Don't conduct any research on your own relating to the case.
16 Don't consult dictionaries, use the internet, or use any reference
17 materials. If anyone should try to talk to you during the recess, inform
18 the marshal immediately.

19 And you may not conduct any investigation, test any theory
20 of the case, recreate any aspect of the case, or in any other way
21 investigate or learn about it on your own. Don't talk, text, tweet, Google,
22 any social media, or conduct any other type of book or computer
23 research with regard to any issue, party, witness, or attorney involved in
24 the case.

25 Most importantly, do not form or express any opinion on any

1 subject connected with the trial until the jury goes back to deliberate.
2 Thank you for your kind attention. Please give that same kind attention
3 to the Defense when they do their opening and have a nice lunch.

4 THE MARSHAL: All rise for the jury.

5 [Jury out at 11:37 a.m.]

6 THE COURT: And you guys will come back at 1:10 to put
7 your issues on the record. Thank you. Court is in recess.

8 [Recess taken from 11:38:20 a.m. to 1:20 p.m.]

9 [Outside the presence of the jury]

10 THE COURT: My apologies to all of you for being late. Mr.
11 Blalack, will you be ready to make those records now?

12 MR. BLALACK: Yes, Your Honor. So the first objection
13 during opening arguments -- argument -- oh, sure.

14 MR. ROBERTS: Sorry, sorry. I'm going to make that first
15 one, Your Honor.

16 THE COURT: Thank you.

17 MR. ROBERTS: Because I'm the one who poked Mr. Blalack
18 to get up and object. And as you recall, this was right at the beginning
19 and what plaintiff's counsel said was you know, most cases, jury, you're
20 just about money and moving money from one corporate pocket to
21 another, but this case is about the quality of healthcare in Nevada. And
22 that's what we objected to.

23 And we objected first because our -- it's sort of the common
24 honored rule of evidence clause is if you'll be able to prove what you say
25 with a witness on the stand or a piece of evidence, you're probably not

1 arguing. And I would submit to you that there's not a single bit of
2 admissible evidence on the proposed exhibits in this case which would
3 prove that how much the jury awards is going to have any effect on the
4 quality of healthcare in Nevada. And in fact, this is not only argument,
5 it's improper argument under *Lioce* and *Gunderson* (phonetic). And the
6 part of *Lioce* I wanted to draw the Court's attention to --

7 THE COURT: I have it up here.

8 MR. ROBERTS: Thank you, Your Honor. Where the Supreme
9 Court defined jury nullification as the jury's knowing and deliberate
10 rejection of the evidence or refusal to apply the law because the jury
11 wants to send a message about some social issue larger than the case
12 itself. And that attorney arguments suggesting to the jury that if they
13 found in their favor, they could remedy some social ill is entirely
14 improper because it encourages the jury nullification.

15 And *Gunderson* confirmed that and explained that an
16 attorney violates RPC 3.4(e) if the attorney is either alluding to a matter
17 that is irrelevant given the law, or unsupported by admissible evidence
18 given the facts which exactly is what telling the jury that this case is
19 about the quality of care in Nevada. This is not an issue before the jury.
20 And they did it at the beginning before they even talked about any
21 evidence, that they had an opportunity through their verdict to improve
22 healthcare in Nevada. Who's going to vote against that?

23 And I want to say, Your Honor, that under this Court's
24 rulings, this is a rate of payment case. That's what this case is now
25 about. Whether the rates we paid were reasonable. And even though

1 they've got several other causes of action, there is going to be no claim
2 which would allow the jury to make a finding that's going to improve the
3 healthcare in Nevada.

4 And if this was an issue, then we would be able to prove
5 things like the amount we paid per visit was more than the actual cost to
6 the provider of care as shown on their own internal documents. We
7 would be able to show the jury that there's no evidence that a single
8 penny of any money they award will actually go to the physicians and
9 nurses who provided the services. Not a single penny, and instead will
10 go to line and increase the profits in the corporate coffers of their private
11 equity care.

12 So that is in the jury's mind right now, and it's totally
13 improper for them to be stewing on that the whole trial and thinking that
14 that's what the case is about because this Court has overruled our
15 objection.

16 So I would ask this Court to reconsider its ruling on our
17 objection and to give a curative instruction because a curative instruction
18 at this stage, under our case law, can still fix it. And that's what we ask
19 the Court to do. Thank you, Your Honor.

20 THE COURT: Thank you. Any response, please?

21 MS. LUNDVALL: Thank you, Your Honor. I'm not going to
22 be as animated as Mr. Roberts because I think that this issue is much
23 more simple issue especially given the presentation that he gave.

24 One of the things that we complained to you was that there
25 wasn't a single exhibit that was going to be presented to this jury that

1 spoke to an opportunity to improve the quality of care here in Nevada.
2 What he didn't make any mention of was oral testimony. And as the
3 Court well knows, oral testimony from the witness stand is no different
4 than what's on a written page. And we have witnesses that will provide
5 oral testimony speaking to the fact in essence, you get what you pay for.

6 And so to the extent that we have evidence that we intend to
7 present to the jury and will present to the jury, this speaks to that very
8 issue and it takes it out of, number one, his contention that what I was
9 doing was arguing to the jury rather than forecasting what the evidence
10 will be.

11 Second point is that he suggested somehow that the
12 argument, I'm going to call it my presentation, invited jury nullification.
13 Jury nullification is when jurors are asked to ignore what the law is.
14 There was nothing even remotely touching upon the idea where I
15 suggested that somehow they had the ability to ignore what the law is.
16 In fact, what we want them to do is to embrace and to apply the law. So
17 nothing even remotely close to the idea that we were asking them to
18 nullify the instructions that the Court would give them. And so therefore,
19 we would ask the Court to deny the request for a curative instruction.

20 THE COURT: Thank you. Do you have a brief reply?

21 MR. ROBERTS: Yes, Your Honor. I think the law shows that
22 it's not just asking the jury but encouraging or inferring. And the quality
23 of medical services and the ability to improve that quality, it had nothing
24 -- it just doesn't have anything to do with this case.

25 And I would add one quick thing that Ms. Lundvall can reply

1 to. But I would remind the Court that we moved for summary judgment
2 on their count seeking a declaratory judgment to force us to pay more
3 money in the future. And they withdrew that because we had opposed it
4 because guess what? There's no Nevada statute which imposes a
5 mandatory process for settling the amount of reimbursement of out of
6 network claims and that's been in place now, I think since January 1st of
7 2020.

8 So there is nothing this jury can do that would increase the
9 amount that insurance companies or if the defendants pay them in the
10 future for medical care. There is nothing they can do to improve the
11 quality of medical care because the amount set for reimbursement of out
12 of network emergency department services is now determined by a
13 statutory process, not this jury's verdict. Thank you, Your Honor.

14 THE COURT: All right. I'm going to stay with the ruling and
15 let's bring the jury in.

16 MR. BLALACK: Your Honor, I have one more record if I can
17 make it?

18 THE COURT: Yes. Just get them ready and then I'll give you
19 the high sign. Yes?

20 MR. BLALACK: Your Honor, I think the last objection was to
21 the in that the argument or presentation regarding the Ingenix
22 settlement, which we addressed in the hall, and I think the Court
23 resolved that in a way that resulted in nothing objectionable from our
24 side.

25 THE COURT: I think you objected before we knew where it

1 was going, and we talked about it in the hall.

2 MR. BLALACK: Thank you, Your Honor.

3 THE COURT: All right. Good, so we'll bring the jury in as
4 soon as I get the high sign.

5 MS. LUNDVALL: Thank you, Your Honor. If the Court needs
6 any further record, what we found, have been able to pull up is the
7 Court's ruling on that motion in limine dealing with the Ingenix
8 settlement. And I think that when you actually look at the transcript and
9 the Court's ruling as well as the written ruling, what you will learn is that
10 we didn't even go as far as what the Court allowed us to do. And so we
11 were two steps back from what the Court's ruling was, and therefore, we
12 believe that the Court's ruling was the right thing -- was proper in the
13 first place.

14 THE COURT: Thank you all.

15 THE MARSHAL: All rise for the jury.

16 [Jury in at 1:30 p.m.]

17 THE COURT: Thank you. Please be seated.

18 Mr. Blalack, does the Defendant wish to present an opening
19 statement?

20 MR. BLALACK: We would, Your Honor. Thank you.

21 THE COURT: Someone on the phone needs to mute
22 themselves. We hear paper. Go ahead, please.

23 DEFENDANT'S OPENING STATEMENT

24 MR. BLALACK: The evidence will show that this lawsuit is
25 part of a deliberate strategy to jack up the cost of emergency medicine

1 services and then hide the bill that the TeamHealth claims are sending
2 Nevada employers and employees.

3 Ladies and gentlemen, my name is Lee Blalack, along with
4 my colleagues, Lee Roberts who you now know all too well. Jeff
5 Gordon, my colleague, Nadia Farjood, we represent the defendants in
6 this case. There's five of them: United Healthcare, United Healthcare
7 Insurance Company, Health Plan of Nevada, Sierra Health and also UMR.

8 I'd also like to introduce my client -- one of my clients, Dr.
9 Wu. You want to stand, sir? He is the medical director for Health Plan of
10 Nevada, and also my colleague -- I think -- is Dan Polsenberg in the
11 room?

12 MR. POLSENBERG: He is.

13 MR. BLALACK: He's one of our colleagues who is helping us
14 in this case.

15 Ladies and gentlemen, the plaintiffs in this case are three
16 companies that are owned by TeamHealth Holdings which is the largest
17 emergency room staffing company in the country. It is based in
18 Tennessee.

19 TeamHealth in turn is owned by the Wallstreet private equity
20 giant, Belasko. The proof will show that the TeamHealth plaintiffs hire
21 ER positions as independent contractors, not employees, and then enter
22 agreements with hospitals to staff ERs at those hospitals. TeamHealth
23 then bills out plans and health insurance like my clients for the services
24 rendered by the ER doctors with whom they contract.

25 At its core of this lawsuit is what is about the reasonable

1 payment for ER services that the TeamHealth plaintiffs rendered at 10
2 hospitals across Nevada from July 1, 2017 to January 31, 2020. It's
3 important to stress that in this case, TeamHealth Plan has already been
4 paid for their services.

5 The dispute here is not over whether my clients should pay
6 for the ER services. You've already heard Mr. Leyendecker and Ms.
7 Lundvall say that we had already paid and there's no dispute about that.
8 So this is not a case about an insurance company denying benefit claim.
9 The argument here is about how much of reimbursement is due to the
10 plaintiffs for those claims.

11 The evidence will show that my clients have already allowed
12 payment of \$2.84 million on these claims. They want you to give them
13 an additional \$10.4 million on top of that, that from the amounts that
14 they have already received from my client, nearly three times more.

15 But the important thing to remember as you're listening to
16 the evidence in this case is that there was no previously agreed or
17 understood agreement or handshake agreement between the parties as
18 to the amount that was owed for these services. The TeamHealth
19 witnesses you will hear in this trial will also concede that there is no
20 Nevada statute, or regulation, or government book that sets a fee
21 schedule or a payment methodology that must be used to reimburse the
22 disputed services.

23 You will hear their witnesses tell you that they had a written
24 contract with my clients that specified the payment amount that was
25 owed for these services. They will also tell you there was no oral

1 contract between the parties, not even a handshake. You see, the proof
2 will show that the TeamHealth Plans were non participating in what you
3 heard called out of network providers. And as a result, they are not
4 entitled to payment of their full billed charges under Nevada law, only
5 the reasonable value of those services.

6 Now the TeamHealth Plan has asserted that the reasonable
7 value of the disputed services is whatever they say it is. Or put another
8 way, whatever they decide to charge. You just heard their lawyers claim
9 that they should be paid for those charges. That they will admit in their
10 testimony, the witnesses' testimony, that the -- they set those charges by
11 themselves, unilaterally with no market or other regulatory restraints or
12 limits.

13 The evidence will show that those charges are inflated and
14 grossly unreasonable. And how do we know that? Because they almost
15 never, and I mean never get paid. I will say that again. They almost
16 never ever get paid their full charges. I will show you their own internal
17 claims data, which documents how much they were paid for either
18 disputed period for the same type of out of network ER services at issue
19 in this case. And that data proves that health insurers other than my
20 clients, so my client's competitors only pay the TeamHealth plans their
21 full charges about six percent of the time. So well over 90 percent of the
22 time, the TeamHealth plaintiffs were not paid their billed charges by
23 people other than my clients.

24 The hard evidence will prove that the TeamHealth plaintiffs
25 had zero expectation that they would be paid their full charges. And

1 certainly had no legal right to demand those charges.

2 Now tying their charges to FAIR Health, which we learned
3 about today is a misdirect. You will hear from FAIR Health itself in this
4 trial. They have agreed to testify as an expert witness on our behalf.
5 They will tell you that FAIR Health does not set industry standards for out
6 of network payment rates, and that its charge database that does not
7 define what is a reasonable value for an out of network service.

8 Most importantly the data provided by the FAIR Health
9 expert witness will prove that the billed charges are entirely arbitrary
10 because they are unilaterally set by the providers with no limits
11 whatsoever. Now the TeamHealth Plan also makes the baseless
12 allegations that my clients engaged in an improper scheme with a third-
13 party company called MultiPlan. You heard a little bit about that earlier.
14 And they've alleged that MultiPlan and my clients engaged in a scheme
15 to defraud them of payments that they were owed.

16 But as I will explain to you shortly, the evidence shows that
17 TeamHealth is bringing this false claim for a very simple reason. The
18 proof will show that they're hoping to silence MultiPlan which is a third-
19 party company that offers a health plan pricing service called Data
20 iSight, and that service shows what's the reasonable value of healthcare
21 services and how it compares to the billed charges that out of network
22 providers show. The evidence will show that TeamHealth is desperate to
23 silence so the MultiPlan can't show the market just how inflated
24 TeamHealth's billed charges actually are, relative to the amounts that
25 health plans typically pay for out of network ER service. As you listen to

1 TeamHealth's testimony in the coming days, don't be fooled by this
2 tactic to use litigation to distract from their own inflated charges.

3 Now ladies and gentlemen, I want to make something crystal
4 clear. My clients do not question that ER doctors and nurses perform
5 valuable services. ER doctors and nurses are heroes. They do incredibly
6 important work in our communities, period. There is no dispute about
7 that. That is not what this case is about. And as you listen to the
8 evidence in this trial, remember that plaintiffs in this case are for-profit
9 companies that staff the ERs, not the actual physicians who render the
10 medical care.

11 There are over 11,500 claims at issue in this case. The
12 evidence you will hear will show that they were rendered by 191
13 different physicians. Yet on their witness list for this trial, they listed
14 only one of the physicians who rendered any of those services. He is a
15 former board director of one of the plaintiffs, TeamHealth Plan.

16 The proof will show that ER staffing companies would set the
17 bill charges at issue in this case are not entitled to gouge my client.

18 THE COURT: Mr. Blalack, I apologize for interrupting but I
19 have to do this.

20 There is someone on the phone who is not muted, and you
21 are interfering with the opening of the Defendant. If that happens again,
22 you will not be allowed to join on BlueJeans. Thank you. I apologize.
23 Please continue.

24 MR. BLALACK: Thank you, Your Honor. I appreciate it.

25 Just to repeat, ladies and gentlemen, the proof will show that

1 the ER staffing companies which set the bill charges at issue in this case,
2 they were not entitled to gouge my client's customers, which are the
3 employers and employees of Nevada who actually pay for health
4 insurance in this state, with inflated charges for those services. That's
5 not fair, and Nevada employers and employees who my clients
6 represent simply can't afford it.

7 Now, ladies and gentlemen, before I tell you more about the
8 evidence in this case, I was trying to think how I could describe the
9 problem that's at the center of the case in a way that makes sense. And
10 here's an example that may help you understand the evidence that you
11 hear in the trial. This is important because behind each one of those
12 11,500 disputed claims, there is a human being. There is a member of
13 one of our -- my client's health plans. And that person is someone who
14 went to an emergency room and found themselves facing not only a
15 medical emergency but an unexpected financial risk as well.

16 So to help understand what you are going to be hearing a lot
17 about in the next few weeks, I want you to imagine a woman who is
18 driving her car on Charleston Boulevard here in Las Vegas. And as she
19 is crossing an intersection, the car in the opposite lane turns into her
20 lane and hits her. She's not seriously injured, but she's shaken up and
21 needs medical assistance. An ambulance arrives, thankfully, on the
22 scene a few minutes later, stabilizes her, and hauls her off to the ER.
23 Let's say, the ER in Mountain View Hospital.

24 Now, she's in pain and doesn't really know where the
25 ambulance is taking her. And she sure doesn't have the time or the

1 inclination to pull out her insurance card to ask the ambulance driver to
2 take her to a different hospital to ensure that the hospital and every
3 professional in it is in her health plan as provider network. She just
4 shows up at MountainView. She is taken into the ER. She is treated by
5 an ER physician on duty at the time. The physician spends about 25
6 minutes with her, patches her up, sends her home. She's a little sore,
7 but okay. It's not a good day, but she's thankful. It could have been
8 much worse.

9 And a few weeks later, she gets a bill from MountainView
10 Hospital. And she is relieved to see that the hospital is in her provider's
11 health plan network. As a result, even though the hospital's billed
12 charges are for thousands of dollars, the hospital has accepted a fraction
13 of those charges as payment in full, which means that her deductible,
14 coinsurance, and copayment are all very manageable.

15 But then a few days later, she gets a second bill. This one
16 from an ER staffing company that is seeking payment for the services
17 rendered to her by the ER physician. And boy, that is a surprise to her.
18 Because even though that hospital was in her health plan network, the
19 ER physician who treated her wasn't. And that staffing company is
20 charging her almost \$1,000 for her medical care. She's frustrated and
21 worried because that's a lot of money and she didn't have any say in
22 which hospital the ambulance would take her. She also had no say in
23 the physician who would treat her and the amount the physician staffing
24 company charged her. In this example, nearly \$1,000 for an out-of-
25 network ER service.

1 So she calls the benefits manager at her job and asks what
2 she should do. The benefits manager explains that her employer's
3 health plan does provide, fortunately, some coverage for out-of-network
4 ER services, and the plan will pay what it believes is the reasonable
5 value for the service. In this example, say \$200. Now, the woman is left
6 with what you've heard a lot about, a balance bill of about \$800. And the
7 staffing company wants to collect. Her health plan, say, HealthPlan of
8 Nevada, thinks the amount already paid is reasonable and that the
9 staffing company hasn't a right to be paid nearly \$1,000 for that ER
10 service when there was a prior negotiated agreement between them
11 about the amount that would be paid. And the market data in that area
12 shows that the services at issue were never paid at those charges, or
13 almost never paid and are excessive.

14 And of course, if the proper payment is nearly 1,000 rather
15 than \$200, it means that this woman's cost share, her patient
16 responsibility is based off that higher amount, which means a larger
17 coinsurance, copayment, and deductible. So what is she going to do?
18 Does she tell the staffing company the amount already paid was fair and
19 reasonable or does she pay the bill just because the staffing company
20 demands whatever amount they decided to charge?

21 That problem, ladies and gentlemen, plays out thousands of
22 times each year here in Clark County, and across Nevada more broadly.
23 That problem is what is at the core and root of this lawsuit. And as you
24 will learn in this trial, the proof will show that the inflated charges set by
25 the for-profit staffing companies are not the reasonable value of those

1 services.

2 Now, I want to tell you a little more about the case and give
3 you some background on some key players and important healthcare
4 terms because you're going to agree with Mr. Zavitsanos when he tells
5 you you're going to be swimming in acronyms in this case. And there's
6 just no getting around it. So I want to take you through a little bit of the
7 background so you can follow some of the testimony and documents
8 you are going to hear.

9 But first, I want to tell you about the key -- the key players in
10 this story, all right. Now, the first is the Blackstone Group. It is the
11 parent of TeamHealth holdings, the world's largest private equity firm.
12 Next is TeamHealth. Blackstone owns TeamHealth. TeamHealth is the
13 nation's largest clinical practice. The evidence will show it operates in 47
14 states, 30 million patients annually. There are 16,000 affiliated
15 healthcare professionals with TeamHealth.

16 Now, TeamHealth then contracts with the individual Plaintiff
17 staffing companies around the country. And in this case, the three that
18 are at issue, there's one here based in Clark County called Fremont,
19 there's one, where I am going to focus in some more detail in a minute,
20 up in the northeastern part of the state called Ruby Crest, and one in the
21 northwestern part of the state called Team Physicians.

22 Now, providers. We've all heard providers in this case, and
23 there are many different types of providers. But in this case, 98, 99
24 percent of the claims at issue in this case are for physicians, medical
25 doctors. Okay? ER physicians. And so the relationship between the

1 various entities is that the providers, the ER providers, enter independent
2 contracts with the individual staffing companies who are the Plaintiffs in
3 this case; Ruby Crest, Team Physicians, and Fremont. So the staffing
4 companies are owned by TeamHealth, again, based out of Knoxville.
5 And TeamHealth is owned by Blackstone, which is based in Manhattan.

6 Now patient, member, employee; you are going to hear
7 those terms a lot interchangeably. Now, ladies and gentlemen, my
8 client's primary business is providing health insurance coverage through
9 employers. That's -- most of these cases involve relationships working --
10 when I say my client's clients, I am talking about an employer. And the
11 member is the person who has the health plan coverage. So you will
12 hear terms like employee, member, and patient. So let me try to explain
13 what that means.

14 If you are a member of your employer's health plan, and in
15 this case, I am using Caesars as an example. The employer is Caesars
16 who is the sponsor of the health plan. The employee is the health plan
17 member. So every one of those employees who is a member of the plan
18 is a member of the plan. When that employee goes, as you've noted
19 here in the illustration, to an ER and sees a doctor, they become a
20 patient. And the costs they incur then become costs for the health plan.

21 Now, I'll give you a sense of who, in the claims that are in
22 dispute in this case, the 11,500 claims. What you are going to find is that
23 these are just a sample of what the evidence will show are the clients of
24 my client, the employers who sponsored the health plans that are at
25 issue in this case. Clark County, and then the MGM Grand, Caesars or

1 the Metropolitan Police Department, you know, the -- so these are my
2 client's clients. Each of them have employees who are members of the
3 health plans and become patients who went to an ER where they visited
4 with a TeamHealth physician.

5 Now, you've heard about two different types of health plans
6 that were mentioned in the opening of the TeamHealth Plans. One are
7 fully insured and the other is self-funded. And I just want to make sure
8 you understand this distinction because it could be very important as
9 you think about the evidence. In a fully insured plan, it's more like a
10 traditional insurance policy. The employer purchases an insurance
11 policy from the insurance company for its employees. It pays a
12 premium, and I'll show you that in a minute.

13 But when there are claims and medical care is rendered, the
14 cost of paying the provider for the medical care is paid from two sources.
15 It's paid by the insurance company who makes a payment to the
16 provider, and then the patient provides a contribution in patient
17 responsibility. But when you have a self-funded plan, and 40 percent of
18 the claims in this case are related to these kind of plans, self-funded
19 plans, there is no insurance company. There is no insurance company
20 who is accepting the risk of providing the coverage. All of the costs of
21 the medical care is coming directly out of the pocket of the employer.

22 So when one of the employees becomes a patient and incurs
23 medical costs, the patient still pays cost-sharing. But the contribution for
24 the balance that goes to the provider is coming out of the employer's
25 pocket, not the insurance company's pocket. So in every one of these

1 self-funded claims that you're going to learn about in this case, my
2 clients didn't pay a dime out of their own pocket for those claims. The
3 money that they used to pay those claims was coming out of the pockets
4 of the employees.

5 My client was a claims administrator, which is called a third-
6 party administrator, a TPA. They're paid a fee, just a service fee, to help
7 the employer run the plan in terms of setting up a network, processing
8 claims, and the like. And that distinction will be very important as you
9 hear some of the evidence in this case.

10 Now, I just talked about who pays the premium. In a fully
11 insured plan, the employer, in this case Caesars, writes a check for the
12 premium to the insurance company along with a contribution from the
13 employees, usually in a payment withheld from their check. And in
14 return, the insurance company accepts the risks that those employees
15 are going to go to a doctor and incur medical costs that they'll have to
16 pay.

17 So if you think about your homeowner's or auto insurance,
18 the insurer is accepting the risk you're going to have an accident, or a
19 tree is going to fall on your house. And you're paying a premium to
20 them to accept that risk. In that self-funded plan, the employer is paying
21 an administrative fee to the claims' administrator, but the risk is being
22 assumed and kept on the employee.

23 Now, you've heard other terms, in network and out of
24 network. This is simple. The doctors in question did not have a network
25 agreement with the insurer or the administrator where they say, if I

1 rendered care to one of your members, I'll accept a certain payment. In
2 the context of a network agreement, when you go to a network provider
3 in your network for your plans, those doctors have agreed to a
4 predetermined rate to be paid for services they render to you or any
5 other members. For an out-of-network provider, there is no agreement.
6 No contract, no handshake, no nothing, specifying what will be owed or
7 not owed for an out-of-network provider.

8 Now, allowed amount versus billed, you've heard a lot about
9 that. A lot of people, when you think allowed amount, think paid. The
10 only reason it's not paid is because that allowed amount includes a
11 portion that's the patient's responsibility.

12 So the insurance company or the administrator will pay a
13 portion of that allowed amount and the balance will be paid by the
14 employee through deductible, coinsurance, copayment. That's the
15 allowed amount. That's the amount that under your health plan is the
16 extent of your coverage. So if you think about other types of insurance,
17 if you say I know I am covered for up to X amount of dollars, that's the
18 allowed amount.

19 The billed charge is the amount that is the price put on the
20 bill that you get. And in healthcare, the two are not the same, as the
21 proof in this case will show. And those billed charges are set by the
22 staffing company unilaterally, not subject to government regulation or
23 requirements, unilaterally.

24 Now, how does patient responsibility get calculated? The
25 evidence will show that when the billed charge is submitted, the

1 administrator of the plan will look at the billed charge and determine the
2 amount of coverage available for the service and set the allowed amount
3 and remit payment of the allowed amount. So in this case, in the
4 example, I am giving you \$1,000 of charges and the allowed amount is
5 200. If the coinsurance of that plan, as an example, is 30 percent, the
6 patient would be responsible for paying \$60 of that 200. That is how the
7 patient responsibility is calculated. Okay?

8 In this case, it is the Plaintiffs position, they told you and they
9 will argue in this trial, that the allow -- the proper allowed amount for
10 these disputed claims should have been the billed charge. That's their
11 position. The billed charge was the proper allowed, not -- and we should
12 -- we improperly limited it to 200. If they're right, then what the
13 calculation would have been for patient responsibility is billed charges of
14 1,000 is the allowed amount of 1,000 times 30, which means the patient
15 pays \$300 of that 1,000. So in that situation, their position, they're
16 arguing that the patient's responsibility is an additional 400 percent.

17 Now, you are going to hear a lot of evidence in this case
18 about different reimbursement rates to different providers and whether
19 there was a basis for it. You heard a lot of suggestion in the opening
20 statement from the other side that we couldn't figure out how we were
21 getting paid. There's no mystery here. Like every other type of health
22 insurance, the plan document, the contract between the employer and
23 the administrator or the health insurer determines what the benefit is.
24 And those plan documents can be different because different employers
25 pick different benefits and different plans.

1 So in the example here, you could have employer A
2 choosing one type of out-of-network program. I am just using one you
3 are going to learn about in the trial called extended non-network
4 reimbursement, shorthand ENRP. That would reimburse out-of-network
5 emergency services at a certain rate. You could have a different
6 employer select a different program for their own reasons. And that
7 program might be the shared savings program, which you heard a little
8 bit about in the opening, and I will describe it more for you later. So you
9 could have two clients picking two different programs for their
10 employees. And because they do that, that can produce two different
11 payments for the same service to the same doctor. All right?

12 So in the situation with Plan A, because that employee
13 patient has one type of coverage, they go to Dr. Doe, they receive a CPT
14 code 99283 on January 15, 2019, and under that plan that the provider
15 selected, they get paid \$200 as the allowed. With the other employer, it's
16 got a richer benefit for their employees when they select the shared
17 savings program. And that employee goes to the same Dr. Doe and gets
18 the same service on the same and he gets paid \$500.

19 Now, I'll explain to you, it is my clients' position that the
20 reasonable value of all of these services -- the reasonable value for all of
21 these services, this for Corporate Physicians, UnitedHealth, and the other
22 Defendants in this case, is the Medicare rate plus a small margin. All of
23 these rates are above that. So some are premium rates of
24 reimbursement and benefits, some are less. But wherever they are on
25 that schedule is a function of customer choice, employers deciding what

1 benefits they want their employees to have and extending something we
2 all know about now and like.

3 Now, you are going to learn a little bit about how the
4 employer self-funded market works from an expert we have called in the
5 case. Her name is Karen King. She's employed as a benefits consultant.
6 She advises large companies, like the ones I have showed you on the
7 screen, in how to set up their health plans, how to retain a third-party
8 administrator to run their plans. She is very, very knowledgeable about
9 that market. And she will tell you that different employers pick different
10 types of out-of-network benefits and programs for their employees
11 based on their own priorities for what they want.

12 Some of those employers are very focused on cost control.
13 They're going to give a little bit of a benefit, but not a rich one. They
14 might choose an out-of-network program from an administrator like one
15 of my clients that extends, you know, a very modest reimbursement. But
16 other employers, and some on the screen I showed you, might choose a
17 very rich benefit that pays a substantially larger amount because they
18 don't want their employees pursued in collections actions and the
19 responsibility of docking them. But that's a -- that's a function of
20 customer decision-making about our plans.

21 She will testify she has reviewed the out-of-network
22 programs that are at issue in this case. She will testify that she has
23 reviewed those programs, and that the programs that the Plaintiffs
24 complain about in this case are very similar, if not identical, to the
25 programs that are used by all of our competitors. There is nothing about

1 our program that you are going to learn about that is different than what
2 Aetna is doing, what the Blues are doing, Cigna is doing, or anyone else.

3 Now, talking about the specific parties you are going to learn
4 about in the case. First, here are the ten facilities that are affiliated with
5 the three TeamHealth plans. There's eight here in Clark County, Ms.
6 Lundvall walked through those with you. Then there is Ruby Crest,
7 which is affiliated with the northeast -- Northeastern Nevada Regional
8 Hospital in Elko. And then Team Physicians, which is up in -- in Fallon.
9 So those are the three Plaintiffs. Those are the emergency rooms they
10 staff with contracted doctors, and they're affiliated with TeamHealth.

11 Now, the disputed claims. There are about 11,500 disputed
12 claims. And the billed charges for those claims -- oh, excuse me. The
13 percent of those claims that are disputed by the three Plaintiffs are
14 divided here. What you can see is that 90 percent of the disputed claims
15 are from Freemont. So there's -- there are some claims from Team
16 Physicians and Ruby Crest and some alleged damages. But as you can
17 see here, this case is about Freemont. 90 percent of the disputed claims
18 paid, priced, serviced, here in Clark County.

19 Now, the Defendants, five Defendants, and I have broken
20 them out for you so you can see what types of plans they are. Now,
21 there are two companies that are fully insured companies. We only do
22 fully insured coverage for companies. Those are Sierra Health and
23 HealthPlan of Nevada. There are two companies that only serve as third-
24 party administrator. That's all they do. They never sell fully insured
25 health insurance coverage because they never pay claims with their own

1 dollars. Those are United Healthcare Services and UMR. And then
2 United Healthcare Insurance Company does both. So it's [indiscernible].

3 Now, TeamHealth Plan is charges and payment. Just to give
4 you a sense of how the numbers stack up. The process of disputed
5 claims, their total bill charges was just over \$13 million -- \$13,200,000.
6 The total amount allowed by my clients on those claims was just over 2.8
7 million. When you average those out, it shows that the average bill
8 charged on those claims was \$1145. And the average paid amount was
9 246.

10 Now, just so you can get a sense of reference, what this
11 shows, is how those averages relate to the Medicare fee schedule. So
12 the plaintiffs' charges of 1,145 correspond to 763 percent of the Medicare
13 rate. The allowed amounts that my clients pay corresponds to 164
14 percent of the Medicare rate. So if you think of in the Medicare fee
15 schedule, multiply it. It's not in dispute what they say they're owed is
16 almost eight times what the rate would be for the Medicare claim.

17 Now, before I move on, I want to come to a slide that you
18 were shown by opposing counsel. You all remember this slide that was
19 shown to you earlier in their opening? And it's showing you United's
20 claims in Nevada, plaintiffs 247, all other care providers 528. Everybody
21 remember seeing that in the opening? The suggestion was that my
22 clients were somehow being unfair because we were not paying this
23 amount. The amount they're asking for on average is twice that amount.

24 So when they held this up to you and said they cheated us
25 because they didn't pay us \$528 on an average for [indiscernible]. The

1 fact of the matter is what they want in this lawsuit, and they want you to
2 award them is \$1,145. Twice that.

3 Now, I want to talk about some other parties. The first is
4 MultiPlan who you heard reference to a moment ago. And MultiPlan is a
5 public company -- a big public company. And it does business with
6 virtually all of the large health plans and health insurers in the United
7 States. So it's a client of United Healthcare; it's also a client of Blue
8 Cross Blue Shield, Anthem, Aetna, and Humana. And you may notice up
9 there ladies and gentlemen, it's also a client of TeamHealth. So it also
10 does business with TeamHealth.

11 MultiPlan offers many services, and I'll -- you're going to
12 learn about all of these during proof, but the one that I want to focus on
13 is Data iSight. Data iSight is the pricing service that was challenged by
14 the plaintiffs in this case and that I gave you a little bit of introduction to
15 earlier. All of those companies use Data iSight. You're going to hear
16 testimony that Anthem uses Data iSight, United uses Data iSight, Blue
17 Cross Blue Shield uses Data iSight, Aetna uses Data iSight. You'll even
18 hear testimony from MultiPlan that employers -- self-funded employers
19 currently use Data iSight.

20 Now, of the five defendants in this case, two of those
21 defendants have absolutely no relationship to MultiPlan. Those are
22 Sierra and HealthPlan of Nevada. So it's not the case that every
23 document you saw earlier today that was referenced in the opening
24 about MultiPlan was limited to one of the United entities because Sierra
25 and HealthPlan of Nevada have never done business with MultiPlan at

1 all.

2 Now, Mr. Ahmad acknowledged this even though we have all
3 of these disputed claims in the case, 722 were reimbursed these costs.
4 Six percent of the total. So when you're hearing all this evidence -- when
5 you spend days talking about Data iSight, I want you to remember how
6 little it touches this case because this is the strategy.

7 Now FAIR Health, that's one of the other third parties you're
8 going to learn about. FAIR Health is a non-profit organization, and it
9 receives claims data from all over the place, government, personal
10 health insurers, and it brings that data in and then it stores it, it analyzes
11 it, and it creates what it calls benchmarks that people in the healthcare
12 industry can use for a variety of purposes, research, reimbursement,
13 public policy.

14 And they have two different data sets that they create. One
15 is of the bill charge on those claims and the other is the paid amount, the
16 amount that was actually shown up. Not just the charge but what was
17 actually paid on those claims. And I'll explain to you those two things
18 are very different. And so when the FAIR Health data comes in, it's
19 broken out, and they have two different data sets for the bill charge and
20 for the paid amount. And then they create these benchmarks, 98
21 percentile, 80th percentile, 70th percentile, 60th percentile.

22 When you heard testimony earlier today -- or statements
23 earlier today that TeamHealth uses FAIR Health to set its charges, its
24 prices, it only uses the charge benchmark. It does not rely on any of the
25 paid claims data that FAIR Health compiles and makes available.

1 Now, I want to talk a little bit about the witnesses that you're
2 going to learn about in this case. And before I do, I just want to see if
3 you remember the Judge's instructions at the beginning when you were
4 sworn. And you may remember that she said, to remember that what
5 the lawyers say is not evidence. Remember that? And she gave you
6 instructions. She said what the lawyers say is not evidence. What is
7 evidence is what witnesses say, what documents are shown. And I want
8 you to remember that, and I urge you to remember that because what I
9 say, what Mr. Leyendecker says, it doesn't matter. We're here just to
10 help guide you. What matters comes out of that box, what documents
11 you see.

12 So we're going to all have different -- the lawyers are going
13 to have different views on things. So I urge you to keep an open mind
14 and listen closely to the witnesses because these are the people who are
15 ultimately going to be the source of truth for you in this trial.

16 Now, you're going to hear from a lot of witnesses in the trial,
17 but I want to preview just a few. So the first is Mr. Bristow -- Kent
18 Bristow. He's the senior vice-president of revenue management at
19 TeamHealth based in Knoxville. He is a financial executive, not a doctor.
20 He's responsible for TeamHealth's network contracting and collections.
21 He was their corporate representative for each of the three plaintiffs here
22 in Nevada on everything they did. His testimony -- they testified
23 through him, not through one of their doctors, through him. He will be
24 their representative in this trial. He will testify about TeamHealth
25 strategy for out-of-network reimbursement. And he will be a -- he was a

1 witness to key meetings with my client that he will describe.

2 Next is Dr. Crane. I think one of my opposing counsel
3 referred to Dr. Crane. He is a chief medical officer. He is also in
4 Knoxville. He's not local. He did not render any emergency room
5 service at issue in this case, not one. This is not a doctor who provided
6 any care [indiscernible]. He was being called as what's called a non-
7 retained expert to testify about services, non-clinical services that
8 TeamHealth provides to emergency rooms. But he's going to tell you
9 and admit he doesn't know what TeamHealth Services -- the ERs in this
10 area -- in the three locations we're talking about here ever used or took
11 advantage of. And he'll also tell you he had no opinion or knowledge
12 about the single most important issue in the case, which is the
13 reasonable value of the ER services.

14 Next, is Dr. Robert Frantz. He is also a senior executive for
15 TeamHealth. He leads one of their regions. They're broken up into
16 regions all across the country in their corporate structure. And he is a
17 president of TeamHealth West. He did not render a single ER service at
18 issue in this case. He again, is another one of these non-retained experts
19 who will testify about TeamHealth plaintiff's performance on certain
20 metrics at three of the emergency rooms here in Clark County. He won't
21 tell you anything about the other seven. And for the three he's talking
22 about he won't have any data or documents to support his testimony.
23 He will also say he has no opinion or knowledge about the core issue in
24 the case which is the reasonable value of the disputed claims.

25 Next is John Haben, one of the witnesses from our client.

1 And my colleagues on the other side are going to call him as their first
2 witness, and you will hear testimony from him. He was -- he is retired.
3 He spent 30 years working for United Healthcare. And after he broke 55,
4 he went off to fish. He will be coming back to testify in this case. He was
5 responsible for managing the employer client's out-of-network costs for
6 United. That was his job. Now, I want you to pay real close attention,
7 ladies and gentlemen, logo of United Healthcare doesn't mean
8 everybody that's ever been affiliated with United Healthcare. He never
9 worked with them or had any role whatsoever supervising or managing
10 Sierra, Health Plan of Nevada, or UMR at all.

11 He will testify that United Healthcare and United Healthcare
12 Insurance developed out-of-network programs for employer clients
13 because they -- the clients demanded those programs to control
14 excessive out-of-network costs and to protect employees from balance
15 billing and collections activity by doctors. He will explain how out-of-
16 market -- how the market for out-of-network ER services works and how
17 it's changed over time and how United responded to its clients' demands
18 for protection of those members and control of those costs.

19 You will also hear testimony from Becky Paradise who is --
20 who used to work for Mr. Haben. She reported to Mr. Haben. She, like
21 Mr. Haben, has no role and has never had a role with Sierra, HealthPlan
22 of Nevada or UMR. She basically has now been running these programs
23 under Mr. Haben's direction and now after his departure. And she will
24 explain how the program is designed to reimburse at a reasonable rate.
25 She will also testify that the out-of-network programs are designed to

1 protect employee clients and their employees from balance billing and
2 collections activity.

3 Now, I want to talk about the legal claims that you're going
4 to be asked to decide in the case. And there's four of them. There's
5 breach of implied contract, unjust enrichment, unfair insurance
6 settlement and violation of Nevada's account payroll. I'm going to take
7 you through the evidence that you're going to hear on those four claims
8 in some detail. Before I do, I want to start with one of the defenses
9 you're going to hear about. And it's called the defense of unclean hands.
10 Kind of an odd defense particularly in the COVID era but that's what it is.
11 And in this defense, ladies and gentlemen, you're going to see evidence
12 that is part of a scheme to extract higher payments from my clients.

13 TeamHealth plaintiffs engaged in a billing practice that one
14 of their own physicians called fraudulent. TeamHealth billed my clients
15 for services rendered by Plaintiff Fremont out here in Clark County as if
16 they were being provided by physicians affiliated with Ruby Crest. So
17 the services rendered down here in Clark County, filled out on the claim
18 form, put them through a backdoor contractual agreement, sent them
19 out -- and sent them to my client for payment as if they had been
20 performed through an agreement with Ruby Crest.

21 Now, you may be wondering why TeamHealth would do
22 something like this, something so convoluted. Well, the proof will show
23 that TeamHealth executed this scheme so that it falsely appeared that
24 those services had been provided by doctors affiliated with Ruby Crest
25 when in fact, they had been performed by doctors in Clark County who

1 were contracted with Fremont. Mr. Bristow, who I told you about, the
2 senior TeamHealth executive from Tennessee, he will testify that he's the
3 one who came up with this scheme in early 2019, just before the
4 TeamHealth plaintiffs filed this lawsuit. The evidence will show that Mr.
5 Bristow attempted to take advantage of what he mistakenly believed - -
6 he mistakenly believe there was a contract between my clients and Ruby
7 Crest that paid Ruby Crest 95 percent of their bill charges. He thought
8 there was a contract between them both. And because he did, he went
9 through with this very elaborate scheme to have those claims billed out
10 through Ruby Crest hoping he could get paid higher rates through that
11 Ruby Crest contract. He only learned later that he was mistaken, there
12 was no contract.

13 Now, the claims data that you will be shown in this case will
14 prove that TeamHealth did in fact, bill some of those disputed claims in
15 this case for services rendered by Freemont here in Clark County
16 through Ruby Crest as an [indiscernible]. So it's not just a conceptual
17 thing. The claims in this case that are in dispute include those that were
18 subject to what's called a sub-ten scheme. And the evidence will show
19 that Mr. Bristow knew he was doing something wrong. The documents
20 you will see, which are internal email from TeamHealth, it will show that
21 Mr. Bristow was worried about being caught in the scheme by my
22 clients. And he was worried that it would cause my clients to terminate
23 the contract he thought existed with Ruby Crest.

24 Mr. Bristow will also admit that TeamHealth did not disclose
25 this scheme to the doctors here in Clark County who actually rendered

1 the ER services that were billed through Ruby Crest. So their doctors
2 who did the service here in Clark County and had them billed thinking
3 they were going to be billed out under Freemont, had no idea they were
4 being billed out by Ruby Crest. And Mr. Bristow will testify he never
5 shared that that's what TeamHealth was doing.

6 You will also hear testimony from other TeamHealth
7 employees and doctors that they thought it was inappropriate for
8 Fremont to submit claims through Ruby Crest as TeamHealth did here.
9 This is Mr. Bristow explaining that he did not disclose the sub-ten
10 scheme to doctors in Clark County who actually rendered the services.

11 And you will also hear testimony from a woman named Rena
12 Harris who was formally one of Mr. Bristow's deputies. She's one of the
13 people Mr. Bristow told to implement this scheme. She was the one that
14 had to go do it. He came up with the idea, and she had to put it in
15 motion. When she was put under oath as a former employee, not still
16 working for TeamHealth, she testified that it was inappropriate for
17 Fremont to bill services it provided under the tax I.D. number of Ruby
18 Crest because Ruby Crest was not the rendering physician.

19 You will also hear testimony from Dr. Daniel Jones who is
20 affiliated with Ruby Crest, was a former director of Ruby Crest. He will
21 testify that Freemont submitting claims for reimbursement to United
22 under Ruby Crest's tax I.D. number, he would consider that to be a
23 fraudulent practice. He will testify by using the term fraud, he means
24 lying for the purposes of obtaining money.

25 So ladies and gentlemen, later at the end of the trial, you will

1 hear that my clients are asking you to find that we've established proof
2 of unclean hands by the TeamHealth plaintiffs. And if you agree that
3 we've met that burden of proof -- I'm not going to take you back to the
4 burden of proof. But if we've met that burden of proof by a
5 preponderance of the evidence, you can deny their claims for recovery
6 even if you think we've underpaid them under Nevada law.

7 Now, let's get to the main event. The main event are their
8 clients. We'll start with breach of implied contract. And the allegation is
9 that the TeamHealth plaintiffs asserted that the party's conduct implied
10 agreement for defendants paid in full bill charges. It is not disputed,
11 Ladies and Gentlemen, that there was no written contract, which I agree
12 with. It is also not disputed that there was no oral contract. So we don't
13 even have a situation where one person says to the other, you know, if
14 you'll do this, if you'll pay me X amount I'll provide [indiscernible]
15 members for X amount of time. None of that. No written contract. No
16 oral contract.

17
18 And the plaintiffs' allegation -- keep this in mind Ladies and
19 Gentlemen, because you're going to have to find that there was -- the
20 conduct of the parties manifested an intent to contract through a breach.
21 One of the key terms will be term. How long was this contract for? Was
22 it for six months? Was it for a year? Was it two years?

23 You know Plaintiffs are going to testify this contract runs on
24 in perpetuity. Until the end of time. Because they are providing
25 emergency services that they have an obligation to provide. That they

1 can't terminate people because of federal law, the Defendants have an
2 obligation to pay it forever.

3 Now, Ms. Harris again, will testify before you, and she will
4 testify that there was no implied contract between the parties, and the
5 Fremont Plaintiffs were out-of-network for the Defendants. So we have
6 no written contract. We have no oral contract. The TeamHealth
7 employee who was Mr. Bristow's number 2, will testify there was no
8 implied contract.

9 Now since the team of Plaintiffs rely on evidence of conduct
10 to support their claim, you might think well what is the parties' dealings?
11 How did they deal with each other? Did they act in a way that leaves the
12 impression that they understood that the Defendants were supposed to
13 pay full charges whenever they rendered services to a Defendant's -- you
14 know, one of my client's members out-of-network? And the answer is
15 no. There was no course of dealing between the parties that would
16 support payment of full charges.

17 What I'm showing you, ladies and gentlemen is a description
18 of evidence you're going to hear from their claims data. And their claims
19 data will show that the before period of dispute, which starts on July 1,
20 2017, when they went out-of-network, my clients paid their full charges
21 70 percent of the time. Seventy percent.

22 So it would be one thing if prior to July 1, 2017, every time
23 they treated one of our members on an out-of-network basis, my clients
24 paid their full charges. And they said well, you did it before. You have
25 an obligation to keep doing it. Not only did my clients not do it 100

1 percent of the time, my clients hardly ever did it. My clients, like all of
2 the other out-of-network health insurers and competitors of my clients,
3 paid their full charges only 70 percent of the time, which absolutely
4 rebuts the notion there was a course of dealings between the parties that
5 would create an expectation for a right to demand full charges. Now Mr.
6 Bristow will also acknowledge those same numbers when he's on the
7 witness stand in front of you.

8 Now unjust enrichment. This claim, ladies and gentlemen is
9 in the alternative to their contract claim. They're going to tell you that
10 you should find that there was a contract. But then they're going to say
11 you can disagree with us. At a minimum you should find that
12 Defendants were unjustly enriched by the value of our services. And
13 they should have to make us whole for the value they gave our members
14 because they were [indiscernible] the full charge.

15 Now the problem with that, ladies and gentlemen, is Mr.
16 Bristow is going to testify to you that he's not aware of any fee schedule
17 or rate set by Nevada statutes or government agencies. They require
18 payment of full charges for having for out-of-network fees or services. In
19 fact there's not a fee schedule rate requiring anything during the period
20 of this schedule. Much less full charges. So even in the absence of a
21 private agreement between the parties, there's no evidence that there
22 was some set standard by the Government or by some agency that says
23 you shall pay out-of-network services at full charges.

24 Mr. Leathers is their expert. One of their experts. He was
25 retained by the Plaintiffs. And he's going to come into this case and

1 testify about what he believes the reasonable value of the services are.
2 Now when you meet him, I want you to keep in mind what his
3 background is. He's an accountant. Nothing against accountants, but
4 he's not an economist. He wasn't trained by education or any other way,
5 with any background or expertise in market economics. He will testify --
6 yes, and he frequently testifies, as does our expert, as a paid expert.
7 And he's done it dozens and dozens of times.

8 He can testify that the TeamHealth bill of charges are
9 unreasonable and he's going to give you a primary reason they're
10 unreasonable, because they are below what he calls the 80th percentile
11 FAIR Health bill of charges benchmark. We're talking about the
12 benchmarks of data, there's one for paid claims and one for charges.
13 He's right on that charge benchmark. He's saying look at the 80th
14 percentile. They're under that. The charges are reasonable.

15 Now as I mentioned earlier, we're going to show you that Mr.
16 Leathers is wrong. And the reason he's wrong is going to be explained
17 by Mr. Mizenko and by the data analysis that Mr. Mizenko prepared. Mr.
18 Mizenko is an expert who works for FAIR Health itself. The very entity
19 they're [indiscernible]. He agreed to testify as an expert for us in this
20 case. He will testify that the data does not set the industry standard for
21 what is a reasonable rate. He will tell you that under oath. He will also
22 tell you under oath that the Fair Health benchmarks are not even
23 designed to measure the reasonable value of healthcare services. That's
24 not what they're for. He will explain that those benchmarks only show
25 what providers charge, not what they're typically paid.

1 Now other point that Mr. Mizenko will show you is he did an
2 analysis of the charges that the TeamHealth Plaintiffs used in preparing
3 this case for the [indiscernible] services, and he compared them, the
4 number of codes at issue to the various benchmarks that FAIR Health
5 creates. And remember what their argument is. Their argument is that if
6 you have no charge below the 80th percentile, it's reasonable. And you
7 may have heard Mr. Ahmad say that the TeamHealth Plaintiff charges
8 were reasonable because they were below the 80th percentile. Was
9 anybody listening closely to how he modified that sentence? He said on
10 average. On average, they're below the 80th percentile.

11 That's important, ladies and gentlemen, because as Mr.
12 Mizenko found when he analyzed the data, if you actually look at the
13 actual code combinations for the three Plaintiffs, those codes are over
14 their own standard 30 percent of the time, 32 percent of the time. And if
15 you measure it not by the 80th percentile, but by the median, which if
16 you ever took statistics know it's the midpoint, the 50 yard line. They're
17 over the median 70 percent of the time almost.

18 Now this whole FAIR Health benchmark is a distraction
19 because that is not the proper standard for measuring reasonable value
20 of an out of network service. Even using their standard, Mr. Mizenko is
21 going to show you that they don't even comply with their own standard.
22 The only way they can get it to comply with their own standard is to
23 come up with an average of their charges across the whole population.

24 Now the data that Mr. Mizenko will provide and walk you
25 through and then another expert, Mr. Deal will walk you through, and I'll

1 show you something about Mr. Deal in a moment, shows why charge
2 data in the FAIR Health benchmarks can't possibly be the basis for
3 measuring reasonable value for two reasons. The data shows the
4 charges are arbitrary and shows they're inflated. We'll take one at a
5 time.

6 This is called a histogram. It's basically a charge that they
7 have created related to the charges of the TeamHealth Plaintiffs. They
8 did one of these for every charge at issue in this case. And it shows for
9 this local, for this Plaintiff, for that service on a particular time period, a
10 year, what were other providers charging for the same service in the
11 same area. Every one of these lines, ladies and gentlemen, represents a
12 charge -- a collection of charges that a group of providers in this area,
13 which is the Las Vegas area, charged for this period in May of 2015.

14 Now first of all, it kind of looks like a [indiscernible] contest
15 with everything everywhere. So the question I'm going to ask you is
16 their position is that the 80th percentile -- and you might be confused.
17 The 80 percentile is not 80 percent. The 80th percentile means that
18 amount or less. So when someone says you're under the 80th
19 percentile, what they're saying is you are at or below 80 percent of the
20 other observations in the guide.

21 So their position here is that there's the 80th percentile. So
22 their position is every one of these charges constitutes the reasonable
23 charge. From here to here. Now this charge is at \$200. There's four
24 people -- four doctors who billed at 400. There were 1100 that billed at
25 800. There were another 976 that billed at 1600. Then there were 1705

1 that billed at 1800. Is that the reasonable charge?

2 Well, maybe it's the \$800 one, or I suppose it could be the
3 \$1200, or maybe the reasonable charge is the \$1800. The point is, ladies
4 and gentlemen, these charges are completely made up by individual
5 providers and have no market relationship. And so using this scatter
6 shot approach to the define what constitutes a reasonable value for
7 service doesn't make economic sense.

8 But if it was just the fact that the charges in the FAIR Health
9 data were, you know, all over the place, that would be one thing, but it's
10 not. That applies in this case specifically. These are charges from the
11 Plaintiffs in this case. We have three Plaintiffs, Fremont, Team Physician
12 and Ruby Crest. Same service 99285, 99291. December 2017. Ruby
13 Crest charged \$767 for that service in December of 2017. That's what the
14 bill would have shown up if you got that service.

15 But if you had been down here, had the same injury, had
16 emergency surgery down here, the exact same service, you would have
17 been charged 1360. Here for 99291, same scenario. You would get
18 charged 796 by Ruby Crest, 1765 by Fremont. Same service, same time
19 of year. Same Plaintiffs -- group of Plaintiffs.

20 Now it's not just that the bill charged is arbitrary. The bill
21 charged is inflationary. How do we know that? Well, in the data that the
22 FAIR Health expert provided and that was analyzed in this case, they
23 lifted the charges for the 80th percentile benchmark that you've heard a
24 lot about and tracked how it changed over time. What was it back in
25 2011? How did it change in 2012, 2013, 2014? And track how it grew

1 over time. That is what the 80th percentile would have been in May of
2 2020, if starting in May of 2021, it had grown at the rate of inflation for
3 physician services, which would have been 14 percent. That's what it
4 would have been. What was it? That's what it was.

5 So what happened, ladies and gentlemen, the evidence is
6 going to show that the FAIR Health 80th percentile of those charges,
7 grew, grew, grew, Dropped down a bit, and then skyrocketed. And as of
8 May 2020 it was \$1991 for the 80th percentile. So think about it, ladies
9 and gentlemen, \$800 would have been the reasonable charge in
10 November of 2017, and then \$400 would have been the reasonable
11 charge in May of 2020, and then 1991 would have been the reasonable
12 charge in May of 2020. That is an arbitrary inflationary system, ladies
13 and gentlemen. And Mr. Mizenko's testimony and the testimony of Mr.
14 Deal will prove why that's so. And it will be the reason why the
15 employers in Nevada, who are my client's customers, are demanding not
16 to have reimbursements based on this.

17 Now the most important evidence you're going to hear in
18 this case about why reasonable value of these services is not the full
19 [indiscernible], it's right here. This is going to be plain data coming from
20 the TeamHealth Plaintiffs own billing system. Which is going to show
21 how often they were reimbursed at full charges by my clients'
22 competitors. Not by my client, but by all the people that they do
23 business with, other than us.

24 And what it's going to show is that when they're out-of-
25 network with anybody else, they only had to pay their full charges 6.4

1 percent of the time. So 93.6 percent of the time when they were
2 submitting a claim as an out-of-network provider to Aetna, Blue Cross
3 Blue Shield, Cigna, fill in the blank, they were getting paid something
4 less than the full charges.

5 And I submit to you, ladies and gentlemen, the proof will
6 show at the end of the case, that there is no way full charges can be
7 reasonable value, when no one pays it.

8 Now you remember Mr. Zavitsanos asking you last week
9 about his hypothetical taxi ride. And whether you would just pay the
10 amount on the meter without any questions. You all remember that? I
11 took note of that one. And as you're listening to the evidence in this
12 case, think about that same taxi ride. But this time, think about whether
13 you would pay whatever the cabby demanded if you didn't know when
14 you got in the cab he was going to charge you 100 bucks to drive around
15 the block, and when you could see his own business records, he only got
16 paid that 100 bucks 6.4 percent of the time. Would that still be fair?
17 Would that still be reasonable? Just because he said pay me.

18 Now you're going to hear testimony from an expert from our
19 side, Bruce Deal, he's a retained expert. I mentioned him earlier. He's a
20 recognized healthcare economist with a master's degree from Harvard
21 University. He has 30 plus years of experience in healthcare valuation
22 cases like this one. He's testified in a lot of cases just like Mr. Leathers
23 has. He will testify that in the healthcare industry, billed charges are not
24 the reasonable value of the services provided. He will testify that the
25 reasonable value can only be measured as the amount that a willing

1 buyer and a willing seller will pay and accept in an negotiated arm's
2 length transaction. That's the proper measure of reasonable value.

3 Now you've heard everybody agree, what's the key
4 profession in this case, is whether the \$2.8 million that my clients already
5 allowed and paid represent the reasonable value of the services. Well,
6 on that question, ladies and gentlemen, I want you to know that there's
7 data that you will see relating to Data iSight, which is supposedly this
8 company that's artificially reducing payments to physicians, which will
9 show that the Data iSight rate that's recommended to use to reimburse
10 claims is accepted nationwide by ER physicians without even a question.
11 Not so much as an email, a phone call, nothing, 85.7 percent of the time.
12 You will hear testimony from multi-plan witnesses describing their data,
13 who will explain that that is the case.

14 And ask yourself as you're listening to the evidence, ladies
15 and gentlemen, is there any better indicator of what is a reasonable
16 amount than an amount that is accepted 85 percent of the time? Now
17 TeamHealth, you will learn, is part of that very small percentage of out-
18 of-network providers who object to reasonable reimbursements and
19 demand their full bill charge. But just because they charge it doesn't
20 mean they're owed it. And it sure doesn't mean it's reasonable value.

21 Now, the next claim is their unfair interest settlement claim.
22 And on this claim, ladies and gentlemen, I think Mr. Leyendecker
23 explained this. They allege that two of my clients, United Healthcare and
24 UMR engaged in a scheme with multi clients to use the Data iSight
25 pricing tool to artificially pay some disputed E.R. claims and then lied

1 about it. They also claim my clients singled them out for unfair
2 treatment.

3 Well, again, I just want to make clear everyone understands,
4 my client didn't come up with Data iSight. Data iSight is a company
5 available with a widely used tool in the industry to every one of my
6 clients' competitors. And how do you know that? Their own expert is
7 going to tell you that. Mr. Leathers will testify that Data iSight is widely
8 used in the industry including by my clients' competitors.

9 In addition, ladies and gentlemen, TeamHealth, as I noted
10 earlier, does business with MultiPlan. You're going to see a contract
11 from Mr. Bristow signed to MultiPlan, where they continue to do
12 business together, TeamHealth and MultiPlan. Now ask yourself, ladies
13 and gentlemen, if it was true that TeamHealth really believed that
14 MultiHealth was engaged in some nefarious scheme to cheat them out of
15 millions of dollars, do you think they'd still be doing business with them
16 year after year after year, during the course of this lawsuit?

17 Now Data iSight, which is the tool that they're tracking, let
18 me give you a little bit of background on it. It uses a proprietary
19 computer program to generate pricing recommendations for claims
20 submitted to other network providers. It relies on publicly available data.
21 Showing the amounts paid for hundreds of millions of medical services.

22 Now for physician services, which is what we're talking
23 about here, the pricing is based on paid claims. So it's not based on
24 what's on the bill charged. It's based on the paid amount. That's what
25 they're measuring and tabulating. It compares those payments to like

1 providers for similar services, similar severity levels, and similar overall
2 condition. Now lastly, ladies and gentlemen, as I think I noted earlier,
3 Sierra, my client Sierra, and my client HealthPlan of Nevada never even
4 did business with Data iSight. Never used it. So it's just completely
5 irrelevant.

6 Now you're going to -- you heard the Plaintiffs show you
7 testimony that was a little confusing because they were trying to show
8 you and suggest somehow my clients can somehow dictate to Data
9 iSight to pay a rate different than what the Data iSight rate actually
10 recommended. You may remember that in their opening. What they are
11 not telling you is that was -- there was such a directive. It's called an ER
12 override. And it was an instruction my clients gave Data iSight to
13 comply with federal law. There is a federal rule tied to the Affordable
14 Care Act, raised to three, requiring --

15 MR. ZAVITSANOS: Your Honor, may we approach?

16 THE COURT: You may. Let's step out into the hall, please.

17 [Sidebar at 2:41 p.m., ending at 2:45 p.m., not transcribed]

18 THE COURT: And for the record, I overruled the objection.

19 MR. BLALACK: So ladies and gentlemen, what I was
20 explaining a moment ago is, I'm going to explain what actually happens
21 between my clients if they [indiscernible] and make sure that you're
22 listening to the evidence. You can tell how it [indiscernible] as compared
23 to how it was described.

24 So there -- you're going to hear testimony about something
25 called the ER override. And the way the ER override worked was when a

1 claim for a nurse's service that was supposed to be adjudicated by Data
2 iSight -- to Data iSight. The Data iSight rate would be developed using
3 the Data iSight methodology and a proprietary methodology. And they
4 would come up with their rate.

5 In this case, I'm just using a hypothetical. We'll say \$300. It
6 would then be compared to the override rate that my clients provided
7 them, which was related to this kind of [indiscernible] and would be
8 compared. And if the override was higher than the Data iSight rate, the
9 greater of those two rates would be used. So in this example, the
10 override would be the higher rate, and that would be the amount that we
11 repaid on the claim.

12 However, if the Data iSight rate that was recommended was
13 higher than the override -- so in this case, the methodology
14 recommended a price of \$400 for this service; it would be compared to
15 the override rate. That would be higher than the override, and so the
16 higher amount would be paid.

17 And so the override instruction that was provided today out
18 of iSight was a floor. Make sure your methodology -- if it recommends a
19 price, it recommends a price at least above this floor. If it doesn't, we're
20 going to pay at least at this threshold. If it's higher, then we'll pay the
21 higher amount. And again, this was compliance related.

22 Now, the fact that the process worked that way shows up in
23 the data. And you're going to hear testimony from Mr. Leathers, their
24 expert, who is going to admit to you that when he looked at the data, he
25 confirmed that the claims paid using the Data iSight rate were paid at

1 twice the rates of the other disputed claims. So when you're hearing all
2 of this scary talk about Data iSight, remember that the Data iSight claims
3 were paid at twice the amounts of the non-Data iSight claims.

4 Now, you've also heard testimony, ladies and gentlemen --
5 or excuse me -- heard information from Plaintiff's counsel about the
6 shared savings program. And I just want to make sure as you're
7 listening to the evidence you understand what the shared savings
8 program was.

9 Now, first of all, their argument is that there is something
10 nefarious about a program that's designed to control out-of-network
11 healthcare costs and to prevent balance billing of the [indiscernible]
12 because that's what the share savings program was. And some
13 foundational information; as you're listening to the evidence of the five
14 defendants in the case, two did not participate in any way, shape, or
15 form, to the shared savings program. The health plan for the Nevada
16 and Sierra Health.

17 So of the five defendants in this case, only the three in that
18 circle -- United Healthcare Services, United Healthcare Insurance and
19 UMR ever had any involvement with the share savings program.

20 Now, when you look at this -- the claims in this case, you're
21 going to see that there's no way that well over half of the claims in this
22 issue could ever even be touched by share savings because of which out
23 of network program was being used to reimburse the claim and which
24 defendant was reimbursing the claim.

25 So again, this is going to be another one of those things that

1 sounds very scary, but when you get into the evidence you're going to
2 learn that very, very few of the claims in this issue in this case were ever
3 touched by the share savings program. Now, how did it work? I want to
4 make sure you have a sense of the operation. So the staffing company,
5 in this case, TeamHealth would bill a claim for a \$1,000. The claim to
6 administrator -- let's say in this case, UMR, would determine the allowed
7 amount under the plan document is \$400. I'm going to allow \$400. That
8 would result in a hypothetical savings of \$600 on the bill sharing.

9 Based on that savings from potential collections from the
10 provider, that savings would then be a benefit that the employer would
11 receive from participating in the program. In this case, they would
12 receive 70 percent of that benefit, which is, essentially, \$420. My client
13 would get the 30 percent fee associated with administering the shared
14 saving program, which would result in a payment of \$180.

15 So the provider would receive an allowed amount of 400, my
16 client would receive \$180 as a fee for administering the program. And
17 then the balance would savings that the employer -- employee never had
18 to deal with in collections action with [indiscernible] physician.

19 Now, the Fremont Plaintiffs in this case suggest that because
20 the savings calculated from the share savings program was based on the
21 bill charged for 1,000, it means that this is an acknowledgment from my
22 clients that used share savings that the bill charged was owed and due.
23 That's their argument. That because we had this program in place, it
24 meant we were credited -- that that \$1,000 in that example was in fact
25 the due amount owed [indiscernible].

1 That's just -- there's no way to support that. The witnesses in
2 this case; there won't be a single one who is going to testify from our
3 clients that they understood that the bill charge was an amount that
4 represented reasonable value and that everybody involved was legally
5 obligated to pay it. What was being purchased for that fee was not only
6 control of out of network costs, but more importantly, an outcome --
7 because under this program, if this resulted in the outcome, the provider
8 accepted the payment and agreed not to bounce to the member.

9 So what the employer getting out of this was the comfort of
10 knowing that their employee wouldn't be harassed with collections.
11 That's what the fee was for. But because the provider -- excuse me,
12 because the -- my clients and their clients wanted to avoid litigating and
13 fighting the doctors over a demand for a \$1,000, doesn't mean that they
14 all agreed the \$1,000 was due in payment. And the best evidence we
15 know that that's true is because nobody ever paid that \$1,000. As I
16 showed you earlier, the evidence indicates that they were paid that
17 amount about 6 percent of the time.

18 Now, let me close by addressing the allegation that my
19 clients unfairly targeted TeamHealth. And you're going to see evidence
20 that I think when you hear it, you will understand the allegation is very
21 hurtful. The evidence will show that my clients bent over backwards to
22 deal with TeamHealth in good faith. And at every turn, TeamHealth
23 responded with threats and deceit.

24 Now, the -- opposing counsel made a big deal of the Yale
25 study. I think we heard the references to that. And the suggestion that

1 somehow it was inappropriate for my clients to provide data in support
2 for that study. What they didn't show you was the actual study. I don't
3 know if anybody knows, they showed you emails about the study. They
4 didn't actually show you the study. And I want to -- you're going to see
5 that study in this case.

6 This was a study done by Yale University by three very
7 renowned researchers on surprise billing. And the study found, in our
8 model of physician behavior, we show that out of network billing allows
9 physicians to significantly increase their payment rate, often because
10 patients cannot avoid out of network physicians during emergency visits.
11 This increase in price does not lead to a decrease in demand.

12 Mr. Deal with testify to you about -- there's something about
13 inelastic demand. Emergency room providers know you're coming to
14 their emergency room no matter what because you don't [indiscernible]
15 looking at this [indiscernible] to figure out which hospital you're going
16 to, and ambulance is taking you there. They know that no matter what
17 their charges are, they're going to get a steady flow of payment. So
18 unlike some providers, they're not incentivized to reduce rates
19 [indiscernible].

20 Next, hospitals that outsource their [indiscernible] care to
21 TeamHealth also have higher physician charges and physician
22 payments.

23 Next, page 26 to 27; "We find that when TeamHealth enters a
24 hospital, there is an increase in out-of-network billing by 32.6 percentage
25 points, consistent with what we observed for in care, we also observed

1 when Team Health enters a hospital there is a large increase in physician
2 charges and physician payment rates."

3 Finally, Page 2. "These out of network bills reflect physician
4 charges, which unlike payments for most medical services, are not set
5 through a competitive process."

6 So ladies and gentlemen, nobody is going to argue any
7 evidence that this research is anything other than bona fide profit. And
8 there won't be any evidence that anything my clients did to provide data
9 for those researchers to use was anything improper. Certainly not
10 unfairly targeting TeamHealth to get out into the public domain what
11 their [indiscernible] rates. Now, the proof will also show that
12 TeamHealth acted in bad faith to extract higher reimbursements from my
13 clients.

14 I'm going to show you evidence that TeamHealth used
15 threats of litigation and threats to terminate business relationships as a
16 [indiscernible] with us. We will show you evidence that they threatened
17 not only to sue us, but to sue our -- sue our clients; our employer clients,
18 the people we're representing, because they knew it would injure our
19 market reputation.

20 The proof will also show -- and this is the irony of ironies,
21 ladies and gentlemen. The proof will also show that United Healthcare
22 was the third-party administrator of the TeamHealth benefit plan. That's
23 right. TeamHealth was a United Healthcare client. They're one of those
24 employers. We were providing health coverage for their employees.

25 The proof will show that they strategically used the threat of

1 terminating their relationship with us to pressure us. And when my
2 clients did not give into that pressure, they terminated our relationship
3 and hired one of our biggest competitors.

4 So what you will see from the evidence, ladies and
5 gentlemen, is that TeamHealth is a giant company. It knows how to play
6 hardball and will pull every lever, including filing a lawsuit, to get what it
7 wants. More money. But that's not all you will hear. You will also see
8 the evidence about that [indiscernible] that I mentioned to you earlier.
9 And it will show the lengths that Mr. Bristow and the other folks at
10 TeamHealth and [indiscernible] would go to scam the payment system.

11 Now, the final claim in this case, ladies and gentlemen, is the
12 violation of account payroll. And in short, this statute requires that a
13 health insurer approve or deny -- one way or the other -- a benefit claim
14 within 30 days of receipt. And if the claim is improved -- approved --
15 within that period, pay the claim within 30 days of approval. That's all
16 the statute requires. Thirty days if you're approved, to pay. That's the
17 same.

18 Now, [indiscernible] the TeamHealth Plaintiffs do not allege
19 that my clients denied their claims. They're only complaint is the
20 amount. So to establish liability under the statute, they must prove that
21 my clients failed to make those payments within 30 days of when those
22 claims were approved.

23 Now, we asked Mr. Bristow in his deposition whether he
24 contented my clients delayed in properly paying these claims. And he
25 said -- he will testify, even in this case, that he thought that my clients

1 underpaid the claims. But he will tell you that he does not contend that
2 my clients failed to timely make the payments they made, consistent
3 with the statute. So we will argue at the end, after you receive
4 instructions from the Court, that even if that allegation of underpayment
5 was true, that it wouldn't be a violation of the statute.

6 Now, as we start this trial, ladies and gentlemen, you being
7 to hear the evidence. I urge you to keep these final points in mind. The
8 [indiscernible] issue in this trial, thousands of people in Clark County and
9 across Nevada went to hospital ERs for medical care and the doctors
10 who treated them often had no contract with the health plans that paid
11 for most of that care. The staffing company that contracted with the ER
12 doctors charge more and more each year for those services unbound by
13 any contract or any market limit at any time.

14 The proof will show that less than reasonable limits are put
15 on the payments for these out-of-network services and the employers
16 and the employees who also bear the costs of those increasing charges
17 and pay more and more for that coverage, and they get less and less out
18 of it.

19 The evidence in this trial will show that the Nevada -- excuse
20 me, the Nevada employers who paid for most of that healthcare incurred
21 by their employees demanded solutions to that problem, and they
22 demanded those solutions from my clients who represented them. And
23 the proof will show that they told my clients to control those healthcare
24 costs that were increasing and limit the out of network reimbursements
25 to reasonable amounts.

1 The evidence will also show that my clients, just like their
2 competitors, paid those reimbursements for out of network services to
3 reasonable market rates. The evidence in this trial will prove that the
4 TeamHealth Plaintiffs were determined to inflate their reimbursements
5 by billing higher and higher charges each year and then suing my clients
6 when they wouldn't double under to that pressure to pay those
7 excessive charges. That's why we're here.

8 At the end of this trial, I'll return to review the evidence with
9 you, and I will return to instruct -- to discuss the instructions that the
10 judge will give you on Nevada law. And when I come back I'll ask you to
11 render the only fair verdict that the evidence will support. I'll ask you to
12 reject all of the TeamHealth Plaintiff's claims. I'll ask you to tell them that
13 they are entitled to reasonable reimbursement for ER services, but they
14 are not entitled to a \$10 million windfall just because that's the price they
15 decide to slap on a bill.

16 I thank you for your attention. I appreciate your time.

17 THE COURT: Thank you. This will be our afternoon recess.

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

23 If anyone tries to talk to you about the case, report that to me
24 immediately. You are not to conduct any research on your own relating
25 to the case. You can't consult dictionaries, use the internet, or use

1 reference materials. Don't talk, text, tweet, use any social media
2 platform, don't Google issues, don't contact any other type of book or
3 computer research with regard to any issue, party, witness or attorney
4 involved in the case. Most importantly, do not form or express any
5 opinion on any subject connected to the trial until the jury deliberates.

6 Thank you for the kind attention you paid to both sides. It is
7 303. Lawyers be back at 3:15, jury at 3:20.

8 THE MARSHAL: All rise for the jury.

9 [Jury out at 3:04 p.m.]

10 [Outside the presence of the jury]

11 THE COURT: I kind of cut you off in the hallway on the
12 objection only because you need to get that on the record. So let -- we
13 can either do it now or at 3:15. What do you prefer? Right now?

14 MR. ZAVITSANOS: No, Your Honor, I'm going to withdraw
15 it. But I do have something very important to address.

16 THE COURT: Good enough.

17 MR. ZAVITSANOS: May I proceed?

18 THE COURT: Please.

19 MR. ZAVITSANOS: Okay. So Your Honor, we had a very
20 vigorous limine hearing that lasted a couple of days. One of the issues
21 that the Court heard substantial discussion about was the Ingenix -- the
22 terms of the Ingenix arrangement, which led to the creation of FAIR
23 Health.

24 And I thought Your Honor actually struck a very nice balance
25 between what we needed to get in and, you know -- I guess protecting

1 them from the implications or the rest of the story, if you will. And Your
2 Honor was very clear I thought during the limine hearing that all of these
3 limine points were subject to review and reversal and -- if someone
4 opened the door.

5 Now, when Defense counsel brought up slide 57 -- which I
6 have to say, Your Honor, I thought he did a really nice job. I like
7 watching very -- I like watching trial lawyers. And this was, to me, the
8 single most effective point that he made during the -- during the Defense
9 opening. May I approach, Your Honor?

10 THE COURT: You may. And have you shown it to Mr.
11 Blalack?

12 MR. ZAVITSANOS: It's slide 57. I think they've got plenty of
13 copies over there.

14 THE COURT: Thank you.

15 MR. ZAVITSANOS: Okay. So this slide, Your Honor,
16 demonstrates that our charges escalated dramatically in 2018. Okay?

17 Now, the reason that they escalated dramatically is because
18 that's when they stopped having to use FAIR Health. Okay? Now, Your
19 Honor, that barn door is wide open. And I have to say -- I'm going to
20 show my hand here, okay?

21 When we had a discussion this morning and Mr.
22 Leyendecker and I had a very vigorous disagreement about this about
23 whether we would object to this slide or not. And we decided we were
24 going to leave the trap up there, and I think the Defendants stepped in it.
25 And I think that door is now open to the terms of the Ingenix sale and the

1 Ingenix -- and the terms of the Ingenix resolution because right now this
2 jury is left with the impression that our charges just skyrocketed, okay,
3 after they -- you know -- 2018.

4 So I mean, I don't know what to say. I don't know -- and we
5 did not object -- I mean, they now cannot take the benefit of opening that
6 door to say we can't tell the rest of what's going on here.

7 THE COURT: I can't make a call on this until I see how the
8 evidence comes in, but I'm sure you would like to respond to that right --

9 MR. BLALACK: That'd be fine, if I could, Your Honor?

10 THE COURT: Of course.

11 MR. BLALACK: First of all, I don't know what opposing
12 counsel is referring to. There's nothing on this slide that relates to that
13 chart. Nothing. This chart -- this data comes straight out of the FAIR
14 Health data that they're relying on. It's about FAIR Health data, not their
15 choice. What this shows, Your Honor, is the growth in the benchmark;
16 not their charges.

17 So as I explained, FAIR -- and FAIR Health will explain -- there
18 are these bench -- you know -- you get all the data and they benchmark it
19 at 90th percentile, 80th percentile, 70th percentile, 60th and 50th
20 percentile. You can track how those percentile benchmarks change over
21 time. Have they gone up? Have they gone down? Have they stayed the
22 same? Et cetera.

23 What this shows is how that benchmark has moved over
24 time. It doesn't describe their charges. It specifically says on the sheet,
25 FAIR Health 80th percent of bill charges. 80th percentile had grown near

1 inflation, so what it's comparing, as I said to the jury, we would prove
2 through the expert is that the benchmark grows at a rate of 382 percent
3 over this time. Whereas if it had risen at the rate of inflation, it would
4 have risen 14 percent. But there is not a single reference on here to the
5 Team Health Plaintiff's bill chart. Now, there are other places we will
6 track that, but that's not involved in this slide.

7 MR. ZAVITSANOS: May I briefly reply, Your Honor?

8 THE COURT: You may.

9 MR. ZAVITSANOS: The problem with what counsel is saying
10 is that because of their conduct with the Ingenix -- with the whole issue
11 around Ingenix -- prices were artificially depressed for years. For years.
12 And they were not allowed to catch up to where they needed to be until
13 this -- until this Ingenix issue came to light.

14 And so he is essentially getting the benefit of the conduct
15 that was in -- that --

16 THE COURT: I understand --

17 MR. ZAVITSANOS: -- led to the --

18 THE COURT: -- both arguments.

19 MR. ZAVITSANOS: Yeah, so --

20 THE COURT: But it's just premature for me at this point to
21 make a call on whether or not the door is open.

22 MR. ZAVITSANOS: Well, the reason I'm raising it, Your
23 Honor -- and I understand. The reason I'm raising it; I would like to raise
24 it with Mr. Haben. I'd like to raise it -- in fact, I'd like to raise it -- you
25 know -- pretty early. And the point is, these charges were depressed

1 because of their conduct. And now we've got something to the jury that
2 suggests that we've got this runaway healthcare crisis.

3 MR. BLALACK: If you'd like -- he'd like to do an offer of proof
4 outside the presence of Mr. Haben, I have no problem with that.

5 THE COURT: No. No.

6 MR. BLALACK: But --

7 THE COURT: I'm not going to -- I'm not going to decide this
8 issue just yet.

9 MR. BLALACK: Okay.

10 THE COURT: I understand both arguments.

11 MR. ZAVITSANOS: Okay. I know you do, Your Honor.

12 THE COURT: All right.

13 MR. ZAVITSANOS: And anyway, I -- anyway, I anticipate this
14 is going to come up with Mr. Haben. I will approach the bench before I
15 get into this topic, but it may even come up today.

16 THE COURT: Good enough. I'll see you guys at 3:20.

17 [Recess from 3:10 p.m. to 3:28 pm.]

18 [Outside the presence of the jury]

19 THE MARSHAL: -- is back in session.

20 THE COURT: Thanks, everyone. Please remain seated.

21 Okay. So on further consideration of the request, my
22 inclination is not to open -- I don't think the one side open the door
23 based on what I heard. But if you do open the door in your defense, I
24 will require you to produce the witness in a rebuttal case.

25 MR. BLALACK: Understood. Thank you, Your Honor.

1 THE COURT: All right. Are we ready to bring in the jury?

2 MR. ZAVITSANOS: Yes, Your Honor.

3 THE COURT: Thank you. And then let me -- can I indicate to
4 you guys? I have to make a financial report every year. I can't accept
5 your very gracious offer to provide my lunch but thank you.

6 UNIDENTIFIED SPEAKER: Do we have to report the candy, or
7 can we --

8 UNIDENTIFIED SPEAKER: Well, how about the leftovers,
9 Judge? Do those count, too?

10 MR. ZAVITSANOS: It's okay if we feed Your Honor's staff?

11 THE COURT: Well, I think it's fabulous. I think it's very
12 generous and very gracious. It's just that I don't want to be the subject
13 of --

14 MR. BLALACK: Understood.

15 MR. ZAVITSANOS: I understand.

16 THE COURT: -- any inquiry on it.

17 MR. BLALACK: Understood.

18 THE COURT: It will have a price. Mine is not \$10 a day.

19 And thank you for the proposed jury instructions. Have you
20 had any luck on a proposed verdict form?

21 MR. BLALACK: We haven't gotten to that yet, Your Honor.

22 THE COURT: Okay.

23 MR. BLALACK: We've got some agreement on some of the
24 instructions, and there's others we'll clearly be in disagreement on --

25 THE COURT: Great.

1 MR. BLALACK: -- which will be [indiscernible].

2 THE MARSHAL: All rise for the jury.

3 THE COURT: Thank you.

4 [Jury in at 3:30 p.m.]

5 THE COURT: Thank you. Please be seated. Plaintiff, please
6 call your first witness.

7 MR. ZAVITSANOS: Your Honor, we call John Haben.

8 MR. BLALACK: Your Honor, I'll go retrieve Mr. Haben. I'll be
9 right back.

10 THE COURT: Thank you.

11 MR. ZAVITSANOS: Your Honor, may I approach the podium,
12 please?

13 THE COURT: Everyone has permission to move about during
14 the entire trial.

15 MR. ZAVITSANOS: Thank you. Your Honor, with the Court's
16 permission? I've laid out the exhibits I'm going to use so I can get to
17 them easily.

18 THE COURT: Great.

19 THE MARSHAL: Sir, watch your step. Step through the
20 stand and face the clerk over there.

21 THE CLERK: Raise your right hand.

22 JOHN HABEN, PLAINTIFFS' WITNESS, SWORN

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

25 THE WITNESS: My name's John Haben. H-A, B as in boy,

1 E-N.

2 THE COURT: And can I --

3 THE CLERK: What's the spelling of John?

4 THE WITNESS: J-O-H-N.

5 THE CLERK: Thank you.

6 THE COURT: Okay. And can everyone see the witness? Yes.

7 Can everyone see the screen? Thank you.

8 Go ahead, please.

9 MR. ZAVITSANOS: Thank you, Your Honor. May it please
10 the Court, Counsel.

11 DIRECT EXAMINATION

12 BY MR. ZAVITSANOS:

13 Q Good afternoon, Mr. Haben.

14 A Good afternoon.

15 Q Thank you for being here.

16 A Thank you.

17 Q Okay. So I've got a lot of ground to cover with you. A lot,
18 okay? So bear with me, all right?

19 A Okay.

20 Q Now, before I get into a little bit about your background and
21 how you fit into the issues of this case, I'm going to ask your help in
22 helping define some of the issues that I think the jury's going to hear.
23 Okay?

24 A Okay.

25 Q All right. And as far as out-of-network reimbursements while

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1 you were at United. You were a senior person with the company, right?

2 A I was vice president of the out-of-network programs.

3 Q Okay. So you're very comfortable with a lot of the acronyms
4 and terms that are used in the out-of-network world, right?

5 A I believe so.

6 Q Okay. Now, the first thing I want to talk about is something
7 called CPT -- that's Charlie Paul Thomas codes, okay? How many CPT
8 codes are there?

9 A I don't know.

10 Q Is it fair to say that there are thousands?

11 A Yes.

12 Q Okay. Now, let's talk about what a CPT code is. So as a way
13 to be uniform about what doctors do and healthcare providers do and
14 hospitals do, a code has been assigned for every type of diagnosis, every
15 type of treatment. So for example, if you have toenail fungus, there's
16 probably a CPT code for that, right?

17 A I'm not a CPT code expert. I would assume there is.

18 Q Okay. If you have cardiac arrhythmia, there's probably a CPT
19 code for that, right?

20 A I would assume so. Yes.

21 Q Now, in emergency medicine, however, unlike all other
22 doctors where it's tied to a part of the body or a type of specific
23 treatment. For emergency room doctors, CPT codes are different, right?

24 A I believe so.

25 MR. BLALACK: Objection. Foundation.

1 THE COURT: Overruled.

2 BY MR. ZAVITSANOS:

3 Q Is that right, sir?

4 A I believe so.

5 Q And in the emergency medicine world, unlike other parts of
6 healthcare, there are five. Five CPT codes, right?

7 A Again, I'm not an expert. I assume you're correct.

8 Q Okay. And I've got them up here. I wrote them down in this
9 chart.

10 THE COURT: I'm going to have to interrupt. I can't see Mr.
11 Blalack. Can you move the charts so --

12 MR. BLALACK: Your Honor, I was going to move here
13 anyway.

14 THE COURT: All right. I just have to be able to see if you
15 make some objection.

16 MR. ZAVITSANOS: Let's see, Your Honor.

17 MR. BLALACK: If this is fine for Your Honor, I'll stand here.

18 THE COURT: Okay.

19 MR. BLALACK: Be out of his way.

20 THE COURT: Thank you, both.

21 MR. ZAVITSANOS: You may get tired. Okay.

22 MR. BLALACK: I've got chocolate.

23 MR. ZAVITSANOS: That's true.

24 BY MR. ZAVITSANOS:

25 Q Okay. Now, you see these codes up here?

1 A Yes.

2 Q And they're identical except this last number here, right?

3 A Yes.

4 Q Okay. And in the world of emergency medicine, unlike
5 everything else, the CPT codes in emergency medicine are based on the
6 severity of the condition, right?

7 A Yes, I believe so.

8 Q Okay. So for example, the one that ends in 5, okay? And just
9 so I can move this along, I'm just going to use this last number here,
10 okay?

11 A That's fine.

12 Q 5 is the most serious, right?

13 A Yes.

14 Q Stroke?

15 MR. BLALACK: Objection. Foundation.

16 THE COURT: Overruled. He is laying foundation.

17 BY MR. ZAVITSANOS:

18 Q Stroke, right?

19 A I don't know. I'm assuming.

20 Q Gunshot, right?

21 A I would assume.

22 Q Okay. So if, say -- and you know that there's many claims,
23 99285 claims, in this case, right?

24 A I would assume so. Yeah.

25 Q Okay. Well, you've seen a bunch of 99285s over your career,

1 right?

2 A I know there are 99285s in -- in claims, yes.

3 Q Yeah, okay.

4 A Yeah.

5 Q And that would include gunshots, right?

6 A Again, I'm not a coding expert. I'm not certified. But if you
7 say so, I believe you.

8 Q All right. So I just want -- as the head guy at United while
9 you were there for out-of-network claims. Talking about this 99285.

10 A Okay.

11 Q This one. The serious one.

12 A Yup.

13 Q That includes strokes, gunshots, heart attacks. Okay. If I tell
14 you, Mr. Haben, this is what we charge to save someone's life that has
15 been shot in -- during the relevant time period, your position to this jury
16 is that amount is egregious, right?

17 A If the 14,000 -- 1,428 is egregious for that level of code? I
18 don't know.

19 Q You don't know? How many emails do you think you wrote
20 where you were talking about emergency room doctors charging
21 egregious rates and specifically targeting team health? How many do
22 you think you wrote using that word, egregious?

23 A I have no idea.

24 Q A lot? Quite a few?

25 A It's all relative. I don't know what you would mean by a lot,

1 but you can ask me, and I'll tell you.

2 Q More than five?

3 A Yeah.

4 Q So we're here trying to figure out whether this amount is
5 egregious or this amount is egregious. It's one of the things we're doing
6 here. Now, I want to know from you as the head of out-of-network
7 claims, before we get into your background. Are you telling this jury that
8 saving someone's life who's been shot, that this amount, this charged
9 amount is egregious?

10 A I would tell you and I would tell the jury when a claim is
11 submitted, there's a lot of medical records that are involved. It could
12 justify a reasonable amount. It could be 254. So a CPT code is typically
13 one line item. I would assume if somebody got shot, that's one item in a
14 large claim. \$1,400 to save somebody's life? I would think it would be a
15 lot more expensive than just one CPT code.

16 Q I'm only talking about emergency room doctors' charges.
17 I'm not talking about the hospital, the radiologist, the ambulance, and I
18 just need a straight-up answer, sir. From where you sit, having been at
19 United for over 30 years, the guy who drove down reimbursements. Is it
20 your testimony to this jury that this amount to the 99285 involving a
21 gunshot, heart attack or a stroke, that amount is egregious?

22 MR. BLALACK: Your Honor, I'm going to object to the
23 questioning. It's argumentative.

24 THE COURT: Overruled.

25 THE WITNESS: May I answer?

1 THE COURT: It's overruled. You can.

2 THE WITNESS: Yeah. Thank you. If you put it in the
3 perspective of saving somebody's life, \$1,400 is not a lot of money.

4 BY MR. ZAVITSANOS:

5 Q Okay. It's what emergency room doctors do; they save
6 people's lives.

7 A Of course they do.

8 Q Okay. So I don't know if you answered my question. Is it
9 egregious or not?

10 A I don't know. I'd have to look at the claim.

11 Q You don't know if someone getting shot and the bill charge
12 being \$1,428 is egregious; that's your testimony to the jury?

13 A My testimony, which I think you asked me, was \$1,428 worth
14 somebody saving somebody's life? I'd say yeah.

15 Q It's egregious or no?

16 A No.

17 Q It's not? Okay.

18 A No.

19 Q So if United paid \$254, you agree with me -- for a gunshot or
20 a heart attack or a stroke -- we got shortchanged, right?

21 A It's a lot lower than 1,428.

22 Q Well, that's not what I asked you, sir. I want you to answer
23 my question. Now, let me try it again. I apologize. I'm not the clearest
24 guy, and I talk kind of fast and I'm from Chicago, so I'm sorry.

25 A It's fine.

1 Q Okay. Let me try it again. If this amount, the 1,428, for
2 saving someone's life in a gunshot is not egregious and is reasonable;
3 do you agree with me that this amount, which is what you all pay, is
4 egregious?

5 A Are you asking is it egregious compared to the 1,428?

6 Q Yeah.

7 A It seems a lot lower to save somebody's life, of course.

8 Q Of course, it is egregious?

9 A It's low.

10 Q I know it's low, and that's why we're here. I mean, we all get
11 that. My question is do you agree what you paid in this case for
12 somebody getting shot or a heart attack or a stroke for a 99285, the most
13 serious code in the emergency room; that is egregious?

14 MR. BLALACK: Your Honor, I object to this line of
15 questioning. There's the foundation as if there is some evidence
16 showing the 1,428 is what was used to save someone's life. There's no
17 evidence in the record on that.

18 THE COURT: Overruled.

19 MR. ZAVITSANOS: Okay.

20 THE WITNESS: Can I -- I'm sorry.

21 MR. ZAVITSANOS: And Your Honor, I'm going to object to
22 the speaking objection also.

23 THE COURT: Yeah. And both of you, if at any time -- I do not
24 allow speaking objections. You can ask to approach the bench.

25 MR. BLALACK: I'll approach, Your Honor.

1 THE WITNESS: Your Honor, can I take a drink of water?

2 MR. ZAVITSANOS: And Your Honor --

3 THE COURT: You can. Yeah.

4 MR. ZAVITSANOS: -- I'm getting a little bit of the
5 heebie-jeebies with Mr. Blalack behind me, so I'm going to move this.
6 He was a Marine, I think.

7 MR. BLALACK: Don't go too far. I got to be able to find you.

8 MR. ZAVITSANOS: Okay. So how about -- okay. Well, that's
9 not going to --

10 THE COURT: Mr. Haben, can you see the lawyer there?

11 THE WITNESS: Unless he writes something different, I'm
12 fine. Thank you.

13 MR. ZAVITSANOS: Maybe I can ask the marshal to help me
14 here. What do you all usually --

15 THE COURT: If you could put it between the -- so just don't
16 obstruct their line of sight. We act like a team up here.

17 MR. ZAVITSANOS: Yes, Your Honor. Let me see if I can put
18 it in the --

19 THE CLERK: It may block you on the recording; are you okay
20 with that?

21 THE COURT: Oh, that's fine.

22 THE CLERK: I just want to make sure.

23 MR. ZAVITSANOS: Okay.

24 THE COURT: And let me interrupt for a minute. We have 95
25 on BlueJeans. Can both of you assure me that none of your witnesses

1 are on unless they're an expert or a 30(b)(6)?

2 MR. ZAVITSANOS: Yes, Your Honor.

3 MR. BLALACK: The Defendants can, Your Honor.

4 THE COURT: Thank you.

5 MR. ZAVITSANOS: Yes, Your Honor.

6 BY MR. ZAVITSANOS:

7 Q Okay. I'm going to try one last time.

8 A Okay.

9 Q I think we established that for 99285 claims, the most serious,
10 \$1,428 is reasonable, right?

11 A Yes. For saving somebody's life, yes.

12 Q Sir, that's what emergency room doctors do. That's the most
13 serious code, right?

14 A Level 5, yes.

15 Q And most of the claims in this case are 4s and 5s, right?

16 A I don't know for a fact.

17 Q Okay.

18 A I assume if they are, you're saying they are.

19 Q Okay. So my question, sir, is -- just yes or no, please.

20 A Okay.

21 Q Is the 254 egregious?

22 A The 254 is a lot lower than the 1,428. If you want to
23 categorize it as egregious, that's fine.

24 Q Well, I would. But I just want to know what you
25 would -- what you would do. Do you agree that this is egregious, 254

1 what United paid?

2 A You know, I would say -- so if you're leaning on my
3 expertise, first of all, I'm not a coder. People go to school to code claims.
4 Secondly, when we look at claims, we look at Medicare. What does
5 Medicare pay?

6 Q I didn't ask you about Medicare, sir.

7 A I understand, but --

8 MR. ZAVITSANOS: And objection, Your Honor. Limine.

9 THE COURT: Yeah, objection sustained.

10 BY MR. ZAVITSANOS:

11 Q Now, listen to my question. Do you not understand my
12 question? I'm using your word that you began implementing in 2014.
13 The word, egregious, which we're going to talk about in great detail.

14 A Okay.

15 Q Okay. Is the 254 -- yes or no; is that egregious?

16 A If you're talking about --

17 Q For a code 5?

18 A If you're talking about my reference to egregious in my
19 emails, I compared egregious to a Medicare reimbursement rate.

20 Q Sir --

21 THE COURT: I just sustained an objection on that.

22 THE WITNESS: Oh, I'm sorry. I didn't --

23 MR. BLALACK: May we approach?

24 THE COURT: Yes.

25 THE WITNESS: I'm sorry. I didn't hear you.

1 [Sidebar at 3:47 p.m., ending at 3:50 p.m., not transcribed]

2 MR. ZAVITSANOS: Your Honor, the Court's ruling?

3 THE COURT: The objection to the -- objection to the -- now
4 I'm confused. I'm enforcing the motion in limine in favor of the Plaintiff
5 on this matter.

6 MR. ZAVITSANOS: Very good.

7 THE WITNESS: Your Honor, could I ask what that means?

8 THE COURT: You'll have to confirm with your counsel at the
9 next break.

10 THE WITNESS: Okay.

11 THE COURT: I confirmed that he has spoken to you about
12 those few rules while we were up here.

13 MR. ROBERTS: I'll let you know when --

14 THE WITNESS: Okay. All right. Thank you.

15 BY MR. ZAVITSANOS:

16 Q Okay. Now, I'm going to try this one more time, sir. And I
17 need just a yes or no answer. Otherwise, I will ask the Court to instruct
18 you to answer yes or no and I don't want to do that, okay?

19 A Okay.

20 Q I want to be respectful. Yes or no, for a 99285, the most
21 severe code in the emergency room, is \$254 egregious?

22 A I'm not trying to be difficult, so I don't --

23 Q Yes or no?

24 A I'm trying -- I will call it --

25 Q And if you want to say I can't answer that, that's fine, too.

1 A I can't answer that.

2 Q Okay.

3 A I need to reference other items. Thank you.

4 Q And you're the -- you were the head of the out of network
5 programs. You were the top guy, right?

6 A Correct.

7 Q And you can't answer that?

8 A I am not a clinician. I cannot answer that.

9 Q When did you find out you were going to testify in this case?

10 A The specific date that it was coming, about two weeks ago.

11 Q Two weeks ago. Okay. And you knew you were going to
12 testify, and you knew that the rates is the central issue in this case, right?

13 A The reimbursement rates?

14 Q Yeah.

15 A I believe so.

16 Q Okay. And there was nobody higher than you that was
17 directly in charge of out of network at United while you were there,
18 right?

19 A Other than the individuals I reported up to in UHM.

20 Q But your testimony to this jury is you can't answer that,
21 right?

22 A No. There are multiple rates across the country,
23 geographically, in a market. I can't answer that off the top of my head.

24 Q I'm not talking about Chicago; I'm talking about here. You
25 can't answer that.

1 A I'm not -- no, I can't.

2 Q All right.

3 A I'm not a coding expert.

4 Q Okay. Let's move on. Okay. I understand you're retired?

5 A Yes.

6 Q When did you retire?

7 A August 2nd of this year.

8 Q Do you have a consulting agreement with United?

9 A I do not.

10 Q Do you have any kind of a retention agreement where you
11 are paid to be available?

12 A I have a severance agreement.

13 Q Yeah. A severance agreement. And in the severance
14 agreement, where they give you some money, one of the conditions was
15 you would be available to advise and assist the company, right?

16 A The severance agreement is I get paid my annual salary for
17 another year and I'm available to testify if I'm called.

18 Q All right. And they paid for you to fly out, obviously, right?

19 A Yep. Yep.

20 Q Business class?

21 A Yes.

22 Q Okay. What's the charge for a business class ticket?

23 MR. BLALACK: Objection, Your Honor. Relevance.

24 THE COURT: Overruled.

25 BY MR. ZAVITSANOS:

1 Q What's the charge, the billed charge, for a business class
2 ticket? What was your ticket?

3 A I do not know. I didn't pay for it.

4 Q Was it more than \$254?

5 A I do not know.

6 Q You don't know -- where do you live at?

7 A Minneapolis.

8 Q That's two time zones away?

9 A Yes.

10 Q How long of a flight is that?

11 A Three hours.

12 Q You don't know if a business class ticket from Minneapolis,
13 Minnesota to Las Vegas, Nevada is more than \$254, sir?

14 A I don't know. I haven't flown in three -- two years. I don't
15 know.

16 Q Where are you staying?

17 A J.W. Marriott.

18 Q Is your hotel room more than \$254 a night?

19 A I do not know.

20 Q All right. Let's move on. Okay. So I think the relevant time
21 period that we're talking about here is 2017 to roughly January 2020.
22 You with me?

23 A Yes.

24 Q Okay. And look, I sometimes get ahead of myself, and
25 sometimes I talk kind of fast. I'm always talking about that time period in

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1 every question, unless I specifically say otherwise, okay?

2 A Okay.

3 Q You with me?

4 A [No audible response.]

5 Q Okay, good. Now, there is a cart next to you. Do you see
6 that?

7 A A cart?

8 Q A cart. Do you see that?

9 A Yes.

10 Q It's hard to understand with these masks, okay? I have to
11 pull it out like this a little bit. I don't know if I'm cheating. Okay? All
12 right. So there is a cart next to you.

13 MR. ZAVITSANOS: And let me just first ask counsel if he has
14 an objection to 455. Oh, by the way, Your Honor, just for the record,
15 when I refer to an exhibit number, I always mean the Plaintiff's unless I
16 say otherwise. Okay? Just for the record. Thank you, Your Honor.

17 Okay. So if I could ask Mr. Blalack whether he has an
18 objection to 455.

19 MR. BLALACK: Yes, Your Honor. It's an incomplete
20 document, Your Honor.

21 THE COURT: Okay.

22 MR. ZAVITSANOS: May I lay the foundation, Your Honor?

23 THE COURT: Yeah.

24 BY MR. ZAVITSANOS:

25 Q Okay. Do you see the binders next to you, sir?

1 A On the cart? Yes.

2 Q Yeah. So you see Michelle back there? She's running the
3 exhibits.

4 A I don't know who she is.

5 Q She's awesome. Okay. So on the spine of those binders,
6 there's a range of the exhibit numbers. Can you see if you can find the
7 one with 455?

8 MR. ZAVITSANOS: Michelle, don't put it up yet, please. If
9 you would -- Your Honor, may the witness step down and get the
10 binder?

11 THE COURT: Yeah. Mr. Haben, you may step over there.

12 THE WITNESS: Is that volume six of seven?

13 MR. ZAVITSANOS: Well, I don't know. It's -- the ranges are
14 there. Whichever one contains 455, if you would not mind, please,
15 getting it and opening it to the tab with 455. And we're going to be
16 doing this a lot until we get enough of these exhibits admitted so that we
17 can talk about them further. Okay?

18 BY MR. ZAVITSANOS:

19 Q Okay. Now, will you take a moment to just look at that,
20 please? 455. Is that your name up at the top?

21 A Yes, it is.

22 Q And what's the status update?

23 A Can I spend just a second --

24 Q Sure.

25 A -- looking at this?

1 Q Sure.

2 [Witness reviews document]

3 A Okay.

4 Q Does that have your name on it?

5 A Yes, it does.

6 Q Does it have Ms. Paradise's name on it?

7 A Yes, it does.

8 Q Is that during the relevant time period?

9 A You --

10 Q 2017 through January 2020.

11 A Yes. I'm assuming you're meaning the end of January.

12 Q Yes, sir.

13 A Yes.

14 Q Is this discussing some of these -- I got to look at this -- these
15 are air quotes -- "programs"? Is that discussing some of these
16 programs?

17 A Are you saying that because it says programs in here?
18 Or -- I'm not trying to be difficult.

19 Q Well, no, because I'm going to get to whether they're really
20 programs or not, or whether they're just -- they're something else. But I
21 digress.

22 A Okay.

23 Q Does this deal with these programs that you all had during
24 this time period?

25 A I think what it deals with is the out of network spend --

1 Q Yes.

2 A -- for a fully insured business.

3 Q Yes, sir.

4 A Okay.

5 Q And is this a report that was either sent to you or created by
6 you?

7 A I don't know if I -- it is most likely created, or I partook in
8 partially creating it.

9 Q And does the memo part -- and just look at it -- does it look
10 complete?

11 A When you say the memo, you mean just the --

12 Q The document. Yes, sir. I'm not talking about whether there
13 was an email attached to it or anything like that. I'm saying does this
14 document look complete.

15 A I think so.

16 MR. ZAVITSANOS: Okay. Your Honor, I move for the
17 admission of Plaintiffs 455.

18 MR. BLALACK: No objection, Your Honor.

19 THE COURT: Exhibit 455 will be admitted.

20 [Plaintiffs' Exhibit 455 admitted into evidence]

21 MR. ZAVITSANOS: Okay. Michelle, please, if we can put it
22 up. All right. Now, let's pull out the top part, please, Michelle. There we
23 go.

24 BY MR. ZAVITSANOS:

25 Q Are you a blackjack player, sir?

1 A I am not.

2 Q Okay. So when you get two aces, a lot of people split those
3 and that's called doubling down, right?

4 A Yeah.

5 Q That's an effort to make more money, right? Doubling down,
6 that term. You've heard that term, right?

7 A In my case, I lose. But yes.

8 Q Yeah. Okay. So this is the out of network double down, and
9 it's got John Haben and Betsy -- I've always been calling it Paradise. Am
10 I saying it wrong?

11 A I -- you're walking away. It's hard to hear you with the mask
12 on. It's Paradise.

13 Q Paradise.

14 A Like you live in paradise.

15 Q Yeah.

16 A Okay.

17 Q Two Tickets to Paradise, the song.

18 A Right.

19 Q Yeah. Okay. So that's you and Ms. Paradise. And the two of
20 you were the lead people on this out of network program development
21 over the five years we're going to talk about, right?

22 A Yeah. I -- yes.

23 Q Okay.

24 A There was an additional person, but yes.

25 Q Okay. Now, let's go to page three.

1 MR. ZAVITSANOS: And Michelle, can you see me okay here,
2 Michelle? Can you please pull out this part here?

3 BY MR. ZAVITSANOS:

4 Q Okay. Now, let's talk about some other terms, here. One of
5 these other terms is something called ASO. Can you see that that's
6 mentioned there, where they're talking about an ASO score card? ASO
7 score card. ASO migration score card. Do you see that?

8 A Yes, I see it.

9 Q Okay. ASO stands for administrative services only, right?

10 A Yes.

11 Q Okay. And by the way, your lawyer did a fabulous job in
12 explaining what that was. Let me see if I can steal some of his thunder
13 here and repeat what he said, okay?

14 A Yep.

15 Q An ASO client is like when you have a big company like
16 AT&T, for example. They're one of your clients, right?

17 A Yeah, I believe so.

18 Q We're going to talk about them.

19 A Okay.

20 Q It's like when you have a company like AT&T where AT&T
21 itself acts as the insurance company, right?

22 A Yes. They fund the claims.

23 Q Okay. But of course, AT&T doesn't know how to be an
24 insurance company, and so they have to hire somebody to run the
25 program and administer the claims, right?

1 A Yes.

2 Q And that's what you do, right?

3 A That's what United does, yes.

4 Q Well, and I -- and by the way, just to be fair to you and the
5 Defendants, there's a number of different entities here. I'm talking
6 conceptually right now, right?

7 A I understand.

8 Q And the way that you measure how you get paid with these
9 ASO clients, like AT&T or Caesar's or these others, right, is something
10 called PMPM, right? That's a charge?

11 A That's a charge.

12 Q That's a charge that the third party administrator, United or
13 one of the United companies, charges the ASO client, right?

14 A That -- that could be a vehicle of what the company is.

15 Q And this stands for per member per month, right?

16 A Correct.

17 Q So for example, as an example, you know, if you pick up an
18 ASO client, you could say, just hypothetically, the PMPM is \$20 per
19 month, right?

20 A As an example?

21 Q Yes, sir.

22 A Yes.

23 Q And so for \$20 a month, or \$30, or \$40, whatever it is, you
24 are going to act as the insurance company and do everything except
25 assume the risk, right?

1 A It's a broad assumption, but just for this discussion.

2 Q Okay.

3 A There's a lot of other nuances to it, but yes.

4 Q Right. Now, these ASO clients, they have these -- there's
5 usually three documents that go with these ASO clients. There's the
6 summary plan description, the SPD.

7 A Yep.

8 Q That's one of them, right?

9 A Yes.

10 Q There's the certificate of coverage, the COC, right?

11 A Yes.

12 Q And we're going to look at some examples of those in a
13 minute.

14 A Fair.

15 Q And then, there's the administrative services agreement,
16 right?

17 A Correct.

18 Q And it's the administrative services agreement that identifies
19 how much the PMPM is, right? That's usually where you put it, how
20 much you're going to charge these ASO clients.

21 A I believe so. I am not directly involved in selling to the client.

22 Q Now, one thing we know is that what the world looked like in
23 2016 for most, and I mean most, of your ASO clients is that most of
24 them, in the summary --

25 MR. ZAVITSANOS: You can sit down.

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1 BY MR. ZAVITSANOS:

2 Q Is that most of them in their plan booklet -- and by the way,
3 the doctors are not signatories to these agreements, right?

4 A I don't know what you mean by that, but I'm assuming
5 they're not -- they're not part of the agreement. Correct.

6 Q Yeah. I mean, if you and I sign an agreement, that doesn't
7 bind Michelle, right? That's our deal, right?

8 A Yeah.

9 Q Okay.

10 A Yeah. Yeah.

11 Q And the administrative services agreement is between
12 United and the ASO client, right?

13 A Yes.

14 Q Okay. Now, in 2016, most of these ASO clients had language
15 in these plans that you all had agreed to that said you're going to pay at
16 the usual, customary, and reasonable amount, right?

17 A I believe so, yeah.

18 Q And the problem with that is if you pay at the UCR
19 rate -- that's another term to add. Usual, customary, and reasonable,
20 right?

21 A Correct.

22 Q Okay. But the problem was when that language was in those
23 plans, Mr. Haben, this is the fee you got and nothing else, right?

24 A I don't know for sure. I'm assuming that's the case.

25 Q But if you can get the clients away from the ASO fee -- or

1 excuse me, from the UCR reimbursement, you not only could charge a
2 PMPM, but you could also charge 35 percent between the difference of
3 the bill charge and what you decided to pay, right?

4 A I think you maybe have misstated that. Get them away from
5 UCR to what?

6 Q Let's say --

7 A To nothing, or?

8 Q To OCM. Let's say OCM, which we'll talk about in a minute.

9 A Okay.

10 Q If they went on this program, this OCM, where all you're
11 doing is just cutting the reimbursement, you get a percentage of that cut
12 in addition to the PMPM. Thirty-five percent of the reduction, right?

13 A It's not just the reduction, though. I think you're
14 misrepresented it, if we wanted to --

15 Q Are you getting 35 percent of the difference between the bill
16 charge and what you pay?

17 A If the client goes to OCM, we have a percentage of savings
18 charge. If they go to other programs, some of the programs, we don't
19 charge them for it at all.

20 Q Okay. I'm going to get to the programs in just a minute.
21 Whether these are really programs. We're not --

22 A Okay.

23 Q You're already administering the claims, right?

24 A In terms of --

25 Q Before going to these other programs. You're already

1 administering the claim for the ASO client, and you're charging them a
2 monthly fee per member, right?

3 A Yeah.

4 MR. BLALACK: Objection.

5 MR. ZAVITSANOS: Okay.

6 MR. BLALACK: Vague, Your Honor. I don't know what we're
7 talking about.

8 MR. ZAVITSANOS: Hold on. I'll get to it.

9 THE WITNESS: You were talking about claims payment,
10 right? Paying --

11 MR. ZAVITSANOS: Yeah.

12 THE WITNESS: Sorry. Not -- I'm sorry.

13 BY MR. ZAVITSANOS:

14 Q And then --

15 THE COURT: And you guys -- please don't talk over each
16 other.

17 THE WITNESS: Yeah. I'm sorry. I just realized that.

18 MR. ZAVITSANOS: I'm sorry. I-- my apologies.

19 THE WITNESS: Me, too.

20 BY MR. ZAVITSANOS:

21 Q And then, if you cut the amount of the reimbursement, you
22 are literally taking money out of our pocket and putting it in yours. And
23 here, on this document here, you've got a score card where you are
24 migrating the reasonable and customary language to this other
25 methodology that entitles you to get a cut in addition to this 35 percent,

1 even though you're not doing anything more for that 35 percent other
2 than just cutting the rate; is that so?

3 A I think you're misrepresenting. Can I --

4 Q No.

5 A Well, I don't think you're correct in your facts.

6 Q Well, you were trying to migrate your clients away from
7 reasonable and customary, right? And you were keeping a score card of
8 how you were doing, right?

9 A Can I --

10 Q No. That's what it says. Score card.

11 A Yeah, it does.

12 Q Okay.

13 A Can I explain it?

14 Q No. You'll get a chance with your lawyer. Okay. ASO
15 reasonable and customary migration score card. Do you see that?

16 A Yeah. Those are the leads. We were selling to clients. So
17 we go and approach the client and say, do you want to migrate.

18 Q My question was do you see that, Mr. Haben?

19 A I do.

20 Q Okay. All right. And by the way, the person who the score
21 card was being evaluated against is you, John Haben, right? So the
22 company was keeping score on you on this double down strategy, to
23 basically increase revenue, right?

24 A That's not correct.

25 Q It's not correct that the primary motivation for these