

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

**APPELLANTS'
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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 programs was to earn as much as you can so that by 2019, you were so
2 successful that you were earning over a billion dollars a year on these 35
3 percent charges, even though you were already servicing the client, sir?
4 Is that true?

5 A No. You're misrepresenting it.

6 Q Did you make over a billion dollars a year from the shared
7 savings initiative?

8 A Yes. We make money for the program. The clients pay us
9 for those services.

10 Q Yes, sir. But they already paid you -- and what are you doing
11 exactly for that 35 percent?

12 A So for the out of network programs, the R&C is an
13 application of a reimbursement method.

14 Q Sir --

15 A Well, you're asking me a question. Can I --

16 Q No, no, no. My question -- I didn't ask what R&C was. What
17 are you doing --

18 A So we --

19 Q -- to earn that 35 percent above and beyond what you were
20 already doing --

21 A Sure.

22 Q -- when you're earning this PMPM, sir?

23 A We --

24 MR. BLALACK: Your Honor, could you allow the witness to
25 answer the question he was asked?

1 MR. ZAVITSANOS: Judge, I'm trying to finish my question.

2 THE COURT: I thought he was clarifying the question.

3 BY MR. ZAVITSANOS:

4 Q Go ahead, sir.

5 A Okay. So the programs that we administer outside so when
6 they migrate. What they pay us for is a member advocacy. So if the
7 member's in the middle, we will get engaged and help them with their
8 balance billing. That's the additional service that they're paying us for.

9 Q Now, wait a minute. I thought we agreed when we were
10 talking about this PMPM, that you were acting as an insurance company
11 in all respects, except you weren't assuming the risk, right?

12 A Correct.

13 Q Okay. So as an insurance company on the other stuff, not
14 the ASO, but the -- it's another acronym -- the RFI business -- and that's
15 fully insured, right?

16 Q Correct.

17 Q That's the other side of business, right? Okay.

18 A Okay.

19 Q Okay. So on the FI business, on the -- on the FI business, sir,
20 if somebody calls -- a member calls, are you going to take their call?

21 A If a member calls?

22 Q Yeah.

23 A Yes.

24 Q And on the ASO business, if a member calls, are you going
25 to take their calls as part of that PMPM fee?

1 A Yes.

2 Q And if they tell you they have a problem, are you going to try
3 to help them with that problem as part of the PMPM fee?

4 A Yes.

5 Q So what are you doing for that 35 percent?

6 A So those new programs had the advocacy piece. So if the
7 member's getting balance billed, we would engage with the provider and
8 say, what are you billing for, can you justify your charges, can we
9 negotiate on behalf of the member to settle at a different amount.

10 Q Here's the problem I'm having. Before you began migrating
11 over, the members by and large were not getting balance billed, correct,
12 for the most part, right?

13 A I believe so.

14 Q Okay. And there was no need for member advocacy because
15 the member went to the emergency room out of network. The
16 physicians were paid reasonable and customary charges. And they
17 moved on, right?

18 A They were being paid what's called the UCR rate.

19 Q Usual, reasonable, and customary, correct?

20 A That was the acronym. Yes.

21 Q Yeah. And then when you started cutting the rate
22 dramatically, you cut it by -- it ended up at 80 percent. It started at 10
23 percent reduction. And over five years, it ended in an 80 percent
24 reduction. Down like a double black in --

25 A A double what?

1 Q Double black. Are you a skater?

2 A No, I am not.

3 Q Okay. It ended up at over 80 percent below the bill charged,
4 right?

5 A Okay.

6 Q And under these programs that provided this 35 percent, the
7 more you cut, the bigger the difference between the bill charged and
8 what you pay, the more you made, leading to over a billion dollars a
9 year, right, sir?

10 A In addition to that, the providers and what they bill. If the
11 providers increase their charges, yes, that's more. And to clarify, too,
12 the migration, clients are sold this. They're not forced this program.

13 Q Oh, hold on.

14 A They ask us to mitigate their spend. And the target --

15 MR. BLALACK: Well, objection. Hearsay, Your Honor.

16 THE WITNESS: Sorry. They do. I've been involved.

17 THE COURT: Hang on.

18 MR. BLALACK: Objection. Hearsay.

19 THE COURT: He answered the question.

20 THE WITNESS: Okay.

21 BY MR. ZAVITSANOS:

22 Q Is any client going to come in here and testify?

23 MR. BLALACK: Objection. Foundation.

24 THE COURT: Overruled.

25 BY MR. ZAVITSANOS:

1 Q Do you know if any client's going to come in here and back
2 up what you just aid?

3 A I don't know.

4 Q Do you know if there's anything that either side written by
5 the client says, I need these rates cut, I need the member exposed. Do
6 we have that?

7 A The benefit plans outlined the out of network program.

8 Q No, no. Do you know whether on your company's exhibit list
9 there's even one shred of paper that backs up what you just said, from a
10 client, sir?

11 A I don't know.

12 Q Okay. So back to my question. The more you cut, the less
13 we get paid, and the more you make?

14 A And our clients are satisfied. They've asked us to do this.

15 MR. ZAVITSANOS: Objection.

16 MR. BLALACK: Your Honor --

17 MR. ZAVITSANOS: Speculation.

18 THE COURT: He can't testify as to what someone else thinks.
19 So the jury needs to --

20 MR. ZAVITSANOS: And nonresponsive.

21 THE COURT: -- disregard that last answer because he can't
22 testify about what someone else thinks.

23 BY MR. ZAVITSANOS:

24 Q I don't want you speaking for someone else. I want you
25 speaking for John Haben, okay? Are you with me?

1 A I'm sorry, can I --

2 Q No, sir. You may not. Let me try this again. Look at me, not
3 him.

4 A I'm trying to clarify -- I'm speaking for John Haben.

5 Q Okay. So here's what I want to know, Mr. Haben, is it correct
6 that with every percentage you cut, United makes more, and the doctors
7 are paid less?

8 A If that's what the client is signed up for. Yes.

9 Q And your company was leaping a score card of you, of how
10 successful this migration was.?

11 A That score card was not of me.

12 Q What?

13 A That score card was not of me.

14 Q Who was it?

15 A That score card was a list of clients to go approach and ask,
16 do you want to move? I owned the score card in terms of reporting it.

17 Q You were the owner, right?

18 A I was responsible for sales to ask them, can you give me the
19 list of clients that have R&C, so that you can approach them.

20 Q Okay. So at any point while you're hanged up at 80 to 85
21 percent cuts, did you ever tell anybody, hey, man, you can't be doing
22 this, this is egregious? Did you ever do that, sir? Did you ever push back
23 even one time on any of these cuts? Were you not as motivated to
24 essentially double up?

25 A I would say to the contrary. We have clients that have asked

1 us, our spend is too high, can you help me?

2 MR. BLALACK: Your Honor, that's not -- he's not getting
3 hairspray. He's responding to a question about his own motivations and
4 state of mind.

5 THE COURT: I'm going to overrule that. The only thing that
6 stays is his impressions.

7 BY MR. ZAVITSANOS:

8 Q Okay. So let me be real quick. I'm not asking you what
9 someone told you, okay, because I need to be able to verify. I mean, you
10 know -- you know who we are, right? You know where we are here?
11 You know what this is?

12 A Yeah. It's a courtroom.

13 Q It's the Cathedral of Truth, right? Not the newspapers, not
14 the media, not the little Yale study, which we're going to talk about in
15 just a minute. Here, it's all about the truth. Okay. And so in order to get
16 to the truth, we need to be able to hear from people directly. So I want
17 to hear from you directly. And then when the other witnesses get on,
18 we'll hear from them directly.

19 A Fair enough.

20 Q Fair enough?

21 A Yup.

22 Q Okay. Now, let me continue. Now, I got sidetracked a little
23 bit. And I want to go back to your background. All right. So can you --
24 would you do me a favor, you're going to get very behind the binders.
25 Would you go to -- pull out the one that has 268? And if you could

1 please take a moment to look real quick. And I said, I'm sorry, I didn't
2 realize you were still on. Okay. Is this a -- the -- what is EHCV?

3 A That's healthcare. Okay. What is EHCV?

4 A I believe -- I've been out of the game for a little bit.

5 Q That's okay.

6 A I believe it's employer healthcare value.

7 Q Okay.

8 A I'm sorry if it mumbled. I think it says value. Yeah.

9 Q Mr. Haben, it's okay. It's okay.

10 Q Okay. On the second page, does it identify you and Ms.
11 Paradise as being in charge of the out of network initiatives?

12 A It does.

13 Q Okay. Is this during the relevant time period, sir?

14 A It says January of '19 -- 2019. So I assume it is.

15 Q Okay. So it's within the end zones, right?

16 A I believe so.

17 Q Okay. All right. And this is addressing some of the
18 programs we're going to talk about, right?

19 A Yes.

20 Q I'm sorry, I didn't hear you.

21 A Yeah.

22 Q My apologies. This is addressing some of the programs
23 we're going to talk about?

24 A I believe so.

25 MR. ZAVITSANOS: Okay. Your Honor, I move for the

1 admission of 268.

2 THE COURT: Any objection?

3 MS. SALES: There's no objection.

4 THE COURT: 268 will be admitted.

5 [Plaintiff's Exhibit 268 admitted into evidence]

6 MR. ZAVITSANOS: Okay. Michelle, let's put up page 1, and
7 let's -- hold on. Okay. Actually, let's go to the second page, Michelle.
8 There's a lot of other stuff on here I'm not going to ask you about. So
9 let's pull out the title and pull out the top part where it says
10 transformational strategies. Kind of the top -- and the top, Michelle.
11 Maybe you can get it bigger. Okay. That's good.

12 BY MR. ZAVITSANOS:

13 Q Okay. So this is -- appears to be a chart of what United is
14 calling transformational strategies, right?

15 A Yes.

16 Q Okay. Transformational strategy means that you were doing
17 things a certain way, but now you're going to go in a different direction,
18 right? You're going to transform what you've been doing?

19 A I would assume so. Yeah. I didn't --

20 Q Okay. And it has a column that says, owner. You see that?

21 A Yup.

22 Q Okay. And that's one thing that United does. You know
23 Harry Truman, right, the buck stops here, he had that little thing on his
24 desk.

25 A I'm -- that's the responsible party.

1 Q Yes, sir.

2 A Yes.

3 Q And United holds its leadership accountable, right?

4 A Correct.

5 Q Okay.

6 MR. ZAVITSANOS: Michelle, let's go to the bottom. And
7 let's see who the owners are identified down at the bottom out of
8 network, because that's what this case is about.

9 BY MR. ZAVITSANOS:

10 Q Okay. All right. John Haben, Becky Paradise?

11 A I do.

12 Q Okay. Ms. Paradise reports to -- she reports to you -- or she
13 reported to you, excuse me?

14 A Correct.

15 Q And I think you said you had about 80 people in your
16 organization?

17 A About that. Yes.

18 Q But she was the only direct report to you, right?

19 A Throughout the network, correct.

20 Q Yes. Now, there's an interesting thing here. Oh, by the way,
21 there's a --

22 MR. ZAVITSANOS: Michelle, close this out for a second. Oh,
23 can you pull out the top part, please, so we get the columns across, and
24 then the bottom? Can you do that Michelle, top and the bottom?

25 BY MR. ZAVITSANOS:

1 Q Now, so the owners are Haben and Paradise, right?

2 A Yup.

3 Q And we see a 2019 T. That's a target, right?

4 A Correct.

5 Q That target does not -- does not include PMPM, right?

6 A That target is what we're trying to save our clients.

7 Q That target does not include PMPM, right?

8 A That target is not a fee to us. That's what we're trying to see,
9 our clients.

10 Q Let me ask you again. That Target does not include PMPM?
11 You're already getting that, right?

12 A It's entirely separate. It's not a fee.

13 Q Yup. Okay. Yes, sir. Now, and the target is to cut by 800
14 million, of which you would get 35 percent for doing nothing, right?

15 A That's not correct.

16 Q You're just cutting the rates. You're already servicing the
17 client. You're not doing a thing for that 35 percent, other than member
18 advocacy, right?

19 A That 800 million represents other programs, other than the
20 programs we charge fees for.

21 Q Okay. Now, here's what I'm going to ask you about.
22 Socialization presentations, can we highlight that? You know there are
23 these people -- do you have kids?

24 A Yes.

25 Q Okay. Are they on your social media?

1 A I would assume so. Yeah.

2 Q Okay. So my kids tell me, Dad, I don't know what it is, but on
3 Instagram, people that are on Instagram, there are some people that
4 actually get paid to just post nonsense. You heard this?

5 A Yup.

6 Q Okay. And these are people that are influencers. They try to
7 influence society, right?

8 A Okay.

9 Q Okay. And no doubt about it, in 2014, United set on a path to
10 change the public narrative, socialization, presentation, so that people
11 would start buying the message, right?

12 A We were educating on provider reimbursements. Yes.

13 Q Yeah. Because you knew -- when you did this, you knew this
14 day was coming, and you knew that people would end up in a jury, and if
15 you got to them five years before, and you blitzed enough media, the
16 narrative would be viewed through your lens, rather than the cathedral
17 of truth, right?

18 MR. BLALACK: Objection. Vague and ambiguous.

19 THE COURT: Overruled.

20 BY MR. ZAVITSANOS:

21 Q Right, sir?

22 A I try --

23 Q That's what that is?

24 A Can I answer?

25 Q No. Is that what that is?

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1 A No. I trust people are smart, and they can understand what
2 they're being told.

3 Q Oh, I do, too. Okay. So socialization presentations are
4 efforts designed to educate the public about excessive healthcare and
5 egregious billers and balance billing and surprised billing and rising
6 costs. All this stuff we heard in opening, which we going to go through
7 slide by slide, and see if there's truth in any of that stuff. Okay.

8 A Good.

9 Q Socialization is designed to change the public narrative,
10 right? And you began that in 2014?

11 A It's to educate.

12 Q Right. Okay. And you've been very successful because the
13 Wall Street Journal, The New York Times, the Washington Post, CNBC. I
14 mean, I think we got the most important. I mean, you've been successful
15 in putting the bullseye on the back of Team Health over the last five
16 years to justify these targets of which you're going to get 35 percent.
17 You've been very successful with that, right?

18 A We don't get 35 percent in all of that.

19 Q Well, you get enough that you make over a billion dollars a
20 year, on top of the PMPM, right?

21 A We make fees off of our programs. Yes.

22 Q You got up to 1.3 billion, right?

23 A I believe so.

24 Q Yeah. Okay. So would you -- the same binder, look at
25 exhibit -- I think it's the same binder. I'm not sure, sir. Exhibit 294. Look

1 at that.

2 A That might be in a different binder.

3 Q Oh, it might be, so just grab it and let me know when you're
4 ready. Okay. And I'll just tell you again as I did the last time, I'm looking
5 at 1 -- pages 1 and pages 3 I'm going to ask you about.

6 MR. ZAVITSANOS: Your Honor, may I ask counsel if he has
7 an objection before I go through the steps.

8 THE COURT: Yes, of course. And just a polite reminder, we
9 will stop at 4:45.

10 MR. BLALACK: I think if you lay the foundation I won't, but I
11 think you need to lay the foundation. It's not evident from the document.

12 MR. ZAVITSANOS: Okay. All right. We'll go again.

13 BY MR. ZAVITSANOS:

14 Q All right, Mr. Haben. Now Exhibit 294, does this identify you
15 and Ms. Paradise on page 3? At the bottom -- bottom of --

16 A Yes, it does.

17 Q Bottom box.

18 A Yep.

19 Q And does this deal with the out-of-network initiatives that
20 United had during the relevant time period which appeared on the first
21 page as 2019?

22 A Yes, this is February 2019.

23 MR. ZAVITSANOS: Your Honor, I move for the admission of
24 294.

25 MR. BLALACK: No objection.

1 THE COURT: Exhibit 294 will be admitted.

2 [Plaintiffs' Exhibit 294 admitted into evidence]

3 BY MR. ZAVITSANOS:

4 Q Okay. Now let's see what we got here. Okay. Now I'm
5 jumping around a little bit here, because what I'm going to do tomorrow,
6 Mr. Haben is we're going to start in 2000 -- we're going to start in 2014.

7 A Okay.

8 Q And we're going to see whether or not you all tried to
9 influence the narrative for the purpose of getting to what we're about to
10 look at. That's what we're going to do tomorrow.

11 A Okay.

12 Q Okay.

13 A Yeah.

14 Q Now for right now I want to look at this document. And this
15 is something called an executive summary, right?

16 A Yeah.

17 Q All right. Okay. So will you please pull out at the bottom of
18 -- yeah, long term transformation. Now what we know is, sir, that this is
19 sent downhill. It's not stopping. It's going to continue unless a jury says
20 stop. We know that, right? Because it is --

21 MR. BLALACK: Objection.

22 THE COURT: Hang on.

23 MR. BLALACK: Argumentative.

24 MR. ZAVITSANOS: Let me rephrase. I'll rephrase, Your
25 Honor.

1 THE COURT: Yeah, objection sustained.

2 MR. ZAVITSANOS: Let me rephrase, Your Honor.

3 BY MR. ZAVITSANOS:

4 Q Okay. Long term transformation; do you see that?

5 A I do.

6 Q Okay. By 2023, you want to continue cutting out-of-network
7 reimbursements by \$3 billion, right?

8 A Correct.

9 Q Okay. And we're going to talk about that minimal impact to
10 numbers tomorrow, I promise. Is whether there's a minimal impact to
11 members. Fair enough.

12 A Fair enough.

13 Q All right. Now let's go to page 3.

14 MR. ZAVITSANOS: Now top third Michelle. Well, actually
15 let's go to the bottom, please. Success Metrix. And all the way to the
16 bottom.

17 BY MR. ZAVITSANOS:

18 Q Okay. Do this is a business plan talking about projections
19 going forward, right? Right, sir?

20 A It's metrics going forward. Not -- it's not a business plan.

21 Q Here's -- and there's you, John Haben.

22 A Yeah.

23 Q Right?

24 A Yeah.

25 Q Okay.

1 MR. ZAVITSANOS: Now Michelle, will you please pull out
2 the top third.

3 BY MR. ZAVITSANOS:

4 Q Now in opening, Mr. Blalack told the jury that there was a
5 problem with the way billing was done. Uncontrolled, no reference, you
6 can pick whatever number you want. Did you hear the opening?

7 A Faintly. I was in the room, but could barely --

8 Q Okay.

9 A -- hear him.

10 Q But internally, the way United talks about what was
11 happening, was not that it was a problem, it's an opportunity. Do you
12 see that? Problem opportunity statement, right?

13 A Correct.

14 Q Okay. And you want to systematically drive 75 percent from
15 22 percent of ASO reimbursement payments to ENRP or OCN payment
16 methods. Do you see that?

17 A I do.

18 Q Okay. Those are much deeper than usual, customary and
19 reasonable, right?

20 A They are.

21 Q And here's the thing, sir. United is the largest single insurer
22 in the United States, right?

23 A I believe so.

24 Q Yeah. And the thing about the insurance industry like the
25 airlines and others is you follow the leader. You all kind of follow each

1 other, right? And so when United does this, driving 75 percent to these
2 80-85 percent reductions. The others do as well, leading to less member
3 protection and higher exposure.

4 MR. BLALACK: Object to the form of the question, Your
5 Honor. It's compound.

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

7 MR. ZAVITSANOS: I'm going to rephrase.

8 BY MR. ZAVITSANOS:

9 Q Actually you know what, I'm going to get to this tomorrow
10 because we need to talk about what ENRP is and what OCM is. We're
11 going to do that tomorrow. But let me -- let me move on Mr. Haben,
12 okay. Okay, now -- okay. A couple of other -- let's identify a couple of
13 other -- couple of other terms here the jury may see in these documents,
14 okay. All right, so we've got this term here. INN, right. That stands for
15 in-network, right? Correct?

16 A Related to like a benefit level, yes.

17 Q Okay. And another way to call this is to say PAR. That's the
18 same.

19 A No. No, it's not.

20 Q If it's a PAR reimbursement, that means you're paying a
21 doctor who is in-network.

22 A INN is in reference to the benefit level in a benefit plan. It's
23 not synonymous for a provider in the network.

24 Q Fair enough. Then I'll get to this tomorrow. Thank you for
25 clarifying that.

1 A Yeah.

2 Q PAR is in-network, right?

3 A Correct.

4 Q And then we have OON. We'll see that a lot in the
5 documents. And that's out-of-network, right?

6 A Correct.

7 Q Okay. Now -- all right. And this case is about this, right?

8 A Yes.

9 Q And this case involves claims that are here, fully insured --

10 A Okay.

11 Q -- right?

12 A Okay.

13 Q And it involves claims here, right?

14 A Okay.

15 Q Right?

16 A Yes.

17 Q And you understand that these clients of yours, these
18 employers, they are not parties to this case. You understand it's the
19 United entities that are the parties, right?

20 A I understand that, yes.

21 Q Okay. All right. Okay. Now another term that the jury will
22 see is TPA. And that stands for third party administrator, right?

23 A Correct.

24 Q And that's what United does when it has ASO clients, right?

25 A You can infer that, yes.

1 Q Okay. Now another thing we're going to hear is these
2 providers that are in network, that are PAR, these are people that have a
3 contract with United, right?

4 A Correct.

5 Q And these are providers like cardiologists and radio -- or
6 cardiologists and gynecologists, and family practice, et cetera. You get
7 the book, and it has the listing of the doctors. All those doctors are in
8 network, right?

9 A I believe. Yeah, I hope you go online and not look at a book,
10 but yes.

11 Q Yeah, you want to go online.

12 A All right.

13 Q But the out-of-network doctors are not on those lists, right?

14 A To be --

15 Q The out-of-network and emergency room doctors are not on
16 those lists?

17 A It depends on the client because they might have access to a
18 wrap network and see.

19 Q I'm going to get to the wrap in a minute.

20 A Okay, but as a PAR provider, they're not indicated as a PAR
21 provider in that directory.

22 Q Okay.

23 A Okay.

24 Q Now let's talk about wrap networks. You just brought that
25 up.

1 A Okay.

2 Q Okay. A wrap network is still out of network, right?

3 A Yes.

4 Q Technically, okay.

5 A Technically.

6 Q Okay, so let's -- it's also called a rental network, right?

7 A Yeah.

8 Q Same thing, right?

9 A Yep. Yep.

10 Q Okay. Now let's talk about what that is. Okay. And let's be
11 crystal clear about this. Wrap and rental are out-of-network, right?

12 A Yes, that's why I tried to clarify that.

13 Q So there are companies - we heard some discussion about a
14 company called MultiPlan, okay. You with me?

15 A Yep.

16 Q And MultiPlan -- is there an objection to Exhibit 3?

17 MR. BLALACK: One second, Your Honor. Court's
18 indulgence. No objection.

19 MR. ZAVITSANOS: Move for the admission of Exhibit 3.

20 THE COURT: Exhibit 3 will be admitted.

21 [Plaintiff's Exhibit 3 admitted into evidence]

22 THE COURT: And we've got two minutes.

23 BY MR. ZAVITSANOS:

24 Q Okay. Let me see if I can do this real fast. Okay, so a wrap
25 rental agreement, sometimes you have out-of-network doctors that may

1 cut a deal, not with the insurance company, but with a third-party like
2 MultiPlan. And they -- and the deal they cut is if you can get us say like
3 90 percent of our bill charges and you go to the insurance company, I
4 already have, we'll take it, right?

5 A That's a good characterization of it.

6 Q Okay, and the thing about wrap rental agreements, like the
7 one we're looking at here, this one is between -- this one is between
8 United and MultiPlan. Do you see that?

9 A I see that. I'm assuming because of the time -- I don't --

10 Q Okay.

11 A I want to look at the whole document, but I can stipulate on
12 the -- I do. Is it in Exhibit 3 over here?

13 Q Let me do it this way, sir.

14 A Okay.

15 Q The thing about these wrap rental agreements is that a lot of
16 out-of-network doctors will do a deal with a company like MultiPlan and
17 then if we -- if an emergency room doctor services a United patient, and
18 that emergency room doctor, or doctor group, is out-of-network, United
19 can go to MultiPlan and say, okay, give us a little bit of a discount under
20 this wrap agreement, even though they're out-of-network, right?

21 A Yeah.

22 Q Okay. And the thing about wrap agreements, is in order for
23 the doctor to accept a little bit less, they have to agree that they are not
24 going to balance bill the member, right?

25 A Correct.

1 THE COURT: That's a good stopping point for today. All
2 right, you guys, we're going to take our recess.

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

8 Don't conduct any research on your own relating to the case,
9 such as consulting dictionaries, use of the internet, or use any reference
10 materials. If anyone tries to talk to you about the case, let us know first
11 thing in the morning.

12 Do not talk, text, tweet, use social media, Google or conduct
13 any type of book or computer research with regard to any issue, party,
14 witness, or attorney involved in the case. Most importantly, do not form
15 or express any opinion on any subject connected with the trial until the
16 jury deliberates. Thank you again for another great day. See you
17 tomorrow at 9:30.

18 THE MARSHAL: All rise for the jury.

19 THE COURT: And again, if you have any dietary issues,
20 please talk to the Marshal.

21 [Jury out at 4:47 p.m.]

22 [Outside the presence of the jury]

23 THE COURT: The room is clear. Defendant do you have
24 anything for the record?

25 MR. BLALACK: One thing, Your Honor that I want to -- I

1 spoke too soon. Mr. Roberts said something I wasn't aware of.

2 THE COURT: Make sure I can see you all.

3 MR. BLALACK: The first thing, I want to give a preview to the
4 Court, and I'll speak to opposing counsel afterwards and then maybe we
5 can address it either by agreement or I can ask for [indiscernible]
6 tomorrow. Yesterday counsel advised Mr. Haben -- does Mr. Haben
7 need to be in the room, if not he may be excused.

8 THE COURT: Oh, you'll be excused for this.

9 THE WITNESS: Thank you.

10 THE COURT: Sorry, I thought he had left. I looked for him in
11 the back.

12 MR. BLALACK: He's hiding by the T.V. Yesterday and today
13 -- do you intend to still go three days with Mr. Haben? You can
14 obviously have some time [indiscernible]. Given the amount of time that
15 is being devoted to Mr. Haben, I have real concerns about the pace that
16 we're going to be in to finish this trial [indiscernible]. Or, the alternative
17 is going to be Plaintiffs are going use 80 to 90 percent of the available
18 time, and I'm not going to have the time [indiscernible].

19 So I'm going to -- after the break I will speak to opposing
20 counsel. But I am going to be proposing a time allocation between the
21 parties [indiscernible] and we've got [indiscernible] the trial, but I suspect
22 opposing counsel is going to be [indiscernible]. And we used our time
23 [indiscernible] on direct and on cross, and vice versa on [indiscernible].

24 I mean, we've got to get the trial done on the time we told
25 the jury it has to be done. And so we have to have some time

1 [indiscernible]. So we can't be -- you know, if we're going to -- right now
2 I think we have something in the order of 12 or 14 witnesses where we
3 have 30 or 40 [indiscernible] just from them on that, not counting the live
4 witnesses. Ms. Paradise is still coming, we've got experts. So I'm just
5 previewing -- I'm not asking the Court to resolve it. I know it's past time,
6 but I'm going to speak with counsel after this. If we can get an
7 agreement, I'll propose it [indiscernible].

8 MR. ZAVITSANOS: Would you like a brief reply, Your Honor?

9 THE COURT: Please be brief.

10 MR. ZAVITSANOS: So, your Honor, we're going to finish on
11 time. And the time limits would severely prejudice us because this is
12 new. I hear this in every case. I do this in every case. I start the first
13 witness --

14 THE COURT: All right, you guys.

15 MR. ZAVITSANOS: -- the first witness is always the longest
16 and Your Honor, I promise you once this witness gets off the stand we're
17 going to be moving lightning speed.

18 THE COURT: Good enough.

19 MR. ZAVITSANOS: So now, the other thing is, Your Honor,
20 he's being very evasive, and it's taking a lot longer than it should. Okay.
21 I only got to page 2 of what I -- and I have a lot of pages. So because
22 the time limit thing actually penalizes us because if he keeps going the
23 way he's going, you know --

24 THE COURT: Okay. Guys --

25 MR. ZAVITSANOS: -- so I will visit with counsel.

1 THE COURT: Talk about it and let me know tomorrow.

2 MR. ZAVITSANOS: Okay.

3 THE COURT: Mr. Roberts, you had an issue.

4 MR. ROBERTS: Yes, and I'll be very brief, Your Honor.

5 Obviously, there are a lot to inquire of a witness, whether we paid his
6 travel expenses and how much it was worth. That's not the basis for our
7 objection. The question was when you travel was your airplane ticket
8 more or less than the reimbursement you gave the doctor for emergency
9 services. That is a prejudicial comparison. It's not probative. It's not
10 relevant. Whatever you take to the airline ticket, the airlines are losing
11 money. They're making money on 245. It's just an improper
12 comparison and that's why we objected because it was argumentative.

13 THE COURT: Thank you. Was there a response?

14 MR. ZAVITSANOS: No, Your Honor. The Court had ruled.
15 I'm happy to give a response.

16 THE COURT: No, it's not necessary. Now I had to set
17 something tomorrow at 9:00 on a TRO, but you can come in the room
18 and get set up, even if we're in court. Okay.

19 MR. ROBERTS: Thank you, Your Honor. So is the plan to
20 start at 9:30?

21 THE COURT: Yeah.

22 MR. ROBERTS: All right.

23 THE COURT: Yeah.

24 MR. ZAVITSANOS: Thank you, Your Honor.

25 THE COURT: Have a good night, everybody.

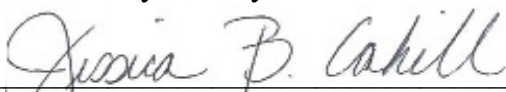
1 MR. ZAVITSANOS: Thank you, Your Honor.

2 MR. BLALACK: Thank you, Your Honor.

3 MR. ROBERTS: Thank you, Your Honor.

4 [Proceedings adjourned at 4:51 p.m.]

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

22 

23 Maukele Transcribers, LLC

24 Jessica B. Cahill, Transcriber, CER/CET-708

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DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD., a Nevada professional
corporation; TEAM PHYSICIANS OF
NEVADA-MANDAVIA, P.C., a Nevada
professional corporation; CRUM, STEFANKO
AND JONES, LTD. dba RUBY CREST
EMERGENCY MEDICINE, a Nevada
professional corporation,

Plaintiffs,

vs.

Case No.: A-19-792978-B
Dept. No.: 27

**DEFENDANTS' DEPOSITION
DESIGNATIONS AND OBJECTIONS
TO PLAINTIFFS' DEPOSITION
COUNTER-DESIGNATIONS**



1 UNITED HEALTHCARE INSURANCE
 2 COMPANY, a Connecticut corporation; UNITED
 3 HEALTH CARE SERVICES INC., dba
 4 UNITEDHEALTHCARE, a Minnesota
 5 corporation; UMR, INC., dba UNITED
 6 MEDICAL RESOURCES, a Delaware
 7 corporation; SIERRA HEALTH AND LIFE
 8 INSURANCE COMPANY, INC., a Nevada
 9 corporation; HEALTH PLAN OF NEVADA,
 10 INC., a Nevada corporation,

11 Defendants.

12 Defendants UnitedHealthcare Insurance Company (“UHIC”), United HealthCare
 13 Services, Inc. (“UHS”), UMR, Inc. (“UMR”), Sierra Health and Life Insurance Co., Inc. (“SHL”),
 14 and Health Plan of Nevada, Inc. (“HPN”) (collectively “Defendants”), by and through their
 15 attorneys, hereby disclose the following deposition designations and objections to Plaintiffs’
 16 counter-designations. Defendants reserve the right to amend these designations and objections
 17 pursuant to the Court’s rulings on any pretrial motions and in the course of trial.

18 Dated this 3rd day of November, 2021.

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DESIGNATIONS FROM MAY 28, 2021
DEPOSITION TESTIMONY OF JENNIFER BEHM 30(B)(1)

Defendants' Designations	Plaintiffs' Objections	Plaintiffs' Counter Designations	Defendants' Objections to Counter Designations
4:20-5:6		5:8-20 18:19-19:3 19:20-20:11 21:1-22:6 21:1-22:6 24:4-7 24:22-25:25	Outside the scope of direct
29:8-10	48.025; MIL		
29:13-17	48.025; MIL		
34:9-11	I/O	32:25-33:4	
34:14-17		34:19-35:3	
38:3-8	50.025	35:5 35:23-36:2 37:3-6	Outside the scope of direct
38:11-12	50.025		
38:14-19	50.025		
38:22-39:3	50.025		
39:6	50.025		
27:20-28:5	48.025; MIL		
60:25-61:8	48.025; MIL		
61:10-20	48.025; MIL		
61:22-62:4	48.025; MIL; 50.025		
62:12-63:6	48.025; MIL; 50.025		
63:8-10	48.025; MIL; 50.025		
92:6-16	48.025; MIL; 50.025		



92:18-93:19	48.025; MIL; 50.025; I/O	93:20-94:20	Incomplete designation; foundation
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DESIGNATIONS FROM MAY 7, 2021
DEPOSITION TESTIMONY OF KENT BRISTOW 30(B)(1)

Defendants' Designations	Plaintiffs' Objections	Plaintiffs' Counter Designations	Defendants' Objections to Counter Designations
7:8-15			
7:25-8:9			
10:9-20			
17:4-11		17:12-24	
18:17-25			
19:10-20:6		19:1-9	
20:8-20	20:14-20 – 48.035 20:22 – 48.035; argumentative		
20:22			
21:3-16		21:17-24	
24:22-26:3			
26:6-25	26:11-15 – MIL-Court's Discovery Orders: INN Agreements, Rates		
27:2-8			
28:22-29:3	48.025		
33:10-15			
34:12-23	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48..025		
36:18-37:20			





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37:22			
44:21-45:2			
45:8-21			
45:25			
46:13-24			
47:1-12			
47:14-19			
48:5-10			
48:16-49:9			
49:21-24			
50:2-8			
51:14-25			
52:3-7	MIL-Coding, Billing etc.		
52:10-53:2	MIL-Coding, Billing etc.		
54:5-6	MIL-Coding, Billing etc.		
54:8	MIL-Coding, Billing etc.		
55:9-17	MIL 18		
56:20-57:4	MIL 18		
58:14-25			
59:7-12			
59:23-60:4			
60:6-8			
63:19-64:5	48.025		

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3	81:10-22	MIL; 48.025; 48.035		
4	81:24	MIL; 48.025; 48.035		
5	82:14-84:20	80:22-81:4 – MIL 48.025; 48.035		
6		83:13-84:20 – MIL; 48.025		
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8	84:23-87:4	84:23-24- MIL; 48.025 85:1-86:25 – MIL; 48.025 87:1-4 – MIL; 48.025		
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10	87:6-20	MIL; 48.025		
11	87:23-88:11	MIL; 48.025		
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13	88:14-89:22	88:14-15 – MIL; 48.025 88:19-89:22- MIL; 48.025		
14	89:24-90:10	MIL; 48.025		
15	90:12-21	MIL; 48.025		
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17	91:1-13	MIL; 48.025		
18	91:19-24	MIL; 48.025		
19	92:1-5	MIL; 48.025		
20	92:20-94:18	MIL; 48.025		
21	94:20-95:10	MIL; 48.025		
22	95:16-19	MIL; 48.025		
23	95:21-23	MIL; 48.025		
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25	96:1-16	MIL; 48.025		
26	96:18-97:5	MIL; 48.025		
27	97:10-20	MIL; 48.025		
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101:-103:2	MIL; 48.025		
103:4-23	MIL; 48.025		
103:25-104:18	MIL; 48.025		
104:20-25	MIL; 48.025		
105:18-106:11			
106:19-107:2			
108:20-109:14		108:15-19	
109:16-110:21			
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113:17-114:1	113:19-114:1 – MIL; 48.025		
114:15-116:11			
116:22-25	MIL; 48.025		
117:2-15	MIL; 48.025		
117:19-119:4	MIL; 48.025; 48.035		
119:6-14	MIL; 48.025; 48.035		
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125:2-19	MIL; 48.025; 48.035		
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128:23-129:16			
129:18-130:1	129:13-21 – 50.025		

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131:2-134:10			
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134:21-24			
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140:14-141:9			
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155:11-14			
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157:7-18			
157:20-158:20			
158:22-159:10	159:8-10 – 50.025		
159:12-19	159:12-14 – 50.025 159:15-19 – 50.025 159:21 – 50.025		
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170:13-173:1	170:13 – 50.025		
173:24-174:1	50.025		
174:6-11	50.025		
174:13-22	50.025		
173:24-175:4	50.025		
175:6-12	50.025		

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176:4-15	50.025		
176:17-22	50.025		
177:15-25	50.025		
178:2-16	50.025		
178:18-179:10	178:18-21 – 50.025		
179:16-23			
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180:5-182:7			
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205:20-206:19			
207:4-13			
207:19-25			
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208:12-25			
209:2-17			
209:19-23			
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211:17-212:1	211:19-212:1 – 48.025		
212:3-14	48.025		
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213:24	48.025		
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218:24-219:10	MIL; 48.025		
219:12-25	MIL; 48.025		
220:12-17	MIL; 48.025		
220:21-222:10	MIL; 48.025		
222:12-20	MIL; 48.025		
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224:13-16	48.025		
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225:4-19	225:4-8 - 48.025		
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226:17-18	48.025, 50.025		
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229:2-25	MIL		
230:2-233:6	MIL		
233:10-19	MIL		



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234:5-21	MIL; 50.025		
234:24-236:7	50.025		
236:12-242:3	50.025		
243:8-246:18	245:29-246:18 – MIL		
246:20-247:12			
249:14-250:1			
250:6-23	MIL		
251:3-8	251:3-6 – MIL		
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258:2-7	258:2-3 – 48.025 258:4-17 – 48.025		
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269:23-271:7	MIL; 48.025		
271:11-16	MIL; 48.025		
271:24-272:1	MIL; 48.025		
272:3-5	MIL; 48.025		
272:15-274:6	MIL; 48.025		
274:12-275:24	MIL; 48.025		



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276:4-277:22	MIL; 48.025		
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278:18-25	MIL; 48.025 MIL; 48.025		
279:2-3	MIL; 48.025		
279:22-280:10	MIL; 48.025		
280:14-283:15	MIL; 48.025		
283:25-284:5	MIL; 48.025		
284:14-19	MIL; 48.025		
284:21-22	MIL; 48.025		
285:14-21	MIL; 48.025		
286:4-16	MIL; 48.025		
286:20-287:10	MIL; 48.025		
287:18-288:24	MIL; 48.025		
289:2-5	MIL; 48.025		
289:9-293:11	MIL; 48.025		
293:13-294:15	MIL; 48.025		
294:22-295:2	MIL; 48.025		
295:4-23	MIL; 48.025		
295:25-296:22	MIL; 48.025		
297:4-300:18	MIL; 48.025		
300:21-301:5	MIL; 48.025		
301:23-304:9	MIL; 48.025		
304:14-307:22	MIL; 48.025		
307:24-308:5	MIL; 48.025		



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310:16-25	MIL; 48.025		
311:5-18	MIL; 48.025		
312:17-317:1	MIL; 48.025		
317:6-318:22	MIL; 48.025		
318:24-320:10	MIL; 48.025		
320:14-321:9	MIL; 48.025		
321:13-322:15	MIL; 48.025		
322:19-323:13	MIL; 48.025		
323:15-16	MIL; 48.025		
323:23-324:2	MIL; 48.025		
324:5-18	MIL; 48.025		
324:21-23	MIL; 48.025		
324:25-325:9	MIL; 48.025		
325:11-16	MIL; 48.025		
325:18-326:10	MIL; 48.025		
326:25-328:8	MIL; 48.025		
328:11-21	MIL; 48.025		
329:1-330:4	MIL; 48.025		
330:6-14	MIL; 48.025		
330:25-331:5	MIL; 48.025		
331:7-332:10	MIL; 48.025		
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2	339:9-15	MIL; 48.025		
3	339:18-21	MIL; 48.025		
4	339:23-340:4	MIL; 48.025		
5	340:6-16	MIL; 48.025		
6	341:1-342:13	MIL; 48.025		
7	342:15-343:13	MIL; 48.025		
8	343:15-23	MIL; 48.025		
9	344:3-15	MIL; 48.025		
10	344:18	MIL; 48.025		
11	344:20-345:11	MIL; 48.025		
12	345:14-23	MIL; 48.025		
13	346:5-9	MIL; 48.025		
14	346:18-347:3	MIL; 48.025		
15	347:5-11	MIL; 48.025		
16	347:13-349:4	MIL; 48.025		
17	349:10-350:18	MIL; 48.025		
18	350:23-25	MIL; 48.025		
19	351:12-353:24	MIL; 48.025		
20	354:2-12	48.025; 48.035		
21	354:14-355:3	MIL; 48.025;		
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DESIGNATIONS FROM MAY 13, 2021
DEPOSITION TESTIMONY OF KENT BRISTOW (TEAM PHYSICIANS) 30(B)(6)

Defendants' Designations	Plaintiffs' Objections	Plaintiffs' Counter Designations	Defendants' Objections to Counter Designations
8:11-9:1			
19:13-21:16	MIL		
22:12-23:3	MIL		
23:15-17	MIL		
23:19-24:5	MIL		
25:1-9	MIL		
25:11-20	MIL		
26:4-23	MIL		
26:25-27:6	MIL		
27:8-10	MIL		
27:18-28:14	MIL		
28:16-19	MIL		
28:21-29:4	MIL		
29:6	MIL		
29:14-21	MIL		
30:9-31:25	MIL		
32:12-24	MIL		
33:1-13	33:1-11 – MIL; 33:12-13 – 50.025		
33:15-35:6	33:15 – 50.025 34:1-6 – 50.025 35:8-14 – 50.025 35:16 – 50.025		
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36:19-37:5			
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37:21-25	50.025		
38:10-18			
38:23-39:3	50.025		
39:5-12	39:9-12 – 50.025		
39:14-18	50.025		
39:20-40:15	39:20 – 50.025 39:22-40:9 – 48.025 40:10-15 – 50.025		
40:17-41:5	40:17-18 – 50.025 41:4-5 – 50.025		
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42:10-15	MIL (in network); 48.025		
42:17-43:8	MIL (in network); 48.025		
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3	45:14-46:11	48.025; 50.025		
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5	47:18	50.025		
6	48:3-10			
7	48:13-49:1			
8	49:4-7	50.025		
9	49:9-50:5	49:9-12 - 50.025 49:13-17 – 48.025 49:18- 50:5 – MIL; 48.025		
10	50:12-22	MIL; 48.025		
11	51:9-52:2	MIL (cost of care, inn, negotiations); 48.025		
12	52:4-12	MIL (cost of care, inn, negotiations); 48.025		
13	52:14-18	MIL (cost of care, inn, negotiations); 48.025		
14	52:20-53:8	MIL (cost of care, inn, negotiations); 48.025		
15	53:13-54:2	MIL (cost of care, inn, negotiations); 48.025		
16	54:12-14	MIL (cost of care, inn, negotiations); 48.025		
17	54:22	MIL (cost of care, inn, negotiations); 48.025		
18	55:7-12	MIL (cost of care, inn, negotiations); 48.025		
19	55:16-18	MIL (cost of care, inn, negotiations); 48.025		
20	55:20-56:14	MIL (cost of care, inn, negotiations); 48.025		
21	56:16-57:7	MIL (cost of care, inn, negotiations); 48.025		
22	57:9-14	MIL (cost of care, inn, negotiations); 48.025		
23	57:16-59:3	MIL (cost of care, inn, negotiations); 48.025		
24	59:5-11	MIL (cost of care, inn, negotiations); 48.025		
25	59:13	MIL (cost of care, inn, negotiations); 48.025		
26	59:15-20	MIL (cost of care, inn, negotiations); 48.025		
27	60:2-20	MIL (cost of care, inn, negotiations); 48.025		
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61:16-62:18	MIL (cost of care, inn, negotiations); 48.025		
62:20-63:10	MIL (cost of care, inn, negotiations); 48.025		
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63:25	MIL (cost of care, inn, negotiations); 48.025		
64:2-8	MIL (cost of care, inn, negotiations); 48.025; 50.025		
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65:10-15	MIL; 48.025		
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77:10-78:8	77:10-20 - MIL; 48.025 78:2-8- 48.025		
78:10-18	78:10-13 – 48.025		
78:20-79:10	79:8-10 – 50-025		
	79:12-16 – 50.025		
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80:1-7	MIL; 48.025		
80:9-11	MIL (negotiations, cost of care); 48.025		
80:24-81:10	MIL (negotiations, cost of care); 48.025		
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110:15-111:10	MIL, 48.025		
111:13-112:4	MIL, 48.025		
112:6-112:15	MIL, 48.025		
112:18-112:21	MIL, 48.025		
113:16-114:2	MIL, 48.025		
114:8-115:11	MIL, 48.025		
115:19-116:8	MIL, 48.025		
116:10-117:18	MIL, 48.025		
118:2-119:3	MIL, 48.025		
119:5-121:12	MIL, 48.025		



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122:3-125:24	MIL, 48.025		
126:1-126:13	MIL, 48.025		
126:15-126:19	MIL, 48.025		
126:21-128:12	MIL, 48.025		
128:14-128:24	MIL, 48.025		
129:7-129:8	MIL, 48.025		
131:4-131:12	MIL, 48.025		
131:14-132:5	MIL, 48.025		
132:8-132:10	MIL, 48.025		
132:24-133:2	MIL, 48.025		
133:11-133:15	MIL, 48.025		
133:17-133:21	MIL, 48.025		
134:1-135:19	MIL, 48.025		
135:21-136:2	MIL, 48.025		
136:4-136:7	MIL, 48.025		
136:9-136:19	MIL, 48.025		
136:21-138:11	MIL, 48.025		
139:2-139:7	MIL, 48.025		
139:13-139:23	MIL, 48.025		
140:13-142:16	MIL, 48.025		
142:18-142:25	MIL, 48.025		
143:2-143:21	MIL, 48.025		
143:23-144:11	MIL, 48.025		
145:9-148:21	MIL, 48.025		
148:23-149:7	MIL, 48.025		
150:14-151:11	MIL, 48.025		
151:13-152:4	MIL, 48.025		
153:16-154:11	MIL, 48.025		
154:13-155:15			
155:21-156:5			
157:1-158:3			
158:5-158:16			
158:21-159:23			
159:25-160:22			
160:24-161:7			
161:21-162:5			
162:7-163:23	162:11-163:17 MIL, 48.025		
163:25-168:4	163:18-165:10, 166:5- 166:16, 167:6-167:25 MIL, 48.025		
168:6-169:25	168:23-169:19 MIL, 48.025		
170:2-170:12			
170:14-171:12			
171:14-172:2			
172:4-173:12	172:1-173:7 48.035		
173:14-173:22			
173:24-174:24			
176:12-179:22			
179:24-181:9			
181:11-182:11			

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182:14-182:19			
183:6-184:4			
184:6-189:18			
189:20-191:1			
191:3-192:10	MIL, 48.025		
192:12-193:7	MIL, 48.025		
193:9-194:5	MIL, 48.025		
194:8-194:17	MIL, 48.025		
194:20-195:6			
195:8-196:9			
196:11-196:24			
197:1-197:11			
197:14-198:22			
198:24-199:6			
199:15-199:21			
201:24-202:5			
202:8-202:21			
202:23-203:17			
203:20-204:12			
204:15-204:23			
206:20-211:19			
211:21-212:11			
212:13-214:7			
214:9-214:21			
215:6-217:1	216:1-272:7 MIL, 48.025		
217:11-218:20	216:1-272:7 MIL, 48.025		
219:16-219:20	216:1-272:7 MIL, 48.025		
219:22-221:8	216:1-272:7 MIL, 48.025		
221:10-221:25	216:1-272:7 MIL, 48.025		
222:18-223:13	216:1-272:7 MIL, 48.025		
223:24-224:3	216:1-272:7 MIL, 48.025		
224:5-225:14	216:1-272:7 MIL, 48.025		
225:16-226:22	216:1-272:7 MIL, 48.025		
227:20-228:13	216:1-272:7 MIL, 48.025		
228:16-233:3	216:1-272:7 MIL, 48.025		
234:15-237:4	216:1-272:7 MIL, 48.025		
237:6	216:1-272:7 MIL, 48.025		
237:20-238:5	216:1-272:7 MIL, 48.025		
238:7-238:18	216:1-272:7 MIL, 48.025		

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238:20-239:8	216:1-272:7 MIL, 48.025		
239:10-241:16	216:1-272:7 MIL, 48.025		
241:18-241:24	216:1-272:7 MIL, 48.025		
242:1-242:8	216:1-272:7 MIL, 48.025		
242:10-242:24	216:1-272:7 MIL, 48.025		
243:17-244:8	216:1-272:7 MIL, 48.025		
244:11-244:25	216:1-272:7 MIL, 48.025		
245:3-245:4	216:1-272:7 MIL, 48.025		
245:12-246:1	216:1-272:7 MIL, 48.025		
246:4-247:8	216:1-272:7 MIL, 48.025		
247:10-247:21	216:1-272:7 MIL, 48.025		
247:23-249:2	216:1-272:7 MIL, 48.025		
249:4-249:15	216:1-272:7 MIL, 48.025		
249:17-249:20	216:1-272:7 MIL, 48.025		
250:6-250:8	216:1-272:7 MIL, 48.025		
250:10-252:18	216:1-272:7 MIL, 48.025		
252:20-252:24	216:1-272:7 MIL, 48.025		
253:1-253:20	216:1-272:7 MIL, 48.025		
253:22-255:6	216:1-272:7 MIL, 48.025		
255:7-255:13	216:1-272:7 MIL, 48.025		
255:15-256:20	216:1-272:7 MIL, 48.025		
256:22-256:25	216:1-272:7 MIL, 48.025		
257:17-258:2	216:1-272:7 MIL, 48.025		
258:19-258:22	216:1-272:7 MIL, 48.025		
258:24-261:19	216:1-272:7 MIL, 48.025		
261:22-262:2	216:1-272:7 MIL, 48.025		
262:4	216:1-272:7 MIL, 48.025		



1	262:15-264:22	216:1-272:7 MIL, 48.025		
2	264:24-265:8	216:1-272:7 MIL, 48.025		
3	265:18-266:17	216:1-272:7 MIL, 48.025		
4	266:20-268:25	216:1-272:7 MIL, 48.025		
5	269:3-270:18	216:1-272:7 MIL, 48.025		
6	270:21-271:3	216:1-272:7 MIL, 48.025		
7	271:5-271:12	216:1-272:7 MIL, 48.025		
8	271:14-273:6	272:21-273:6 MIL, 48.025		
9	274:3-274:7	MIL, 48.025		
10	274:9-274:17			
11	275:1-275:7	275:1-275:14 MIL, 48.025		
12	275:10-276:10	275:15-276:22 MIL, 48.025		
13	276:20-277:1	277:17-279:25 MIL, 48.025		
14	277:3-277:23			
15	277:25-279:6			
16	279:16-279:21			
17	279:24-281:7	280:1-289:18 MIL, 48.025		
18	281:9-283:10	280:1-289:18 MIL, 48.025		
19	283:12-283:19	280:1-289:18 MIL, 48.025		
20	283:21-284:3	280:1-289:18 MIL, 48.025		
21	284:5-284:15	280:1-289:18 MIL, 48.025		
22	284:25-285:5	280:1-289:18 MIL, 48.025		
23	285:7-287:13	280:1-289:18 MIL, 48.025		
24	287:15-289:16	280:1-289:18 MIL, 48.025		
25	289:18-290:1	48.105		
26	290:3-290:5	48.105		
27	290:8-290:17	48.105		
28	291:2-291:8	48.105		

DESIGNATIONS FROM APRIL 29, 2021
DEPOSITION TESTIMONY OF JOE CARMAN

Defendants' Designations	Plaintiffs' Objections	Plaintiffs' Counter Designations	Defendants' Objections to Counter Designations
5:4-6			
5:15-17			
24:7-25:25			
29:9-13			
42:11-25	MIL- Court's Discovery Orders: Corporate Practice of Medicine – Granted in Part/Denied in Part; 48.025; 48.035		
44:9-13	MIL- Court's Discovery Orders: Corporate Practice of Medicine – Granted in Part/Denied in Part; 48.025; 48.035		
52:9-13			
52:16-19			
67:7-11	MIL- Court's Discovery Orders; 48.025; 48.035		
67:20:21	MIL- Court's Discovery Orders; 48.025; 48.035	67:23-68:1 68:3-6 69:8-17 73:7-14 74:1-75:3 75:5-8 75:10-21 75:23-25 76:2-3 76:5-10 76:24-77:2 77:4-16 77:18-20 77:22	Outside the Scope of Direct Outside the Scope of Direct Outside the Scope of Direct Outside the Scope of Direct Outside the Scope of Direct Outside the Scope of Direct Outside the Scope of Direct Outside the Scope of Direct Outside the Scope of Direct Outside the Scope of Direct
80:10-81:22			
81:24-82:1		82:3-13 83:5-23	Relevance Relevance
85:19-22			
85:24-86:21			
90:14-91:6			
91:8-91:25			





1	92:2-18		92:20-93:12 93:20-94:3	Relevance Relevance
2	94:4-96:20			
3	98:25-100:20			
4	100:22-101:13			
5	101:15			
6	103:11-104:4		103:1-10	Relevance
7	104:24-105:7		105:8-21	Relevance
8	106:14-18			
9	106:20-107:9		107:10-21	Relevance
10	113:11-15	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035		
11	113:17-115:12	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035	118:3-13	Relevance
12	122:19-123:2	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035		
13	123:4-13	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035		
14	123:15-16	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035		
15	130:18-23	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035		
16	130:25	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035		
17	133:16-134:7	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035		
18	134:9-135:25	134:9-25 – MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035		



136:3-11	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035		
136:13-137:5	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035		
137:7	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035	137:20-138:2	
139:4-7	MIL- Court's Discovery Orders: INN Agreements, Rates – Deferred to Trial; 48.025; 48.035		
139:13-15	MIL- Court's Discovery Orders: INN Agreements, Rates – Deferred to Trial; 48.025; 48.035		
140:20-141:19	MIL- Court's Discovery Orders: INN Agreements, Rates – Deferred to Trial; 48.025; 48.035		
141:22-142:1	MIL- Court's Discovery Orders: INN Agreements, Rates – Deferred to Trial; 48.025; 48.035		
142:4-22	MIL- Court's Discovery Orders: INN Agreements, Rates – Deferred to Trial; 48.025; 48.035		
143:2-14	MIL- Court's Discovery Orders: INN Agreements, Rates – Deferred to Trial; 48.025; 48.035		
143:16-144:16	MIL- Court's Discovery Orders: INN Agreements, Rates – Deferred to Trial; 48.025; 48.035		
144:18-145:17	MIL- Court's Discovery Orders: INN Agreements, Rates – Deferred to Trial; 48.025; 48.035		
145:19-21	MIL- Court's Discovery Orders: INN Agreements, Rates – Deferred to Trial; 48.025; 48.035		



151:19-24	MIL- Court's Discovery Orders: INN Agreements, Rates – Deferred to Trial; 48.025; 48.035		
152:3	MIL- Court's Discovery Orders: Corporate Practice of Medicine – Granted in Part/Denied in Part; 48.025; 48.035		
152:5-17	MIL- Court's Discovery Orders: Corporate Practice of Medicine – Granted in Part/Denied in Part; 48.025; 48.035		
155:7-19	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035	155:24-156:2 157:5 157:14-16 157:19-21	Outside the Scope of Direct Outside the Scope of Direct Outside the Scope of Direct Outside the Scope of Direct
163:23-164:5	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035		
164:7-20	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035		
164:22-166:5	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035		
166:7-167:9	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035		
173:4-174:25		175:1-14 175:16-20 175:22-24 176:1-13	Outside the Scope of Direct Outside the Scope of Direct Outside the Scope of Direct Outside the Scope of Direct
182:12-183:21	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035		
191:24-192:13	MIL-Court's Discovery Orders: Corporate Practice of Medicine – Granted in		
	Part/Denied in Par; 48.025; 48.035		
203:23-204:1			

204:3-12			
204:15-15			

**DESIGNATIONS FROM MAY 26, 2021
DEPOSITION TESTIMONY OF BRENT DAVIS**

Defendants' Designations	Plaintiffs' Objections	Plaintiffs' Counter Designations	Defendants' Objections to Counter Designations
5:24-6:2			
6:10-6:12			
24:13-24:20			
25:9-10			
38:21-40:4	MIL- Court's Discovery Orders: Network Negotiations/Contracts; 48.025; 48.035	37:20-38:13	
41:2-11	MIL- Court's Discovery Orders: Medicare - Granted; 48.025; 48.035		
43:12-21	MIL- Court's Discovery Orders: INN Rates: Ruling Deferred to Trial and Court's Discovery Orders: Network Negotiation; 48.025; 48.035		
44:9-14	MIL - Court's Discovery Orders: INN Rates: Ruling Deferred to Trial and Court's Discovery Orders: Network Negotiation; 48.025; 48.035		
		46:7-9	Outside the scope of direct
		47:4-24	Outside the scope of direct
		49:21-50:1	Outside the scope of direct
		53:16-54:6	Outside the scope of direct

**DESIGNATIONS FROM MAY 27, 2021
DEPOSITION TESTIMONY OF DAVID GREENBERG 30(B)(1)**

Defendants' Designations	Plaintiffs' Objections	Plaintiffs' Counter Designations	Defendants' Objections to Counter Designations
5:20-6:14	5:5-23 48.025		





19:12-33:4	26:18-30:21- 48.025; MIL 32:6-33:5- 48.025; MIL		
34:1-39:21	34:1-12 – 48.025; MIL 35:25-36:6 - 48.025 36:7-37:9 – 48.025; 50.025 37:1-9 – 48.025; 50.025 37:25-38:10 – 48.025 39:18-21 – 48.025; MIL		
40:10-41:2			
42:22-47:11	42:25 – 48.025 44:4-45:14 – 48.025; MIL 45:16-21; 48.025 45:22- 25 – 48.025; 48.035 46:1- 8 – 48.025; 50.025. 48.035 46:9-47:11 – 48.025; MIL		
47:23-49:14	47:23-48:7 – 48.025; 50.025		
50:10-52:2	50:10-51:22 – 48.025; MIL		
53:12-54:4			
54:10-56:8	54:14-55:2 – 48.025; MIL	56:9-11 56:13	Relevance Relevance
56:15-57:15	56:15-56:16 (ending at “bit for you”) – I/O; 48.025; 48.035 56:21- 25 – 48.025; MIL 57:1- 15 – 48.025; MIL; 50.025		
58:15-59:3	48.025; 48.035; 50.025		
62:3-64:16	62:13 – 48.035 62:22 – 48.035 63:2 – 48.035 63:8 – 48.035 63:11-64:16 – 48.025; MIL		
64:23-66:1	48.025; MIL	66:2-4 66:6-7 66:9-14 67:23-25 68:2-3 68:10 (“...When”.) - 21	
68:22-69:5	68:22-25 – 50.025 69:1-2 – 48.035 69:3-5 – 50.025		
70:8-71:5	48.025; MIL; 50.025		
71:8-71:17	48.025; MIL; 50.025		
73:21-74:7			
85:8-86:15	85:23-85:24 – I/O	85:25 86:16-19	Incomplete designation Incomplete designation, Relevance



86:23-88:14	86:23-25 – 48.035 87:1-25 – 50.025; 50.275 88:1-14 – I/O; 50.025; 50.075	88:15-18 88:20-89:5 89:7-8 89:10-11 89:13-22 89:24-90:1 <i>90.3-15 Subject to final ruling on INN rates</i> <i>90.18-20 Subject to final ruling on INN rates</i> <i>90.22-25 Subject to final ruling on INN rates</i> <i>91.2-4 Subject to final ruling on INN rates</i>	
91:6-91:12	48.025; MIL		
94:12-95:9	48.025; MIL; 50.025		
95:17-97:22	48.025; MIL; 50.025		
98:20-99:3	48.025; 48.035; 50.025		
99:20-100:4	48.025; 48.035; 50.025		
100:6-101:11	48.025; MIL	<i>103.2-6 - Subject to final ruling on INN rates</i> <i>103.9 - Subject to final ruling on INN rates</i>	
107:21-107:24	48.025; MIL		
108:20-109:8	48.025; MIL		
124:22-125:3	I/O; 48.025; MIL	124:4-7 124:10-12 124:14-18 124:20 <i>125:5-6. 125:9;</i> <i>125:11-14 Subject to Objections</i>	Incomplete Designation
126:10-126:25	48.025; MIL		
131:4-131:14	48.025; MIL		
134:15-134:25	48.025; MIL		
135:8-136:17	48.025; MIL		
142:1-143:25	48.025; MIL		
144:1-144:8	48.025; MIL		
153:13-155:25	153:13-154:9 - 48.025; MIL 154:10-155:25 – 50.025		
156:16-157:13	48.025; MIL; 48.035		
157:14-163:23	48.025; MIL; 48.035		
164:17-167:6	164:17-169:9 – 48.025; MIL; 48.035 166:10-167:6 – 48.035; 50.025		
167:7-172:1	48.025; MIL; 48.035		
172:9-175:25	48.025; MIL; 48.035		

176:6-180:25	48.025; MIL; 48.035		
182:7-191:22	48.025; MIL; 48.035		
193:16-195:2		193:11-15	Relevance
195:13-197:1	48.025; I/O; MIL; 48.035	209:21-210:1 210:3-5 210:7-8 210:11-12 211:25-212:3 218:9 (“...it would...” – 11 218:15-16 218:18-20	Lacks Foundation, Overbroad, Outside the scope of initial designation (as to each counter)
219:11-219:16	48.025; MIL	219:2 219:4-10	Lacks Foundation, Overbroad, Outside the scope of initial designation (as to each counter)

DESIGNATIONS FROM JUNE 25, 2021
DEPOSITION TESTIMONY OF RENA HARRIS; 30(B)(1)

Defendants’ Designations	Plaintiffs’ Objections	Plaintiffs’ Counter Designations	Defendants’ Objections to Counter Designations
8:15-9:1		18:12-21	
23:1-23:5			
31:13-33:16	I/O		
34:12-37:3	34:12-15 – I/O	34:6-11	
37:11-39:3			
39:16-39:22		39:13-15	
52:21-53:2	48.025; 48.035\		
58:4-59:13	48.025; MIL		
68:8-70:20	48.025; MIL		
71:14-72:24	48.025; MIL; I/O		
73:15-79:20	48.025; MIL		
81:2-86:5	48.025; MIL		
87:7-88:9	48.025; MIL		
88:19-88:23	48.025; MIL		
90:12-25	48.025; MIL		
91:1-93:16	48.025; MIL		
93:23-95:10	48.025; MIL		
95:20-96:4	48.025; MIL		
100:20-102:11	48.025; MIL		
114:13-117:4			
126:15-128:16	48.025; MIL		
130:7-133:24	48.025; MIL		
136:11-139:8	48.025; MIL		





1	144:14-18	48.025; MIL		
2	146:20-148:15	48.025; MIL		
3	150:18-152:23	48.025; MIL		
4	155:18-21	48.025; MIL		
5	156:23-157:16	48.025; MIL		
6	183:18-186:2	183:18-185:25 – 48.025; MIL 186:1-2 – MIL		
7	188:16-189:20	48.025; MIL		
8	204:21-206:18			
9	206:19-207:8	48.025; LC; MIL; 50.025		
10	208:2-210:22	48.025; LC; MIL; 50.025		
11	216:16-219:21	48.025; MIL		
12	220:5-:25	48.025; MIL		
13	221:11-23	48.025; MIL		
14	222:24-223:4	48.025; MIL		
15	223:21-224:7	48.025; MIL		
16	232:10-238:3	48.025; MIL		
17	239:2-242:1	48.025; MIL	242:5-14	Outside the Scope of Direct
18	259:14-264:18	259:14-261:25 – 48.025; MIL 262:1-264:18 48.025; MIL; 48.035		
19	270:5-271:18	48.025; MIL; 50.025		
20	272:23-275:9	48.025; MIL; 48.035;		
21		50.025		
22	278:7-292:4	48.025; MIL; 48.035; 50.025		
23	299:10-301:18	48.035; 50.025; 50.275		
24	302:13-22	48.035; 50.025; 50.275		
25			306:13-23	
26			307:6-22	Relevance; Prejudice outweighs probative value; Outside the Scope of Direct
27			307:25-309:14	Relevance; Prejudice outweighs probative value; Outside the Scope of Direct

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		310:20-312:9	Relevance; Prejudice outweighs probative value; Outside the Scope of Direct
		312:18-25	Relevance; Prejudice outweighs probative value; Outside the Scope of Direct
		316:7-13	Relevance; Prejudice outweighs probative value; Outside the Scope of Direct
		316:18-21	Relevance; Prejudice outweighs probative value; Outside the Scope of Direct
		316:23-25	Relevance; Prejudice outweighs probative value; Outside the Scope of Direct
		317:12-22	Relevance; Prejudice outweighs probative value; Outside the Scope of Direct
		318:2-4	Relevance; Prejudice outweighs probative value; Outside the Scope of Direct
		318:8-10	Relevance; Prejudice outweighs probative value; Outside the Scope of Direct

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DESIGNATIONS FROM MAY 20, 2021
DEPOSITION TESTIMONY OF DANIEL JONES 30(B)(1)

Defendants' Designations	Plaintiffs' Objections	Plaintiffs' Counter Designations	Defendants' Objections to Counter Designations
4:23-5:8			
15:10-20			
16:7-14	MIL; 48.025; 48.035		
17:6-11			
39:19-40:11			
40:20-41:4			
41:8-13			
41:17-21	41:19-21 – I/O; 50.025; 50.265		
41:25-42:6	I/O; 50.025; 50.265		
42:20-43:1			
43:6-12			
43:18-20			
59:4-17		58:1-24 59:25-61:6	
61:15-21	61:21- I/O; 50.025; 50.265		
61:25-62:1	I/O; 50.025; 50.265	62:9-15	Foundation

DESIGNATIONS FROM MAY 25, 2021
DEPOSITION TESTIMONY OF MARK KLINE 30(B)(1)

Defendants' Designations	Plaintiffs' Objections	Plaintiffs' Counter Designations	Defendants' Objections to Counter Designations
7:3-10			
21:15-22:14			
28:11-17			
31:23-33:19	33:12-19 – 48.025; 48.015; 48.025		
61:21-63:25	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035		
132:11-133:6	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035		





133:10-15	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035; 50.025		
134:4-19	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035; 50.025		
136:4-15	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035		
137:9-20	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035		
137:23-138:6	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035		
138:9-18	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035		
139:2-6	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035		
139:9-20	MIL- Court's Discovery Orders: Network Negotiations/Contracts - Granted; 48.025; 48.035		

DESIGNATIONS FROM MAY 24, 2021
DEPOSITION TESTIMONY OF LEIF MURPHY 30(B)(1)

Defendants' Designations	Plaintiffs' Objections	Plaintiffs' Counter Designations	Defendants' Objections to Counter Designations
7:3-13			
18:10-19:11			
38:15-20	48.025; MIL		
38:22			
50:2-54:1	51:22 – 48.035 52:1 – 48.035 52:8-53:1 – 48.025; 48.035		
54:4-13	54:6-13 – 48.025; 48.035 54:16-55:12 – 48.025; 48.035		



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54:16-55:12			
68:20-69:1			
73:1-13			
74:13-22			
76:21-25	48.025; MIL; 50.025; 50.275		
77:2-12	77:2 – 48.025; MIL; 50.025; 50.275		
84:7-10			
84:13-19			
84:25-85:6			
85:9-25			
86:2			
87:7-10			
87:12-88:1	87:7-10 - 88:1 – 48.025; I/O; MIL 87:12-88:1 88:1 – 48.025; I/O; MIL		
88:4-10	48.025; I/O; MIL		
98:5-17			
98:22-99:3	99:1-3 – 48.025; MIL		
99:8-101:9	99:8-11 – 48.025; MIL 99:16-25 – I/O 100:22 – I/O	100:1-2	Incomplete designation
101:12-19			
101:21			
103:21-24			
104:1-15			
104:25-105:17			
108:14-16	48.025; 48.035		
108:18-23	48.025; 48.035		
109:1-5	48.025; 48.035		
109:8-19	48.025; 48.035		
109:22-25	48.025; 48.035		
114:2-117:9	48.025; MIL & 2		
117:11-118:1	117:11-118:1 – 48.025; MIL & 2		
118:3-8	48.025; MIL & 2		
118:10-11	48.025; MIL & 2		
118:21-23	48.025; MIL		
119:1-9	48.025; MIL		
125:5-7	I/O		
125:25-126:14	48.025; MIL		
126:16-19	48.025; MIL		
127:16-24	48.025; MIL		
128:2-11	128:2-7 – 48.025; MIL 128:8-13 – 50.025; 50.275		
128:13-18			
128:20-22			
133:25-135:9	134:21-135:9 – 48.025; MIL		
142:1-9	48.025; MIL		
142:12-16	48.025; MIL		

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1	144:16-19		
2	144:22-24		
3	149:15-25		
4	150:4-7		
5	150:10-16		
6	152:24-157:19	152:24-154:13 – MIL 156:1-157:19 – MIL	
7	157:22-158:7	157:23 MIL 158:1-7 – MIL; MIL	
8	161:21-162:11	48.025; MIL	
9	162:16-19	I/O	162:22
10	162:24-163:4	48.025; MIL	
11	163:7-15	163:7-10 – 48.025; MIL	
12	163:18-24		
13	164:2-11		
14	164:15-23	164:21-23 – 48.025; MIL	
15	165:2-9	165:2-5 – 48.025; MIL 165:6-9 – MIL; 48.035	
16	166:18-24	48.025; 48.035	
17	167:2-8	48.025; 48.035	
18	167:20-24	48.025; 48.035	
19	168:2-6	48.025; 48.035	
20	168:24-169:5	48.025; MIL	
21	169:8	48.025; MIL	
22	171:6-10	48.025; MIL	
23	171:13-19	48.025; MIL	
24	171:21-25	48.025; MIL	
25	176:22-25	48.025; MIL	
26	177:3-11	48.025; MIL	
27	185:22-187:16	48.025; MIL	
28	187:19-188:4	48.025; MIL	
29	188:6-8	48.025; MIL	
30	190:25-191:9	48.025; MIL	
31	191:12-19	48.025; MIL	
32	205:6-23	48.025; 48.035	
33	228:23-229:22	48.025; 48.035	
34	230:20-231:7	48.025; 48.035	
35	231:9-231:11	48.025; 48.035	
36	231:13-16	48.025; 48.035	
37	244:16-245:21	48.025; MIL	
38	273:23-274:1	48.025; MIL	
39	274:3-22	48.025; MIL	
40	274:24-275:10	48.025; MIL	
41	295:19-296:5	48.025; MIL	
42	296:7	48.025; MIL	
43	300:10-301:5	300:10-16 – 48.025; MIL	
44	301:24-302:1		

**DESIGNATIONS FROM MAY 25, 2021
DEPOSITION TESTIMONY OF EDDIE OCASIO 30(B)(1)**



Defendants' Designations	Plaintiffs' Objections	Plaintiffs' Counter Designations	Defendants' Objections to Counter Designations
5:6-8			
12:2-15			
44:11-50:15		35:1-11	Outside the scope of Direct, Hearsay
53:24-56:19		56:20-57:23 58:11-59:25	Outside the scope of Direct
		60:24-61:10	Outside the scope of Direct
		61:23-62:6	Outside the scope of Direct
		62:8-11	Outside the scope of Direct
		63:6-16	Outside the scope of Direct
		65:18-66:4	Outside the scope of Direct
		66:18-21	Outside the scope of Direct
68:1-70:25			
72:24-75:16			
75:21-96:7		96:20-97:22 98:25-99:12	
99:13-100:18			
		101:5-13	
		102:11-13 102:15 102:17-22	
103:24-108:16			
109:4-126:22			
		145:5-147:18 147:24-150:7	
150:13-152:6		152:7-14	

DESIGNATIONS FROM MAY 26, 2021
DEPOSITION TESTIMONY OF DAN SCHUMACHER

Plaintiffs incorporate their affirmative designations for Dan Schumacher as if fully set forth herein. Further, see below:



Defendants' Designations	Plaintiffs' Objections	Plaintiffs' Counter Designations	Defendants' Objections To Counter Designations
7:12-8:17	7:12-15 - 48.025		
11:5-13			
22:20-24			
28:20-30:8	29:15-25 – 48.025; Mil		
	30:1-8 - 48.025		
34:25-35:9			
37:3-6			
37:20-38:18			
39:2-9			
44:18-24			
149:17-150:12	48.025; Mil		
162:11-20			
164:21-23			
165:18-23			
217:4-10			
218:2-19		218:20-219:12	Relevance
237:22-239:16	238:1-18 – 48.025; Mil 238:23-25 – 48.025; Mil		
240:13-248:13	240:22-241:4 – 48.025; Mil 243:10-245:20 – 48.025; Mil 247:17-248:7 – 48.025; Mil		
255:3-12	48.025; Mil		

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of November, 2021, a true and correct copy of the foregoing **DEFENDANTS' DEPOSITION DESIGNATIONS** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD., a Nevada professional
corporation; TEAM PHYSICIANS OF
NEVADA-MANDAVIA, P.C., a Nevada
professional corporation; CRUM, STEFANKO
AND JONES, LTD. dba RUBY CREST
EMERGENCY MEDICINE, a Nevada
professional corporation,

Plaintiffs,

Case No.: A-19-792978-B
Dept. No.: 27

**DEFENDANTS' OBJECTIONS TO
PLAINTIFFS' PROPOSED ORDER
GRANTING IN PART AND DENYING
IN PART PLAINTIFFS' MOTION IN
LIMINE TO EXCLUDE EVIDENCE
SUBJECT TO THE COURT'S
DISCOVERY ORDERS**



1 vs.

2 UNITED HEALTHCARE INSURANCE
3 COMPANY, a Connecticut corporation; UNITED
4 HEALTH CARE SERVICES INC., dba
5 UNITEDHEALTHCARE, a Minnesota
6 corporation; UMR, INC., dba UNITED
7 MEDICAL RESOURCES, a Delaware
8 corporation; SIERRA HEALTH AND LIFE
9 INSURANCE COMPANY, INC., a Nevada
10 corporation; HEALTH PLAN OF NEVADA,
11 INC., a Nevada corporation,

12 Defendants.

13 Defendants UnitedHealthcare Insurance Company (“UHIC”), United HealthCare
14 Services, Inc. (“UHS”), UMR, Inc. (“UMR”), Sierra Health and Life Insurance Co., Inc. (“SHL”),
15 and Health Plan of Nevada, Inc. (“HPN”) (collectively “Defendants”), by and through their
16 attorneys of the law firms of Weinberg Wheeler Hudgins Gunn & Dial, LLC and O’Melveny &
17 Myers LLP, hereby lodge the following objections to Plaintiffs’ proposed Order Granting in Part
18 and Denying in Part Plaintiffs’ Motion *in Limine* to Exclude Evidence Subject to the Court’s
19 Discovery Orders (the “Proposed Order”).

20 Plaintiffs submitted their draft Proposed Order to Defendants for review on October 31,
21 2021. That same day, Defendants submitted proposed redline revisions to Plaintiffs, which
22 sought to strike findings and orders of the Court that were not specifically addressed or ruled
23 upon. *See* Defendants’ redlines to Proposed Order, **Exhibit 1**. Plaintiffs responded on
24 November 1, 2021, stating that they would accept some, but not all of Defendants’ revisions. In
25 particular, Plaintiffs would not accept Defendants’ revisions to make the proposed orders
26 pertaining to “Medicare or Non-Commercial Reimbursement Rates” and “How [Plaintiffs’]
27 Charges Are Set,” similar to the parties’ other orders stating that a motion is either granted,
28 denied, or deferred “for the reasons on the record.” Additionally, Defendants requested that the
orders utilize this language because Plaintiffs’ Proposed Order misrepresented the scope of their
Motion *in Limine* to Exclude Evidence Subject to the Court’s Discovery Orders (the “Motion”) and misrepresented, misinterpreted, or added extraneous information to the Court’s order. In response to Defendants’ concerns, Plaintiffs revised the Proposed Order to further deviate from



1 the Court's holding during the hearing when the motion was argued. *See* Plaintiffs' Redlines in
2 Response to Discussions with Defendants, **Exhibit 2** at 2 (replacing the exclusion of "evidence,
3 argument, or testimony comparing Plaintiffs' billed charges to Medicare or non-commercial
4 reimbursement rates" with the exclusion of "evidence, argument, or testimony that Medicare or
5 non-commercial reimbursement rates are the reasonable rate, that providers accept it most of
6 the time" (emphasis added to show the change)).

7 Because Plaintiffs would not revise the Proposed Order to state that these sections were
8 granted or deferred "for the reasons stated on the record," Defendants could not agree to the final
9 form and content of the Proposed Order, as it still includes inappropriate and irrelevant findings
10 or orders. The Proposed Order was submitted via email to the Court on November 3, 2021.

11 **OBJECTIONS**

12 Defendants set forth herein their objections to Plaintiffs' Proposed Order, which includes
13 findings and orders that were not addressed by the Court at the hearings of October 19 and 20,
14 2021. As relevant for these objections, Plaintiffs' Motion, *inter alia*, sought to preclude
15 evidence, argument, and testimony of Medicare rates and Plaintiffs' methodology for setting
16 billed charges (How Plaintiffs Set Billed Charges).

17 Defendants submit that any of Plaintiffs' inclusions that inaccurately represent the issues
18 involved or do not represent the Court's oral rulings should be stricken, as it would be prejudicial
19 to include such extraneous findings of fact and conclusions of law. Defendants' specific
20 objections to Plaintiffs' proposed order are as follows:

21 1. Defendants object to Plaintiffs' recasting of their Motion to preclude Medicare
22 rates by proposing an order to exclude only "evidence, argument, or testimony that Medicare or
23 non-commercial reimbursement rates are the reasonable rate, that providers accept it most of the
24 time, or arguing reasonableness based on a percentage of Medicare or non-commercial
25 reimbursement rates." Proposed Order's **Medicare or Non-Commercial Reimbursement**
26 **Rates** Section. Plaintiffs did not accept Defendants' revision to have this portion of the order
27 read "the Motion is GRANTED with respect to the issue of Medicare for the reasons stated on
28 the record." Defendants object to Plaintiffs' Proposed Order because it improperly narrows their



1 Motion and does not accurately represent the Court's oral ruling.

2 2. Plaintiffs' successful Motion was not limited to just Medicare or non-commercial
3 rates being reasonable, how often "providers accept it,"¹ or to argument or testimony that their
4 billed charges are not reasonable based on references to percentages of Medicare.² Rather,
5 Plaintiffs moved to exclude "any evidence, argument, or testimony relating to [Medicare]." Pls.
6 Motion at 9 (emphasis added). In other words, their motion would have precluded both Plaintiffs
7 and Defendants broadly from offering testimony relating to Medicare. Nor was the oral
8 argument cabined to the sub-issue of just comparing Plaintiffs' billed charges against Medicare.
9 For example, Plaintiffs argued that Defendants "also want[ed] to inject irrelevant Medicare
10 reimbursement rates through its references to TeamHealth and to Blackstone," but "[t]hat too
11 would be improper and subject to the Court's prior orders." 10/19/21 Tr. 134:23-135:1. They
12 also argued that the Motion was broader than just precluding Medicare, let alone a percentage of
13 Medicare: "We saw requests . . . for production that sought -- not only Medicare, but all other
14 noncommercial type of information and data." 10/19/21 Tr. 202:24-203:1.

15 Similarly, Defendants showed the Court just how broad Plaintiffs' Motion was by
16 presenting the materials that Plaintiffs produced in discovery, including internal documents, that
17 were replete with the word Medicare:

18 And we submit that the evidence that was later produced in discovery . . . and
19 that the parties took depositions on proves why [Medicare admissibility] was a
20 prudent reservation for the Court to make, because frankly, Your Honor, these
21 parties do business in the language of Medicare; they contract in the language of
22 Medicare; they negotiate in the language of Medicare; they budget in the language
23 of Medicare; they track their receivables in the language of Medicare. And so the
24 notion that you could have a trial about the reasonable value of healthcare
25 services, without the word Medicare rates being spoken or the Medicare B
26 schedule, is just incomprehensible in our judgment and in my experience.

25 ¹ Plaintiffs do not explain if the "it" in "providers accept it" refers to Medicare or "non-commercial rates."

26 ² Plaintiffs' revisions to the Proposed Order depicted in **Exhibit 2** are seemingly an attempt to capture a
27 discussion between the parties' counsel. First, Defendants disagree that these revisions accurately capture
28 that discussion. Second, that post-order discussion regarding the *enforceability* of the order does not have
bearing on what Plaintiffs successfully moved in limine to preclude. That is, the Proposed Order should
memorialize what Plaintiffs successfully precluded, as ruled by the Court.

1 10/19/21 Tr. 154:21-155:7; *see also id.* 183:14-20 (“defendants have an official corporate
2 position . . . that the fair value or reasonable value of an out-of-network service is the
3 Medicare rate plus a small margin”). Plaintiffs’ Motion was directed at precluding any
4 use of Medicare at trial. The Court acknowledged this breadth, too, when it warned
5 Plaintiffs that they will open the door “to Medicare,” if they present documents
6 containing negotiations using Medicare. 10/19/21 Tr. 207:12-21.

7
8 Defendants propose that this portion of the Proposed Order be reformed by
9 replacing the strike-through text with the bold text as follows:

10 IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue
11 of Medicare rates **for the reasons stated on the record.** ~~Any evidence, argument, or~~
12 ~~testimony that Medicare or non-commercial reimbursement rates are the reasonable~~
13 ~~rate, that providers accept it most of the time, or arguing reasonableness based on a~~
14 ~~percentage of Medicare or non-commercial reimbursement rates is hereby~~
15 ~~EXCLUDED in limine.~~ If Defendants believe evidence, argument, or testimony
16 subject to this ruling is relevant and should be admitted, they shall make an offer of
17 proof outside the presence of the jury.

18 3. In the “How [Plaintiffs’] Charges are Set” section of the Proposed Order,
19 Defendants object to the inclusion of “any evidence, argument, or testimony relating to how the
20 Health Care Providers’ charges are set is hereby EXCLUDED in limine. This shall not preclude
21 the introduction of evidence regarding FAIR Health or percentiles of FAIR Health, nor shall it
22 preclude the introduction of evidence regarding increase in prices set by the Health Care
23 Providers.” In the majority of the motion *in limine* proposed order, the parties have agreed that
24 the Court should enter an order either stating granted, denied, or deferred “for the reasons stated
25 on the record.” Defendants seek that language here because Plaintiffs’ proposed language could
26 cause the ruling to be interpreted too narrowly based on the explicit reference to what type of
27 evidence is not precluded. While it is true that Plaintiffs represented that Defendants could
28 challenge FAIR Health and its connection to Plaintiffs’ “process” for setting billed charges,
10/22/21 Tr. 41:16-19 (“we would expect [Defendants] to have the opportunity to rebut the
presentation of a connection between FAIR Health and that type of process” for setting billed
charges”), that is but one item on a non-exclusive list of examples Defendants provided as to



why they need to be able to present evidence on Plaintiffs' methodology for setting billed charges: that their charges increased numerous times. 10/20/21 Tr. 41:24-42:24. In response to this example, the Court noted that its ruling "does not preclude [Defendants] from talking about the price increases." *Id.* Tr. 44:21-23. But, Defendants' example was never intended to be the only means of demonstrating the excessiveness of Plaintiffs' billed charges, which this Court already recognized. *Id.* Tr. 37:16-19 ("by consistently ruling that the cost of plaintiffs' business model is irrelevant, it *doesn't cut off the defendant[s] from saying the charges were excessive.*" (emphasis added)). Therefore, Plaintiffs' additional language intended to add color to the Order should be rejected in favor of the simple statement that this portion of the Motion is "GRANTED for the reasons stated on the record," as depicted by replacing the strike-through text with the bold text as follows:

IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of how the Health Care Providers' charges are set **for the reasons stated on the record.** ~~Any evidence, argument, or testimony relating to how the Health Care Providers' charges are set is hereby EXCLUDED in limine. This shall not preclude the introduction of evidence regarding FAIR Health or percentiles of FAIR Health, nor shall it preclude the introduction of evidence regarding increase in prices set by the Health Care Providers.~~ If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court modify Plaintiffs' Proposed Order consistent with the objections as stated above.

Dated this 3rd day of November, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of November, 2021, a true and correct copy of the foregoing **DEFENDANTS' OBJECTIONS TO PLAINTIFFS' PROPOSED ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EVIDENCE SUBJECT TO THE COURT'S DISCOVERY ORDERS** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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Judge David Wall, Special Master
Attention:
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20 /s/ Colby L. Balkenbush

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Attorneys for Plaintiffs

DISTRICT COURT**CLARK COUNTY, NEVADA**

FREMONT EMERGENCY SERVICES
 (MANDAVIA), LTD., a Nevada professional
 corporation; TEAM PHYSICIANS OF
 NEVADA-MANDAVIA, P.C., a Nevada
 professional corporation; CRUM,
 STEFANKO AND JONES, LTD. dba RUBY
 CREST EMERGENCY MEDICINE, a
 Nevada professional corporation,

Plaintiffs,

vs.

UNITED HEALTHCARE INSURANCE
 COMPANY, a Connecticut corporation;
 UNITED HEALTH CARE SERVICES INC.,
 dba UNITEDHEALTHCARE, a Minnesota
 corporation; UMR, INC., dba UNITED
 MEDICAL RESOURCES, a Delaware
 corporation; SIERRA HEALTH AND LIFE
 INSURANCE COMPANY, INC., a Nevada
 corporation; HEALTH PLAN OF NEVADA,
 INC., a Nevada corporation,

Defendants.

Case No.: A-19-792978-B
 Dept. No.: XXVII

**ORDER GRANTING IN PART AND
 DENYING IN PART PLAINTIFFS'
 MOTION IN LIMINE TO EXCLUDE
 EVIDENCE SUBJECT TO THE
 COURT'S DISCOVERY ORDERS**

Hearing Date: October 19–20, 2021

This matter came before the Court on October 19–20, 2021 on plaintiffs Fremont
 Emergency Services (Mandavia), Ltd. (“Fremont”); Team Physicians of Nevada-Mandavia,
 P.C. (“Team Physicians”); Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency
 Medicine’s (“Ruby Crest” and collectively the “Health Care Providers”) Motion in Limine to
 Exclude Evidence Subject to the Court’s Discovery Orders (the “Motion”). Pat Lundvall,
 Kristen T. Gallagher and Amanda M. Perach, McDonald Carano LLP; and John Zavitsanos,
 Joe Ahmad, Kevin Leyendecker, Jane Robinson, and Jason McManis, Ahmad, Zavitsanos,
 Anaipakos, Alavi & Mensing, P.C., appeared on behalf of the Health Care Providers. D. Lee
 Roberts and Colby Balkenbush, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC; Lee Blalack
 and Dmitri Portnoi, O’Melveny & Myers LLP; and Dan Polsenberg, Lewis Roca Rothgerber
 Christie LLP appeared on behalf of UnitedHealthcare Insurance Company; United HealthCare
 Services, Inc.; UMR, Inc.; Sierra Health and Life Insurance Co., Inc.; and Health Plan of
 Nevada, Inc.’s (collectively, “United”).

The Court, having considered the Motion and United’s opposition, and the argument of
 counsel at the hearing on this matter, and good cause appearing, finds and orders as follows:

Clinical Records & Proper Coding

IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of
 clinical records and proper coding, for the reasons stated on the record. ~~Any evidence,~~
~~argument, or testimony suggesting that any of the at-issue claims were improperly coded,~~
~~submitted, or that the services are not emergency services is hereby EXCLUDED in limine. If~~
~~Defendants believe evidence, argument, or testimony subject to this ruling is relevant and~~
~~should be admitted, they shall make an offer of proof outside the presence of the jury.~~

Medicare or Non-Commercial Reimbursement Rates

IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of
 Medicare ~~for the reasons stated on the record. If Defendants believe evidence, argument, or~~
~~testimony subject to this ruling is relevant and should be admitted, they shall make an offer of~~
~~proof outside the presence of the jury. rates. Any evidence, argument, or testimony comparing~~
~~Plaintiffs’ billed charges to Medicare or non-commercial reimbursement rates or arguing~~

reasonableness based on a percentage of Medicare or non-commercial reimbursement rates is hereby EXCLUDED in limine.

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The Health Care Providers' In-Network Rates

IT IS HEREBY ORDERED that the Motion is DEFERRED to trial with respect to the issue of the Health Care Providers' in-network rates for the reasons stated on the record. If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury. ~~Defendants believe that any excluded evidence, argument, or testimony that is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury.~~

The Health Care Providers' In-Network Negotiations/Prior Contracts with United

IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of the Health Care Providers' In-Network Negotiations/Prior Contracts with United for the reasons stated on the record. If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury. ~~Any evidence, argument, or testimony relating to the Health Care Providers' In-Network Negotiations/Prior Contracts with United is hereby EXCLUDED in limine.~~

The Health Care Providers' Out-Of-Network Reimbursement Rates & Data

The Health Care Providers' Motion with respect to the issue of the Health Care Providers' out-of-network reimbursement rates and data was withdrawn on the record at the hearing on October 20, 2021.

The Health Care Providers' Costs of Service

IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of the Health Care Providers' costs of service for the reasons stated on the record. If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury. ~~Any evidence,~~

argument, or testimony relating to the Health Care Providers' costs of service is hereby EXCLUDED in limine.

How the Health Care Providers Charges Are Set

IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of how the Health Care Providers' charges are set for the reasons stated on the record. If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury. ~~Any evidence, argument, or testimony relating to how the Health Care Providers' charges are set is hereby EXCLUDED in limine. This shall not preclude the introduction of evidence regarding FAIR Health or percentiles of FAIR Health, nor shall it preclude the introduction of evidence regarding increase in prices set by the Health Care Providers.~~

The Health Care Providers' Hospital Contracts/Credentials

IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of the Health Care Providers' hospital contracts and credentials for the reasons stated on the record. If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury. ~~Any evidence, argument, or testimony relating to the Health Care Providers' hospital contracts and credentials is hereby EXCLUDED in limine.~~

Corporate Ownership, Acquisition and Due Diligence, Corporate Structure

IT IS HEREBY ORDERED that the Motion is GRANTED IN PART and DENIED IN PART with respect to the issue of the corporate ownership, acquisition and due diligence, and corporate structure. Any evidence, argument, or testimony regarding the flow of funds between Plaintiffs and TeamHealth is hereby EXCLUDED in limine.

The Motion is DENIED with respect to ~~(1)~~ evidence, argument, or testimony regarding the relationship between (1) Plaintiffs and TeamHealth, Inc.; and (2) ~~a brief amount of evidence, argument, or testimony regarding~~ the basic relationship between TeamHealth, Inc. and Blackstone Inc. (formerly known as The Blackstone Group, Inc.).

1 If the Defendants believe evidence, argument, or testimony subject to the ruling on this
2 Motion is relevant and should be admitted, they shall make an offer of proof outside the
3 presence of the jury.

4 **Sub-TIN**

5 IT IS HEREBY ORDERED that the Motion is DENIED with respect to the sub-TIN
6 issue, for the reasons stated on the record.

7 **Collections and CollectRX**

8 IT IS HEREBY ORDERED that the Motion is GRANTED-DEFERRED until trial with
9 respect to the issue of collections and the Health Care Providers' use of CollectRX and. ~~Any~~
10 ~~evidence, argument, or testimony relating to collections and the Health Care Providers' use of~~
11 ~~CollectRX is hereby EXCLUDED in limine. Any ruling on to the issue of~~ claims subject to a
12 negotiated agreement between CollectRX and Data iSight for the reasons stated on the record.
13 ~~is DEFERRED until trial.~~

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Respectfully submitted by:

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI
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/s/

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Attorneys for Plaintiffs

DISTRICT COURT**CLARK COUNTY, NEVADA**

FREMONT EMERGENCY SERVICES
 (MANDAVIA), LTD., a Nevada professional
 corporation; TEAM PHYSICIANS OF
 NEVADA-MANDAVIA, P.C., a Nevada
 professional corporation; CRUM,
 STEFANKO AND JONES, LTD. dba RUBY
 CREST EMERGENCY MEDICINE, a
 Nevada professional corporation,

Plaintiffs,

vs.

UNITED HEALTHCARE INSURANCE
 COMPANY, a Connecticut corporation;
 UNITED HEALTH CARE SERVICES INC.,
 dba UNITEDHEALTHCARE, a Minnesota
 corporation; UMR, INC., dba UNITED
 MEDICAL RESOURCES, a Delaware
 corporation; SIERRA HEALTH AND LIFE
 INSURANCE COMPANY, INC., a Nevada
 corporation; HEALTH PLAN OF NEVADA,
 INC., a Nevada corporation,

Defendants.

Case No.: A-19-792978-B
 Dept. No.: XXVII

**ORDER GRANTING IN PART AND
 DENYING IN PART PLAINTIFFS'
 MOTION IN LIMINE TO EXCLUDE
 EVIDENCE SUBJECT TO THE
 COURT'S DISCOVERY ORDERS**

Hearing Date: October 19–20, 2021

This matter came before the Court on October 19–20, 2021 on plaintiffs Fremont Emergency Services (Mandavia), Ltd. (“Fremont”); Team Physicians of Nevada-Mandavia, P.C. (“Team Physicians”); Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine’s (“Ruby Crest” and collectively the “Health Care Providers”) Motion in Limine to Exclude Evidence Subject to the Court’s Discovery Orders (the “Motion”). Pat Lundvall, Kristen T. Gallagher and Amanda M. Perach, McDonald Carano LLP; and John Zavitsanos, Joe Ahmad, Kevin Leyendecker, Jane Robinson, and Jason McManis, Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C., appeared on behalf of the Health Care Providers. D. Lee Roberts and Colby Balkenbush, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC; Lee Blalack and Dmitri Portnoi, O’Melveny & Myers LLP; and Dan Polsenberg, Lewis Roca Rothgerber Christie LLP appeared on behalf of UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Sierra Health and Life Insurance Co., Inc.; and Health Plan of Nevada, Inc.’s (collectively, “United”).

The Court, having considered the Motion and United’s opposition, and the argument of counsel at the hearing on this matter, and good cause appearing, finds and orders as follows:

Clinical Records & Proper Coding

IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of clinical records and proper coding, for the reasons stated on the record. If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury.

Medicare or Non-Commercial Reimbursement Rates

IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of Medicare rates. Any evidence, argument, or testimony ~~comparing Plaintiffs’ billed charges to that~~ Medicare or non-commercial reimbursement rates are the reasonable rate, that providers accept it most of the time, or arguing reasonableness based on a percentage of Medicare or non-commercial reimbursement rates is hereby EXCLUDED in limine. If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury.

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3 **The Health Care Providers' In-Network Rates**

4 IT IS HEREBY ORDERED that the Motion is DEFERRED to trial with respect to the
5 issue of the Health Care Providers' in-network rates for the reasons stated on the record. If
6 Defendants believe evidence, argument, or testimony subject to this ruling is relevant and
7 should be admitted, they shall make an offer of proof outside the presence of the jury.

8 **The Health Care Providers' In-Network Negotiations/Prior Contracts with United**

9 IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of
10 the Health Care Providers' In-Network Negotiations/Prior Contracts with United for the
11 reasons stated on the record. If Defendants believe evidence, argument, or testimony subject to
12 this ruling is relevant and should be admitted, they shall make an offer of proof outside the
13 presence of the jury

14 **The Health Care Providers' Out-Of-Network Reimbursement Rates & Data**

15 The Health Care Providers' Motion with respect to the issue of the Health Care
16 Providers' out-of-network reimbursement rates and data was withdrawn on the record at the
17 hearing on October 20, 2021.

18 **The Health Care Providers' Costs of Service**

19 IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of
20 the Health Care Providers' costs of service for the reasons stated on the record. If Defendants
21 believe evidence, argument, or testimony subject to this ruling is relevant and should be
22 admitted, they shall make an offer of proof outside the presence of the jury.

23 **How the Health Care Providers Charges Are Set**

24 IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of
25 how the Health Care Providers' charges are set. Any evidence, argument, or testimony relating
26 to how the Health Care Providers' charges are set is hereby EXCLUDED in limine. This shall
27 not preclude the introduction of evidence regarding FAIR Health or percentiles of FAIR
28 Health, nor shall it preclude the introduction of evidence regarding increase in prices set by the

Health Care Providers. If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury.

The Health Care Providers' Hospital Contracts/Credentials

IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of the Health Care Providers' hospital contracts and credentials for the reasons stated on the record. If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury.

Corporate Ownership, Acquisition and Due Diligence, Corporate Structure

IT IS HEREBY ORDERED that the Motion is GRANTED IN PART and DENIED IN PART with respect to the issue of the corporate ownership, acquisition and due diligence, and corporate structure. The Court finds that the flow of funds within the Plaintiffs' or TeamHealth's corporate structure is irrelevant and inadmissible.

The Motion is DENIED with respect to evidence, argument, or testimony regarding the relationship between (1) Plaintiffs and TeamHealth, Inc.; and (2) the basic relationship between TeamHealth, Inc. and Blackstone Inc. (formerly known as The Blackstone Group, Inc.).

If the Defendants believe evidence, argument, or testimony subject to the ruling on this Motion is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury.

Sub-TIN

IT IS HEREBY ORDERED that the Motion is DENIED with respect to the sub-TIN issue, for the reasons stated on the record.

Collections and CollectRX

IT IS HEREBY ORDERED that the Motion is DEFERRED until trial ~~with respect to the issue of collections, the Health Care Providers' use of CollectRX, claims subject to a negotiated agreement between CollectRX and Data iSight,~~ for the reasons stated on the record.

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If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury.

Respectfully submitted by:

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI
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/s/

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD., a Nevada professional
corporation; TEAM PHYSICIANS OF
NEVADA-MANDAVIA, P.C., a Nevada
professional corporation; CRUM,
STEFANKO AND JONES, LTD. dba RUBY
CREST EMERGENCY MEDICINE, a
Nevada professional corporation,

Plaintiffs,

vs.

UNITED HEALTHCARE INSURANCE
COMPANY, a Connecticut corporation;
UNITED HEALTH CARE SERVICES INC.,
dba UNITEDHEALTHCARE, a Minnesota
corporation; UMR, INC., dba UNITED
MEDICAL RESOURCES, a Delaware
corporation; SIERRA HEALTH AND LIFE
INSURANCE COMPANY, INC., a Nevada
corporation; HEALTH PLAN OF NEVADA,
INC., a Nevada corporation.

Defendants

Case No.: A-19-792978-B
Dept. No.: XXVII

**NOTICE OF ENTRY OF ORDER
AFFIRMING AND ADOPTING REPORT
AND RECOMMENDATION NO. 11
REGARDING DEFENDANTS' MOTION
TO COMPEL PLAINTIFFS'
PRODUCTION OF DOCUMENTS
ABOUT WHICH PLAINTIFFS'
WITNESSES TESTIFIED**

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1 PLEASE TAKE NOTICE that an Order Affirming and Adopting Report and
2 Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of
3 Documents About Which Plaintiffs' Witnesses Testified was entered on November 3, 2021, a
4 copy of which is attached hereto.

5 DATED this 3rd day of November, 2021.

6 McDONALD CARANO LLP

7 By: /s/ Kristen T. Gallagher

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18 *of Nevada-Mandavia, P.C. & Crum, Stefanko*
19 *and Jones, Ltd. dba Ruby Crest Emergency Medicine*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 3rd day of November, 2021, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER AFFIRMING AND ADOPTING REPORT AND RECOMMENDATION NO. 11 REGARDING DEFENDANTS' MOTION TO COMPEL PLAINTIFFS' PRODUCTION OF DOCUMENTS ABOUT WHICH PLAINTIFFS' WITNESSES TESTIFIED** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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/s/ Marianne Carter
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DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD., a Nevada professional
corporation; TEAM PHYSICIANS OF
NEVADA-MANDAVIA, P.C., a Nevada
professional corporation; CRUM, STEFANKO
AND JONES, LTD. dba RUBY CREST
EMERGENCY MEDICINE, a Nevada
professional corporation,

Plaintiffs,

vs.

UNITEDHEALTH GROUP, INC., a Delaware
corporation; UNITED HEALTHCARE
INSURANCE COMPANY, a Connecticut
corporation; UNITED HEALTH CARE
SERVICES INC., dba
UNITEDHEALTHCARE, a Minnesota
corporation; UMR, INC., dba UNITED
MEDICAL RESOURCES, a Delaware
corporation; OXFORD HEALTH PLANS,
INC., a Delaware corporation; SIERRA
HEALTH AND LIFE INSURANCE
COMPANY, INC., a Nevada corporation;
SIERRA HEALTH-CARE OPTIONS, INC., a

Case No.: A-19-792978-B
Dept. No.: XXVII

**ORDER AFFIRMING AND ADOPTING
REPORT AND RECOMMENDATION
NO. 11 REGARDING DEFENDANTS'
MOTION TO COMPEL PLAINTIFFS'
PRODUCTION OF DOCUMENTS
ABOUT WHICH PLAINTIFFS'
WITNESSES TESTIFIED**

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1 Nevada corporation; HEALTH PLAN OF
 2 NEVADA, INC., a Nevada corporation; DOES
 3 1-10; ROE ENTITIES 11-20,
 Defendants.

4 The Special Master filed Report and Recommendation No. 11 Regarding Defendants
 5 UnitedHealth Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services,
 6 Inc.; UMR, Inc.; Oxford Health Plans LLC (incorrectly named as “Oxford Health Plans, Inc.”);
 7 Sierra Health and Life Insurance Company, Inc.; Sierra Health-Care Options, Inc. and Health
 8 Plan of Nevada, Inc.’s (collectively, “Defendants”) Motion to Compel the Plaintiff Health Care
 9 Providers’ Production of Documents About which Plaintiffs’ Witnesses Testified on Order
 10 Shortening Time (“R&R #11”) on August 11, 2021. R&R #11 addressed the following issues:
 11 (1) summary of David Greenberg’s, Lisa Zima’s, and Kent Bristow’s call notes with Data iSight
 12 referred to during their respective depositions (hereinafter referred to as the “Data iSight
 13 Communications”); (2) summary document listing wrap/rental networks referred to by Kent
 14 Bristow during the deposition of the Team Physicians’ NRCP 30(b)(6) designee; (3) data on full
 15 billed charges for the period 2015-2017; (4) TeamHealth documents and data relating to 4,000
 16 claims from Defendants’ administrative services only (“ASO”) customers; and (5) the Health
 17 Care Providers’ 2013-2017 chargemasters; (6); the Health Care Providers’ contracts with third-
 18 party insurers and (7) balance billing policy separate from the policy contained in deposition
 19 Exhibit 31 to the NRCP 30(b)(6) Designee for Team Physicians.

20 On August 25, 2021, Defendants filed an objection to R&R # 11 with respect to
 21 paragraph 1 of R&R #11 regarding the Data iSight Communications. Thereafter, on September
 22 28, 2021, the Court entered an Order on Stipulation resolving Defendants’ Objection
 23 (“September 28 Order”) and Defendants withdrew their Objection. Good cause appearing
 24 therefor,

25 ...
 26 ...
 27 ...
 28 ...

IT IS HEREBY ORDERED that, with the exception of paragraph 1 of the R&R #11 concerning the Data iSight Communications which is subject to the September 28 Order, the remainder of R&R #11 is hereby affirmed and adopted in its entirety, a copy of which is set forth in **Exhibit 1** attached hereto.

November 3, 2021

Dated this 3rd day of November, 2021

Nancy L Allf

TW

52A 77C 9047 3AF2
Nancy Allf
District Court Judge

Submitted by:

Approved as to form/content:

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GUNN & DIAL, LLC

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By: /s/ Brittany M. Llewellyn

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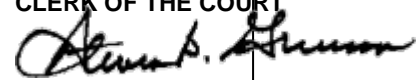
Attorneys for Defendants

EXHIBIT 1

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EXHIBIT 1



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702-835-7800 Phone
Special Master

DISTRICT COURT
CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES (MANDAVIA),
LTD, et al.,

Plaintiffs,

vs.

UNITEDHEALTH GROUP INC., et. al.,

Defendants

Case No.: A-19-792978-B
Dept. No.: 27

JAMS Ref. #1260006167

**REPORT AND RECOMMENDATION #11
REGARDING DEFENDANT'S MOTION TO
COMPEL PLAINTIFFS' PRODUCTION OF
DOCUMENTS ABOUT WHICH PLAINTIFFS'
WITNESSES TESTIFIED**

On June 24, 2021, Defendants filed a Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified, on an Order Shortening Time. The Motion specifically addressed the issue to the attention of the Special Master. During a status teleconference on June 25, 2021, the parties agreed to a briefing schedule for this Motion. Plaintiffs filed a timely Opposition on July 6, 2021, and Defendants filed a timely Reply brief on July 12, 2021.

The matter was presented for telephonic hearing on July 22, 2021. Participating were the Special Master, Hon. David T. Wall, Ret.; Pat Lundvall, Esq., Kristen T. Gallagher, Esq., Amanda M. Perach, Esq. and Rachel H. LeBlanc, Esq., appearing for Plaintiffs; Colby Balkenbush, Esq., Daniel F. Polsenberg, Esq., and Abraham G. Smith, Esq., appearing for Defendants.

By the instant Motion, Defendants seek the production of documents that Defendants claim were requested by Defendants in written discovery requests, are relevant to Defendants' claims and defenses and were used by Plaintiffs' witnesses (including witnesses designated by Plaintiffs under NRCP 30(b)(6)) to prepare for deposition. Plaintiffs contend that they are under no obligation to produce documents that the Trial Court or the Special Master have previously determined to be non-discoverable.

The Defendants have classified the documents addressed in the instant Motion into seven separate categories, each of which is addressed separately below. The Special Master, having reviewed the pleadings and papers on file

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1 herein, including a review of the documents at issue, and having considered the arguments of counsel at the time of
2 hearing, and pursuant to NRCP 53(e)(1), hereby sets forth the following Report and Recommendation regarding
3 Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified:

4 1. Data iSight Communications

5 Defendants seek production of notes referred to in the depositions of Kent Bristow and Lisa Zima regarding
6 communications that Plaintiffs' representatives Zima and David Greenberg had with Data iSight representatives.
7 Defendants contend that certain portions of these communications are referenced in Plaintiffs' Amended Complaint.
8 According to Plaintiffs, Greenberg and Zima were both deposed at length regarding the communications.

9 Defendants rely in part on NRS 50.125 as support for the production of these notes. However, it does not
10 appear that Bristow or Zima used these notes to prepare for their deposition, and as such NRS 50.125 is inapplicable
11 to the analysis.

12 Plaintiffs contend that the notes have not been produced as they are protected by the work product and
13 attorney-client privilege. According to a Declaration by Plaintiffs' counsel, Bristow was directed by counsel to have
14 Greenberg and Zima contact Data iSight representatives in July of 2019.

15 It is the recommendation of the Special Master that Defendants' request for production of these notes be
16 DENIED. Based upon the Declaration of counsel for Plaintiffs, the notes constitute attorney work product and/or
17 constitute attorney-client privileged communications, and as such are protected from disclosure. See, NRCP
18 26(b)(3)(A); NRS 49.095; Wynn Resorts, Ltd. v. Eighth Judicial District Court, 133 Nev. 369, 374, 383 (2017).
19 Defendants have been able to question witnesses as to the substance of the communications with Data iSight
20 representatives in the depositions of Zima and Greenberg. This is consistent with Nevada law that the relevant facts
21 are discoverable but the communications with counsel regarding those facts are not. See, Phillips v. C.R. Bard, Inc.,
22 290 F.R.D. 615, 626 (D. Nev. 2013). As set forth above, Defendants have examined witnesses regarding the substance
23 of the communications.

24 2. Wrap/rental summary document

25 Defendants seek production of a summary document that Bristow relied upon in preparation for his deposition
26 as a corporate designee. The summary document relates to a summary of eight wrap/rental agreements. The parties
27 agree that Plaintiffs have produced the eight agreements. Bristow testified that he reviewed a summary of the eight
28

1 agreements, and prepared notes from that summary. The notes have been produced but the summary has not. By this
2 Motion, Defendants seek production of the summary.

3 Given that Bristow testified that he reviewed the summary in preparation for his deposition, Defendants rely
4 in part on NRS 50.125 to support their request for production. Plaintiffs contend that Defendants failed to establish
5 that Bristow's review of the summary refreshed his recollection. However, Bristow testified as follows:

6 Q Did you review the written agreements for all of those [wrap/rental] arrangements in preparation for
7 your testimony today?

8 A I did not review the agreements themselves but a listing of the agreements that we've had in place
9 to know who they were with and when they started and what the term – the basic reimbursement
10 terms are.

11 Team Physicians Deposition Transcript, Ex. 1 to Defendants' Appendix, p. 265.

12 It is the determination of the Special Master that the foregoing excerpt from the deposition constitutes a
13 sufficient foundation to establish that Bristow reviewed the at-issue summary to refresh his recollection prior to the
14 deposition.

15 During the hearing on this Motion, counsel for Plaintiffs suggested that the summary itself was potentially
16 subject to protection under the attorney-client privilege, as it was contained within communications between
17 representatives of Plaintiffs and their counsel. As such, Plaintiffs were directed to submit the summary for an *in*
18 *camera* review by the Special Master, which submission was made on August 2, 2021. Review by the Special Master
19 has not provided any additional grounds for protection of the document.

20 Based on the foregoing, it is the recommendation of the Special Master that Defendants' request for
21 production of this summary be GRANTED.

22 3. Data on Full Billed Charges for the Period 2015-2017

23 Defendants request production of documents evidencing that certain claims adjudicated by Defendants were
24 paid in full during period beginning January 1, 2015 and June 30, 2017, as referenced by Bristow during his deposition.
25 Although Plaintiffs challenge whether the requested documents actually fall within Defendants' written discovery
26 requests, Plaintiffs note that they have produced the spreadsheet reviewed by Bristow in connection with his testimony.
27 Defendants did not refute this contention in their Reply Brief.

28 As a result, it is the recommendation of the Special Master that Defendants' request for any further production
of documents under this category is DENIED.

1 4. Contract Claim File

2 Defendants request documents and data relating to approximately 4,000 claims from Defendant United's
3 Administrative Services Only ("ASO") customers. In his deposition, Bristow described the claims as having been
4 adjudicated by Defendant United but paid according to a direct agreement or some other agreement that Plaintiffs had
5 with another party. Defendants have generally referred to these documents as "contract claim files."

6 It is the recommendation of the Special Master that Defendants' request for documents under this category
7 be DENIED, as the requested documents fall within Report and Recommendation #2, which found that "provider
8 participation agreement documents and internal TeamHealth communications about negotiating a provider
9 participation agreement with United" are irrelevant to the core issue of rate of reimbursement and therefore not
10 discoverable.¹

11 5. 2013 to 2017 Chargemasters

12 Defendants seek production of chargemasters in effect prior to TeamHealth's acquisition of certain Plaintiff
13 entities, given Bristow's testimony that it is TeamHealth's typical practice to maintain and retain prior chargemasters.
14 Plaintiffs have produced chargemasters from the relevant time periods, including some chargemasters during the time
15 period referenced in this request.

16 Notably, the Special Master, in Report and Recommendation #7, addressed this very issue and determined
17 that these additional prior chargemasters, in effect prior to the time period relevant in this matter, are not relevant
18 under the provisions of NRCP 26(b)(1). As such, it is the recommendation of the Special Master that Defendants'
19 request for documents under this category be DENIED.

20 6. Contracts with Third Party Insurers

21 Defendants seek production of Plaintiffs' contracts with third party insurers. It is the recommendation of the
22 Special Master that Defendants' request for documents under this category be DENIED. The Trial Court's February
23 4, 2021 Order and the Special Master's Report and Recommendation #7 clearly set forth that the requested documents
24 are not discoverable, especially with respect to in-network claims data and arrangements.

25 7. Separate Balance Billing Policies

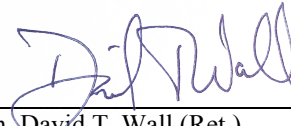
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¹ On or about August 9, 2021, the Trial Court entered an Order affirming Report and Recommendation #2.

1 According to Defendants, Bristow testified that Plaintiffs possess a balance billing policy separate from the
2 one already produced by Plaintiffs, describing the TeamHealth policy prohibiting balance billing. Plaintiffs have
3 produced a balance billing policy during discovery.

4 It is the recommendation of the Special Master that Defendants' request for documents under this category
5 be DENIED, given the determination in Report and Recommendation #2 that such balance billing documents were
6 not relevant or discoverable.

7 This Report and Recommendation addresses all issues before the Special Master under this pending Motion.
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9 Dated this 11th day of August, 2021

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11 Hon. David T. Wall (Ret.)
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PROOF OF SERVICE BY E-Mail

Re: Fremont Emergency Services (Mandavia), Ltd. et al. vs. UnitedHealth Group, Inc. et al.
Reference No. 1260006167

I, Michelle Samaniego, not a party to the within action, hereby declare that on August 11, 2021, I served the attached REPORT AND RECOMMENDATION #11 on the parties in the within action by electronic mail at Las Vegas, NEVADA, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at Las Vegas,
NEVADA on August 11, 2021.



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To: [Kristen T. Gallagher](#); [Roberts, Lee](#); [Balkenbush, Colby](#); [Blalack II, K. Lee](#)
Cc: [Pat Lundvall](#); [Amanda Perach](#); TMH010@azalaw.com; [Justin Fineberg](#); [Rachel LeBlanc](#); jsiegelaub@lashgoldberg.com
Subject: RE: Fremont v. United - order re R&R #11
Date: Tuesday, November 2, 2021 11:08:47 PM
Attachments: [REVISEE-sig2020_5801a862-4942-4e3a-94ab-425c0ea8e329.png](#)

Kristy,

You may affix my e-signature and proceed with the submission.

Thank you,

Brittany



LITIGATION DEPARTMENT
OF THE YEAR ALM'S DAILY REPORT
 2020 - 2019 - 2018 - 2017 - 2016 - 2014

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Sent: Monday, November 1, 2021 2:56 PM
To: Llewellyn, Brittany M.; Roberts, Lee; Balkenbush, Colby; Blalack II, K. Lee
Cc: Pat Lundvall; Amanda Perach; TMH010@azalaw.com; Justin Fineberg; Rachel LeBlanc; jsiegelaub@lashgoldberg.com
Subject: RE: Fremont v. United - order re R&R #11

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Brittany –

Following up on this. Please advise if we may proceed with submitted the attached to the Department with your electronic signature.

Kristen T. Gallagher | Partner

McDONALD CARANO**P:** 702.873.4100 | **E:** kgallagher@mcdonaldcarano.com**From:** Kristen T. Gallagher**Sent:** Thursday, October 21, 2021 7:15 PM**To:** 'Llewellyn, Brittany M.' <BLlewellyn@wwhgd.com>; Roberts, Lee <LRoberts@wwhgd.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>; Blalack II, K. Lee <lblalack@omm.com>**Cc:** Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; TMH010@azalaw.com; Justin Fineberg <jfineberg@lashgoldberg.com>; Rachel LeBlanc <RLeBlanc@lashgoldberg.com>; jsiegelaub@lashgoldberg.com**Subject:** Fremont v. United - order re R&R #11

Brittany –

Please find attached a proposed order affirming R&R #11, subject to the stipulation. Please let me know if we may insert your electronic signature for submission to the Court.

Thank you,
Kristy

Kristen T. Gallagher | Partner**McDONALD CARANO**

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1 **CSERV**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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6 Fremont Emergency Services
(Mandavia) Ltd, Plaintiff(s)

CASE NO: A-19-792978-B

7 vs.

DEPT. NO. Department 27

8
9 United Healthcare Insurance
Company, Defendant(s)

10
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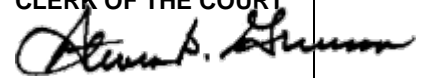
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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

Defendants.

CASE#: A-19-792978-B

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
WEDNESDAY, NOVEMBER 3, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 7

APPEARANCES:

For the Plaintiffs:

PATRICIA K. LUNDVALL, ESQ.
JOHN ZAVITSANOS, ESQ.
JASON S. MCMANIS, ESQ.
JOSEPH Y. AHMAD, ESQ.

For the Defendants:

D. LEE ROBERTS, JR., ESQ.
K. LEE BLALACK, ESQ.
JEFFREY E. GORDON, ESQ.
ADAM G. LEVINE, ESQ.
NADIA L. FARJOOD, ESQ.
DANIEL F. POLSENBERG, ESQ.

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MARKED

RECEIVED

None

1 Las Vegas, Nevada, Wednesday, November 3, 2021

2
3 [Case called at 9:41 a.m.]

4 [Outside the presence of the jury]

5 THE COURT: Okay. So are we having a technical issue?

6 UNIDENTIFIED SPEAKER: Yeah.

7 THE COURT: This way you won't wait for me.

8 MR. BLALACK: Your Honor, we have two, just housekeeping
9 things I wanted to raise.

10 THE COURT: Thank you.

11 MR. BLALACK: One is we propose that the parties mark for
12 the record, the demonstratives that were presented to the jury yesterday.
13 I don't know if the Plaintiffs have an objection to that, but that's our
14 proposal.

15 THE COURT: Any response, please?

16 MR. ZAVITSANOS: We're indifferent, Your Honor. It's not
17 evidence, so --

18 MR. BLALACK: Yeah. Just for the record, Your Honor, that
19 happened --

20 MR. ROBERTS: This is a Court's exhibit, Your Honor.

21 THE COURT: That's fine. And I agree to that.

22 MR. BLALACK: Okay. Thank you, Your Honor. The final
23 housekeeping issue, Your Honor, pursuant to the argument we had a few
24 days ago -- I think it was Monday, or maybe last week, regarding the
25 protective order for AEO material and for media access. We went

1 through Plaintiffs' exhibit list, which is 400, or 450 exhibits to identify.
2 Just the narrow group of exhibits that contain pricing formulas and
3 numbers of that nature, that present, you know, our most significant
4 AEO concerns.

5 We have redacted those exhibits to allow the entire exhibit to
6 be used and offered into evidence, but with the redaction of just those
7 discrete portions, and we've shared it with opposing counsel this
8 morning. I think their view is that they're not willing to consent to those
9 redactions. I'll let them explain if that's true and why. But your motion,
10 Your Honor, would be that for the record -- the exhibit -- those exhibits, if
11 they're going to be offered and entered into evidence, that the redacted
12 version be the one that's entered into the record. And if they're going to
13 actually show and publish the portion of the exhibit that would contain
14 the AEO material that's redacted, that they're -- the media access be --
15 the public access be turned off for that limited; that's our request.

16 THE COURT: And the response?

17 MR. ZAVITSANOS: So this is a little bit involved. So let me
18 -- let me start with -- let me frame the issue. So here's what counsel said
19 in opening statement yesterday, and this is discussing these programs.
20 He said -- to justify what the programs are. And so he said, so what the
21 employer getting out of this was the comfort of knowing that the
22 employee wouldn't be harassed with collections. That's what the fee
23 was for, and he just started talking percentages.

24 So here's what I think the evidence is going to show today.
25 They began with this PMPM fee. This 35 percent was added. And what

1 happened was, contrary to what we heard in opening statement, what
2 the Court is going to see today, that there were multiple complaints from
3 clients about why these changes were being made. And in particular,
4 the complaint was about this fee and how much money they were
5 making off this.

6 So United surreptitiously, internally, decides what they're
7 going to do. They're going to stop charging the fee and they're going to
8 bake it into the PMPM fee. And so they go from a margin on PMPM of
9 this much, to this much. Eight times above what their competitors are
10 doing.

11 Now, what they have marked as AEO, and what they -- and
12 what they don't want the jury to see, or the -- or the courtroom, including
13 documents from 2007. 2007, none of this is confidential. These fees,
14 these PMPM fees, which they're trying to omit, are their competitive bids
15 to these customers who solicit multiple insurance companies; these
16 customers do not sign confidentiality agreements about what those fees
17 are. They are out in public. In fact, in some of these documents, they
18 are comparing to the penny what they are charging, versus what their
19 competitors are charging.

20 So I need to be able to show that progression about where
21 these fees started. The 35 percent, the complaints, which is the exact
22 opposite of what we heard in opening, and then where it ended up. And
23 I -- and finally, Your Honor, I feel like I got a little sandbagged here
24 because this is an issue we've been talking about for a while. I have
25 invited them to share with me, so I can look at it. Instead, they hand us

1 an envelope this morning.

2 Now, if they knew that this was going to be an issue, you
3 know, I wish I would have gotten this a couple weeks ago. Finally, I am
4 told, and I don't know this, but I'm told these documents are not being
5 displayed on the -- on the BlueJeans link, okay.

6 Now, we are adamantly opposed to any kind of
7 confidentiality regarding these documents because like I said, there's a
8 much bigger forces at play here. And they have bashed us in the media
9 over and over and over for the last ten years, as you'll see today. And
10 the real agenda, 100 percent of why they did what they did is what I'm
11 describing right now.

12 And so for that reason, Your Honor, we maintain that this
13 should -- that these documents should not be redacted and that we
14 should be able to proceed. And on this point, two other things, I have
15 concerns that -- I don't know if Your Honor's a college basketball fan,
16 but --

17 THE COURT: I'm from Kentucky. Come on.

18 MR. ZAVITSANOS: Okay. So one of your big nemeses' is
19 Dean Smith when he had a lead, he would -- you know, he put his -- he
20 put his fist up -- put his hand up like this, right, before corner stall he
21 deliberately tried to delay against.

22 Now, I'm a little concerned that the way this witness was
23 answering yesterday, and with these objections to exhibits, where we're
24 trying to kind of slow down the trial, coupled with this request for time
25 limits, you know, I'm just -- I'm not assigning any --

1 THE COURT: You guys are using up your time. We can do
2 this over the lunch hour.

3 MR. ZAVITSANOS: Anyway --

4 THE COURT: Briefly, a response?

5 MR. BLALACK: Yes, Your Honor. Quite simply, nothing
6 about my proposal prevents my colleagues on the other side from doing
7 everything that Mr. Zavitsanos just said he wants to do. Nothing.
8 Making sure every one of these exhibits, in unredacted form to the
9 witness. They can publish the unredacted versions to the jury. They can
10 examine the witness. That's all fair game in my proposal.

11 What I -- what we're proposing -- and they don't have to -- if
12 they want to do that, they can. If they want to show the fee numbers,
13 they can. That's all fair. What I'm asking is if they're going to do that,
14 they're going to actually go beyond -- show the entire document, publish
15 it, and show the exact figures that are at issue, that the figures
16 themselves be redacted for the record, and that for the testimony about
17 the figures, that they're -- the media access be limited in the way Your
18 Honor addressed in the hearing.

19 THE COURT: But I ruled on this yesterday. I'm not going to
20 redact anything that goes into evidence. I'm not going to redact
21 anything that the jury reviewed. If it's an AEO issue, we'll clear the
22 courtroom of the press.

23 MR. BLALACK: Okay. And that solves the problem.

24 THE COURT: Yeah. And then the transcript may be redacted
25 later.

1 MR. BLALACK: That -- and that would address my concern,
2 Your Honor.

3 THE COURT: Well, we dealt with this yesterday.

4 MR. BLALACK: Well, I think there was an objection to this on
5 the other side. So that -- so if they're going to use an exhibit that --
6 there's 19 out of 400 we identified with this screen redactions on the
7 individual exhibits. If they, when they get to those, want to show those
8 figures, and the Court is going to clear the room for the testimony about
9 that exhibit and that figure, then we're fine with that; it solves our
10 concern.

11 THE COURT: We have used 20 minutes of your trial time.
12 Let's bring in the jury.

13 MR. BLALACK: Thank you.

14 THE COURT: We can't do this every day, guys. Every 20
15 minutes, is -- they're going to be --

16 MR. ZAVITSANOS: I understand, Your Honor. My apologies,
17 Your Honor.

18 THE COURT: Is Mr. Haben out in the hall?

19 MR. ZAVITSANOS: He's ready when you all are ready, Your
20 Honor. I'll go get him.

21 THE COURT: Let's go ahead and have him come in right
22 after the jury to save some time.

23 MR. ZAVITSANOS: Okay, Your Honor.

24 THE MARSHAL: All rise for the jury.

25 [Jury in at 9:51 a.m.]

1 THE COURT: Thank you. Please be seated. Good morning,
2 everyone. Welcome to Wednesday.

3 Mr. Habens -- let's bring Mr. Habens in.

4 MR. ZAVITSANOS: Your Honor, they went to get him.

5 THE COURT: Thank you. So we just have to tell the
6 members of the jury, we don't all live in the courtroom. We actually
7 come and go, because every time you walk in, we're already here.

8 Mr. Haben, you're under the same oath that you previously
9 swore. There is no reason to reswear you in.

10 JOHN HABEN, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

11 THE WITNESS: Okay.

12 THE COURT: Plaintiff.

13 MR. ZAVITSANOS: Thank you, Your Honor. May we please
14 the Court, counsel? May I have a seat, Your Honor?

15 THE COURT: Please.

16 MR. ZAVITSANOS: And before I start, Your Honor, we have
17 a new representative here. Will you stand up? This is Ashley Pratt. She
18 is an employee and a nurse practitioner over in our group here. Thank
19 you.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. ZAVITSANOS:

22 Q Okay. Mr. Haben, did you take history in college?

23 A I don't believe I did.

24 Q Okay. Do you know who Benjamin Disraeli is?

25 A I do not.

1 Q He was one of the prime ministers of the United Kingdom in
2 the late 1800s. It was during a time of big change in the world. And he
3 had a real famous saying that there are three kinds of lies. There's lies,
4 damn lies, and statistics. Have you heard that term?

5 A I have not.

6 MR. BLALACK: Object to form. Argumentative, Your Honor.

7 THE COURT: Overruled.

8 BY MR. ZAVITSANOS:

9 Q Okay. You know that numbers can be manipulated, right?
10 That was the point of what Prime Minister Disraeli was saying, and you
11 know this, right?

12 A I have no opinion to that.

13 Q You don't?

14 A No.

15 Q Well, we have a transcript of counsel's opening from
16 yesterday, and we're going to be using this a lot, okay? Let me start with
17 one of the things that was said to the jury yesterday. The evidence is
18 going to show that FAIR Health, 80th percentile of those charges grew,
19 grew, grew, dropped out a bit, and then skyrocketed. Did you hear that?

20 A I did not.

21 Q In support of that, he put up a statistic showing a graph with
22 the charges going through the roof. Did you see that?

23 A I did not.

24 Q Well, that's my friend, Mr. Leyendecker back there, he got
25 very excited when he heard that because the reality is you all

1 manipulated those numbers, right?

2 MR. BLALACK: Object to form.

3 THE COURT: Overruled.

4 THE WITNESS: I disagree.

5 BY MR. ZAVITSANOS:

6 Q That you manipulated the numbers in order to try to
7 convince the jury that those charges are going through the roof, right?

8 A I disagree.

9 Q Okay. Well, you all have two experts in this case, Karen King,
10 and Mr. Deal. Between the two of them, they charged \$2,400 an hour.
11 Did you know that?

12 A I did not.

13 Q Okay. So \$2,400 an hour to come in here and say this is too
14 high; did you know that?

15 A No, I said I did not.

16 Q Okay. So let me ask you this, as between real time
17 information, when you're not paying someone \$2,400 an hour, and a
18 paid expert, whose earning more than -- more than these billed charges,
19 which one do you think the jury should put more stock into?

20 MR. BLALACK: Object to form.

21 THE COURT: Overruled.

22 BY MR. ZAVITSANOS:

23 Q Sir?

24 A I don't understand the context of your question.

25 Q Which type of evidence do you believe the jury should put

1 more stock into, real time information about what was going on with
2 those charges at the time, or the testimony of some \$2,400 an hour
3 expert? Which one?

4 A What's real time information? I don't know what you mean
5 by that.

6 Q Well, let's go there.

7 A Okay.

8 Q You got those binders there? The binders, go to 370, please.
9 They're up on the chart there. Do you have 370?

10 A Yes, it's right here.

11 Q Okay. Let's go to 370. Okay. Now, will you please turn to
12 the second page? Is this a United email concerning billed charges?

13 A Can I take a minute to look at it?

14 Q Sure.

15 A Okay.

16 Q My question is, is that an internal United email that you
17 received that started to bill charges?

18 A I don't know if billed charges was the only thing in here. I did
19 see reference to it.

20 Q Okay. And you did receive it, right, in connection with your
21 role as the head of the out-of-network spend for United?

22 A Yes, my name's on it.

23 MR. ZAVITSANOS: I move for admission, Your Honor.

24 MR. BLALACK: No objection, Your Honor.

25 THE COURT: And what's the number again?

1 MR. ZAVITSANOS: I'm sorry, Your Honor, 370.

2 THE COURT: Exhibit 370 will be admitted.

3 [Plaintiffs' Exhibit 370 admitted into evidence]

4 MR. ZAVITSANOS: Okay. Now, let's pull it up, Michelle, and
5 let's go to page 2. Top email.

6 BY MR. ZAVITSANOS:

7 Q All right. Now, it's a little hard to read, so I'm going to read it
8 out loud. And we see it's from Rebecca Paradise to a bunch of people,
9 including you, right there, right?

10 A Yes, I see that.

11 Q And it's a bunch of information we're going to go to in just a
12 little bit. And the --

13 MR. ZAVITSANOS: Michelle, I need you to go -- well, hold
14 on. Yeah, highlight the last paragraph, please, Michelle.

15 BY MR. ZAVITSANOS:

16 Q And let's read it out loud. Now, this is June 2019, real time,
17 right?

18 A I don't know what you mean by real time.

19 Q It was written on June 24, 2019, during the events of this
20 case. Not after the fact, where the lawyers get to pick the expert.

21 A If that's what you're saying -- if that's what you're asking, a
22 real time is, yes.

23 Q Yeah.

24 A Yeah.

25 Q So Ms. Paradise is telling you and a bunch of other people,

1 "As we discussed, even though we are seeing increased savings
2 YOY" -- that's year over year?

3 A Yes.

4 Q "We are experiencing" --

5 MR. ZAVITSANOS: Michelle, underline.

6 BY MR. ZAVITSANOS:

7 Q "We are experiencing a continued reduction in non-par bill
8 charges that I believe that has been the case each year since 2016." Do
9 you see that?

10 A I do see that.

11 Q Uh-oh. Right?

12 MR. BLALACK: Object to form.

13 THE COURT: Overruled.

14 BY MR. ZAVITSANOS:

15 Q Uh-oh.

16 A What do you mean by uh-oh?

17 Q Well, we got your lawyer telling the jury charges were
18 skyrocketing, but in real time, it says the opposite. Which one should the
19 jury put more stock in?

20 A I think you're misrepresenting it. So which is --

21 Q Which one should they put more stock in, sir, the document
22 or what your counsel said? That's my question.

23 A Bill charges went down because we brought providers into
24 the network. That doesn't reflect what a specific provider would charge.

25 MR. ZAVITSANOS: Objection. Non-responsive.

1 THE WITNESS: Those are two different statements
2 between --

3 THE COURT: You do have to answer that question.

4 THE WITNESS: I'm sorry.

5 MR. ZAVITSANOS: Your Honor?

6 THE COURT: If you can.

7 MR. ZAVITSANOS: Can the witness be instructed to please
8 answer? He'll get every opportunity to respond in cross.

9 THE COURT: I just did.

10 MR. ZAVITSANOS: Thank you.

11 THE WITNESS: Yeah.

12 BY MR. ZAVITSANOS:

13 Q Which statement should the jury put more stock into, what
14 your paid expert is going to tell this jury or what Ms. Paradise was telling
15 you on this email, sir?

16 A They're both accurate.

17 Q Okay. Well, is it true that between 2016 and 2019, there's a
18 continued reduction in non-par bill charges? Is that true?

19 A Yes, it is.

20 Q Okay. Now, let's pick up where we left off yesterday.

21 Where's that marker? Oh. Okay. We were talking about this wrap rental
22 issue, right, yesterday? Remember? That's where we broke.

23 A I believe so, yeah.

24 Q And the one thing about wrap rental -- wrap or rental -- is we
25 know this is out-of-network, and that's going to be important. We'll

1 explain why in just a minute.

2 A Can I -- can I clarify for folks, so they understand what that
3 means?

4 Q No, sir. Wrap is out-of-network doctors that reach a deal
5 with a third party like MultiPlan for a discount, a slight discount, off of
6 their bill charges. And that insurer, if they want, they can access the
7 rate, right?

8 A If they have an agreement with MultiPlan, yes.

9 Q Okay. So let's go to the wrap agreement. Exhibit 3.

10 MR. ZAVITSANOS: Got Exhibit 3, Michelle?

11 BY MR. ZAVITSANOS:

12 Q Okay. So first of all, let's see --

13 A Can I -- can I go get it, please? Is it -- is it --

14 Q It's up on your screen. Okay?

15 THE WITNESS: I'd rather -- can I get the binder?

16 MR. ZAVITSANOS: Yeah.

17 THE COURT: You can, sure.

18 MR. ZAVITSANOS: Michelle, while he's doing that, will you
19 please pull out the first paragraph, please? Right there. Yep. And will
20 you highlight United Healthcare and MultiPlan, please?

21 BY MR. ZAVITSANOS:

22 Q All right. Now, we're on page one. Is this an agreement
23 between United Healthcare and MultiPlan?

24 A Can I take two minutes to just take a look at this?

25 Q Sure.

1 A Thank you.

2 [Witness reviews document]

3 THE WITNESS: Sorry. I just need to get to one page here.

4 Okay.

5 BY MR. ZAVITSANOS:

6 Q Okay. So the question is is this an agreement between
7 United Healthcare and MultiPlan?

8 A Yes.

9 Q Okay. And again, just as a refresher, MultiPlan is not part of
10 United, right?

11 A Correct.

12 Q They're an independent company that will, among other
13 things, will go out and get a bunch of out-of-network doctors, tell them if
14 you just cut your bill charge a little bit, you sign an agreement with me,
15 and then an insurance company, in order to avoid bickering, they can
16 access the wrap agreement and pay you on network what you agree to.

17 A That's not a hundred percent accurate. If you want me to
18 explain it?

19 Q No, sir. Is that generally the case?

20 A No, it's not.

21 Q It's not the case. Okay. Well, let's take a look at this and see
22 what we can see. All right. So let's now go to page three. All right.

23 MR. ZAVITSANOS: Michelle, will you please pull out the
24 section that is section 1.18, Network, and 1.19, Network Provider?

25 MS. RIVERS: Say it again?

1 MR. ZAVITSANOS: 1.18 and 1.19, in the middle of the page.

2 Right there. There you go.

3 BY MR. ZAVITSANOS:

4 Q Okay. So these are definitions, right?

5 A Yes.

6 Q Okay. And network is a complimentary network for
7 healthcare providers, right?

8 A Yes.

9 Q And a provider is a doctor or a nurse practitioner, right?
10 When we see provider, it's someone that's providing healthcare.

11 A In general, yeah.

12 Q All right. So that's the definition of what a network is and
13 what a -- so a network provider is an out-of-network healthcare provider
14 that's part of the wrap agreement, right?

15 A That's incorrect.

16 Q That's not what this document says?

17 A It does not say out-of-network provider.

18 Q Okay, sir.

19 A And I -- that's what I was trying to explain before so people
20 could understand what this means.

21 Q No, sir.

22 MR. ZAVITSANOS: Let's go to page seven, please, Michelle.
23 Now, pull up Article 4, Duties of Network Manager, 4.1.

24 BY MR. ZAVITSANOS:

25 Q Okay. All right. Now -- okay. So this is an agreement

1 between United and MultiPlan. And this is talking about access to
2 providers, providers being the doctors, right?

3 A Yes.

4 Q That have signed an agreement with MultiPlan, right?

5 A Yes.

6 Q And generally are not in network with United, right?

7 A That's not correct.

8 Q Your out-of-network doctors are in network?

9 A That's what I'm trying to explain. Multi --

10 Q Are out-of-network doctors in network?

11 A Doctors can be in or out-of-network with different insurance
12 companies.

13 Q Yes, sir. I'm talking about United. And my question to you,
14 Mr. Haben, is a doctor that is part of a wrap rental agreement, are they
15 generally out-of-network from United's preferred provider plan?

16 A No.

17 Q They're not?

18 A MultiPlan has the largest network in the country. They don't
19 contract with just providers that are not part of United. So they'll
20 contract with providers across the country. And payers like United,
21 Aetna, Cigna can use those providers as a wrap agreement if they
22 want --

23 Q Yeah.

24 A -- to fill a hole. But it doesn't mean -- I -- because I think what
25 you're saying is all the MultiPlan providers are out-of-network; they're

1 not.

2 Q Okay.

3 A They have a broad network. Broader than United.

4 Q All the MultiPlan providers, with regards to United, have not
5 signed a contract directly with United to be part of the United network.
6 The emergency room doctors, right?

7 A Can you ask that again, because I -- that's confusing?

8 Q Yes, sir. Did you prepare for your testimony last night?

9 A No. I texted with my sons about a hockey game.

10 Q You didn't meet with the lawyers last night?

11 A I did.

12 MR. BLALACK: Your Honor. Objection. *Coyote Springs*.

13 MR. ZAVITSANOS: Your Honor, I'm going to ask him what
14 they discussed.

15 THE COURT: You can ask if he met with you. You cannot get
16 into the topics.

17 MR. BLALACK: That's fine.

18 BY MR. ZAVITSANOS:

19 Q Did you meet with the lawyers last night, sir?

20 A Yes. I had dinner with them.

21 Q When you finished that meeting, was it your impression to
22 try to be as technical and as difficult in your response to my questions as
23 possible?

24 MR. BLALACK: Object to form. Argumentative.

25 THE COURT: Overruled.

1 BY MR. ZAVITSANOS:

2 Q Is that the impression you had when you got done with the
3 meeting last night?

4 A My impression was to tell the truth and to help educate.

5 Q Thank you, sir. Now, there may be some doctors that are
6 out-of-network in some states, in network in other states, right?

7 A Some doctors that are out-of-network in some states.

8 Q Yeah.

9 A And in network in other states.

10 Q There may be some doctors that are out-of-network for one
11 insurance company but in network with another insurance company,
12 right?

13 A Yes.

14 Q Okay.

15 A Yes.

16 Q Back to my question: wrap rental agreements is a gap-filler
17 for out-of-network doctors for United that do not have a direct contract
18 with United, right?

19 A I think you're -- can you say that again, please? Because I -- I
20 think you're --

21 Q Yes, sir.

22 A -- kind of closing in on the --

23 Q I've asked it three times now.

24 A No, you were asking it different, but --

25 Q No, I think I asked the same question. But let me try it again.

1 A You know, you're getting close to, I think, what you're
2 saying.

3 Q A wrap rental agreement is a gap-filler for out-of-network
4 doctors that do not have a direct contract with United, right?

5 A Now you're confusing it again, and I'd be glad to explain
6 why.

7 Q No, sir. Is what I said correct? An emergency room doctor
8 who does not have a written agreement with United to be in network,
9 can they be part of a wrap network?

10 A An emergency room doctor could be part of a wrap network
11 whether they're in or out-of-network.

12 Q That's not my question, Mr. Haben.

13 A Well, you're -- it's --

14 Q Please answer my question.

15 A I can't answer the way you're asking it because it's not
16 accurate.

17 Q Sir, during the relevant time period, were our doctors in
18 network with United?

19 A I think some of them were.

20 Q During the relevant time period, sir, '17, '18, and '19, the ones
21 here in Nevada.

22 MR. BLALACK: Your Honor, may we approach?

23 THE COURT: You may.

24 [Sidebar at 10:14 a.m., ending at 10:14 a.m., not transcribed]

25 THE COURT: So I'd sustain the objection. The question will

1 be rephrased.

2 BY MR. ZAVITSANOS:

3 Q Let's use Freemont, sir. I'll change my question a little bit.

4 A Okay.

5 Q During the relevant time period, was Freemont Emergency
6 Services in Nevada part of the network, United's network?

7 A I don't know for a hundred percent.

8 Q Okay. During the relevant time period, do you know whether
9 Freemont was part of this wrap rental agreement with MultiPlan?

10 A I don't know a hundred percent.

11 Q All right. Let's continue going through this.

12 A Okay.

13 Q All right. Now, according to this, network providers, doctors,
14 under this agreement, providing services to customers of United on the
15 basis of terms and conditions, including reimbursement rates as set forth
16 in this agreement with network manager. Do you see that?

17 A Yes, I see it.

18 Q Okay. So that basically says any doctor that's part of this
19 out-of-network wrap agreement is going to provide service for United
20 insurers at the rates set forth in this agreement, right? That's what that
21 says.

22 A It does not say that.

23 Q It says what I just read, right?

24 A Yes, it says what you just read.

25 Q Thank you. All right. Let's go on to page 17. All right. We're

1 looking at the wrap rental agreement, section 6.7. Now, this says,
2 basically, any provider who's out-of-network who signs a wrap
3 agreement may not balance bill a member, right?

4 A Can I take two seconds --

5 Q Sure.

6 A -- to read this?

7 [Witness reviews document]

8 Q I'm going to read it out loud. "Payment is provided under
9 these sections, together with any copayment, deductible, or coinsurance
10 for which the customer is responsible is payment in full for a covered
11 service. Subject to the terms of the network provider agreement,
12 network providers" --

13 MR. ZAVITSANOS: Michelle, underline this.

14 BY MR. ZAVITSANOS:

15 Q "Network providers will not seek to recover and will not
16 accept any payment from customer, United payer, or anyone acting on
17 their behalf in excess of payments in full as provided in this section 6.7."
18 Right?

19 A I see that.

20 Q Okay. No balance billing, right?

21 A That's technically not what that says.

22 Q What?

23 A Do you want me to clarify?

24 Q No, sir. Does this basically say we cannot balance bill the
25 member?

1 A You can. I think it says that. Yeah, you can.

2 Q This says that the provider, a network provider, can balance
3 bill the member?

4 A You can bill for copayment, deductible, or coinsurance.

5 Q Okay, sir --

6 A You can. I'm not trying to be cute. They --

7 Q Well, I think that it says, "together with any copayment,
8 deductible, or coinsurance." Putting that aside, not the patient portion,
9 but the rest, the discount, we cannot balance bill for that, right?

10 A Putting that aside, yes.

11 Q Okay. Now, that provides, in terms of balance billing for the
12 discount, a hundred percent protection for the member, right? That's a
13 good thing.

14 A It's a good thing.

15 Q Right. And what United did, beginning in 2016, was go
16 through and try to eliminate as many of these agreements as possible,
17 exposing the member to balance billing, right?

18 A That's a misrepresentation.

19 Q All right. Well, let's take a look.

20 A Okay.

21 Q Okay. Did you all have a movement afoot to move your ASO
22 clients off of these wrap rental agreements?

23 A What do you mean by that?

24 Q I mean, get them off of this and onto your programs.

25 A We had a movement to remove, and I think it clarifies in one

1 of the sections, we have the right to eliminate a provider if the discount
2 is not a market reasonable rate.

3 Q Is that a fancy way of saying yes, that you tried to move your
4 clients off of these wrap rental agreements which provided a hundred
5 percent protection for the member onto programs with deeper
6 discounts?

7 A A fancy way of saying it is if it's a reasonable discount, we'll
8 take it.

9 Q Yes, sir. And -- okay. Let's move on. Let's go to --

10 MR. ZAVITSANOS: Well, hold on, Michelle. Pull -- get
11 Exhibit 363, please. You may have the binder there.

12 MR. BLALACK: Your Honor, may we approach?

13 THE COURT: You may.

14 [Sidebar at 10:20 a.m., ending at 10:21 a.m., not transcribed]

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

16 THE COURT: Please.

17 MR. ZAVITSANOS: Okay. Your Honor, I move for the
18 admission of Plaintiff's Exhibit 363, subject to what we discussed at the
19 bench.

20 MR. BLALACK: No objection subject to the issues we
21 discussed, Your Honor.

22 THE COURT: Thank you.

23 MR. ZAVITSANOS: Okay.

24 THE COURT: 363 will be admitted in the redacted form.

25 [Plaintiffs' Exhibit 363 admitted into evidence]

1 BY MR. ZAVITSANOS:

2 Q United has a website, right?

3 A Yes.

4 MR. ZAVITSANOS: Okay. And let's pull up Exhibit 363,
5 Michelle. And let's go to -- pull out the -- Michelle, follow me
6 here -- from here to here. Actually, what we could do --

7 BY MR. ZAVITSANOS:

8 Q All right. So this is a website that was printed -- and I'll just
9 represent at the bottom -- June 13, 2019. Do you see that, sir?

10 A I do.

11 Q Okay. Information on payment of out-of-network benefits.
12 Do you see that?

13 A I do.

14 Q And that's what we're talking about in this case, right? Out-
15 of-network benefits.

16 A Yes.

17 Q All right. Now, the last sentence says, "The UnitedHealth
18 Group affiliate will pay based on the terms of the member's healthcare
19 benefit plan that in many" --

20 MR. ZAVITSANOS: Circle the word many, Michelle.

21 BY MR. ZAVITSANOS:

22 Q -- "many cases provides the payment for amounts that are
23 the lower of," first, "the out-of-network provider's actual charge billed to
24 the member or the reasonable and customary amount, the usual,
25 customary, and reasonable amount, the prevailing rate, or other similar

1 terms that base payment on what other healthcare professionals in a
2 geographic area charge for their services." Did I read that right?

3 A Correct.

4 Q Okay. So United is telling its members on this website
5 concerning out-of-network benefits that there are many plans that have
6 this language, usual -- excuse me, reasonable and customary or usual,
7 customary, and reasonable, right?

8 A Correct.

9 Q Now, let's figure out what these terms mean.

10 MR. ZAVITSANOS: Close it out. Next, what do these terms
11 mean? Let's pull that up, Michelle. Okay.

12 BY MR. ZAVITSANOS:

13 Q All right. Now, I'm not going to read the whole thing. The
14 jury can read it. I'm going to focus on one sentence here. Right here.
15 And it says, "The resource" -- now, a resource is a dictionary or
16 encyclopedia. That's a resource, right, or a database? That's a resource,
17 right?

18 A Yeah.

19 Q That's a type of resource?

20 A Yes.

21 Q "The resource used for payment of professional services is
22 based on what other healthcare professionals in the relevant geographic
23 area or regions charge for their services," right?

24 A Yes, I see that.

25 Q All right. Now, let's go to the next page. Hold on.

1 MR. BLALACK: Your Honor?

2 MR. ZAVITSANOS: Yeah. I'm not going to pull it up.

3 MR. BLALACK: All right. Well, it was published. That's why
4 I was raising a question.

5 MR. ZAVITSANOS: In fact, watch, Counsel. I'll do something
6 that I think will satisfy you. Hold on, please.

7 BY MR. ZAVITSANOS:

8 Q Oh, by the way, "professional services" that we just saw
9 include emergency room services, right?

10 A What we just saw? I'd have to look at that again.

11 Q Well, professional services includes the charges of
12 emergency room doctors, right?

13 A I would consider an emergency room physician a
14 professional service.

15 Q Thank you. Okay.

16 MR. ZAVITSANOS: All right. Now, Michelle, let me come
17 over there. Is there a way you can pull it up without displaying?

18 MS. RIVERS: Uh-huh.

19 MR. ZAVITSANOS: Okay. Let me know when you're ready.

20 MS. RIVERS: It's coming.

21 BY MR. ZAVITSANOS:

22 Q Now, there's a section here about what is FAIR Health. And
23 we see here in this website that you all have out. FAIR Health, now,
24 that's a nonprofit, right?

25 A Yes.

1 Q FAIR Health does not get a percentage of any savings, right,
2 that United realizes for itself and its clients, right?

3 A That's correct.

4 Q But MultiPlan does get a percentage, right?

5 A Our fee structure with MultiPlan is based on certain things.
6 Percentage of savings is one of them.

7 Q Okay. So for every dollar that you cut, part of that 35 percent
8 goes to MultiPlan, right?

9 A Using their services, yes.

10 Q Yeah. And MultiPlan is supposed to be an objective third
11 party, right?

12 A Yes.

13 Q Okay. Are you a baseball fan?

14 A I am.

15 Q If the umpire calling balls and strikes was being paid by one
16 of the teams, would the umpire be neutral?

17 A MultiPlan is an umpire for multiple payers.

18 Q That's not my question, sir. I'm talking baseball. If the
19 umpire was being paid by one of the teams, would that umpire be
20 neutral?

21 A Umpire is getting paid already in the --

22 Q Do you not understand my question?

23 A Yeah. I understand what you're saying.

24 Q If the umpire was being paid by --

25 A I think it's a misrepresentation.

1 Q -- one of the teams, would they --

2 A Yeah. It would -- sure, they'd be biased. Yeah.

3 Q Okay. And MultiPlan, a great portion of its revenue is earned
4 off of telling providers how much the discount should be. It gets a cut,
5 right?

6 A Ask that again, please.

7 Q Yeah. MultiPlan gets a cut. When it recommends how much
8 you should cut off of the bill charged, it gets a taste off of that 35 percent.

9 A MultiPlan gets a fee for their services, yes.

10 Q FAIR Health does not. They're a nonprofit.

11 A We pay FAIR Health, as well.

12 Q MultiPlan is owned by a private equity group, right?

13 A That's incorrect.

14 Q Oh, really? Okay. We'll look it over.

15 A They're a public company.

16 Q Yeah. Public.

17 A They're a public company.

18 Q Yeah. So the more they make, the more their stock goes up,
19 right?

20 A I don't know what --

21 Q Like any company?

22 A I don't know what influences their stock.

23 Q In any event, let's look here. "FAIR Health provides
24 healthcare consumers," now those are the patients, right?

25 A That's a capitalized term. So --

1 Q "Healthcare consumers" is not a capitalized term, sir. The
2 first sentence. Do you see that? "FAIR Health provides healthcare
3 consumers."

4 A Oh. I -- you have the whole thing up there. If you want to
5 highlight what I want to look at, please.

6 Q No, sir.

7 A I was getting confused.

8 Q Yeah. I'm just talking about here.

9 A Where? I can't see where you're pointing.

10 Q You can't see the two -- you can't see the two lines that are
11 up on your screen?

12 A There's two sections of healthcare consumers. There's one
13 that's capitalized and one that's not. Which one are you looking at?

14 THE COURT: You can step around if you wish.

15 THE WITNESS: Well, I was just hoping she'd highlight it,
16 but --

17 MR. ZAVITSANOS: Why don't you highlight it, Michelle?
18 The witness is having difficulties. The first one, please. Okay, right
19 there. No, no, no, no, no. Just "healthcare consumers", Michelle, please.

20 THE WITNESS: Thank you.

21 MR. ZAVITSANOS: Right here, Michelle.

22 THE WITNESS: I saw where she was pointing. I thought she
23 was -- you were looking at the bottom in the bold.

24 BY MR. ZAVITSANOS:

25 Q Yeah. "Healthcare consumers" are the patients, right?

1 A I would assume so. I mean, this is out of --

2 Q You would assume so, sir? You don't know if "healthcare
3 consumers" are your insureds, who are patients receiving out-of-network
4 benefits?

5 A If you want me to make that assumption, I'll make that
6 assumption. This is --

7 Q No. Sir, you are the head of the out-of-network program at
8 United. Are you telling this jury you don't know what a healthcare
9 consumer is?

10 A I'm sorry. I'm not trying to be difficult. This is two sentences
11 out of a broader document that I don't know the context.

12 Q You're not trying to be difficult, Mr. Haben?

13 A No, I'm not. I'm not.

14 Q So back to my question, Mr. Haben. Are you telling this jury
15 you don't know what a healthcare consumer is?

16 A I will assume, if you're saying healthcare consumers, they're
17 patients. I'll assume that.

18 Q No, sir. I don't want you to assume. I want you, as the top
19 guy at United in charge of out-of-network programs, to tell this jury, do
20 you know what a healthcare consumer is?

21 A It could be an employer group. That's -- in my world, when I
22 think about healthcare and consumption, it could be employer groups. If
23 you're saying that these are patients, I will accept that.

24 Q "FAIR Health provides healthcare consumers with an
25 estimate of how much out-of-network services" --

1 MR. ZAVITSANOS: Michelle, underline this.

2 BY MR. ZAVITSANOS:

3 Q -- "will cost them." Do you see that?

4 A Yes.

5 Q Do you see that, sir?

6 A I see that.

7 Q And FAIR Health is a subscription-based service. You pay a
8 flat fee for that, right?

9 A Yes.

10 MR. ZAVITSANOS: All right. Now, Michelle, take that down,
11 and let's go to page three. And Michelle, let's pull out -- this is from your
12 website. This is what you are telling the world, right?

13 THE WITNESS: It's on --

14 MR. BLALACK: Hey. Hey, John?

15 MR. ZAVITSANOS: Yeah?

16 MR. BLALACK: This raises that same issue.

17 MR. ZAVITSANOS: Michelle, close that out. I just want the --

18 THE COURT: Take that down, please.

19 MR. ZAVITSANOS: Take that down, please. Michelle, I just
20 want the first paragraph, please.

21 MR. BLALACK: All right. That's fine.

22 MR. ZAVITSANOS: Just the first paragraph.

23 MR. BLALACK: First paragraph is fine, Your Honor.

24 MR. ZAVITSANOS: Yeah.

25 MS. RIVERS: What page?

1 MR. ZAVITSANOS: Page three. And you can skip the little
2 box on top. I just want the first paragraph.

3 BY MR. ZAVITSANOS:

4 Q Okay. Now, let me see if I got this straight. So FAIR Health is
5 a third-party data service that insurers like United subscribe to, to
6 provide guidance to make sure to get an evaluation of what things are
7 going to cost from a billed charge standpoint, right?

8 A They don't provide guidance. They --

9 Q Provide information.

10 A -- provide information.

11 Q Okay. So yesterday, we heard that -- we heard counsel for
12 you talk about the taxicab situation where you get in a cab and if the cab
13 turned out to be an egregious amount more than others charge, that
14 would be wrong. FAIR Health is the kind of service that tells us what
15 other doctors are charging, right?

16 A Yes.

17 Q And the name FAIR Health, I mean, fair is kind of baked into
18 their name, right?

19 A That's their name, yeah.

20 Q Yeah. And what it says -- what you were telling the public is
21 that affiliates of UnitedHealth Group --

22 MR. ZAVITSANOS: Follow me, Michelle.

23 BY MR. ZAVITSANOS:

24 Q Affiliates of UnitedHealth Group frequently use the 80th
25 percentile of the FAIR Health benchmark databases to calculate how

1 much to pay for out-of-network services of healthcare professionals,
2 okay? What plan designs and administrators, particular healthcare and
3 benefit plans may choose different percentiles for use with applicable
4 healthcare benefit plans, right?

5 A I see that.

6 Q Okay. So what you are telling the world is that UnitedHealth
7 Group frequently, meaning a lot, uses the 80th percentile, right?

8 A That is what that says.

9 Q Okay. So UCR, usual, customary, and reasonable, right?

10 A Yeah.

11 Q Look to FAIR Health to get a definition. That's what you're
12 telling the world, right?

13 A I'm telling the world for the benefit plans that have that
14 language, look to FAIR Health.

15 Q And usually, the 80th percentile, right?

16 A Or whatever the health plan benefit asks.

17 Q I'm just going by what this says.

18 A I think that says they can choose a different -- it's cut off for
19 me. They can choose a different percentile.

20 Q "Frequently use the 80th percentile." Let me just change the
21 language. I'll take "usually" out, and I'm going to put "frequently".
22 Okay? Now, is that true? Is that what you tell the world?

23 A In addition to the other wording, yes, that's what that says.

24 Q All right. So if we want to determine whether
25 Freemont's -- I'm going to use them as an example -- Freemont's billed

1 charges are reasonable, what United says to do -- or a usual, customary,
2 and reasonable, is we should look at FAIR Health at the 80th percentile
3 and compare those bill charges to that, right?

4 A For the benefit plans that have that language, yes.

5 MR. ZAVITSANOS: Okay. Michelle, take that down, please.

6 BY MR. ZAVITSANOS:

7 Q Okay. Let's move on. Now, a couple of other acronyms
8 before we get into the meat of this five-year plan. All right. So we talked
9 about FI. We talked about PMPM. We've talked about ASO. I want to
10 talk about another thing now called ENI. That stands for employer and
11 individual, right?

12 A Correct.

13 Q Okay. So this is commercial insurance that is -- it's the same
14 as kind of fully insured, right? This is fully insured insurance.

15 A It's not just fully insured.

16 Q Okay. What does it include?

17 A It's ASO.

18 Q Oh, that includes ASO?

19 A Yes.

20 Q Okay. Thank you.

21 A It's -- can I just go the opposite? It's not Medicare or
22 Medicaid.

23 Q Right.

24 A Okay?

25 Q Thank you, sir. Okay. So this is -- so this includes both ASO

1 and FI, right?

2 A ASO and fully insured.

3 Q Okay. So this is employer and individual, right?

4 A Correct.

5 Q Okay. Thank you, sir.

6 A Yep.

7 Q Okay. So the jury sees that on the documents, that's what
8 that means, right? Right?

9 A Most likely, yes.

10 Q Yeah. Okay. All right. And that's commercial insurance, like
11 you said, right?

12 A That is commercial.

13 Q Okay. Now --

14 MR. ZAVITSANOS: Hey, Michael, is 25 in?

15 MR. KILLINGSWORTH: Conditionally.

16 MR. ZAVITSANOS: Okay. Counsel -- ask counsel if he has an
17 objection to 25.

18 MR. BLALACK: Your Honor, I don't know that we've got -- I
19 think we have a foundation objection to this, Your Honor.

20 THE COURT: Okay. Lay a foundation.

21 BY MR. ZAVITSANOS:

22 Q Would you please find Exhibit 25, please?

23 A Sure.

24 MR. KILLINGSWORTH: There was no objection that we've
25 received.

1 MR. ZAVITSANOS: There was no objection?

2 MR. KILLINGSWORTH: No.

3 THE COURT: There was an objection.

4 MR. BLALACK: There is an objection, Your Honor.

5 Twenty-five?

6 THE COURT: I thought that he said there was a foundational
7 objection.

8 MR. ZAVITSANOS: Not according to what they found.

9 MR. BLALACK: According to our list of objections, Exhibit 25
10 is an incomplete document and lacks foundation.

11 THE COURT: All right.

12 MR. ZAVITSANOS: I'll lay a foundation, Your Honor.

13 MR. BLALACK: Are you talking about 25?

14 MR. ZAVITSANOS: Twenty-five.

15 MR. KILLINGSWORTH: It was withdrawn on your 10/28
16 submission to us.

17 MR. BLALACK: I think we just agree to disagree on that, Your
18 Honor. I mean --

19 MR. ZAVITSANOS: Fine. I'll --

20 MR. BLALACK: -- I think we can quickly -- he can quickly lay a
21 foundation, and we resolve it.

22 THE COURT: Okay.

23 MR. ZAVITSANOS: I'm going to disbelieve Mr. Killingsworth,
24 and I'm going to believe opposing counsel for the purposes of this. So
25 Your Honor, may I just lay the foundation?

1 THE COURT: You don't have to ask permission.

2 MR. ZAVITSANOS: Okay.

3 BY MR. ZAVITSANOS:

4 Q Sir, do you have Exhibit 25?

5 A Yes.

6 Q Is this a chart talking about the out-of-network programs in
7 2016?

8 A Yes.

9 Q Okay. Does this identify the programs that existed at the
10 time?

11 A I believe so.

12 Q And were you in charge of those -- of that portion
13 that -- administratively, were you in charge of these programs at that
14 time?

15 A Yes, I was.

16 MR. ZAVITSANOS: I move for admission of 25.

17 MR. BLALACK: Your Honor, I'd still object. There's no
18 connection that this document has any -- the witness has personal
19 knowledge.

20 THE COURT: It was conditionally admitted yesterday, so I'll
21 overrule your objection. Okay, 25 is admitted.

22 [Plaintiffs' Exhibit 25 admitted into evidence]

23 MR. ZAVITSANOS: All right. Now, put up the first page,
24 Michelle.

25 BY MR. ZAVITSANOS:

1 Q When you all use the term programs, that means a process
2 by which you're going to determine how much you're going to pay to
3 out-of-network doctors, and nurse practitioners, and other healthcare
4 professionals, right?

5 A I guess I don't think of it in that detail. A program is a
6 program that we use to address medical spend.

7 Q Medical spend. Okay.

8 A Yeah.

9 MR. ZAVITSANOS: Let's go to the next page, Michelle.

10 BY MR. ZAVITSANOS:

11 Q So this is the world in 2016. And let's look at the first one,
12 and let's pull out the first one. Shared Savings Program. That's a new
13 acronym now. We got SSP. All right. Shared Savings Program. Let's
14 see what this says. This says, "Access to provider contracts via SSP
15 vendor," right?

16 A Correct.

17 Q Those are the wrap agreements we were talking about, right?

18 A Yes.

19 Q Okay. So this SSP program is talking about what happens
20 when you United goes to someone like MultiPlan and says I want to take
21 advantage of his wrap agreement that you've negotiated with this
22 emergency room physician, right?

23 A Yes.

24 Q The work in getting that emergency room physician to sign
25 that wrap agreement was done by MultiPlan, right?

1 A Yes, or a vendor that they use as well. MultiPlan has layers
2 of defenders.

3 Q Yes. They did all the work, right, to get those providers in
4 the wrap agreement, right?

5 A They are a subsidiary or delegate of theirs, yes.

6 Q Yeah. And even though they did all the work, whatever that
7 percentage discount is, you take a percentage on that in addition to your
8 PMPM fee, right?

9 A Yes. Our clients save, our members save, and we save.

10 Q That's not what I'm asking, sir.

11 A Yeah.

12 Q I don't want to hear your reverse speech. I want to know --

13 A It's --

14 Q -- even though MultiPlan did all the work, and even though
15 you already get a PMPM fee, you take a fee on that percentage discount?

16 A Yes, we do.

17 MR. BLALACK: Your Honor, I object to that argumentative
18 statement before the question.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, we do.

21 BY MR. ZAVITSANOS:

22 Q Okay. So in 2016, I mean the world was good. Members are
23 protected. Providers are giving you a discount off of their bill charges.
24 There's no litigation. Everybody knows what's going to be paid out, and
25 there's clarity in the plans. And United is even getting a fee on that

1 reduction. That's the world in 2016, right?

2 A I don't know if it's true saying there's no litigation, but --

3 Q Well, we just looked at the agreement that says that
4 somebody that's -- a provider that signs a wrap agreement cannot go
5 after the member for the discount. They're prohibited by the contract,
6 right?

7 A Some still have tried to do that.

8 Q Sir, you're answering a different question. Does the contract
9 prohibit --

10 A Oh, yes.

11 Q -- the provider --

12 A The contract does.

13 Q -- from going after the member for balance billing?

14 A Yes, it does.

15 Q Okay. Now we heard a lot about balance billing in opening
16 statement. And before you started cutting us the way you did, if you
17 were part of these wrap agreements, there was no balance billing. It
18 didn't exist contractually, right?

19 A Contractually, yes.

20 Q Okay. So you see here where it says provider agrees not to
21 balance bill the member for the discount?

22 MR. ZAVITSANOS: Highlight that, Michelle. That's the last
23 bullet, the first box.

24 BY MR. ZAVITSANOS:

25 Q That's what we just talked about, right?

1 A Yes.

2 Q Savings. Client shares in the savings as a reduction of
3 medical expense, right?

4 A Correct.

5 Q Shares meaning shares with you, right?

6 A And the member.

7 Q Shares with United, right?

8 A And the member.

9 Q Yeah. Yeah. I'm going to get to the member in just a
10 minute.

11 A Yeah.

12 Q Okay. Now look at this. ASO --

13 MR. ZAVITSANOS: Highlight that last part. The whole thing,
14 Michelle.

15 BY MR. ZAVITSANOS:

16 Q What percent of the membership was on SSP in 2016? Sir.

17 A Are you asking what's on the document? It said 95 percent.

18 Q No, sir. I mean this is your document. You were in charge
19 here, right?

20 A Yeah. It says 95 percent.

21 Q Ninety-five percent of the out of network doctors were happy
22 to discount their bill charge. No balance billing. You get a fee. The
23 employer has clarity. It's a win, win, win, win all the way around in 2016,
24 right?

25 A Can I clarify what you said?

1 Q No, sir.

2 A Well, you didn't say -- you said 95 percent of doctors.

3 Q Well, no, it says 95 percent -- I'm sorry. Ninety-five percent
4 of the membership. That's your ASO clients, right?

5 A Yes.

6 Q So 95 percent of these employer groups. And by the way, a
7 company like Caesar's, or Tesla, or TNT, they got some really smart
8 people working for them, right?

9 A Yeah.

10 Q They got legal departments, right?

11 A I would assume so.

12 Q Yeah. And they know what they're doing, right?

13 A I don't know them.

14 Q Well, this is something that they knowingly, willingly, and
15 voluntarily agreed to put in their plans, and y'all signed off on it too.

16 A Yes.

17 Q Okay. Now let's go to --

18 MR. ZAVITSANOS: Close that out. And let's look at another
19 program in 2016. Same page, Michelle. It's 120 -- excuse me. 25 page
20 2, Michelle. Pull up the third row. There we go.

21 BY MR. ZAVITSANOS:

22 Q Okay. Now there's that term again, UCR, except now it says
23 receivable instead of reasonable. And over here, it says R and C,
24 reasonable and customary, right?

25 A Yes.

1 Q Below that, percentile values are provided by fair health.
2 This is a charge based methodology approach for professional services,
3 right?

4 A Correct.

5 Q Okay. That's what we do. That's what our doctors do,
6 provide professional services, right?

7 A Yes, they do.

8 Q All right. Now this is the traditional out of network
9 reimbursement program. Generally applies to out of network benefit
10 claims, right?

11 A That's what that says.

12 Q Right. That means that's what everybody is doing in 2016,
13 right?

14 A No, it does not.

15 Q It -- so when it says this is the traditional -- so you a college
16 football fan?

17 A Not really.

18 Q You know, my friend, Mr. Leyendecker, I'm going to pick on
19 him again. He went to the University of Texas. One of his sons went to
20 Texas A&M. That's like oil men --

21 A Yeah.

22 Q -- okay. At Texas A&M, the tradition is to stand during the
23 entire game.

24 A Okay.

25 Q Now not everybody stands, but most people do. That's a

1 tradition at that school. You with me?

2 A Uh-huh.

3 Q When you wrote that this is the traditional out of network
4 reimbursement program, sir, doesn't that mean that that's what most
5 ASO clients have in their plans before you started migrating?

6 A I wasn't thinking of Poe [phonetic] when I wrote that or
7 whoever wrote that. Traditional to mean as legacy, old way of doing.

8 Q Not currently tracked but a 80th percent provides an effective
9 rate of approximately 5 percent. See that?

10 A Correct.

11 Q ASO. Available option for clients instead of MNRP. We'll talk
12 about that later. Majority of ASO clients still use this out of network
13 reimbursement methodology, right?

14 A Yes, that's what that says.

15 Q Okay. Now let me see if I can clarify, because it sounds --
16 there's a little bit of overlap between this SSP and this USR -- UCR. And
17 I'm -- let me make a statement and tell me if you agree with it. A wrap
18 rental agreement is a way to bring down the UCR even more, right?
19 Bring down the discount even more where a doctor or doctor's group
20 has agreed to a certain discount, so we have clarity, right?

21 A I'm sorry. You're -- I'm not trying to be difficult. Ask that --

22 Q Sure.

23 A -- again, because I think you changed a little bit.

24 Q There's a little bit of overlap between this program, this UCR,
25 and the wrap and this SSP, right?

1 A Overlap with who? Like the doctors?

2 Q Yeah. There's a little bit of overlap in terms of how you run
3 it, how you do it, right?

4 A I don't think so.

5 Q Oh, sorry. Let me move. Here's the difference. So a
6 majority of the ASO clients use this UCR methodology, but United does
7 not get a fee above and beyond the PMPM fee, if you're going to process
8 an out of network claim, under this program, right?

9 A I believe that's correct.

10 Q Okay. And so, what you've done at this time period is you
11 will go -- you'll go to MultiPlan, see if the doctor making a claim has
12 signed a wrap agreement, and then you have the option of accessing
13 that wrap agreement and taking advantage of that discount, right?

14 A If the employer group wants the wrap agreement, then they
15 will sign up for SSP.

16 Q And for that you do get a fee.

17 A Yes, we do.

18 Q Okay. So there was a movement beginning in 2016 to get
19 clients off of the reasonable and customary methodology, right?

20 A Clients are asking for a more competitive --

21 Q No, sir. I don't want you to speak for clients. We're going to
22 get to what clients want and what they don't want in a little bit.

23 A Clients moved from R and C -- or UCR to wrap.

24 Q That's not my question. You started a movement, in 2016, to
25 migrate clients over, get them off of this onto programs where you could

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1 get a fee?

2 A I did --

3 MR. BLALACK: Object to form. Asked and answered.

4 THE COURT: Overruled.

5 BY MR. ZAVITSANOS:

6 Q Right?

7 A I did not start a movement.

8 Q United started a movement.

9 A United did not start a movement.

10 Q United --

11 MR. ZAVITSANOS: What is it, Michael?

12 BY MR. ZAVITSANOS:

13 Q United did not have an objective to get clients off of the
14 reasonable and customary?

15 A United had an objective to meet our clients' needs.

16 MR. ZAVITSANOS: Objection. Objection. Nonresponsive,
17 Your Honor. I'm going to ask you to please instruct -- ask the Court to
18 please instruct the witness to answer the question.

19 THE COURT: Reask.

20 BY MR. ZAVITSANOS:

21 Q Did United have an initiative to get clients off of UCR onto a
22 different methodology where they could get an additional fee?

23 A We had an initiative to move clients to -- or off of UCR.

24 Q Onto programs for which you would get a fee, right?

25 A Onto programs that cost us a fee and to get a fee from the

1 clients. Yes.

2 Q Okay.

3 MR. ZAVITSANOS: Your Honor, when would you like to take
4 a break?

5 THE COURT: This is a good time.

6 MR. ZAVITSANOS: Thank you.

7 THE COURT: It is 10:58. I'd like to take a break. We'll go to
8 11:15. And expect to work through 12:15 before we break for lunch.

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

15 If anyone tries to speak to you about the case, let me know
16 immediately through the marshal. You are not to conduct any research
17 on your own relating to the case. You can't consult dictionaries, use the
18 internet, or use reference materials. Don't post on social media. Don't
19 talk, text, tweet, google issues, or conduct any other type of book or
20 computer research. Don't refer to any issue, party, witness, or attorney
21 involved in the case.

22 Most importantly, do not form or express any opinion on any
23 subject connected with the trial until the jury deliberates. And thank you
24 for your kind attention. See you at 11:15.

25 THE MARSHAL: All rise for the jury.

1 [Jury out at 10:59 a.m.]

2 [Outside the presence of the jury]

3 THE COURT: The room is now clear. Defendant, did you
4 have anything for the record?

5 MR. BLALACK: No, Your Honor.

6 THE COURT: Plaintiff, anything for the record.

7 MR. ZAVITSANOS: No, Your Honor.

8 THE COURT: This is a polite reminder to everyone. Please
9 keep those masks on at all times in the courtroom. There was someone
10 who took their mask off to sneeze earlier today. I don't want to call
11 anybody out, but I had a COVID situation where I had to declare a
12 mistrial in September. I just -- you all have too much at stake to take a
13 chance.

14 MR. ZAVITSANOS: Your Honor, I don't remember if that was
15 me. If it was me, my apologies though.

16 THE COURT: No, no. No apology needed. I just want
17 everybody to be safe and healthy.

18 [Recess from 11:00 a.m. to 11:16 a.m.]

19 [Outside the presence of the jury]

20 THE COURT: Thanks, everyone. Please remain seated.

21 And let's bring in the jury.

22 And, Mr. Habens [sic] -- let's get Mr. Habens [sic] in here so
23 we don't waste any time.

24 THE CLERK: Haben.

25 THE COURT: Haben?

1 MR. BLALACK: Can he bring him in, Your Honor?

2 THE COURT: Yes. Please.

3 MR. BLALACK: Okay.

4 [Pause]

5 THE COURT: And so that -- so that all the lawyers know, we
6 handed out the schedule for next week already to the jurors. Okay?

7 MR. ZAVITSANOS: Excuse me, Your Honor?

8 THE COURT: We handed out the schedule to the jurors for
9 tomorrow [sic] --

10 MR. ZAVITSANOS: Thank you.

11 THE COURT: -- this morning.

12 MR. ZAVITSANOS: Thank you. For next week?

13 THE COURT: Uh-huh.

14 [Pause]

15 MR. ROBERTS: Do you have copies up there for us,
16 Your Honor?

17 THE COURT: I don't. But I can get some.

18 MR. ROBERTS: Thank you, Your Honor.

19 [Court and Clerk confer]

20 THE MARSHAL: All rise for the jury.

21 [Jury in at 11:18 a.m.]

22 THE COURT: Thank you. Please be seated. Please proceed.

23 MR. ZAVITSANOS: Thank you, Your Honor. May it please
24 the Court, counsel.

25 Your Honor, before I begin, we set up an additional screen

1 here because my colleagues were telling me it might be a little hard to
2 see further back. It's identical -- same -- the same is going to be
3 displayed.

4 THE COURT: Would you like to --

5 MR. ROBERTS: No objection. I appreciate it, Judge.

6 THE COURT: Thank you.

7 MR. ROBERTS: Thank you.

8 BY MR. ZAVITSANOS:

9 Q Okay. Mr. Haben, during the break, I added to the chart -- I
10 just want to give you a chance to make sure we're on the same page. I
11 think I wrote down what you said. And that is the shared saving
12 program. That's the one where they use the wrap agreement and get a
13 percentage fee, right?

14 A Correct.

15 Q And then the UCR program, Exhibit 25 -- we just looked at --
16 there's no additional fee?

17 A Correct.

18 Q Okay. Thank you, sir.

19 Okay. Now, I want to go to Exhibit 368.

20 THE WITNESS: Can I go get it?

21 MR. ZAVITSANOS: And don't put it up yet, Michelle. It's
22 not --

23 [Counsel confer]

24 THE COURT: And I show that this was conditionally
25 admitted.

1 MR. BLALACK: I don't think we objected to this one,
2 Your Honor.

3 MR. ZAVITSANOS: We move for the admission of 368.

4 THE COURT: It's been conditionally admitted. It will now be
5 admitted.

6 [Plaintiffs' Exhibit 368 admitted into evidence]

7 MR. ZAVITSANOS: Michelle, put it up.

8 THE CLERK: It's been conditionally admitted.

9 BY MR. ZAVITSANOS:

10 Q Okay. Now, we're going to talk about this document a fair
11 amount probably this afternoon. But let's identify what it is. Pull out the
12 top --

13 MR. ZAVITSANOS: Pull out the top -- Michelle, following me
14 here -- from here to here. The heading and the first paragraph, please.

15 BY MR. ZAVITSANOS:

16 Q "Out-of-network Cost Management Programs." Do you see
17 that?

18 A Yeah. Can I take two seconds and get familiar with it?

19 Q Sure. I'm only going to ask you about one sentence in this
20 document. But I'll let you take your time.

21 [Witness reviews document]

22 THE WITNESS: Okay.

23 BY MR. ZAVITSANOS:

24 Q All right. Talking points. This is what you are training your
25 salespeople to go out into the market and say, right?

1 A I'm not familiar with this document, so I don't know for sure.

2 Q You're the head guy of the out-of-network cost management
3 program, right?

4 A I am that person, yes.

5 Q And you've never seen this document before?

6 A I mostly have seen it, but I don't know exactly what it is.

7 Q Yeah. And here's the thing, Mr. Haben --

8 MR. ZAVITSANOS: Close it out, Michelle. Michelle, will you
9 please pull up this little part right here?

10 BY MR. ZAVITSANOS:

11 Q Internal use only means this better not get out, right?

12 A No, it doesn't.

13 Q That means it better not leave the company? Internal use
14 only. Right?

15 A I didn't write the document, so I --

16 Q You don't know what internal use only means? Sir?

17 A I think it means it's not freely distributed outside the
18 company.

19 Q Okay. Let's go to page 7.

20 MR. ZAVITSANOS: And let's pull up, Michelle, the heading
21 that says, "Existing ASL Clients," down to the last bullet point right
22 above, "New ASL clients."

23 BY MR. ZAVITSANOS:

24 Q This internal only document says, at a minimum, meet with
25 clients who have not adopted SSPE -- now, let me stop right there.

1 That's a term we haven't talked about yet. We're going to get to that a
2 little bit later. That's a program that has deeper cuts than this program,
3 right?

4 A What do you mean by deeper cuts?

5 Q The reimbursements are lower.

6 A Most likely, yes.

7 Q And so this document is in 2018. Now we've got a -- it's two
8 years after the one we just looked at. We're getting these -- we're
9 getting -- we're getting these fees, these percentage fees. And now the
10 goal is to get clients off reasonable and customary FAIR Health.

11 MR. ZAVITSANOS: Can you underline that, Michelle?

12 BY MR. ZAVITSANOS:

13 Q That was United's goal on this internal only document, get
14 the clients off of this so -- your salesforce so we can earn a fee, right?

15 A That's misrepresented. I can explain.

16 Q No, sir. Was the goal to get the clients off of reasonable and
17 customary FAIR Health?

18 A It was to understand the priorities.

19 Q One more time, Mr. Haben.

20 THE COURT: It's a yes or no question.

21 THE WITNESS: That was not the goal.

22 BY MR. ZAVITSANOS:

23 Q It was not your goal to get the clients off of reasonable and
24 customary, right? That's what you're telling the jury?

25 A It was to understand the priorities. That's what they were

1 trying to --

2 Q It was not the goal to get clients off of reasonable and
3 customary? That's what you're telling the jury, right?

4 A If they wanted --

5 MR. BLALACK: Object to form. Asked and answered.

6 THE COURT: Overruled.

7 THE WITNESS: They --

8 BY MR. ZAVITSANOS:

9 Q Right?

10 A They weren't obligated to move. We wanted to inform them.

11 Q Mr. Haben, this document is staring us in the face. It literally
12 says that was your goal. Are you really telling the jury that was not your
13 goal?

14 A What you highlighted is what it's -- that says that. The
15 paragraph above it does not say that.

16 Q I'm not asking you about the paragraph above it, sir.

17 A I understand.

18 Q I'm asking you, was it your goal -- I mean it's literally staring
19 us in the face. Was it your goal to get these clients off of reasonable and
20 customary FAIR Health?

21 A Just that section misrepresents the intent. I can explain it, if
22 you want me to.

23 Q I have now asked you that six times, sir.

24 A And I have been consistent in my answer.

25 Q Oh, yes, you have.

1 A Yeah.

2 Q Now, yes or no. One last time.

3 A I don't --

4 Q If you can't answer it, just tell me you can't answer it.

5 A I can't answer -- it's not a yes or no. I can't answer that.

6 Q So let me make sure. If I ask you whether United's goal was
7 to get clients off of reasonable and customary FAIR Health, you're telling
8 me you can't answer that, right?

9 A If that's your specific question, I can't answer it without
10 context.

11 Q Does the document say the goal is to get clients off of
12 reasonable and customary slash FAIR Health?

13 A Yes, it does.

14 Q Oh. I left out the most important thing. Percentage of
15 savings fee applies. I can't forget that. Right?

16 A That's what it says, yes.

17 Q Yeah. Get them off of this. No fee. And get them onto one
18 of the other ones. Percentage applies. Right?

19 A That's what that says.

20 Q Have you ever seen the movie What About Bob?

21 A Bits and pieces.

22 Q Fine movie, right?

23 A Bill Murray's a funny guy.

24 Q And it's about this really annoying guy who thinks he's got
25 like a psychological problem, who hounds his psychologist, right?

1 A Yeah.

2 Q And there's a part in the movie where he says, I need, I need,
3 I need, I need, right? And he's kind of driving him crazy, right?

4 A I don't remember that part, but I could imagine he would.

5 Q Yeah. So that's what this is. You all need more money
6 because you got a little taste here, and now you want more. Get them
7 off of this. Get them onto something deeper?

8 A That's cost very little to administer. The other one is very
9 expensive to administer.

10 Q Oh, we're going to talk about that a little later, about what
11 you're doing above and beyond just cutting the rate unilaterally. Okay?
12 And we'll talk about that a little later. Let me move on.

13 A Okay.

14 MR. BLALACK: Objection, Your Honor. Counsel is testifying.

15 THE COURT: Yeah. Disregard the last sentence, please.

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

17 BY MR. ZAVITSANOS:

18 Q All right. Let's go to --

19 MR. ZAVITSANOS: Is 239 on, Michelle? Let me ask -- let me
20 ask counsel if he has an objection.

21 MR. BLALACK: Could I have the exhibit number again,
22 please?

23 MR. ZAVITSANOS: Oh, I'm sorry. Your Honor, it's 239.

24 MR. BLALACK: One moment, Your Honor, while I pull this
25 up. The Court's indulgence for just a second, Your Honor?

1 THE COURT: You may.

2 [Counsel confer]

3 MR. BLALACK: No objection, Your Honor. It can be
4 admitted.

5 THE COURT: All right. 239 will be admitted.

6 [Plaintiffs' Exhibit 239 admitted into evidence]

7 THE WITNESS: Can I go get it?

8 MR. ZAVITSANOS: Sure. Okay. Let's -- Michelle, will you
9 please put up the -- pull out the dates so we see what we're talking
10 about.

11 BY MR. ZAVITSANOS:

12 Q So I'm jumping around dates a little bit. I haven't started
13 kind of doing it date order yet. But this is in 2018. Kind of in the middle
14 of this five-year program. We're going to go through this five-year
15 endeavor. Do you see that, September, in 2018 --

16 A I do.

17 Q -- Exhibit 239? Are you with me, sir?

18 A Yes, I see that.

19 Q Okay. Change the narrative, right? Change the narrative?

20 MR. BLALACK: What's the question, Your Honor?

21 BY MR. ZAVITSANOS:

22 Q Is that what it says?

23 A Yes, it does.

24 MR. ZAVITSANOS: And go to the second page, Michelle,
25 please. And, Michelle, will you please pull out executive summary on

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1 the left? All the way -- right there. There we go. Thank you.

2 THE WITNESS: Do you mind if I just take a second to --

3 MR. ZAVITSANOS: Sure.

4 THE WITNESS: -- let me take --

5 MR. ZAVITSANOS: While you're doing that, Michelle, will
6 you -- will you highlight this bullet point, second from the bottom,
7 please?

8 [Witness reviews document]

9 THE WITNESS: Okay.

10 BY MR. ZAVITSANOS:

11 Q Okay. Will you go to the executive summary on page 2? So
12 as of 2018 --

13 MR. ZAVITSANOS: Right here, Michelle. Highlight the
14 second one.

15 BY MR. ZAVITSANOS:

16 Q The shared savings programs that existed at that point for
17 the ASL clients generated about a billion dollars to United right? Right?

18 A If you're asking, that's what that says, yes.

19 Q Yeah. And MultiPlan, the umpire, the one that your counsel
20 talked about being objective, independent, they got \$300 million of that,
21 right, because they get a cut too, right?

22 A Correct.

23 Q Okay. Now --

24 MR. ZAVITSANOS: Okay. Take that down, Michelle, and
25 let's go, please, to page 6 just real quick and then we'll move onto

1 something else. And pull out that whole thing, execution and timing.

2 BY MR. ZAVITSANOS:

3 Q And this appears to be a list of tasks to migrate people over
4 to these programs where you can get deeper fees, bigger fees, right?

5 A Can you point to me where you're seeing that?

6 Q Well, the first one right here under OON, out-of-network
7 adoption and discounts. Increase ASL adoption of SSPE -- that's another
8 one of these programs -- to 90 percent, right?

9 A Yes, it does say --

10 Q That's the goal?

11 A It does say adoption, yes.

12 Q And you are listed --

13 MR. ZAVITSANOS: Can you highlight this from right here,
14 Michelle, right under the blue line all the way down? No, no. From -- I'm
15 sorry. From here, Michelle. You are the person in charge. Right down --
16 one more. There you go.

17 BY MR. ZAVITSANOS:

18 Q It's got your name on each of those, right?

19 A Yes, it does.

20 Q Okay. All right. We're going to talk about this document a
21 little bit later.

22 A Good.

23 Q Okay?

24 A Good.

25 MR. ZAVITSANOS: May I ask counsel if he has an objection

1 to 476?

2 MR. BLALACK: Your Honor, the Court's indulgence? Just
3 give me a moment.

4 THE COURT: Certainly.

5 [Counsel confer]

6 MR. ZAVITSANOS: Your Honor, while he's doing that, may I
7 ask a question? Oh --

8 THE COURT: Let's let -- he needs to concentrate on --

9 MR. BLALACK: Yeah.

10 THE COURT: -- evidence.

11 MR. BLALACK: This was a quick one, Your Honor. We have
12 no objection.

13 THE COURT: All right. 476 will be admitted.

14 [Plaintiffs' Exhibit 476 admitted into evidence]

15 THE WITNESS: Can I go get it?

16 MR. ZAVITSANOS: Michelle, go back to Exhibit 239, the one
17 we were on, page 2. Pull out the executive summary. Pull out the
18 second bullet.

19 BY MR. ZAVITSANOS:

20 Q So it's a billion dollars of the 30 percent in addition to the
21 PMPM for cutting the reimbursement, right, sir?

22 A I'm sorry. Where is this?

23 Q The one that's highlighted on your screen.

24 A It's not 476?

25 Q No, sir. It's the one highlighted on your screen that we just

1 talked about.

2 A Oh, yes.

3 Q It's a billion dollars for the 35 [sic] percent for cutting the
4 reimbursements, right?

5 A I don't say it says cutting reimbursements. It's not just that.

6 Q The shares savings program, that's not the -- that's not
7 referring to the 35 [sic] percent?

8 A It's referring to the 30 percent but it's not just cutting
9 reimbursements.

10 Q Did you just cut the 35 to 30?

11 A It said 30 percent of savings here.

12 Q Some of the plans have 35 percent, right?

13 A Yes.

14 Q Okay.

15 A Yeah.

16 Q Do you know what it cost to build the Bellagio Hotel?

17 A I do not.

18 Q It's the first hotel in the world that cost a billion dollars. Did
19 you know that?

20 A I had no idea.

21 Q But when you go to the Bellagio, you see bricks, you see
22 mortar, you see fixtures, rooms, plumbing. You're getting a billion
23 dollars every year for doing nothing other than just cutting the rate?

24 A That's incorrect and I can provide context, if you want.

25 Q No, sir. Let's move on to 471. 476, excuse me. Okay.

1 Parking lot. That's the name of this initiative here, right, parking lot?

2 A I don't know if that's an initiative. It's the name on the
3 document.

4 Q Okay. Let's go to the second page.

5 A Can I take a quick second while you're --

6 Q Sure.

7 A -- going through that?

8 Q Sure.

9 A Okay.

10 MR. ZAVITSANOS: Michelle, will you please pull up the top,
11 please, non-par medical spend management. Actually, hold on. Let's
12 see who's on this document. If we can go, please, to -- Michelle, to
13 please, to page --

14 THE WITNESS: Page what?

15 MR. ZAVITSANOS: Page 6. Oh, I'm sorry. Let me -- Your
16 Honor, let me clarify one thing for the record. So when I've been
17 referring to page numbers, I'm only referring to the, what we call the trial
18 direct number. That's going to be the number at the very bottom right-
19 hand corner.

20 THE COURT: Thank you.

21 MR. ZAVITSANOS: It is not going to be the printed page and
22 it is not going to be the Bates number, which is the number above.

23 THE COURT: Got it.

24 MR. ZAVITSANOS: It's the -- at the very bottom, just for the
25 benefit of everyone, okay? Okay.

1 BY MR. ZAVITSANOS:

2 Q So this is the out-of-network organization, and it shows Ms.
3 Paradise as the VP of the out-of-network program management, right?

4 A Correct.

5 Q And she reported to you, correct?

6 A Correct.

7 Q Okay. Now let's go back to the page I was talking about.
8 Let's go to page 2 of Exhibit 476.

9 MR. ZAVITSANOS: Pull up the top paragraph, Michelle and
10 the heading.

11 BY MR. ZAVITSANOS:

12 Q Okay. Now, this word, newco, that appears there, that is a
13 common term that companies use when they have an idea to start a new
14 company, but they don't have a name for it yet, right?

15 A Typically, yes.

16 Q Okay. So here you are conceptually talking about this new
17 company, right?

18 A Yes.

19 Q And this is the non-par medical spend management, right?

20 A That's the title at the top.

21 Q And this new company will support the out-of-network spend
22 reductions --

23 MR. ZAVITSANOS: Michelle, follow me here, right here.

24 BY MR. ZAVITSANOS:

25 Q -- and drive enterprise value. Do you see that?

1 A Yes, I see retention of the other network spend reductions.

2 Q Drive enterprise value means raise the stock price, right?

3 A No, it does not.

4 Q Enterprise value is the market cap. If you take all publicly
5 traded shares and add the value together, that's the enterprise value of
6 the company, right?

7 A That was not the context of this.

8 Q No, sir. I'm not asking about the document. Enterprise value
9 means if I look in the Wallstreet Journal or Yahoo or any of these other
10 sites, I take the number of shares of that public company and multiply it
11 by the share price. That's the enterprise value, right?

12 A I don't know that for a fact. I don't know that. I'm not a stock
13 guy.

14 Q But you have a bunch of United stock, right? A bunch of it.

15 MR. BLALACK: Your Honor, objection. Relevance.

16 THE COURT: Objection sustained.

17 BY MR. ZAVITSANOS:

18 Q Sir, you don't know what enterprise value means and you're
19 a vice president at United Healthcare?

20 A In this context, it's value to the employer group.

21 Q No, sir. Drive enterprise value. Whose enterprise value?

22 A The employer group and ours.

23 Q Ah, I see. So here, you're not talking about United's
24 enterprise value. You're talking about the employer's value?

25 A Well, we were looking at the EHCV --

1 Q Sorry?

2 A -- acronym. That's the related to the value to the employer
3 groups.

4 Q Sorry?

5 A The enterprise.

6 Q My question is, on this document, is it your testimony to the
7 jury that when you say you're trying to drive enterprise value, you are
8 trying to raise the stock price of your clients? Is that what you're saying?

9 A No. We're trying to save money for our clients.

10 Q Okay. So --

11 A It's value for us and our clients.

12 Q You don't know -- just one last que -- one last time here.

13 A That's fine.

14 Q And I'm not going to ask how much. Do you -- I mean, do
15 you have a -- do you own any stock? Any stock?

16 MR. BLALACK: Objection, Your Honor. Same --

17 BY MR. ZAVITSANOS:

18 Q I'm not going to ask how much you own.

19 THE COURT: No.

20 MR. ZAVITSANOS: Okay.

21 THE COURT: Objection sustained.

22 MR. ZAVITSANOS: Okay.

23 BY MR. ZAVITSANOS:

24 Q Are you telling me you've never heard that term before
25 today, even though it -- this is on one of your documents in your

1 department, where you're talking about filing a newco, this is the first
2 you're hearing you're hearing of that?

3 A The way you described it, I don't --

4 Q No, sir. The term, enterprise value.

5 A I've heard enterprise value before.

6 Q What does it mean to you?

7 A It means value to us and our clients.

8 Q That's one of those corporate speak things. What does it
9 mean in financial terms? When you said what is the enterprise value of
10 a company, what does that mean?

11 A It means that we can do something cheaper for our clients.
12 We still get revenue. We're not ashamed of that, but we don't have to
13 pay as much to a vendor. That's what that means.

14 Q Okay. So -- all right. Let me move. Okay.

15 MR. ZAVITSANOS: Take that down, Michelle.

16 BY MR. ZAVITSANOS:

17 Q At United, you were evaluated annually, correct, on your
18 performance?

19 A Correct.

20 Q And your performance for these programs was based on the
21 medical cost savings, right?

22 A That was one component, yes.

23 Q Yeah. That means the amount by which you could reduce
24 the medical spend for both ASO and fully insured is one of the things the
25 company used to determine what kind of evaluation you got, what kind

1 of bonuses you got, et cetera, right?

2 A That's correct.

3 Q The more you cut, the better you were evaluated, the bigger
4 your bonus, right?

5 A That's incorrect.

6 Q Well, the total allowable on a claim, that was the metric by
7 which your performance was evaluated. Do we agree?

8 A That was one of many metrics.

9 Q All right. Now, as between the three Plaintiffs in this case,
10 Dr. Scherr's group and United, whose actions are more egregious in this
11 case, in your opinion?

12 MR. BLALACK: Objection. Form and foundation.

13 THE COURT: Sustained.

14 BY MR. ZAVITSANOS:

15 Q Let me -- I'm going to tighten that up a little bit. Now, I'm
16 going to get to it in just a minute, all right?

17 A That's fine.

18 MR. ZAVITSANOS: Now, let me ask counsel if he has an
19 objection to 55.

20 MR. BLALACK: 55, John?

21 MR. ZAVITSANOS: Yes, sir.

22 MR. BLALACK: Foundation, Your Honor. We do object.

23 THE COURT: All right. So there's an objection. You'll have
24 to lay a foundation.

25 BY MR. ZAVITSANOS:

1 Q Would you please get 55, please? You reported to a man
2 named Dan Rosenthal, right?

3 A For a period of time, yes.

4 Q What was his title when you reported to him?

5 A He was the president of United Health Networks.

6 Q And Mr. Rosenthal, who did he report to at that time?

7 A Can you give me a time period, please?

8 Q '17, '18. Did he report to Mr. Schumacher?

9 A I'm not 100 percent sure.

10 Q Okay.

11 A I'm not 100 percent sure.

12 Q Mr. Schumacher is the -- what is he? What's his title?

13 A I don't remember what Dan's title was.

14 Q You don't remember if he was the CEO of the company?

15 A Of which company?

16 Q United Healthcare.

17 A I don't know specifically if he was or not. I don't re -- I'm not
18 trying to be difficult. There are two individuals, Steven Nelson and Dan
19 Schumacher. I don't remember their exact roles. I think Dan reported to
20 Steve.

21 Q You don't remember who was the CEO of your company in
22 2018?

23 A 2018 was a personally tough time for me, so I don't really
24 remember.

25 Q You were there 30 years.

1 A I had a lot of leaders.

2 Q You don't remember who the CEO of United Healthcare was
3 in 2018?

4 A It could have been Steven Nelson. I don't remember.

5 Q Okay. In any event, back to this exhibit. Remember
6 yesterday, you talked about educating the public?

7 A Yes.

8 Q Does this document deal with out-of-network surprise
9 billing?

10 A Can I take a look at it, please?

11 Q Sure.

12 MR. ZAVITSANOS: And Your Honor, just for budgeting
13 purposes what --

14 THE COURT: We'll got until about 12:15.

15 MR. ZAVITSANOS: Yes, Your Honor. Okay.

16 THE COURT: And -- 12:15, and we'll take a half hour lunch
17 today, since lunch is being provided for you.

18 MR. ZAVITSANOS: Thank you, Your Honor.

19 THE WITNESS: Can you ask your question again?

20 BY MR. ZAVITSANOS:

21 Q Yes, sir. I think my question was, does this document deal
22 with, among other things, out-of-network balance billing?

23 A It says balance billing for out-of-network.

24 Q Does this document deal with the outlier cost management
25 program?

1 A I don't know. I don't think I wrote this document.

2 Q I'm not asking whether you wrote it. I'm asking does the
3 document deal with the outlier cost management program?

4 A The document has outlier cost management in it.

5 Q And in 2016, you were in charge of the out-of-network
6 programs, right?

7 A Correct.

8 Q And I'll represent to you this is a document that was
9 produced by United Healthcare. Does this -- do you have any reason to
10 dispute that?

11 A No reason.

12 Q Okay.

13 MR. ZAVITSANOS: Your Honor, we move for the admission
14 of Plaintiffs' Exhibit 55.

15 MR. BLALACK: We maintain our objection. They haven't laid
16 foundation with this witness, Your Honor.

17 THE COURT: Lay a little more foundation.

18 BY MR. ZAVITSANOS:

19 Q Does this document talk about or deal with the benefits of
20 the OCM program?

21 A Again, I didn't write it.

22 Q That's not my question. Does this document deal with the
23 benefits of the OCM program?

24 A I think it deals with out-of-network physicians practicing at
25 hospitals, in network hospitals.

1 Q Look at the second page, sir. Does this document deal with
2 the benefits of the OCM program?

3 A Again, it's got OCM written in the document.

4 Q One more time. Does this document deal with the benefits of
5 the OCM program?

6 MR. BLALACK: Objection. Asked and answered.

7 THE COURT: Overruled.

8 THE WITNESS: It describes the OCM program.

9 BY MR. ZAVITSANOS:

10 Q Is this document consistent with other documents that -- and
11 by the way, you were in char -- you were the guy in charge of the OCM
12 program, right?

13 A Correct.

14 Q Okay.

15 MR. ZAVITSANOS: Your Honor, we move for the admission
16 of 55.

17 MR. BLALACK: I still maintain my objection, Your Honor.

18 THE COURT: All right. Objection's overruled. 55 will be
19 admitted.

20 [Plaintiffs' Exhibit 55 admitted into evidence]

21 MR. ZAVITSANOS: Okay.

22 BY MR. ZAVITSANOS:

23 Q Now, let's go to the first page, please. All right. We're going
24 to talk about this Yale study in a little bit, but these are more talking
25 points from November, 2016. So that would be closer to the beginning

1 of this five-year initiative, right?

2 A It's November of 2016.

3 Q Yeah. And in 2016, like you said earlier, that's at a time when
4 95 percent of your clients were on this UCR methodology with wrap
5 agreements where there was no balance billing, right? That's Exhibit 25
6 that we looked at earlier, right?

7 A We saw that in Exhibit 25, yes.

8 Q Okay. Despite that, you are making a media statement that
9 says out-of-network physicians should not be using emergencies as an
10 opportunity to bill patients excessive amounts when they are at their
11 most vulnerable. You see that?

12 A The first sentence?

13 Q Yeah. Do you see that?

14 A Yes, I do see that.

15 Q Does this media statement include anything about how it
16 was your goal to get clients off of reasonable and customary, and FAIR
17 Health so that you could earn more money? Is there anything in there
18 about that, sir?

19 A I --

20 Q For the media?

21 A I'm not familiar with the document, so I don't know.

22 Q Yeah. Let's go to the next point or the next page, please.

23 Page 2.

24 MR. ZAVITSANOS: Michelle, will you please go to -- from
25 subpar 3, the four bullets. Okay.

1 BY MR. ZAVITSANOS:

2 Q Now, this is outlier cost management program. Let's put that
3 up on the chart, because we've mentioned it a couple of times, and I
4 keep saying we're going to get to it, okay. Let's put it up here.

5 MR. ZAVITSANOS: Michelle --

6 BY MR. ZAVITSANOS:

7 Q I'm a terrible speller, so I need to see how to spell outlier.
8 Okay. Okay. So OCM is an out-of-network reimbursement methodology
9 program that standard for outlier cost management, right?

10 A It's not just reimbursement. It's also an advocacy program.

11 Q Fair enough. It's -- OCM stands for outlier cost management,
12 right?

13 A It helps to manage the costs, yes.

14 Q Okay.

15 MR. ZAVITSANOS: Michelle, real quick -- actually, we'll get
16 to it after lunch.

17 BY MR. ZAVITSANOS:

18 Q Let's go to here. So this program is -- provides for deeper
19 cuts than this program, right? This one uses wrap network agreements
20 that provide a minimal discount off the bill charged. This one is a much
21 deeper discount, right?

22 A The reduction is dependent on what the provider is billing.

23 Q Yeah. And what you're telling the media is that you're
24 actually going to collaborate with the doctors to put a cap on the charges
25 billed, right?

1 A To protect the members, yes.

2 Q Yes, sir. And that, Mr. Haben, 100 percent is a lie. You did
3 not consult one doctor, other than your in-house medical director to
4 come up with this cap.

5 MR. BLALACK: Object to form. Compound, Your Honor.

6 THE COURT: It is compound. Break it down.

7 MR. ZAVITSANOS: Let me rephrase.

8 BY MR. ZAVITSANOS:

9 Q This cap, which we're going to talk about, you did not consult
10 any emergency doctors or any other out-of-network provider, correct,
11 sir?

12 A I did not talk to any out-of-network provider or ER physician.

13 Q Even though you're telling the media we got runaway bill
14 charges. It's a problem. People are vulnerable in the emergency room.
15 Charges are escalating. There's some bad apples out there and we're
16 going to work with the good ones to come up with a cap to get to a win-
17 win, right?

18 A We will work with the providers, if they engage with us on
19 that bill for that client.

20 Q Yeah, but you didn't do that. You just came up with an
21 arbitrary cap.

22 A It's not an arbitrary number.

23 Q Okay. We're going to talk about that. Let me -- then let me
24 rephrase my question. You didn't do that. You just came up with a cap.
25 Right, sir?

1 A That's incorrect.

2 Q You did not consult any doctors, sir, right?

3 A We looked at our par median for provider --

4 Q You did not consult any doctors, correct?

5 A We consulted their contracts.

6 Q Sir, did you consult with a human being in a meeting?

7 A No.

8 MR. ZAVITSANOS: Take it down, Michelle.

9 BY MR. ZAVITSANOS:

10 Q Okay. Now, I'm going to change topics and I'm going to talk
11 about who you United is in the marketplace relative to its competition,
12 okay?

13 MR. ZAVITSANOS: Now, let me ask -- Your Honor, may I ask
14 counsel if he has an objection to 447?

15 MR. BLALACK: One moment, Your Honor.

16 THE COURT: Yeah. Take a minute.

17 BY MR. ZAVITSANOS:

18 Q And Mr. Haben, will you start looking at? If you're going to
19 need to read it, if you wouldn't mind looking at it while your --

20 A That's what I'm doing.

21 Q -- counsel's looking at it?

22 A That's what I'm doing.

23 MR. BLALACK: Yes. We have an objection. Foundation
24 among other things, so would ask that foundation be laid.

25 THE COURT: Thank you.

1 BY MR. ZAVITSANOS:

2 Q Would you like a moment to read it, sir?

3 A Yes, sir.

4 Q Okay.

5 [Witness reviews document]

6 A Okay.

7 Q Okay. Now you were a gentleman in charge of the
8 out-of-network spend E&I, right?

9 A That's insurance for the out-of-network programs for E&I.

10 Q Yes, excuse me. You were in charge of the out-of-network
11 programs for E&I, right?

12 A Correct.

13 Q And E&I, the employer and individual section of United, they
14 would regularly issue business plans, right?

15 A Yes.

16 Q And you would receive those business plans, correct?

17 A Actually, periodically we would. Not always.

18 Q Okay. And you would contribute to those business plans on
19 occasion, correct?

20 A Indirectly.

21 Q Yes, sir. Indirectly. And would you please turn to the third
22 page? And is this talking about some of the business objectives on the
23 E&I portion of the company?

24 A I'd need a little time to look at it. I didn't write it.

25 Q Let me ask it this way, sir.

1 A Okay.

2 Q Is there a discussion -- and your title was what, sir?

3 A Vice president.

4 Q Okay. Is there a discussion in this document, in the group to
5 which you belong, the E&I Group, about what your competitors are
6 doing? Different programs and initiatives and types of things that the
7 other insurers in the marketplace are doing?

8 A So first of all, I'm not part of the E&I Group. I'm part of the
9 United Health Network team. That's not part of E&I.

10 Q You're not part of United Healthcare?

11 A I am part of United Healthcare, but there are other
12 components inside of United Healthcare. I'm not part of the E&I team.

13 Q Sir, are you part of United Healthcare?

14 A Yes, I am.

15 Q And you -- it was part of your task to contribute to these
16 business plans, correct?

17 A Indirectly, yes.

18 Q Okay. My question again, sir, is on page 3. Is there a
19 discussion about what your competitors are doing?

20 A There's a note about what competitor's actions are, yes.

21 Q And part of your job was to keep up with whatever
22 information was publicly available about what your competitors are
23 doing, additive purposes?

24 A Obviously, we had to be competitive, yes.

25 MR. ZAVITSANOS: Your Honor, I move for the admission of

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1 Exhibit 447.

2 MR. BLALACK: Object to the foundation. There's no
3 connection to this witness whatsoever.

4 THE COURT: If -- there's insufficient foundation at this time.
5 BY MR. ZAVITSANOS:

6 Q Mr. Haben, are you testifying under oath you did not get this
7 business plan in 2019?

8 A I'm assuming I did. Some of them are kept inside the E&I
9 Group.

10 MR. ZAVITSANOS: I move for the admission, Your Honor,
11 based on that answer.

12 THE COURT: That's insufficient. If you can link it to his
13 group.

14 BY MR. ZAVITSANOS:

15 Q Let me ask it this way, sir. Maybe I don't even need to admit
16 the exhibit. Let me just ask this. Did you all keep up with what your
17 competitors were doing?

18 A No.

19 Q You didn't?

20 A We were far behind on some things.

21 Q Did -- I'm sorry. Did you try to get market intelligence about
22 what your competitors were doing?

23 A Yes. We tried to get information. Are we -- why are we
24 falling behind?

25 Q That's not what I asked, sir. We're going to find out whether

1 you were ahead or behind in just a minute. I promise.

2 A Okay.

3 Q Did you try to get intel on what your competitors were
4 doing?

5 A Did I personally?

6 Q Your group?

7 A Yes.

8 Q Okay. Thank you, sir. Now there were a lot of times -- oh,
9 actually, actually hang on. Go to page 6, please. Is there a discussion on
10 page 6 on out-of-network programs?

11 A There's information on out-of-network programs there. Yes.

12 Q Did that information come from your organization in the
13 company?

14 A I don't know for sure.

15 Q Who else would it come from?

16 A It could have been from sales individuals inside E&I.

17 Q Were you the person in charge of the out-of-network out live
18 cost and management goals and objectives that we looked at earlier on
19 the other exhibit with target dates?

20 A Yes.

21 Q Does this identify some of those targets?

22 A Can I look at it for a second, please?

23 Q Sure.

24 [Witness reviews document]

25 A Can I look on the other targets that were on there that you

007957

007957

1 referred to?

2 Q I'm talking about this page.

3 A I understand, but you said there were targets on another
4 page with my name on it.

5 Q The targets on the other document that we looked at earlier
6 where there were your name was on every one of those targets.

7 A Yeah. I don't remember. You're asking me are those targets
8 on this page. I don't know for sure.

9 Q I didn't ask that, sir.

10 A Okay.

11 Q Try it again.

12 A Can you ask it again?

13 Q Sure. Does this page contain some of the goals for the out-
14 of-network programs of which you were in charge when this business
15 plan was issued?

16 A Give me just a second to read this. My eyes are getting
17 really bad.

18 Q Sure.

19 [Witness reviews document]

20 A Yes.

21 MR. ZAVITSANOS: Your Honor, I move for the admission of
22 Exhibit 447.

23 MR. BLALACK: Because the goals are on it, that doesn't
24 establish a foundation between the witness and the document.

25 MR. ZAVITSANOS: Can we approach, Your Honor?

1 THE COURT: You may.

2 [Sidebar at 12:05 p.m., ending at 12:06 p.m., not transcribed]

3 MR. ZAVITSANOS: Your Honor, I move for the admission of
4 447, please.

5 MR. BLALACK: And I'll state our objection another time.

6 THE COURT: I've overruled the objection, which will be
7 placed on the record over the lunch break, and 447 will be admitted.

8 [Plaintiffs' Exhibit 447 admitted into evidence]

9 BY MR. ZAVITSANOS:

10 Q Okay. And let's --

11 MR. ZAVITSANOS: Michelle, real quickly let's go to page 3.

12 BY MR. ZAVITSANOS:

13 Q And I'm not going to bother going through these in detail,
14 but there's a heading here called competitive and internal landscape. Do
15 you see that?

16 A Yes.

17 Q Okay.

18 MR. ZAVITSANOS: And Michelle, will you just pull up this
19 section here?

20 BY MR. ZAVITSANOS:

21 Q I'm not going to read it. And there's a discussion of other
22 insurance companies there, right, and what they're doing, right?

23 A Yeah. There are other insurance companies there.

24 Q Okay. So let's now go to page 7. And again, we're talking
25 about this new program, this outlier cost management. And we're going

1 to pull out --

2 MR. ZAVITSANOS: Michelle, will you please pull out the
3 section that says out-of-network down at the bottom of the page?

4 BY MR. ZAVITSANOS:

5 Q Okay, so this is this new program, right? This OCM we talked
6 about, right?

7 A Yes.

8 Q And it talks about as clients transition to a more aggressive
9 discount program, we will support their members with potential balance
10 bill risks, right?

11 A Yes. That's what that says.

12 Q Now let's be clear what that means. Even though United is
13 making a billion dollars a year, if a member gets balanced billed where
14 you are a third-party administrator under one of these programs, United
15 is not going to pay the bill?

16 A We will do what the employer group says they need us to do.

17 Q United is not contractually going to pay that bill, right?

18 A Unless the employer group says we should.

19 Q Contractually, sir, your ASO plans do not obligate United to
20 pay the bill, right?

21 A Can you explain contractually? Between who? Us and
22 the --

23 Q Yeah. You and these employer groups where you're the
24 third-party administrator. It's the employer who's going to pay the
25 balance bill, not United, under the terms of these agreements, right?

1 A We administer their funds. We will do what they tell us to
2 do.

3 Q Sir, please answer my question.

4 A I am answering.

5 Q Under the terms of the plan. I'm not talking about hey, do
6 me a favor here. I'm talking about what you are legally obligated to do
7 under the terms of the plan, United is not on the hook for the balance
8 bill, right?

9 A I told you what we're legally obligated to do.

10 Q So if a client tells you to give me a million dollars, are you
11 going to give him a million dollars?

12 A If a client tells us to pay a provider to take the member out of
13 the middle, we will do that.

14 Q Do you have any examples we can look at where United did
15 that even one time in this case? Under this where you were running the
16 OCM program as a third-party administrator, sir?

17 MR. BLALACK: Object to form, Your Honor. He's not a
18 lawyer. He doesn't know the case.

19 MR. ZAVITSANOS: I'm asking if he knows of any instances.

20 THE COURT: Reask. The form was inappropriate.

21 BY MR. ZAVITSANOS:

22 Q Are you aware of any document that is on your company's
23 exhibit list that shows that United actually paid the balance bill at the
24 request of the ASO client?

25 A We have paid the balance bill. I don't know if there's --

1 Q I'm asking whether we can look at it in writing, sir, not take
2 your word for it.

3 A I don't -- you're going to have to take my word for it. I don't
4 know all the documents.

5 Q Thank you, sir. Now the benefit about this outlier cost
6 management is it provides -- Michelle, follow me -- revenue replacement
7 strategy for current shared savings IOI. Now there's a new term. Let's
8 talk about that. What is IOI?

9 A That's short for Internal Operating Income.

10 Q That's how much gain you're going to make, right? How
11 much profit, right?

12 A Income, yes.

13 Q Yeah. Internal Operating Income, right?

14 A Yes.

15 Q Okay. So on this business plan that was written in 2019
16 looking forward to 2020, Plaintiff's Exhibit 447, the plan is that now this
17 NewCo that we talked about a little while ago, it now has a project name,
18 and it's called Project Airstream, right?

19 A Correct.

20 Q And it's going to provide revenue replacement strategy for
21 your internal operating income, right?

22 A Correct.

23 Q Do you have a -- are you aware of any document under this
24 OCM policy where you are acting as a third-party administrator where
25 United unconditionally said if your members are balanced billed, United

1 will pay for it? Are you aware of any document like that?

2 A Ask that again, please.

3 Q Okay. Are you aware of any document, while you all were
4 formulating these plans, where United acting as a third-party
5 administrator told your client that in exchange for this percentage fee
6 and the PMPM, you would indemnify the member out of United's
7 coffers, not the client's?

8 A I don't know if there is or not.

9 Q All right. Michelle, you can take that down. Okay. Now
10 there were a bunch of times where all the insurance companies get
11 together and kind of trade notes, right?

12 A I --

13 MR. BLALACK: Objection. Foundation. Form.

14 MR. ZAVITSANOS: I'm asking if he knows.

15 THE COURT: It needs foundation.

16 BY MR. ZAVITSANOS:

17 Q Do you know whether insurance companies get together and
18 trade notes?

19 A I don't.

20 Q You don't know?

21 A I don't know.

22 Q Okay. Well let's take a look at the binder and go to Exhibit
23 282.

24 THE COURT: And I'm sounding the two minutes warning.

25 MR. ZAVITSANOS: Yes. Yes, Your Honor.

1 BY MR. ZAVITSANOS:

2 Q Okay. Are you there, Mr. Haben?

3 A I'm not there yet.

4 Q Okay.

5 A Okay.

6 Q Do you see your name as one of the attendees, four from the
7 bottom, far left corner?

8 A I do.

9 Q Do you see Ms. Paradise's name about a fourth of the way up
10 from the second column?

11 A Yes, I do.

12 Q Did you attend meetings put on by MultiPlan where a bunch
13 of insurance companies were invited to talk about out-of-network
14 reimbursements?

15 A Your last part is mischaracterizing it, but I did attend
16 meetings with MultiPlan, yes.

17 Q Is this in attendee list? Did you attend this meeting in 2019 at
18 MultiPlan's invitation?

19 A I'm not 100 percent sure if I did. I have attended their
20 meetings before.

21 Q Is your name as one of the attendees?

22 A Yes, but sometimes I'm not able to go.

23 Q Any reason to dispute that you were there?

24 A I -- not off the top of my head, no.

25 MR. ZAVITSANOS: I move for the admission of 282.

1 MR. BLALACK: Your Honor, we didn't object to this exhibit.

2 THE COURT: Okay. 282 will be admitted.

3 [Plaintiffs' Exhibit 282 admitted into evidence]

4 BY MR. ZAVITSANOS:

5 Q Just put it on the shelf. MultiPlan is the company that just off
6 of United was making three hundred million dollars a year for
7 administering these wrap agreements, right?

8 A Not just wrap, but other programs, yes.

9 Q They got a percentage of the savings, right?

10 A Yes.

11 Q Okay. And here you are --

12 MR. ZAVITSANOS: Michelle, pull out the middle column,
13 excuse me, far left column quarter of a way from the bottom. Will you
14 highlight Mr. Haben's name?

15 BY MR. ZAVITSANOS:

16 Q There you are, John Haben, right?

17 A Yeah.

18 Q Okay. And we see there are representatives at these
19 meetings from Cox HealthPlans, Cigna, Blue Cross, Kaiser, Aetna,
20 Meritain Health, Trustmark, and many others, right?

21 A Correct.

22 Q And there's Ms. Paradise.

23 MR. ZAVITSANOS: Michelle, let's go to the second column,
24 same document, Exhibit 282. Your Honor, 30 seconds and I'll be done.
25 Second column, Michelle, like a quarter of the way down by Ms.

1 Paradise's name. There we go right here.

2 BY MR. ZAVITSANOS:

3 Q There she is, right?

4 A Yeah.

5 Q And you all -- these insurance companies and MultiPlan, the
6 umpire was getting paid. What are you all talking about at these
7 meetings?

8 A They have presenters about the industry, what's happening
9 in the marketplace. They have medical individuals coming. They talk
10 about the trend in the market.

11 Q And so, if a lawyer gets up in a trial and says look at what
12 other insurance companies are doing, what they're paying and what
13 they're not paying, you all got it scripted out already, right, with all the
14 other carries from MultiPlan.

15 A I think you're mischaracterizing.

16 MR. BLALACK: Objection. Vague.

17 THE COURT: I'm going to sustain the objection. It's time for
18 lunch. It is 12:17, so we will be back at 12:50 instead of 12:45.

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

24 Don't conduct any research on your own regarding the case.
25 Don't consult dictionaries, use the internet, or use reference materials.

1 Don't talk, text, tweet, Google, or conduct any other type of book or
2 computer research. Do not do any social media. And if anyone tries to
3 talk to you, let me know about that immediately. Most importantly, do
4 not form or express any opinion on any subject connected with the trial
5 until the jury deliberates.

6 Thanks for a great morning. See you at 12:50.

7 THE MARSHAL: All rise for the jury.

8 [Jury out at 12:18 p.m.]

9 [Outside the presence of the prospective jurors]

10 THE COURT: Mr. Haben, you can step down during recess.

11 Okay, looks like the room is clear. Defendant, do you have
12 anything to put on the record?

13 MR. BLALACK: Mr. Haben is still in the courtroom.

14 THE COURT: Defendant, you had something to put on the
15 record, I believe.

16 MR. BLALACK: Your Honor, I think I was simply going to lay
17 -- make an objection on foundation to the exhibit.

18 THE COURT: 447?

19 MR. BLALACK: We should have [indiscernible] Your Honor. I
20 thought it was only establishing that a document refers to a topic, then I
21 wouldn't have [indiscernible] is not sufficient to lay a foundation. That
22 the testimony is the document. He did not write the document. He did
23 not receive the document. He didn't have any role in the creation
24 [indiscernible].

25 THE COURT: Good enough. And the response?

1 MR. ZAVITSANOS: Well, Your Honor, I think he testified that
2 he generally does prepare responses to this. And the only part of the
3 document I questioned him on, the only part I care about is the part that
4 relates to his organization within the company.

5 THE COURT: Good enough. Thanks guys. Have a good
6 lunch. See you at 12:50.

7 MR. BLALACK: Thank you, Your Honor.

8 MR. ZAVITSANOS: Thank you, Your Honor. You said 30
9 minutes, right?

10 THE COURT: 12:50.

11 UNIDENTIFIED SPEAKER: 12:50?

12 THE COURT: Yeah.

13 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

14 THE COURT: Ten till 1:00.

15 [Recess taken from 12:20 p.m. to 12:54 p.m.]

16 THE COURT: And let's bring in the jurors.

17 And Mr. Haben, come on up. We're trying to -- trying to
18 maximize our time here.

19 THE WITNESS: Yep.

20 THE COURT: Thank you.

21 [Pause]

22 THE MARSHAL: All rise for the jury.

23 [Jury in at 12:56 p.m.]

24 THE COURT: Thank you, please be seated.

25 Mr. Zavitsanos, please continue with your direct.

1 MR. ZAVITSANOS: Thank you, Your Honor. May it please
2 the Court and counsel.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. ZAVITSANOS:

5 Q Good afternoon, Mr. Haben.

6 A Good afternoon.

7 Q Okay. I want to continue talking about the competitive
8 landscape. Before I do that, I just want to make sure we got -- I think we
9 might have a had a little bit of confusion on a few topics. And I just want
10 to make sure that you and I are on the same page. Okay?

11 MR. ZAVITSANOS: So, Michael [indiscernible]

12 MR. KILLINGSWORTH: 363.

13 MR. ZAVITSANOS: Can you pull up 363, Michelle?

14 BY MR. ZAVITSANOS:

15 Q I think we got this, but I just want to make sure it's clear.
16 This is the website we talked about, the United website, where you all
17 are identifying what reasonable and customary or usual customary and
18 reasonable mean.

19 MR. ZAVITSANOS: And Michelle, will you please pull up the
20 two bullets, please? Actually, Michelle, pull up -- here you go, from here
21 to here. Great. Thank you, Michelle.

22 BY MR. ZAVITSANOS:

23 Q Okay. Now, I will represent to you that your lawyer during
24 the opening statement told the jury that nobody evaluates billed charges
25 -- excuse me, let me start over. Your lawyer told the jury that it is not

1 customary to process out-of-network reimbursements on what providers
2 charge. Okay?

3 A Okay.

4 Q Are you with me?

5 A Yep.

6 Q Let's just make that assumption for a second.

7 A Okay.

8 Q Okay. Now, is it correct that on its website, United says, in
9 the second bullet point, that --

10 MR. ZAVITSANOS: Michelle, from here -- from here. The
11 second -- kind of the second quote.

12 BY MR. ZAVITSANOS:

13 Q The usual, customary, and reasonable amount, the prevailing
14 rate for other similar terms that base payment on what other healthcare
15 professionals in a geographic area charge for their services, right?

16 A Yes.

17 Q That's what United says how an out-of-network provider is
18 paid. It's the lower of either the billed charge or the usual reasonable
19 and customary amount of what other professionals charge --

20 MR. ZAVITSANOS: Can you circle charge, Michelle?

21 BY MR. ZAVITSANOS:

22 Q -- charge in that area, right?

23 A For those benefit plans that have that language, that's what
24 that says.

25 Q Thank you, sir.

1 Okay. One other point, and then we're going to get back to the
2 competitive landscape, and that is this. I think this was clear, but let me
3 just belts and suspenders. Okay?

4 All right. So FAIR Health and MultiPlan are both not owned by
5 United, right?

6 A That is correct.

7 Q They both provide -- they both provide references on how to
8 process out-of-network reimbursements for doctors, including
9 emergency room doctors, right? Among other things, right?

10 A That is incorrect.

11 Q Why is it incorrect?

12 A Your wording on references of how to process.

13 Q Well, I -- let me rephrase.

14 A Okay.

15 Q Yeoh, I see what you're saying. Let me -- my bad.

16 A Yep.

17 Q Both FAIR Health and MultiPlan have data that insurers can
18 use on how to process out-of-network claims that they can access, right?

19 A Process also is a -- is not an accurate component.

20 Q To make reimbursements, sir. You know what I am getting
21 at, Mr. Haben?

22 A No. No, I don't know what you're getting at.

23 Q You don't know what I'm getting at? You don't know that
24 MultiPlan, you can engage MultiPlan. United can engage MultiPlan to
25 evaluate what is a reasonable out-of-network fee, right? Through a tool,

1 like, Data iSight, for example, right?

2 A Reasonable out-of-network payment.

3 Q Right?

4 A Yes.

5 Q Okay. And you can do the same thing with FAIR Health
6 according to what you are saying, right?

7 A It's a little misleading, and I --

8 Q I'm just --

9 A -- can explain.

10 Q No, sir. I am just going by what you're saying here. That
11 UnitedHealth Group affiliate -- so follow me. The UnitedHealth Group
12 affiliate will pay, circle pay, based on the term of the member's
13 healthcare benefit plan. And in many cases, provides for payment
14 amounts -- for amounts that are the lower of either.

15 MR. ZAVITSANOS: Michelle, highlight the UnitedHealth
16 Group, please, the beginning of the sentence if you can?

17 BY MR. ZAVITSANOS:

18 Q Okay. That's what your website says, right?

19 A Yes.

20 Q Okay. And FAIR Health is one of the ways to determine the
21 usual, customary, and reasonable amount, right?

22 A As what providers charge, yes.

23 Q Okay. So MultiPlan does that, FAIR Health does that. FAIR
24 Health charges a flat fee. You pay one fee, and you can use it as often as
25 you want to or need, right?

1 A Correct.

2 Q They do not get a percentage of the savings?

3 A That is correct.

4 Q MultiPlan gets a percentage of the difference between the
5 billed charge and what you actually pay?

6 A In the allowed amount, yes. That --

7 Q Well, the allowed, what you pay, right?

8 A Can I clarify your what you pay statement?

9 Q Let me -- let me use your words. MultiPlan gets a percentage
10 between the billed charge and the amount that you all -- you all
11 determined is allowed?

12 A Yes.

13 Q So the deeper the cuts, the more MultiPlan makes?

14 A The greater the fee MultiPlan gets.

15 Q As between those two, who is incentivized to give you a
16 lower number?

17 A I don't know if I can answer that question.

18 Q Okay. Now, all right. Do you have Exhibit 267 up there? We
19 are going to go back to the competitive landscape.

20 A I've got to get it.

21 MR. ZAVITSANOS: I'm sorry. Hold on, I misspoke. My
22 apologies.

23 BY MR. ZAVITSANOS:

24 Q 266. My apologies, sir.

25 A I've got to get it.

1 MR. BLALACK: Is this a new exhibit, John, or?

2 MR. ZAVITSANOS: Yes. And I want to ask --

3 MR. BLALACK: Okay.

4 MR. BLALACK: Okay.

5 MR. ZAVITSANOS: So Your Honor, this is the -- I'll have to
6 say what's in it. This is the 2019 E & I business plan. It is the same type
7 of thing we just covered. Okay? And let me just ask counsel first, if he
8 has an objection?

9 MR. BLALACK: Yes, Your Honor. Foundation.

10 THE COURT: Okay.

11 MR. ZAVITSANOS: Okay.

12 THE WITNESS: Can I take a quick peek?

13 BY MR. ZAVITSANOS:

14 Q Okay. And while you are looking, let me just tell you
15 specifically what I want you to look at, pages 11, 32, 6, and 8. Tell me if
16 those pages that I just read deal with shared savings, out-of-network, the
17 programs, the type of programs you were in charge of at this time? And
18 I am happy to give you those numbers again if you need them.

19 A No, I remember.

20 Q Okay.

21 A Can you ask your question again?

22 Q Yes, sir. This is a similar type of document to the 2020 E & I
23 business plan we looked at before the lunch break, right?

24 A I believe so, yes.

25 Q Okay. This -- but this one is for 2019, right?

1 A Yes.

2 Q And let's just clarify one thing. The one we talked about
3 earlier that was dated 2020 was actually prepared in 2019?

4 A Yeah. When business plans are done, they're done the
5 period before that --

6 Q Exactly.

7 A -- for the upcoming year.

8 Q So this one that's 2019 was done in 2018?

9 A Most likely, yes.

10 Q Yes, sir. Okay.

11 Now, my question is, does this E & I business plan on pages 5, 6, 8,
12 and 11, and 32, deal with out-of-network programs that you were in
13 charge of?

14 A It's a lot to reconcile, but I see it on 5. I don't quickly see it on
15 6. I don't know if I see it on 8.

16 Q Look on the right column under medical management.

17 A What page, please?

18 Q Page 8. And by the way -- oh, I'm sorry, let me --

19 A No, that's fine.

20 Q Mr. Haben, when I say the page number I would like you to
21 review --

22 A No, I heard you.

23 Q -- it's a little confusing.

24 A No, I've got it.

25 Q So it's the very bottom left -- the very bottom right. Okay?

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1 A Yep.

2 Q The heading that says, medical management?

3 A Yep.

4 Q If you look under, right under that bar graph, do you see a
5 discussion about the out-of-network programs?

6 A Yep, I do.

7 Q Okay. And let's go to 11 and 32.

8 A Can you point to it on 11, please?

9 Q Yes, sir. It's the heading -- well, the heading that says,
10 shared savings program?

11 A Oh, I see it. Thank you.

12 Q Okay. And then page 32?

13 A I see it on 32.

14 Q Yep. And I'm sorry, I said page 6 earlier. I was mistaken. It's
15 actually on page 5, sir.

16 A I see it on 5.

17 Q Yes, sir. Okay.

18 So is this information that would have come from your
19 organization within the company?

20 A Either indirectly or it could be just not from us, from people
21 in E & I that have used our programs.

22 Q Okay. Programs that you were in charge of?

23 A Yes.

24 Q And in looking at this, anything about that that's inaccurate
25 or a mistake that you notice?

1 A I would need time to look through these.

2 Q Okay. Well --

3 A Do you want to --

4 Q I don't want to burn the clock here, but go ahead because I
5 need to get this foundation, so.

6 A If you want to ask me a question on one of them, I can --

7 Q Well, okay. So let's look at -- hold on for one second.

8 Let's -- let's look at page 11. Does the information on page 11 look
9 generally accurate to you for that time frame?

10 A So the statement underneath the heading of SSPE, is that
11 what you're asking?

12 Q Yes, sir. And the -- yes, sir. And the numbers?

13 A I don't know if I could quote the numbers, it's four or five
14 years ago. But generally, it looks fine.

15 MR. ZAVITSANOS: I move for admission of 266, Your Honor.

16 MR. BLALACK: I am going to object. No evidence
17 establishing wrote it, saw it, participated in creating it, nothing
18 connecting him to the document.

19 THE COURT: Okay. You'll have to lay a little additional
20 foundation.

21 MR. ZAVITSANOS: Thank you, Your Honor.

22 BY MR. ZAVITSANOS:

23 Q Okay. Let's look on page -- look on page 8, please, under
24 medical management under the bar graph. Does that coincide with the
25 goals and objectives that your organization had in 2018 --

1 A Give me just --

2 Q -- going forward?

3 A Give me just a second to read it, please.

4 Q Yes, sir.

5 A Yes.

6 MR. ZAVITSANOS: Okay. Your Honor, I move for the
7 admission of 266.

8 MR. BLALACK: Same position, Your Honor.

9 THE COURT: The objection is overruled. 266 will be
10 admitted.

11 [Plaintiffs' Exhibit 266 admitted into evidence]

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

13 THE COURT: You may.

14 BY MR. ZAVITSANOS:

15 Q Okay. So we were talking about competitive position, that's
16 the topic we are covering right now. And now, just in terms of number
17 of members and number of ASO clients, at this time, during the time
18 period we're talking about, United was the largest insurer in the country,
19 right?

20 A I would assume so.

21 Q Okay. So let's look at this 266. Now this is a -- this is the
22 business plan for ENI in 2019, done in 2018. Now let's --

23 MR. ZAVITSANOS: Michelle, go to the second page, please.

24 BY MR. ZAVITSANOS:

25 Q Now 2018, these programs that, again, we're going to cover

1 in a little more detail, were well underway at this point, right?

2 A Which program?

3 Q The ENRP, the Outlier Across Management, right? I mean
4 you had launched these programs by 2018.

5 A Yes.

6 Q Okay. And despite the fact that you were trying to manage
7 medical costs, it looks like --

8 MR. ZAVITSANOS: Michelle, can you highlight this part
9 here. Right here. Far right column, second -- no, not that one. Right
10 above it, Michelle. Yeah. Will -- if you can pull it out, please. Okay.

11 BY MR. ZAVITSANOS:

12 Q So in 2018, even though you were cutting reimbursements,
13 United was losing share in the ASO market. Clients were leaving, right?

14 A I don't know that for a fact. That's what that says.

15 Q Okay. And part of the reason were leave -- part of the reason
16 you were losing share is because customers started to complain about
17 how much money you were making on these programs, right?

18 A I have no idea why they were leaving.

19 Q You don't know whether you were getting pushback from
20 your ASO clients about the billions you were making on these
21 percentage reductions?

22 A I don't know if that was the reason they were leaving, but
23 they challenge us on -- sorry. They challenge us on the fees all the time.

24 Q Okay.

25 MR. ZAVITSANOS: Michelle, close that out.

1 BY MR. ZAVITSANOS:

2 Q And it looks like there was a comment.

3 MR. ZAVITSANOS: Michelle, will you please pull out -- can
4 you see me, Michelle? Here down to here, please.

5 BY MR. ZAVITSANOS:

6 Q Now during the opening, I thought I wrote something about
7 we can't afford it or something like that, that healthcare costs were out of
8 control, and we can't afford it. Do you remember hearing that?

9 A When was this?

10 Q During the opening statement.

11 A I didn't listen to the opening statement.

12 Q Well, it looks like your revenues are going up, right, by 2018,
13 right? 55 billion, right?

14 A Yeah. Dip in '17 and up in '18.

15 Q Okay. But here's the part I want to ask you about.

16 MR. ZAVITSANOS: Right here, Michelle. Highlight.

17 BY MR. ZAVITSANOS:

18 Q No other company is as uniquely positioned as we are to
19 make a real contribution to the transformation underway in healthcare.
20 Okay.

21 A I see that.

22 Q You were leading the way to how the insurance industry is
23 going to administer health insurance.

24 A I see what it says.

25 Q Yeah. And so, when you go to these meetings and MultiPlan

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1 and all of you are together, the leading in the room is United Healthcare,
2 right?

3 A In terms of out-of-network programs or just --

4 Q I'm just looking here about the transformation in healthcare.

5 A We are one of the largest, yes.

6 Q I'm talking about the transformation.

7 A Okay.

8 Q United was leading the way into the transformation going
9 from the way things were to where you wanted to go, right?

10 A That's what that says, yes.

11 Q And the transformation is going to lead to this, going from 55
12 billion to a projected 68 billion, right?

13 A Yes. That's what that says.

14 Q And that, Mr. Haben, that's good for the healthcare industry,
15 that transformation, right?

16 A I don't know if I can answer that.

17 MR. ZAVITSANOS: Pull that down, Michelle.

18 BY MR. ZAVITSANOS:

19 Q Let's talk about the public education now. Oh, please get
20 Exhibit 63.

21 A Which one?

22 Q 63. Now the five-year plan -- oh, by the way, I wrote this on
23 the board here. Let me just get this out of the way. We heard something
24 about a -- something called Data iSight in opening statement. Are you
25 familiar with that term?

1 A I am.

2 Q Data eyesight this tool -- so we're going to get to it in a little
3 bit -- is owned by MultiPlan, right?

4 A Yes. Yes.

5 Q So when we see Data iSight in the documents, that's
6 referring to MultiPlan, right?

7 A I would have to see how it's referenced, but yes.

8 Q And because we know United loves acronyms, Data iSight
9 sometimes appears as DIS, right?

10 A Healthcare likes acronyms, yes.

11 Q Yes. I've noticed that.

12 A Yes.

13 Q I've noticed that.

14 A Makes it easier and harder.

15 Q I've noticed that. Do you all have a class on teaching all the
16 acronyms?

17 A There is a book.

18 Q Okay. All right. So if the jurors go through these documents
19 and they see references to OON DIS, that's out-of-network using Data
20 iSight, right?

21 A I'd have to look at specifically --

22 Q Yeah, but that's generally -- DIS is Data iSight, right?

23 A Yes. Typically, yes.

24 Q Okay. All right. Now -- okay. Now let's move on and let's go
25 to the -- to this point. Now United decided, in 2014, that it was going to

1 transform healthcare, right, in the out-of-network setting, right?

2 A I don't think that was just out-of-network.

3 Q Among other things, right? So we're going to talk about
4 2014 to 2019. Is it true, Mr. Haben, that y'all attempted to -- that these
5 Instagrammers, y'all attempted to influence through a very carefully
6 planned strategy the public during this five-year period by using a
7 variety of tools designed to get out to the media, so that as you were
8 cutting rates, public sentiment would be on the side of the insurers who
9 were carrying the healthcare reform flag and not the doctors? Did y'all
10 do that?

11 A I would disagree with that characterization.

12 Q Okay.

13 A I can explain it if you want me.

14 Q Well, we're going to go through the documents and --

15 A Okay.

16 Q -- see what y'all did.

17 A Okay.

18 Q Okay. All right. So will you get Exhibit 63, please?

19 A Okay. Can I look at it?

20 Q Yes, sir. Please take your time and let me know when you're
21 ready.

22 MR. ZAVITSANOS: May I ask counsel if he has an objection
23 to it?

24 MR. BLALACK: No objection to Exhibit 63.

25 MR. ZAVITSANOS: Michelle, will you please put that up

1 while Mr. Haben is looking at?

2 THE COURT: Polite reminder. Somebody's phone is going
3 off. Thank you. Go ahead, please.

4 MR. ZAVITSANOS: 63, Michelle.

5 MR. BLALACK: We've got a deposition on the screen.

6 MR. ZAVITSANOS: I'm sorry, Your Honor. That was --
7 please take that down.

8 THE COURT: Did you have an objection?

9 MR. ZAVITSANOS: 63.

10 MR. BLALACK: No. I just want the right exhibit up.

11 THE COURT: Oh, 63.

12 MR. BLALACK: Correct. No objection to 63.

13 MR. ZAVITSANOS: That was my fault. With these masks, I
14 was not clear. My apologies.

15 THE COURT: 63 is admitted.

16 [Plaintiffs' Exhibit 63 admitted into evidence]

17 MR. ZAVITSANOS: Yes.

18 Michelle, are you good? Okay. Thank you. While Mr. Haben
19 is looking at it.

20 MR. ZAVITSANOS: Michelle, will you please pull out the title
21 from the date down to the title? Perfect. Okay.

22 BY MR. ZAVITSANOS:

23 Q Mr. Haben, let me know when you're ready, okay, sir?

24 A I'm ready.

25 Q Okay. So here we are in 2016. There's an earlier one than

1 this, but let's start here. Actually, hold on. Let's actually start at the
2 beginning. Let's go to Exhibit -- hold on.

3 MR. ZAVITSANOS: Michelle, take that down. Counsel, do
4 you have an objection to Exhibit 12?

5 MR. BLALACK: One moment. No objection.

6 THE COURT: All right. So Exhibit 12 will be admitted.

7 [Plaintiffs' Exhibit 12 admitted into evidence]

8 BY MR. ZAVITSANOS:

9 Q Let's start -- I'm going to try to do this in vague orders, so it's
10 not confusing.

11 A Can I take a quick peak as you're going?

12 Q Sure.

13 MR. ZAVITSANOS: Michelle, same thing. Michelle, while
14 Mr. Haben is reading it, pull out from the top down to the title, and let's
15 get the date in there. I need the date, Michelle, please. Oh, it's there.
16 Oh, okay.

17 THE WITNESS: Okay.

18 BY MR. ZAVITSANOS:

19 Q All right. Not for external distribution, right? This is another
20 one of these internal confidential documents. Right, sir?

21 A Yes, that's what that says.

22 Q Okay. And what this says it's the out-of-network billing
23 initiative. You see that?

24 A Yes, I do.

25 Q The initiative that began in 2014, right?

1 A That's the date of the document. Yes.

2 Q Okay. And so --

3 MR. ZAVITSANOS: Close that out, Michelle. Pull out
4 initiative overview. Down to number 4.

5 BY MR. ZAVITSANOS:

6 Q All right. United --

7 MR. ZAVITSANOS: Hold on, Michelle. Don't highlight
8 anything yet.

9 BY MR. ZAVITSANOS:

10 Q United Healthcare's individual members, number of
11 businesses and providers who agree to engage with us to provide in
12 network access to quality care have been harmed by physicians and
13 other healthcare professionals who choose not to participate in our
14 network and subsequently charge exorbitant and often ever increasing
15 fees. Typically, these providers fall into these categories. What's
16 number one, sir?

17 A You want me to read it?

18 Q Yeah. What's number one?

19 A Non-party emergency providers and facilities.

20 Q Yeah. Now what we know is there is a law called EMTALA.
21 Are you familiar with that?

22 A I am not. I'm sorry. Say it again.

23 Q EMTALA, E-M-T-A-L-A.

24 A I'm sorry. I thought you said impala. In general, yes.

25 Q Impala is a car and an animal --

1 A And an animal.

2 Q -- right? Okay. All right. So emergency room doctors,
3 they're a little bit of a different breed; would you agree?

4 MR. BLALACK: Objection. Vague.

5 THE WITNESS: I don't know if I can answer that.

6 MR. ZAVITSANOS: Let me rephrase.

7 THE COURT: Objection sustained.

8 MR. ZAVITSANOS: I'm going to rephrase, Your Honor. I'll
9 withdraw.

10 BY MR. ZAVITSANOS:

11 Q Emergency room doctors have to treat anybody and
12 everybody. They don't get a choice, right?

13 A I don't know the law. I believe that's the case.

14 Q Okay. And that separates them from every other doctor,
15 right? Other doctors, if you don't -- these urgent care centers, if you
16 don't have the money, you don't get treated, or dermatologists, or
17 pediatricists, or cardiologists, right?

18 A I believe so.

19 Q Yeah.

20 A I'm not sure.

21 Q And so, like uninsured people, they have to get treated under
22 this law, right, whether they can pay or not?

23 A I believe that's the case.

24 Q Okay. So there's some percentage -- and I don't want to get
25 into this -- but there's -- in any detail. But there's some percentage of

1 folks who don't have insurance that are still treated at the emergency
2 room, right?

3 A Yes.

4 Q Okay. Now you're targeting in this initiative or this -- yeah,
5 this initiative, the top group that you're targeting are emergency room
6 doctors, right?

7 A I wouldn't say it's a target, but number one is emergency
8 providers.

9 Q Now in 2014 --

10 MR. ZAVITSANOS: Close this out, Michelle. Now pull out
11 the next one, next paragraph.

12 BY MR. ZAVITSANOS:

13 Q And here's the thing.

14 MR. ZAVITSANOS: Pull out the next few paragraphs,
15 Michelle.

16 BY MR. ZAVITSANOS:

17 Q In 2014, remember we talked about the way the world was?
18 Ninety-five percent of your ASO plans use wrap network agreements,
19 where there was a prohibition on balance billing. Remember that?

20 A Yes.

21 Q So there was no balance billing problem when you were
22 running the usual customary and reasonable programs in these ASO --
23 for these ASO clients. The problem was you weren't getting the double
24 fee.

25 A The problem was the medical expense was very high.

1 Q Okay. Well, that wasn't my question, but let's move on.
2 Here you say because these providers, these out-of-network providers,
3 number one, emergency room doctors, have learned that insurers often
4 want to protect their members from being balance billed, they often act
5 with impunity. Now that's a strong word; would you agree?

6 A I believe so.

7 Q That means you don't care. The doctors don't care, right?

8 A It's the staffing companies that don't care.

9 Q Do the doctors care?

10 A I don't think the doctors understand what the staffing
11 companies are doing.

12 Q Ah, they're ignorant. The doctors are ignorant. They don't
13 know what companies like Team Health are doing. This guy here has no
14 idea, even though he's been with -- he's been with and employed, by the
15 way -- he's been there for a long time. He doesn't know what's going on.

16 A I don't --

17 Q That's what you're saying?

18 A I don't know who he is.

19 Q Okay. In any event, sir, what we know is, at this time when
20 you started this initiative, since most of these out-of-network people
21 were on wrap agreements there was not a chronic balance billing
22 problem. They might have isolated instances here and there, but there
23 was not a chronic problem. Because to be in a wrap agreement, you
24 can't balance bill, right?

25 A If they're a part of a wrap agreement, and under the contract

1 terms, they wouldn't balance bill.

2 Q Okay. Okay. Let's continue with this initiative.

3 MR. ZAVITSANOS: Let's look at the bottom, Michelle.

4 Media plan. All the way to the bottom.

5 BY MR. ZAVITSANOS:

6 Q So you're going to plant stories in the media around surprise
7 medical bills -- and here's my favorite word -- egregious, including
8 coverage of our own missteps in paying egregious bills, right?

9 A Yes, that's what that says.

10 Q This word egregious, what does it mean to you? What is --
11 what is the definition?

12 A Well above the market rate.

13 Q No, no, no, the word -- just what does the word mean in
14 English? Does it mean shockingly bad?

15 A I am not a dictionary; I could not tell you.

16 Q Well egregious means -- will you agree with me, it means
17 shockingly bad?

18 A To me in this context, it's a very high charged amount.

19 Q It's a serious accusation to level against someone, right?

20 A To what?

21 Q To level against someone.

22 A Or --

23 Q If they're engaging in egregious behavior.

24 A Or a medical bill, yes.

25 Q Okay. Now the plan was to use this word egregious so often

1 that people would start equating it with emergency room doctors. That
2 was the messaging, the influence y'all were trying to get out to the
3 world, so that you could then justify cutting the rates. That was the plan,
4 right?

5 A I disagree.

6 Q So I don't want to get into politics, but you've heard the
7 term -- whatever -- whether you're a Republican, an Independent, or a
8 Democrat, you've heard the term fake news?

9 A Unfortunately, yes.

10 Q Okay. And if you are a Democrat, you assign that to a certain
11 type of news organization. And if you're a Republic, you assign that to a
12 certain type of new organization.

13 MR. ROBERTS: Objection. Foundation and relevance.

14 THE COURT: Where are you going?

15 MR. ZAVITSANOS: The word egregious being equated with
16 emergency room doctors.

17 THE COURT: Overruled.

18 BY MR. ZAVITSANOS:

19 Q Right, sir?

20 A I don't know if I can answer that.

21 Q Well, that was the goal was just like fake news. Y'all were
22 going to use the word egregious, so that when you heard that word,
23 egregious bills, you would equate it with people like this, right?

24 A I disagree.

25 Q Well, let's take a look. So extensive media coverage of our

1 network changes over the past six months has sensitized the public,
2 including the media, to any further initiatives we may undergo to
3 increase quality and control costs, code, pay less, right? Right, sir?

4 A I don't know; I didn't write this.

5 Q Well, you believe in this; don't you? I mean you were part of
6 the initiative here. You told us yesterday the goals were to educate the
7 public. I mean you believe in this, right?

8 A Believe in what?

9 Q Believe in this initiative that your company undertook
10 beginning in 2014?

11 A I believe that there are very high medical expenses that
12 employer groups have asked us to address.

13 MR. ZAVITSANOS: Now I should have done this earlier
14 when I was trying to lay the foundation, but, counsel, will you look at
15 Exhibit 13 and tell me if you have any objection to this, please.

16 MR. ROBERTS: One moment.

17 MR. ZAVITSANOS: Yes.

18 MR. ROBERTS: No objection, Your Honor.

19 THE COURT: Exhibit 13 will be admitted.

20 [Plaintiffs' Exhibit 13 admitted into evidence]

21 BY MR. ZAVITSANOS:

22 Q Okay, now this memo, you said you didn't write it, sir; is that
23 right? Is that right, sir?

24 A I'm sorry, this --

25 Q The memo we were just --

1 MR. ZAVITSANOS: you can take that down, Michelle.

2 BY MR. ZAVITSANOS:

3 Q The memo we were just looking at, Exhibit 12, did you just
4 tell the jury you didn't write it?

5 A I don't believe I did.

6 Q Did you receive it?

7 A I believe I probably did.

8 Q So let's go to Exhibit 13, which is the cover email to this
9 memo.

10 MR. ZAVITSANOS: And let's pull up, Michelle, from here to
11 here. I'm sorry, Michelle, it goes in front. From here to here, please.
12 Yeah, perfect. Okay.

13 BY MR. ZAVITSANOS:

14 Q This is the cover email to the memo we were just looking at.
15 And what's the subject line? Can you read that out loud, please?

16 A That's regarding egregious biller reduction effort.

17 Q Okay. Now what this says is, this is the -- this is the cover
18 email and it's sent out by the Public Relations Director of United
19 Healthcare to many people, including you, right?

20 A Yes, I see that.

21 Q Okay. And what we have here, Mr. Haben, is attached for
22 your review is the media P.R. materials. Messaging may need to be
23 tempered for various audiences. Do you see that?

24 A I do.

25 Q `In other words, depending on who you're saying this to, we

1 might have to adjust it a little bit, right?

2 A I didn't write that, so I don't know what she's -- I don't know
3 what she's trying to put in context.

4 Q You don't understand what messaging may need to be
5 tempered for various audiences means, as the vice president of the Out-
6 of-network Programs, targeting emergency room doctors as number one
7 on the problem list? You don't know what that means?

8 A Again, I didn't write the email. You would have to ask Maria.

9 Q Okay. Fair enough. Let's go back to the memo, Exhibit 12,
10 and let's go to page 2. Up at the top.

11 MR. ZAVITSANOS: The top two bullets, Michelle.

12 BY MR. ZAVITSANOS:

13 Q And here are the objectives of the media plan. You want to
14 minimize reputational risk. In other words, we want to look good.
15 United, right? Right?

16 A We want to minimize our reputational risk.

17 Q Yeah. And you want to ensure that United Healthcare's e-
18 messages are included, and that United Healthcare is positioned
19 reasonably and fairly in coverage, right?

20 A Yes.

21 Q So let me make sure I understand. When it comes to United
22 Healthcare, it's okay to expect United Healthcare to be treated
23 reasonably, right? Right?

24 A I believe anybody should be treated reasonably, yes.

25 Q But when it comes to our doctors, who are asking for the

1 reasonable rate, you don't agree with that?

2 MR. ROBERTS: Objection. Foundation.

3 THE COURT: Overruled.

4 BY MR. ZAVITSANOS:

5 Q Right?

6 A I don't agree with what?

7 Q You're entitled to be treated reasonably, but he's not.

8 A That's not what I said.

9 Q But your position in this case is we should not get the usual,
10 customary and reasonable rate the way United Healthcare defines it.

11 Right, sir?

12 A That's different than the term reasonable.

13 Q Oh, reasonable doesn't mean reasonable.

14 A Reasonable means reasonable. Just because a word has the
15 word reasonable in it, or a program, doesn't make it -- deem it that way.

16 Q Just because a program says it's reasonable doesn't mean
17 it's reasonable?

18 A No, that -- our clients have complained about excessive
19 charges.

20 Q Please, sir. I'm going to get to what the clients were
21 complaining of. I'm going to get there in a minute.

22 A I can explain it if you want.

23 Q No, sir, I don't want you to explain. My question is, is it your
24 position to this jury that reasonable does not mean reasonable?

25 A My position to the jury on reasonable is what our clients

1 expect, and they expect us to treat providers reasonably. We have no
2 benefit to underpay a provider. They want providers in the network, and
3 they want --

4 MR. ZAVITSANOS: Objection, Your Honor, hearsay.

5 THE WITNESS: That is not hearsay.

6 THE COURT: You're going to have to disregard the last two
7 sentences of that answer, because you can't testify about what other
8 people wanted.

9 BY MR. ZAVITSANOS:

10 Q Mr. Haben, I'm going to ask you to do me a favor. Please do
11 not speak again about what some client told you, unless you can bring
12 them here and put them in that box.

13 THE COURT: No, that's my job.

14 MR. ROBERTS: Your Honor, I'm going to ask for no more
15 legal instructions, because it's --

16 THE COURT: Yeah, that's my job.

17 MR. ZAVITSANOS: I'm sorry.

18 THE COURT: Please disregard the last statement made by
19 Mr. Zavitsanos.

20 MR. ZAVITSANOS: Yes, Your Honor. My apologies. May I
21 proceed, Your Honor?

22 THE COURT: Yes.

23 BY MR. ZAVITSANOS:

24 Q Okay. Okay. Mr. Haben, let's continue with this media
25 message. And let's go to the next section, tactics. Right here.

1 MR. ZAVITSANOS: Michelle, will you pull up the tactics?

2 BY MR. ZAVITSANOS:

3 Q Tactics, they make you all look good and make the doctors
4 look like they're egregious billers is you're going to develop extensive
5 messaging, including media statement, general talking points, questions
6 and answers, and other materials to support our media and other
7 outreach efforts, right?

8 A That was a pretty long question. I don't agree with your
9 context in the beginning.

10 Q Okay. Let me -- let me ask it again without the context. Part
11 of the tactics included the first bullet point?

12 A Yes.

13 Q And you were going to craft pitch emails to select media
14 outlets for interviews on those things, right?

15 A That's what that says.

16 Q Identify -- now here's the one I wanted to ask you about.
17 Identify and prepare one or two key spokespersons to conduct proactive
18 media outreach. Do you see that?

19 A I do.

20 Q Remind me again how many children you have?

21 A I have two boys.

22 Q Are either of them in college?

23 A One is.

24 Q When your son was looking at schools, the schools he would
25 attend, did he look at those rankings. Like where schools are ranked?

1 A I don't believe he did.

2 Q Okay. Well, no doubt about it, Yale University is as high as it
3 gets, right?

4 A I don't know.

5 Q World class, five percent of the people get admitted.

6 A Okay.

7 Q Sterling reputation, right?

8 A I don't know.

9 MR. ROBERTS: Objection. Compound.

10 THE COURT: It is compound.

11 MR. ZAVITSANOS: Let me rephrase it.

12 BY MR. ZAVITSANOS:

13 Q Sterling reputation, right?

14 A I would believe so. I don't really know.

15 Q And what you all did, you went and bought a professor at
16 Yale, and together you crafted an article, and he became your
17 spokesperson --

18 MR. ROBERTS: Compound.

19 BY MR. ZAVITSANOS:

20 Q -- right?

21 MR. ROBERTS: Objection. Compound again, Your Honor.

22 THE COURT: Sustained.

23 MR. ZAVITSANOS: Let me rephrase.

24 BY MR. ZAVITSANOS:

25 Q You secured a professor from Yale University for a fee; right?

1 A I was not involved with that, so I don't know.

2 Q You weren't involved with that?

3 A I was not.

4 Q Did you get -- were you copied on the drafts of the Yale
5 report that was circulating in United?

6 A I don't believe I was copied on the drafts, no.

7 Q Was this gentleman, this professor at Yale, one of your
8 spokespersons about proactive media outreach?

9 A I don't know.

10 Q Do you know whether your CEO was on a first name basis
11 with him?

12 A I don't know.

13 Q Okay. Regularly review media coverage and other responses
14 to initiative to determine additional communication needs. Advertising.
15 Op-eds. Op-eds are opinion pieces that appear in the editorial section of
16 the newspaper, right?

17 A Yes.

18 Q For the media engagement, right, sir?

19 A Yes.

20 Q Okay. So this sounds pretty detailed, these tactics; would
21 you agree?

22 A I don't know. I'm not a communications person.

23 Q Next. Talking points.

24 MR. ZAVITSANOS: Next section, Michelle. Same document,
25 please, Michelle. It's Exhibit 25. I'm sorry, Michelle, my apologies.

1 Exhibit 12, page 2. And talking points at the bottom. Okay.

2 BY MR. ZAVITSANOS:

3 Q So I'm not going to go through the whole thing because it's
4 in evidence, but the second bullet point says some out-of-network -- now
5 it says some. Do you see that? Some. That's a less than all. Some is
6 less than all?

7 A Yes.

8 Q Some out-of-network physicians may bill excessive or
9 egregious, there's that word again, charges. Sometimes more than 500
10 percent Medicare. Do you see that?

11 A I do.

12 Q Now here's an interesting thing. There's two ways to look at
13 a bill charge. You can say how much of a reduction you're going to take
14 off of that bill charge, 5 percent, 10 percent, 80 percent, or you can take
15 that bill charge, and you can say how much of a multiplier of Medicare it
16 is, right?

17 A Yes.

18 Q Okay. And you would agree with me that 80 percent
19 reduction off of a bill charge sounds punitive?

20 A I disagree.

21 Q Eighty percent -- let me ask it differently. Eighty percent
22 reduction off of the billed charge sounds like a lot. A big reduction,
23 right?

24 A Yes, it's a big reduction.

25 Q 250 percent of Medicare sounds like a lot, right?