

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.

Electronically Filed  
Apr 18 2023 08:09 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 85525

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

Petitioners,

*vs.*

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

Respondents,

*vs.*

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

Real Parties in Interest.

Case No. 85656

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PAGES 8251-8500**

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325	Defendants' Reply in Support of Motion to Retax Costs	05/04/22	69	17,122–17,150
457	Defendants' Reply in Support of Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	01/05/22	126	31,259–31,308
37	Defendants' Reply in Support of Their Supplemental Brief in Support of Their Motions to Dismiss Plaintiff's First Amended Complaint	06/03/20	6	1340–1349
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225	Defendants’ Response to TeamHealth Plaintiffs’ Trial Brief Regarding Defendants’ Prompt Pay Act Jury Instruction Re: Failure to Exhaust Administrative Remedies	11/16/21	40	9799–9806
12	Defendants’ Statement of Removal	05/30/19	1	123–126
33	Defendants’ Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs’ First Amended Complaint Addressing Plaintiffs’ Eighth Claim for Relief	05/26/20	5	1173–1187
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481	Exhibits P473_NEW, 4002, 4003, 4005, 4006, 4166, 4168, 4455, 4457, 4774, and 5322 to “Appendix B to Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits” (Tabs 98, 106, 107, 108, 109, 111, 112, 113, 114, 118, and 119) (Filed Under Seal)	10/07/22	142	35,243–35,247
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326	Health Care Providers’ Reply in Support of Motion for Attorneys’ Fees	05/04/22	69	17,151–17,164
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167	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 28	6992–6997
168	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 29	6998–7000 7001–7003
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434	Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	12/13/21	111	27,401–27,495
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128	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 7 Regarding Defendants' Motion to Compel Responses to Defendants' Amended Third Set of Request for Production of Documents and Overruling Objection	09/16/21	19	4727–4747
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154	Notice of Entry of Order Denying Defendants' Motion for Order to Show Cause Why Plaintiffs Should not be Held in Contempt for Violating Protective Order	10/14/21	22	5309–5322
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173	Notice of Entry of Order Denying Defendants' Motion in Limine No. 3 to Allow Reference to Plaintiffs' Decision Making Processes Regarding Setting Billed Charges	11/01/21	29	7064–7075
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175	Notice of Entry of Order Denying Defendants' Motion in Limine No. 12, Paired with Motion in Limine No. 11, to Preclude Plaintiffs from Discussing Defendants' Approach to Reimbursement	11/01/21	29	7088–7099
176	Notice of Entry of Order Denying Defendants' Motion in Limine No. 5 Regarding Argument or Evidence that Amounts TeamHealth Plaintiffs Billed for Services are Reasonable [An Alternative Motion to Motion in Limine No. 6]	11/01/21	29	7100–7111
177	Notice of Entry of Order Denying Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	11/01/21	29	7112–7123
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181	Notice of Entry of Order Denying Defendants' Motion in Limine No. 13 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	11/01/21	29	7160–7171
182	Notice of Entry of Order Denying Defendants' Motion in Limine No. 14: Motion Offered in the Alternative MIL No. 13 to Preclude Plaintiffs from Contesting Defendants' Defenses Relating to Claims that were Subject to a Settlement Agreement Between CollectRx and Data iSight; and Defendants' Adoption of Specific Negotiation Thresholds for Reimbursement Claims Appealed or Contested by Plaintiffs	11/01/21	29	7172–7183
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185	Notice of Entry of Order Denying Defendants' Motion in Limine No. 20 to Exclude Defendants' Lobbying Efforts	11/01/21	29	7208–7219
186	Notice of Entry of Order Denying Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	11/01/21	29	7220–7231
187	Notice of Entry of Order Denying Defendants' Motion in Limine No. 27 to Preclude Evidence of Complaints Regarding Defendants' Out-Of-Network Rates or Payments	11/01/21	29	7232–7243
188	Notice of Entry of Order Denying Defendants' Motion in Limine No. 29 to Preclude Evidence Only Relating to Defendants' Evaluation and Development of a Company that Would Offer a Service Similar to Multiplan and Data iSight	11/01/21	29 30	7244–7250 7251–7255
189	Notice of Entry of Order Denying Defendants' Motion in Limine No. 32 to Exclude Evidence or Argument Relating to Materials, Events, or Conduct that Occurred on or After January 1, 2020	11/01/21	30	7256–7267
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293	Notice of Entry of Order Denying Defendants' Motion to Apply Statutory Cap on Punitive Damages	03/09/22	53	13,179–13,197
62	Notice of Entry of Order Denying Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on Order Shortening Time	10/27/20	11	2671–2683
78	Notice of Entry of Order Denying Defendants' Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	02/04/21	15	3703–3713
193	Notice of Entry of Order Denying Defendants' Motion to Strike Supplement Report of David Leathers	11/01/21	30	7355–7366
353	Notice of Entry of Order Denying Defendants' Renewed Motion for Judgment as a Matter of Law	10/12/22	73	18,087–18,114
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203	Notice of Entry of Order Granting Defendants' Motion in Limine No. 25	11/04/21	33	8104–8115
204	Notice of Entry of Order Granting Defendants' Motion in Limine No. 37	11/04/21	33	8116–8127
205	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 9	11/04/21	33	8128–8140
206	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 21	11/04/21	33	8141–8153
207	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 22	11/04/21	33	8154–8165
341	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Retax Costs	08/02/22	71	17,726–17,739
358	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits	10/18/22	75 76	18,609–18,750 18,751–18,755
215	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion in Limine to Exclude Evidence Subject to the	11/12/21	37	9162–9173

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242	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	11/19/21	44	10,954–10,963
192	Notice of Entry of Order Granting Plaintiffs' Motion in Limine to Exclude Evidence, Testimony And-Or Argument Regarding the Fact that Plaintiff have Dismissed Certain Claims	11/01/21	30	7292–7354
63	Notice of Entry of Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/27/20	11	2684–2695
335	Notice of Entry of Order Granting Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	06/29/22	71	17,594–17,609
281	Notice of Entry of Order Granting Plaintiffs' Proposed Schedule for Submission of Final Redactions	01/31/22	52	12,969–12,979
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102	Notice of Entry of Order of Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Question	05/26/21	17	4157–4165
22	Notice of Entry of Order Re: Remand	02/27/20	3	543–552
142	Notice of Entry of Order Regarding Defendants' Objection to Special Master's Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents about which Plaintiffs' Witnesses Testified on Order Shortening Time	09/29/21	21	5104–5114
66	Notice of Entry of Order Setting Defendants' Production & Response Schedule Re: Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	11/09/20	12	2775–2785
285	Notice of Entry of Order Shortening Time for Hearing Re: Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits	02/14/22	53	13,029–13,046
354	Notice of Entry of Order Unsealing Trial Transcripts and Restoring Public Access to Docket	10/12/22	73	18,115–18,125
86	Notice of Entry of Report and Recommendation #1	03/16/21	16	3887–3894
120	Notice of Entry of Report and Recommendation #11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs'	08/11/21	18	4487–4497

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95	Notice of Entry of Report and Recommendation #3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time	04/15/21	17	4080–4091
104	Notice of Entry of Report and Recommendation #7 Regarding Defendants' Motion to Compel Plaintiffs' Responses to Defendants' Amended Third Set of Requests for Production of Documents	06/03/21	17	4173–4184
41	Notice of Entry of Stipulated Confidentiality and Protective Order	06/24/20	7	1517–1540
69	Notice of Entry of Stipulated Electronically Stored Information Protocol Order	01/08/21	12	2860–2874
289	Notice of Entry of Stipulation and Order Regarding Certain Admitted Trial Exhibits	02/17/22	53	13,074–13,097
360	Notice of Entry of Stipulation and Order Regarding Expiration of Temporary Stay for Sealed Redacted Transcripts	10/25/22	76	18,759–18,769
282	Notice of Entry of Stipulation and Order Regarding Schedule for Submission of Redactions	02/08/22	52	12,980–12,996
111	Notice of Entry Report and Recommendations #9 Regarding Pending Motions	07/01/21	18	4313–4325

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361	Notice of Filing of Writ Petition	11/17/22	76	18,770–18855
24	Notice of Intent to Take Default as to: (1) Defendant UnitedHealth Group, Inc. on All Claims; and (2) All Defendants on the First Amended Complaint's Eighth Claim for Relief	03/13/20	3 4	699–750 751
324	Notice of Posting <i>Supersedeas</i> Bond	04/29/22	69	17,114–17,121
10	Notice of Removal to Federal Court	05/14/19	1	42–100
333	Notice of Supplemental Attorneys Fees Incurred After Submission of Health Care Providers' Motion for Attorneys Fees	06/24/22	70 71	17,470–17,500 17,501–17,578
291	Objection to Plaintiffs' Proposed Judgment and Order Denying Motion to Apply Statutory Cap on Punitive Damages	03/04/22	53	13,161–13,167
345	Objection to Plaintiffs' Proposed Orders Denying Renewed Motion for Judgment as a Matter of Law and Motion for New Trial	09/13/22	72	17,941–17,950
377	Objection to R&R #11 Regarding United's (Filed Under Seal) Motion to Compel Documents About Which Plaintiffs' Witnesses Testified (Filed Under Seal)	08/25/21	84 85	20,864–20,893 20,894–20,898
320	Opposition to Defendants' Motion to Retax Costs	04/13/22	68	16,856–16,864
153	Opposition to Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Regarding the Fact that Plaintiffs have Dismissed Certain Claims and Parties on Order Shortening Time	10/12/21	22	5301–5308



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415	Plaintiffs’ Combined Opposition to Defendants Motions in Limine 1, 7, 9, 11 & 13 (Filed Under Seal)	09/29/21	104	25,786–25,850
416	Plaintiffs’ Combined Opposition to Defendants’ Motions in Limine No. 2, 8, 10, 12 & 14 (Filed Under Seal)	09/29/21	104	25,851–25,868
145	Plaintiffs’ Motion for Leave to File Second Amended Complaint on Order Shortening Time	10/04/21	21	5170–5201
422	Plaintiffs’ Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants’ Reply in Support of Motion for Partial Summary Judgment (Filed Under Seal)	10/17/21	108	26,664–26,673
378	Plaintiffs’ Motion in Limine to Exclude Evidence Subject to the Court’s Discovery Orders (Filed Under Seal)	09/21/21	85	20,899–20,916
380	Plaintiffs’ Motion in Limine to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges (Filed Under Seal)	09/21/21	85	21,077–21,089
149	Plaintiffs’ Motion in Limine to Exclude Evidence, Testimony and-or Argument	10/08/21	22	5265–5279

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363	Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time (Filed Under Seal)	09/28/20	78	19,144–19,156
49	Plaintiffs' Motion to Compel Defendants' Production of Claims File for At-Issue Claims, or, in the Alternative, Motion in Limine on Order Shortening Time	08/28/20	7 8	1685–1700 1701–1845
250	Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,594–11,608
194	Plaintiffs' Notice of Amended Exhibit List	11/01/21	30	7367–7392
208	Plaintiffs' Notice of Deposition Designations	11/04/21	33 34	8166–8250 8251–8342
152	Plaintiffs' Objections to Defendants' Pretrial Disclosures	10/08/21	22	5295–5300
328	Plaintiffs' Opposition to Defendants' Motion for New Trial	05/04/22	69 70	17,179–17,250 17,251–17,335
420	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment (Filed Under Seal)	10/05/21	107	26,498–26,605
327	Plaintiffs' Opposition to Defendants' Motion for Remittitur and to Alter or Amend the Judgment	05/04/22	69	17,165–17,178
144	Plaintiffs' Opposition to Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	09/29/21	21	5155–5169
143	Plaintiffs' Opposition to Defendants' Motion	09/29/21	21	5115–5154

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279	Plaintiffs' Opposition to Defendants' Motion to Apply Statutory Cap on Punitive Damages and Plaintiffs' Cross Motion for Entry of Judgment	01/20/22	52	12,773–12,790
374	Plaintiffs' Opposition to Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time (Filed Under Seal)	07/06/21	84	20,699–20,742
25	Plaintiffs' Opposition to Defendants' Motion to Dismiss	03/26/20	4	752–783
34	Plaintiffs' Opposition to Defendants' Motion to Dismiss First Amended Complaint	05/29/20	5 6	1188–1250 1251–1293
349	Plaintiffs' Opposition to Defendants' Motion to Redact Portions of Trial Transcript	10/07/22	72	17,990–17,993
278	Plaintiffs' Opposition to Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing	01/12/22	52	12,769–12,772
369	Plaintiffs' Opposition to Defendants' Motion to Supplement the Record Supporting Objections to Reports and Recommendations #2 and #3 on Order Shortening Time (Filed Under Seal)	06/01/21	81 82	20,066–20,143 20,144–20,151
329	Plaintiffs' Opposition to Defendants' Renewed Motion for Judgment as a Matter of Law	05/05/22	70	17,336–17,373
317	Plaintiffs' Opposition to Defendants' Rule 62(b) Motion for Stay	04/07/22	68	16,826–16,831
35	Plaintiffs' Opposition to Defendants' Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended	05/29/20	6	1294–1309

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55	Plaintiffs' Opposition to Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	09/29/20	9-10	2224–2292
72	Plaintiffs' Opposition to Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/12/21	14	3420–3438
122	Plaintiffs' Opposition to United's Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt and Sanctioned for Allegedly Violating Protective Order	08/24/21	19	4528–4609
270	Plaintiffs' Opposition to United's Motion to Seal	12/29/21	50	12,323–12,341
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260	Plaintiffs' Proposed Second Phase Jury Instructions and Verdict Form	12/06/21	49	12,064–12,072
243	Plaintiffs' Proposed Special Verdict Form	11/19/21	44	10,964–10,973
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366	Plaintiffs' Response to Defendants Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order (Filed Under Seal)	04/19/21	78 79	19,389–19,393 19,394–19,532
195	Plaintiffs' Response to Defendants' Objection to Media Requests	11/01/21	30	7393–7403
371	Plaintiffs' Response to Defendants' Objection to Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions (Filed Under Seal)	06/16/21	82	20,212–20,265
376	Plaintiffs' Response to Defendants' Objection to Special Master Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Questions (Filed Under Seal)	07/22/21	84	20,751–20,863
110	Plaintiffs' Response to Defendants' Objection to Special Master's Report and Recommendation #7 Regarding Defendants' Motion to Compel Responses to Amended	06/24/21	18	4281–4312

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426	Plaintiffs' Response to Defendants' Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties (Filed Under Seal)	11/08/21	109	26,965–26,997
246	Plaintiffs' Second Supplemental Jury Instructions (Contested)	11/20/21	46	11,255–11,261
261	Plaintiffs' Supplement to Proposed Second Phase Jury Instructions	12/06/21	49	12,072–12,077
236	Plaintiffs' Supplemental Jury Instruction (Contested)	11/17/21	42	10,308–10,313
248	Plaintiffs' Third Supplemental Jury Instructions (Contested)	11/21/21	46	11,267–11,272
216	Plaintiffs' Trial Brief Regarding Defendants' Prompt Payment Act Jury Instruction Re: Failure to Exhaust Administrative Remedies	11/12/21	37	9174–9184
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229	Reply in Support of Trial Brief Regarding Evidence and Argument Relating to Out-Of-State Harms to Non-Parties	11/16/21	41	10,116–10,152
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440	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 2 of 18 (Filed Under Seal)	12/24/21	114 115	28,291–28,393 28,394–28,484
441	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 3 of 18 (Filed Under Seal)	12/24/21	115 116	28,485–28,643 28,644–28,742
442	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 4 of 18 (Filed Under Seal)	12/24/21	116 117	28,743–28,893 28,894–28,938
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452	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 14 of 18 (Filed Under Seal)	12/24/21	123 124	30,517–30,643 30,644–30,677
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454	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 16 of 18 (Filed Under Seal)	12/24/21	124 125	30,836–30,893 30,894–30,952
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232	Trial Brief Regarding Jury Instructions on Formation of an Implied-In-Fact Contract	11/16/21	41	10,198–10,231
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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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## Marty Millerliele – May 27, 2021 Deposition

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**Alexander Mizenko – September 20, 2021 Deposition**

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12:19	12:25		178:17-185:3	179:7-17; L (50.115); 179:23- 180:2 L (50.115); 183:10- 184:18-L (50.115)	
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21:22	22:5	Lack of foundation, relevance, vague and ambiguous			
22:9	22:25	Lack of foundation, relevance, vague and ambiguous			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAS COUNTER- COUNTERS
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26:11	26:21				
26:25	26:25				
27:6	28:6				
31:15	31:25				
32:22	33:3				
33:14	34:4				
43:16 ("...did" )	43:20				
44:5	44:8				
45:18	45:25	Relevance, privilege			
46:7	46:25				
47:2	47:13				
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48:14	49:5	Lack of foundation			
50:3	50:17	Lack of foundation			
50:21	51:10	Lack of foundation			
51:14	52:4	Lack of foundation			
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54:17	55:9	Lack of foundation			
55:13	57:17	Lack of foundation, vague and ambiguous			
57:21	58:10	Lack of foundation			
59:3	59:25	Lack of foundation, vague and ambiguous			

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62:3	62:17	Lack of foundation, vague and ambiguous			
62:21	63:25	Lack of foundation, vague and ambiguous			
64:3	64:16	Lack of foundation			
64:20	65:4	Lack of foundation, vague and ambiguous			
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67:18	67:22				
67:24	67:24				
68:23	70:3				
71:17	71:22	Lack of foundation, calls for speculation			
71:25	72:6	Lack of foundation, calls for speculation			
72:9	72:15	Lack of foundation, calls for speculation			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAS COUNTER- COUNTERS
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73:9	73:12	Asked and answered			
73:16	74:12	Asked and answered, Lack of foundation, calls for speculation			
74:15	75:19	Lack of foundation			
75:24	75:25	Lack of foundation			
76:19 ("...you are")	77:5				
80:4	81:15				
81:19	82:3	Asked and answered			
82:7	82:7	Asked and answered			
82:12	83:12				
86:23	87:5				
107:19 ("...whe n Fair Health")	109:18				
113:18	113:21	Lack of foundation, vague and ambiguous			
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133:2	133:16	Lack of foundation,			

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153:19	153:24	Lack of foundation, vague and ambiguous			
154:4	154:21	Lack of foundation, vague and ambiguous			
155:2	155:5	Lack of foundation, vague and ambiguous			
158:14	158:19	Lack of foundation, vague and ambiguous			
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161:5 ("...you mention ed...")	162:20				
164:10	164:17	Lack of foundation, vague and ambiguous			
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175:18	175:20	Lack of foundation, vague and ambiguous, calls for speculation			
175:22	176:12	Lack of foundation, vague and ambiguous, calls for speculation, argumentative, asked and answered			
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177:17	177:22	Lack of foundation, vague and			

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**Susan Mohler – June 18, 2021 Deposition**

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23:13	24:12	Relevance, prejudice outweighs probative, foundation, authentication, hearsay	25:1-14		
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115:16	115:25	Calls for a legal conclusion, foundation, relevance	266:10-19		
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226:22	227:3	Relevance			
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26:8 (“...So you’re...”)	28:15
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38:18 (“...At some”)	38:21
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39:8 (“...after that time”)	40:5
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40:18 (“...Do you”)	40:21
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72:24	73:3
73:5	73:16
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96:21	97:5
97:18	98:2
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126:25	128:1
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131:16	132:14
132:17	132:19
134:6	135:17
135:20	136:1
136:3	137:24
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141:22	142:3
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**Rebecca Paradise – May 18, 2021 Deposition**

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35:11	37:10
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59:23	60:2
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61:9	61:11
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113:11	114:1
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125:1	125:2
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139:10	139:21

**Daniel Rosenthal – March 23, 2021 Deposition**

BEGIN PAGE/LINE	END PAGE/LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAS COUNTER-COUNTERS
9:21	10:6		8:19-21	47.120 (need to include 21:2-4)	
12:5 ("You . . .")	12:20		20:24-21:1	47.120 (need to include 22:3-4)	
20:13	20:23		21:11-22:2		
36:4	36:24	Relevance, prejudice outweighs probative	22:5-10	48.025	



BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAS COUNTER- COUNTERS
37:17	37:23 ("... Yeah.")		36:25-37:16		
37:25	38:23	Relevance, prejudice outweighs probative	51:4-9	47.120 (need to include 85:7-8)	
38:25	39:4	Relevance, prejudice outweighs probative	84:18-85:6		
39:18	40:1	Foundation, relevance, prejudice outweighs probative	100:19-21	47.120 (need to include 102:23-25)	
40:5	40:5		102:2-22	48.025; 48.035; MIL on Negotiations	
40:8	40:12	Foundation, relevance, prejudice outweighs probative	109:9-13	47.120 (need to include 11:9-14).	
40:15	41:7	Foundation, relevance, prejudice outweighs probative	111:4-8	48.025; 48.035; MIL on Negotiations	
41.14	42:8	Foundation, relevance, prejudice outweighs probative	112:16-113:5	48.025; 48.035; MIL on Negotiations	
43:3 ("Can . . .")	43:12	Foundation, relevance, prejudice outweighs probative	115:14-20		

BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAS COUNTER- COUNTERS
44:19	44:24	Foundation, hearsay, relevance, prejudice outweighs probative	119:2-11		
45:14	46:11	Foundation, hearsay, relevance, prejudice outweighs probative	119:13-15		
46:13	46:21	Relevance	119:18-120:1	48.025; 48.035	
49:12	51:3	Relevance, prejudice outweighs probative	124:10-24	48.025; 48.035; MIL on Negotiations	
51:19	52:2	Relevance, prejudice outweighs probative	127:22-128:5	48.025; 48.105; MIL Negotiations	
53:8	53:9	Relevance, prejudice outweighs probative	130:5-10	48.025; 48.035; MIL on Negotiations	
53:11	54:14	Relevance, prejudice outweighs probative	130:22-131:6	48.025; 48.035; MIL on Negotiations	
54:18	55:11	Relevance, prejudice outweighs probative	136:9-15	48.025; 48.035; MIL on Negotiations	
55:20	56:3	Relevance, prejudice outweighs probative	138:25-139:2	48.025; 48.035; MIL on Negotiations	
56:16	57:4	Foundation, relevance, prejudice outweighs probative	139:9-15	48.025; 48.035; MIL on Negotiations	

BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAS COUNTER- COUNTERS
57:12	57:17	Foundation, relevance, prejudice outweighs probative	144:15-145:14	48.025	
58:1	58:14	Relevance, prejudice outweighs probative	151:20-152:2		
58:19	59:1	Foundation, relevance, prejudice outweighs probative	227:3-8		
59:20	60:10	Foundation, relevance, prejudice outweighs probative	238:14-16	48.025; 48.035; MIL on Negotiations	
60:15	60:22	Relevance, prejudice outweighs probative	254:2-11		
62:3	62:11				
63:5	63:8	Foundation, prejudice outweighs probative			
63:10	63:13	Foundation			
64:2	64:14	Foundation			
64:24	65:14	Foundation, prejudice outweighs probative			
65:17	65:22	Foundation			
66:12	66:23	Foundation			
67:3	67:7	Foundation, cumulative			
67:10	67:21				
67:24	68:5				
70:15	70:18	Relevance, prejudice			

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		outweighs probative			
70:20	71:9	Relevance, prejudice outweighs probative			
76:16	76:19				
77:12	77:25	Foundation, relevance, prejudice outweighs probative			
78:2	78:14	Foundation, relevance, prejudice outweighs probative			
78:21	78:25	Foundation, relevance, prejudice outweighs probative			
79:20	79:25	Foundation, relevance, prejudice outweighs probative			
82:5	82:10	Foundation, relevance, prejudice outweighs probative			
83:17	84:4	Foundation, relevance, prejudice outweighs probative			
85:17	87:5	Foundation, relevance, prejudice outweighs probative, incomplete designation			

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89:16	89:24	Foundation, relevance, prejudice outweighs probative			
90:4	90:4				
90:8	90:18	Relevance, prejudice outweighs probative			
90:21	91:7	Relevance, prejudice outweighs probative			
91:19	91:20	Relevance, prejudice outweighs probative			
95:11	95:19	Foundation, relevance, prejudice outweighs probative			
96:14	97:3	Foundation, relevance, prejudice outweighs probative			
97:9	98:1	Foundation, relevance, prejudice outweighs probative			
98:9	99:16	Foundation, relevance, prejudice outweighs probative			

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100:2	100:9	Foundation, relevance, prejudice outweighs probative, calls for speculation			
100:13	100:15	Foundation, relevance, prejudice outweighs probative, calls for speculation			
100:22	100:25				
101:6	101:9	Foundation, relevance, prejudice outweighs probative			
101:12	101:14	Foundation, relevance, prejudice outweighs probative, assumes facts not in evidence			
101:17	101:17				
103:1	103:19	Foundation, relevance, prejudice outweighs probative, asked and answered			
104:1	104:3	Foundation, relevance, prejudice outweighs probative, asked and answered			
104:7	104:8				
105:11	105:14	Foundation, relevance, prejudice			

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		outweighs probative, calls for speculation			
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106:9	106:15	Foundation, relevance, prejudice outweighs probative			
111:15	112:4	Foundation, relevance			
112:7	112:15	Foundation, relevance			
118:23	119:1				
120:3	120:4	Vague			
120:6	120:6				
120:9	121:23	Foundation, relevance, prejudice outweighs probative			
128:6	128:11	Foundation, asked and answered			
128:15	129:7	Foundation, asked and answered			
129:12	129:13	Calls for speculation			
129:18	129:24				
130:1	130:4				
131:23	132:15				
135:6	135:9	Foundation			
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149:17	150:10				
151:3	151:9				
153:5	153:16	Foundation, relevance, prejudice outweighs probative			
153:18	153:21	Foundation, relevance, prejudice outweighs probative			
154:7	154:14	Foundation			
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158:4	159:19	Relevance			
162:3	163:5				
168:18	169:2	Foundation, relevance			
170:2	171:1	Foundation, relevance, prejudice outweighs probative			
171:5	171:14	Foundation, relevance, prejudice outweighs probative			
171:17	172:11	Foundation, relevance			



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172:22	174:6	Foundation, relevance, prejudice outweighs probative			
174:10	175:9	Foundation, relevance, prejudice outweighs probative			
175:12	175:13	Foundation, vague and ambiguous			
175:22	176:10				
178:17	178:25	Foundation, relevance, prejudice outweighs probative			
180:12	180:16	Relevance			
180:21	180:24	Relevance			
181:3	181:22	Foundation, relevance			
182:5	182:6				
182:12	183:3	Foundation, relevance			
183:5	183:6	Foundation, relevance			
184:16	185:7	Foundation, relevance, prejudice outweighs probative			
185:11	185:21	Foundation, relevance, prejudice outweighs probative			
185:24	186:24	Foundation, relevance, prejudice outweighs probative			

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187:17	189:20	Foundation, relevance, prejudice outweighs probative			
190:2	192:13	Foundation, relevance, prejudice outweighs probative			
192:21	193:4	Foundation, relevance, prejudice outweighs probative			
193:6	195:13	Foundation, relevance, prejudice outweighs probative			
195:15	195:16	Foundation, relevance			
196:21	197:15	Foundation, relevance, prejudice outweighs probative			
197:19	198:2	Foundation, relevance, prejudice outweighs probative			
198:4	198:23	Foundation, relevance, prejudice outweighs probative			
202:7	202:14	Foundation, relevance,			

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		prejudice outweighs probative			
202:16	203:1	Foundation, relevance, prejudice outweighs probative, vague and ambiguous			
203:3	203:4				
203:20	204:5	Foundation, relevance, prejudice outweighs probative			
204:20	205:15	Foundation, relevance, prejudice outweighs probative			
205:18	206:7	Foundation, relevance, prejudice outweighs probative			
206:14	206:17	Foundation, relevance, prejudice outweighs probative			
207:10	207:15	Foundation			
207:21	207:22	Foundation			
207:24	208:2	Foundation			
209:20	209:24				
211:3	211:8	Foundation, relevance, prejudice outweighs probative			
211:21	212:2	Foundation, relevance, prejudice			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAS COUNTER- COUNTERS
		outweighs probative			
212:5	213:7	Foundation, relevance, prejudice outweighs probative			
213:10	213:14	Foundation, relevance, prejudice outweighs probative			
214:14	214:20	Foundation, relevance, prejudice outweighs probative			
215:1	215:2 ("... I")	Foundation, relevance, prejudice outweighs probative			
219:11	221:13	Foundation, relevance, prejudice outweighs probative, vague and ambiguous			
221:17	221:18	Foundation, relevance			
224:14	225:1	Foundation, relevance, prejudice outweighs probative			
225:3	225:4				
226:18	227:1	Foundation			
232:5	232:15	Foundation, relevance			
232:23	234:5	Foundation, relevance, prejudice			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAS COUNTER- COUNTERS
		outweighs probative			
234:7	234:25	Foundation, relevance, prejudice outweighs probative			
238:1	238:6	Foundation, relevance, prejudice outweighs probative			
238:17	239:12				
240:5	240:11	Foundation, relevance, prejudice outweighs probative			
240:19	242:11	Foundation, relevance, prejudice outweighs probative			
242:13	242:16	Foundation, relevance, prejudice outweighs probative			
243:4	243:7	Foundation, relevance			
243:13	243:18	Foundation, relevance, prejudice outweighs probative			
243:25	244:5	Foundation, relevance, prejudice outweighs probative			
244:20	244:24	Foundation, relevance, prejudice outweighs			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAS COUNTER- COUNTERS
		probative, calls for speculation			
245:3	245:16	Foundation, relevance, prejudice outweighs probative, calls for speculation			
245:19	245:24				
248:6	248:19	Foundation, relevance, prejudice outweighs probative			
248:22	248:23				
249:14	249:17	Foundation, relevance, prejudice outweighs probative			
250:21	252:6	Foundation, relevance, prejudice outweighs probative			
252:8	252:16	Foundation, relevance, prejudice outweighs probative			
255:2	256:9	Foundation, relevance, prejudice outweighs probative, mischaracteriz es the document			
256:13	257:25	Foundation, relevance			
260:13	260:19	Foundation, relevance, prejudice			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAS COUNTER- COUNTERS
		outweighs probative			
260:22	260:23				
260:25	261:6	Foundation, relevance, prejudice outweighs probative			
261:10	261:11	Foundation, relevance, prejudice outweighs probative			
261:14	261:17	Foundation, relevance, prejudice outweighs probative			
261:19	261:19				
262:8	262:16	Foundation, relevance, prejudice outweighs probative			
262:19	262:20				
262:22	262:24	Foundation, relevance, prejudice outweighs probative			
263:2	263:12	Foundation, relevance, prejudice outweighs probative			
264:25	265:3	Foundation, relevance, prejudice outweighs probative			
265:5	265:9	Foundation, relevance, prejudice			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAS COUNTER- COUNTERS
		outweighs probative			
270:10	270:12				
270:22	270:24	Foundation, calls for speculation			
271:3	271:6	Foundation, calls for speculation			
271:9	271:9	Foundation, calls for speculation			
272:8	272:10	Foundation, calls for speculation			
272:14	272:15				
272:19	272:22	Foundation, relevance, prejudice outweighs probative, calls for speculation			
272:25	273:6	Foundation, relevance, prejudice outweighs probative			
273:8	273:12	Foundation, relevance, prejudice outweighs probative, calls for speculation			
273:16	273:17	Foundation, relevance, prejudice outweighs probative, calls for speculation			
274:4	274:16	Foundation, relevance, prejudice outweighs			



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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAS COUNTER- COUNTERS
		probative, calls for speculation			
274:20	274:21	Foundation, relevance, prejudice outweighs probative			
280:25	281:7	Foundation, relevance			
282:20	282:24	Foundation, relevance, prejudice outweighs probative			
283:10	283:18	Foundation, relevance, prejudice outweighs probative			
284:2	284:2				
284:7	284:18	Foundation, relevance, prejudice outweighs probative, assumes facts not in evidence			
284:21	284:24	Foundation, relevance, prejudice outweighs probative, assumes facts not in evidence			
285:7	285:16	Foundation, relevance, prejudice outweighs probative			
285:18	285:19				
286:4	286:15	Foundation, relevance, prejudice			

BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAS COUNTER- COUNTERS
		outweighs probative			
291:6	291:9	Foundation, relevance			
291:21	292:20	Foundation, relevance			
293:12	293:14	Relevance			
296:22	297:3	Foundation, relevance			
297:8	297:13	Foundation, relevance			
307:10	307:13	Relevance, prejudice outweighs probative			
307:16	307:22	Foundation, relevance			
307:25	308:9	Relevance, prejudice outweighs probative			
308:17	308:22	Relevance, prejudice outweighs probative			
308:24	309:2	Relevance, prejudice outweighs probative			
309:7	309:7	Relevance, prejudice outweighs probative			

## Michael Schill – June 11, 2021 Deposition

BEGIN PAGE/ LINE	END PAGE/ LINE	DEFENDANTS COUNTER DESIGNATIONS	DEFENDANT'S OBJECTION	PLAINTIFFS COUNTER- COUNTER DESIGNATIONS
11:9	11:12	11:1-11:5		
13:11	13:15			
14:12	14:17			
14:22	15:7			
16:13	16:17			
19:1	20:1			
21:4	21:7			
21:25	22:9			
22:12	22:18			
22:22	22:25			
23:7	23:24			
24:2 ("...It says")	24:8			
25:5	25:9	25:22-26:9		
25:16	25:21			
26:11	26:20			
26:22	26:25		Compound, Assumes facts not in evidence	
27:2	27:6			
27:9	27:17			
27:19	28:7		Compound	
28:10	28:12			
28:15	29:15		Compound	
29:18	29:20			
30:7	30:12	30:1-30:5		
30:18	30:19	30:13-30:16	Vague and ambiguous	
30:22	31:5			
31:9 ("...But. ")	31:11			
31:20	31:24			
32:14	33:5		Relevance	
33:8	33:10			
33:13	33:15			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFENDANTS COUNTER DESIGNATIONS	DEFENDANT'S OBJECTION	PLAINTIFFS COUNTER- COUNTER DESIGNATIONS
33:17	33:19		Calls for speculation	
33:22	33:23			
34:21	35:3		Vague and ambiguous	
35:7	35:12			
35:14	35:19			
36:4	36:5 ("proce dures on a code.")	36:5-36:6		
36:6 ("...eac h line would")	36:12	36:12		
36:14	36:23		Vague and ambiguous	
37:1	37:2			
37:4	37:14			
38:6	38:9		Calls for speculation	
38:12	38:13			
38:15	38:17		Calls for speculation	
38:20	39:25		Relevance; Lacks foundation	
40:4	40:10			
45:3	46:5		Relevance	
46:11	46:12			
46:15	46:25			
47:18	47:23			
51:22	52:6			
52:18	52:25			
54:5	54:13		MIL 30, Vague and ambiguous	
54:16	54:18		MIL 30	
55:15	55:23			
56:25	58:7		Vague and ambiguous, Lacks foundation	
58:12	58:12			
61:10	61:14		Vague and ambiguous, Lacks foundation	
61:24	62:1			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFENDANTS COUNTER DESIGNATIONS	DEFENDANT'S OBJECTION	PLAINTIFFS COUNTER- COUNTER DESIGNATIONS
62:3	62:10			
63:20	63:24			
65:2	65:16		MIL 30	
67:22	68:7	68:17-69:4		
69:14	69:18			
69:22	69:24		Vague and ambiguous	
70:4	70:7		Vague and ambiguous	
70:9	70:10			
70:24	71:11		Vague and ambiguous	
71:14	71:16			
71:18	71:20			
72:4	72:5			
72:7	72:11	75:23-76:5		
76:6	76:10			
76:23	76:25		Vague and ambiguous	
77:3	77:8		Vague and ambiguous	
80:8	80:11			
80:23	80:24		Vague and ambiguous	
81:2	81:3			
81:5	81:12			
81:14	82:6			
84:18	85:9			
85:11	85:13			
85:25	86:14			
86:16	86:17		Lacks foundation, Asked and answered	
86:21	86:22			
86:24	86:25		Lacks foundation	
87:3	87:4			
87:6	87:7		Relevance, Lacks foundation	
87:10	87:11			
90:16	90:19			
92:2	92:14			
92:16	92:21			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFENDANTS COUNTER DESIGNATIONS	DEFENDANT'S OBJECTION	PLAINTIFFS COUNTER- COUNTER DESIGNATIONS
93:20	94:7			
94:24	95:7		Cumulative	
102:5	102:6		Vague and ambiguous, Lacks foundation	
102:11	102:13			
102:15	102:17		Mischaracterizes testimony	
102:24	103:1			
103:4	103:15			
104:12	104:16			
104:18	104:23			
105:18	105:24		Lacks foundation	
106:7	106:19		Lacks foundation	
106:22	106:23			
107:1	107:2		Lacks foundation	
107:8	107:9		Lacks foundation	
107:11	107:12			
110:25	111:9			
111:12	111:14			
111:18	111:25			
112:3	112:9			
126:25	127:2	126:18-126:23	Lacks foundation	
127:5	127:7	127:9-127:25		
133:4	133:14		Lacks foundation	
133:17	133:19			
133:21	133:22		Lacks foundation	
133:25	133:25			
135:7	135:20			
135:22	136:4			
143:4	143:5			
143:18	144:10		Lacks foundation	
144:13	144:18			
145:5	145:6		Lacks foundation	
145:9	145:19		Lacks foundation	
145:22	145:24			
146:3	146:4		Lacks foundation	

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFENDANTS COUNTER DESIGNATIONS	DEFENDANT'S OBJECTION	PLAINTIFFS COUNTER- COUNTER DESIGNATIONS
146:8	146:9			
158:7	158:14		Lacks foundation	
158:18	158:19			
159:10	158:13			
160:2	160:17		Lacks foundation	
160:21	160:23			
160:25	161:6			
162:19	163:3			
163:13	164:12		Lacks foundation	
164:15	164:17			
175:20	176:23		Lacks foundation	
177:1	177:2			
182:25	183:20			
186:11	186:14			
203:6	203:13		Lacks foundation	
203:16	203:19			
204:5	204:7			
208:10	208:13		Lacks foundation	
208:16	208:21			
223:3 ("...But ")	223:5		Asked and answered, Lacks foundation	
223:9	223:15			
223:17	224:3		Lacks foundation	
224:6	224:8			
224:10	224:11		Vague and ambiguous	
224:14	224:16			
224:19	224:21		Lacks foundation	
224:25	224:25		Incomplete designation	
228:7	228:13	228:15-229:9		
229:10	229:16			
		230:6-230:9		
		230:12		
		230:14-230:16		
		230:19		

BEGIN PAGE/ LINE	END PAGE/ LINE	DEFENDANTS COUNTER DESIGNATIONS	DEFENDANT'S OBJECTION	PLAINTIFFS COUNTER- COUNTER DESIGNATIONS
		230:21-230:23		
		231:1-231:7		
		231:9		
		231:25-232:9		
		232:21-232:22		
		232:25-233:25		
		235:20-235:23		
		236:2-236:10		
		236:12		
		241:10-241:11		
		241:14-241:21		
		241:25-242:2		
		242:16-242:20		
		242:24-243:4		
		244:4-24:7		
		244:10-244:11		
		246:16-246:19		
		246:23-247:4		
		249:8-249:11		
		249:15-249:21		

**Jason Schooner – May 20, 2021 Deposition**

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30:14	30:20
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31:18	31:22



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40:1	40:5
40:21	41:1
41:2	41:8
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43:11	43:22
45:10	46:21
48:2	48:11
49:20	50:13
50:16	50:17
51:4	51:19
52:9	52:12
53:6	54:1
54:6	55:3
55:18	56:1
56:10	56:16
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115:17	115:18
115:20	115:25
118:6	118:10
118:12	118:17
129:14	131:11
131:21	132:4
132:6	132:25
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144:1	144:21
145:11	146:22
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148:20	149:15
149:20	150:9
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150:14	150:16
151:1	151:10

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153:10	157:19
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160:22	160:25
162:24	165:25
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166:9	166:11
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166:16	166:22
167:3	167:18
167:21	170:16
170:22	171:2
171:9	171:9
171:11	172:6
172:8	172:8
172:17	172:23
173:1	173:1
173:3	173:7
173:10	173:10
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174:1	174:2
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175:1	175:1
176:3	177:5
177:8	177:10
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## Daniel Schumacher – May 26, 2021 Deposition

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8:10	8:17		8:6-9		
8:21	9:23	Relevance	22:20-24		
13:24	14:3		30:4-8	48.025; MIL on Negotiations	
15:19	16:22	Relevance	37:3-6		
22:10	22:19		37:20-38:2		
23:4	23:7		38:16-18		
24:2	24:7		39:2-9		
27:12	28:2		44:18-24	48.025; 50.275	
28:20	30:3		106:17-107:13		
34:25	35:2		109:18-20		
35:6	35:9		110:9-12		
38:3	38:15		132:20-25		
40:8	40:23		134:5-9		
40:25	41:3		137:7-8		
41:12	41:21		138:25-139:8		
42:15	43:14		144:9-15		
46:4	46:14	Relevance	144:24-145:15		
47:8	48:21	Foundation, relevance, prejudice outweighs probative	147:21-24	48.025	
48:24	48:25	Foundation, relevance, prejudice outweighs probative	162:14-20	48.025; 48.035; MIL Negotiations	
49:4	49:20	Foundation, relevance, prejudice outweighs probative	164:21-23	48.025; 48.035; MIL Negotiations	
49:23	49:24		165:18-23	48.025; 48.035; MIL Negotiations	
50:2	50:4	Foundation, relevance, prejudice	170:7-10		

BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
		outweighs probative			
50:14	50:23	Foundation, relevance, prejudice outweighs probative, vague and ambiguous	171:10-172:16		
53:22	54:9	Relevance	175:13-22		
54:19	55:1	Relevance, prejudice outweighs probative, vague and ambiguous	183:11-17	47.120 (need to include 183:21- 184:1)	
55:18	56:10	Relevance	184:2-19	47.120 (need to include 183:21- 184:1)	
56:12	56:14	Relevance	205:16-206:5		
56:16	56:24	Relevance	207:19-208:17	47.120 (need to include 208:18-20).	
57:24	58:7		217:4-10	48.025; 48.035; MIL Negotiations	
63:23	64:8	Relevance	218:2-19	48.025; 48.035; MIL Negotiations	
64:25	66:2	Foundation, relevance	225:7-14	48.025; 48.035; MIL Negotiations	
66:14	67:2		227:24-228:11	48.025	
67:13	67:17	relevance	231:16-232:5	48.025	
69:19	70:8	relevance	234:20-21		
70:13	71:5		237:22-239:6	48.025; 48.035; MIL Negotiations	
71:12	72:5		239:14-16	48.025; 48.035; MIL Negotiations	
73:3	73:24		240:13-214:14	48.025; 48.035; MIL Negotiations	

BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
74:16	74:20	Foundation, vague and ambiguous	242:25-246:21	48.025; 48.035; MIL Negotiations	
		Foundation			
74:23	74:24	Foundation, vague and ambiguous	247:17-248:13	48.025; 48.035; MIL Negotiations	
75:2	76:24		251:3-23	48.025; 48.035; 48.105; MIL Negotiations	
77:3	77:5		252:7-23	48.025; 48.035; 48.105; MIL Negotiations	
77:8	77:11	Foundation	255:3-12	48.025; 48.035; MIL Negotiations	
77:16	77:17	Foundation	257:10-17	48.025; 48.035; MIL Negotiations and Prior Contract/Ter mination	
77:19	78:13	Relevance, prejudice outweighs probative	262:18-263:4	48.025; 48.035; MIL	
78:15	78:18	Relevance, prejudice outweighs probative			
80:15	80:23	Foundation, relevance			
81:13	81:22	Relevance			
82:15	82:22	Relevance			
83:2	84:13	Relevance			
86:20	87:3	Relevance			
88:23	91:7	Foundation, prejudice outweighs probative			

BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
91:11	93:5	Foundation, relevance			
93:11	93:11				
93:13	95:13	Foundation, relevance			
96:2	96:14				
96:16	97:12				
97:15	97:22				
98:14	98:17	Asked and answered			
98:21	98:24				
103:6	104:20				
105:6	105:15	Misstates the record			
106:3	106:16				
108:1	108:13	Relevance			
109:8	109:17				
109:25	110:8				
110:13	110:16				
116:18	118:3	Foundation, relevance			
118:5	118:13				
118:18	118:25	Relevance			
120:10	121:14				
122:11	122:12	Vague and ambiguous			
122:15	122:18				
124:5	124:7	Vague and ambiguous, asked and answered			
124:11	124:15				
124:17	124:24				
125:17	125:18	Vague and ambiguous, relevance			
125:20	125:23				
125:25	126:11	Foundation, calls for speculation			
126:20	126:21				
126:23	127:2				
130:21	132:8	Relevance, prejudice			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
		outweighs probative			
132:16	132:19	Relevance			
133:11	133:12	Foundation, relevance			
133:15	133:15				
134:10	134:19	Foundation			
134:22	134:23				
134:25	135:4	Foundation			
135:7	135:11				
135:21	135:21	Asked and answered			
135:24	135:25				
136:2	136:5	Foundation, calls for speculation			
136:8	136:10				
136:18	136:25	Foundation, calls for speculation, asked and answered			
137:4	137:5				
138:15	138:20	Foundation, calls for speculation, relevance			
138:22	138:23				
139:13	139:18	Foundation, calls for speculation, relevance			
139:21	139:22				
140:6	140:16				
140:19	140:19				
141:3	141:7	Foundation, calls for speculation, relevance			
141:12	141:12				
141:14	141:20	Foundation, relevance, prejudice outweighs probative			
142:7	142:7				
142:23	143:2	Foundation, relevance			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
143:16	143:17				
143:19	143:22	Foundation, vague and ambiguous, relevance			
144:1	144:8				
144:16	144:23	Foundation, relevance, prejudice outweighs probative			
146:5	146:15	Relevance			
146:19	147:20	Relevance			
148:16	149:2	Relevance, prejudice outweighs probative			
149:17	150:12				
159:6	159:12	Foundation, relevance, asked and answered			
159:15	159:17				
159:23	160:5	Foundation, relevance, asked and answered			
160:9	160:13	Foundation, relevance, asked and answered			
161:11	161:13	Relevance			
161:22	162:6				
162:21	163:24				
164:8	164:9				
165:24	166:9				
169:11	169:13				
169:17	169:17				
169:19	169:21	Vague and ambiguous			
169:23	170:5				
170:11	170:20				
171:2	172:9	Incomplete designation			
172:17	172:23				
173:7	173:9	Vague and ambiguous			



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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
173:17	173:19	Vague and ambiguous			
173:23	174:1				
174:3	174:10				
174:16	174:17	Vague and ambiguous			
174:20	174:21				
174:23	174:25	Vague and ambiguous			
175:2	175:3				
175:5	175:12				
175:23	176:2	Vague and ambiguous			
176:10	176:10				
176:19	177:6	Vague and ambiguous			
177:10	177:10				
177:16	178:3	Foundation			
178:6	178:17				
179:21	179:25	Foundation, relevance, prejudice outweighs probative, vague and ambiguous			
180:3	180:3				
180:5	180:9	Foundation, relevance, prejudice outweighs probative, vague and ambiguous			
180:13	180:20				
180:22	182:15				
185:23	187:3				
191:11	191:23				
193:5	194:9	Attorney colloquy (designated question withdrawn), relevance			
194:25	195:5	Foundation, relevance			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
195:14	196:4	Foundation, relevance, prejudice outweighs probative			
196:13	196:21				
196:24	196:25				
197:2	197:9				
199:21	200:3	Relevance, prejudice outweighs probative			
204:9	205:3	Relevance, prejudice outweighs probative			
206:6	206:8	Relevance, prejudice outweighs probative			
206:11	206:12	Relevance, prejudice outweighs probative			
206:14	206:24	Relevance, prejudice outweighs probative			
207:9	207:18				
208:21	211:4	Relevance			
211:19	211:22	Foundation, relevance, asked and answered.			
212:2	212:2				
212:4	213:8	Foundation, relevance, prejudice outweighs provative			
213:10	213:14				
213:16	213:24	Relevance, prejudice outweighs			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
		probative, asked and answered			
214:2	214:2				
214:4	214:9	Relevance, prejudice outweighs probative, asked and answered			
214:12	214:13	Relevance, prejudice outweighs probative			
214:15	214:23	Relevance, prejudice outweighs probative			
214:25	215:11	Relevance, prejudice outweighs probative			
215:13	216:5	Relevance, prejudice outweighs probative			
220:22	221:18				
223:12	223:18				
224:2	224:15				
225:3	225:6				
225:22	225:25	Relevance			
226:8	226:21	Relevance			
227:3	227:8	Relevance			
227:13	227:23	Relevance			
228:12	228:14	Foundation, relevance, vague and ambiguous			
228:17	228:20	Relevance			
228:22	229:20	Relevance			
229:24	230:3	Relevance			
231:1	231:15	Foundation, relevance			
232:6	232:12				
233:4	233:12				
233:16	234:14	Foundation			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
237:3	237:12	Foundation, relevance			
239:7	239:13				
241:15	242:24				
246:22	247:16				
248:14	248:22	Mischaracterizes testimony, argumentative			
248:25	249:4				
249:6	249:13				
249:23	249:23				
249:25	250:11	Foundation			
250:15	250:16	Foundation			
250:18	250:24	Foundation			
256:1	256:6	Argumentative, mischaracterizes the testimony, relevance			
256:10	256:11	Relevance			
256:13	257:9	Relevance			
260:22	260:25	Relevance			
261:3	261:9	Relevance			
263:5	265:12	Relevance, asked and answered			
265:16	265:16				
265:18	265:21	Asked and answered			
265:24	265:24				
266:2	266:3	Asked and answered			
266:6	266:6				
266:8	266:14	Foundation, relevance, prejudice outweighs probative			
266:18	267:15	Foundation, relevance, prejudice outweighs probative			
267:20	267:24	Foundation, relevance,			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
		prejudice outweighs probative, vague and ambiguous			
268:3	268:3	Foundation, relevance, prejudice outweighs probative			
268:5	268:6	Foundation, relevance, prejudice outweighs probative			
268:9	268:11	Foundation, relevance, prejudice outweighs probative			
268:13	268:13	Foundation, relevance, prejudice outweighs probative			
268:16	268:16				
268:18	269:2	Foundation, relevance, prejudice outweighs probative			
269:6	269:10	Foundation, relevance, prejudice outweighs probative			
269:13	269:17	Foundation, relevance, prejudice outweighs probative			
269:19	269:22	Foundation, relevance, prejudice			

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BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
		outweighs probative			
269:24	270:7	Foundation, relevance, prejudice outweighs probative			
276:4	276:8	Relevance, prejudice outweighs probative			
276:14	277:5	Relevance, prejudice outweighs probative			
277:8	277:9	Relevance, prejudice outweighs probative			
277:11	277:11	Relevance, prejudice outweighs probative			
277:13	278:1	Relevance, prejudice outweighs probative			
278:5	278:5	Relevance, prejudice outweighs probative			
278:7	279:4	Foundation, relevance, prejudice outweighs probative, assumes facts not in evidence			
279:8	279:15	Foundation, relevance, prejudice outweighs probative, assumes			

BEGIN PAGE/ LINE	END PAGE/ LINE	DEFS OBJS	DEFS COUNTERS	PLAS OBJS	PLAINTIFFS COUNTER- COUNTERS
		facts not in evidence			
279:17	279:21	Foundation, relevance, prejudice outweighs probative			
280:4	280:8	Foundation, relevance, prejudice outweighs probative			
280:10	281:4	Foundation, relevance, prejudice outweighs probative			
285:18	285:22	Relevance, prejudice outweighs probative			
286:5	286:10	Foundation, relevance, prejudice outweighs probative			

**David Yerich – May 18, 2021 Deposition**

BEGIN PAGE/ LINE	END PAGE/ LINE	DEFENDANTS COUNTER DESIGNATIONS	DEFENDANT'S OBJECTION	PLAINTIFFS COUNTER- COUNTER DESIGNATIONS
6:20	7:2	6:14-6:16		
8:8	8:13			
12:11 ("So, Mr. Yerich, I'm....." )	12:15 ("...see n this notice before" )			
13:10	13:15			
13:23	14:16			

1	14:17	16:1		
2	16:22	17:16	17:17-17:25	Foundation; Relevance
3	20:11	20:22		Foundation; Relevance
4	21:1	21:5		Incomplete Designation; Foundation; Relevance
5	25:18	26:5		Foundation; Relevance
6	28:6	28:8		
7	29:21	30:7		Foundation; Relevance
8	30:16	31:22		Foundation; Relevance; Beyond the scope
9	32:4	32:11		Foundation; Relevance; Beyond the scope
10	32:19	33:6		Foundation; Relevance
11	46:10	46:13		Foundation; Relevance; Beyond the scope
12	46:18	46:19		Foundation; Relevance; Beyond the scope
13	63:14	63:18		Foundation; Relevance; Mischaracterizes testimony
14	63:21	64:2		Foundation; Relevance
15	64:7	64:20		Foundation; Relevance
16	66:10	66:14		Foundation; Relevance; Mischaracterizes testimony
17	66:17	66:22		Foundation; Relevance; Mischaracterizes testimony
18	66:24	66:25		Foundation; Relevance; Beyond the scope
19	67:3	67:9		Foundation; Relevance; Beyond the scope

**Scott Ziermer – May 27, 2021 Deposition**

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39:2	39:9
40:2	40:11
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44:10	45:2
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46:17	46:19
48:10	49:1
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51:8	51:15
52:16	52:17
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59:12	60:1
60:4	60:11

## Scott Ziemer – May 28, 2021 Deposition

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36:18	37:3
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37:12	37:14
37:18	37:22
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**Vincent Zuccarello – May 27, 2021 Deposition**

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52:15	53:1
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1 Dated this 3rd day of November, 2021.

2 AHMAD, ZAVITSANOS, ANAIPAKOS,  
3 ALAVI & MENSING P.C.

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008341

**CERTIFICATE OF SERVICE**

I certify that I am an employee of Ahmad, Zavistanos, Anaipakos, Alavi & Mensing, P.C. and that on this 3rd day of November, 2021, I caused a true and correct copy of the foregoing **PLAINTIFFS' DEPOSITION DESIGNATIONS** to be served by email, upon the following:

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STEVEN D. GRIERSON  
CLERK OF THE COURT

NOV 08 2021

BY,   
J.L. QUAMINA, DEPUTY

A-19-792978-B  
JURL  
Jury List  
4973683



DISTRICT COURT  
CLARK COUNTY, NEVADA

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FREMONT EMERGENCY  
SERVICES (MANDAVIA) LTD,  
PLAINTIFF(S)  
VS.  
UNITED HEALTHCARE  
INSURANCE COMPANY,  
DEFENDANT(S)

CASE NO.: A-19-792978-B

DEPARTMENT 27

1<sup>st</sup> AMENDED JURY LIST

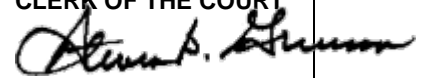
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|-------------------------------------|-----------------------|
| 1. Nerissa Gonzaga                  | 7. Dinah Hortillas    |
| 2. Cindy Springberg                 | 8. Elizabeth Trambulo |
| 3. Katelyn Landau                   | 9. Michael Cabrales   |
| 4. Zerrick Walker                   | 10. Paul Reese        |
| 5. <del>Angelo Torres-EXCUSED</del> | 11. Isis Wynn         |
| 11/8/21                             |                       |
| 6. Catherine Ross                   | 12. Valerie Herzog    |

ALTERNATES

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE  
INSURANCE COMPANY, ET AL.,

Defendants.

CASE#: A-19-792978-B

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF  
DISTRICT COURT JUDGE  
MONDAY, NOVEMBER 8, 2021

**RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 8**

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.  
DANIEL F. POLSENBERG, ESQ.  
ADAM G. LEVINE, ESQ.  
HANNAH DUNHAM, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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FOR THE DEFENDANT

MARKED

RECEIVED

None

1 Las Vegas, Nevada, Monday, November 8, 2021

2  
3 [Case called at 9:22 a.m.]

4 [Outside the presence of the jury]

5 THE MARSHAL: -- the Honorable Judge Allf presiding.

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

8 IN UNISON: Good morning, Your Honor.

9 THE COURT: Calling the case of Freemont v. United. Let's  
10 have appearances for the record, please.

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

13 MR. ZAVITSANOS: Good morning, Your Honor. John  
14 Zavitsanos on behalf of the healthcare providers.

15 MR. AHMAD: Your Honor, Joe Ahmad, also on behalf of the  
16 healthcare providers.

17 MR. LEYENDECKER: Good morning, Your Honor. Kevin  
18 Leyendecker on behalf of the healthcare providers.

19 THE COURT: Thank you.

20 MR. MCMANIS: Good morning, Your Honor. Jason  
21 McManis on behalf of the healthcare providers.

22 THE COURT: And for the Defense, please?

23 MR. BLALACK: Good morning, Your Honor. Lee Blalack on  
24 behalf of the Defendants.

25 MR. ROBERTS: Good morning, Your Honor. Lee Roberts on

1      behalf of the Defendants.

2                   THE COURT: Thank you.

3                   MS. DUNHAM: Hannah Dunham on behalf of the  
4      Defendants.

5                   MR. GORDON: And Jeff Gordon on behalf of the Defendants.  
6      Good morning.

7                   MR. POLSENBERG: Dan Polsenberg, Your Honor, good  
8      morning, for the Defendants.

9                   THE COURT: And one more appearance from the Defense?

10                  MR. LEVINE: Good morning, Your Honor. Adam Levine on  
11     behalf of the Defendants.

12                  THE COURT: All right. I started early this morning only  
13     because one of the jurors called in sick this morning, Angelo Torres, 38,  
14     in the back row. Angelo Torres said that he has a stomach flu, he hopes  
15     to be back tomorrow. I wanted to give you guys a chance to caucus as to  
16     how you want to handle it before bringing the jury in.

17                  MR. BLALACK: Okay. Your Honor, could we have a moment  
18     to confer on our side and then we can talk to the other side?

19                  THE COURT: That's what I had in mind. You have a good  
20     five minutes.

21                  MR. BLALACK: And then we have one issue, a housekeeping  
22     issue I want to --

23                  THE COURT: Sure.

24                  MR. BLALACK: -- raise, too, Your Honor, so I don't know if  
25     you want to do that now or do you want to wait until we resolve this

1 issue?

2 THE COURT: Go ahead.

3 MR. BLALACK: So I mentioned this to Mr. Zavitsanos last  
4 week, I'm concerned about our timing. As you know, the parties  
5 represented in the joint pretrial memorandum that we would complete  
6 this case and have a verdict by the Tuesday before Thanksgiving, which I  
7 believe is the 23rd. We assume two days for a charging conference,  
8 closing arguments, and a day or a little over a day of deliberations,  
9 which is what we're working off of. That leaves by my count eight days  
10 of proof left in the calendar. We think -- we want to make sure our  
11 clients are not prejudiced in one of two ways.

12 One, we don't want this trial to extend beyond Thanksgiving.  
13 The Court has qualified a jury on the representation that the trial would  
14 conclude by the Tuesday before Thanksgiving. All of these jurors agreed  
15 to participate and support their community on that basis. We think if it  
16 goes beyond Thanksgiving we will be the ones held accountable because  
17 we have to put on our case.

18 Secondly, the alternative is our colleagues on the other side  
19 use up 80, 90 percent of the available trial time for their case and then  
20 we don't have adequate time for our defense.

21 So out of concern for that -- and I will tell Your Honor, it's  
22 expectation after conferring with opposing counsel, that by the end of  
23 this week we will have completed two witnesses. We're going to finish  
24 Mr. Haben through Wednesday, and then we expect Ms. Paradise to be  
25 called next, and maybe we get her done on Friday in a full day or not, I'm



1 not sure, but there doesn't seem to be any possibility that we're going to  
2 finish more than two witnesses after the first two weeks of trial.

3 So my proposal last week to Mr. Zavitsanos was that we  
4 divide the time that is available for proof equally and essentially institute  
5 a clock, where when he's examining a witness that clock is charged  
6 against their time, when I'm examining a witness, whether it's a direct or  
7 cross, same thing, to ensure that we have equitable distribution of the  
8 time.

9 Plaintiffs' counsel are not agreeable to that proposal, so  
10 before we get too far into this and then we can't put the toothpaste back  
11 in the tube, I want to specifically ask the Court to institute a time  
12 allocation so that we can fairly ensure we complete the trial as  
13 represented to the jury, and that the Defendants get the opportunity to  
14 present their case.

15 THE COURT: Good enough. Your response?

16 MR. ZAVITSANOS: Yes, Your Honor, a few things. Number  
17 1, as I represented to Your Honor and to opposing counsel, I have three  
18 days of cross for Mr. Haben, that's what I represented to the Court, and I  
19 think -- so that means I would finish by mid-afternoon tomorrow, and I  
20 think I'm on track to do that. Once Mr. Haben is off the stand, the pace of  
21 this case is going to pick up substantially, and I mean substantially, and I  
22 remain confident that we will finish by the time that we said. There will  
23 not be any witness anywhere near as close on the stand as we have with  
24 Mr. Haben.

25 The second thing I will say, Your Honor, is -- and it's their

1 right to do this, but I don't recall a trial that I had where so many of the  
2 exhibits have been contested and so many foundation-type objections  
3 have been raised. It felt like a good part of the time while Mr. Haben was  
4 on the stand we devoted to trying to lay foundation for the documents,  
5 and also, Mr. Haben was, I believe at times, evasive.

6 And so this -- we do object to the time limits. We -- this is  
7 not something we had discussed ahead of time, but we are going to  
8 move as quickly as possible, Your Honor, and now we just ask -- I am  
9 confident we're going to finish by -- on the Tuesday before Thanksgiving.

10 THE COURT: All right.

11 MR. ZAVITSANOS: Okay.

12 THE COURT: So I need to think about this. I need to talk to  
13 the chief judge because it may be possible for you to do some overtime.  
14 You'd have to pay for it. I'll find out what that may cost. Because the  
15 Plaintiff has the burden of proof at this point, I'm not going to rule on  
16 your request. I'm going to take them at their word and see if the pace  
17 picks up. If it doesn't, we'll revisit the issue, or I may have some  
18 alternatives for you. Okay.

19 Now I do have to tell you, Wednesday is the civil judges  
20 meeting that I preside over, so I will need an hour for lunch.

21 MR. BLALACK: That's fine, Your Honor.

22 THE COURT: So there goes a half-hour right there.

23 MR. BLALACK: Understood, Your Honor, and just to be clear  
24 for the record, in anticipation of the suggestion that somehow the pace is  
25 a function of our objections, I went back and looked last week. There

1 were 24 exhibits admitted, there were foundation objections the we  
2 asserted, and that Mr. Zavitsanos had to lay a foundation for for six of  
3 them. So I don't think it is a fair statement that the objections to the  
4 foundation of exhibits that are being offered for witnesses who didn't  
5 write or receive them is inappropriate or in any way could be  
6 characterized as trying to delay the trial.

7 THE COURT: I'm going to cut off the arguments now and  
8 give you five minutes to confer with your groups with regard to what to  
9 do with Mr. Torres.

10 MR. BLALACK: Thank you, Your Honor.

11 THE COURT: He does want to come back.

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

13 THE COURT: We'll be in recess for five minutes.

14 MR. BLALACK: Thank you, Your Honor.

15 [Recess taken from 9:29 a.m. to 9:34 a.m.]

16 THE COURT: Thanks everyone. Please remain seated. Is  
17 there a consensus, Plaintiff and Defendant?

18 MR. ZAVITSANOS: Yes, Your Honor. The parties have  
19 conferred, and we are both agreeable to excusing this gentleman.

20 THE COURT: Is that correct?

21 MR. BLALACK: That's correct, Your Honor.

22 THE COURT: Okay. I have had a -- I sent a text to the chief  
23 judge, she has a Monday calendar, she's taking my Wednesday morning  
24 calendar so that we could give you full days.

25 MR. BLALACK: Thank you.

1 THE COURT: And when I hear from her I'll let you know. The  
2 other thing I wanted to tell you is that I think I heard you all say a day for  
3 the jury to deliberate?

4 MR. BLALACK: Well, what I said was, Your Honor, I'm  
5 assuming those first two days of the last week, which is whatever the  
6 22nd, 23rd, would be consumed by a charging conference, closing  
7 arguments, and deliberations. That was --

8 THE COURT: Okay.

9 MR. BLALACK: -- the premise. I don't know if that's how it  
10 will play out, but I was trying to come up with what's the available time  
11 for proof, which means all the proof --

12 THE COURT: Okay.

13 MR. BLALACK: -- has to be in the prior Friday.

14 THE COURT: Good enough, because the last trial I had that  
15 was longer than this one, and the plaintiff asked for more money, it was  
16 almost four weeks of trial, and the jury was out only about an hour.

17 MR. BLALACK: Okay. Well, if it goes faster than that --

18 THE COURT: The longer the trial is, the quicker they  
19 deliberate.

20 MR. BLALACK: Right. If that's the case, then we might be  
21 able to get a little proof in on that Monday, but either way, there's not  
22 much time that week for proof, I guess, is my point.

23 THE COURT: Good enough. All right. So let's bring in the  
24 jury, and I'll let them know that Mr. Torres is ill and has been excused.

25 MR. ZAVITSANOS: Your Honor --

1 THE COURT: Anything else to bring up?

2 MR. ZAVITSANOS: Yes. I'm sorry. One of the things that's  
3 not contested, there are some exhibits we'd like to offer for which there  
4 is not an objection and Mr. McManis has that list.

5 THE COURT: Give me just a second because I keep track of  
6 that separately. Okay. Ready.

7 MR. MCMANIS: Good morning, Your Honor. Jason  
8 McManis. So each of these is -- there's no objection to these. Some of  
9 these were previously conditionally admitted, but we just want to offer  
10 them into evidence, so I'll just read off the list here.

11 THE COURT: Got it.

12 MR. MCMANIS: Plaintiff's Exhibit 1, 9, 19, 22, 27, 35, 58, 61,  
13 71, 72, 73, 74, 75, 77, 120 --

14 THE MARSHAL: All rise for the jury.

15 [Jury in at 9:36 a.m.]

16 THE COURT: And we'll have to do that as soon as we seat  
17 the jury. We'll finish that.

18 Thank you. Please be seated. Mr. McManis, will you  
19 continue? These are stipulated exhibits; Plaintiffs' Exhibits we're reading  
20 into the record.

21 MR. MCMANIS: Yes, Your Honor.

22 THE COURT: I had 120.

23 MR. MCMANIS: I believe I left off at 120?

24 THE COURT: Uh-huh.

25 MR. MCMANIS: All right. So Plaintiff's Exhibit 121, 122, 127,

1 142, 144, 145, 146, 147, 148, 149, 150, 158, 178, 183, 185, 212, 231, 254,  
2 261, 262, 263, 264, 287, 290, 291.

3 THE COURT: 290?

4 MR. MCMANIS: 290 and 291, 317, 319, 320, 322, 359, 365,  
5 367, 376, 394, 395, 400, 412, 418, 424, 440, 471, 472, 473, 483, and 486.  
6 That completes the list.

7 THE COURT: Is that correct?

8 MR. BLALACK: That's correct. No objection.

9 THE COURT: Very good and thank you for your professional  
10 courtesy.

11 MR. MCMANIS: And Your Honor, I have a copy for the court  
12 reporter.

13 THE COURT: For the clerk. Thank you. We have a fill-in  
14 clerk today and that's a really hard job. So all right. And if I didn't say it  
15 yet, welcome to Monday. Mr. Torres who sits in seat five called in sick  
16 this morning. He had a stomach flu, and he wanted to come back today.  
17 Unfortunately, we're going to have to excuse him from the jury because  
18 we're very mindful of being respectful of your time, so later today we'll  
19 reorder you after lunch. So is Mr. Haben here? Can we --

20 MR. BLALACK: He is, Your Honor.

21 THE COURT: Yes. Mr. Haben, you're under the oath you  
22 previously swore. There's no reason to re-swear you. Thank you.

23 JOHN HABEN, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

24 THE WITNESS: Appreciate it.

25 THE COURT: And then go ahead, please, with direct.

1 MR. ZAVITSANOS: Thank you, Your Honor. May I proceed?

2 THE COURT: Please.

3 MR. MCMANIS: Thank you. May it please the Court,  
4 counsel.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. ZAVITSANOS:

7 Q Okay, Mr. Haben, good morning.

8 A Morning.

9 Q How was your weekend?

10 A It was good. Thank you.

11 Q Good. Okay. Here's what I want to do. I want to very quickly  
12 offer some additional exhibits, so we don't have to stop during the  
13 examination and try to prove them up, so I'm just going to go through  
14 one by one and see if the Court will admit them, okay?

15 A Okay.

16 Q All right.

17 MR. ZAVITSANOS: So I want to start with 265, and let me --  
18 Your Honor, if I could, if I could just -- I'm going to go through -- there's  
19 six or seven I'm going to offer, and I'll ask counsel first if he has an  
20 objection.

21 THE COURT: Good enough.

22 MR. BLALACK: And that was 265?

23 MR. ZAVITSANOS: Yes, sir.

24 THE COURT: 265.

25 MR. BLALACK: Yeah. No objection.

1 MR. ZAVITSANOS: Okay. Your Honor, may I move for the  
2 admission of Plaintiffs' Exhibit 265?

3 THE COURT: There being no objection, 265 will be admitted.

4 [Plaintiffs' Exhibit 265 admitted into evidence]

5 MR. ZAVITSANOS: The next one, Your Honor, is 236, and I'll  
6 ask counsel if he has an objection to 236.

7 MR. BLALACK: Court's indulgence, one second.

8 MR. ZAVITSANOS: Excuse me?

9 MR. BLALACK: No objection.

10 THE COURT: 236, there being no objection, will be admitted.

11 [Plaintiffs' Exhibit 236 admitted into evidence]

12 MR. ZAVITSANOS: The next one, Your Honor, is 354.

13 MR. BLALACK: Objection to foundation of that document,  
14 Your Honor.

15 THE COURT: Very good.

16 MR. ZAVITSANOS: If we could get 354, please?

17 BY MR. ZAVITSANOS:

18 Q Would you take a moment to look at it, please, and tell me if  
19 this document produced by United deals with the shared savings  
20 programs of which you were the head?

21 A Yeah, I'll need a minute.

22 Q Yes, sir.

23 A I can answer your question.

24 Q Yes, sir. Does this deal with some of the shared savings  
25 programs at United while you were there?



1           A     It talks -- it's not a shared savings program, it's part of an out-  
2 of-network program that was implemented in the future.

3           Q     Yes, sir. Okay. And do you remember, there was discussion  
4 around this, during your sworn deposition?

5                 MR. BLALACK: Objection. Vague as to what this is.

6                 MR. ZAVITSANOS: I'm refreshing his memory, Your Honor.

7                 THE COURT: It was do you recall, so overruled.

8 BY MR. ZAVITSANOS:

9           Q     There's copy of your deposition when I ask you --

10                 MR. ZAVITSANOS: And Your Honor?

11                 THE WITNESS: Right here?

12                 MR. ZAVITSANOS: Yes. Can I just -- what's the Court's  
13 pleasure?

14                 THE COURT: You would move to publish it?

15                 MR. ZAVITSANOS: No, no, Your Honor.

16                 THE COURT: No.

17                 MR. ZAVITSANOS: I just -- I wanted to explain what a  
18 deposition was, and I don't know if the Court -- if the Court would  
19 prefer --

20                 THE COURT: It was in the pretrial instructions to the jury.

21                 MR. ZAVITSANOS: Oh, okay. Very good. Okay.

22 BY MR. ZAVITSANOS:

23           Q     So your deposition is right next to you.

24           A     Okay.

25           Q     Okay. And that's where you answer questions under oath,

1 just like you're doing here, right?

2 A Okay.

3 Q Mr. Haben, right?

4 A Yes. Yup.

5 Q Okay. So here's what -- I want you to just read it to yourself,  
6 if you can please go to pages 216 through 219, and the question is, do  
7 you remember discussing this Exhibit 354 that we're talking about during  
8 your deposition? And that was Deposition Exhibit 10, is what I'll  
9 represent to you, okay?

10 [Witness reviews document]

11 A Okay.

12 Q Okay. So the question is, do you remember discussing this  
13 Plaintiff's Exhibit 354 for identification during your deposition?

14 A I believe so. I think the example that he referred to was in  
15 the deposition was in here.

16 Q Okay. And this document is a United document, right?

17 A Yes.

18 Q And it deals with out-of -- some of the out-of-network  
19 programs, correct?

20 A Yes.

21 Q Okay. Of which you were the head?

22 A Yes.

23 MR. ZAVITSANOS: I move for admission of 354, please.

24 MR. BLALACK: Same foundation objection, Your Honor.

25 He's not on the document. It wasn't sent to him, hasn't established he

1 ever reviewed it, and he didn't say in his deposition that he had seen it.

2 THE COURT: Objection is overruled. Objection goes to the  
3 weight, not admissibility. So it will be admitted.

4 [Plaintiffs' Exhibit 354 admitted into evidence]

5 MR. ZAVITSANOS: All right. I have a few more, Mr. Haben,  
6 and then we'll get started.

7 THE WITNESS: Yeah.

8 MR. ZAVITSANOS: Bear with me here. Okay. The next one,  
9 sir, is 132. Let me -- let me first ask counsel -- your counsel if he has an  
10 objection to that?

11 THE COURT: Was that 356?

12 MR. BLALACK: No objection, Your Honor. 132.

13 THE COURT: 132?

14 MR. BLALACK: If I have the right number, no objection.

15 MR. ZAVITSANOS: No. The last one, Your Honor, was 354.

16 THE COURT: Yeah.

17 MR. ZAVITSANOS: And this one that I just offered is 132.

18 And I move for admission of 132.

19 THE COURT: There being no objection, 132 will be admitted.

20 [Plaintiffs' Exhibit 132 admitted into evidence]

21 MR. ZAVITSANOS: Okay. Mr. Haben, we have three more.  
22 344. Let me ask your counsel first if he has an objection to it. That's 344.

23 MR. BLALACK: No objection, Your Honor.

24 THE COURT: 344 will be admitted.

25 [Plaintiffs' Exhibit 344 admitted into evidence]

1 MR. ZAVITSANOS: Okay. The next one, Your Honor, is 324.  
2 And I'll ask counsel if he has an objection to that.

3 MR. BLALACK: No objection.

4 THE COURT: 324 will be admitted.

5 [Plaintiffs' Exhibit 324 admitted into evidence]

6 MR. ZAVITSANOS: Okay. Finally for now, there'll be more,  
7 but for now, 342. And for counsel's benefit, it's the same document as  
8 324, just the labor version.

9 MR. BLALACK: Yeah. No objection, Your Honor.

10 THE COURT: 342 will be admitted.

11 [Plaintiffs' Exhibit 342 admitted into evidence]

12 MR. ZAVITSANOS: Okay. May I proceed, Your Honor?

13 THE COURT: Please.

14 MR. ZAVITSANOS: Okay, Mr. Haben.

15 Okay. And before I start, Your Honor, my apologies. I  
16 neglected to introduce -- we have a new representative today. In  
17 addition to Dr. Scherr, we have Dr. Grace Sasaki. Will you please stand  
18 up, Dr. Sasaki?

19 THE COURT: Thank you and welcome.

20 MR. ZAVITSANOS: Thank you.

21 BY MR. ZAVITSANOS:

22 Q Okay. Mr. Haben, do you know who Pinocchio is?

23 A Yes, I do.

24 Q Okay. And what happened to Pinocchio when he didn't tell  
25 the truth?

1 A I think his nose grew.

2 Q Okay. Well, here's what I have done. I have United's  
3 opening statement, the transcript that was given to the jury, okay?

4 A Uh-huh.

5 Q And I am going to read to you some of the statements, and I  
6 want you to tell me if it's true, in your opinion, or not true, okay?

7 A Okay.

8 Q All right. Let's start with the first one which is that the  
9 Plaintiffs, the provider groups over here, they set the charges by  
10 themselves with no market restraint whatsoever, whatever they decide  
11 to charge, they would charge. Is that true?

12 A I don't know the thinking behind the Plaintiffs and the  
13 staffing firms.

14 Q In your opinion, is that true, sir?

15 A I'm sorry to be picky. Can you ask the question again of what  
16 they said?

17 Q United's counsel said that the Plaintiffs set the charges by  
18 themselves, with no market restraint whatever. And whatever they  
19 decided to charge, they would charge. Do you believe that's true?

20 A I don't know if they had somebody help them set the  
21 charges, but they -- the staffing firm set the charges.

22 Q Well, we looked at your own documents that talk about the  
23 80 percentile of FAIR Health, remember? We covered that in some  
24 detail, right?

25 A Yes.

1 Q Okay. And you did not go back and evaluate whether our  
2 charges on average are actually below the 80 percentile of FAIR Health?

3 A When?

4 Q During the relevant time period. Here, for these claims at  
5 issue in this case. Did you go back and look at our charges and compare  
6 them to the 80 percentile of FAIR Health for the claims at issue in this  
7 case?

8 A I personally did not do that.

9 Q Okay. All right. The next thing we heard in opening was that  
10 your clients demanded these programs to control excessive out-of-  
11 network costs and to protect employees from balance billing. That's  
12 another one of the promises that United's lawyers made to the jury in  
13 opening. Okay?

14 A Okay.

15 Q And you know that for every single one of the claims at issue  
16 in this case, there was no balance billing, right?

17 A I don't know that to be true.

18 Q If that was true, the statement would be a little Pinocchio-ish,  
19 would you agree?

20 A I would -- I would disagree.

21 Q Okay. And this thing about clients demanding these alleged  
22 programs, the clients who demanded them, now that you've had a four-  
23 day break, did you meet with the lawyers at all during the four days,  
24 either by phone, by Zoom, or in person?

25 A No. We had dinner Wednesday night, and that was it.

1 Q Okay. Did you find any documents on either parties' exhibit  
2 list during these four days to support the idea that it was the clients that  
3 demanded these programs and not United, to make more money?

4 A I didn't search the documents.

5 Q Okay. Another one is that -- another statement on page 98 of  
6 the opening statement is that employers in Nevada demanded not to  
7 have reimbursement based on FAIR Heath. Can you point me to one  
8 document anywhere on the face of the earth that's on either parties'  
9 exhibit list where that statement is true?

10 A I don't know all of the documents, so I couldn't answer that.

11 Q Another one, and we're going to have to wait on this one. I  
12 just want to know whether it's true or not, is that thing called Data iSight,  
13 which we are going to explain, each of these programs, today. But Data  
14 iSight, according to United in opening statement, is a proprietary  
15 computer program to generate pricing recommendations for United; is  
16 that true?

17 A Not just for United, all United and competitors.

18 Q Data iSight -- do you know what a shill is?

19 A I do not.

20 Q A shill is like a front. It's a -- I mean, Data iSight is essentially  
21 -- it's kind of you all's little tiny monster, right? Whatever you tell Data  
22 iSight to price it at, that's what they're going to price it at, right?

23 MR. BLALACK: Object to the form of the question, it's  
24 argumentative.

25 THE COURT: It is argumentative. Rephrase.

1 MR. ZAVITSANOS: Let me rephrase.

2 BY MR. ZAVITSANOS:

3 Q Data iSight, when you say jump, they say how high, right?

4 A I disagree.

5 Q Okay. We'll look at that. Next, the Yale study, that's another  
6 promise that was made in opening, page 108. The statement was made  
7 that United did not unfairly target TeamHealth to get out into the public  
8 domain what their excessive rates were. Okay?

9 A Okay.

10 Q Do you know whether that's true or not, whether United in  
11 fact, specifically, deliberately targeted TeamHealth with the Yale study?

12 A Is that -- what -- what's your question?

13 Q Did TeamHealth target -- excuse me. Did United target  
14 TeamHealth in the Yale study?

15 A No.

16 Q All right. And the -- now, this was not in the opening  
17 statement, but this is something that you said, and I just want to make  
18 sure we're on the same page. When I was asking you about enterprise  
19 value, you made the comment that even though you're the vice  
20 president, in charge of all these programs, you're not a numbers guy,  
21 right? Remember making that comment?

22 A I don't know if I said I'm not a numbers guy. I'm not a stock  
23 guy. You were referring to enterprise value and the stock valuation.

24 Q What was your college degree in?

25 A A bachelor's degree in business administration and

008365

008365



1 accounting.

2 Q Okay. So you were a accounting major?

3 A I technically specialized in accounting, but I failed the CPA  
4 twice.

5 Q But you were an accounting major?

6 A I was bachelor of business degree and accounting focus.

7 Q Okay. By definition, those -- that's as numberly -- that's as  
8 numberly of a type of guy as it gets, people that major in accounting?

9 A I know numberly people more than I do. I failed the CPA  
10 twice and moved away from it.

11 Q Okay. All right. Now, I think we left off -- oh, by the way --

12 [Counsel confer]

13 MR. ZAVITSANOS: Okay. So let's go to 265, which I think is  
14 now actually in evidence. May I approach, Your Honor?

15 THE COURT: You may.

16 MR. ZAVITSANOS: Would you please, when you get that, if  
17 you could put that in then, Mr. Haben? If I could trouble you?

18 And Michelle, will you please pull up the first page of 265?

19 [Counsel confer]

20 MR. ZAVITSANOS: Okay. Michelle, I'll just do this the old-  
21 fashioned way, okay.

22 BY MR. ZAVITSANOS:

23 Q On 265, does it show you on page 4, sir, as the top of this org  
24 chart?

25 A Can I take a look?

1 Q Yes, sir.

2 A Yes, it does.

3 Q Okay. And by the way, Mr. Haben, how much time did you  
4 spend, before you got here last week, with the lawyers preparing for  
5 your trial testimony? How many days?

6 A Four hours.

7 Q Only four hours?

8 A Yeah. It was -- I don't remember exactly which day.

9 Q Okay. Now --

10 A But it was --

11 Q Anyway, this shows you at the top of the org chart, right?

12 A Sorry.

13 Q On page 4?

14 A Yeah. Yes, it does.

15 Q And Rebecca Paradise is down there below you?

16 A Yes, she is.

17 Q Okay. All right. Now, one of the things that you believe is  
18 that these out-of-network emergency room charges are making  
19 employers go bankrupt. You want the jury to know that, right?

20 A I -- does that say that here?

21 Q I'm asking you, sir.

22 A I --

23 Q Is it your belief to this jury that these out-of-network  
24 emergency room charges are making employers go bankrupt?

25 A It was may -- it was putting a financial burden on them.

1 Q That's not my question.

2 A I don't know their financial state, if they went bankrupt or  
3 not.

4 Q Well, why don't you get your deposition. Do you remember  
5 testifying differently when we took your deposition, sir?

6 A I don't remember; it was that far back.

7 Q Go, please, to 180 -- page 187, and beginning on line 11,  
8 that's you, right?

9 A The witness, yes.

10 Q Yeah.

11 A I believe so.

12 Q And at that time, you said, "We have egregious billers out  
13 there today." I'm going to skip the rest of that sentence. Next sentence,  
14 "I don't think individuals or members of the jury should disregard the  
15 fact that there are egregious billers out there taking advantage of people  
16 in tough situations and making employers go bankrupt because they are  
17 going after their dollars."

18 MR. BLALACK: Your Honor, I object. He -- if he's going to  
19 read the witness' testimony, he needs to read the entire piece. He's  
20 cutting pieces of it up.

21 MR. ZAVITSANOS: Your Honor, there's a limine issue, which  
22 is what I skipped, and counsel knows that.

23 MR. BLALACK: Then he shouldn't be using the testimony.

24 MR. ZAVITSANOS: It had nothing to do with what I just read.

25 THE COURT: If there hasn't been a violation of the motion,

1 then your objection is overruled.

2 MR. ZAVITSANOS: Okay.

3 THE COURT: If you think there's been a violation, then --

4 MR. BLALACK: Well, what I --

5 THE COURT: -- we'll take it up on the next break.

6 MR. BLALACK: What I think, Your Honor, if he's going to try  
7 to use the witness' testimony --

8 THE COURT: No speaking objections. We'll take it up on the  
9 next break.

10 BY MR. ZAVITSANOS:

11 Q Okay, Mr. Haben, please tell the jury -- here, I'm going to get  
12 a marker. Let's identify any employer, if you know, when you said this  
13 under oath, that there are employers going bankrupt because of these  
14 out-of-network emergency room charges, who is the first one?

15 A I don't have any specific names.

16 Q Then why did you say this under oath?

17 A Because I think it was a very hardship -- a very large hardship  
18 for employer groups based on what they were saying to us, that they  
19 were having excessive ER charges coming through.

20 Q Well, and on that point, United is a -- is a huge company,  
21 right?

22 A Yes.

23 Q Lots of employees?

24 A Yes.

25 Q And it works a lot on paper and emails and data, right?

1 A Correct.

2 Q And what you just said about employers, where's the data?  
3 Where's the document that backs up what you just said, and backs up  
4 what your counsel said during opening? Where is it?

5 A It's not in these documents that I am aware of. It was  
6 through conversations with clients and consultants.

7 Q Yes, sir. Let's move on.

8 Okay. Now, I want to use an example, I think, that came up in your  
9 deposition, but let's run through the numbers and see how this works.  
10 Okay? So let's say that the charge for the emergency -- we're going to  
11 use round numbers. Okay?

12 A That's fine.

13 Q The charge is \$1,400. And the allowed amount is \$300.  
14 Okay?

15 A Okay.

16 Q So 300, that's after these programs we're applying. Okay?

17 A Okay.

18 Q \$300 allowed amount. What's the difference?

19 A \$1,100.

20 Q So the savings are \$1,100?

21 A The difference is 1,100.

22 Q So \$1,100 is the savings, right?

23 A Bill minus allowed is 1,100.

24 Q Yes, sir. And if we multiply that by 35 percent, which is what  
25 your fee is, how much is that?

1 A That's south of 400, north of 330.

2 Q So I had Mr. Killingsworth who's got the hardest -- do the  
3 math on this. And will you take my word for it that \$385?

4 A That seems about right.

5 Q Okay. So this is United's fee, and this, this 300 --

6 MR. ZAVITSANOS: I'm done.

7 BY MR. ZAVITSANOS:

8 Q The 300 is what the doctors get, right?

9 A That's the allowed amount.

10 Q And your position to this jury is that is fair, right? That's fair.

11 A If the clients had a program that charged that fee, they  
12 understood that they see it on a bill the next month, yes.

13 Q Sir, I didn't ask about qualifications here.

14 A Yes, I think it's fair.

15 Q Okay. Do you think this is embarrassing, sir, the fact that  
16 United is getting a fee for doing nothing other than just paying the rate?  
17 You cut the doctor down to 300, and you cut him so you could get this.

18 MR. BLALACK: Object to form. Compound and  
19 argumentative.

20 THE COURT: Objection sustained. You can rephrase.

21 MR. ZAVITSANOS: Sure.

22 THE COURT: Break it down.

23 MR. ZAVITSANOS: Okay.

24 BY MR. ZAVITSANOS:

25 Q Are you proud of this? Are you proud of this?

1 A I am proud of what we did for our clients, yes.

2 Q Now what we know -- I think we saw this last week, but just  
3 to reorient. No doubt about it, what drives all of United's decisions is  
4 more, more, more, right?

5 A That's incorrect.

6 MR. BLALACK: Objection. Vague.

7 THE COURT: Overruled.

8 MR. ZAVITSANOS: Exhibit 66, page 2.

9 THE WITNESS: Sorry. It's just going to be a second here.

10 MR. ZAVITSANOS: Michelle, pull out the second paragraph.

11 BY MR. ZAVITSANOS:

12 Q It's up on your screen, sir. We've looked at this already,  
13 but --

14 A Can I just get the document?

15 Q Yes, sir.

16 MR. ZAVITSANOS: Michelle, will you please highlight the  
17 first two sentences, please, up to the word margins? Your Honor, may I  
18 tilt this screen a little bit, so the jury can see it a little better.

19 THE COURT: Yeah. They normally check every morning. I'll  
20 ask the marshal to do it.

21 MR. ZAVITSANOS: I'm sorry, Your Honor. I should -- my  
22 apologies.

23 THE COURT: Can everyone see the screen?

24 UNIDENTIFIED JUROR: Not really.

25 THE COURT: No. Ms. Ross, you can't?

1 MR. ZAVITSANOS: Thank you, Your Honor.

2 THE COURT: And then, Mr. Haben, if you need to step down,  
3 you have permission to move about.

4 THE WITNESS: All right. Thank you.

5 BY MR. ZAVITSANOS:

6 Q Mr. Haben, can you see what's highlighted on your screen at  
7 the witness stand?

8 A Yeah, but everything shifted to the side a little bit. So instead  
9 of trying to adjust the --

10 Q Fair enough.

11 A -- orientation, I'd rather look on paper.

12 Q Okay.

13 A [indiscernible].

14 Q So my question is, sir, it looks like the guiding principle for  
15 United is more.

16 A Can I look at this, please?

17 Q Yeah.

18 [Pause]

19 THE WITNESS: I'm sorry. Your question again.

20 BY MR. ZAVITSANOS:

21 Q The reason y'all did what you did is because you were driven  
22 by that one word, more, right?

23 A I disagree. It says in there our mission is to help people live  
24 healthier lives. That's the primary mission at the very top.

25 Q And I believe the children are our future too. I'm talking



1 about the strategies here, sir, is driven -- you see that word driven? Is  
2 driven by two simple strategies, growing our member base and  
3 expanding our margins. That means making more profit, right? The  
4 margin is the difference between what you bring in and what you spend,  
5 right?

6 A I believe so, yes.

7 Q And if you spend less, i.e., pay the doctors less, the margin  
8 grows?

9 A Well, that's incorrect, because it's the employer group's  
10 money. So if we allowed less --

11 Q Let's talk about the fully insured business. On the fully  
12 insured business, the less you spend the more you make?

13 A Well, there's medical loss ratio tied to that too. I couldn't  
14 answer --

15 MR. ZAVITSANOS: Objection. Nonresponsive.

16 THE COURT: Overruled. I thought he said he couldn't  
17 answer it.

18 BY MR. ZAVITSANOS:

19 Q You can't answer that?

20 A No.

21 [Counsel confer]

22 MR. ZAVITSANOS: Michelle, let's pull up Exhibit 144.  
23 Actually, Michelle, before you do that --

24 MR. BLALACK: Is that in evidence, Your Honor?

25 [Counsel confer]

1 THE COURT: Give me the number again.

2 [Counsel confer]

3 MR. ZAVITSANOS: 144, Your Honor.

4 THE COURT: I show that it has been admitted.

5 MR. BLALACK: Okay. My apologies, Your Honor.

6 MR. ZAVITSANOS: Michelle, before we pull up 144, let's pull  
7 up 246.

8 BY MR. ZAVITSANOS:

9 Q 246 is where we broke at the end of the day last week, okay?  
10 And I think we left off on page 3. And these are the different programs,  
11 which we're going to go through and define what these are in just a little  
12 bit. But what I want to do is go to the next page that talks about the  
13 critical path to execution. You see that?

14 A I do.

15 Q Okay. And this is your roadmap -- one of the roadmaps in  
16 these documents about how you're going to get from paying the usual,  
17 customary, and reasonable rate to the end of the line of where you want  
18 to be, right? The critical path to execution, right, sir?

19 A I'm sorry. Ask your question again. I see the critical path to  
20 execution.

21 Q This is a roadmap for non-par, out-of-network in other words,  
22 claims and a timeline, correct?

23 A On the left-hand side, yes.

24 Q Okay. And what we see here -- by the way, remember last  
25 week you told me --

1 MR. ZAVITSANOS: Michelle, pull this up right here.

2 BY MR. ZAVITSANOS:

3 Q You told me that the MultiPlan agreement was not  
4 terminated. Remember that?

5 A I don't remember what I said.

6 Q Well, it looks like after you got this -- these programs up and  
7 running, the plan by 2023 was to terminate the MultiPlan vendor contract  
8 to save the \$300 million and put that in your pocket as well, right?

9 A But the contract is not terminated yet. If clients still want to  
10 use MultiPlan they can. And that was as of the --

11 Q My question, sir, was by 2023 -- it's kind of hard to read  
12 here -- the plan was to terminate the MultiPlan vendor contract, right?

13 A That was an option, yes.

14 Q That was an option? That wasn't the plan?

15 A Well, as I was trying to explain -- can I explain it?

16 Q No. Was that the -- was that the roadmap, the critical path to  
17 execution, that y'all were planning to terminate the MultiPlan contract by  
18 2023?

19 A If clients stayed on MultiPlan, we had to keep the agreement.

20 Q Is that what the document says, sir, that the critical path to  
21 execution and the timetable was by 2023, the MultiPlan vendor contract  
22 would be terminated?

23 A Yes.

24 Q Is that what it says?

25 A It says MultiPlan vendor contract terminated 2023.

1 Q Okay. Now let's go to Exhibit 144. That's the one I was  
2 about to ask you some questions on. And let's see how you shape the  
3 narrative, okay? And these are more talking points.

4 A Can I go --

5 Q Right?

6 A Can I go get it, please?

7 Q Yeah.

8 [Pause]

9 THE WITNESS: Can I spend a minute reading it?

10 [Pause]

11 THE WITNESS: Okay.

12 BY MR. ZAVITSANOS:

13 Q Okay. All right. So let's look at this Exhibit 144, and we're  
14 going to go to page 4 on these talking points of what you were telling the  
15 public.

16 MR. ZAVITSANOS: Page 4, Michelle, under number 1, the  
17 first paragraph there.

18 BY MR. ZAVITSANOS:

19 Q All right. Why was the shared savings program enhanced?  
20 Now before I continue reading, you started on this path -- this critical  
21 path to execution with this shared savings program, right?

22 MR. BLALACK: Objection. Compound question.

23 THE COURT: Objection sustained.

24 BY MR. ZAVITSANOS:

25 Q You began the critical path of execution with the shared

1 savings program, right? That was -- that's what came first.

2 A I'm not sure of your question.

3 Q The shared savings program -- let's go to Exhibit 25. We  
4 looked at this yesterday, Mr. Haben. It's up on your screen. This is the  
5 state of things in 2016.

6 MR. ZAVITSANOS: Michelle, page 2.

7 THE WITNESS: What -- sorry. What document, please?

8 MR. ZAVITSANOS: 25, page 2.

9 Let's pull out, Michelle, the shared savings program all the  
10 way across with the headline --with the heading out-of-network program  
11 overview. Okay. And I need the heading too, Michelle.

12 BY MR. ZAVITSANOS:

13 Q Okay. So in 2016, I thought we covered this last week, 95  
14 percent of the membership had this shared savings program which  
15 included wrap agreements, right?

16 A Yes. That's what the document says.

17 Q Okay. So in 2016, there was no balance billing, right?

18 MR. ZAVITSANOS: Michelle, right here.

19 BY MR. ZAVITSANOS:

20 Q No balance billing. I think we covered this last week. You  
21 made a fee on it, right?

22 A Correct.

23 Q You made a fee on this shared savings program when you  
24 used the wrap agreement, right?

25 A Correct.

1 Q But then when you decided to make more, meet that  
2 objective, you spread misinformation about the state of things, right?

3 A That's incorrect.

4 Q Let's go to Exhibit 144.

5 MR. ZAVITSANOS: Michelle, let's do this. Put that up next  
6 to 144, page 4. What you have up on the screen right next to 144, page  
7 4. Okay. So, Michelle, we're going to pull up the top here, the shared  
8 savings program all the way across, please, and then the paragraph  
9 under number one on the right-hand side, please, Michelle.

10 BY MR. ZAVITSANOS:

11 Q Okay. So let's compare here, Mr. Haben. The top pullout is  
12 Exhibit 25, page 2. And what we see here is that --

13 MR. ZAVITSANOS: Right here, Michelle.

14 BY MR. ZAVITSANOS:

15 Q -- 95 percent of the membership had SSP, no balance billing,  
16 provider agrees not to balance bill the member for the discount. That  
17 was the reality in 2016 and what United knew internally, right? You  
18 knew that?

19 A For those that have a wrap agreement, yes.

20 Q But when it came to the messaging of why you needed to cut  
21 the rate deeper, what you were telling the public was that many of these  
22 providers do not participate in wrap networks or engage in single case  
23 negotiation efforts, right?

24 A Yes, that's what that says.

25 Q That is directly contradicted. What you're telling the public is

1 directly contradicted by what you know to be the truth, right, sir?

2 A That's incorrect. The --

3 Q Sir, I just asked you is that correct?

4 A No, that's incorrect. And I can explain it.

5 Q I don't need you to explain, sir. We can read it up on the  
6 screen here, right?

7 A That --

8 Q Can we read it up on the screen?

9 A That's talking about all providers not ER physicians only.

10 Q Sir, can we read this up on the screen?

11 A Yes, you can. And it's -- I can explain.

12 Q No, sir. To you, Mr. Haben, is what you were telling the  
13 public inconsistent with what you knew to be true? Yes or no.

14 A No, it's not inconsistent.

15 Q Okay. Thank you, sir. Now initially --

16 [Counsel confer]

17 BY MR. ZAVITSANOS:

18 Q Okay. 63.

19 A Can I put these away or do you need these?

20 Q Sure. And what you were telling the public initially, you  
21 didn't want to bash all doctors. And so, initially, what United did as part  
22 of this medica campaign was to say it's just a few bad apples. It's just a  
23 handful of bad doctors out there that are causing these runaway  
24 healthcare costs, right?

25 MR. BLALACK: Objection to the form. Argumentative.

1 MR. ZAVITSANOS: I can rephrase.

2 MR. BLALACK: Counsel is testifying.

3 THE COURT: Objection sustained.

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

5 BY MR. ZAVITSANOS:

6 Q Exhibit 63, page 1.

7 A Let me get to that, please.

8 MR. ZAVITSANOS: Michelle, pull out --

9 BY MR. ZAVITSANOS:

10 Q This is the talking points memo in 2014 that we talked about  
11 briefly last week.

12 MR. ZAVITSANOS: Second paragraph, Michelle.

13 BY MR. ZAVITSANOS:

14 Q Okay.

15 A I need to get there, please. Just hold on. Okay.

16 MR. ZAVITSANOS: Michelle, right here. Small group.  
17 Highlight and circle.

18 THE WITNESS: Can I just --

19 BY MR. ZAVITSANOS:

20 Q When you began this campaign, you knew the public would  
21 not accept the idea that all out-of-network emergency room doctors are  
22 bad. And so, you began taking baby steps, right, sir?

23 A Can I just find this in the document, please?

24 Q We --

25 A I don't --



1 Q We covered this in detail last week. Do you need to read it  
2 again?

3 A Yes, please.

4 Q Okay. Go ahead.

5 A So where --

6 Q It's on page 1.

7 A Yeah.

8 Q Second paragraph.

9 A Okay. Give me just a second, please.

10 Q Sure.

11 [Pause]

12 THE WITNESS: Okay.

13 THE COURT: Is there someone on the phone who's not  
14 muted.

15 THE COURT RECORDER: I just muted that.

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

17 MR. ZAVITSANOS: Thank you, Your Honor.

18 BY MR. ZAVITSANOS:

19 Q Initially, sir, the message was it was just a handful of bad  
20 apples, right, small group?

21 A It doesn't say bad apples, but it's staffing firms they were  
22 doing that in small numbers.

23 Q But then -- and this is 2014. If we go to 144, that's the one we  
24 were just looking at. And now we are four years later. Let's see how  
25 the message has evolved. Page 4.

1 A Can I get to that again, please?

2 Q Yeah.

3 MR. ZAVITSANOS: Right there, Michelle. No, just the first  
4 one. Michelle, right here. No, no, no, just emergency treatment  
5 providers are shown. Okay. And I want you to circle the word "many".  
6 BY MR. ZAVITSANOS:

7 Q So, Mr. Haben, the campaign began in 2014. It was a small  
8 group in 2014. As you were getting a tailwind by 2018, had it become  
9 many?

10 A Those two statement --

11 MR. ROBERTS: Objection. Compound.

12 THE COURT: It is compound. You'll have to break it down.

13 BY MR. ZAVITSANOS:

14 Q By 2018, was the message that emergency room doctors,  
15 many of them, don't participate in Wrap Network agreements and --

16 MR. ZAVITSANOS: Right here, Michelle.

17 BY MR. ZAVITSANOS:

18 Q Our balanced billing. Was that the message by 2018, sir,  
19 members by surprise, would not expect the balance billing issue? Was  
20 that the message by 2018, Mr. Haben?

21 A I think there's a couple questions in there. There are --

22 Q Was this the message by 2018?

23 A Which part? This is --

24 Q It's highlighted, sir.

25 A Many ER physicians did not participate in Wrap networks.

1 Q My question is, Mr. Haben, this document, which is a talking  
2 points memo, in 2018, four years after the one we just saw, is this part of  
3 United's public education campaign?

4 A Yes. We were trying to educate the public.

5 Q Okay. And this, Mr. Haben, no doubt about it, even  
6 Pinocchio would laugh at this. This is a bald-faced lie.

7 A That's incorrect.

8 MR. ROBERTS: Objection. Argumentative.

9 THE COURT: Objection sustained. Disregard the last  
10 question.

11 MR. ZAVITSANOS: Let me rephrase it.

12 BY MR. ZAVITSANOS:

13 Q If you're in a Wrap agreement, you're prohibited  
14 contractually from balance billing, right?

15 A If you're in a Wrap agreement.

16 Q Does that make it seem to you like now we're talking about  
17 most emergency room doctors? It doesn't same some or a handful. It  
18 says emergency room doctors, right? Right?

19 A It says emergency treatment providers.

20 Q So here you're saying the problem is these providers don't  
21 participate in Wrap networks. And as you gain additional footing with  
22 your messaging, did that message change, sir?

23 A I am not sure if I'm following your question.

24 Q Well, let's take a look.

25 MR. ZAVITSANOS: Hold on, Michelle, I want you to leave

1 that up, and put it up next to 324.

2 THE WITNESS: 3 what?

3 BY MR. ZAVITSANOS:

4 Q 324.

5 A Can I put this other one away?

6 Q I want you just to orient this, Mr. Haben. So we started in  
7 2014. Some providers are a problem.

8 A I'm sorry, some providers are what?

9 Q Are a problem. Remember we looked at the 2014  
10 document? We looked at the 2014 talking points document?

11 A I'd have to look at that again.

12 Q You don't remember it, even though we talked about five  
13 minutes ago?

14 A I don't think it said some are a problem.

15 Q Fair enough. 2018 is the language we just saw.

16 MR. ZAVITSANOS: In fact, Michelle, pull it out, so we can  
17 see it.

18 BY MR. ZAVITSANOS:

19 Q 2018, right here. This is the message publicly in 2018, right?

20 A That was an internal talking point document.

21 Q That was an internal talking points document. Talking points  
22 meaning talking to members of the public and media, right?

23 A I don't know who the audience was beyond that.

24 Q And if we go on 324, now we're in 2019, and let's see what  
25 you say then. Page 2.

1 MR. ZAVITSANOS: Okay. Michelle I need you to pull out this  
2 and right here, Michelle.

3 THE WITNESS: Can I look at page 2 while you do that?

4 MR. ZAVITSANOS: Sure. No, no, no, right here to here to  
5 here. Right there. That's it.

6 BY MR. ZAVITSANOS:

7 Q Okay, now let me know when you're caught up.

8 MR. ZAVITSANOS: Michelle, right here. Highlight this and  
9 highlight this.

10 BY MR. ZAVITSANOS:

11 Q You ready?

12 A One more second, please.

13 [Witness reviews document]

14 Q You ready?

15 A Yeah, I guess.

16 Q Okay. So in 2018, you're saying the problem is that a lot of  
17 these providers don't participate in Wrap Network agreements, right?

18 A Yes.

19 Q And by the next year, the Wrap Network agreements are the  
20 problem?

21 A Because most ER physicians don't participate in them.

22 Q I didn't ask why, sir. The next year in 2019, Wrap networks  
23 perpetuate the problem, right?

24 A Yes, and that is why.

25 Q Okay. So let me see if I can follow this. The state of the

1 world in 2016, 95 percent were on Wrap Network agreements, right?

2 A Employer --

3 Q Shared savings program.

4 A Employer groups, yes.

5 Q 2018, as part of your public education, you're saying these  
6 providers are not participating in Wrap Network agreements, right?

7 A Yeah.

8 Q In 2019, now Wrap networks, no balance billing, agreed upon  
9 rates, everybody's happy, everybody's making money, it's the problem,  
10 right?

11 A Because ER staffing firms do not participate in Wrap  
12 agreements, yes.

13 Q Well, you know that TeamHealth participates in a Wrap  
14 Network agreement, right?

15 A Yes, but the agreements are percent of bill.

16 Q Sir, my question is -- I didn't ask why.

17 A I don't know for a fact.

18 Q Well, when your lawyer stood up in opening statement and  
19 told the jury that we still do business with MultiPlan even though we're  
20 accusing them -- I don't know what he said, but he told the jury, we still  
21 do business with MultiPlan. Do you know what that means? That means  
22 we have a Wrap Network agreement with them?

23 A Not always, no.

24 Q Do you know what that means, is my question.

25 A I don't know specifically.

1 Q Okay. We'll ask someone else about that, okay.

2 A That's fine.

3 Q Let's move on. Now, let's go back 246. Now the problem  
4 with these Wrap Network agreements is that even though you were  
5 making over \$800 million a year for literally doing nothing, you needed  
6 more, right.

7 MR. ROBERTS: Objection. Argumentative.

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

9 THE COURT: Objection sustained.

10 THE WITNESS: Can I get 246, please?

11 MR. ZAVITSANOS: Mr. Haben --

12 THE COURT: Hang on a second.

13 MR. ZAVITSANOS: Michelle, let's please go to -- now this is  
14 a -- I'm jumping around a little bit here, but let's go to the second page.

15 BY MR. ZAVITSANOS:

16 Q This is talking about ASO clients. Not the fully insured  
17 business, but the ASO business, okay? Are you with me?

18 A Page 2, yes.

19 Q And it looks like --

20 MR. ZAVITSANOS: Michelle, right here.

21 BY MR. ZAVITSANOS:

22 Q And so you were making, at that time, off of these SSP  
23 programs, \$830 million a year, right?

24 A That's correct.

25 Q And here we see that 70 percent of the claims were not

1 eligible for the deeper discount, right? The new programs you were  
2 instituting. So you needed to change those, right?

3 A Yes, we needed to talk to the clients to see if they wanted to  
4 change.

5 Q Okay. So but the first thing that has to happen in order for  
6 that to happen is even though you're making 830 million, page 8. In  
7 order to make sure that this happens --

8 MR. ZAVITSANOS: -- page 8, please. Right here. Where  
9 we're talking about -- right here, Michelle.

10 BY MR. ZAVITSANOS:

11 Q At that point, you all were talking about instructing MultiPlan  
12 to shut off a Wrap Network. And the reason you're going to do that is so  
13 that you could make more money, right?

14 A That's incorrect. We were doing that because if they had  
15 ENRP or UNRP that's a free program. So we would rather have the client  
16 take that program.

17 Q Well, and here's my favorite word. Due to egregiousness. Is  
18 it egregious, Mr. Haben, to turn off wrap agreements that protect the  
19 member, allow you to make \$830 million for doing nothing, and pay the  
20 provider an amount that they've agreed to take? Is that egregious?

21 MR. ROBERTS: Objection. Compound and argumentative.

22 THE COURT: Break it down.

23 MR. ZAVITSANOS: Yeah.

24 THE COURT: But otherwise overruled.

25 BY MR. ZAVITSANOS:



1 Q Let me break it down. Is it egregious to have a Wrap  
2 Network agreement where it's a win, win, win? Is that egregious?

3 A If it is a win, win, win, and a reasonable reimbursement rate  
4 to the staffing firm, yes. It's not egregious.

5 Q Well, let's be clear because we want that, your position to the  
6 jury -- or is your position to the jury that we are entitled to zero? Is that  
7 your position?

8 A No, I'd have to look at the claims. Claims are complicated,  
9 and you have to look at each claim.

10 Q Well, Mr. Haben, you were the architect for these claims.  
11 And these plans by the way, what they are is you get -- let me back up.  
12 United gets tens of thousands of claims a day, right? A lot.

13 A I think --

14 Q A lot of claims a day.

15 A Millions, I think.

16 Q Okay. And what you do is you go in, and you set up a  
17 computer model, so that the claims are processed electronically under  
18 these programs, right?

19 A It is extremely complicated, and I'd be glad to try to explain,  
20 but I think there's an expert.

21 Q No, sir, I understand --

22 A It's --

23 Q -- we're going to get into the program.

24 A It's extremely complicated.

25 Q Sir, listen to my question. The claims are processed

1 electronically, right?

2 A That would be the goal, yes.

3 Q Okay. Okay. And then what you did was -- in order to justify  
4 this, what you did was you fancified your desire for more money by  
5 coming up with these fancy sounding pilots. That's what you did, right?

6 A That's incorrect.

7 Q Okay.

8 A We were all competitive, you've seen that on page 4, I  
9 believe.

10 THE COURT: So I'm going to have to ask everyone to take a  
11 break at this time. You're instructed during the break, don't talk with  
12 each other or anyone else on any subject connected with the trial. Don't  
13 read, watch or listen to any report of, or commentary on the trial. Don't  
14 discuss this case with anyone connected to it by any medium of  
15 information, including without limitation, newspapers, television, radio,  
16 internet, cell phones or texting.

17 Don't conduct any research on your own relating to the case.  
18 Don't consult dictionaries, don't use the internet, or don't use reference  
19 materials. Don't talk, text, Tweet, Google, or conduct any other type of  
20 research with regard to any issue, party, witness, or attorney involved in  
21 the case. Do not form or express any opinion on any subject connected  
22 with the trial until the matter is submitted to the jury.

23 I understand there's an evacuation order for the courthouse.  
24 I'm going to ask that all of you file out. Go down the escalator, exits are  
25 on the south and north of the building. And we'll see you as soon as we

1 can.

2 [Recess from 10:40 a.m. to 12:24 p.m.]

3 [Outside the presence of the jury]

4 THE COURT: Thank you. Please remain seated. So let me  
5 recall the case of Freemont v. United. Note the presence of counsel and  
6 parties. Everybody okay going forward? I'd like to make sure the jury's  
7 okay, then send them to lunch? Yes.

8 MR. ZAVITSANOS: Yes, Your Honor.

9 MR. BLALACK: Yes, Your Honor. We didn't bring our  
10 witness back, you know, because of the email about lunch.

11 THE COURT: That's fine.

12 MR. BLALACK: But if we need him.

13 THE COURT: So we'll bring him back at 2:00.

14 MR. BLALACK: Okay.

15 THE COURT: Thanks.

16 MR. BLALACK: Did you mean 1:00.

17 THE COURT: 1:00. We'll bring him back at 1:00.

18 MR. BLALACK: Got it. Thank you, Your Honor.

19 UNIDENTIFIED SPEAKER: Daylight savings time.

20 THE COURT: Why they don't change the clocks? It takes a  
21 week. So welcome to your first evacuation, if that was your first. And  
22 it's not my first, but there's no reason to be concerned. Everything's  
23 been cleared. We clear it internally. There's a whole procedure. We  
24 clear it internally, based upon what the -- something came through  
25 security that looked like it may have an explosive device.

1 MR. BLALACK: Okay.

2 THE COURT: Metro was here. They brought the dogs.  
3 Everything's clear. Nobody's going to be concerned.

4 THE MARSHAL: All rise for the jury.

5 MR. BLALACK: Thank you, Your Honor.

6 [Jury in at 12:26 p.m.]

7 THE COURT: Thank you. Please be seated. All right,  
8 everyone. So that was a little extra fun we weren't planning on today,  
9 but I want to assure that the building is safe. I guess something came  
10 through security that looked like it may have an explosive device. We've  
11 had a thorough inspection of every floor in this courthouse, and it's been  
12 cleared by the state police, Metro, our marshals and I guess, apparently  
13 a group of dogs.

14 So what we want to do is make sure everybody's okay and  
15 then send you out to lunch and start again at 1:00. That clock is wrong.  
16 It says 1:30. It's really 12:30. Is everybody okay enjoying a little lunch  
17 and getting back to work?

18 UNIDENTIFIED SPEAKER: Yes.

19 THE COURT: That's a great attitude. Thank you. You're  
20 instructed during the recess don't talk with each other or anyone else on  
21 any subject connected with the trial. Don't read, watch or listen to any  
22 report of or commentary on the trial. Don't discuss this case with  
23 anyone connected to it by any medium of information, including without  
24 limitation, newspapers, television, radio, internet, cell phones or texting.

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

1 You can't consult dictionaries, use the internet or use reference  
2 materials. Don't talk, text tweet, use social media, Google or conduct  
3 any other type of book or computer research with regard to any issue,  
4 party, witness or attorney involved in this case.

5 Most importantly, do not form or express any opinion on any  
6 subject connected with the trial until the matter is submitted to the jury.

7 Thank you again. Enjoy your lunch. See you at 1:00.

8 THE MARSHAL: All rise for the jury.

9 [Jury out at 12:28 p.m.]

10 [Outside the presence of the jury]

11 THE COURT: All right. So Mr. Blalack, you had something to  
12 put on the record.

13 MR. BLALACK: The only point I wanted to make, Your  
14 Honor, was the objection to the reading of the transcript, which during  
15 that exchange, Mr. Zavitsanos read only a portion of it. He started with  
16 the response of the witness and then skipped two or three lines and then  
17 picked up the response. Under the rule of completeness, our position is  
18 that the entire portion of that answer should have been read and that  
19 was the basis of the objection. He referred to a limine ruling. I don't  
20 believe there was any limine ruling that precludes reference to any of the  
21 statutes that are referenced in that -- in the testimony, which is, I think,  
22 the reason for why that was excluded. If there was, I'll be glad to  
23 reevaluate our ruling, but either way, once you kind of show the witness  
24 testimony, he's obligated to show the entire [indiscernible].

25 THE COURT: And the response?

1 MR. ROBERTS: Your Honor, if I could just add the --

2 THE COURT: You may.

3 MR. ROBERTS: -- two citations for the record?

4 THE COURT: Certainly.

5 MR. ROBERTS: Nevada Rules of Civil Procedure Rule 32(a)(6)  
6 and Nevada Revised Statute 47.120.

7 THE COURT: I'll take a look at those over the recess. Thank  
8 you.

9 MR. ZAVITSANOS: And Your Honor, if I could. The part that  
10 I skipped, the witness talked about the legislative changes that went into  
11 effect in 2021. It had nothing to do with companies going bankrupt. It  
12 was at the beginning of a clearly convoluted answer completely  
13 unrelated to the point that I read. And one thing counsel did not say is  
14 that the part that I omitted somehow contextualizes the bankruptcy point  
15 that I was raising. It does not. It's completely separate.

16 THE COURT: Now, during the argument we had in front of  
17 the jury, you mentioned it related to a motion in limine?

18 MR. ZAVITSANOS: Yes, Your Honor. And I believe the  
19 motion in limine relates to the legislative changes that went into effect  
20 after the operative period that we're talking about in this case, because  
21 Nevada -- excuse me -- made some pretty drastic changes along with  
22 several other states to this balance billing issue and how claims like this  
23 get resolved. That's what the witness was talking about. That, I believe,  
24 is the subject of the limine order that Your Honor has entered that that  
25 was not -- that was off limits. And so I did not want to open the door by

1 reading a portion that does not in any way relate to the point that I was  
2 making.

3 THE COURT: Good enough. Did you have a response?

4 MR. BLALACK: Yes, Your Honor. I don't -- I'm not familiar  
5 with that motion in limine, so if it can be -- the number can be cited to  
6 me, I'll be --

7 THE COURT: If you have something to bring up after lunch,  
8 we'll take a moment.

9 MR. BLALACK: Thank you, Your Honor. I don't believe there  
10 is one, but if there is, I'll be glad to look at it.

11 THE COURT: Thank you, both. All right. Have a good lunch.

12 MR. ZAVITSANOS: Thank you.

13 MR. BLALACK: Thank you.

14 [Recess taken from 12:31 p.m. to 1:03 p.m.]

15 THE COURT: Please be seated. Are we ready to bring in the  
16 jury?

17 MR. ZAVITSANOS: Yes, Your Honor.

18 MR. BLALACK: Would you like me to bring in Mr. Haben  
19 now, Your Honor?

20 THE COURT: Yeah. Please. Save you some time.

21 THE MARSHAL: All rise for the jury.

22 [Jury in at 1:04 p.m.]

23 THE COURT: Thank you. Please be seated. And Mr.  
24 Zavitsanos.

25 MR. BLALAK: I think he just walked out of the courtroom,

1 Your Honor.

2 THE COURT: He stepped out. Okay. Mr. Zavitsanos, please  
3 continue.

4 MR. ZAVITSANOS: Thank you, Your Honor. May it please  
5 the Court and counsel. I'm sorry, Your Honor. May I proceed?

6 THE COURT: Yes, please.

7 MR. ZAVITSANOS: Thank you. Okay.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. ZAVITSANOS:

10 Q Mr. Haben. Okay. So I think we left off talking about that  
11 language that talked about shutting off the Wrap networks. Do you  
12 remember that in the document?

13 A Yes, I believe so.

14 Q Okay. So --

15 MR. ZAVITSANOS: Michelle, can you pull up Exhibit 368,  
16 please? Your Honor, I think we may have an issue here [indiscernible].

17 BY MR. ZAVITSANOS:

18 Q Do you have 368 there in front of you, sir?

19 A I do.

20 Q Okay.

21 MR. ZAVITSANOS: [Indiscernible] pull it up here. My  
22 apologies, Your Honor.

23 BY MR. ZAVITSANOS:

24 Q If you would turn please to page 9, please?

25 MR. ZAVITSANOS: Michelle, are you there?



1 MS. RIVERS: Uh-huh.

2 MR. ZAVITSANOS: Okay. I'm not sure what the green thing  
3 is down there, but, Michelle, can you pull out the section that says  
4 existing clients?

5 BY MR. ZAVITSANOS:

6 Q All right. So we just looked at a document, Mr. Haben, that  
7 talked about shutting down these Wrap networks, and this is another  
8 talking points memo, and does this appear to be a directive to your sales  
9 staff?

10 A I'm not 100 percent familiar with this document. So I don't  
11 know if it's for sales or not.

12 Q Well, let's look at the previous page. Page 8 --

13 A Okay.

14 Q -- the same document.

15 MR. ZAVITSANOS: Michelle, can you pull halfway down  
16 where it says -- that's okay. You know what, let's go back to where we  
17 were. 368, page 9.

18 BY MR. ZAVITSANOS:

19 Q Okay. This is a United document, correct?

20 A Yes.

21 Q Existing clients. Now these would be ASO type clients, right?

22 A I believe so.

23 Q "Meet with existing clients to understand their priorities and  
24 introduce new" -- now there's that acronym -- "out-of-network packages  
25 that are most appropriate" --

1 MR. ZAVITSANOS: Hold on, Michelle.

2 BY MR. ZAVITSANOS:

3 Q -- "and aligned with their goals. At a minimum, meet with  
4 clients who have not adopted SSPE" -- now that's that program with the  
5 deeper discounts, right?

6 A It's shared savings enhanced.

7 Q Yeah. " Who have not adopted SSPE and will remain on  
8 reasonable and customary," right?

9 A Yes.

10 Q "Clients are not obligated to change, but the goal" --

11 MR. ZAVITSANOS: Here we go, Michelle, right here.

12 Underline or highlight the whole thing.

13 BY MR. ZAVITSANOS:

14 Q "The goal is to get clients off of reasonable and  
15 customary/FAIR Health," right?

16 A Yes, that's what that says.

17 Q That was your goal -- United's goal?

18 A Yes, that's what that says. Clients are not competitive, and  
19 we needed to educate them.

20 Q Yes. And if we look at the -- page 7 of the same document,  
21 around the time where the goal is to shut off the Ramp Networks --

22 MR. ZAVITSANOS: Let's go to page 7. 368, page 7.

23 Michelle, right here to right here.

24 BY MR. ZAVITSANOS:

25 Q And this again is existing ASO clients. And this has the same

1 language, the goal is to get clients off of reasonable and customary FAIR  
2 Health. And look at the next bullet, percentage of saving fee applies,  
3 right?

4 A Yes, that's what that says.

5 Q Okay. Now, we're going to look at one other talking points  
6 memo. Let's go to 144.

7 MR. ZAVITSANOS: And Michelle, will you please go to page  
8 8. Now, this is another talking points memo, and Michelle pull out  
9 section 12.

10 BY MR. ZAVITSANOS:

11 Q Now, again, we're talking about the ASO clients for United.  
12 Does this appear to be talking points to the sales staff at United?

13 A Can I get there, please?

14 Q Yes, sir.

15 A What page?

16 Q It is page 8.

17 A Okay.

18 Q When having conversations with clients -- does this appear  
19 to be a talking points memo to your sales people?

20 A I believe so.

21 Q And they're talking about something called an elevator pitch.  
22 Do you see that?

23 A Yes.

24 Q Elevator pitch means you can say it succinctly enough that  
25 you can complete the thought in the course of an elevator ride, right?

1 A That's what I understand.

2 Q Egregious billers. Runway healthcare costs. Out of control  
3 emergency room charges. That's an elevator pitch, right?

4 A I don't know.

5 Q Okay. Well, let's go to page 11 of the same talking points  
6 document. And by the way, so far, Mr. Haben, as between the clients  
7 and United, does this seem as though it is United that is ramrodding  
8 these discounts rather than the clients based on what we've seen?

9 MR. BLALACK: Object to form. Argumentative.

10 THE COURT: Objection sustained.

11 BY MR. ZAVITSANOS:

12 Q Does this appear to you, the talking points memos we have  
13 been through, that the motivation for these changes is coming from  
14 United and not the clients?

15 A No, it is not. I can -- I can explain if you want me to.

16 Q No, sir. Let's pull this.

17 MR. ZAVITSANOS: Michelle, and I need the heading, please.  
18 Close that out. Yeah. Page -- it's page 144, page 11. And I need --  
19 Michelle, follow me from here to here, please. Thank you.

20 BY MR. ZAVITSANOS:

21 Q Okay. All right. So this is another talking points and FAQ --  
22 that's frequently asked questions, right?

23 A Yes.

24 Q Number 25. What if my client wants to continue with SSP  
25 only? Now, SSP is the one with the Wrap agreements, right?

1 A Correct.

2 Q If your client does object SSPE, you should escalate the  
3 conversation to underwriting and your leadership. You're going to bring  
4 the big guns in to try to talk them into accepting it?

5 MR. BLALACK: Objection. Compound.

6 THE COURT: Objection is sustained.

7 BY MR. ZAVITSANOS:

8 Q This talks about bringing leadership in if the client is resistant  
9 to these deeper discounts, right?

10 A It's not what that says.

11 Q Okay. All right.

12 MR. ZAVITSANOS: Take it down, Michelle.

13 BY MR. ZAVITSANOS:

14 Q All right. Now, here's what I want to do. I want to do three  
15 things. First, I want to look at the impact to the members -- the members  
16 would be the individuals, the impact to United of these programs, the  
17 dollar impacts. Once we get done with that, then we're going to talk  
18 about this Yale study, okay? You with me?

19 A Yeah.

20 Q Okay. So we're going to go to the same exhibit we've been  
21 on, this 246. This is the opportunities email and we're going to go to  
22 page 9. And just so we have a reference point --

23 MR. ZAVITSANOS: Michelle, can we please go to page 8 real  
24 quick just so we have a reference here?

25 BY MR. ZAVITSANOS:

1 Q This is the document --

2 MR. ZAVITSANOS: Michelle, pull this out here.

3 BY MR. ZAVITSANOS:

4 Q This is the document that had the language about shutting  
5 off Wrap networks, right? 248? Right, sir? It's up on your screen. Do  
6 you see it?

7 A I'm sorry.

8 Q Yeah. This is the document that talked about shutting off  
9 Wrap networks?

10 A It does have that comment in there.

11 Q Okay. All right. So now, let's go to page 9.

12 A Can I just take a two second look at 9?

13 Q Sure. Sure. I'm only going -- I'm going ask -- for purposes of  
14 what I'm about to ask you -- I'm going to ask you about this chart here --

15 A Okay.

16 Q -- so if you want to read the whole thing, go ahead.

17 A Okay.

18 Q All right. Now, what we have here --

19 MR. ZAVITSANOS: Michelle, let's pull -- follow me here.

20 From here to here. All the way across. All right. Thank you, Michelle.

21 BY MR. ZAVITSANOS:

22 Q Okay. So here's what we have. We have these different  
23 programs which we're going to go through what they mean a little bit  
24 later. But these are the "programs" that you all have. There's billed  
25 charges. There's the SSP with the Wrap Network, which we talked

1 about. There's reasonable and customary. There's something called  
2 OCM, which we're going to talk about. And something called ENRP. Do  
3 you see that?

4 A Yes.

5 Q These are the different ways to get to discounts -- or excuse  
6 me. These are the different ways to deal with out-of-network charges,  
7 correct?

8 A They are programs to address the charge amounts of the  
9 [indiscernible - Mr. Zavitsanos and witness speaking at same time].

10 Q All right.

11 MR. ZAVITSANOS: Now, let's close this out. And -- no, keep  
12 this page up. We're going to get rid of the carve out there, Michelle,  
13 please. Page 9, please. Okay. Now, Michelle, let's pull this out before  
14 we go through the numbers. Right here. From here to here.

15 BY MR. ZAVITSANOS:

16 Q Okay. Now, let's take a look and see what it says. Okay. I'm  
17 going to get to the first bullet point in just a little bit, but I want to talk  
18 about the next two. So in -- somebody went through and did a  
19 comparison of all these different ways to deal with out-of-network  
20 reimbursement costs. And you all wrote down, "No member protection  
21 for ENRP could put member at risk for discount amount." Now, that  
22 means balance billing, right?

23 A Yes.

24 Q Okay. So an ENRP, what does that stand for?

25 A It's the Extended Non-Network Reimbursement Program.

1 Q Okay. That is the one that has the deepest discounts, right?

2 A That is based on a par median and has the deepest  
3 reduction.

4 Q ENRP provides UHC -- that's UnitedHealthcare, right?

5 A Yes.

6 Q The least liability and no vendor fee, right?

7 A Yeah, so we don't charge the clients for it either.

8 Q I'm going to get to that. I promise. We're going to get to  
9 that. I want to get through this chart here right now.

10 A Okay.

11 Q So from United's standpoint, on the fully insured part of the  
12 business, that's not ASO -- that's the part where you are taking the risk,  
13 right?

14 A Yes.

15 Q There's no doubt about it, this ENRP which provides for up to  
16 85 percent reductions off of the bill charges that's the best thing for  
17 UnitedHealthcare, least liability, no vendor fee meaning you don't have  
18 to pay MultiPlan, right?

19 A If the state allows us to do that with the benefit plans, yes.  
20 That's the deepest reduction.

21 Q Okay. So let's just succinctly say this. ENRP, the one that  
22 offers the deepest discounts, right?

23 A Yeah, it's based on par median.

24 Q No doubt about it, that's what is best for UnitedHealthcare,  
25 right? On the fully insured side?



1 A Not necessarily.

2 Q Is it the one that provides UnitedHealthcare with the least  
3 liability and no vendor fee?

4 A That's what we have written here, yes.

5 Q I'm sorry?

6 A That's what we have written here, yes.

7 Q Okay. Likewise, on the fully insured side, not ASO but where  
8 you are acting as the insurance company in terms of protection for the  
9 member, there is none.

10 A That's incorrect. I can explain why that is.

11 Q No, sir. Does it say no member protection for ENRP, put  
12 "member at risk for discount amount"?

13 A It also says state regulations. There are state regulations that  
14 have protections.

15 Q I didn't ask you about state regulations, sir.

16 A Well, that --

17 Q My question is is that what that says?

18 A In that bullet, it does say that.

19 Q Good for United, bad for member.

20 A That's incorrect.

21 Q Okay. Now, let's go to the chart. Okay.

22 MR. ZAVITSANOS: Page 9, Michelle. 246, page 9. We're  
23 going back. Okay. Now, there's a lot going on here. Let's see if we can  
24 break this down a little bit. Michelle, follow me. I want you to go from  
25 here to here.

1 BY MR. ZAVITSANOS:

2 Q Okay. This chart is looking at two different scenarios. The  
3 top part is looking at the impact on members, clients, and  
4 UnitedHealthcare on the fully insured side. That's this FI that Michelle  
5 has highlighted. Do you see that?

6 A Correct.

7 Q And the bottom part is the ASO part, right? Those are the  
8 two lines of business we're talking about here, right?

9 A Yeah. ASO is not shown, I think, in your blow-up.

10 Q Yeah. I'm -- we're going to get to the ASO in a little bit.

11 A Okay.

12 Q Let's do the fully insured part first. Now, fully insured is  
13 where United is the insurer, right?

14 A Correct.

15 MR. ZAVITSANOS: And Michelle, just so we keep clarity, can  
16 you pull that out again where the ASO is not showing? We're  
17 going -- yeah, there you go. Thank you. Perfect.

18 BY MR. ZAVITSANOS:

19 Q Okay. Now, what this does is it starts with a set of  
20 assumptions on these different programs, right?

21 A Yes.

22 Q And it assumes a billed charge of \$1,000, right, out-of-  
23 network?

24 A Correct.

25 Q Okay. So here's what we're going to do. So highlight this

1 and highlight this. Okay. Now -- then, so the billed charge comes in. It's  
2 \$1,000. And it looks like by this time, by October of 2018, the average  
3 discount on these wrap networks, SSP, is 30 percent, right?

4 A That's just an example for the illustration.

5 Q All right. Fair enough. Okay, sir. And then, the example on  
6 the ENRP side is a 70 percent reduction, right?

7 A Yes.

8 Q Okay. So that means the discount amount on ENRP is \$700,  
9 right? And the discount amount on the wrap network is \$300, right?

10 A Yes. Based on that math, that's what that says.

11 Q So if we subtract 1,000 from 700, the allowed amount is \$300,  
12 right?

13 A Yes.

14 Q Whereas the allowed amount over here is \$700, right?

15 A Yes. Yes.

16 Q Okay. Now, one thing you tried to explain last week was  
17 when looking at these billed charges, there's a member share, right?

18 A Yeah.

19 Q That has nothing to do with balance billing. It's just the  
20 terms of the plan are the member, like in this example, the member is  
21 responsible for 20 percent of the charges when you're out-of-network,  
22 right?

23 A In that example, their coinsurance or cost share is 20 percent.

24 Q Okay. So the member share in ENRP is the same as it is in  
25 the wrap network, right? And the member is going to have to pay that

1 regardless of the discount, right?

2 A The percentage is the same.

3 Q Yes. And that's not -- and you understand, from our  
4 standpoint, there's no complaint about that, about the member portion  
5 of the out-of-network charge?

6 A I don't know what --

7 MR. BLALACK: Objection. Foundation.

8 THE COURT: Overruled.

9 THE WITNESS: I don't know what you guys complain about  
10 on that.

11 BY MR. ZAVITSANOS:

12 Q Well, you understand the thing we're complaining about is  
13 the program discount. That's what we're complaining about. Do you  
14 understand that?

15 A I don't know.

16 Q Mr. Haben, you -- how long was your deposition?

17 A Four -- my deposition?

18 Q How many hours?

19 A I think it was eight.

20 Q During those eight hours, you didn't figure out that the big  
21 issue here is you're applying these discounts arbitrarily and you're  
22 putting money in your pocket versus our pocket, that that was our  
23 complaint? You didn't know that?

24 A That's not my understanding of the concern.

25 Q Okay. Anyway, let me keep going. All right. Now, would

1 you agree with me that one of the reasons people buy insurance is to  
2 avoid the worst-case scenario? Right?

3 A I don't -- I don't know. What do you mean?

4 Q All types of insurance. Liability insurance. I mean,  
5 everybody buys insurance when they drive a car so that if they get in an  
6 accident and they get sued, the worst-case scenario being they get sued,  
7 they have protection on it.

8 A I understand what you're saying.

9 Q Fundamentally, that's the purpose of insurance is to protect  
10 against the worst-case scenario, right?

11 A I understand what you're saying.

12 Q Okay. So after we apply the member benefit cost share, it  
13 looks like from United's standpoint, it's best-case scenario is \$240,  
14 meaning that's what -- do you see that, sir? \$240?

15 A I do.

16 Q Versus \$580 on the wrap network, right?

17 A I do see that.

18 Q Okay. So the wrap network clearly is not as good for United  
19 as ENRP, right?

20 A It depends on the provider agreement.

21 Q Well, I'm just looking at this chart that you all have.  
22 Five-eighty is more than double of two-forty, right?

23 A Yes, but you're talking -- you asked about the wrap network  
24 agreement with the provider. That's -- this is just a representation.

25 Q Yes, sir. Yes, sir. Now, again, we buy insurance for the

1 worst-case scenario. Under the wrap agreement --

2 MR. ZAVITSANOS: Michelle, follow me here.

3 BY MR. ZAVITSANOS:

4 Q -- net impact to member, worst-case. What is the worst-case  
5 scenario to the member?

6 A \$140.

7 Q And that \$140 is the cost share that the member is going to  
8 have to pay regardless, right?

9 A That is according to their benefit plan, yes.

10 Q What is the worst-case scenario under ENRP for the member,  
11 sir?

12 A If the provider bills the member and harasses them for it, it  
13 could be \$760.

14 Q Well, when you say harasses them for it, you mean balance  
15 billing. If the provider who provided the service sends a bill for \$1,000,  
16 what we know is in this column, the wrap network, they cannot balance  
17 bill the member for that 30 percent reduction, right?

18 A If the employer group has the wrap network as their out-of-  
19 network program and we take that contract, yes.

20 Q But ENRP, the member is now exposed not only for the cost  
21 share but for this discount, \$760, if they're balance billed, right?

22 A If the staffing company bills them, yes.

23 Q Did I use the word staffing company? Do all emergency  
24 room doctors work with staffing companies?

25 A I don't believe so.

1 Q This is not limited to staffing companies, is it, sir?

2 A I've seen more collection efforts by staffing companies than  
3 not.

4 Q My question, sir, is this analysis is not limited to staffing  
5 companies?

6 A I think what this analysis was trying to say was there are  
7 entities out there that would harass an employee for an egregious  
8 amount.

9 MR. ZAVITSANOS: Objection. Non-responsive.

10 THE COURT: I thought it was responsive. Overruled.

11 BY MR. ZAVITSANOS:

12 Q Do you see staffing company written on this chart anywhere,  
13 sir?

14 A No, I do not.

15 Q Okay. So can we agree on this: using these assumptions in  
16 this United document, ENRP, from a worst-case scenario, is bad for  
17 members, good for United?

18 A No.

19 Q Okay. Can we agree that on this wrap network column, very  
20 good for members, sort of good for United?

21 A No. And I can explain why. I mean, there's --

22 Q No, sir.

23 A -- there's a lot of detail.

24 Q Yes, sir. Okay.

25 A Okay.

1 MR. ZAVITSANOS: Now -- okay. Now, let's look at the other  
2 side. Let's go to ASO. Okay. Bottom. Bottom, Michelle, page 9, 246.  
3 And we're going to go from here to here, please.

4 BY MR. ZAVITSANOS:

5 Q All right. Now, this is a situation involving an ASO client,  
6 right?

7 A It's an example for ASO business.

8 Q Yes, sir. And once again, we start with an assumption of  
9 \$1,000. Here's the wrap network, here's the ENRP, right?

10 A Correct.

11 Q There's the same reduction, 30 percent and 70 percent, right?

12 A Correct.

13 Q Okay. Meaning the allowed amount, the differential, is 700  
14 on the wrap side, 300 on the ENRP side, right?

15 A Correct.

16 Q Same cost share assumption, the member has to pay 20  
17 percent, right?

18 A Correct.

19 Q And we see net impact to member, worst-case, which  
20 number is bigger between the wrap network worst-case scenario and the  
21 ENRP worst-case scenario?

22 A On the member line?

23 Q Yeah. On the member. On the individual.

24 A ENRP, if the client selects that.

25 Q And that's if the out-of-network provider balance bills the



1 member, right?

2 A If they get balance billed.

3 Q And so, how many times -- from the member standpoint  
4 worst-case scenario, how many times does 140 go into 760?

5 A I'm not sure off the top of my head.

6 Q Is it more than three?

7 A Yeah.

8 Q Okay.

9 A Yep.

10 Q So worst-case scenario, ENRP is three times worse than the  
11 wrap network if the member is going to get balance billed, right?

12 A No. I don't understand your question. It's saving the client a  
13 significant amount of money.

14 Q Sir, my question is to the member, ENRP is three times  
15 worse in the worst-case scenario, right?

16 A ENRP is a par median at a reasonable reimbursement. It's  
17 what other par providers accept.

18 Q One more time, to the member, the net impact worst-case  
19 scenario if you're balance billed is more than three times worse.

20 A If they take the member to collections, yes, it is.

21 Q And we lived in this world when this five-year plan began.

22 A What --

23 MR. BLALACK: Object to the form of the --

24 MR. ZAVITSANOS: Let me rephrase it because it caught  
25 me --

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1 THE COURT: Yeah. I was going to say rephrase.

2 BY MR. ZAVITSANOS:

3 Q The world we operated in in 2016 and before for out-of-  
4 network ASO was the SSP wrap network.

5 MR. BLALACK: Objection. Vague. I have no idea who we is.

6 THE COURT: Overruled.

7 BY MR. ZAVITSANOS:

8 Q Right?

9 A I don't know what you're referring to.

10 Q Well, I don't want to keep going back to it. But remember,  
11 we talked about Exhibit 25?

12 MR. ZAVITSANOS: Michelle, pull up Exhibit 25. That's the  
13 2016 programs. Michelle, can you please pull up the second page, top  
14 column? I think we've looked at this a couple of times. All the way  
15 across. Oh, no, I need the heading, too, Michelle, please. Right there.  
16 Thank you. Right here, Michelle. Ninety-five percent.

17 THE WITNESS: That's membership, though.

18 MR. ZAVITSANOS: Yeah.

19 THE WITNESS: That's not providers.

20 BY MR. ZAVITSANOS:

21 Q Membership, you mean individuals?

22 A I mean the employer groups. If there's employer groups for  
23 1,000 members in total, 950 of them have access to wrap agreement if  
24 it's available.

25 Q Okay. Ninety-five percent have access to wrap agreements,

1 right? According to this document.

2 A That's what they chose.

3 Q Okay. Okay. Now -- thank you, sir. All right. Now, you  
4 know that by -- during this claim period, you know that TeamHealth had  
5 two choices on what to do with these claims that are at issue in this case.  
6 The first thing they could do is they could balance bill the people here in  
7 Nevada and go after them for these discounts. Or they could elect not to  
8 balance bill and to end up here, right?

9 A I think there's another option, as well.

10 Q Well, you know that TeamHealth, for the claims at issue in  
11 this case, did not balance bill one person.

12 A No, I don't know that for a fact. I believe they had collection  
13 efforts.

14 Q No, sir. I'm talking about the claims at issue in this case.

15 A I don't know for a fact.

16 Q Okay. Now, you didn't know that the emergency room  
17 groups here were going to seek reimbursement through this lawsuit as  
18 opposed to balance billing? You didn't know that?

19 A Explain that again.

20 Q Why don't you get your deposition and go to page 70?

21 A May I just put this other document away, so I don't mess it  
22 up?

23 Q Sure.

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

25 THE COURT: You may.

1 [Sidebar at 1:37 p.m., ending at 1:38 p.m., not transcribed]

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

3 THE COURT: Please. And for the record, I overruled the  
4 objection, but we will put it on the record at our next break.

5 BY MR. ZAVITSANOS:

6 Q Why don't you go to page 70 of your deposition, sir?

7 A Seven zero?

8 Q Seven zero. And this was a deposition that you gave on May  
9 21, 2021, right, sir?

10 A Yes. Yes.

11 Q That was this year, right?

12 A Yeah. Yes.

13 Q Okay. So now, we're on page 70. Under oath, right? You  
14 were under oath, right?

15 A Yeah.

16 Q Lines 8 through 18.

17 A Can I read them?

18 Q No. I'm going to read out loud to you.

19 A Okay.

20 Q "And you understand, sir, that instead of balance billing  
21 patients, we on the lawyers' side are representing these provider groups  
22 seeking additional reimbursement in this lawsuit? You understand that,  
23 right?"

24 Answer, "Yes, I do."

25 Was that your answer?

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1 A Yes.

2 Q Next question. "All right. And you understand that this  
3 dispute does not involve any patients directly, right?"

4 Answer, "I don't know that for a fact. But if you say it is, I  
5 understand that."

6 Did I read that correctly?

7 A Yes, you did.

8 Q Do you know why United's lawyer during the opening  
9 statement kept talking about balance billing for these claims?

10 A I think there's still a risk of being billed for those claims. And  
11 there are collection activities being pursued through a different avenue.

12 Q Sir --

13 MR. ZAVITSANOS: Your Honor, I'm going to object to the  
14 constant limine violation.

15 MR. ROBERTS: Objection. Your Honor, the question calls for  
16 the response that he gave.

17 MR. ZAVITSANOS: Your Honor, I asked about fees and  
18 claims.

19 THE COURT: I'm going to overrule the objection and ask you  
20 to refocus the question for him.

21 BY MR. ZAVITSANOS:

22 Q For these claims, sir, are you aware of any evidence that any  
23 balance billing efforts took place for these claims here?

24 A I don't know about these specific claims. No.

25 Q Okay. Now, so for this five-year plan to be successful, I think

1 we talked about there was going to be a public education effort, right?

2 A Yes. We needed to inform our clients of their options.

3 MR. ZAVITSANOS: Your Honor, can I ask counsel if there' an  
4 objection to Exhibit 13, which I'll represent to counsel --

5 MR. ROBERTS: 13's been admitted. It's in, I believe.

6 BY MR. ZAVITSANOS:

7 Q Okay. So let's go over 13. We covered this briefly last week.  
8 I just want to -- so we can have a chronological progression. Now, we're  
9 going to get into this Yale study. But before the Yale study in 2014,  
10 remember, we had talked about these talking points -- the talking points  
11 memo? Sir, remember that?

12 A Yes.

13 Q Exhibit 12?

14 A Yes. Could I just --

15 Q This --

16 A Can I look at this just for a --

17 Q Sure. Sure. Take your time.

18 MR. ZAVITSANOS: And Michelle, follow me here.

19 THE WITNESS: Okay.

20 MR. ZAVITSANOS: Okay. And right now, Michelle, attached  
21 for your review are.

22 BY MR. ZAVITSANOS:

23 Q All right. So this is 2014. And you're starting this narrative  
24 about egregious billers, right?

25 A It is about egregious billers. Yes.

1           Q     Yes. Okay. Now, back to our baseball analogy. If United is  
2 playing these guys in baseball and you're pitching, they're hitting, you  
3 throw the ball, and you're the pitcher, and you call a strike, do you think  
4 there might be some skepticism that the person who benefits from the  
5 strike is calling the strike?

6           A     I think it depends on the individual. Me personally, I'm a fair  
7 individual. I think I'd be fair.

8           Q     Now, if the umpire calls a strike, that's unreachable, right,  
9 because he's neutral, right? Well, what if -- again, back to my question,  
10 what if the umpire was secretly, without anybody in the world knowing,  
11 on the payroll of the pitcher? Would you have reason to be skeptical of  
12 the umpire?

13          A     Yeah.

14          Q     Okay. And that's what you all did with the Yale study?

15          A     I disagree.

16          Q     Well, is it true, sir, before we get into the documents on the  
17 Yale study, that until just a few months ago, nobody knew that the Yale  
18 study had been supported and funded by United?

19               MR. ROBERTS: Object to form, Your Honor. That misstates  
20 the record.

21               THE COURT: Overruled.

22 BY MR. ZAVITSANOS:

23          Q     Sir?

24          A     I don't know.

25          Q     You don't know when it broke that United was behind the

1 Yale study?

2 A I don't know.

3 MR. ZAVITSANOS: Okay. Well, Your Honor, I have a  
4 number of documents coming up. And I'd like you -- but I would like to  
5 have a bench conference first. And --

6 THE COURT: You may.

7 MR. ZAVITSANOS: -- this might require maybe three  
8 minutes of Your Honor's time.

9 THE COURT: Let's take it out in the hall, please.

10 [Sidebar at 1:45 p.m., ending at 1:47 p.m., not transcribed]

11 THE COURT: Thanks, everyone.

12 All right. We're going to take a recess so that we can resolve  
13 a matter outside of your presence. And I'll ask you to step out during the  
14 argument.

15 THE WITNESS: Okay.

16 THE COURT: All right. During this -- and we know it's only  
17 been 45 minutes. It's 1:47. We are going to ask you to be ready to start  
18 at 2:00.

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

24 Don't conduct any research on your own relating to the case.  
25 Don't consult dictionaries, use the internet, or use any reference



1 material. Don't use any social media. Don't talk, text, Tweet, Google, or  
2 conduct any other type of book or computer research with regard to any  
3 issue, party, witness, or attorney involved in this case.

4 Most importantly, do not form or express any opinion on any  
5 subject connected to this trial until the matter is submitted to you. See  
6 you at 2:00.

7 THE MARSHAL: All rise for the jury.

8 [Jury out at 1:48 p.m.]

9 [Outside the presence of the jury]

10 THE COURT: Okay. The room's clear. Mr. Zavitsanos?

11 MR. ZAVITSANOS: Yes, Your Honor. And with the Court's  
12 permission, Your Honor, I know the Court typically would only like one  
13 attorney to address the issue. Respectfully, because of the importance of  
14 this issue, if I could have Mr. Fineberg back to cleanup for me. Let me  
15 start and kind of frame the issue. And then Mr. Fineberg is going to zero  
16 in on exactly what we're talking about here.

17 All right. Let me begin by saying there are a number of Yale  
18 study documents that the Court has already conditionally admitted. Let  
19 me -- let me give you the numbers on those. Those are 30 -- 30 -- and  
20 these are the ones that I intend to use. 37, 79, 92, 55, 100, and 509. Now,  
21 that's most of them. That's most of them.

22 THE COURT: I think 509 was already admitted.

23 MR. ROBERTS: And so was 92.

24 MR. ZAVITSANOS: Yes. Okay. I'm sorry --

25 THE COURT: So was 93.

1 MR. ZAVITSANOS: -- my notes a little off. My apologies. So  
2 the ones we're talking about, Your Honor, are 40, 32, 85, and 56.

3 MR. ROBERTS: 56?

4 MR. ZAVITSANOS: 56. Okay. Now, Your Honor, the ones  
5 that have been either admitted or conditionally admitted tell three-  
6 fourths of the story. The remaining ones, which were addressed during  
7 Mr. Rosenthal's deposition fill in the rest of the rest of the picture. This  
8 gentleman, the -- I think one of the first documents that I moved to admit  
9 this morning was a document showing the hierarchy within United.

10 And Your Honor, there are a great many individuals under  
11 him. He is very senior, Mr. Haben is. I think the jury is permitted to infer  
12 that he is not being completely truthful when he says he didn't know  
13 about this because the test on -- the test on foundation for a document is  
14 not whether the witness says they're familiar with it or whether his name  
15 is on it. That's not the test. It's more -- it's a very slight standard. And  
16 it's akin to authentication.

17 Now, once it's in, then I am permitted, I believe, to question  
18 this witness, particularly giving his standing in the company. If it was a  
19 lower-level person and Your Honor was -- and it had nothing to do with  
20 his job, that would be a 403 type of issue, kind of a prejudicial issue. Not  
21 admissibility. This gentleman is -- he is the highest-ranking person that  
22 is going to testify in this trial, other than Ms. Paradise, who I think now  
23 has his role. But at the time, he was the highest ranking. And so I would  
24 like to be able to question him on it.

25 The topic of the Yale study deals with out-of-network billing,

1 which of course is right down the fairway of what this gentleman was in  
2 charge of. And because we can't -- unfortunately, we can't -- I would  
3 love it actually, with my ADD brain, to have two witnesses up there at the  
4 same time. But because we can't have two people testifying  
5 simultaneously, we have to do this sequentially. And so I would like to  
6 conditionally admit the documents I just mentioned. And then to be  
7 followed up with full admission during Mr. Rosenthal's video deposition.  
8 And I know counsel has a couple things to say.

9 MR. FINEBERG: Thank you, Your Honor. Justin Fineberg.  
10 So the issue, as Mr. Zavitsanos framed it, is the exhibits that will come in  
11 through the deposition of Mr. Rosenthal. We didn't want to play out of  
12 order. So we have those clips that we could show Your Honor or show  
13 the jury now, or we could wait to do that in its entirety, as well. A 40-  
14 minhute long deposition that we would be entitled to show in order.

15 So the -- our preference, frankly, would be rather than doing  
16 that and breaking it up, to have the video shown all at once and have the  
17 exhibits conditionally admitted. I can go through and put on the record  
18 the points in the deposition, where they will be played and marked.

19 THE COURT: So I can't understand which way you want to  
20 go. Do you want to stop this to play Rosenthal? No?

21 MR. FINEBERG: No.

22 THE COURT: It's purely conditionally?

23 MR. FINEBERG: Correct. At this moment, we're saying the  
24 option would be to do it that way. But our preference is not to do it that  
25 way, to represent to Your Honor that we have video -- the depositions

1 and the clips here ready if we needed to.

2 MR. BLALACK: Yeah. And --

3 THE COURT: And please stand, so that I can make eye  
4 contact with you, Mr. Blalack. This interferes.

5 MR. BLALACK: I'll move over here, Your Honor.

6 THE COURT: Thank you.

7 MR. BLALACK: So a couple of things. There is a way to do  
8 what they want to do. And that would have been with -- to start with Mr.  
9 Rosenthal, present that evidence, play whatever foundation they thought  
10 could get those -- the exhibits. And then once again, confuse them with  
11 another witness. It's not appropriate to introduce a new dep witness in  
12 the midst of the examination of another witness. And we have Dr. Reese  
13 [phonetic], the witness. So let's put him on.

14 Point two, in terms of conditional ambition, the problem we  
15 have here, Your Honor, is dirty. We're just discarding the requirements  
16 of personal knowledge to lay a foundation for an exhibit, which is set out  
17 in NRS 50.025.

18 MR. ZAVITSANOS: They are free to ask Mr. Haben, does he  
19 know about the Yale study, was he involved in the -- they can ask all of  
20 those questions. He's just not the right wrong person to lay the  
21 foundation for admitting exhibits that he didn't write that he didn't  
22 receive, that weren't discussed with him, when there's no connection to  
23 him other than the fact they relate to topics in his area of business. If  
24 that were the standard for admission, then they would literally be --  
25 almost anything could be -- a combination could be admitted.

1                   So our objection is not to having the evidence be subject to  
2 examination of the witness. They can ask whatever questions they want.  
3 It's just circumventing the requirements of the rules to lay a proper  
4 foundation to admit them through this witness. That's the objection.

5                   MR. BLALACK: Brief reply, Your Honor?

6                   THE COURT: Uh-huh.

7                   MR. BLALACK: So Your Honor, noticeably, counsel did not  
8 address the conditional admission rule. He addressed everything except  
9 that. Mr. Haben is a senior guy, and the jury is permitted to infer  
10 whether he knew about it or not. He deals with out-of-network. To  
11 suggest that he did not know what was going on internally, when he is  
12 on the original talking points memo about educating the public in 2014  
13 and 2016 and 2018, I think is a little bit of a stretch.

14                   And so again, we would request -- and Your Honor, the only  
15 reason I offered as an alternative to play the deposition out of order of  
16 order, Mr. Rosenthal is in the event -- and I hope this is not the case. But  
17 I don't think I've demonstrated that, oh, any kind of, you know, pre-  
18 disposition to fabricate or to suggest something to the Court that's not  
19 the case. I take my role very seriously. And if Your Honor had the  
20 slightest bit of hesitation, you could play the Rosenthal deposition. I'm  
21 representing through Your Honor that these are going to be proven.

22                   THE COURT: Good enough. I am going to conditionally  
23 admit them, consistent with the conditional admission for the opening.  
24 And will you tell the jury 2:05?

25                   You guys, be ready at 2:05. Thanks.

1 [Recess from 1:57 p.m. to 2:05 p.m.]

2 [Outside the presence of the jury]

3 THE COURT: Thanks everyone. Please remain seated.

4 Anything Counsel, before we bring in the jury?

5 MR. ZAVITSANOS: Your Honor, my apologies. I neglected  
6 to mention one thing, and I'm going to have Mr. McManis. And it's  
7 going to be under 60 seconds, I promise.

8 THE COURT: Talk fast.

9 MR. BLALACK: I'm timing him.

10 THE COURT: Can the witness stay?

11 MR. ZAVITSANOS: Oh. No, Your Honor. Actually, no. Let's  
12 -- we'll take it up at the next break. We'll take it up at the next break.

13 THE COURT: So what -- I didn't get that last phrase?

14 MR. ZAVITSANOS: We -- I'm sorry, Your Honor. I said we  
15 will take it up at the next break.

16 THE COURT: Very good. Make sure that you talk to Mr.  
17 Blalack before you bring it to my attention.

18 MR. ZAVITSANOS: Yes.

19 THE COURT: Let's bring in the jury.

20 MR. ZAVITSANOS: Thank you, Your Honor.

21 THE MARSHAL: All rise for the jury.

22 [Jury in at 2:07 p.m.]

23 THE COURT: Thank you. Please be seated. Mr. Zavitsanos,  
24 go ahead please.

25 MR. ZAVITSANOS: Thank you, Your Honor. May it please

1 the Court.

2 Okay. Michelle, please pull up Exhibit 12. I am not going to  
3 go through this document because we've already covered it. I want to  
4 make a reference point to the date. From here, Michelle. From here to  
5 here. Okay? From here. Yeah, perfect.

6 BY MR. ZAVITSANOS:

7 Q Okay. So this is -- we talked about this last week. This is the  
8 media plan that got these initiative underway in 2014. Remember we  
9 talked about this last week?

10 A The media plan didn't get the initiatives underway.

11 Q No. I'm sorry.

12 A Okay.

13 Q Do you remember we talked about that these initiatives  
14 began in 2014, last week?

15 A We talked about this document last week, yes.

16 Q Yes. Now, up until 2014, UnitedHealthcare was required to  
17 process claims that have reasonable and customary language using FAIR  
18 Health. And that obligation expired in 2014, correct, sir?

19 A I don't know for a fact if it did.

20 Q You don't know for a fact, even though you've been there for  
21 30 years in charge of out-of-network programs, that prior -- that up until  
22 2014, that you all were required to use the FAIR Health database?

23 A That's not correct. I --

24 Q Was there a period of time where you were required to use  
25 the FAIR Health database for reasonable and customary charges?

1           A     I don't know for a fact. If an employer benefit plan or a fully  
2 insured benefit plan didn't have usual and customary in it, we were not  
3 obligated.

4           Q     I am not asking about that. If there was reasonable and  
5 customary language in the policy and plan and the SPD, was there was a  
6 period of time when you United was obligated to use FAIR Health as the  
7 reference point?

8           A     If it had that language, I believe so.

9           Q     Okay. And that obligation, at some point, expired, right?

10          A     At some point, yes.

11          Q     And once that expired, you began this, what we're looking at  
12 up on the screen, in 2014, right?

13          A     I don't believe that's accurate.

14          Q     Now, one of the things that you all did was that in order to  
15 educate the public, you all decided that it would be good to have a  
16 world-class university, find a professor or two there, and issue a paper  
17 advancing your position, right?

18          A     That's not correct.

19                 MR. ZAVITSANOS: Well, let's -- Your Honor, I move for the  
20 conditional admission of Exhibit 40.

21                 THE COURT: Subject to their putting an objection on the  
22 record.

23                 MR. BLALACK: Right. Subject to our prior discussion --

24                 THE COURT: All right.

25                 MR. BLALACK: -- Your Honor. No objection.



1 THE COURT: 40 will be conditionally admitted.

2 [Plaintiffs' Exhibit 40 conditionally admitted into evidence]

3 BY MR. ZAVITSANOS:

4 Q Now, are you aware of any scholarly treatises where the  
5 professor will allow someone in the private sector on one side of the  
6 debate to secretly edit the paper that they're writing?

7 A I am not sure what you mean. Can you ask it a different  
8 way?

9 Q Well --

10 MR. ZAVITSANOS: Michelle, here we go. From here to here.  
11 All the way up. Keep going. Keep going. All right.

12 BY MR. ZAVITSANOS:

13 Q Okay. So this is an email to Dan Rosenthal. And he was -- he  
14 was the president of one of the United companies; is that right?

15 A I believe at that time he was president at the UnitedHealth  
16 Networks.

17 Q Okay. And this is talking about material for call tomorrow on  
18 out-of-network study, right?

19 A Can I take a quick look at this --

20 Q Sure.

21 Q -- because I'm not on this email.

22 A Okay.

23 Q All right. So let's see what was going on. So in this email,  
24 we see that there was a pre-call discussion. It says, "Dan, I'm looking  
25 forward to our call tomorrow. Attached are two files for your review.

1 The Word document is a draft of the paper that the Yale folks plan to  
2 submit to NEJM for publication." Do you see that?

3 A I do.

4 Q Okay. And this is being sent to Dan Rosenthal, right?

5 A Yes.

6 Q Why would the people at Yale send a draft of the paper in  
7 Word that allows for editing; do you know, sir?

8 A I don't know. You'd have to ask them.

9 MR. ZAVITSANOS: Close this out. Let's look at the next  
10 email, right above it. From here to here. All the way. Go up. Right  
11 there.

12 BY MR. ZAVITSANOS:

13 Q And here was Mr. Rosenthal, the president, "Please resend  
14 the Word file." Do you see that?

15 A I do.

16 Q Now, let's talk about word processing. Now, if you send  
17 something as a PDF, typically, that's the kind of thing you can't edit that,  
18 right?

19 A Typically, yeah. Typically.

20 Q But if you send something in a Word file, that allows the  
21 recipient to make edits to change the document, right?

22 A I don't know for a fact. You could also protect it, I believe.

23 Q Yeah, I understand. But Microsoft Word, the computer  
24 program, allows for editing?

25 A Yeah, of course.

1 Q Okay. Do you know why the president of your company is  
2 asking for the Word file of this Yale report?

3 A I don't. You'd have to ask Dan.

4 MR. ZAVITSANOS: Okay. So let's go on. Let's go to Exhibit  
5 32.

6 Your Honor, I would move for a conditional admission of  
7 Exhibit 32.

8 THE COURT: And there's an objection on the record?

9 MR. BLALACK: Same position, Your Honor.

10 THE COURT: Objection is overruled. 32 will be conditionally  
11 admitted.

12 [Plaintiffs' Exhibit 32 conditionally admitted into evidence]

13 BY MR. ZAVITSANOS:

14 Q Now, right at the top.

15 A Okay.

16 Q February '16, that's during this period, right?

17 A During what period?

18 Q The five-year period we talked about, right?

19 A The plan to inform clients?

20 Q Yes. Right?

21 A I don't know for sure, but.

22 Q Zack Cooper. Now, we're going to talk about him a fair  
23 amount. He's the lead guy on this study, right?

24 A I don't know for a fact if he is.

25 MR. ZAVITSANOS: Close it out, Michelle. And it looks like

1 from here, Michelle -- from here to here.

2 BY MR. ZAVITSANOS:

3 Q It looks like somebody went in and made edits to this study,  
4 right?

5 A I don't know.

6 Q Did you report to Dan Rosenthal during this time in 2016?

7 A Yes, I did.

8 Q And you're telling this jury you don't know if these are Dan  
9 Rosenthal's edits after he asked for the Word file?

10 A I don't know.

11 Q Did Dan Rosenthal go to Yale?

12 A I don't know.

13 Q Do you know whether Dan Rosenthal is on the faculty at  
14 Yale?

15 A I don't know.

16 Q Do you know whether Dan Rosenthal is friends with Zack  
17 Cooper such that Mr. Cooper, or Professor Cooper, would allow  
18 somebody in the private sector to edit his work?

19 A You'd have to ask Dan.

20 Q Exhibit 37, which has previously been conditionally admitted,  
21 I believe, Your Honor.

22 THE COURT: What number again, did you say 30?

23 MR. ZAVITSANOS: 37, Your Honor. I'm sorry.

24 THE COURT: 37.

25 MR. ZAVITSANOS: I'm sorry, these masks are tough.

1 THE COURT: And I have that as conditionally admitted.

2 MR. ZAVITSANOS: Yes, Your Honor.

3 THE COURT: Earlier.

4 MR. BLALACK: Yes, Your Honor. Thank you.

5 MR. ZAVITSANOS: Okay. Now, let's -- Michelle, here we go.

6 Let's pull up from here to here. All right.

7 THE WITNESS: Could I just take a quick peek?

8 MR. ZAVITSANOS: Sure.

9 THE WITNESS: Okay. Thank you.

10 MR. ZAVITSANOS: Michelle, can you do me a favor? While

11 he's doing that, please, can you highlight this whole paragraph here?

12 The whole thing, please. Michelle, will you underline what I have

13 underlined here, please?

14 [Witness reviews document]

15 THE WITNESS: Okay.

16 BY MR. ZAVITSANOS:

17 Q Zack Cooper is the author. He's a scholar at a world-class  
18 university, about to issue an explosive piece, but United is supporting  
19 him, right?

20 A I disagree.

21 Q And United is able to dictate to Professor Cooper what goes  
22 in or not on the article, right?

23 A I disagree.

24 Q Well, when it says that the company will only be referred to  
25 as a "large carrier", and that "our support is expected to remain behind

1 the scenes" in quotes, that means United Geppetto, the person  
2 controlling the puppet, nobody knows he's behind the curtain. And this  
3 scholar is publishing stuff at United's request, right?

4 MR. BLALACK: Your Honor, where to start? Object to form,  
5 argumentative, also compound.

6 THE COURT: Objection sustained. You'll have to break it  
7 down and --

8 MR. ZAVITSANOS: Yes, Your Honor.

9 THE COURT: -- use more neutral terms.

10 BY MR. ZAVITSANOS:

11 Q Behind the scenes means secret, right?

12 A I didn't write this, so I don't know what they mean.

13 Q You don't know what behind the scenes means, it doesn't  
14 mean secret?

15 A I did not write this, so I don't know what it means.

16 Q I'm not asking about this. I'm just asking as a -- just on the  
17 English language. Does behind the scenes mean secret?

18 A No, it doesn't.

19 Q Hmm-hmm. We'll have to look -- since the findings will bring  
20 up what's been happening in the clinician world --

21 A Where is that please?

22 Q The highlight on the screen, sir.

23 A There's a lot there, so.

24 Q Yeah. It's the third sentence from the bottom.

25 A Thank you.

1 Q Halfway down. "Since findings will bring up what's been  
2 happening in the clinician world under a less than positive light, we'll  
3 have to look into the possibility of further distancing ourselves from the  
4 piece" -- here's the part I like -- "and messaging in anticipation of media  
5 inquiries," right?

6 A That's what that says, yes.

7 Q Yeah. I'm the spokesperson for United. I don't know  
8 anything about this. We have nothing to do with it. That's what that  
9 means. Right?

10 A I don't think that's what that means.

11 Q Well, it talks about "messaging in anticipation of media  
12 inquiries," right?

13 A That's what --

14 Q Those words are there.

15 A That's what that says.

16 Q And "distancing ourselves from the piece," right?

17 A That's what that says.

18 Q Because you know, Mr. Haben, that if United is associated  
19 with this piece, the force that it's going to carry with the public is not  
20 going to have the same weight as if it's an objective piece put out by a  
21 professor at world-class university, right?

22 A I would disagree.

23 MR. BLALACK: Objection to foundation of the question.

24 THE COURT: Overruled.

25 BY MR. ZAVITSANOS:

1 Q Right, sir?

2 A I would disagree.

3 Q I don't want to get into politics, but you've seen some of  
4 these political ads that come up during election season, right?

5 A I try not to watch them.

6 Q Well, sometimes -- I'm going to use Mr. Leyendecker's  
7 example, there'll be something like Americans for a great America. And  
8 it talks about all these bad things about a particular candidate. And it  
9 looks objective until you find out that it's actually funded through a PAC  
10 by someone else, right?

11 A I don't know.

12 Q That's what's going on here, right? You all funded Zack  
13 Cooper. You're distancing yourself. You're going to remain behind the  
14 scenes, right?

15 A I would disagree.

16 MR. ZAVITSANOS: Hmm-hmm. Okay. Well, let's go to  
17 Exhibit 85. And one of the purposes --

18 THE WITNESS: I've got to get the binder.

19 MR. ZAVITSANOS: Michelle, will you please pull up -- let's  
20 go to 85, please, page 9.

21 THE WITNESS: Can I take a look at it?

22 THE COURT: Yeah, give --

23 MR. ZAVITSANOS: Oh, I'm sorry.

24 THE COURT: -- give him a minute.

25 MR. ZAVITSANOS: Please take that down, Michelle. Your



1 Honor, my apologies. We'll move for the conditional admission of 85.  
2 This is one of the ones that I've covered earlier. My apologies, Your  
3 Honor.

4 MR. BLALACK: It's the same objection.

5 THE COURT: And your objection is on the record. 85 will be  
6 conditionally admitted.

7 [Plaintiffs' Exhibit 85 conditionally admitted into evidence]

8 MR. ZAVITSANOS: Thank you, Your Honor. Okay. So  
9 Michelle, please pull up Exhibit 85, page 9.

10 BY MR. ZAVITSANOS:

11 Q Okay. So we heard a lot in opening statements --

12 A Can I have just a little bit more time, please?

13 THE COURT: Yeah, let's have a couple more minutes here.

14 MR. ZAVITSANOS: Sure. Yes, I'm sorry. I get ahead of  
15 myself sometimes. My apologies.

16 [Witness reviews document]

17 THE WITNESS: Okay. Thank you.

18 BY MR. ZAVITSANOS:

19 Q Okay. So we heard a little -- we heard quite a bit in opening  
20 statement about this company called Team Health, right?

21 A I didn't listen to the opening statements.

22 Q Well, Team Health is a -- is an outfit that works with ER  
23 groups all over the country, right?

24 A I believe they're a staffing firm, yes.

25 Q And you knew that Team Health has more resources than an

1 individual little mom and pop ER practice in some small town where  
2 there are maybe three or four doctors? Team Health has more  
3 resources, right?

4 A I believe Team Health is a very large company.

5 Q Yes, sir. And so one of the things this Yale study was  
6 intended to do was go after these companies that work with emergency  
7 room physicians. Because if you could take them out, the mom and  
8 pops are no problem, right?

9 A I don't agree with that.

10 Q Well, here we are in 2016. Out-of-network confidential.  
11 Do you see that?

12 A I do.

13 Q Okay. We'll plan -- looks like you all are on a first name basis  
14 with Professor Cooper. Do you see that?

15 A I see his name there.

16 Q Yeah. First name basis, right?

17 A I don't know their relationship with him.

18 Q Okay. Will plan to provide Zach with Team Health and Care  
19 and Sheridan Health as three big names in this space, right?

20 A That's what that says, yes.

21 Q Those are three problems for UnitedHealthcare, right?

22 A I would disagree.

23 Q Does this indicate to you, you are telling Zack who to identify  
24 in the article?

25 A I didn't write the article, and I'm not on the email chain, so I

1 don't know.

2 Q You didn't read the article.

3 A I'm sorry --

4 Q Hold on.

5 A I meant the email.

6 Q No, sir. When the article came out, and made the cover of  
7 New York Times, as the head of out-of-network programs for United, did  
8 you read the article?

9 A I certainly did.

10 Q I'm sorry.

11 A I certainly did.

12 Q Okay. So now let's go to same exhibit, and I'm not going to  
13 go through every -- there's a lot of discussion here and the jury can do it  
14 on its time, but let's go to page 4. And this is a 9 page email.

15 MR. ZAVITSANOS: Michelle, will you do me a favor? Can  
16 you close that out? And just go -- can you go backwards, Michelle? Can  
17 you go backwards? If you start on page 9 and just scroll backwards if  
18 you could, until you get to page 4. Okay. So there's a lot of discussion  
19 here about this Yale study. And let's get to page 4. Okay, stop. All right.  
20 Now, so here we are on page 4. And Michelle, can you please pull up  
21 the email from Sam Ho to a bunch folks, including Dan Rosenthal?

22 BY MR. ZAVITSANOS:

23 Q Who is Mr. Ho? What's his title?

24 A I believe Dr. Ho was the Chief Medical Officer at  
25 UnitedHealthcare.

1 Q So is he -- is he like the gentleman that's here in the  
2 courtroom, the Chief Medical Officer from UnitedHealthcare?

3 A Similar roles but Dr. Ho is for all of UnitedHealthcare.

4 Q Why is Dr. Ho involved in a PR campaign involving what  
5 names should go into this Yale study, sir?

6 A I don't know. You'd have to ask Dr. Ho.

7 Q He's a medical doctor, not a publicist, right?

8 A He is a medical doctor.

9 Q So Dr. Ho is telling Mr. Rosenthal, among others, I agree with  
10 the identification of the two firms and also reaffirm that  
11 UnitedHealthcare should not be identified as the data source, right?

12 A That's what that says.

13 Q Team Health should be mentioned, but UnitedHealthcare  
14 should not. Do you think that's fair, sir?

15 A Yeah.

16 Q Okay. Let's now go to page 3. Second email from the top.  
17 Dan Rosenthal to Andrea Bilotta and Jill Mitchell. Who are those folks?  
18 Who is Andrea Bilotta?

19 A She's an attorney.

20 Q Who's Jill Mitchell?

21 A She's an attorney.

22 Q Mr. Rosenthal is your boss, right?

23 A At that time, yes.

24 Q My question is, now this is Rosenthal. What benefit is there  
25 from specifically identifying them? Them being Team Health, right?

1 A I don't know.

2 Q Given their size, it seems obvious who they are, right?

3 A That's what that says.

4 Q Okay. So the question is, what benefit is there from  
5 identifying them.

6 MR. ZAVITSANOS: Let's see what the answer is. Let's go to  
7 the next email. Scroll down. Right there.

8 BY MR. ZAVITSANOS:

9 Q Who's this from?

10 MR. ZAVITSANOS: Michelle, can we go up a little more?

11 BY MR. ZAVITSANOS:

12 Q No, who's it from? Who's Andrea Bilotta?

13 A She's an attorney.

14 Q Okay. Scroll up. What benefit is there in naming Team  
15 Health? Public shaming comes to mind, right.

16 A That's what that says.

17 Q So let me make sure I understand what's going on here. In  
18 2016 there was no product balance billing problem. But because you  
19 were now free to not use FAIR Health and increase your margins, you're  
20 now going to shame the groups that support the emergency room  
21 doctors, as a way to effect the perception of the public, right?

22 MR. BLALACK: Object to the form of the question. It's  
23 compound.

24 THE COURT: It was compound. Rephrase.

25 BY MR. ZAVITSANOS:

1 Q In 2016 -- I'm not going to go through what the state of  
2 things were in 2016, we've done that a bunch. We're in 2016 with this  
3 email, right, or 2017, in the beginning, right?

4 A 2017.

5 Q Yeah. Public shame comes to mind. That's what your  
6 lawyers are advising Mr. Rosenthal, to shame them because that will --  
7 that will cause them to be bashful about asking for a usual, customary  
8 and reasonable rate? Is that what that means?

9 A You would have to ask Andrea Bilotta.

10 Q Okay. Well, let's keep going. Now Mr. Rosenthal -- let's go  
11 to page 1. We're going to skip a few emails. And again, the jury can  
12 look at it on its time. But let's go to Exhibit 85, page 1. Now let's get the  
13 date. Because the date is sort of important on this one. So now we're in  
14 March 21, 2017. Do you see that?

15 A Yes.

16 Q By the way did you know that was four days before Greek  
17 Independence Day?

18 A I did not. But thank you, for letting me know.

19 Q Okay. All right. So here's Dan Rosenthal after all of this nine  
20 pages of emails, he ends up the president, I don't think that he could be  
21 named. It feels like a less is more situation. Do you see that?

22 A I do.

23 Q Meaning Team Health. So Rosenthal basically decides, nah,  
24 let's not name them, right?

25 A I see what he wrote, yes.

1 Q Okay. And so, sir, if we go to Exhibit 100. Now this is March  
2 21, 2017. Let's write this down. Okay. Now let's go to Exhibit 100. It  
3 looks like the people at United didn't want to take no for an answer, and  
4 they kept pressing Rosenthal, we need to name Team Health if we're  
5 going to get the goal over the goal line, right?

6 A I don't know. I'm not on this email.

7 Q Well, let's go to Exhibit 100, please, page 2. Let's look at the  
8 date.

9 MR. ZAVITSANOS: Michelle, top email, please. Pull that  
10 down.

11 BY MR. ZAVITSANOS:

12 Q Okay. Who's Theodore Prospect?

13 A I don't know Ted's exact role.

14 Q Is he senior? Is he upper management?

15 A I don't know what you mean by that.

16 Q Is he at least a vice president?

17 A I don't know what Ted's role is.

18 Q Okay. Well, there's your boss, Dan Rosenthal, right?

19 A Yeah.

20 Q Okay. Once again, first named basis. Following our last  
21 discussion -- well, I just noticed this, we shared collective feedback with  
22 Zack.

23 MR. ZAVITSANOS: Stop, Michelle, let's highlight that.  
24 Underline that sentence. You know, you can read these things 100  
25 times, and you don't notice it?

1 THE WITNESS: Can I spend some time reading through this?

2 [Witness reviews document]

3 THE WITNESS: Okay.

4 BY MR. ZAVITSANOS:

5 Q We shared our collective feedback with Zack. So a bunch of  
6 people got on a conference call with Zack and were telling him put this in  
7 there, put that in there, put this in there, put that in there. Is that what's  
8 going on?

9 A I don't know, I'm not on the email, and I was not in that  
10 discussion.

11 Q We is plural, not singular. It's not the royal we, right? We is  
12 plural, more than one person?

13 A Yeah.

14 Q Why are there a bunch of folks from United talking to a Yale  
15 professor about what he should put in his paper?

16 MR. BLALACK: Objection. Calls for speculation.

17 BY MR. ZAVITSANOS:

18 Q Do you know?

19 THE COURT: Objection sustained. He hasn't had any  
20 personal knowledge of that.

21 MR. ZAVITSANOS: Okay.

22 BY MR. ZAVITSANOS:

23 Q All right. Let's -- all right. So you were running the out-of-  
24 network programs at this time, April 2017, right?

25 A Yes.



1 Q Okay. And in 2017 the initiative was under way to get the  
2 more aggressive cuts in reimbursements, right?

3 A Which initiative is that?

4 Q Well, we looked at -- I don't want to go back to like Exhibit 25,  
5 which was in 2016. It lists a bunch of the programs that you're going to  
6 try to implement. Do you remember we covered that?

7 A I do.

8 Q Okay. And so -- and you were part of, as we said last week,  
9 the public education campaign, right?

10 A We were talking with our clients, yes.

11 Q Okay. And so here Ted Prospect, he's in operations. He's  
12 not a lawyer, right?

13 A I don't know Ted's --

14 Q Fair enough. To accomplish this, we were okay with naming  
15 MCare and Team Health as two of the leading physician outsourcing  
16 funds in the ED, that's emergency department, right?

17 A I believe so, yeah.

18 Q Okay. In the ED space. Now let's see what Mr. Rosenthal  
19 said. Let's go to the first page of Exhibit 100. Let's look at the bottom  
20 email, please.

21 MR. ZAVITSANOS: You went past it, Michelle, yeah, perfect.

22 BY MR. ZAVITSANOS:

23 Q Who's Tom Beauregard?

24 A I don't know Tom's role.

25 Q Okay. There is Dr. Ho, right?

1 A Yes.

2 Q And there is Dan Rosenthal, most importantly, right?

3 A Yes.

4 Q Okay. Dan, you had concerns on naming names. Are you all  
5 right moving forward with this context and no mention of United Health  
6 Group as a data source. Do you see that?

7 A I do.

8 Q And, sir, three weeks after Mr. Rosenthal said don't name  
9 Team Health, he changed his mind. I'm good. Agreed. I'm good.

10 MR. ZAVITSANOS: Circle that, Michelle, will you?

11 BY MR. ZAVITSANOS:

12 Q Right? That's what that says, right?

13 A That's what's written there, yes.

14 Q And you know that the Yale study did make the cover of New  
15 York Times, and it did mention Team Health, and it did not mention  
16 UnitedHealthcare, right?

17 A I don't remember.

18 Q You don't remember whether it mentions Team Health or  
19 not?

20 A I don't remember if it was on the New York Times or where it  
21 was.

22 Q When a University like Yale comes out with a study like this,  
23 it had a significant impact; can we agree?

24 A I don't know if I could say that or not.

25 Q Well, let's look at Exhibit 7.

1 MR. ZAVITSANOS: Actually hold on a second. We'll use the  
2 same exhibit. Actually, I'm sorry, 79. 79, Your Honor, I think has already  
3 been conditionally admitted.

4 THE COURT: I show that as well.

5 BY MR. ZAVITSANOS:

6 Q 79 page 3.

7 A Can I take a look?

8 Q Sure.

9 MR. ZAVITSANOS: Page 3, Michelle. 4, I'm sorry, Michelle.  
10 Michelle, I need you to pull up from here to right here.

11 BY MR. ZAVITSANOS:

12 Q What's up on the screen, Exhibit 79, page 4, following the  
13 release of the Yale study, include the most prestigious news  
14 organizations in the United States, right?

15 A I would assume so.

16 Q And the one thing the article did not mention was that these  
17 new programs exposed a number of balance billing, and that the existing  
18 wrap network groups do not. That is missing from the Yale study, right?

19 A It's unrelated.

20 Q Exhibit -- let's go to Exhibit 92. So the Yale study comes out  
21 and -- pull this out. Here we are on May 17. That's around the time of  
22 this extensive new coverage. And this is United's emergency  
23 department transformation initiative, right?

24 A That's what that says.

25 Q Would you agree with me that United spends a lot of time

1 coming up with these fancy sounding names for these programs to make  
2 them sound legitimate?

3 A I would disagree.

4 Q Okay. Let's go to page 21. And on this initiative -- well, there  
5 it is. There's Yale, right? And all of these other news organizations,  
6 right?

7 A Yes, I see them.

8 Q Okay.

9 MR. ZAVITSANOS: Close it out, Michelle.

10 BY MR. ZAVITSANOS:

11 Q And your --

12 MR. ZAVITSANOS: Close that out.

13 BY MR. ZAVITSANOS:

14 Q And you are including the Yale logo to legitimize your  
15 message. Like well, don't take our word for it. Even Yale says we're  
16 right. That's the purpose of that, right?

17 A I didn't write this document. I don't know the purpose of it.

18 Q Well, let's look at Exhibit 79 --

19 MR. ZAVITSANOS: Which I think was conditionally admitted,  
20 Your Honor?

21 THE COURT: Yes.

22 MR. ZAVITSANOS: Okay.

23 THE COURT: We said that just a few minutes ago.

24 MR. ZAVITSANOS: Yeah. Oh, I'm sorry. My apologies.

25 BY MR. ZAVITSANOS:

1 Q Okay. And let's look at page -- oh yeah. That's right. Page 4.

2 MR. ZAVITSANOS: And pull up the top email, Michelle.

3 BY MR. ZAVITSANOS:

4 Q And here's, again, this -- Mr. Prospect [phonetic]. And I'm  
5 not going to bother reading it, but it's talking about the Yale study that  
6 was released and the related press coverage was quite good, including a  
7 feature story that evening on NBC Nightly News and stories in the New  
8 York Times, Wall Street Journal, Washington Post, NPR, ABC World  
9 News Tonight and others. See below for links for some of the key  
10 stories, right?

11 A Yes, I see that.

12 Q And Mr. Rosenthal's response -- please go to the page 3,  
13 please. Your boss --

14 MR. ZAVITSANOS: Right here, Michelle.

15 BY MR. ZAVITSANOS:

16 Q That's his response. Piling on. Nice splash. I mean, United  
17 when it comes to TeamHealth is a little bit vindictive. Would you agree,  
18 sir?

19 A I disagree.

20 Q And of course, as soon as this Yale study came out, you  
21 immediately issued talking points. Exhibit 55, please. First -- I'm sorry.

22 A Can I go get it?

23 Q Yes, sir.

24 THE COURT: Yes, of course.

25 MR. ZAVITSANOS: I'll wait, sir, and you just tell me -- hey,

1 Michelle, can you just highlight this, please?

2 THE WITNESS: Okay.

3 MR. ZAVITSANOS: Michelle, highlight the first sentence,  
4 please.

5 BY MR. ZAVITSANOS:

6 Q These were your talking points, right? And -- right, sir? On  
7 the Yale study that the company issued in November of 2016?

8 A I don't know the context of this, so I'm not sure.

9 MR. ZAVITSANOS: Michelle, let's -- scroll further down,  
10 please. Good. Good. Good and good. Right here. Highlight this.

11 BY MR. ZAVITSANOS:

12 Q This dynamic is completely out of the insurance company's  
13 control. Do you see that?

14 A I do.

15 Q Well, that's not true. You made a choice. You were making  
16 \$800 million on these shared saving programs, right?

17 A Yeah --

18 Q In '16?

19 A Yes.

20 Q And you decided you wanted more, but your talking points  
21 are this out of our control situation that the Yale study's talking about is  
22 out of our control, right?

23 A I disagree with that. I can explain. I think I have a different  
24 perspective on it.

25 Q No, sir. Now, let's go to the second page, please, of this -- of

1 these talking points.

2 MR. ZAVITSANOS: Scroll down, Michelle. Stop.

3 BY MR. ZAVITSANOS:

4 Q And just as public sentiment after the issuance of this Yale  
5 study --

6 MR. ZAVITSANOS: The whole thing, please. Actually, right  
7 here. And underline the last bullet point.

8 BY MR. ZAVITSANOS:

9 Q As this Yale study is leaving its mark, you now begin talking  
10 about putting a cap on how much emergency room doctors can charge  
11 as a way to generate shared savings fees with your ASO clients.  
12 Coincidentally, it happens at the same time, right, sir?

13 A That's incorrect. I can explain.

14 Q No, sir.

15 A They -- we don't put a cap up on charges.

16 Q Oh, you don't? You don't --

17 A The --

18 Q -- put a cap on charges?

19 A No. A provider can charge whatever they want and that's the  
20 issue. Staffing companies drive up the charge amounts.

21 Q Oh, okay. Well, you -- remember last week you told me you  
22 were not trying to be cute?

23 A I'm trying to be factual and tell the truth.

24 Q Do you have a cap on how much will pay? At the time you  
25 left, was there a cap on how much United will pay out-of-network

1 emergency room doctors, sir?

2 A No. There's an initial guidance of an offer to --

3 Q Is --

4 A -- take the member out of the middle.

5 Q -- there a cap?

6 A It's a guidance. A cap is a guidance you have to have from

7 an operational process, guidance to start the negotiation.

8 Q Under ENRP -- I'm just going to ask you one more time. Is it  
9 true the final program, the one that you were driving at in five years, that  
10 there is a cap above which you will not reimburse?

11 A I can explain it.

12 Q Yes or no. Is there a cap?

13 A On ENRP --

14 Q Ye --

15 A -- the fee -- free program?

16 Q Yeah.

17 A There's initial guidance. I wouldn't call it a cap.

18 Q So will you pay more than the cap, more than the guidance?

19 A Let's say a provider calls in and says hey --

20 Q My question, sir.

21 A You're asking me a question. I'll answer it.

22 Q Well, it's a yes or no.

23 A It's not. I can't answer yes or no.

24 Q Okay. All right. We'll get to that.

25 A I --



1 Q We'll get to ENRP, and we're going to see if there is a cap or  
2 not.

3 A I'd be glad to explain.

4 Q Regardless, internally, on your talking points, this is what  
5 you were telling the public, right?

6 A This is what we went and educated clients for their options, if  
7 they wanted to move.

8 Q Right. Okay. So now let's take a look. Exhibit 509.

9 MR. ZAVITSANOS: Is that it?

10 UNIDENTIFIED SPEAKER: That's conditionally admitted.

11 MR. ZAVITSANOS: Conditionally admitted.

12 BY MR. ZAVITSANOS:

13 Q And let's go, please, to page 6. Okay. I'll give you a moment  
14 to catch up, sir.

15 A I don't have that in my document.

16 MR. ZAVITSANOS: Michelle, here. Can you close it out?  
17 We're going to make this a little bit bigger.

18 THE WITNESS: Can I -- do you have a paper document?

19 MR. ZAVITSANOS: Oh, I'm sorry. Yes, sir. Hold on, please.  
20 Do we have a -- can somebody give me a copy of 509, please?

21 BY MR. ZAVITSANOS:

22 Q I'll tell you what --

23 MR. ZAVITSANOS: May I approach, Your Honor?

24 THE COURT: You may. You don't -- you have permission to  
25 move about, both sides --

1 MR. ZAVITSANOS: Excuse --

2 THE COURT: -- both sides equality. Both sides have  
3 permission to move about.

4 MR. ZAVITSANOS: Oh. Okay.

5 BY MR. ZAVITSANOS:

6 Q You can even read my noted, okay. Here you go.

7 MR. ZAVITSANOS: Michelle, here's what I need you to do.

8 THE WITNESS: Can I just take a quick peek at it?

9 MR. ZAVITSANOS: Yes, sir.

10 THE WITNESS: This is really hard to read.

11 MR. ZAVITSANOS: And I blew it up on the screen, so you  
12 could read it. Now here -- Michelle, here's what I need you to do. Right  
13 here. Highlight that.

14 [Witness reviews document]

15 THE WITNESS: Okay.

16 MR. ZAVITSANOS: Michelle, highlight the next one, please.

17 BY MR. ZAVITSANOS:

18 Q And it looks like on this internal talking points document  
19 where you're going to bring your -- our story to life. You see that?

20 A I do.

21 Q Our includes Zack Cooper, Ph.D., Yale School of Public  
22 Health to publicly speak on this healthcare trend national and local  
23 media pitches. You see that?

24 A I do.

25 Q Zack Cooper's not an umpire. He's on the team, right?

1 A I would disagree with that.

2 Q Sir, you're going to use him to bring our story to life, to  
3 speak on this healthcare trend. How do you know he's available if he's  
4 not part of your team?

5 A I don't know. I didn't write this, and I don't know what --

6 Q Well, wait a minute.

7 A -- I don't think I was on this document.

8 Q He -- sir -- this is -- may I have that back, please?

9 A Yeah.

10 Q Remember that org chart we looked at the beginning of  
11 your examination today, this morning --

12 A I --

13 Q -- and it had you at the top?

14 A Yep.

15 Q This area here is the area that you were the head of, these  
16 negotiations, right?

17 A Which negotiations?

18 Q No. I'm just saying on that org chart, it identified you as the  
19 head, remember?

20 A I am in charge of the out-of-network programs.

21 Q And are you telling the jury that even though you're the head  
22 man, you've never seen this before?

23 A I don't recall seeing it.

24 Q Well, this affects your area, right?

25 A People write a lot --

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1 Q Your part of the business.

2 A People write a lot of documents inside the company. I don't  
3 see them all.

4 Q The people that work for you, were they quality employees?

5 A Very much so.

6 Q Did you trust them to carry out the objectives that you  
7 instituted?

8 A Yes.

9 Q Do you know whether anyone was reprimanded at any time  
10 for any of the documents we have seen so far?

11 A I don't believe so.

12 MR. ZAVITSANOS: You can take it down, Michelle.

13 BY MR. ZAVITSANOS:

14 Q And these documents we just looked at sir, these were all  
15 under wraps for keeping secret until just a few months ago.

16 MR. BLALACK: Object to the foundation and form of the  
17 question.

18 THE COURT: Objection sustained. It wasn't a question.

19 MR. ZAVITSANOS: Let me rephrase.

20 BY MR. ZAVITSANOS:

21 Q These documents we just looked at, you're not aware that  
22 they were made publicly available more than three months ago, or are  
23 you?

24 A I don't know.

25 Q Okay. Let's go to Exhibit 265. Page 13. And by the way, just

1 so we have a reference point here. On 265, let's look at the second page.  
2 What is Region 5?

3 A That's how we would characterize national relationships, so I  
4 believe that's my team.

5 Q Okay.

6 MR. ZAVITSANOS: Next page, Michelle, 265, page 2. Is that  
7 not it?

8 UNIDENTIFIED SPEAKER: 265 is it.

9 MR. ZAVITSANOS: Hmm-hmm?

10 UNIDENTIFIED SPEAKER: No.

11 MR. ZAVITSANOS: Okay. Let's just do it the old fashioned  
12 way.

13 BY MR. ZAVITSANOS:

14 Q Do you have the whole exhibit there in front of you?

15 A I believe so.

16 Q Do you see your name as being one of the participants of this  
17 meeting that took place April 23rd, 2018?

18 A I do.

19 Q All right. And let's go -- will you go to page 13, please, of  
20 265?

21 MR. ZAVITSANOS: Can you pull it out, Michelle or otherwise  
22 I'll just read it. Okay.

23 BY MR. ZAVITSANOS:

24 Q So on page 13, there's a title that says TCOC. Now, TCOC,  
25 it's another acronym. That stands for Total Cost of Care --

1 A Yes, it --

2 Q -- right?

3 A Yes, it does.

4 Q All right. Let's bookmark that. We're going to get back to  
5 that, but I want to ask about the third box. It's the one that says,  
6 "Competitive discounts." It looks like at this meeting, you all continued  
7 talking about, and I quote, "Transforming the reimbursement landscape  
8 through deployment of market disruptive strategies and aggressive  
9 management of appropriate utilization," right?

10 A Yes, that's what that says.

11 Q Yeah. And that's what your -- that's what this five-year plan  
12 involved was to disrupt the existing market and change the way people  
13 look at healthcare so that you all can make a lot more money?

14 A That's incorrect. I have, at that point, national hospital  
15 relationships. So with HCA in tenant and others. And so I have  
16 partnerships with them, and we work together to help manage costs with  
17 those entities.

18 Q I didn't ask you about that, sir.

19 A Well, that's what it reflects.

20 Q My question is --

21 A It's not --

22 MR. ZAVITSANOS: Close that out, Michelle.

23 THE WITNESS: It's not part of the five-year strategy.

24 BY MR. ZAVITSANOS:

25 Q Let me move on. All right. Okay. So --

1 MR. ZAVITSANOS: Is 67 in, Michael?

2 MR. KILLINGSWORTH: It's been conditionally admitted, yes.

3 MR. ZAVITSANOS: All right.

4 BY MR. ZAVITSANOS:

5 Q Let's go to Exhibit 67, which I think has been conditionally  
6 admitted. And would you take a moment and look at that?

7 THE COURT: The number again?

8 MR. ZAVITSANOS: 67, Your Honor.

9 THE COURT: Okay.

10 BY MR. ZAVITSANOS:

11 Q Okay. So I'm done talking about the Yale study. We're now  
12 going to start talking about some of these programs and see if we can  
13 identify them a little bit, okay? Okay, Mr. Haben?

14 A Yeah. Let me just get there.

15 Q Okay. And take a moment to read that to yourself.

16 A Okay.

17 Q And what I'd like you to do in particular is look at the third  
18 page and tell me if that relates to an area over which you have  
19 responsibility -- ultimate responsibility at UnitedHealthcare.

20 A Which page were you pointing me to? I'm sorry.

21 Q I'm sorry, sir. Let me say it again. Page 3.

22 [Witness reviews document]

23 A I just need to -- I don't know this document.

24 Q Sure. No, no. Take your time. Just let me know when  
25 you're ready.

1 [Witness reviews document]

2 A Okay.

3 Q Okay. So my question is -- we're not going to read the whole  
4 thing. We're going to cover a couple of the points in this document. But  
5 does this document include areas over which you had responsibility and  
6 were the head of?

7 A It's got a reference to outlier cost management. I don't know  
8 the document, or I don't remember it.

9 Q Well, my question is outlier cost management, OCM, is one  
10 of the programs over which you had control, right?

11 A Yes.

12 Q And this appears to be a --

13 MR. ZAVITSANOS: Page 1, Michelle.

14 BY MR. ZAVITSANOS:

15 Q -- a medical cost management team template for stage one  
16 and stage two -- and/or stage two, right?

17 A Yeah. I believe so. I -- again, I'm sorry. I'm not super  
18 familiar with this, so.

19 Q Well, you manage the out-of-network spend on the unit  
20 platform, which included programs like outlier cost management,  
21 correct?

22 A Yes.

23 Q And that's addressed in this document?

24 A I do see it on page 3.

25 MR. ZAVITSANOS: Your Honor, we would move



1 unconditional admission of Exhibit 67.

2 MR. BLALACK: Object to the foundation, Your Honor. He  
3 has no connection to this document.

4 THE COURT: You'll have to lay additional foundation.

5 BY MR. ZAVITSANOS:

6 Q Do you see on page 3 --

7 MR. ZAVITSANOS: Go to page 3, Michelle.

8 BY MR. ZAVITSANOS:

9 Q The statements that are on page 3 are the same type of  
10 statements that you were advancing as the head of the out-of-network  
11 programs at United during this migration, right?

12 A Yeah. There are two leaders that were involved at that time.  
13 Myself and Tina Brown-Stevenson. Tina had new initiatives, and this fell  
14 underneath her purview.

15 Q Well, implementing outlier cost management as part of SSP,  
16 that included you, right? I mean, that was part of what you did, right?

17 A Tina's team was involved and responsible for new  
18 implementation. My team was responsible to operate them once they're  
19 up and running.

20 Q Okay. Fair enough. And you're talking about the benefits of  
21 OCM, right?

22 A Where is that, please?

23 Q "OCM will provide value to our clients and to network  
24 management contracting efforts. By implementing OCM and impacting  
25 non-par providers, we will help control costs."

1 A I -- can you tell me where you're pointing, because --

2 Q It's a last bullet point, sir.

3 A Okay. Okay. I see that.

4 Q Yeah. That's what you did. This is what you did at United  
5 while you were the vice president in charge of out-of-network programs,  
6 right?

7 A So to be clear, there were two leaders, Tina  
8 Brown-Stevenson and me. Tina --

9 Q I didn't -- right. I understand. You've made that clear, Mr.  
10 Haben. I understand.

11 A Okay.

12 Q I'm asking about what you did, okay?

13 A Yeah. This looks like Tina's team's document.

14 Q Wait a minute. So we've looked at a bunch of documents.  
15 Doesn't this language sound similar to documents that you're on?

16 A It does.

17 Q Okay.

18 A But she is on this document. I would assume it's part of her  
19 team.

20 Q Well, sir, my question is this language about OCM is part of  
21 what you did at United in addition to her, right?

22 A Once it was implemented, it came over to me, yes.

23 Q Right. Exactly, sir. Okay. And up here, where it says, "OCM  
24 will allow for discounts with provider benefits that are typically allotted  
25 bill charges," right?

1 A I do see that.

2 Q That's the stuff we've been talking about the last couple of  
3 days, right? With your programs.

4 A Yeah.

5 MR. ZAVITSANOS: Okay. Okay, Your Honor. I move for the  
6 unconditional admission of 67.

7 MR. BLALACK: Same position, Your Honor. The foundation  
8 has to be -- connect the personal knowledge of the witness to the  
9 document, not to subject matter that happens to be mentioned.

10 THE COURT: I don't know what his connection is to Tina and  
11 her team.

12 BY MR. ZAVITSANOS:

13 Q What was Tina's title?

14 A I think she was Vice President of Total Cost of Care Initiatives.

15 Q Did she report to you? Did you report to her?

16 A No. She reported directly to Dan.

17 Q And you reported to Dan?

18 A Yes.

19 Q And you were both part of the F&I part of the company,  
20 right?

21 A E&I?

22 Q E&I, excuse me. E&I, correct?

23 A Well, we were part of UnitedHealth Networks.

24 Q Right. Reporting to Dan Rosenthal?

25 A Yes.

1 Q And there was some overlap between what she did and what  
2 you did, correct?

3 A She -- like I explained, she works on new initiatives. Once  
4 they're implemented, it comes over to my group.

5 Q I understand, sir. And my question is as a result of that,  
6 there is some overlap between what she does and what you did, right?

7 A Not exactly, but.

8 Q There's no -- there's zero overlap between what she did and  
9 what you did? So when she signed someone up to OCM, she wouldn't  
10 brief you on what deal terms were and what's happening here and give  
11 you updates?

12 A She doesn't sign people up for OCM. She implements new  
13 initiatives --

14 Q Okay.

15 A -- on the platforms.

16 Q And so answer my question, please. Are you telling the jury  
17 that there was zero overlap between your responsibilities and her?

18 A She was responsible for new implementation. I was  
19 responsible to operate it once it's implemented.

20 Q That's not my question.

21 A But it's hard to explain.

22 Q No, sir. I just want to know was there overlap between what  
23 she did and what you did at the company?

24 A I'm trying to explain what we did.

25 MR. BLALACK: Objection. Vague, Your Honor. I don't know

1 what overlap means.

2 THE COURT: Overruled.

3 BY MR. ZAVITSANOS:

4 Q Was there any overlap -- any overlap, at all?

5 A Well, any is a -- yeah.

6 Q Yeah. Any is a broad word.

7 A Yeah.

8 Q Was there any overlap?

9 A Yeah. Sure.

10 Q Okay. And this OCM, just to be clear, whether it's for ASO or  
11 fully insured, you were in charge of these programs, as we said, right?

12 A Once they were implemented, I was in charge of them.

13 Q And the benefits to ASO clients in the second bullet point are  
14 the same type of benefits that we've seen with documents with your  
15 name on it, right?

16 A I don't know what they mean by -- can you highlight which  
17 benefits you're talking about?

18 Q Yeah. Sir, there's no discussion in here about signing up  
19 new clients. This is the benefits of OCM, right?

20 A This is talking about ASO clients that have typically rich  
21 benefits. So a better coverage.

22 Q My question is a bit different. Answer my question.

23 A I don't know which benefits you're talking about, then. Can  
24 you --

25 Q So, Mr. Haben, you're trying to tell me that this document

1 does not relate to what you do because this Tina -- what's her last name?

2 A Tina Brown-Stevenson.

3 Q Tina Brown-Stevenson was in charge of securing new clients  
4 and then you would run it once they got signed up, right?

5 A That's not what I said.

6 Q What did you say?

7 A I said Tina is responsible for new initiatives. I can explain  
8 why that's important if you'd like me to.

9 Q Okay. No, sir. Now, there's nothing in here about new  
10 initiatives. This is about the initiative that you managed, right?

11 A I eventually managed it once it was implemented.

12 Q Yeah. And this is 2019. By 2019, you were managing the  
13 OCM program, right?

14 MR. BLALACK: 2017, Your Honor.

15 BY MR. ZAVITSANOS:

16 Q Excuse me, 2017. You were managing OCM, correct?

17 A Yes, but not for ASO. And this is, I believe, talking about  
18 ASO.

19 Q Well, you were not managing the programs for ASO clients  
20 in 2017?

21 A I believe she was working on a new implementation for  
22 OCM.

23 Q Were you managing the programs for ASO clients in 2017?

24 A Yes. Some programs, yes.

25 MR. ZAVITSANOS: Go to Exhibit 25, Michelle.

1 BY MR. ZAVITSANOS:

2 Q Remember we looked at this multiple times, sir? It's Exhibit  
3 25, right?

4 A Can I just --

5 Q Yep.

6 A Yes.

7 Q Okay. And these are the programs, remember, we covered  
8 this?

9 MR. ZAVITSANOS: Go to the next page, Michelle. Go to the  
10 bottom of page -- go to page 3, please.

11 BY MR. ZAVITSANOS:

12 Q Do you see that, the outlier cost management and egregious  
13 biller? These are the programs I thought we agreed that you were in  
14 charge of. I thought we covered this already, right?

15 A Yes. But it says not available for ASOs. So it was a little bit  
16 of a different program, and that's why Tina was implementing it.

17 Q Okay. But the program is -- operates basically the same in  
18 terms of the how you get to the discount, what the steps are, right?

19 A I would disagree. There are state laws involved with fully  
20 insured that we have to abide by.

21 Q Sir, I'm not asking about your legal opinion. The way,  
22 internally, assuming the state law permitted it. The steps of OCM on the  
23 ASO side were the same as on the fully insured side, correct?

24 A They could be different, and I can explain that.

25 Q No, sir. Were they generally the same?

1           A     I'd have to kind of go back and look because it depends on  
2 what the client adopts. It could be --

3           Q     You can't tell me right now, Mr. Haben, whether they were  
4 generally the same, assuming state law permitted?

5           A     It's a very complicated process, and I --

6           Q     I understand you want to say it's complicated.

7           A     I can't --

8           Q     Please answer my question.

9           A     I can't generalize it.

10           MR. ZAVITSANOS: Your Honor, can we approach for a  
11 second?

12           THE COURT: You may.

13           [Sidebar at 3:14 p.m., ending at 3:14 p.m., not transcribed]

14           THE COURT: All right, you guys. Time for a short recess this  
15 afternoon. During the recess, don't talk with each other or anyone else  
16 on any subject connected with the trial. Don't read, watch, or listen to  
17 any report of or commentary on the trial. Don't discuss this case with  
18 anyone connected to it by any medium of information, including without  
19 limitation newspapers, television, radio, internet, cell phone, texting.

20           Don't conduct any research on your own. Don't consult  
21 dictionaries, use the internet, or use reference materials. You are not to  
22 talk, do any social media, text, tweet, Google, or conduct any other type  
23 of book or computer research with regard to any issue, party, witness, or  
24 attorney involved in the case.

25           Finally, do not form or express any opinion on any subject



1 connected with the trial until the jury deliberates. Thank you for your  
2 attention this afternoon. We will see you sharp at 2:30.

3 THE MARSHAL: All rise.

4 THE COURT: Oh, 3:30. Sorry, guys.

5 [Jury out at 3:15 p.m.]

6 [Outside the presence of the jury]

7 THE COURT: Okay. It looks like the room is clear. Let's kind  
8 of redo what you guys started at the bench where Mr. Zavitsanos -- and  
9 there was an objection, and I ruled.

10 MR. BLALACK: Thank you, Your Honor.

11 MR. ZAVITSANOS: So, Your Honor, first, I would move for  
12 the unconditional admission of 67, which we addressed at the bench. I  
13 don't need to go through the arguments again, but I have something  
14 much more serious to raise.

15 THE COURT: Let's deal with things one at a time. And just  
16 make sure I can maintain eye contact with you, please?

17 MR. BLALACK: Sorry, Your Honor. I don't think there's a  
18 need to restate our position, Your Honor. I don't believe the witness has  
19 given any testimony connecting himself to the creation of the document.  
20 Understanding his contacts he has no personal knowledge of the  
21 document at all, or that's been established on the record. And our  
22 position is establishing personal knowledge of the topic that happens to  
23 be referenced in the document is not sufficient to accept as foundation.  
24 So we stand on our position.

25 THE COURT: And I did admit it based upon his testimony

1 that he ended up implementing the program and other programs for  
2 ASO clients. Now, your second issue.

3 MR. ROBERTS: Your Honor, before you move on --

4 THE COURT: Yes, of course. Please.

5 MR. ROBERTS: And I apologize for this. I'm being a lousy  
6 local counsel. The Court referenced a rule and your understanding of a  
7 rule on conditional admission.

8 THE COURT: Right.

9 MR. ROBERTS: I'm unfamiliar with that rule. Either now or  
10 at another time, would the Court provide us with a citation of that so I  
11 can look it up?

12 THE COURT: I can.

13 MR. ZAVITSANOS: I'm happy to give it to you.

14 THE COURT: I can. But --

15 MR. ROBERTS: I've dealt with Rule 104 in federal court, but I  
16 didn't know there was a Nevada one, I'm a bit embarrassed to say.

17 THE COURT: Thank you.

18 MR. ROBERTS: Thank you, Your Honor.

19 MR. ZAVITSANOS: So Your Honor, I'll be brief because I  
20 know Your Honor needs a break here. Very, very brief. This document  
21 that I just spent 20 minutes, because of counsel's objections, the  
22 custodian is Sarah Peterson at [indiscernible].

23 THE COURT: No, because I don't want to see something the  
24 other side hasn't seen.

25 MR. ZAVITSANOS: Exhibit 265, page 4, shows Ms. Peterson

1 reporting to Mr. Haben. And the custodian of this document was Ms.  
2 Peterson. Now here's the problem --

3 THE COURT: So you can --

4 MR. ZAVITSANOS: I know, but here's the problem --

5 THE COURT: You have him on direct.

6 MR. ZAVITSANOS: The problem is, Your Honor, Ms.  
7 Peterson's materials were never produced. And the lady that he talked  
8 about, his parallel, never produced. We found a document yesterday,  
9 coincidentally from another source, that's very material to this case,  
10 never produced. And Your Honor, this is a strong allegation, and I don't  
11 think it's counsel. I think United is hiding documents. And I --

12 THE COURT: Well, you just can't make that assumption  
13 without -- just asking me to make that assumption without something  
14 with much more evidence.

15 MR. ZAVITSANOS: Yeah. I understand. And the only thing,  
16 Your Honor, is the reason I'm raising this is because we would like to  
17 have a hearing at some point, not taking up the jury's time, to address  
18 this issue. Because what I'm seeing back here, Your Honor, I mean,  
19 there's some serious issues for Your Honor. And --

20 THE COURT: Do you have enough information to respond?

21 MR. BLALACK: Well, I don't know what I'm responding to,  
22 Your Honor.

23 MR. ZAVITSANOS: I'll visit with you.

24 MR. BLALACK: I think it's irresponsible to make that  
25 allegation, candidly. And I -- given how the examination has been

1 conducted, I don't know how a witness could otherwise answer a  
2 question about a witness -- about a document that we just didn't see.  
3 This man has 80-some-odd people working for him. The notion that I've  
4 got a note -- if I was the head of an organization, I have to have personal  
5 knowledge before testifying under oath about every PowerPoint and  
6 email someone that reported to me wrote in the span of four yes is, in  
7 our view, preposterous. That certainly doesn't establish foundation. It  
8 doesn't establish an attempt to evade. And it also doesn't establish the  
9 materials that were responsive to that request weren't produced.

10 THE COURT: Okay. Thanks. See you at 3:30.

11 [Recess taken from 3:20 p.m. to 3:31 p.m.]

12 THE COURT: Thanks, everyone. Please, remain seated. Are  
13 we ready to bring in the jury?

14 MR. BLALACK: We are, Your Honor.

15 THE COURT: Good. Just to give you guys an update, the  
16 chief judge and I haven't had a chance yet to talk. I hope after hours so  
17 that I can have an answer for you tomorrow.

18 MR. BLALACK: Thank you, Your Honor.

19 MR. ZAVITSANOS: Yes, Your Honor.

20 THE MARSHAL: All rise for the jury.

21 [Jury in at 3:32 p.m.]

22 THE COURT: Thank you. Please, be seated. Okay. Go  
23 ahead.

24 MR. ZAVITSANOS: Thank you, Your Honor. May it please  
25 the Court, Counsel. And Your Honor, we move for the admission -- the

1 unconditional admission of Plaintiffs' 67.

2 THE COURT: Okay. And there's an objection on the record  
3 which was overruled. 67 has been admitted.

4 [Plaintiffs' Exhibit 67 admitted into evidence]

5 MR. ZAVITSANOS: Okay. Michelle, can you please go to the  
6 second -- or, excuse me, page 3?

7 BY MR. ZAVITSANOS:

8 Q Mr. Haben, I'll represent to you this is January 2017. So this  
9 is at the very beginning of the year, and this is the document we were  
10 discussing before the break. And is it correct that the first step towards  
11 getting deeper cuts --

12 MR. ZAVITSANOS: Michelle, highlight the last paragraph.

13 BY MR. ZAVITSANOS:

14 Q -- was using this new term called outlier cost management,  
15 sir? Your first step, significant first step. Was that the first step?

16 A Hold on for a second.

17 Q Sure.

18 MR. ZAVITSANOS: Michelle, I can't make that out. Did you  
19 underline that? Significant first step? Significant first step. Top line.  
20 Can you underline that? Yeah, right there. Thank you, Michelle.

21 THE WITNESS: What was your question again?

22 BY MR. ZAVITSANOS:

23 Q Yes. So when you look at Exhibit 25 -- I keep going back to  
24 that, that showed the state of the world in 2016, right?

25 A I believe so, yes.

1 Q That's the one that said 95 percent. We're on SSP, the  
2 shared savings program --

3 A Yes.

4 Q -- which was the -- included wrap networks, right?

5 A Yes.

6 THE COURT: Let me just verify. Everyone can see the  
7 witness? The TV is not interfering? Thank you.

8 MR. ZAVITSANOS: Thank you, Your Honor. May I proceed?

9 THE COURT: Please.

10 MR. ZAVITSANOS: Thank you.

11 BY MR. ZAVITSANOS:

12 Q Okay. So that was 2016. January of 2017 you are now going  
13 to take the next step, and it says implementing outlier cost management  
14 as part of SSP will be a significant first step in providing an alternative to  
15 reduce spend and allow for reasonable reimbursements to non-par  
16 providers for predominantly ER -- that's emergency room, right?

17 A Yes.

18 Q And what's RAPL?

19 A RAPL. So radiology, anesthesiology, pathology, and lab.

20 Q Okay. All right. So these types of doctors here -- emergency  
21 room doctors and then the folks in RAPL, right?

22 A Correct.

23 Q All right. Now, this document says -- actually, I'll just  
24 highlight the parts that I'm talking about. So this is primarily for ASO --  
25 the ASO side of the business, right? Right?

1 A That's what that says, yes.

2 Q On the ASO side, what you're saying is that out-of-network  
3 costs are increasing --

4 MR. ZAVITSANOS: Michelle, just highlight, please.

5 BY MR. ZAVITSANOS:

6 Q Out-of-network costs are increasing putting a financial strain  
7 on both plan sponsors and insurers. Do you see that?

8 A Yes, I do.

9 MR. ZAVITSANOS: Okay. Michelle, can you underline plan  
10 sponsors and insurers?

11 BY MR. ZAVITSANOS:

12 Q This is during your public education. Can you point us to any  
13 document in evidence that explicitly says there's a financial strain either  
14 on plan sponsors or UnitedHealthcare?

15 MR. BLALACK: Objection to foundation of the question. The  
16 witness is not a lawyer.

17 THE COURT: Overruled.

18 BY MR. ZAVITSANOS:

19 Q Mr. Haben, can you point us to any document on either  
20 exhibit list that supports that statement that explicitly says there's a  
21 financial strain on United or on plan sponsors?

22 A I don't know all the documents. I could try to explain what  
23 they're --

24 Q No, sir. I just want to know whether you, as the head of out-  
25 of-network and being at United for 30 years, if you're aware of anything

1 at all to back this up when you were going to take the next step?

2 A Anything? Yeah, I can -- we've got feedback from clients.

3 Q I need to see it, sir. I'm sorry, I'm not going to take your  
4 word for it. You understand that, right?

5 A Well, I -- you asked anything, so I wasn't sure --

6 Q Yeah, I want to know in writing that's on the exhibit list here;  
7 is there something that supports that in writing that we can see that's  
8 been marked as an exhibit?

9 A I don't know all the documents that are marked.

10 Q Well, okay. Are you telling the jury that in January of 2017,  
11 after netting \$830 million in 2016 for doing nothing that there was a  
12 financial strain on United?

13 MR. BLALACK: Object to the form. Argumentative.

14 MR. ZAVITSANOS: I'll rephrase.

15 BY MR. ZAVITSANOS:

16 Q Are you telling the jury that in 2016 there was a financial  
17 strain on United?

18 A I don't believe so.

19 Q Why does it say that then?

20 A I didn't write this, so I don't know what they mean.

21 Q Okay. OCM. So let's write this down. And by the way,  
22 remember I asked you earlier if you just kind of made these terms up so  
23 it would sound legitimate? Remember?

24 A I believe so, yeah.

25 Q Okay. That's what you did, right? I mean, there's nothing to



1 this. You programmed your computer network to cut the rate, and you  
2 just go.

3 A I disagree.

4 Q Okay.

5 A I can explain.

6 Q No, sir. Okay. Here we are. This is out -- by the way, did you  
7 all hire one of these consulting firms to come up with the names of these  
8 alleged programs?

9 A I don't believe so.

10 Q Your marketing people, did they participate in what you were  
11 going to call these programs?

12 A I don't believe so.

13 Q Well, it used to be called the egregious biller program and  
14 you changed it, right?

15 A I believe it was changed, yes.

16 Q Who made the decision to change it?

17 A I don't remember.

18 Q Okay. So OCM is something called outlier cost management,  
19 right?

20 A Correct.

21 Q An outlier is something that exists way outside of what  
22 typically happens, right?

23 A Roughly, yeah.

24 Q And this is a little bit of a misnomer because at the time in  
25 2016 the outlier in 2016 was to pay below what the wrap rental

1 agreements had, right?

2 A I would disagree.

3 Q Yeah, in fact, sir, in 2016, which is when we say the jury  
4 ought to use that as the evaluation [indiscernible]. The outlier here is  
5 what you all were planning to do. And so you took that word, and you  
6 literally flipped it around and tried to suggest that the outlier was the  
7 status quo and what you all had been doing all along, right?

8 A I disagree, and I can explain the purpose of the program.

9 Q No, sir. Okay. Now -- all right. Let's -- and by the way, under  
10 this OCM, this is also called SSPE, right?

11 A Technically, no.

12 Q Well, OCM is part of SSPE?

13 A SSPE is an enhancement to SSP.

14 Q Okay. So SSP is the shared savings plan with the wrap rental  
15 agreements, right?

16 A Yes, the shared savings program, which --

17 Q Right.

18 A -- included wrap network --

19 Q Right.

20 A -- and prospective fee negotiation.

21 Q And then you added this "E" for the new program, right?

22 A It was an enhancement to the program.

23 Q And the "E" is this, right?

24 A The purpose of the enhancement was there were some  
25 contracts that -- in the wrap network that were based on billed charges

1 and billed charges did not stop. They kept on going up, so a percent off  
2 a bill today could be nothing tomorrow. It could be just erased if the  
3 provider increased their billed charges.

4 Q Well, my question was a little different. And I'm sorry it  
5 wasn't clear. Let me try it again. The "E" in SSPE is this, outlier cost  
6 management, right?

7 A I believe so.

8 Q Okay. Well, now -- Exhibit 76, which I think was conditionally  
9 admitted --

10 MR. ZAVITSANOS: Your Honor, may I ask counsel if he --  
11 this was conditionally admitted or if he has an objection to  
12 unconditionally admitting this?

13 MR. BLALACK: I think that was conditionally admitted. Let  
14 me confirm.

15 MR. ZAVITSANOS: I may be wrong, Your Honor. I showed  
16 it --

17 THE COURT: It was conditionally admitted.

18 MR. ZAVITSANOS: May I ask counsel if he has an objection  
19 to the unconditional admission?

20 MR. BLALACK: I don't, Your Honor.

21 THE COURT: All right.

22 MR. BLALACK: That can be admitted.

23 THE COURT: All right. So 76 can be admitted.

24 [Plaintiffs' Exhibit 76 admitted into evidence]

25 MR. ZAVITSANOS: All right. Thank you, Your Honor.

1 BY MR. ZAVITSANOS:

2 Q Okay. Mr. Haben -- oh, you want a chance to look at it?

3 A Yes, please.

4 Q Okay.

5 A Thank you.

6 Q While you're doing that, let me just note the date. This is  
7 January 2017. So we're moving chronologically now. And this is the  
8 same month as the document that we just looked at about the first step.  
9 Okay? You with me?

10 A Yeah.

11 Q Okay.

12 A Okay. We can go. If I have questions, I might need to stop  
13 you.

14 Q Okay. I'm sorry, Mr. Haben? I apologize.

15 A I -- we can go. I can -- if I have questions, I'll --

16 Q Okay.

17 A -- stop you.

18 Q All right. Is it correct, Mr. Haben, that contrary to what you  
19 told the jury, when you all made the decision to go for deeper cuts,  
20 United had serious concerns that the clients -- these ASO clients -- who  
21 were already paying a PMPM fee and who were already paying you a  
22 percentage for the discount from the wrap rental agreement; is it correct  
23 that United had concerns that there would be pushback from the clients  
24 because of how much money you were making for doing nothing?

25 A I would disagree on the comment of doing nothing. Clients

1 always put pressure on what we're charging them. We have to be  
2 competitive.

3 MR. ZAVITSANOS: Let's go to page 4, Michelle. Okay.

4 BY MR. ZAVITSANOS:

5 Q So this is January 2017. We're now trying to take the first  
6 step in these programs, which is SSPE, also called -- or includes this  
7 outlier cost management -- oh, did a consultant help you with this term?  
8 This SSP?

9 A No.

10 Q What about this one?

11 A No.

12 Q Okay. So the one in bigger letters -- keep the prime percent  
13 of saving each structure that exists today for SSP. Do you see that?

14 A I do.

15 Q In other words, you're going to keep charging 35 percent,  
16 right?

17 A That depends on what's in the --

18 Q Right?

19 A -- claim agreement?

20 Q Well, sir, one of the things you could have done since there  
21 are going to be deeper discounts at this time, is you could have cut your  
22 percentage. You could have done that, right?

23 A Sure.

24 Q But the decision on the front end was no, we're going to keep  
25 the current percent, because that's going to generate our favorite word,

1 more. Right?

2 A It depends on what the client adopts.

3 Q Well, key drivers that may influence SSPE implementation --

4 MR. ZAVITSANOS: Highlight the bottom two, Michelle.

5 BY MR. ZAVITSANOS:

6 Q Current pressure on SSP program fees -- adding SSPE will  
7 increase both fees and subsequent pressure, right?

8 A Yes, that's what that says.

9 Q It says that currently under the old state of the world, under  
10 SSP, you were already getting pressure from clients about how much  
11 you were making, right?

12 A Yes, clients always put pressure on costs.

13 Q I thought you told the jury however that these programs --  
14 that the clients came to you, and they wanted the program, right?

15 A I could explain that.

16 Q No, sir. Is that what you told the jury?

17 A Yes, and I can explain that --

18 Q I don't need you to explain.

19 A Oh, I'd like to.

20 Q You will. You'll get a full opportunity when your lawyer asks  
21 you. Okay? So there's nothing in here that -- that the client wants this,  
22 right? In fact, it says you need to balance revenue expectations and  
23 client concerns, right?

24 A Yes, that's what that says.

25 Q And it ended up -- I mean, in its peak you ended up making

1 about a billion and a half dollars, right, in one year?

2 A That's incorrect.

3 Q What was the highest revenue -- what was the highest  
4 revenue amount that you've earned in one year during these programs  
5 for percentage?

6 A For the percentage I don't know. Overall, I think it was 1.3  
7 billion.

8 Q 1.3? Is that what you said?

9 A Yes.

10 Q Okay. While this is what you all were discussing internally  
11 and it looks like there was pressure from the clients, but we're going to  
12 keep the same percent.

13 A Yep, we can't force the clients to change.

14 Q You what?

15 A We can't force the client to change.

16 Q That wasn't my question. Adding this program, which will  
17 increase fees, and there's already pressure, the decision was made you  
18 are not going to cut your percentage, right?

19 A What it says here, it says keep the current percent of savings  
20 structure in place.

21 Q So at the end of the day, Mr. Haben, United gets the full rack  
22 rate, the 35 percent. You don't get cut, but we do. Do as I say, not as I  
23 do. That's what you did, right?

24 MR. BLALACK: Object to the form of the question. It's  
25 compound.

1 MR. ZAVITSANOS: Let me rephrase.

2 THE COURT: Objection sustained.

3 BY MR. ZAVITSANOS:

4 Q The philosophy at United in connection with these programs  
5 was do as I say, not as I do, right?

6 A I disagree.

7 Q You weren't going to cut what you get, but you're definitely  
8 going to cut what we get, right?

9 A I disagree.

10 MR. ZAVITSANOS: All right. Let's go to page 5. Okay.

11 Michelle, follow me here, please. From here -- from here to here.

12 Thanks, Michelle.

13 BY MR. ZAVITSANOS:

14 Q Okay. So here we are again comparing the fully insured side  
15 of the business. That's where you are the -- that you're taking the risk;  
16 versus the ASO side where you're just administering the claim, right?

17 A Correct.

18 Q And here with this SSPE that you're going to implement,  
19 there may be a wrap rental agreement, but what you're going to do,  
20 according to this plan, is you're going to suggest the -- to the doctor that  
21 they need to take less as part of a negotiation, right?

22 A I disagree, and I can explain the philosophy.

23 Q Is there a discourse with the physician group about the  
24 reimbursement under SSPE at any point in the process?

25 A I don't know what you mean. Can you explain what you're



1 asking?

2 Q I'm asking did you talk -- was somebody charged with talking  
3 to the doctor groups at any point in this SSPE reimbursement scenario?

4 A I -- you're going to have to be more specific.

5 Q You don't know what I mean by that? Whether --

6 A Are you talking about --

7 Q -- you would tell -- talk to the doctor and explain to them --

8 THE COURT: Sorry, stop interrupting everybody.

9 MR. ZAVITSANOS: Let me try again. I'm not [indiscernible].

10 BY MR. ZAVITSANOS:

11 Q Does this seem to say that under SSPE if the doctor group  
12 doesn't agree to what you're proposing you were going to sue them  
13 under the F.I. part of the business?

14 A I don't know what that means.

15 Q You don't know that what it means to say that UHC will  
16 pursue legal action with providers if unable to obtain reasonable  
17 agreement? You don't know what that means?

18 A I could explain. There's --

19 Q No.

20 A There are state laws that need to be abided by if they are  
21 not --

22 Q No. No, sir. Are you a lawyer?

23 A No, I'm not.

24 Q Okay. I'm just asking whether you know what it means that  
25 UnitedHealthcare is going to pursue legal action with providers -- those

1 are the doctors -- if unable to obtain a reasonable agreement?

2 A I can explain what that is if you'd like me to.

3 Q Sir, this is on the fully insured side when it's your nickel  
4 that's risk, right?

5 A Uh-huh. And when state laws apply, yes.

6 Q When it's the client's nickel --

7 MR. ZAVITSANOS: Michelle, highlight this.

8 BY MR. ZAVITSANOS:

9 Q There's going to be litigation if United is not going to spend  
10 for it, right?

11 A I don't believe we're able to litigate on behalf of a client  
12 without their permission.

13 Q Well, no -- well, that's not what this says. This says UHC will  
14 not litigate on behalf of the clients, right?

15 A That's what that says.

16 Q So when it's your dollar at risk, you will pursue legal action,  
17 right?

18 A That's misleading. That's not exactly what it says.

19 Q Now, this is a fee-based program on the ASO side, right?  
20 Right?

21 A Yes.

22 Q Okay. And I think this is clear, but just let's -- just to be clear.  
23 The percentage we've been talking about, the 35 percent. By definition,  
24 that would only apply to ASO clients, right?

25 A Correct.

1 Q Because on the fully-insured side, percentages are not  
2 involved if you pay less on the fully-insured side, then you pay less and  
3 United gets to keep more of the fees, right?

4 A Yeah, the fees associated with the administration of a plan.

5 Q Yeah, okay. So when we're talking about the Shared  
6 Savings, that always means ASO?

7 A Not exactly.

8 Q I'm sorry. When we're talking about percentage -- the  
9 percentage fee, it always means ASO?

10 A We don't charge a percentage fee for fully insured because  
11 that's our plan. But we don't charge ourself.

12 Q Right. Well, of course. That would be silly, right? To charge  
13 yourself a fee?

14 A Uh-huh.

15 Q Okay. So again, my question is when we see a reference like  
16 we do here for a fee-based program with a percent of savings, that  
17 always means ASO, right?

18 A In this situation, it means ASO.

19 Q Thank you, sir. Okay. Okay. Okay, now, let's go to  
20 page -- let's go to page 10. And one of the things you all did -- and by  
21 the way, this document --

22 MR. ZAVITSANOS: Michelle, go to the first page, please.  
23 276.

24 BY MR. ZAVITSANOS:

25 Q This document. Did this come out of your organization in the

1 company?

2 A I don't believe that it did.

3 Q Okay. Fair enough.

4 MR. ZAVITSANOS: Let's go to page -- where we were,  
5 Michelle. Page 10, please.

6 BY MR. ZAVITSANOS:

7 Q But you were in charge of managing this program, right?

8 A I was in charge of the out-of-network programs.

9 Q Yes, sir. And one of the things United does, like a lot of  
10 businesses -- there's nothing nefarious about this -- is they do something  
11 called revenue modeling, right?

12 A I believe so. Yes.

13 Q And essentially, that's another way of saying, well, let's see  
14 how much money we're going to make from this program, right?

15 A I don't have any context for it.

16 Q You don't have -- you don't know what revenue modeling is?

17 A I am not in finance, so I don't do the revenue modeling.

18 MR. ZAVITSANOS: Okay. Michelle, highlight right here.

19 BY MR. ZAVITSANOS:

20 Q "Revenue potential from deploying SSP Plus with 100  
21 percent adoption across ASO is \$200 to \$255 million or an increase of 22  
22 to 28 percent". Do you see that?

23 A I do see that.

24 Q Okay. And that's the driver for SSPE right here, right?

25 A I disagree.

1 Q Do you know how much of the three plaintiffs in this case are  
2 seeking?

3 A I don't recall.

4 Q If it's around 10 and a half million dollars, is that about 5  
5 percent of what you all would make in one year under these projections?

6 A Ten million is 5 percent of 200.

7 Q Yeah. Is how much, five percent?

8 A Of 200.

9 Q Yeah. And that is the annual potential if you get 100 percent  
10 adoption, right?

11 A If 100 percent of our clients adopt the programs, that's what  
12 this is saying.

13 Q Yes, sir. Okay. Now, finally, let's look on this document at  
14 page 16. And this appears to be something called deployment scenario;  
15 do you see that?

16 A Hold on.

17 Q Yup.

18 A Can I just take a quick peek, please?

19 Q Yes, sir. Yes, sir. Just let me know when you're ready.

20 [Witness reviews document]

21 A Okay.

22 Q Okay. So this is about how you're going to -- you're looking  
23 at options in deploying this deeper set of cuts under SSPE, right?

24 A I don't believe I wrote this document. I don't know what  
25 they're intending to say.

1 Q You don't know what a deployment scenario is?

2 A Yes, but I didn't write this, so I don't know exactly what  
3 they're trying to convey.

4 Q Yeah. My question is do you know what a deployment  
5 scenario is?

6 A I wouldn't put those two terms together, but.

7 Q Okay. Okay. So on this page, deployment scenarios.

8 MR. ZAVITSANOS: Michelle, close this out. And we're going  
9 to pull out -- I'm going to pull out a section of this. So we're going to  
10 close out this pullout -- or is this the whole page?

11 MS. RIVERS: It's the whole page.

12 MR. ZAVITSANOS: Okay. Michelle, can you pull out right  
13 here? All right. Thank you, Michelle.

14 BY MR. ZAVITSANOS:

15 Q Okay. So in this deployment scenario, any increase in fees is  
16 a paying point for some clients. And essentially what you're saying  
17 there is you've got to talk them into it, right?

18 A No, that's not what that's saying.

19 Q Socialization and messaging will be critical with both sales,  
20 clients, and the broker community. That's what it says.

21 A You have to talk to clients. You just can't make the change.

22 Q My question is on this deployment scenario, the step that  
23 you're outlining is socialization and messaging will be critical with both  
24 sales/clients, and the broker community. That's what it says?

25 A That's what it says.

1 Q Yes, sir. And that socialization included things like the Yale  
2 report, right?

3 A I would disagree.

4 Q Okay. So let's look at Exhibit 246. And we're going to go to  
5 page 8. Page 8. Okay.

6 A I got to go that.

7 Q Yes, sir.

8 MR. ZAVITSANOS: Michelle, if you'll follow me here while  
9 Mr. Haben is getting the other binder. If you can pull out from here to  
10 here to here. I need that bottom arrow to go right there. Yeah. And  
11 Michelle, can you highlight vertically? And I want you to highlight this  
12 section here, Michelle. Right here. And if you can't do that, just  
13 highlight here.

14 BY MR. ZAVITSANOS:

15 Q Okay. Are you ready, Mr. Haben?

16 A I am.

17 Q All right. So this OCM. We're looking at a comparison of  
18 these programs, right? And we've gone from this wrap network  
19 agreement which existed in 2016. It looks like the discounts are even  
20 deeper now. 30 to 40 percent. Now, with this new program, it's 60 to 69  
21 percent, right?

22 A That's what that says. Yes.

23 Q And of course, the deeper the discount, the more you make?

24 A Depending on the client set up. Yes.

25 Q Okay. Now, Exhibit 76. We're going to go back to that SSPE

1 ASO update, that's the one we were just talking about, in January of  
2 2017.

3 A I need to go get that.

4 Q Yup. That's the one we just had before.

5 MR. ZAVITSANOS: And what we want to do is -- Michelle,  
6 will you please go to page 7? And I want to now go back to MultiPlan.  
7 All right. Michelle, right here and here to here. Just that top part. All  
8 right. Michelle, right here.

9 THE WITNESS: I'm sorry. What page?

10 MR. ZAVITSANOS: Page -- what is it, Michelle?

11 MS. RIVERS: 7.

12 MR. ZAVITSANOS: Page 7, Mr. Haben. Michelle, right here.  
13 Manager fees. Highlight "seven percent of savings."

14 BY MR. ZAVITSANOS:

15 Q That seven percent is what you would pay to MultiPlan,  
16 right?

17 A I believe so.

18 Q The vendor here is MultiPlan -- or including MultiPlan?

19 A It could include MultiPlan. We had other vendors, too.

20 Q Right. And what you're doing here is you're essentially  
21 evaluating if you do this, what's this going to run you, right?

22 A What does that mean?

23 Q What's it going to cost you?

24 A Yes, it's a heavy lift. We have to do some things to get it up  
25 and running and operationalize it. Sorry.



1 Q Okay. So you're going to have to pay seven percent as the  
2 money's coming in. MultiPlan gets seven percent, right?

3 A I believe that's what that says.

4 Q And then your expenses are at 17 and about \$4 million,  
5 right?

6 A Yes, it's a heavy lift to operationalize and run the program.

7 Q To generate \$220 million?

8 A We have to send claims over. We have security  
9 requirements. We have to answer the phone. There's a lot of work to it.

10 Q Sure. Answering the phone is expensive.

11 A It is. And you have to support the member, walk them  
12 through their benefits. If they're getting balance billed, we have to  
13 address that, too.

14 Q They're getting balance billed because you all stuck them in  
15 the middle when you decided to cut the rate.

16 A I disagree. Providers affect the charge amounts that they  
17 have out there.

18 Q Okay.

19 A It's not just our fee. They affect the top line of the math.

20 Q Okay, hold on. Okay. Would you please look at Exhibit 244,  
21 please?

22 A Yeah. Let me get up and get it.

23 MR. ZAVITSANOS: And may I ask counsel if he has an  
24 objection? Counsel, I will direct your attention to the second page, last  
25 paragraph.

1 MR. BLALACK: No objection.

2 MR. ZAVITSANOS: Thank you. We offer 244 -- Plaintiffs' 244  
3 into evidence, Your Honor.

4 THE COURT: There will be no objection. 244 will be  
5 admitted.

6 [Plaintiffs' Exhibit 244 admitted into evidence]

7 MR. ZAVITSANOS: Okay. Michelle, will you please pull that  
8 up?

9 BY MR. ZAVITSANOS:

10 Q Now. So I think we were in 2017 as you were forecasting  
11 how much you're going to make, what this is going to cost you, pros and  
12 cons. Now, we are in 2018.

13 MR. ZAVITSANOS: And if we can, Michelle, from here to  
14 here. We're going to look at -- and actually, Michelle, can you scroll up  
15 and see if we can capture this whole email? Perfect. Okay, that's  
16 perfect. Now, let's take this a step at a time. First of all, let's see -- let's  
17 pull out who it's from and who it's to.

18 BY MR. ZAVITSANOS:

19 Q Okay. Who is Scott Ziemer?

20 A He's part of UMR, United Medical Resources.

21 Q Is that the parent company?

22 A Parent company of?

23 Q Who is UMR? Let me --

24 A They're a -- they're a third-party company. Third-party

25 TP -- I'm sorry. Third-party administrator. They're a separate company

1 inside UnitedHealthcare.

2 Q Okay. But they're under the United umbrella?

3 A They're under UnitedHealthcare.

4 Q Thank you, sir. Okay. Okay. So here, it says, "It is my  
5 understanding" -- now, we're in September of 2018. "It is my  
6 understanding that the UnitedHealthcare CEO" -- now, was that at the  
7 time?

8 A I don't recall. It might be Steve Nelson, but I'm not sure.

9 Q In '18?

10 A I don't remember.

11 Q Fair enough. The CEO of UnitedHealthcare will be laying out  
12 a strategy to become more aggressive with their out-of-network  
13 programs, right? Or UHM will be laying out a strategy to become more  
14 aggressive with their out-of-network programs, right?

15 A That's what that says, yes.

16 Q Okay. And there's that acronym, OOM, right? That's --

17 A Yes.

18 Q That's what we've been talking about?

19 A Yes.

20 MR. ZAVITSANOS: All right. So Michelle, close that out.

21 And let's now pull out this thing called benchmarking, which we've  
22 heard a little bit about. All right.

23 BY MR. ZAVITSANOS:

24 Q Okay. "CRS Benchmark Program". See that?

25 A I do.

1 Q CRS is Medicare?

2 A No, it is --

3 Q I think it's a shorthand way to refer to Medicare?

4 A I don't believe so.

5 Q What is it?

6 A I don't know. This is UMR. I don't run their programs.

7 Q Fair enough.

8 MR. ZAVITSANOS: Okay. Actually, Michelle, can we go to  
9 the second page? Actually, hold on. Close that out. Pull out this bottom  
10 section here.

11 BY MR. ZAVITSANOS:

12 Q You don't know what this is? These emails?

13 A I'm not on these emails. This is UMR. They run their own  
14 program.

15 Q So when they said "We will continue to work" --

16 MR. ZAVITSANOS: Follow me, Michelle.

17 BY MR. ZAVITSANOS:

18 Q -- "with Becky Paradise on John Haben's team on improving  
19 all of our out-of-network solutions". You weren't aware of this, what's  
20 going on in the email?

21 A No. We consult with each other, but I don't run their  
22 programs. They're a totally independent entity.

23 Q Well, my question is were you aware of left hand, right hand  
24 what you all were doing?

25 A We were aware that they had a client issue that they raised.

1 That clients were saying they're spending too much for non-par, and  
2 they needed assistance.

3 Q Well, that's not my question. My question is were you  
4 all -- did you all coordinate on what you all did?

5 A Scott asked if we had an opinion on some things and what  
6 we are aware of, and we shared information.

7 Q Okay. "When we offer these two programs to clients,  
8 adoption depends on several factors. With CRS Benchmark, it depends  
9 on the client's willingness to believe in the advocacy programs, limit  
10 balance billing" -- right -- "and accept the increased fees". You see that?

11 A Yes.

12 Q "Recently, we proposed CRS Benchmark to a very large  
13 customer. And despite millions in savings, they did not want to live with  
14 the potential member disruption due to balance billing", right?

15 A I see that.

16 Q Okay. So these ASO clients; these are very sizable  
17 companies, right?

18 A They could be very small, and they can be very big.

19 Q Okay, fair enough. Some of them are very large, like AT&T,  
20 for example. They're one of your clients.

21 A AT&T, MGM. Very big companies.

22 Q Yes, sir. Okay. All right, so.

23 [Pause]

24 MR. ZAVITSANOS: So let's now go to -- Your Honor, may I  
25 ask Counsel if he has an objection to 379? And I'm going to direct his

1 attention to the top of page 1.

2 MR. BLALACK: One moment, Your Honor. No objection,  
3 Your Honor.

4 THE COURT: There being no objection, Exhibit 379 will be  
5 admitted.

6 [Plaintiffs' Exhibit 379 admitted into evidence]

7 MR. ZAVITSANOS: Okay. Michelle, pull out the bottom  
8 email, please.

9 BY MR. ZAVITSANOS:

10 Q And Mr. Haben, is it correct that United -- this effort to try to  
11 get your ASO clients away from the usual customary and reasonable  
12 amount as a reimbursement way to pay for out-of-network emergency  
13 room clients. This was a constant work in progress; would you agree? It  
14 did not happen overnight.

15 A It takes clients a long time to understand the impact, so we  
16 have to work with them over a long period of time. That's why it takes  
17 up to five years.

18 Q Yes, sir. So here we are now. This is 2019. And by the  
19 way --

20 MR. ZAVITSANOS: Close this out for a second, Michelle.

21 BY MR. ZAVITSANOS:

22 Q Now, just to be fair. You're at the very top --

23 MR. ZAVITSANOS: Pull this out.

24 BY MR. ZAVITSANOS:

25 Q It looks like there was a bunch of emails. And then

1 ultimately, those got forwarded to you. Do you see that?

2 A Yeah. Can I take a quick peek?

3 Q Sure, sure, sure.

4 A Or you want to point -- okay.

5 Q All right. By the way, do you know if CRS stands for cost  
6 reduction and savings?

7 A I don't -- I don't remember.

8 Q Okay. In any event, we're now at this bottom email here that  
9 ultimately got forwarded to you. And here, we --

10 MR. ZAVITSANOS: Michelle, here we go. I want you to pull  
11 from here to here.

12 BY MR. ZAVITSANOS:

13 Q And it looks like by 2019, some of the folks at United were  
14 still struggling with in terms of finding the right approach with these  
15 ASO clients, right?

16 A That's what that says.

17 Q Yeah.

18 MR. ZAVITSANOS: And if we go down a little further after  
19 the colon here. Close that out. Michelle, right here. First bullet point.

20 BY MR. ZAVITSANOS:

21 Q The immediate call to action is to move clients who are in a  
22 program that ties back --

23 MR. ZAVITSANOS: Right here, Michelle. Third line.

24 BY MR. ZAVITSANOS:

25 Q That ties back to R&C, that's reasonable and customary,