

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.

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.

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Case No. 85525

Case No. 85656

**APPELLANTS' APPENDIX
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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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/s/ Jessie M. Helm

An Employee of Lewis Roca Rothgerber Christie LLP

1 right?

2 A Yes.

3 Q To one of the preferred program options, preferably either
4 OCM/OCM or SSPE/OCM, right?

5 A Yes, that's what that says.

6 Q Right. SSP is OCM, right? OCM is part of SSPE. Anyways,
7 let me move on.

8 MR. ZAVITSANOS: Right here.

9 BY MR. ZAVITSANOS:

10 Q Otherwise, to keep it simple, we should assume clients on a
11 reasonable and customary based program are more paternalistic. That's
12 a Greek word, by the way; did you know that?

13 A I didn't.

14 Q Yeah. Pater is father, right?

15 A Very good.

16 Q So paternalistic that you are caring for those under your
17 control, right?

18 A Understood.

19 Q So clients on an R&C based program are more paternalistic
20 and will want their members to be protected while getting more value
21 out of the out-of-network programs, right?

22 A Yes.

23 Q Now, we know for a fact -- I know I've asked this a couple
24 times, and I apologize for asking you again. That under that wrap
25 agreement under SSP, this was being achieved.

1 A It was -- it was --

2 Q Paternalistic attitude was being achieved, right?

3 A They were not getting the value that they wanted to get out
4 of the program, so.

5 Q Well, let's go to the next page and see these folks who are
6 struggling about finding the right approach.

7 MR. ZAVITSANOS: Next page, Michelle. Right here. Let's
8 pull out from here, Michelle, to here. Here to here. Okay.

9 BY MR. ZAVITSANOS:

10 Q So one of the things you're going to do is --

11 MR. ZAVITSANOS: Right here, Michelle. Follow me.

12 BY MR. ZAVITSANOS:

13 Q You're going to explain why reasonable and customary is
14 problematic and should not be preferred, and then help identify the
15 slides. What is SCE?

16 A I believe that's like a client executive. So somebody that
17 would talk with a client.

18 Q In sales, right?

19 A Yeah.

20 Q Okay. So this is telling the sales people, hey, reasonable and
21 customary; you need to tell the clients that's problematic, and then you
22 should present these messaging slides, right?

23 A Okay, I'm not going to explain why that's problematic.

24 Q Said another way.

25 MR. ZAVITSANOS: Right here, Michelle.

1 BY MR. ZAVITSANOS:

2 Q "We need a slide on reasonable and customary that creates
3 the sense of urgency", right?

4 A That's what that says. It was a big problem. Charges were
5 going through the roof.

6 Q Well, so urgency -- is the urgency to UnitedHealthcare?
7 Because every time you're processing one of these claims on just
8 reasonable and customary, and there's no wrap rental agreement, you
9 are not making any additional money. And therefore, it was urgent that
10 we have the ability to double up, right? That's what that's called.

11 A That's a mischaracterization. Clients were uncompetitive.
12 We had a problem. Clients were saying that we weren't managing their
13 costs, so we were trying to explain it.

14 Q Well, sir, I think we just went through this email, and we saw
15 about your clients being paternalistic and wanting to protect their
16 members, right?

17 A And it said but they're not getting the value of the programs.

18 Q Did we just look at what I just said, sir?

19 A Yes, and that's what that said.

20 Q Okay. And so this urgency. Are you telling the jury that is an
21 urgency on the part of the client or United?

22 A It was the client that was expressing concern.

23 Q Oh, I see. So when you're telling the sales staff that we need
24 a slide, meaning a puff piece, on a reasonable and a customary that
25 creates the sense of urgency, that's not United needs to create the sense

1 of urgency to the client, that's the client telling United, it's urgent, we
2 need to get off this reasonable and customary as soon as possible?

3 A I'm sorry, I'm --

4 MR. BLALACK: Form. Compound.

5 THE COURT: Sustained. And the editorialization isn't
6 appropriate.

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

8 THE COURT: The editorializing is inappropriate.

9 MR. ZAVITSANOS: Yes, Your Honor.

10 BY MR. ZAVITSANOS:

11 Q Whose urgency are we talking about here?

12 A So I misspoke. There was a problem. It was an urgent
13 problem. We were trying to explain to the clients the balance between
14 holding harmless and the rising medical costs that they were seeing. So
15 we wanted to bring that in front of them.

16 Q That's not my question, Mr. Haber. What I said was -- is
17 whose urgency is it? Do you believe that was discussed? Is that
18 United's urgency or the client's urgency?

19 A We were trying to explain to the client that there's an urgent
20 issue that we're seeing. And we were trying to notify them. Otherwise,
21 they end up overpaying and we have a satisfaction issue with the client.

22 Q Mr. Haber, I'm not asking that. Let me -- let me try this again.

23 A Okay.

24 Q I just want to know, when it says, "we need slide" on
25 reasonable and customary, it creates the sense of urgency. Whose

1 urgency is that? Is that United or the client's?

2 A We were trying to tell the client there was an urgent issue
3 they should be aware of.

4 Q All right. Thank you, sir. Exhibit 243, please.

5 MR. ZAVITSANOS: Your Honor, may I ask --

6 THE WITNESS: It's conditioning --

7 MR. ZAVITSANOS: -- counsel if he has an objection to
8 Exhibit 243?

9 MR. BLALACK: No objection.

10 THE COURT: Exhibit 243 will be admitted.

11 [Plaintiffs' Exhibit 243 admitted into evidence]

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

13 THE COURT: You may.

14 THE WITNESS: Can I just look at it?

15 MR. ZAVITSANOS: Yes, sir. Let me know when you're
16 ready. And Michelle, if you'll pull up the front too, just so we can see
17 who this is.

18 BY MR. ZAVITSANOS:

19 Q Okay. So --

20 A Can I just take a quick --

21 Q Yes, please. Okay. You just let me know --

22 A I will.

23 Q -- you just let me know when you're ready, okay?

24 A It should be quick.

25 Q Yes, sir.

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1 A Okay.

2 Q Okay. All right. So this appears to be an email from Ms.
3 Paradise to you, right?

4 A Correct.

5 Q And this is September 26th, 2018, right?

6 A Correct.

7 Q All right. Okay. And this is talking about specific numeric
8 compartments, right?

9 A No. That is not correct.

10 Q Okay. Well, see where it says SSP -- or I'm sorry, the subject
11 is UMR repair? And it's talking about programs that UMR has that could
12 save 242 million dollars, right?

13 A I see that.

14 Q Okay. That's what this is about?

15 A It's about client savings and what they could do to save more
16 money for the client.

17 Q Well, the subject is UMR repair. Ms. Paradise is sending you
18 some financial information, right?

19 A She's sending me estimates on savings.

20 MR. ZAVITSANOS: Michelle, pull that up for me. And pull
21 up, please, in here. And include Ms. Paradise's signature block.

22 BY MR. ZAVITSANOS:

23 Q All right. So this is using the word aggressive in terms of the
24 kind of cuts you're going to institute, right?

25 A I think it's just related to the overall environment of those

1 out-of-network costs.

2 Q Okay. "We also generate additional savings by not running
3 the claims through the usual and customary, but rather driving all out-of-
4 network claims to a more aggressive pricing and managing appeals to
5 try to hold the member harmless, right?"

6 A I see that.

7 Q Okay. Now, do you find, Mr. Haben, that under this program,
8 if you cut the bill by 60 percent at this time, and a member gets balance
9 billed, isn't it accurate that a huge chunk of people that get balance billed
10 just pay it without realizing that they can do something about it?

11 A That's incorrect.

12 Q Okay. Is there any -- and when we're talking about the ASO
13 side of the visits, right?

14 A Okay.

15 Q If claims are processed using the usual, reasonable, and
16 customary, but if you pay less than that under this SSP, okay?

17 A I'm sorry, can you say the first part again? I'm --

18 Q Sure.

19 A -- I got distracted.

20 Q You are managing claims for a client.

21 A Yup.

22 Q Under the usual, reasonable, and customary process, okay?

23 A Language in their benefit plan?

24 Q Yes, sir.

25 A Okay.

1 Q And you -- but you apply the deeper cuts. Ultimately, if the
2 member gets balance billed and the -- and the provider, the doctor,
3 demands that his bill get paid, the plan would have to pay the bill
4 charge, right? And I will simplify things. But they'd have to pay the bill
5 charge minus the copayment?

6 A You're mixing programs. Outlier cost management language
7 typically is not with our usual reasonable and customary program.

8 Q Let me rephrase that.

9 A Okay.

10 Q If the plan says you may process claims in the usual,
11 customary, and reasonable, but you pay less than that, you pay less than
12 the 80th percentile of fair health. And the member then gets balance
13 billed in this sole situation. The member calls United and be provided --
14 United calls the provider. And the provider says, nope, I'm not willing to
15 take a bus if that's what it costs. In that scenario, you would have to pay
16 the bill charge?

17 MR. BLALACK: I don't believe that scenario exists. The
18 language is usual, reasonable, and customary.

19 BY MR. ZAVITSANOS:

20 Q You're not aware that there are -- that that's -- that there are
21 situations where you would have to pay the bill charge when you're
22 acting as a third-party, then a stranger. If the member got balance billed
23 and the provider is not willing to take loans. That would exist in some
24 sort of expenses, right?

25 A If the provider is -- or the staffing company is harassing the

1 member and asking for billed charges, and the employer group says,
2 please take my member out of the middle, I need help because they're
3 complaining, and they ask us to pay bill charges, we will use their funds
4 to pay bill charges. It's very rare though.

5 Q Okay. So where is it in evidence that United was telling the
6 ASO members that if you get balance billed, you are full indemnified,
7 and your employer will pay the bill charge? Where is that document?

8 A I -- there's thousands of pages. I don't know where that is.

9 Q Well, if that happened, if you had to pay on behalf of your
10 client the bill charge under the scenario you outlined --

11 A Okay.

12 Q -- what that means is United then has to refund the
13 percentage fee that it earned, right?

14 A That's correct. If we don't save any money for the client, we
15 don't charge that.

16 Q And so do you believe that the jury -- and so what United did,
17 Mr. Haber, it deliberately made this language that was sent out to the
18 members so unclear and so opaque that they wouldn't know that, so that
19 you would not have to refund that percentage savings; is that accurate?

20 A What language are you talking about?

21 Q Language that says, "If you get a bill from the provider, the
22 plan will pay for it.

23 A If you show --

24 Q That language doesn't exist in any document in evidence,
25 does it, sir?

1 A I don't know. I don't know all the pages in the evidence.

2 Q Okay. Well, speaking of these ASO contracts -- well, actually,
3 let me finish on this. And then I'm going to ask you about ASO
4 contracts. And then I think we're going to run out of time for the day.
5 Okay. Actually, it's been up on the screen. The jury read it. So I'm
6 going to move on.

7 Okay. So here's what I want to ask you. Now, you understand that
8 one of the things the jury is going to do here, sir, they're going to decide
9 what is the reasonable value with these out-of-network services or the
10 claims that are the subject to his case?

11 MS. RIVERS: Objection. Foundation.

12 THE COURT: Overruled.

13 THE WITNESS: I don't know.

14 BY MR. ZAVITSANOS:

15 Q Well, in preparing for your deposition, and preparing for your
16 trial testimony, you didn't kind of reach that conclusion that the jury's
17 going to decide what the reasonable value is of these out-of-network
18 emergency room charges?

19 A That could be an argument. Yes.

20 Q All right. Now, what we know is these ASO contracts, they
21 are between United and the Employer, right?

22 A Which contracts are you talking about?

23 Q Any ASO contract is between the employer and United?

24 A I would assume so. You're going to have to show me one
25 and I could look at it.

1 MR. ZAVITSANOS: Well, Michael, here you are.

2 BY MR. ZAVITSANOS:

3 Q You don't know whether the ASO contracts are between
4 United and the employer?

5 A Which contract are you talking about?

6 Q Any contract, sir. AT&T, for example.

7 A They have an ASA.

8 Q Fair enough.

9 A Which is an administrative service agreement. Yeah.

10 Q That's between --

11 A Yes.

12 Q -- United --

13 A Yes.

14 Q Okay.

15 Q -- and AT&T, right?

16 A Correct.

17 Q The Plaintiffs here are not a party to that agreement, right?

18 A That is correct.

19 Q They did not participate in any way, shape, or form in the
20 negotiations for what those plan agreement said, right?

21 A Unless they were a client of United's, correct.

22 Q Right. And so if the ASO agreement says you pay at a 70
23 percent reduction -- right? I mean, you all -- you all got the clients to
24 change a lot of this language in these ASO agreements from reasonable
25 and customary to an avenue that allows for deeper costs, right?

1 A If the client wanted to adopt a new program, we had
2 language that we put in the ASA form.

3 Q But you understand because we were not at the table, those
4 agreements don't mind us? They may bind you. But they don't bind
5 then doctor, right?

6 A I'm not an attorney, but I'm assuming that's the case.

7 Q Okay. So for example -- let's flip it around now for a second.
8 If the doctors' group here, the healthcare providers, they reach a deal
9 with AT&T, and the deal was between the provider groups and AT&T,
10 that United does not get any kind of a percentage fee for the shared
11 savings program? Certainly, United is not bound to continue operating
12 that program when it's not a party to that agreement, right?

13 A I'd have to see the agreement. I don't know what you're
14 talking about.

15 Q United is not bound by agreements it doesn't sign, right?

16 A Well, nobody is. Yeah.

17 Q Sure. Just like healthcare providers are not, right?

18 A I am not following what you're trying to ask me.

19 Q Here's what I'm trying to ask. If the jury is going to
20 determine reasonable value off these out of network charges, and
21 whether we are owed money or not, would you agree to with these ASO
22 clients? It does not bind us, and it doesn't bind the jury.

23 A Are you asking me if the staffing company can pursue the
24 client?

25 Q No, sir.

1 A I don't know what you're asking me.

2 Q The deal that you reach with these ASO clients on how much
3 we get paid, does not bind us, limit us to seeking reasonable value?
4 That's my question.

5 MR. BLALACK: Object to the form, Your Honor, on two
6 grounds. One, it calls for a legal conclusion. It's already been asked and
7 answered twice.

8 THE COURT: If it's within his knowledge, he can answer.

9 BY MR. ZAVITSANOS:

10 Q Yeah. You understand my question, Mr. Haben?

11 A I am not -- I'm not trying to be difficult. I am not following
12 your -- ask your question.

13 Q Mr. Haben --

14 THE COURT: Well, it's been asked and asked [sic]. So move
15 on.

16 MR. ZAVITSANOS: Your Honor, I'm at a good transition
17 point if you'd like.

18 THE COURT: Okay. It's 4:40. We're leaving five minutes on
19 the table. It gives you -- gets you home faster. So we'll recess until
20 tomorrow at 9:30.

21 Do not talk with each other or anyone else on any subject
22 connected with the trial. Don't read, watch, or listen to any report of or
23 commentary on the trial. Don't conduct any research on your own
24 regarding the case. Don't consult dictionaries or use reference materials.
25 Don't talk, don't use social media, don't text Tweet, Google, or conduct

1 any type of computer research with regard to any issue, party, witness,
2 or attorney involved in the case. Most importantly, do not form or
3 express any opinion on any subject connected with the trial until the jury
4 deliberates.

5 Thank you for your attention today. Thanks for being willing
6 to work after that surprise this morning. And I'm going to bring the
7 lawyers in at 9:30 -- 9:15, so we can start tight at 9:30.

8 THE MARSHAL: All rise for the jury.

9 [Jury out at 4:42 p.m.]

10 [Outside the presence of the jury]

11 THE COURT: Okay. The room is clear. Anything to put on
12 the record tonight? I'll bring you back at 9:15. You can have 15 minutes
13 in the morning.

14 MR. ZAVITSANOS: Great. Thank you, Your Honor.

15 THE COURT: All right. See you in the morning. Have a good
16 night, everyone.

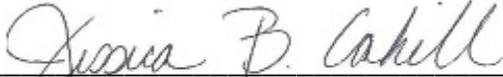
17 MR. ZAVITSANOS: Thanks, Your Honor.

18 MR. BLALACK: Thank you, Your Honor.

19 [Proceedings adjourned at 4:42 p.m.]

20

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

23 

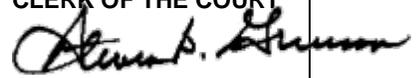
24 Maukele Transcribers, LLC
25 Jessica B. Cahill, Transcriber, CER/CET-708

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

Defendants.

CASE#: A-19-792978-B

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
TUESDAY, NOVEMBER 9, 2021

RECORDER'S AMENDED TRANSCRIPT OF JURY TRIAL - DAY 9

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.
HANNAH DUNHAM, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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Las Vegas, Nevada, Tuesday, November 9, 2021

[Case called at 9:19:32 a.m.]

[Outside the presence of the jury]

THE MARSHAL: District Court 27 is now in session, the Honorable Judge Alf presiding.

THE COURT: Thanks everyone, please be seated. Good morning.

GROUP RESPONSE: Good morning, Your Honor.

THE COURT: All right. So IT is on their way, but we think we can -- we're on the record; is that correct?

THE COURT RECORDER: Yes.

THE COURT: Good enough. Calling the case of Fremont v. United. Appearances, please, starting first with the Plaintiff.

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

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

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

MR. MCMANIS: Jason McManis, on behalf of the healthcare providers.

MR. LEYENDECKER: Good morning, Your Honor. Kevin Leyendecker.

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1 THE COURT: Thank you. And for the Defense, please?

2 MR. BLALACK: Lee Blalack , Your Honor, on behalf of the
3 Defendants.

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

6 MR. GORDON: Jeff Gordon, on behalf of the Defendants.

7 MR. POLSENBERG: And Dan Polsenberg, Your Honor.

8 THE COURT: Thank you, all.

9 MR. BLALACK: Thank you, Your Honor.

10 THE COURT: All right. We've got a few minutes before the
11 jury comes in. I believe -- did the Defendant have something for the
12 record?

13 MR. BLALACK: I don't -- not at this time, Your Honor.

14 THE COURT: No.

15 MR. BLALACK: I don't believe so.

16 THE COURT: Okay. Plaintiff, anything?

17 MR. ZAVITSANOS: Yeah. Your Honor, I think we have one
18 exhibit that's not contested.

19 MR. MCMANIS: Yes, Your Honor. One minor exhibit issue,
20 from the conditionally admitted exhibits, before opening. There's three
21 numbers on that list that we want to withdraw. There's not actually an
22 exhibit associated with those numbers; those are Plaintiffs' Exhibits 315,
23 316 and 494.

24 THE COURT: And have you conferred with opposing
25 counsel?

1 MR. MCMANIS: I have, Your Honor.

2 THE COURT: Any objection?

3 MS. DUNHAM: No objection, Your Honor.

4 THE COURT: All right. So 315, 316 and 494 will be
5 withdrawn.

6 MR. ZAVITSANOS: Thank you, Your Honor.

7 THE COURT: So, Marshal, why don't you see if the people
8 are here?

9 THE MARSHAL: Yes, ma'am.

10 THE COURT: Thanks everybody for being early today, I want
11 to maximize our time in the courtroom.

12 MR. ZAVITSANOS: And, Your Honor, just so -- this doesn't
13 necessarily need to be on the record, but just from a housekeeping
14 standpoint, we lost some time yesterday because of the situation with
15 the evacuation. I intend to take probably, although I'm going to try to do
16 my best not to do this, use probably the rest of the day and then I'm
17 going to pass Mr. Haben. The goal -- I conferred with Mr. Blalack, the
18 goal is to get him completely off the stand, by the close of business
19 Wednesday.

20 And then as I've told Your Honor, I fully expect that the pace
21 of the case is going to kick up considerably.

22 THE COURT: Good enough.

23 MR. ZAVITSANOS: There will not be any witness, I don't
24 believe, at least from our standpoint, that's going to be more than half a
25 day.

1 THE COURT: Okay. The Chief Judge is taking my motions'
2 calendar in the morning, so I can give you a full day.

3 MR. BLALACK: Oh, wonderful.

4 MR. ZAVITSANOS: Oh, that's great.

5 THE COURT: Uh-huh.

6 MR. BLALACK: And you're referring to next week, Your
7 Honor?

8 THE COURT: No, tomorrow?

9 MR. BLALACK: Oh, tomorrow.

10 THE COURT: Yeah. And I would suggest lawyers at 9:15,
11 jury at 9:30, again, to maximize our time.

12 MR. ZAVITSANOS: Yes.

13 MR. BLALACK: To that end, Your Honor, I've lost track of the
14 scheduling issue for next week. I think originally there were two days
15 that were half days. Is that still the case, or will they be full days?

16 THE COURT: I won't know until the end of the week, what I
17 can get farmed out for next week. Some of the cases I can't, because we
18 went dark last week, so the Chief Judge could do two weeks for
19 tomorrow.

20 MR. BLALACK: Yes.

21 THE COURT: I'll just have to see how things shape up. I'll let
22 you know as soon as I can.

23 MR. BLALACK: Thank you, Your Honor.

24 MR. ZAVITSANOS: Yes, Your Honor.

25 [Counsel confer]

1 MS. LUNDVALL: Your Honor, while we're waiting for the
2 jury to be brought in, I think that we can take advantage as far as the
3 time. Yesterday you heralded the idea that without foundation it was
4 hard to make any determination that in fact the documents may be
5 received with Health Plan of Nevada. We brought certain exhibits that
6 lay foundation for that, and then I have got copies for opposing counsel,
7 as well as for the Court, so that as this issue comes up later on
8 throughout the course of the trial then you know what we're talking
9 about.

10 It particularly concerned the custodian that was identified
11 during the testimony, yesterday, of Mr. Haben. Mr. Haben claimed to
12 disclaim knowledge of certain documents, because certain programs
13 were under the purview of a woman by the name of Tina Brown-
14 Stevenson. Tina Brown-Stevenson, quite obviously, given Mr. Haben's
15 testimony, should have been a custodian for whom -- that their
16 documents should have been searched in response to production
17 obligations that were placed upon United, not only through our request,
18 but also due too many court orders concerning that.

19 And what I brought to the Court then, is a copy of this for
20 clarification purposes of the Court's order of our adverse inference. I
21 brought to the Court, also, the excerpts in from the testimony of the
22 United representative that identified which custodians were searched,
23 and an exhibit that he had created then of the names of those
24 custodians, and Tina Brown-Stevenson is not on that exhibit list. And
25 with the Court's permission I can hand you these documents --

1 THE COURT: Have you shown --

2 MS. LUNDVALL: -- and I have copies for counsel, as well.

3 THE COURT: Have you provided them to opposing counsel?

4 MS. LUNDVALL: I have now.

5 THE COURT: You may.

6 MS. LUNDVALL: Thank you, Your Honor.

7 THE COURT: And, Mr. Blalack, since you're just seeing these,
8 I'm going to give you a chance to review it before I ask for your
9 response.

10 MR. BLALACK: I will be glad to respond just preliminarily
11 now, Your Honor. I will look at this more closely. I disagree with the
12 premise that Tina Brown-Stevenson would have been a custodian,
13 whose added duty is to have a record search, and I disagree that there's
14 any basis for Plaintiffs to argue now, having participated in the whole ESI
15 protocol, where the custodians were exchanged and disclosed, and the
16 fact that many, many communications involving Ms. Brown-Stevenson
17 were produced in the case, because they're communications with other
18 relevant witnesses, and I disagree with the premise of this argument.
19 But I don't think it's appropriate for the Court to entertain, and resolve, or
20 question as severe as an adverse inference without a motion and without
21 some briefing that would give us a chance to respond.

22 So my position is, I'll review this, but if they want to ask for
23 something like a sanction of an adverse inference, I would ask for a
24 motion and a response opportunity.

25 THE COURT: I would suggest that we can take that up when

1 we settle jury instructions.

2 MR. BLALACK: Thank you, Your Honor.

3 MS. LUNDVALL: Thank you, Your Honor. But also, just in an
4 effort to try to help, Mr. Blalack, there already is a sanction of an adverse
5 inference that has been imposed, and that's why I included a copy of the
6 Court's order imposing that sanction. Thank you.

7 THE COURT: Good enough.

8 One of the things I want to talk to the Chief about, and we
9 still haven't been able to connect, due to calendars, is about overtime,
10 maybe a Saturday, the weekend before you're going to close, to settle
11 jury instructions. There's expense to you, but that way it doesn't
12 inconvenience the jury, so --

13 MR. BLALACK: Thank you, Your Honor. The only wrinkle on
14 my father-in-law passed away.

15 THE COURT: Oh, I'm sorry.

16 MR. BLALACK: And his memorial service is that Saturday,
17 and they scheduled it that Saturday so that I wouldn't have to interfere
18 with the Court calendar. If it becomes absolutely necessary I will --

19 THE COURT: No, no.

20 MR. BLALACK: -- revisit that.

21 THE COURT: No, no. Family comes first.

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

23 THE COURT: We'll find a way. I would take Thursday this
24 week, but we're not far enough along.

25 MR. BLALACK: That would be fine, Your Honor.

1 MR. ZAVITSANOS: And, Your Honor, from our standpoint,
2 we certainly extend our sympathies to Mr. Blalack --

3 THE COURT: Of course.

4 MR. ZAVITSANOS: -- and we obviously insist that he come
5 first. On any other day, it would have been at any time.

6 THE COURT: Yeah. But when we get closer we'll know
7 where we're going.

8 MR. BLALACK: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. ZAVITSANOS: And, Your Honor, from our standpoint it
11 will be primarily Ms. Lundvall and Ms. Robinson on our side. And I --
12 Ms. Lundvall obviously is here and Ms. Robinson will stay here. So any
13 time before, like we have no opposition at all to the overtime issue, so --

14 THE COURT: So is the 20th the day of the service?

15 MR. BLALACK: Correct, Your Honor. My plan was to, after
16 Court on Friday, fly off and get to -- it's Jefferson City, Missouri -- get to
17 Jefferson, then do the service and fly back early on Sunday morning.

18 THE COURT: Wow. Wow, wow. Okay.

19 MR. BLALACK: But we can -- you know, if that's the only way
20 to keep this trial over before Thanksgiving, you know, we'll do what we
21 need to do.

22 THE COURT: Good enough.

23 I'm just waiting to see the marshal, to give him the high sign
24 to bring in the jury.

25 THE CLERK: A couple minutes. He said he's still waiting on

1 one more.

2 THE COURT: Oh, thank you.

3 MR. ZAVITSANOS: Can I ask counsel about one exhibit, Your
4 Honor?

5 THE COURT: You may.

6 [Counsel confer]

7 THE COURT: And just to let you guys know, I'm not able at
8 this point to keep up with what's in and not, you're going to have rely
9 more on the clerk.

10 MR. ZAVITSANOS: Yeah. We're -- I think between the two of
11 us --

12 THE COURT: I'm too out of order on my notes.

13 MR. BLALACK: Agreed, Your Honor.

14 [Counsel confer]

15 MR. ZAVITSANOS: Your Honor, so can I -- I would move --

16 THE COURT: All right. So Exhibit 175 will be admitted.

17 [Plaintiffs' Exhibit 175 admitted into evidence]

18 THE COURT: And let's bring Mr. Haben in, please.

19 MR. BLALACK: The marshal asked Mr. Haben to wait.

20 THE COURT: I'm sorry?

21 MR. BLALACK: The marshal asked Mr. Haben to wait.

22 THE MARSHAL: All rise for the jury.

23 [Jury in at 9:29 a.m.]

24 THE COURT: Thank you. Please be seated.

25 Good morning, everyone. Welcome to Tuesday, which we

1 hope will be evacuation-free. And unfortunately that happens now and
2 then in the courthouse, and I am not concerned about your safety, so
3 that you know that this is still a safe place.

4 Mr. Haben, you're under the same oath you swore
5 previously, there's no reason to re-swear you.

6 THE WITNESS: Okay.

7 JOHN HABEN, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

8 THE COURT: Go ahead, please.

9 MR. ZAVITSANOS: Thank you, Your Honor. May it please
10 the Court, counsel.

11 DIRECT EXAMINATION CONTINUED

12 BY MR. ZAVITSANOS:

13 Q Mr. Haben, good morning.

14 A Good morning.

15 Q Just as a housekeeping matter, I had originally budgeted that
16 it would take three full days to cross-examine you, with all the material
17 we have here. We lost a little bit of time yesterday, so we'll probably
18 take the balance of the day today, and then you'll have full opportunity to
19 explain, whatever you'd like to explain to the jury. Good? Okay. All
20 right.

21 Okay. Now, today I'd like to cover a few things, I want to go
22 through the different programs, and what differentiates one versus the
23 other, and mechanically how they work, okay? And then I want to talk
24 about this Naviguard issue, okay?

25 A Okay.

1 Q Okay, now -- and what I've written here, I just -- I added to
2 the chart yesterday, and I've shown Mr. Blalack this -- is this is this SSPE,
3 which is shared savings program enhanced, it includes OCM, right?

4 A I believe to, yes.

5 Q Okay. And OCM, this outlier cost management that often
6 uses a MultiPlan service to help with that, right?

7 A Yes.

8 Q And the MultiPlan service that goes with this is something
9 called Data iSight, right?

10 A I believe, so, yes.

11 Q Data iSight, and the acronym for that is DIS, right?

12 A Yes.

13 Q Okay. So this gets a little confusing, but -- so DIS, Data iSight
14 is the tool for OCM that goes with SSPE. Generally, is that correct?

15 A Generally, that's correct.

16 Q Okay. Thank you, sir. All right. Now --

17 [Pause]

18 MR. MCMANIS: It's been conditionally.

19 MR. ZAVITSANOS: Excuse me.

20 MR. MCMANIS: It's been conditionally admitted.

21 MR. ZAVITSANOS: Okay. Oh, it's been conditionally
22 admitted?

23 MR. MCMANIS: Yes.

24 MR. ZAVITSANOS: Okay. So, Your Honor, we'll refer now to
25 Exhibit 43, and Mr. Haben, if you'd be so kind as to get that binder. And,

1 Michelle, can you put that, please? Thank you. Michelle, just pull out the
2 top part where the title is.

3 MR. MCMANIS: John, it looks like this monitor is not on.
4 How do we --

5 [Counsel confer]

6 MR. ZAVITSANOS: Well, hold on, let's -- I want to make sure
7 you got -- you can see what I'm highlighting --

8 THE WITNESS: Yeah, it says out of range.

9 MR. ZAVITSANOS: I'm sorry?

10 THE WITNESS: It says out of range. I don't know what that
11 means.

12 MR. ZAVITSANOS: I'm very technically challenged, so I have
13 no idea what that means.

14 UNIDENTIFIED SPEAKER: That's going to be a resolution
15 issue.

16 THE COURT: So I have it on my screen. Mr. Haben, do you
17 need it on the screen, we can call IT?

18 THE WITNESS: I think he says he wants me to see the
19 highlights, so, yes.

20 THE COURT: Yes. Okay. Sorry, guys, technical.

21 [Pause]

22 MR. ZAVITSANOS: Is yours on the screen?

23 THE WITNESS: It is not.

24 MR. ZAVITSANOS: Okay. All right. We'll do the best we
25 can, and we'll try to deal with it maybe --

1 THE COURT: Is it on the screen here?

2 MR. ZAVITSANOS: It is, Your Honor.

3 THE COURT: Because I can't see it. Mr. Haben, if you'd like
4 to, you could step around to that screen.

5 MR. ZAVITSANOS: Let me --

6 THE WITNESS: You know, if you just tell me where you're
7 looking.

8 MR. ZAVITSANOS: Yes, sir. We'll do that then.

9 BY MR. ZAVITSANOS:

10 Q You have the document in front of you, right?

11 A Yes, I do.

12 Q Okay. So we're on Exhibit 43, and this is July 2016, right?

13 A Yes.

14 Q Okay. So this would be closer in time to kind of the
15 beginning of this five-year period we've been talking about, right?

16 A It's early on in the process.

17 Q All right. And this is something called OCM optimization,
18 right?

19 A Yes. That's what that says.

20 Q Okay. And optimization means "making it better," right?

21 A Yes.

22 Q Okay. So this document is talking about this OCM program
23 for the FI business, the fully insured business on the unit platform, right?

24 A That's what it says, yes.

25 Q Okay. And that is an area of your responsibility, right?

1 A The out-of-networks programs on the unit platform is my
2 responsibility.

3 Q Yes, sir. And this is occurring during the time when you had
4 those responsibilities, right?

5 A Yes.

6 MR. ZAVITSANOS: Your Honor, we move for the
7 unconditional admission of Plaintiffs' 43.

8 MR. BLALACK: No objection.

9 THE COURT: Exhibit 43 will be admitted.

10 [Plaintiffs' Exhibit 43 admitted into evidence]

11 BY MR. ZAVITSANOS:

12 Q Okay. Now, Mr. Haben, generally speaking, and I'm going to
13 be at 100,000 feet here, okay, it's fair to say that when United began
14 going down this road, setting up these programs, things got increasingly
15 more in focus as we went further along, right? There were ideas that
16 were proposed, rejected, they were shaped more, until we end up in
17 2019 when these programs have definite characteristics.

18 MR. BLALACK: Object to the form of the question.

19 Compound

20 THE COURT: It is compound.

21 BY MR. ZAVITSANOS:

22 Q Did these programs develop over time?

23 A All programs develop over time, including these.

24 Q All right. And this is at the beginning of the OCM program,
25 this document here, right?

1 A It's in July of 2016.

2 MR. ZAVITSANOS: Okay. So, Michelle, let's pull out the
3 background section please.

4 BY MR. ZAVITSANOS:

5 Q Okay. Now as you all are trying to implement this program
6 for the fully insured business --

7 MR. ZAVITSANOS: Right here, Michelle, FI business.

8 THE WITNESS: Can you just, as you're doing that? FI --

9 BY MR. ZAVITSANOS:

10 Q Yes. So it's the first, it's the first line.

11 A FI business [indiscernible]?

12 Q FI business I just highlighted.

13 A Okay.

14 Q Okay.

15 A Thank you.

16 Q All right. So this paragraph is talking about physician
17 egregious billing. All right. And non-par providers. That would be
18 somebody like us, right?

19 A A provider not in the network.

20 Q Okay. For fully insured INN benefit level for claims that could
21 be reimbursed at bill charges. And the same seal edit looks for these
22 claims and then reprices at 350 percent of CMS. CMS is Medicare, right?

23 A It is.

24 Q Okay. And we're going to talk -- that 350 percent, we used
25 the term override, and we used the term benchmark. Which one is that?

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1 Is that the benchmark or is that the override?

2 A I don't know if you put context to either yet. I would say it's
3 neither. It's a reimbursement amount that will be put on the claim and
4 paid.

5 Q Internally within United, how did you all refer to this 350
6 percent, as an override or as a benchmark?

7 A It was a repricing amount.

8 Q Are you --

9 A It's neither.

10 Q Okay. So are you telling the jury that, internally, there are no
11 documents that you received or authored referring to that 350 percent as
12 an override or a benchmark?

13 A I don't know. But from experience of when this went into
14 place, it was a repricing amount that was applied to the claim, and then
15 the payment was made out to the provider.

16 Q Okay. We're going to talk about that a little bit later, but let's
17 move on to the part I want to get to.

18 MR. ZAVITSANOS: Okay. Michelle, delete the highlighting
19 here if you can. And we're going to, we're going to highlight something
20 else. Okay. Stay where we are.

21 BY MR. ZAVITSANOS:

22 Q We will shut off the seal edit and move it to Data iSight. And
23 this is optimizing OCM, parentheses --

24 MR. ZAVITSANOS: Hold on, Michelle. Don't highlight that
25 yet. Don't highlight -- okay. Let's not highlight any of that. Thank you,

1 Michelle.

2 BY MR. ZAVITSANOS:

3 Q Okay. Now in describing what Data iSight is, or OCM, you all
4 know it's owned by MultiPlan, a vendor that works with
5 UnitedHealthcare on pricing, processing, consistency -- here's the part
6 we want to highlight -- legally sound process versus our random
7 calculated amounts. You see that?

8 A I do see that.

9 Q Okay. So in the absence of Data iSight, at least internally, the
10 numbers you were using were random calculated amounts, right?

11 A I disagree with that.

12 Q Okay. All right. No this -- again, we're going get to it a little
13 bit later. This repricing of 350, a couple years later, that moved down to
14 250, right?

15 A That's incorrect.

16 Q The next year?

17 A I don't believe so.

18 Q When did it move to 250?

19 A You're, I think, conflating two different components.

20 Q When did the 350 move to 250?

21 A Are you asking about benchmark or are you asking about
22 repricing?

23 Q Did you all implement a 250 percent of CMS number during
24 this five-year period?

25 A As a benchmark, yes.

1 Q Okay. What year was that?

2 A I don't remember off the top of my head.

3 Q Okay. All right. Okay. Now and -- okay. So since we're on
4 this topic --

5 MR. ZAVITSANOS: Is 229 in, Michael? Can I ask counsel,
6 Your Honor, if he has an objection to it?

7 MR. BLALACK: One moment, Your Honor.

8 THE COURT: And the number again?

9 [Pause]

10 MR. BLALACK: No objection.

11 THE COURT: Exhibit 229 will be admitted.

12 [Plaintiffs' Exhibit 229 admitted into evidence]

13 BY MR. ZAVITSANOS:

14 Q Okay. Let's go to page 3.

15 A Can I take a quick peek?

16 Q Sure.

17 MR. ZAVITSANOS: And, Michelle, will you please pull up
18 from here and to here.

19 THE WITNESS: Where are you pulling up?

20 MR. ZAVITSANOS: To here, Michelle. Keep going. Okay.

21 BY MR. ZAVITSANOS:

22 Q It's the email on page 3 from Mark Edwards to a bunch of
23 folks, including Rebecca Paradise.

24 MR. ZAVITSANOS: Michelle, right here. And circle the word
25 change.

1 THE WITNESS: Can you kind of just tell me where you start
2 and ended?

3 MR. ZAVITSANOS: No, hold on, Michelle. Michelle. Okay.
4 We're only highlighting the word change, and we're highlighting this
5 entire sentence, the first full one.

6 BY MR. ZAVITSANOS:

7 Q Okay. So here's what I've done, Mr. Haben.

8 A Yeah.

9 Q On the first line of that email, I've highlighted the word
10 change, and I've highlighted the first bullet point, okay? You with me?

11 A Does it say change to current OCM DIS rules?

12 Q Yes. I'm going to show you.

13 A I think I see it.

14 Q Yeah. Do you see mine?

15 A Yes.

16 Q Okay.

17 A Can I just take a peek at the email for a second?

18 Q Sure.

19 A Okay.

20 Q Okay. So 2016, we saw that 350 percent number. And now,
21 in 2018, it looks like that's changing from 350 to 250. That's what that
22 says, right?

23 A I don't know if it correlates back to the 2016. I'm not on this
24 email chain, but I do see that professional ER services moving from 350
25 to 250.

1 Q Well, Mr. Haben, I don't want to get bogged down with the
2 issue here. I'm just asking, in 2018, you being the head guy of these
3 programs, did you move this number from 350 to 250?

4 A That is what that says, yes.

5 Q Okay. All right. Now here's what I'd like to do. You're
6 comfortable in looking at these EOBs, right? And you know what an EOB
7 is, right?

8 A Yes, I do. Yeah.

9 Q Okay. That's another acronym. So EOB stands for what?

10 A Explanation of benefits.

11 Q Okay. And that's that document, if you go to the doctor,
12 whether you're in network or out of network and you have health
13 insurance, you get this form with all this kind of financial on it like what
14 was charged, what was paid, et cetera, right?

15 A Yeah. It's a highly regulated form typically by the states or
16 the Department of Labor.

17 Q Who typically -- who issues the EOB?

18 A The insurer or -- yeah.

19 Q So that would be United?

20 A The administrator. Yeah.

21 Q Okay. So United issues the EOB, right? And then who
22 receives it?

23 A EOB goes to the member.

24 Q Okay. So the member --

25 A Or the patient.

1 Q Yes, sir. The patient. I'm just going to put PT, okay?

2 A Yeah.

3 Q Since we're in this acronym game, right? So member
4 receives the EOB. Okay. And you've seen lots of EOBs I guess over
5 time, right?

6 A I've seen many.

7 Q Okay. So, for example, if you go to -- here's one. 375,
8 please. If you could turn to that and tell me if that is, if that is a United
9 EOB.

10 A Yes, it looks like it.

11 Q Okay. And then what about 444? Is that a United EOB?

12 A Let me get that.

13 [Pause]

14 A Yeah, it appears so.

15 BY MR. ZAVITSANOS:

16 Q Okay. So if you will turn to the second page of 444.

17 A Okay.

18 Q Does that seem to indicate that this EOB, this explanation of
19 benefits for this out of network service, provided by --

20 [Pause]

21 Q If you'll turn to page 5 and tell me who the doctor group is.
22 Is that Ruby Crest?

23 A Is this provider remitted by -- associated with that EOB?

24 Q Yes. Yes, sir. Is that Ruby Crest? Is that the name of the -- is
25 that -- is Crum, Stefanko, and Jones -- we've been referring to them as

1 Ruby Crest, right?

2 A I don't know if you have or not.

3 Q Okay. I'll represent to you that's Ruby Crest, okay?

4 A Okay.

5 Q All right. So now there's one more thing we need to define
6 before we talk about these two documents. And that is the provider
7 remittance advice. Right?

8 A Yes.

9 Q Okay. And what is -- well, first of all -- oh, provide
10 [indiscernible], okay. Who issues this?

11 A United.

12 Q Okay. So -- and who receives it?

13 A The provider.

14 Q Okay. Okay. All right. So let's see if we can make sense of
15 this. A United member goes to the emergency room. It's staffed by
16 Ruby Crest doctors. They get the service. And following that service,
17 being out of network, the member will get an EOB, right?

18 A Yeah.

19 Q And the provider for that same treatment will get this
20 remittance advice, correct?

21 A Correct. Correct.

22 Q And both of them essentially, among other things, identify
23 the allowed amount.

24 A Yes, I believe so.

25 Q Okay. The allowed amount is the amount that United has

1 determined it will pay, right?

2 A It also includes the member cost share.

3 Q Yes, sir. Yes, sir.

4 A Yes.

5 Q And --

6 A But -- yes.

7 Q Yeah. And by the way, and you keep mentioning that. So let
8 me just get one thing out of the way so that we -- we're not confused
9 here. There's always a member co-share part of this, right?

10 A Not always.

11 Q Well, a lot of times, right?

12 A Depends on the service and the benefit plan.

13 Q Sure. I'm not going to ask about member co-share. I'm only
14 asking about the discount off of the bill charge. You with me. The
15 allowed amount.

16 A The allowed amount is what is allowed on that claim.

17 Q Right. Okay. So looking at these two documents, Exhibit
18 444, okay, and --

19 MR. ZAVITSANOS: What was the other one, Michael?

20 MR. KILLINGSWORTH: 375.

21 MR. ZAVITSANOS: What is it?

22 MR. KILLINGSWORTH: 375.

23 BY MR. ZAVITSANOS:

24 Q And 375, are those United EOBs?

25 A Without pulling that one back up, yes.

1 Q Okay. And you're comfortable understanding these numbers
2 and what these mean in these documents, right?

3 A At a very high level. I am not a member service expert. So
4 there are people that are smarter than me that know how to navigate
5 these better.

6 Q I'm not going to ask your opinions. I just wanted to be able
7 to identify the information so that we can make sense of it, okay?

8 A I will try my best, yes.

9 Q Yes. Okay.

10 MR. ZAVITSANOS: Okay. Your Honor, I move for the
11 admission of 375 and 443.

12 MR. LEYENDECKER: 375 and 444.

13 MR. ZAVITSANOS: 375 and 444.

14 MR. BLALACK: No objection.

15 THE COURT: Exhibits 375 and 444 will be admitted.

16 [Plaintiffs' Exhibit 375 and 444 admitted into evidence]

17 BY MR. ZAVITSANOS:

18 Q Okay. So let's just look at what the cover of an EOB looks
19 like, okay?

20 A Do I need 375 or where are you now?

21 Q Actually, let's stay with 444 so that you don't have to get up,
22 okay?

23 A Okay.

24 Q All right.

25 MR. ZAVITSANOS: Let's pull up 444, Michelle.

1 BY MR. ZAVITSANOS:

2 Q Okay. Is this --

3 MR. ZAVITSANOS: Michelle, let's pull out -- let's pull out
4 from here to here.

5 THE WITNESS: What page are you on?

6 BY MR. ZAVITSANOS:

7 Q I'm on the first page.

8 A Okay.

9 Q Okay.

10 A And what are you highlighting?

11 Q So I've just pulled out everything from the top of the page to
12 the bottom of the box that says claim summary, right?

13 A Okay.

14 Q Okay. So this one, we see that --

15 MR. ZAVITSANOS: Over here, Michelle.

16 BY MR. ZAVITSANOS:

17 Q The group name is AT&T Mobility. Whoops. Okay.

18 MR. ZAVITSANOS: Right there, Michelle.

19 BY MR. ZAVITSANOS:

20 Q Okay. So that means this is an ASO claim, right?

21 A It doesn't say that specifically, but I believe AT&T is a
22 self-funded employer group.

23 Q Okay. So the charge here was \$1,187, right?

24 A I'm sorry. What page are you on?

25 Q I'm on the first page.

1 A For 444?

2 Q For -- correct. For 444. It's the shaded box.

3 A I have 1148 as the amount billed.

4 MR. ZAVITSANOS: I think you have an old one. Can we get
5 a copy, please -- current copy of that? He has the old one. This is the
6 one we switched out.

7 MR. LEYENDECKER: 444?

8 MR. ZAVITSANOS: Yeah.

9 BY MR. ZAVITSANOS:

10 Q Do you have an earlier version? The one that is in evidence
11 is the one that's up on the screen. Anyway, it doesn't matter. Let me
12 just go through these now.

13 A Well --

14 Q Would you like to look at it?

15 A Yeah. Because it does make a difference because the benefit
16 plans --

17 Q Sure.

18 A -- are different.

19 BY MR. ZAVITSANOS:

20 Q While he's getting that, let me ask you a few kind of
21 preliminary questions before we get into this. The explanation of
22 benefits will, among other things, show the amount of the discount,
23 right, the reduction off a billed charge, right?

24 A Yes.

25 Q Okay. And -- okay.

1 MR. ZAVITSANOS: Michelle, take that down. We'll get back
2 to it. And let's go now to Exhibit 120.

3 BY MR. ZAVITSANOS:

4 Q So we saw that this EOB was for AT&T Mobility, right? The
5 one we just looked at.

6 A The one in my binder is for AT&T. I don't know if it's the
7 same one you have here.

8 Q Yes, it is. It is. It's 120. And what we're going to do, Mr.
9 Haben, is we're going to go through the plan document to see how this
10 EOB was processed, okay? So we're at 120 and let's go to page 2.

11 A Okay. Let me get there.

12 MR. ZAVITSANOS: Oh, back up, Michelle, one page. Okay.

13 BY MR. ZAVITSANOS:

14 Q Okay. So there it is. That's the summary plan description.

15 A Can I just take a --

16 Q Sure.

17 A -- quick peek. Page 2?

18 Q Yes, sir.

19 MR. ZAVITSANOS: Do we have it Michael?

20 MR. KILLINGSWORTH: It's being printed.

21 BY MR. ZAVITSANOS:

22 Q All right. So this is the summary plan description for AT&T,
23 right?

24 A Yeah, just to clarify though, they're a very large company as
25 everybody knows. They could have multiple benefit plans inside of the

1 company.

2 Q That's all right.

3 A Okay.

4 Q And they're an ASO client of United, right?

5 A Yes, they are.

6 Q All right. And as we said a couple of days ago, on these ASO
7 arrangements, there's a summary plan description, there's a certificate
8 of coverage, and there's an administrative service agreement, right?

9 A I'm not sure if -- I remember you saying certificate of
10 coverage. I'm not -- when I hear COC, sorry, certificate of coverage I
11 think of fully insured. So I --

12 Q We're going to look. We're going to look.

13 A Okay.

14 Q Okay. All right. So at the very least, there's a summary plan
15 description, and an administrative service agreement, right?

16 A Yes.

17 Q And the administrative service agreement is the one that
18 identifies how much United will charge?

19 A It identifies to the client what they've agreed to for programs.

20 Q Okay. So now, we're on into the 120, and in order to run this
21 program for AT&T, United charges a PMPM fee -- per member per
22 month, right?

23 A I don't know what AT&T has.

24 Q But that's a typical arrangement, right?

25 A Yes.

1 Q Okay. All right. And so this is 120. Now let's look at 290.

2 MR. ZAVITSANOS: And let's go to page 2, Michelle.

3 BY MR. ZAVITSANOS:

4 Q So we just looked at the summary -- the cover of the
5 summary plan description. I'll wait for you, Mr. Haben.

6 BY MR. ZAVITSANOS:

7 Q Now we're looking at the certificate of coverage for AT&T
8 with UnitedHealthcare. Let me know when you have that. Okay. All
9 right. Now --

10 A Can I just take a quick peek at this?

11 Q Sure.

12 A Okay.

13 Q Let's go to page 31. And the certificate of coverage --

14 MR. ZAVITSANOS: Michelle, pull out from here to here.

15 Actually, from here to here.

16 THE WITNESS: What are you pulling up?

17 MR. ZAVITSANOS: I'm pulling up the top third of this
18 document. Sorry, Mr. Haben. Michelle and I both had a lot of coffee this
19 morning, so -- okay. Now I need you to go a little further down, Michelle.
20 I need the whole section. Is that the whole section? Right above this.

21 There we go. Perfect.

22 THE WITNESS: Where did you end?

23 BY MR. ZAVITSANOS:

24 Q Okay. It's the section about what is the certificate of
25 coverage.

1 A Okay.

2 Q And the part I want to ask you about, it says, this certificate
3 of coverage is part of the policy and is the legal document -- and she'll
4 highlight -- between UnitedHealthcare and the group. And the group is
5 AT&T, right?

6 A Yes.

7 Q Okay. This is the working agreement between United, and
8 it's ASO client, in this case AT&T, right?

9 A This is the certificate of coverage.

10 Q Okay. And again, I know we covered this yesterday, neither
11 the summary plan description nor this document do the providers sign
12 off on this?

13 A No. Unless they're an employer group that has United as
14 insurance, yes.

15 Q Now, if we go back to the summary plan description, the
16 companion document to this, Exhibit 120, page 86, we will see -- oh, by
17 the way, the summary plan description -- just for reference, Mr. Haben,
18 the summary plan description is dated September 2017, and the COC is
19 dated, I believe, in 2019. You with me?

20 A Yes, I see those two dates.

21 Q Okay. Now, here's what I want to do. We're looking at page
22 86 of Exhibit 120, and there is a section called emergency services.

23 MR. ZAVITSANOS: Michelle, down to here. Good.

24 BY MR. ZAVITSANOS:

25 Q And this is the telling the member how emergency room

1 charges are going to be handled, right?

2 A Can you -- so I see the ER services. Where did you stop
3 when you highlighted?

4 Q I stopped right above the paragraph immediately under the
5 last bullet point.

6 A Got it. Can I just read this real quick?

7 Q Yes, sir.

8 MR. ZAVITSANOS: Michelle, while he's doing that, let's
9 highlight this, please. Start here -- right here. No, no, no. Right here.
10 Go all the way across, please, across here. And can you circle the word
11 highest? Okay.

12 THE WITNESS: Now where are you highlighting?

13 MR. ZAVITSANOS: Hold on. I need you to highlight this.

14 Okay.

15 BY MR. ZAVITSANOS:

16 Q So the AT&T document which is what you're telling the
17 member you're going to cover says in the second paragraph, last
18 sentence, "The allowable charge for covered non-network emergency
19 services." Now that's us, right? That's us?

20 A If you're the provider for that service, it could be.

21 Q Right. "Will no less than the highest of the following three
22 things," right?

23 A That's what that says.

24 Q So UnitedHealthcare is obligated to process out-of-network
25 claims for AT&T for emergency services at whichever of these three

1 bullet points is the highest, right?

2 A If they're non-participating, and if it's underneath this benefit
3 plan, we'll follow the benefit plan.

4 Q Yes, sir. And so the second one is the reasonable and
5 customary amount, right?

6 A Yes, that's what that says.

7 Q Okay. And -- I don't want to go back, but we've had a bunch
8 of discussions about what that means, right? You and I have had a
9 bunch of discussion about what the means?

10 A You can keep going. I don't -- we've talked about reasonable
11 and customary.

12 Q Yes, sir. That's what I'm --

13 A Yeah.

14 Q Okay. Now -- but United -- you didn't do that, right?

15 A I disagree.

16 Q You ignored what you were obligated to do, and you put it in
17 this so you could make money?

18 A I don't agree.

19 Q Okay. Well, let's go back to Exhibit 444. Oh, I have it right
20 here, sir. I have the new one. Here you go. This is the correct one. And
21 if you would be so kind as to -- would you do me a favor, Mr. Haben,
22 would you replace that in the book? Remove the old one and replace it
23 with the one I just handed you?

24 THE COURT: Does he have the Court's version?

25 MR. ZAVITSANOS: He has, Your Honor, the one -- I believe

1 the Court's --

2 THE COURT: We can't just change out evidence in the
3 Court's --

4 MR. ZAVITSANOS: That's the witness copy, Your Honor.

5 THE COURT: All right. That's the witness copy; that's not the
6 Court's

7 THE COURT: We both stipulate that's the witness copy.

8 MR. BLALACK: That makes sense to me, Your Honor.

9 THE COURT: Good enough.

10 MR. ZAVITSANOS: Yes, Your Honor.

11 THE COURT: Thank you.

12 MR. ZAVITSANOS: Thank you.

13 BY MR. ZAVITSANOS:

14 Q Okay. Now -- okay. So let's first of all, we just looked at the
15 AT&T plan. Let's pull this out right here.

16 MR. ZAVITSANOS: Right here, Michelle.

17 BY MR. ZAVITSANOS:

18 Q Okay. So this is AT&T. You see that?

19 A I don't know where you're pointing to.

20 Q I'm pointing --

21 MR. ZAVITSANOS: Oh, Michelle, you had it.

22 BY MR. ZAVITSANOS:

23 Q -- at the very top of the page when it says member patient
24 information, we see that AT&T is the group, right?

25 A Yeah. I see that.

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1 Q All right.

2 MR. ZAVITSANOS: And close that out, Michelle.

3 BY MR. ZAVITSANOS:

4 Q And there's -- you have a shadow box identifying a charged
5 amount of \$1187.

6 MR. ZAVITSANOS: Give me one second here. Okay.
7 Michelle, want to pull up the shadow box. I need the whole thing,
8 Michelle. Okay. All right. That's fine. That's good. Can we get rid of
9 that first box? Okay. This is fine.

10 BY MR. ZAVITSANOS:

11 Q So the amount billed was 1187, right?

12 A Yes.

13 Q Right?

14 A Yes.

15 Q And United discounted by a little over \$425 --

16 MR. ZAVITSANOS: You don't need to pull that out, Michelle.
17 Okay.

18 THE WITNESS: The plan discount according to the benefit
19 plan.

20 BY MR. ZAVITSANOS:

21 Q Yeah. So now let's go to the next page of this EOB. Page 2.

22 MR. ZAVITSANOS: And, Michelle, let's pull up from here to
23 here. Good.

24 BY MR. ZAVITSANOS:

25 Q Okay. That's going to be a little hard to read but here's what

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1 it says. "Member -- this is what United is telling the member, right?

2 A It's on the EOB. It's a member of EOB.

3 Q Okay. "Member, this service was provided by an out-of-
4 network provider. We paid the provider according to your benefits and
5 data provided by Data iSight. Do you see that?

6 A I do.

7 Q Data iSight is not used with reasonable and customary,
8 right?

9 A I don't think so.

10 Q So you just took it upon yourself to ignore the plan language
11 and apply a deeper discount than what the plan allows, right, sir?

12 MR. BLALACK: Object.

13 MR. ZAVITSANOS: That's what this says?

14 MR. BLALACK: Object to the form. Misstates the record.

15 THE COURT: Overruled.

16 BY MR. ZAVITSANOS:

17 Q You took this claim, and you applied one of your alleged
18 programs to it when the plan says you're supposed to use reasonable
19 and customary so that you could make a fee, right?

20 A That's incorrect. I don't know if this plan document goes
21 with this EOB. AT&T has got multiple policy numbers. So if you can
22 show me the SPD for that group number, I can see if it's the same one.

23 Q Well, sir, let's go to page 5.

24 MR. ZAVITSANOS: Your Honor, when are we going to take a
25 break? I mean, I can finish this document.

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1 THE COURT: Well, it hasn't been 45 minutes --

2 MR. ZAVITSANOS: Okay --

3 THE COURT: -- since we started.

4 BY MR. ZAVITSANOS:

5 Q All right. So now we're on the provider remittance advice.
6 That's the section -- that's the one that goes to the doctor, right, for the
7 same claim?

8 A Yes.

9 Q Okay. And here we see from Crum, Stefanko, and Jones,
10 right? That's, us, right?

11 A I don't know if that's you, but I see those names.

12 Q Okay.

13 MR. ZAVITSANOS: Michelle, close that out, and I'd like you
14 to pull out the bottom -- the whole bottom half of the document
15 beginning with the second row of boxes. Okay.

16 BY MR. ZAVITSANOS:

17 Q So this is a 99285. That's the most serious code, right?

18 A That is the highest level code.

19 Q The charge was 862, right?

20 A It's hard to read, but yes, I think so.

21 Q Okay. And this is an AT&T claim. And once again, this
22 service was provided by an out of network provider. We paid the
23 provider according to your benefits and data provided by Data iSight.
24 Do you see that?

25 A I do.

1 Q Okay. So the plan we looked at says reasonable and
2 customary, right?

3 A The plan you showed me said reason -- yes, reasonable and
4 customary. I don't know if that plan goes with this EOB, though.

5 Q Okay. So if it does, this is wrong? You all made a mistake?

6 A I don't think it does. AT&T, like I said, has multiple policies.

7 Q Okay.

8 A And the dates are different.

9 Q Do you know whether all the AT&T claims at issue in this
10 case were processed using something less than reasonable and
11 customary?

12 A I don't know.

13 MR. ZAVITSANOS: Michelle, you can take that down.

14 BY MR. ZAVITSANOS:

15 Q Now, we -- there's an appeal mechanism within you all's little
16 system there, right? You -- the provider -- they felt they got short-
17 changed, they could appeal, right?

18 A Providers can appeal. Members can appeal.

19 Q Okay. Look at Exhibit 470.

20 A I need to put a few of these away.

21 Q Sure. Let me know when you're there, sir, okay? And I won't
22 want to say the patient's name out loud, but does this Exhibit 470 relate
23 to the same patient we just looked at?

24 A Can I -- I don't know off the top of my head. Can I go look at
25 it? What number was that again?

1 Q That was 444. And you can just compare the name that
2 appears on 444 with the name that appears on 470.

3 A And 444 was the new one that you gave me, right?

4 Q Yes, sir.

5 A I see the names are the same.

6 Q Yes, sir. Okay. Now, 470, does that appear to be a United
7 document concerning this claim?

8 A I am not sure what this is. I've never seen these before.

9 Q Well, do you see that it says -- it has a -- Defendants' Bates
10 number on it? That would be United.

11 A Yes.

12 Q Okay.

13 A Okay.

14 Q Any reason to dispute that this document produced by
15 United for the same patient for the EOB we just looked at is not what it
16 purports to be?

17 A I don't know.

18 Q Well, is there anything on there that indicates that it's
19 fraudulent or that it's --

20 A I wouldn't think so.

21 Q Okay.

22 A I don't know, though.

23 Q And you're familiar with this appeal process within these
24 programs, right?

25 A What do you mean?

1 Q And that's -- the process of appealing is part of these
2 programs, right? Like OCM?

3 A It's not unique to the programs. There's a process you can
4 appeal for insurance, self-funded, any type of claim.

5 Q Okay.

6 MR. ZAVITSANOS: Your Honor, we move for the admission
7 of 470.

8 MR. BLALACK: Object to the foundation, Your Honor.

9 THE COURT: A sufficient foundation was laid. The exhibit
10 will be admitted.

11 [Plaintiffs' Exhibit 470 admitted into evidence]

12 MR. ZAVITSANOS: Okay.

13 BY MR. ZAVITSANOS:

14 Q So now we're going --

15 MR. ZAVITSANOS: Pull that down, Michelle.

16 BY MR. ZAVITSANOS:

17 Q -- we're talking about the same patient involving that claim
18 that applied Data iSight --

19 MR. ZAVITSANOS: Pull it all the way down -- all the way up.

20 BY MR. ZAVITSANOS:

21 Q And what we have here -- it's a little hard to read --

22 MR. ZAVITSANOS: Michelle, what I'd like you to do is -- first
23 of all, I'm not going to say the name out loud, but let's highlight right
24 here, so that when the jury goes back, they can compare the names right
25 there. Then on the bottom part, Michelle, can you highlight the entire

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1 part within the two lines at the bottom. And I'd like you to underline the
2 third line all the way across and up to right here, Michelle, in the next
3 line.

4 THE WITNESS: Can you talk me through what you're
5 highlighting?

6 BY MR. ZAVITSANOS:

7 Q Yes, sir. Let me just tell you what it says. It says, "This
8 appears to be an appeal by Ruby Crest for this patient out of network
9 pursuant to the AT&T plan, your ASO client. We appealed and you said
10 negotiation was not attempted. This claim has been reviewed and
11 reimbursed, using Data iSight," right?

12 A I see that it says that.

13 Q And this is an online routing system, right?

14 A Yes, that's what that says.

15 Q I mean, it looks like we appealed, and you all wouldn't even
16 talk to us.

17 MR. BLALACK: Object to the foundation of the question.

18 MR. ZAVITSANOS: According --

19 THE COURT: Overruled.

20 BY MR. ZAVITSANOS:

21 Q We appealed, and it just went into your little computer
22 program applying a methodology that seems to be inconsistent with this
23 claim and you all didn't even talk to us, right?

24 A I disagree and I don't know if that's associated with that plan
25 document.

1 Q And you understand, Mr. Haben, that in terms of fairness,
2 having the jury evaluate whether you all followed this plan or not and
3 whether you all reimbursed this at reasonable rates is going to be more
4 fair than having United decide that, right?

5 MR. BLALACK: Objection. Calls for a legal conclusion.

6 THE COURT: Overruled.

7 BY MR. ZAVITSANOS:

8 Q Right, sir?

9 A I disagree.

10 Q Okay. United is obligated -- we're not a party to the plan, so
11 we don't have to follow the plan, right? Because we're not a party to it,
12 right?

13 A You can bill whatever you want.

14 Q But United -- a contract between itself and its ASO client, you
15 haven't followed the plan.

16 A We follow the benefit plan.

17 Q Okay.

18 MR. ZAVITSANOS: Take that down, Michelle.

19 BY MR. ZAVITSANOS:

20 Q By the way, when you cut that bill by the 400 bucks or so
21 using Data iSight, Data iSight get a cut -- MultiPlan gets a cut of that
22 reduction, right? They get a percentage of that reduction.

23 A We pay MultiPlan for the program.

24 Q And you pay yourself, too. You get a percentage of that
25 reduction?

1 A If the clients bought the program, we charge them the fee.

2 Q Well, if you apply Data iSight, which is part of OCM, you get
3 a cut, right?

4 A Yeah. The client signs up for the program and they know
5 there's a fee associated with it.

6 Q Well, we looked at the AT&T plans, which are as late as 2019.
7 This claim was in 2019. I mean, you didn't follow the plan, right?

8 A I don't know if that plan is associated with that claim.

9 Q Okay.

10 A That SPD is from 2014.

11 Q Oh. And by the way, one of the paternalistic reasons that
12 employers put that out-of-network emergency charges be included in
13 their summary plan documents is because they want to protect the
14 member from being balanced billed, right?

15 A I don't know the motive of the employers, but the Affordable
16 Care Act outlines very specific rules that you have to follow and that's
17 what that language is trying to emulate.

18 Q Sorry. I'm asking -- remember when we looked yesterday,
19 when we were talking about migrating clients off of reasonable and
20 necessary and one of the phrases you all used was that some clients are
21 paternalistic, because they want to protect their members, right?

22 A Understood.

23 Q What we just saw cheated this member out this protection.

24 A I would disagree. I can explain.

25 MR. BLALACK: Object to form. Argumentative.

1 THE COURT: Objection sustained. Rephrase.

2 BY MR. ZAVITSANOS:

3 Q What we just saw denied this member the protection called
4 for under that plan?

5 A I would disagree.

6 Q Okay.

7 A I can explain. It's a very complicated process.

8 Q So here's the thing. I want to get finished with you today
9 and I know you keep saying you want to explain, okay. And I'm -- look, I
10 promise you're going to get a full opportunity, okay? And I just gotta get
11 through these materials, okay?

12 A I know your --

13 Q Listen, I'm getting sick of the sound of my own voice up here.

14 THE COURT: Please don't interrupt.

15 MR. ZAVITSANOS: Okay.

16 BY MR. ZAVITSANOS:

17 Q So we're going to -- I'm just going to try to get through this,
18 okay?

19 A I understand. It's a complicated process. These are
20 complicated plans I'm trying to explain, so people can understand.

21 Q Okay. Now, let's go to -- okay. Let's go to 175. We've talked
22 about this document a little bit. All right. So page 3 --

23 MR. ZAVITSANOS: Or excuse me, Michelle. Page 2. And
24 will you please pay up the first paragraph with the heading? Landscape
25 and the first paragraph.

1 THE WITNESS: Can I just take a quick peek?

2 BY MR. ZAVITSANOS:

3 Q Sure. So let me know when you're ready.

4 MR. ZAVITSANOS: Michelle, can you scroll up just a tiny bit
5 within that box -- no, within the box, just scroll up just a little bit so we
6 can make sure we got all the words. Thank you, Michelle.

7 BY MR. ZAVITSANOS:

8 Q Let me know when you're ready.

9 A Yeah, just -- you're just looking at page 2 for now?

10 Q Yes, sir. Okay. So again -- and we covered this, but this is
11 talking about --

12 A Okay, I'm ready.

13 Q Yeah. So this is talking about ASO clients like United and it
14 says that those clients typically have established a cap on eligible or
15 allowed. Now, eligible or allowed means the amount that's being
16 reimbursed to them, right?

17 A Yeah. I use allowed amount.

18 Q Okay. A cap on eligible or allowed --

19 MR. ZAVITSANOS: Hold on, Michelle. Not going to highlight
20 yet.

21 BY MR. ZAVITSANOS:

22 Q -- that is tied to a --

23 MR. ZAVITSANOS: Right here, Michelle.

24 BY MR. ZAVITSANOS:

25 Q -- that is tied to a usual and customary out-of-network

1 reimbursement methodology, right?

2 A That's what that says.

3 Q Okay. So when it says typically --

4 MR. ZAVITSANOS: Circle the word typically.

5 BY MR. ZAVITSANOS:

6 Q -- typically means usually, most of the time, right?

7 A I don't know how you would use it, but --

8 Q That's a typical thing, right?

9 A Understood.

10 Q Okay. So this is a charge-based methodology that often
11 exceeds 300 percent of Medicare, right?

12 A UNC is what the providers submit for their charges.

13 Q Okay. Now -- all right. Let's now move to page 4.

14 UNIDENTIFIED SPEAKER: Page what?

15 MR. ZAVITSANOS: Page 4.

16 THE WITNESS: Can I just take a quick peek?

17 BY MR. ZAVITSANOS:

18 Q Sure. Okay. Now --

19 A Hold on.

20 Q Sure.

21 MR. ZAVITSANOS: Michelle, can you please pull up the
22 bottom second down here and we're going to go through this chart here.

23 THE WITNESS: Okay.

24 BY MR. ZAVITSANOS:

25 Q Okay. So again, you're try -- it looks like, according to this

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1 document, you are trying to migrate your clients, your ASO clients, away
2 from reasonable and customary to these deeper cuts, right?

3 A We were uncompetitive with our competitors. They're doing
4 something more significant, so we're trying to educate that we can do
5 this, too.

6 Q Is that a yes? You all are trying to --

7 A It doesn't say migrate here.

8 Q Okay. So what more can we do? SSPE -- that's this, right?

9 A Yes.

10 Q The one that we're talking about.

11 A Yes.

12 Q On out of network benefits. Okay. This potential opportunity
13 would apply the Data iSight market rates, which are generally deeper
14 than reasonable and customary. If a provider pushes back and wants to
15 balance fill the members, we would adjust to the appropriate reasonable
16 and customary amounts for the claims, right?

17 A That's what that says, yes.

18 Q Are you a poker player?

19 A I am not.

20 Q Okay.

21 A I'm terrible.

22 Q Do you know what bluffing is?

23 A Yeah, I know what bluffing is.

24 Q So if a -- if you bluff and the other player calls you, you're
25 going to fold, right? That's kind of what that says.

1 A No, that's not what that says. These are services where the
2 member has a choice.

3 Q Okay.

4 A These are not ER physician services.

5 Q Well, it looks like, according to this document, the way that a
6 provider can be assured of getting the reasonable and customary
7 amount is to balance bill the member, according to that, right?

8 A That's not what that says. And these are for non-ER
9 services, by the way.

10 Q SSPE is for non-emergency?

11 A You're pointing to out of network benefit level in that chart.

12 Q That's -- my question, sir is does SSPE apply to emergency
13 room charges?

14 A I can't see what you're highlighting. Were you highlighting
15 the --

16 Q Forget it. Forget about it.

17 A Okay.

18 Q Does SSPE apply to emergency room charges?

19 A It depends on the benefit plan.

20 Q Okay. Now -- all right, so once again if a provider pushes
21 back and wants to balance bill the member, United would adjust for the
22 reasonable and customary amount, right?

23 A We will do what the benefit plan tells us to do for the
24 choice --

25 Q I'm just asking, that's what that says, right?

1 A That's what that says.

2 Q Now what if Ruby Crest -- for the claims at issue in this case,
3 Ruby Crest and the other two provider groups do not balance bill the
4 member? What are their options to get the reasonable and customary
5 amount?

6 A I'm not sure if I understand your question. The benefit plan
7 would have to be looked at.

8 Q No, sir, I'm just going by what's up on the screen. I'm
9 looking at what's up on the screen. And this seems to say if a provider
10 pushes back and wants to balance bill the member, United would adjust
11 to the appropriate, reasonable and customary amount of their claim,
12 right?

13 A Yeah, but you're looking under a column that's not
14 applicable to ER services.

15 Q Sir, once again, are you telling us that SSPE does not apply
16 to ER plans?

17 A I've continuously tried to explain to you it depends on the
18 benefit plan.

19 Q Well, hold on for a second. An emergency room provider
20 that's out-of-network, if you apply a deep discount like 80 or 85 percent,
21 in the absence of some legal prohibition, they could balance bill the
22 member, right?

23 A A provider can bill whatever they want. We can't regulate
24 that. They can go after the member, but if we -- if they bill a reasonable
25 amount, there's no reason not to pay that. If they bill a very high amount

1 then that's something that we have to help them the member in the
2 employer group with.

3 Q My question is a little different. Okay. My question is, an
4 emergency room provider whose bill has been cut by 80 or 85 percent, in
5 the absence of a law prohibiting that during this relevant time period,
6 they could balance bill the member, right?

7 A Well, I think to be clear, the provider typically doesn't do the
8 bill, it's the staffing company.

9 Q That's fine.

10 A And if it's that deep of a reduction, it's a very high billed
11 amount. And yes, they have the right to take the member to collections
12 and the employer group to collections.

13 Q Okay. And if they have a policy of not balance billing, then
14 the only recourse is what we're doing here.

15 A No, I believe they also do collection efforts. And I've seen --

16 Q Listen to my question, sir. If --

17 A Well, it's not the only recourse.

18 Q If the claims at issue in this case, these three provider groups
19 have a policy of not balance billing during this time period, their only
20 recourse is what we're doing here.

21 A I disagree.

22 Q Okay. Now let's look at --

23 MR. ZAVITSANOS: Michelle, close out the pull out, please,
24 and let's look at this chart.

25 BY MR. ZAVITSANOS:

1 Q Are you telling the jury that this chart does not apply to
2 emergency room claims?

3 A Which chart? The whole chart?

4 Q Yeah.

5 A ER services are applied at the in-network benefit level. So
6 that's not the out of network benefit level, it's the in-network benefit
7 level.

8 Q Okay. So that's the third column?

9 A Where it says INN benefit level, yes.

10 Q Okay. So let's see how this SSPE works. Okay? So the claim
11 comes in. The claim is received, right?

12 A Yes.

13 Q That's -- that claim is filed electronically with United, right?

14 A Most likely, yes.

15 Q Okay. And we're going to talk about how this -- how this
16 SSPE works. So the claim comes in. And if it's at the 80th percentile of
17 Fair Health, and it's over 500 percent of Medicare, then it's going to go
18 into this flow chart, right?

19 A Again, as I've said many times, first of all, you've got to look
20 at the benefit plan and see what they have.

21 Q I'm talking about this one. Forget the benefit plan. I'm
22 talking about what is on this document, which you all are proposing.
23 The claim is received. The VMP of 500 percent of Medicare ceiling,
24 starting 4/1/18, right? Right?

25 A Yes, that's what that says.

1 Q Okay. So now we go into our decision tree here. First we
2 look at the wrap network to see if that's a deep enough cut according to
3 that, right?

4 A It's like a waterfall. If the providers agree to a reasonable
5 rate, and it's less than five times Medicare, the largest payer in the
6 country, then we would take that. If the benefit plan has the
7 [indiscernible - Mr. Zavitsanos speaking over the witness]

8 MR. ZAVITSANOS: Your Honor, the last response, we have a
9 limine issue.

10 THE COURT: So counsel please approach.

11 [Sidebar at 10:38 a.m., ending at 10:40 a.m., not transcribed]

12 THE COURT: Good morning, everybody. We're going to
13 take our morning recess. So during this recess don't talk with each
14 other or anyone else on any subject connected with the trial. Don't read,
15 watch, or listen to any report of or commentary on the trial. Don't
16 discuss this case with anyone connected to it by any medium of
17 information including, without limitation, newspapers, television, radio,
18 radio, internet, cellphones or texting.

19 Don't conduct any research on your own relating to the case.
20 Don't consult dictionaries use internet or use reference materials. Don't
21 post on social media, don't talk, text Tweet, Google, or conduct any other
22 type of book or computer research with regard to any issue, party,
23 witness, or attorney involved in the case.

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

1 We'll go to 10:55, and we'll take a light lunch today. Thank you.

2 THE MARSHAL: All rise for the jury.

3 THE COURT: And, Mr. Haben, I'll ask you to step out during
4 the argument.

5 THE WITNESS: All right. Thank you.

6 [Jury out at 10:40 a.m.]

7 [Outside the presence of the jury]

8 THE COURT: So the room is clear, Mr. Zavitsanos.

9 MR. ZAVITSANOS: Yes, Your Honor. I will -- I'll get right to
10 the point. I mean I'll spare how we got here. But the Court -- the Court
11 has devoted a considerable amount of time to this interplay between
12 Medicare and the out-of-network rates that we are talking about in this
13 case. And ultimately where the Court came down was issuing the limine
14 ruling following very extensive briefing and arguments. The Court
15 entered its order.

16 Subsequent to that order, which prohibited the mention of
17 Medicare, I visited with Mr. Blalack. And he and I both recognized that
18 because of the number of times that CMS is mentioned on the
19 documents and the amount of redactions that would need to happen, I
20 would agree to move back a little bit on that by agreement, provided
21 explicitly that two things were not mentioned either explicitly or subtly.

22 And that is, number one that Medicare is the largest payor in
23 the country, which, of course, conveys the image that this is the way that
24 most doctors receive payment. And therefore if it's good -- if it's good
25 when they receive Medicare, it must be good if they receive just a little

1 bit above Medicare. That was the first -- and Mr. Blalack agreed that he
2 would avoid that. And frankly, he has been -- he has been a gentleman.
3 He has not violated that. And in opening he did not violate that.

4 Second, I said that the other thing I said that the other thing
5 we would want to avoid, which is a very close correlator to the first one,
6 is a suggestion, either explicitly or implicitly, that Medicare, itself, is an
7 appropriate rate. And again, Mr. Blalack agreed and again he honored
8 that and did not violate it during the opening statements.

9 Now Mr. Haben, I asked him a question. The answer that he
10 gave, which violated the limine, respectfully I believe was not
11 responsive. It was a canned speech that he had in his pocket. He pulled
12 it out, and he explicitly, explicitly violated, I believe both of the
13 agreements that I reached with Mr. Blalack and the Court's ruling on the
14 limine.

15 And so at this point, Your Honor, the only thing I'm going to
16 ask -- I like Mr. Blalack, okay. The only thing that I'm going to ask is that
17 Mr. Blalack admonish Mr. Haben to not do that again. And that he -- that
18 he not mention that it's the largest system in the country, or that it's
19 reasonable, or whatever. I mean for the most part everything else is fair
20 game. But I'd just ask that he be admonished to do that. Because I can't
21 respond to that without opening the door to my agreement. And again
22 his answer, I believe, was not responsive. So it's not like well, I asked
23 him about it and therefore he gave me -- he gave me the answer. I didn't
24 ask him about who the largest payor was in the country.

25 THE COURT: And your response, please?

1 MR. BLALACK: Yes, Your Honor. Let me -- let me do the
2 easy part first and then I'll make the record I need to make for the more
3 complex part.

4 Part one, Mr. Haben has been advised that what he should
5 stay away from is any discussion of Medicare as, you know, the largest
6 payor in the country and all that sort of thing, as well as anything
7 suggesting that Medicare's specific rate, the fee schedule, is the
8 reasonable proper payment for these services. So that has been given. I
9 will absolutely embrace the obligation that has been requested by
10 counsel to advise him of that and reaffirm to him that he just -- he should
11 stay away from that in terms of responding to any other question from
12 counsel. So with that, that part is easy, and I will take it upon myself to
13 do that as soon as we break.

14 I want to make a broader record, though, on something, Your
15 Honor. One, the order on the motion in limine has not yet been entered.
16 I think we have a proposed order with competing language. But the
17 reason for that, Your Honor, is our view was Medicare -- and this has to
18 come into this case. It's impossible to try the case without it. My client's
19 state of mind, he's been attacked for three days, he's inextricably tied to
20 their view that the rates they pay are reasonable, because they're a
21 multiple of Medicare. And that's the foundation of everything we do.

22 Our opponents disagree with us, and that's fine. That's an
23 issue of fact for the jury to sort out. But the ability of our clients to
24 defend in good faith and state mind is a function of being able to explain
25 that.

1 So during the course of this trial, document after document,
2 after document, testimony after testimony comes in discussing Medicare
3 in many different ways. And in fairness to Mr. Haber, given how his
4 entire business operation is set around a multiple of Medicare, I think it's
5 just sometimes hard for him to figure out as a lay person where that line
6 is. I will reaffirm where that line is, so that he knows.

7 With respect to, you know, going forward, I will make sure
8 that those two areas, he understands are not appropriate. I will make
9 offers of proof on those at a separate time. I do think that the areas that I
10 covered in opening, it sounds like we don't have an agreement. That's
11 the only thing with respect to Medicare that's not just referring to a
12 document that's important to us, which is to be able to at least show
13 what the charges are, and the allowed amounts are, as a reference to
14 Medicare, which we did in opening, and have the Defendant be able to
15 say that the rate that was paid, they believe is a reasonable rate at 160 or
16 whatever it was percent of Medicare, but will not testify that the
17 Medicare rate is the reasonable rate or describe the breadth and scope of
18 the Medicare program. So with that record, Your Honor, I'll be glad to
19 advise Mr. Haber.

20 THE COURT: Thank you. And briefly?

21 MR. ZAVITSANOS: No response, Your Honor.

22 THE COURT: All right. So there was a request for
23 admonishment. That's not necessary given that fact that Mr. Blalack is
24 willing to counsel with the client during the recess.

25 So that's the ruling. It's 10:47. See you at 10:55.

1 MR. ZAVITSANOS: Oh, Your Honor, just to be clear. Just to
2 be clear. I did not ask the Court to admonish him.

3 THE COURT: That's how I heard it.

4 MR. ZAVITSANOS: Maybe I misspoke it. I'm sorry, Your
5 Honor. I asked Mr. Blalack to admonish the witness.

6 THE COURT: But Mr. Blalack need not admonish him. He
7 merely needs to counsel with him.

8 MR. ZAVITSANOS: Yes, Your Honor.

9 THE COURT: Thank you both.

10 MR. BLALACK: Thank you, Your Honor.

11 THE COURT: See you at 10:55.

12 [Recess taken from 10:47 a.m. to 10:57 a.m.]

13 THE MARSHAL: Courtroom 27 is back in session.

14 THE COURT: Please remain seated. Let's bring in the jury.

15 MR. ROBERTS: Thank you, Your Honor. And Lee Roberts
16 here for the Defendant's, Your Honor.

17 THE COURT: We did notice you were missing for a while this
18 morning.

19 MR. ZAVITSANOS: We had an APB on him.

20 MR. ROBERTS: I had mediation with Judge Gonzalez this
21 morning, and I got it started before I headed back since Mr. Blalack had
22 this witness, but I appreciate the Court's indulgence.

23 THE COURT: That's some multitasking.

24 MR. ZAVITSANOS: The room did feel a little out of balance.
25 Oh, and Your Honor, what -- just so for budgeting purposes, what time

1 are you going to break for lunch?

2 THE COURT: Somewhere between 12:10 and 12:15.

3 MR. ZAVITSANOS: Got it.

4 THE COURT: They seem to tolerate the 75-minute pretty
5 well.

6 MR. ZAVITSANOS: Okay.

7 MR. BLALACK: I agree.

8 MR. ZAVITSANOS: Great.

9 [Pause]

10 THE MARSHAL: All rise for the jury.

11 [Jury in at 10:59 a.m.]

12 THE COURT: Thank you. Please be seated. Plaintiff, please
13 continue.

14 MR. ZAVITSANOS: Thank you, Your Honor. May it please
15 the Court, counsel?

16 BY MR. ZAVITSANOS:

17 Q Before we get back to this waterfall that you mentioned, do
18 you know where AT&T is based?

19 A I don't.

20 Q Okay. If I told you, it's in Dallas, Texas, any reason to dispute
21 that?

22 A No. That would kind of refresh my memory.

23 Q Okay, fair enough. Now back to the waterfall. Okay. So --

24 A Sorry, what page are we on again?

25 Q Oh, I'm sorry.

1 A 3?

2 Q Mr. Haben, I'm on page 4. So we're looking at -- we're
3 talking about the SSPE program. So the claim comes in. Now this wrap
4 network that's in the waterfall, that's a wrap network that United had
5 signed with MultiPlan, right?

6 A United has a contract with MultiPlan to access their wrap
7 network.

8 Q And separate and apart from that, providers sign agreements
9 with MultiPlan for this wrap arrangement, right?

10 A If they're in the wrap, either MultiPlan has the agreement or
11 MultiPlan leases an agreement from another --

12 Q Okay.

13 A -- entity.

14 Q But even though you have signed an agreement with
15 MultiPlan, if it's more than 500 percent of Medicare at this point then
16 even though you signed it, you're going to go to this next step would be
17 the fee negotiation if the wrap network is above 500 percent, right?
18 According to this waterfall.

19 A If the client's benefit plan has wrap network and they had
20 benchmark pricing in their benefit plan, then yes. We would go to the
21 next step if it's greater than 500 percent of Medicare.

22 Q And if this fee negotiation, which is with the provider, right?

23 A Yes.

24 Q And MultiPlan does that negotiation as we said, right?

25 A Yes.

1 Q If that negotiation does not yield an acceptable outcome,
2 then you're just going to apply this OCM rate using Data iSight, right?

3 A The OCM would kick in, yes.

4 Q Data iSight, right?

5 A Yes.

6 Q And these are the charges that were previously paid at 100
7 percent of billed charges, right?

8 A Depends on the benefit plan.

9 Q I'm just saying what's on the screen.

10 A That's what that says on the screen, yes.

11 Q Okay. And going into this OCM, did United know that there
12 were many scenarios where this would be worse for the employer?

13 A I'm sorry; can you ask that a different way?

14 Q Sure. This document is called, "Enhancing out of network
15 competitive position", right?

16 A Yes.

17 Q Okay. Did you do financial projections on what kind of
18 impact this would have on employers?

19 A I don't know if there was financial impact, but I'm assuming
20 so.

21 Q Let's look at page 6. Okay. Now there's a lot going on here
22 and let's see if we can break it down.

23 A Can I just take a quick peek?

24 Q Yes, sir.

25 MR. ZAVITSANOS: So let's start, Michelle, right here. And

1 we go from here to here.

2 BY MR. ZAVITSANOS:

3 Q Okay. So according to this document --

4 A I just need a few more seconds here.

5 Q Sure.

6 A It's really small.

7 MR. ZAVITSANOS: It's the assumptions part that's showing.
8 That box. Well, just that box, the assumptions box.

9 THE WITNESS: Okay. I'll ask questions as we go.

10 BY MR. ZAVITSANOS:

11 Q Yes, sir. So for purposes of these financial projections we're
12 assuming a bill charge of \$1,000, right?

13 A Yes.

14 Q We're assuming that the member deductible has been
15 satisfied, but the co-insurance is 60/40, right?

16 A That's what that says, yes.

17 Q Meaning that the plan will pay 60 percent, the member pays
18 40?

19 A Yes. I believe that's kind of the ratio --

20 Q Okay.

21 A -- we were assuming.

22 Q And the fee that you all are going to charge on this
23 assumption is 35 percent, right?

24 A Yes. That's what that says.

25 Q Okay. So the other assumption you're making here is that --

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1 the assumption is, this bill charge that the reasonable and customary
2 amount is \$600, right?

3 A Yes. That's an assumption on that benefit plan.

4 Q But if you apply this Data iSight methodology it's \$300, right?

5 A That is the assumption, yes.

6 Q Okay. So these assumptions are going to apply to the
7 scenarios we're going to look at.

8 MR. ZAVITSANOS: Michelle, close that out. And Michelle,
9 here's what I want you to do now. I want you pull up from here to here.
10 Just this area here.

11 BY MR. ZAVITSANOS:

12 Q Okay. And here's what we're doing. We're looking at the
13 effect now on the employer. We looked at earlier on the effect on the
14 employee. Now we're looking at the effect on the employer. So these
15 are the assumptions we just talked about here, right?

16 MR. ZAVITSANOS: Michelle, can you make that a little
17 bigger?

18 BY MR. ZAVITSANOS:

19 Q Okay. All right. So now the column on the left -- or excuse
20 me, on the right, current, that's under the old regime using reasonable
21 and customary, right?

22 A That's underneath the old program as the example.

23 Q Okay. So the allowed amount was \$600. That's the
24 reasonable and customary, right?

25 A Yes.

1 Q The client, that would be the employer, right?

2 A Yes.

3 Q They're going to pay \$360, right?

4 A That is what that says.

5 Q There's the member part, but the client cost is \$360 under the
6 old regime, right?

7 A That would be the client responsibility.

8 Q And these are projections that looks like you all were making
9 going into this program for clients that had not switched over yet, right?

10 A It was a simplified example so people can understand it.

11 Q Okay. Now let's go to the next one. Let's now look at
12 proposed here.

13 MR. ZAVITSANOS: Michelle, I need you to pull from here to
14 here. See if you can capture all of this.

15 BY MR. ZAVITSANOS:

16 Q Okay. So -- all right. So under the Data iSight methodology
17 where the allowed amount is \$300 rather than \$600, do you see that?

18 A I do.

19 Q So the allowed amount is \$300, right?

20 A Yes.

21 Q Same assumption?

22 A Yeah.

23 Q The client now instead of 360 is paying 180, right?

24 A Correct.

25 Q But they've also got to pay the fee, the 35 percent fee, which

1 is \$245, right?

2 A In that example it is, yes.

3 Q And so when we get to it the total cost to the employer --

4 MR. ZAVITSANOS: Right here, Michelle.

5 BY MR. ZAVITSANOS:

6 Q Is \$425, right?

7 MR. ZAVITSANOS: You had it, Michelle.

8 THE WITNESS: Yes. That's what that says.

9 MR. ZAVITSANOS: Okay. So Michelle, highlight 425.

10 BY MR. ZAVITSANOS:

11 Q So under the new plan designed to save money, the
12 employer's obligation is actually higher than the old plan according to
13 this?

14 A They save on medical costs, but they do pay a fee. If they
15 agree --

16 Q That's not my question. My question is, this OC -- this is
17 your document, this is United doing these calculations, right?

18 A As an example, yes.

19 Q And so United knows going into this before converting
20 employers over, running these assumptions, the employer's going to be
21 worse off than under reasonable and customary, right?

22 A I think what they're trying to reflect -- I didn't write this.
23 They're trying to reflect that they probably are going to have to negotiate
24 with the client on a lower fee.

25 Q Sir, I'm not asking you to speculate for someone. I just want

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1 to know what's on this document. Going into this, this chart, the
2 employer cost number is higher with SSP than without, correct?

3 A Let me just get my bearings please. Yes. That's the math.

4 MR. ZAVITSANOS: You can close it out, Michelle.

5 BY MR. ZAVITSANOS:

6 Q All right. Now I thought you said a couple of times -- oh, I
7 thought you said a couple of times, Mr. Haben, please correct me if I
8 misheard you, okay? I thought you said you were trying to catch up with
9 your competitors.

10 A Yes.

11 Q Or words to that effect.

12 A That was the understanding through consultants, that we
13 were uncompetitive. Our clients are paying more for services than they
14 should.

15 Q Through consultants?

16 A Yes.

17 Q Who -- what consultants?

18 A There's consultants that work with employer groups, Willis
19 Towers Watson, Aon, other entities.

20 Q Aon, that's an insurance company too, right?

21 A I do not know. I know there's Aon Consulting.

22 Q So did the consultants help you come up with these names?

23 A No. They did not. They provided us feedback that we would
24 lose clients if we're not competitive.

25 Q Okay, fair enough. Wait a minute, they said what?

1 A If we're not competitive on medical cost savings we're at risk
2 of losing a client.

3 Q And so you did this to -- let me finish the point first before we
4 get there. Okay. So my question I think started before I veered off, my
5 apologies. The question is, you feel like you all were behind your
6 competitors, right?

7 A That was the feedback we were getting.

8 Q Let's go to Exhibit 66, page 1. Now we've seen this
9 document before.

10 A Can I --

11 Q This --

12 A -- go get it please?

13 Q Sure. This is the 2017 business plan which I think was put
14 together in 2016. So this would be at the beginning of the program,
15 right?

16 A We've had programs in place since 2003.

17 Q Yeah. The five -- excuse me. This would be the beginning --
18 closer to the beginning of this five-year period that we've talked about,
19 right?

20 A The five-year period you are referring to, yes.

21 Q Okay. So let's look at page 21 please. "Maintaining our
22 lead."

23 MR. ZAVITSANOS: Michelle, can you pull this out and pull
24 out "seizing the opportunity", those three bullets.

25 THE WITNESS: Can I read for a second?

1 BY MR. ZAVITSANOS:

2 Q Sure.

3 A Is it "seizing the opportunity" is the section?

4 Q Yes.

5 A Okay.

6 MR. ZAVITSANOS: Michelle, highlight the part that says,
7 "shared savings".

8 BY MR. ZAVITSANOS:

9 Q Let me know when you're ready.

10 A I am ready.

11 Q So you told us you were behind your competitors, but
12 internally you were leading the pack, right? "Maintaining our lead",
13 that's what that says.

14 A That's just in reference probably not related to how
15 competitive we are with our network.

16 Q I'm sorry. Sir, it just says, "Maintaining our lead", right?

17 A That's what that says, yes.

18 Q Lead means you're ahead, right?

19 A Yes, it does.

20 Q Okay. All right. And if we go to page 2. This business plan I
21 think we agreed was written in 2016, right? Because it's a '17 business
22 plan.

23 A I believe so.

24 Q Okay. All right.

25 MR. ZAVITSANOS: So Michelle, will you please pull up the

1 third paragraph where it says, "We are in a third year", that whole
2 paragraph, please? Great.

3 BY MR. ZAVITSANOS:

4 Q Okay. "We are in a third year of unprecedented organic
5 growth with almost one million new fully insured group members added
6 to our ranks since 2015." Here's the part I want to ask you about.

7 MR. ZAVITSANOS: Michelle, highlight the next sentence.

8 BY MR. ZAVITSANOS:

9 Q "We will continue this growth by advancing our already
10 industry-leading gross margins by \$5 PMPM while continuing" blah blah.
11 Do you see that?

12 A I do.

13 Q Okay. So in 2016, industry-leading margins, and exceeding --
14 you exceeded your budget -- budgetary expectation by \$5 PMPM.

15 A I didn't write this, so I don't know what he means.

16 Q You don't know what it means, "That we will continue this
17 growth by advancing our already industry-leading gross margins by \$5
18 PMPM"?

19 A I can read what you read, but I don't --

20 Q Let me just write it the way it is. Okay?

21 A Yep.

22 Q All right. That was in '16?

23 A Yes.

24 Q Okay. Now, the PMPM, that's the base fee that you charge
25 an ASO client. We talked about that, right?

1 A Um --

2 Q Per member per month.

3 A When we talked about it, yes. I don't know what he's
4 referring to. I didn't write it.

5 Q Okay. And typically, the PMPM fee does not include 35
6 percent?

7 A Typically, no.

8 Q Okay. All right, now --

9 [Counsel confer]

10 BY MR. ZAVITSANOS:

11 Q Okay. Now, as you began implementing this SSPE program,
12 with the Health and MultiPlan. Let's go to 343. As you were doing that --

13 [Counsel confer]

14 MR. ZAVITSANOS: 342, Michelle.

15 BY MR. ZAVITSANOS:

16 Q As you were doing that, what happened was because of the
17 amount of money that you were making, you started losing clients. So
18 instead of -- well, let me know, I'm going to keep on going. Is it correct
19 that as SSPE was getting implemented, you began losing clients?

20 A I don't know for sure.

21 Q Okay. So this is something called Project Airstream MVP
22 Overview. And by the way, since we're on this, we're going to get to this
23 a little bit later, but let me just -- for clarification, see if we can agree. So
24 remember, we talked about that NewCo, New Company?

25 A Yeah.

1 Q That is also referred to as Project Airstream sometimes,
2 right?

3 A Yes.

4 Q Okay. And Project Airstream today, is now the government?

5 A Yes.

6 Q All right. All right. Now, we'll get to that later.

7 But let's go -- we're on this, Exhibit 342. Let's go to page 26.

8 MR. ZAVITSANOS: And Michelle, can you pull up that wrap?

9 The whole -- the whole thing, please.

10 BY MR. ZAVITSANOS:

11 Q All right. The green line is the number of ASO clients, right?

12 A No, it's membership.

13 Q Membership, excuse me. It's the number of membership,
14 right?

15 A Correct.

16 Q And that's dropping pretty significantly, right?

17 A That's what that looks like, yes.

18 Q And it's dropping at the same time as your shared savings
19 revenue is going up, right?

20 A That is correct.

21 Q So you're getting a 27 percent increase in shared savings
22 revenue, which includes SSPE, from 647 million to 819 million, but
23 members are dropping off along the way, right?

24 A That's what that reflects, yes.

25 Q But members wanted -- or clients wanted SSPE, that's your

1 testimony, right?

2 A Clients were looking for us to help address high medical
3 expense.

4 Q Yeah. Was it these clients, the ones on the graph going
5 down? Was it those clients?

6 A I don't know who's in that count.

7 Q All right. Now --

8 [Counsel confer]

9 MR. ZAVITSANOS: Your Honor, may I ask counsel if he has
10 any objection to Exhibit 96? And I would direct counsel to page 1, at the
11 top.

12 MR. BLALACK: If I could -- counsel, did you plan to provide
13 the attachment too or just the exhibit?

14 MR. ZAVITSANOS: Yes, we did.

15 MR. BLALACK: Okay. No objection if both are coming in.

16 THE COURT: Exhibit 96 will be admitted.

17 [Plaintiffs' Exhibit 96 is admitted in evidence]

18 BY MR. ZAVITSANOS:

19 Q Before I do that, Mr. Haben, I just -- I'm sorry, I just need to
20 button up one last point. On Exhibit --

21 MR. ZAVITSANOS: Is 126 in, Michael?

22 [Counsel confer]

23 MR. ZAVITSANOS: All right. Let's -- Michelle, please pull up
24 96. Okay. So first of all, let's see who this is from and who this is to. All
25 the way down, Michelle. Let's get the whole email, please. All right.

1 BY MR. ZAVITSANOS:

2 Q Okay. So it's from John Haben to a bunch of folks here,
3 right?

4 A Yes.

5 Q And the subject is OCM, that's outlier cost management,
6 right?

7 A Yes.

8 Q And that's the same as SSPE, right?

9 A It's a component inside SSPE.

10 Q Yes, sir. And -- okay. And it looks like -- basically, it looks
11 like you all were getting together with MultiPlan to talk about -- to
12 discuss potential opportunity to improve planned outlier cost
13 management by 900 million dollars, right?

14 A Can I just read this for a second?

15 Q Okay. So you were going to --

16 THE COURT: Well, he just asked to --

17 THE WITNESS: Can --

18 THE COURT: -- for a chance to read it.

19 MR. ZAVITSANOS: Oh, I'm sorry, Your Honor. My
20 apologies. I didn't hear him.

21 THE WITNESS: Yeah. You can keep going. I'll -- apology if
22 any questions.

23 MR. ZAVITSANOS: Okay, sir.

24 BY MR. ZAVITSANOS:

25 Q So according to this email, UnitedHealthcare and MultiPlan

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1 were going to meet at some conference so that they could coordinate
2 how this program could cause even deeper cuts, right, by \$900 million,
3 right?

4 MR. BLALACK: Object to form.

5 THE COURT: Overruled.

6 THE WITNESS: That's not what that says.

7 BY MR. ZAVITSANOS:

8 Q Okay. We want to get together with Dale from MultiPlan this
9 morning. What is HEAC?

10 A HEAC, hospital executive advisory committee.

11 Q To discuss potential opportunity to improve planned outlier
12 cost management by \$900 million. Do you see that?

13 A Yes.

14 Q Is that -- does that cover emergency room physicians or is
15 this just the facilities?

16 A I don't know for sure.

17 Q Okay. All right. Fair enough. Let's go to -- let's now go to --
18 and you prepared this PowerPoint, right, page 2?

19 A On page 2, I believe so.

20 Q Okay. Now, this is page 2, please. Okay. April 2017?

21 A Correct.

22 Q Right?

23 A Correct.

24 Q Okay. And we're going to go now to, please, page 3. And --
25 okay. So this is a document you prepared.

1 MR. ZAVITSANOS: And Michelle, can we pull this part up,
2 please?

3 BY MR. ZAVITSANOS:

4 Q And it looks like what you are doing is you're making a
5 recommendation on something called layering benchmark pricing over
6 the shared savings programs when OCM is implemented in July of 2017,
7 right?

8 A Correct. That's what that says.

9 Q All right. And so here, step 1, the waterfall, is the wrap
10 network rate will only be accepted if the threshold is achieved. Meaning
11 less than 350 percent of Medicare, right?

12 A Or 350 percent, 350 or less.

13 Q Or less, right. And then, fee negotiation. The negotiated
14 amount will be accepted only if the threshold is achieved, the 350
15 percent, right?

16 A Correct. That's what that says.

17 Q Third-party network, is that the wrap agreement?

18 A No.

19 Q Oh. Okay. Never mind. All right. Let's go to the bottom
20 one, Data iSight. If the solutions above do not meet the threshold, the
21 plan will reprice using Data iSight, i.e., which stands for in other words,
22 350 percent of CMS, right?

23 A Yes, that's what that says.

24 Q All right. So if the bill comes in and it's above the wrap
25 agreement you agreed to, you're going to cut it down to 350 percent of

1 CMS using Data iSight?

2 A That's not exactly what that says, and I could -- I'm glad to
3 walk through the waterfall, how it works.

4 Q Well, no. I'm just talking about what's written on the screen.
5 I mean, the final step is if the solutions above, meaning if the doctor
6 doesn't agree to accept less, then you're just going to pay him 350
7 percent of Medicare, right?

8 A Yeah. We're looking for reimbursement amounts that are
9 accepted to keep the member out of the middle, to hold them harmless.

10 Q Yeah. My question is --

11 A If it doesn't achieve that, then yes, we will pay 350.

12 Q That's my question. Okay. So --

13 A That's for benefit plans, if the client adopts it, yes.

14 Q Right. And by the way, on the fully insured side, the same
15 thing would be true, right?

16 A Not 100 percent, no.

17 Q Mostly. I mean, you'd have this 350 percent benchmark
18 applied on the fully insured side as well, right?

19 A It all depends on the benefit plan of what's filed and
20 approved in the state.

21 Q Sir --

22 A It's not a general comment.

23 Q -- on the fully insured side, were there plans that are not ASO
24 plans, where United is the -- taking the risk, were you applying this 350
25 percent?

1 A There's different mechanisms for the 350, so there's an
2 egregious biller mechanism, there's a benchmark pricing mechanism.
3 And there's kind of a cratered out floor. So that you're -- I -- if you want
4 to show me something specific, I can look at it and tell you. But there --
5 the plans --

6 Q You don't remember if the 350 percent applied to any part of
7 the fully insured side of your business?

8 A You would have to show me a benefit plan, and I could look
9 at it.

10 Q But you don't remember, sitting there as the head of the
11 bottom network, the guy who wrote this memo with the
12 recommendation, you don't remember if the fully insured side included
13 350 percent?

14 A It depends on the type of program. It could have. There's
15 multiple --

16 Q And then -- and then, that 350 percent was later cut to 250
17 percent, right?

18 A Explain what you're asking.

19 Q Did the 350 percent that you were talking about in this
20 document here, did that subsequently get cut to 250 percent?

21 A In terms of the benchmarking?

22 Q Yeah.

23 A Yeah. We make a recommendation to reduce that to 250.

24 Q You made a recommendation to who?

25 A If the clients wanted to adopt that, they could.

1 Q How about on the fully insured side, did you reduce that to
2 250 percent on any benefit plan on the fully insured side?

3 A I don't remember.

4 Q Okay. Okay. Page 4 of Exhibit 96. Now, this is your
5 PowerPoint, and -- right? This is your PowerPoint, right?

6 A Yes.

7 Q And our competition and the next steps. And remember, I
8 know I've asked you this before. But remember, you told me you all
9 were behind the competition, right?

10 A Correct.

11 MR. ZAVITSANOS: Michelle, highlight the last bullet point.

12 BY MR. ZAVITSANOS:

13 Q It looks like, according to the document you prepared, United
14 would be leading the pack by cutting the threshold to 350 percent?

15 A We would be in line with another competitor, yes.

16 MR. ZAVITSANOS: Whoa, whoa, whoa, whoa. Hold it.
17 Michelle, hold on to that.

18 BY MR. ZAVITSANOS:

19 Q No. My question was --

20 MR. ZAVITSANOS: Just highlight the whole page, Michelle.

21 BY MR. ZAVITSANOS:

22 Q -- United would be leading the pack, right?

23 A Along with another competitor. That's what that says.

24 Q Along with another competitor. Okay. All right. So there's
25 two of the main insurance companies in the country are doing this,

1 right?

2 A There could be more. I'm not aware of exactly who else is
3 out there.

4 Q And United is a public company, right?

5 A Yes, we are.

6 Q Meaning you're -- you have quantitative financials that are
7 available to the public, right?

8 A Yes. Unlike a private entity, yes.

9 Q Sure. And if a competitor sees what you are doing and
10 you're leading the pack, well, the pack is going to move with the leader,
11 right?

12 A In the audited financials, the competitors don't see what your
13 proprietary programs are.

14 Q I know we talked about this. Well, first of all, you -- it looks
15 like that United, you know what the other insurance companies are doing
16 because you mention it in your bullet point there, right?

17 A Yes. Consultants have informed us we're uncompetitive.

18 Q Yeah. And you're not the only company that uses
19 consultants, right?

20 A No.

21 Q Okay. And so again, my question is if you cut the benchmark
22 and you say we're never going to pay above 350, the competition is
23 going to follow right behind, right?

24 A Depends on what the employer groups want.

25 MR. ZAVITSANOS: All right. So Michelle, you can take that

1 down, please. Michael, is 126 in?

2 MR. KILLINGSWORTH: I think it's in.

3 MR. ZAVITSANOS: All right.

4 BY MR. ZAVITSANOS:

5 Q Mr. Haben, would you be so kind as to be at Exhibit 126?

6 A I don't know what this is. Can I just take a peek?

7 Q Yes, sir. And I would like you to look at specifically pages 3
8 and page 36.

9 A Three and thirty-six?

10 Q Yes.

11 A Give me just a minute.

12 Q Sure.

13 [Witness reviews document]

14 A Sorry I'm not familiar, but I need just a little bit more time.

15 Q Okay.

16 [Witness reviews document]

17 A Okay. You can start, and I'll tell you if I have questions.

18 Q Okay. Does page 36 deal with shared savings?

19 A Can I have a -- I didn't write this. I'm not part of this group.

20 Q Actually, let me do this. You can put that up. Let me do it
21 this way. Would you agree with me that as you were rolling out SSPD,
22 there was concern from a lot of the ASO clients and there was a lot of
23 pressure from those clients to reduce your fee revenue from these out of
24 network programs, sir?

25 A There's always pressure on fees for clients.

1 Q Well, that's not my question. As you were rolling out SSPD,
2 at that time, was there a concern within the company that there was a lot
3 of pressure from clients about your fee revenue from these out of
4 network programs, like SSPD?

5 A Yes. There's always pressure on those fee programs.

6 Q And so initially, you -- let's go to Exhibit 67, please.

7 A May I put this one away?

8 Q Yes, sir. So if we go to page 3 of Exhibit 67.

9 A Okay. Let me get that up here.

10 MR. ZAVITSANOS: Yeah. And Michelle, pull this off, please.

11 BY MR. ZAVITSANOS:

12 Q Okay. So as you're rolling out SSPD, we've looked at this
13 once before, you came up with the talking points that notwithstanding
14 these additional fees, why it was good for these ASO clients to adopt
15 SSPD, right?

16 A Can -- I'm sorry, I couldn't see where you're pointing.

17 Q Well, just these paragraphs here that we talked about before.
18 I'm not going to bother repeating it again. So for example --

19 MR. ZAVITSANOS: Highlight the last paragraph, Michelle.

20 BY MR. ZAVITSANOS:

21 Q When you were trying to sell SSPD to your clients, right?

22 A Yes. The clients are asking for help on their medical costs.

23 Q Did you share with any of your clients the scenario that if
24 they implemented SSPD, there would be situations where it would
25 actually cost them more, like you did internally?

1 A I don't know.

2 MR. ZAVITSANOS: Counsel -- may I ask Counsel if he has an
3 objection to Exhibit 8?

4 MR. BLALACK: We have no objection, Your Honor.

5 THE COURT: Exhibit 8 will be admitted.

6 [Plaintiffs' Exhibit 8 admitted into evidence]

7 MR. ZAVITSANOS: Okay. Michelle, go to page 2.

8 BY MR. ZAVITSANOS:

9 Q All right. So this is the agreement between United and
10 MultiPlan, right?

11 A Yeah. I believe so.

12 Q Yeah.

13 MR. BLALACK: Your Honor, can we approach real --

14 THE COURT: You may.

15 MR. BLALACK: -- for just a moment.

16 MR. ZAVITSANOS: Take that down, Michelle.

17 [Sidebar at 11:42 a.m., ending at 11:44 a.m., not transcribed]

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

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

20 THE COURT: Please.

21 MR. ZAVITSANOS: Thank you. Okay. So Michelle, will you
22 please pull up Exhibit 8, page 2, first paragraph.

23 BY MR. ZAVITSANOS:

24 Q Okay. This is a really long document, and I'm only going to
25 cover one tiny little part of it. This is the agreement between

1 UnitedHealthcare and MultiPlan, right?

2 A Yes.

3 Q And I think if the jury goes through this, they'll see that it was
4 amended a bunch of times, right? I mean, this one is in 2013, right?

5 A Yes.

6 Q You see that?

7 A I believe it's -- it has been amended quite a bit.

8 Q Yeah. And Mr. Haben, I believe --

9 MR. ZAVITSANOS: Ah, yes. Page 6, Michelle.

10 BY MR. ZAVITSANOS:

11 Q And it looks like -- let's pull this all up. It looks like the person
12 who signed on behalf of United was you.

13 A That's correct.

14 Q Minnetonka, I love the name of that town. All right. That's --

15 A Tonka Toys.

16 Q That's right. Okay. So you signed on behalf of United, right?

17 A Correct.

18 Q Okay. And then, like we said, this was amended a number of
19 times, right?

20 A I believe so.

21 Q Okay. Now -- okay. And MultiPlan -- let's just very briefly
22 remind ourselves who MultiPlan is. They are the objective third party
23 that evaluates what a fair reimbursement rate is, right?

24 A They're a vendor that provides us tools and resources to
25 pre-price claims.

1 Q And you consider that to be objective, not biased?

2 A Yes.

3 Q Let's go to Exhibit 239, page 13.

4 A Can I get that, please?

5 Q Yes, sir. And while you're doing that, I'm going to have
6 Michelle pull up this part of it.

7 MR. ZAVITSANOS: Michelle, can you -- do you have those
8 little arrows that you can do? Can you do an arrow on the second bullet
9 point, please?

10 THE WITNESS: Can I just take a quick peek?

11 MR. ZAVITSANOS: Yes, sir. No, the other way. I'm going to
12 have to stand on my head, you keep doing that. All right. There we go.
13 Can you move that a little bit? Not that one; the one above it. This one
14 right here. Number two. That's good. Don't worry about it. It's fine.

15 THE WITNESS: Which page number?

16 MR. ZAVITSANOS: Number two, Michelle. You got it at
17 number three. I'm on page 13, sir.

18 THE WITNESS: Okay. Let me read this, please.

19 MR. ZAVITSANOS: Yes, sir. There you go. Great.

20 [Witness reviews document]

21 THE WITNESS: Okay.

22 BY MR. ZAVITSANOS:

23 Q Okay. So this is a UnitedHealthcare document, right?

24 A Yes. I believe it's a draft.

25 Q Yeah. And I think the title of this document is Project

1 Airstream, right? Which is --

2 A No, it's not.

3 Q Project Airstream MVP -- oh, I'm sorry. You're right, sir. My
4 apologies. Excuse me. Out-of-network, change the narrative, change
5 performance, right?

6 A That's what that says, yes.

7 Q Yes, sir. Okay. Now, let's -- first of all, let's look at what
8 MultiPlan is. Internally, you all knew that one out of every five dollars
9 that MultiPlan received came from United, right?

10 A That's what we understood.

11 Q Okay. That is a huge component for MultiPlan, right, 20
12 percent?

13 A You would ask -- need to ask them.

14 Q Well, does United have any single client that represents 20
15 percent of their revenue?

16 A I don't know.

17 Q Okay. Out of any of them.

18 A I don't know.

19 Q Twenty percent is a very significant amount, would you
20 agree?

21 A I -- you would need to ask MultiPlan.

22 Q You don't know if 20 percent is a significant amount?

23 A Depends on the situation.

24 Q If 20 percent of their revenue is coming from United
25 Healthcare, do you still think they're unbiased and objective?

1 A Yes.

2 Q Okay. And by the way, we heard a lot in opening statement
3 about private equity. Is MultiPlan owned by private equity?

4 A No, they're not.

5 Q Well, were they at this time? Look at the last bullet.

6 A Yes, they were.

7 Q Okay. Okay. Now, looking at this document, sir, first page,
8 the reason that that discussion about MultiPlan was in there is because
9 by 2018, as these programs were underway, you all started discussing
10 creating this new co, Project Airstream, that would replace MultiPlan,
11 right?

12 A That's not a hundred percent true.

13 Q Let's look on the second page.

14 MR. ZAVITSANOS: Michelle, pull out the executive summary
15 for the year. Okay.

16 BY MR. ZAVITSANOS:

17 Q So we see that the primary out of network vendor, MultiPlan,
18 has a \$300 million a year vendor fee, right?

19 A That's what we pay MultiPlan, yes.

20 Q Right. And so action with urgency and acceleration --

21 A I'm sorry. Where were you pointing?

22 Q Action with urgency and acceleration, same --

23 A I see it.

24 Q Same box.

25 A Yeah.

1 Q "Improve out of network program reimbursement levels to 80
2 percent of par rates." Do you see that?

3 A Yes, I do.

4 Q We're talking about now even deeper cuts, right?

5 A I would disagree.

6 Q Okay. Let's keep going. Next page, please. And what you all
7 did is because you were losing clients on this ASO model, what you
8 were going to do was you were just going to change the name and
9 repackage the fee as something else, right?

10 A I disagree. We were building --

11 Q You were going -- I'm sorry. Sorry. I didn't mean to cut you
12 off.

13 A We were building a member advocacy program. Something
14 that MultiPlan does not do.

15 Q You were going to redesign shared savings and call it
16 something else, right?

17 A We were adding a new enhancement to the out-of-network
18 programs to help advocacy.

19 Q You were going to redesign shared savings and call it
20 something else because of the pressure you were getting from these
21 clients, right?

22 A That's incorrect. We were building an advocacy program for
23 the --

24 MR. ZAVITSANOS: Michelle, highlight this, redesign shared
25 savings revenue model to TCOC focus.

1 BY MR. ZAVITSANOS:

2 Q It doesn't say eliminate shared savings revenue. It says
3 redesign.

4 MR. ZAVITSANOS: Can we highlight this, Michelle, right
5 here?

6 BY MR. ZAVITSANOS:

7 Q Right?

8 A Yes, it does.

9 Q Okay. So the 35 percent is now called total cost of care. And
10 you're going to come up with some fancy sounding new terms to make it
11 sound differently, right?

12 A That's incorrect. I can explain.

13 Q No, sir. You were going to redesign this program to this,
14 right?

15 A We were --

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

17 THE COURT: Overruled.

18 BY MR. ZAVITSANOS:

19 Q Just last -- last question. You were going to redesign shared
20 savings, the percentage, for what you call a TCOC focus --

21 A That --

22 Q -- total cost of care focus?

23 A That's not what that says.

24 Q That's not what that says?

25 A You said the percentage. It doesn't say the percentage.

1 Q Then, we go on to page 5, moving from strategy to
2 execution.

3 MR. ZAVITSANOS: Michelle, follow me right here. Thank
4 you.

5 BY MR. ZAVITSANOS:

6 [REDACTED]
7 [REDACTED]

8 [REDACTED]
9 [REDACTED]

10 [REDACTED]

11 [REDACTED]
12 [REDACTED]

13 [REDACTED]

14 [REDACTED]
15 [REDACTED]

16 [REDACTED]
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[REDACTED]

MR. ZAVITSANOS: What exhibit, Michael?

MR. KILLINGSWORTH: It's 266, page 4.

BY MR. ZAVITSANOS:

Q Let's pull up Exhibit 266.

A I need to go get it.

Q Yes, sir.

A What page, please?

Q Okay. So we are going to page -- first of all, let's identify what this is. Okay. This is the 2019 business plan, right?

A Yeah. That's what that says.

Q And if we go to page -- give me one second, sir.

A Uh-huh. Take your time.

Q Okay. Let's go to -- when did you start doing Total Cost of Care, sir, when you started using that concept --

A I don't know that --

Q -- with your clients?

A I don't know. That was part of the clinical team. Not my team.

1 Q Okay. Well, let's go to page 17, please.

2 MR. ZAVITSANOS: Right here, Michelle. Pull that up.

3 BY MR. ZAVITSANOS:

4 Q Gross margin in 2019, is higher than it's ever been, right?

5 A I didn't write this, so I don't know what that means.

6 Q You don't know?

7 A It says, "historically high."

8 Q You didn't write this?

9 A I did not.

10 Q Okay. So let's look at page 24, please. Okay. So we see that
11 even though the ASO growth is shrinking, the gross margin on the
12 PMPM is increasing, right? Less members, more money, right?

13 A That's not what that says.

14 Q "We stayed at gross margin, PMPM, \$93.85 by 2019, right?"

15 A Yes. That's what that says.

16 Q All right.

17 A I think that's the projection.

18 Q Yes. And that's because of this we design, where you were
19 going to pay someone for pinning up cat fees so the clients wouldn't be
20 starting a 35 percent, right?

21 A That's incorrect. The PMPM is driven by many other
22 administrative services other than the out-of-network programs.

23 Q Okay. Now, let's go back to Exhibit 8. And we started talking
24 about that this morning. And we're going to go to page 121. And Mr.
25 Haben, I'm just going to show this. Let's not --

1 MR. ZAVITSANOS: Actually, page 120, please, Michelle.

2 BY MR. ZAVITSANOS:

3 Q Okay. So form the slots in the headings, you see what we're
4 talking about? This is --

5 A What page? 120?

6 Q Yes. This is the agreement between MultiPlan and United.

7 And these are the fees that United will pay to MultiPlan, right?

8 A All right. Let me just take a quick peek.

9 Q Yes, sir.

10 A Yes. Those are the fees for the programs.

11 MR. ZAVITSANOS: Michelle, let's go to page 121, which is
12 the very next page. And Michelle, pull out this box here, just the box,
13 please. And Michelle, will you highlight this part here? Highlight and
14 circle this, please. Okay. And then circle the bottom one, please.

15 BY MR. ZAVITSANOS:

16 Q Okay. So those are the percentages up on the screen, Mr.
17 Haben, on page 121, that MultiPlan would receive when using Data
18 iSight to pre-price the claims, right?

19 A Yes.

20 Q And you maintain to this jury, MultiPlan is objective, right?

21 A Yes, of course.

22 MR. ZAVITSANOS: Okay. Thank you, sir. Okay. Take that
23 down, Michelle. May I ask counsel if they have an objection to 34, Your
24 Honor?

25 THE WITNESS: What was that number again, Your Honor?

1 MR. ZAVITSANOS: I'm sorry, 34. Three-four.

2 MR. BLALACK: Object to the foundation of this document,
3 Your Honor.

4 THE COURT: There is no stipulation.

5 MR. ZAVITSANOS: Yes. Okay.

6 BY MR. ZAVITSANOS:

7 Q Mr. Haben, would you describe as best as you can -- if you
8 want to cheat so you can refresh your memory, you're -- you are free to
9 look at Exhibit 24, if you'd like. But you don't have to do them all,
10 correct? And my question is, can you describe to the jury generally,
11 what is Data iSight? What's your understanding of it?

12 A At a high level, without looking at the document?

13 Q Yeah. A high level.

14 A Data iSight is a tool that MultiPlan has that's available to do
15 what they call a cost plus a reasonable margin application. So they get
16 to a reasonable reimbursement rate for the providers. It also will
17 incorporate other components that a payor like United would want. So
18 it's an engine that reprices claims and will send back to United.

19 Q Let's pull up 471. Now --

20 A Can I get it?

21 Q Actually, hold on. Let's measure it to stay awesome. Okay.
22 So what -- when you say it's a tool, what does that mean?

23 A United, when they get an out-of-network claim, they send the
24 claim out to MultiPlan if that claim's eligible for the out-of-network
25 program. It will go in -- if the client has outlier cost management, it goes

1 into Data iSight. Data iSight has pricing methodology, along with our
2 criteria, if we define that. They'll reprice that claim using their logic, and
3 they will send it back to United. So you can think about it as a claims
4 repricing engine. I call it a tool just to be simple.

5 Q Okay. So you've seen the Wizard of Oz?

6 A I love it. My mom's favorite movie.

7 Q Yes, sir. My kid's favorite movie, as well. Okay. So in
8 Wizard of Oz, the impression is that there's this almost deity kind of
9 figure called Wizard of Oz, who employs this kind of black fox magic to
10 grant people's wishes, right?

11 A I understand. Yup.

12 Q But it ends up being this kind of insecure little man who
13 really is the opposite of what people thought the Wizard of Oz was,
14 right?

15 A Understood.

16 Q Okay. And Data iSight is the Wizard of Oz, would you agree?

17 MR. BLALACK: Object to form. Argumentative.

18 THE COURT: Sustained.

19 BY MR. ZAVITSANOS:

20 Q Data iSight is just a front for United to have an independent
21 source to use this sophisticated title to reprice claims at whatever
22 amount United says, would you agree?

23 A I disagree. I can explain it and walk through how the
24 programs work.

25 Q No. We're going to move on.

1 A Okay.

2 MR. ZAVITSANOS: Your Honor, what would be a good time
3 to start?

4 THE COURT: Let's go through it right after lunch.

5 All right. So everybody, let's take our lunch break. During
6 the recess, don't talk with each other or anyone else on any subject or
7 issue connected with the trial. Don't read, watch, or listen to any report
8 of or commentary on the trial. Don't discuss this case with anyone
9 connected to it or by any medium of information, including without
10 limitation, newspapers, television, radio, internet, cell phones, or texting.

11 Do not conduct any research on your own relating to the
12 case. You can't consult dictionaries, use the internet, or use reference
13 materials. Don't talk, do social media, text, Tweet, Google issues, or
14 conduct any other type of book or computer research with regard to any
15 issue, party, witness, or attorney involved in the case.

16 Most importantly, do not form or express any opinion on any
17 subject connected with the trial until the matter is submitted to you.
18 Thank you for another great morning. Have a good lunch. And be back,
19 please, at 12:45.

20 THE MARSHAL: All rise for the jury.

21 [Jury out at 12:09 p.m.]

22 THE COURT: Mr. Haber, you may step down.

23 THE WITNESS: Thank you.

24 [Recess taken from 12:09 p.m. to 12:51 p.m.]

25 [Outside the presence of the jury]

1 THE COURT: Thanks, everyone. Please be seated. All right.
2 I am told that we have 156 people on Blue Jeans. So if anyone is joining
3 us remotely, please be sure to mute yourself.

4 Calling the case of Fremont v. United. Note the presence of
5 counsel and their clients. Are we ready to bring in the jury?

6 MR. ZAVITSANOS: Yes, Your Honor, from the Plaintiff.

7 MR. BLALACK: We are, Your Honor. And I can bring Mr.
8 Haben in if you'd like.

9 THE COURT: Please.

10 [Pause]

11 THE MARSHAL: All rise for the jury.

12 [Jury in at 12:53 p.m.]

13 THE COURT: Thank you. Please be seat. All right. The
14 Court is in order. We have a number of people who are watching the TV
15 remotely during this trial. And unfortunately, right now the video is not
16 working for you. We're working to get that fixed.

17 Plaintiff, please continue.

18 MR. ZAVITSANOS: Thank you, Your Honor. And may it
19 please the Court, counsel.

20 BY MR. ZAVITSANOS:

21 Q Okay, Mr. Haben. I think we left off on the Wizard of Oz,
22 right?

23 A I believe so.

24 Q Okay. So Data iSight. First of all, Data iSight, that sounds
25 like an oppressive sounding name. Do you agree?

1 A I'm not a marketing guy. I wouldn't know.

2 Q Okay. Give me one second. Let's go back to Exhibit 43.

3 [indiscernible] this Data iSight.

4 MR. ZAVITSANOS: You got it, Michelle? Is the TV off?

5 [Pause]

6 MR. ZAVITSANOS: Okay. So please pull out the background
7 section.

8 BY MR. ZAVITSANOS:

9 Q Okay. So this is in July 2016. We looked at it a little while
10 ago. And in describing Data iSight internally within United, you all said
11 that it is a legally sound process. See that?

12 A I do see that.

13 Q Okay. As opposed to this random calculated amounts -- or
14 excuse me. As opposed to our random calculated amounts, right?

15 A I see that.

16 Q Okay. You remember reviewing with Mr. Fineberg, in your
17 deposition, some materials on Data iSight?

18 A You'd have to refresh my memory.

19 Q Would you please get the binder with Exhibit 413?

20 A Just a minute.

21 Q And while you're getting that, Mr. Haben, before United
22 started using Data iSight, it received materials from MultiPlan about the
23 benefits of Data iSight, correct?

24 A Yes, I believe so.

25 Q And you were one of the people that participated in the

1 decision to use Data iSight?

2 A Yes, I was.

3 Q Okay. And this Exhibit 413 is one of the type or materials
4 that Data iSight would provide about how it works, right?

5 A I don't recognize this.

6 Q Do you remember discussing this at your deposition?

7 A Are we looking at the same document?

8 Q Yes, sir. There's a Data iSight logo on the front page.

9 A Okay. I was getting confused as to what was on the screen. I
10 don't remember looking at this document, but you can refresh my
11 memory.

12 Q Well, look on page 3, please. Do you remember Mr. Fineberg
13 going through this with you?

14 A I don't remember. I'm not trying to be difficult. I just don't
15 remember.

16 Q So -- and do you have your deposition up there?

17 A Yes, I do.

18 Q Are the exhibits attached to your deposition?

19 A I don't know how this works. So --

20 Q Here you go.

21 MR. ZAVITSANOS: May I approach, Your Honor?

22 THE COURT: You may.

23 BY MR. ZAVITSANOS:

24 Q The part there that -- the tab 5. And just see if that refreshes
25 your recollection about this document.

1 of Plaintiffs' 413.

2 MR. BLALACK: Your Honor, object to the foundation. The
3 witness didn't write it and did not create it. And it was not produced by
4 any Defendant in this case.

5 THE COURT: Any response, please?

6 MR. ZAVITSANOS: Your Honor, this is the tool that they
7 used, and he said that the representations in here are consistent with
8 what United was discussing internally.

9 THE COURT: Objection is overruled. Exhibit 413 will be
10 admitted.

11 [Plaintiffs' Exhibit 413 admitted into evidence]

12 BY MR. ZAVITSANOS:

13 Q Okay. So now in fairness to you, Mr. Haben, this is a Data
14 iSight document. You see the logo up there?

15 A I do.

16 Q All right. Now let's go through this. Page 2. This is what
17 Data iSight is telling the public about what it does. It says to determine
18 the Data iSight reimbursement amount, the first step is to gather some
19 information about your client. The healthcare provider sends the
20 information on a bill to your health plan. Data iSight uses it to build a
21 comparison group or a benchmark group of claims data. This enables us
22 to compare the charges on your claim against other claims in a manner
23 the provider would find to be fair. You see that?

24 A I do.

25 Q And the provider's name here is Ruby Crest Emergency

1 Medicine, right?

2 A I see that.

3 Q And this whole thing that I just read is fiction because the
4 Data iSight amount always works out, always, always, always, always
5 works out to the amount that United wants to pay.

6 MR. BLALACK: Object to the form of the question.

7 BY MR. ZAVITSANOS:

8 Q Right?

9 MR. BLALACK: Argumentative.

10 THE COURT: Objection sustained.

11 MR. ZAVITSANOS: Let me rephrase.

12 BY MR. ZAVITSANOS:

13 Q Is it correct that the Data iSight amount always works out to
14 either 350 percent when that was in effect or when you dropped it to 250
15 percent it works out to 250 percent every single time?

16 A I don't know if that's true or not.

17 Q Okay. Let's go to the first page. Determining the Data iSight
18 reimbursement amount. And this is a representation of how a -- how
19 Data iSight does this, right?

20 A I don't know this document. So I don't know what it's
21 representing.

22 Q Well, it says the Data iSight reimbursement amount
23 determined for your claim was \$609.28. You see that?

24 A I do.

25 Q Now this column in the far right-hand side, how much is

1 that?

2 A It says \$174.08.

3 Q Okay. Now hold on now. Let's take a look at what's going
4 on here. So this is a claim.

5 MR. ZAVITSANOS: Close this out, Michelle, that one page,
6 page 2. Pull this out.

7 BY MR. ZAVITSANOS:

8 Q This is a claim for Ruby Crest during the relevant time period,
9 one of the claims in this case, right?

10 A I don't know if it's a claim for this case or not.

11 Q Okay. Let me rephrase. It's during the claim period of this
12 case, right?

13 A I believe so.

14 Q Okay. Let's go to the next page. And the way the waterfall
15 worked was the 350 percent you get, according to you, the greater of 350
16 percent or the Data iSight amount, right?

17 A It would be either the 350 percent of Medicare or the Data
18 iSight amount, whichever is greater.

19 Q Okay. So according to this claim form, which is for Ruby
20 Crest, Data -- the Data iSight reimbursement amount determined for
21 your claim was 609.28. You see that?

22 A I do.

23 Q So Data iSight ran its methodology, what's laid here on the
24 second paragraph, and came up with the 609.28, right?

25 A If that's what you're representing they did. They repriced

1 that claim at 609.

2 Q Well, the -- this amount was determined by -- and then it lists
3 a bunch of thing, right, which is their little methodology, right?

4 A Hold on. Yes.

5 Q Okay. So according to this Exhibit 413, what's the Medicare
6 rate?

7 A 174.08.

8 Q If we multiple that by 350 percent -- the 350 percent, that
9 benchmark, comes from United not from Data iSight, right?

10 A Yes. It's guidance, and I can explain why that is.

11 Q That's okay. If we multiply 174.08 by the amount that you
12 want to pay, what does it work out to?

13 A I don't have my calculator. I don't know.

14 MR. ZAVITSANOS: Michael, you got your calculator.

15 BY MR. ZAVITSANOS:

16 Q Will you take his word for it? He's got a trusting face.

17 MR. BLALACK: I'll check it.

18 MR. ZAVITSANOS: He's got an even more trusting face.

19 BY MR. ZAVITSANOS:

20 Q So let's multiply --

21 MR. BLALACK: Don't worry about it. Go with it, Mr. Haben.

22 Okay.

23 BY MR. ZAVITSANOS:

24 Q Okay. Let's multiply 174.08 times 350 percent. What does
25 that work out to?

1 A Is that what the number is?

2 Q Hold on.

3 MR. KILLINGSWORTH: Yeah, 609.28.

4 BY MR. ZAVITSANOS:

5 Q 609.28. Wow. What a coincidence, right, Mr. Haben? It just
6 happens to be exactly what the Wizard of Oz says it comes out to.

7 MR. BLALACK: Object to the form. Argumentative.

8 MR. ZAVITSANOS: Let me rephrase.

9 BY MR. ZAVITSANOS:

10 Q It just happens to be exactly what United wants to pay, right?

11 A It paid per the 350 percent floor.

12 Q Well, sir, internally, you all decided you don't want to pay
13 more than 350. But to be fair, you're going to let Data iSight run these
14 sophisticated calculations and whichever is higher, 350 or Data iSight,
15 that's what you're going to go with, right?

16 A Yeah. There's -- I can explain why.

17 Q No, sir. Is it a coincidence that every single claim in this case
18 that Data iSight has run works out to exactly 350 or 250?

19 MR. BLALACK: Object to the foundation of the question. The
20 witness doesn't know what claims are at issue in the case.

21 THE COURT: Overruled.

22 BY MR. ZAVITSANOS:

23 Q Is it a coincidence, sir, that every single claim in this case that
24 Data iSight used this proprietary methodology comes out to exactly what
25 United wanted to pay?

1 A I don't know all the claims. I haven't looked at all of them, so
2 I don't know.

3 Q Well, this one works out to exactly what United wanted to
4 pay, right?

5 A It works out to 350 percent of Medicare.

6 Q And you don't have an explanation of why, I mean, down to
7 the penny it works out to exactly 350 percent? You don't --

8 A I --

9 Q You don't have an explanation for that?

10 A I think I can try to explain.

11 Q No, sir. Do you have any documents that we can look at
12 about why this coincidence took place?

13 A I wouldn't characterize it as a coincidence. And I can explain
14 why.

15 Q By the way, if we go to page 5 of this same document -- oh,
16 and by the way, on that discount from the bill charge down to this
17 patented, computerized, proprietary methodology, Data iSight, MultiPlan
18 got somewhere between 7 to 10 percent of that differential, right?

19 A We have to pay them a fee for repricing the claim.

20 Q Okay. So here, part of the same document, Ruby Crest --

21 MR. ZAVITSANOS: Right down here, Michelle. Will you
22 highlight that column across the way?

23 BY MR. ZAVITSANOS:

24 Q Remember we started your examination by saying these CPT
25 codes for emergency room doctors, there's only five of them and the

1 most serious one is 99285, right?

2 A There's only five codes there, yes.

3 Q Yeah. And this one, using this patented methodology for
4 99285, the most serious code, Data iSight, MultiPlan, when they get 20
5 percent or 20 percent of the revenues you guys get, they cut it to exactly
6 what you wanted to pay, right?

7 A They repriced it at 350 percent of Medicare.

8 Q Running their sophisticated technology, it just coincidentally
9 matched what you wanted to pay?

10 A It's not a coincidence. I can explain why.

11 Q No, sir. And by the way, in your deposition when you were
12 asked whether you had an explanation for this, your answer was no, you
13 did not, right? But now you have an explanation?

14 A Well, you asked me -- I don't know the specific claim, but you
15 asked me in general why I thought it paid 350, and I can try to explain
16 that.

17 Q No, sir. Okay. Now, the whole reason we were doing this --
18 let's go to 471, please. I think one of the places we started, Mr. Haben, is
19 allegedly the whole impetus for United doing this is so that you could
20 control premiums --

21 A Can I get --

22 Q -- and bring them in check?

23 A Can I get the document?

24 Q Yes, sir. I'm sorry. My fault.

25 A Okay.

1 Q Okay. This document is something called commercial
2 competitor financial review, right?

3 A Yes.

4 Q Okay.

5 MR. ZAVITSANOS: Go to page 3, please. And let's pull out
6 the top paragraph. Michelle, right here. From here to here.

7 THE WITNESS: Can I just take a peek?

8 MR. ZAVITSANOS: Sure.

9 THE WITNESS: Page 8?

10 MR. ZAVITSANOS: Michelle, highlight here to here.

11 THE WITNESS: Is that page 3 or page 8?

12 MR. ZAVITSANOS: Excuse me. I'm sorry, sir. It's page 3.

13 THE WITNESS: Let me take a look. Okay.

14 BY MR. ZAVITSANOS:

15 Q So while United is leading the pack to try and control
16 healthcare costs by eliminating egregious charges like the one we just
17 saw for 99285, at the same time it is cutting rates by significant amounts.
18 Premiums are going up at a high rate increase, right?

19 A I didn't write this document. I don't know the foundation of
20 it. So I don't know if it's correlated.

21 Q You're charging more, and you're paying less. You're
22 benefiting on both ends, right?

23 A I would disagree.

24 Q Mr. Haben, wouldn't you agree with me that the impetus for
25 this was the concern for members who were paying premiums that were

1 too high? That was one of the alleged concerns that United had, right?

2 A I'm not sure if I'm following your question.

3 Q At the beginning of this five year period, Mr. Haben, I
4 thought you told us that healthcare costs with these egregious billers
5 were causing premiums to go up, right?

6 A Healthcare costs affect premiums.

7 Q So you started substantially cutting reimbursements for out-
8 of-network providers, right?

9 A We started offering programs to our clients to address high
10 medical costs.

11 Q And at the same time you're doing that, and you're paying
12 less and reigning in healthcare costs, you're jacking up premiums, right?

13 A I don't think it says that.

14 Q Okay. Will you please look at Exhibit 273, please? Take a
15 moment to review it, please.

16 A There's 190 pages. Is there a page you want me to look at?

17 Q Is this a presentation for the ENI, employer and individual
18 part of the company?

19 A I'm not familiar with this document, so I don't know what it
20 is.

21 Q Does it have the United logo on it?

22 A It does.

23 Q If you will please turn to page 56?

24 A Can I take a peek?

25 Q Sure. Let me know when you're ready, sir.

1 A Okay.

2 Q Does that page deal with the time period we have been
3 discussing, this 2014 through part of 2019?

4 A Again, I don't know what the document is. I didn't write it. It
5 does have a range in the upper left of 2014 to 2018.

6 Q Does this address premiums during that time?

7 A I don't know if it does.

8 Q Does it have a percentage increase of premiums during that
9 time?

10 A It does have a percentage of increase in the premiums.

11 Q And premiums are one of the things that you and I discussed
12 during your testimony a few days ago, correct, sir?

13 A I said that premiums are affected by medical costs.

14 MR. ZAVITSANOS: Your Honor, we move for the admission
15 of Plaintiffs' 273.

16 MR. BLALACK: Object to the foundation, Your Honor. The
17 witness didn't write it, receive it, and is not involved in its preparation.

18 THE COURT: And did you say 271?

19 MR. ZAVITSANOS: Excuse me, Your Honor. 273 and it is to
20 rebut the statement that Mr. Haben offered while under oath.

21 THE COURT: Objection is overruled. Exhibit 273 will be
22 admitted.

23 [Plaintiffs' Exhibit 273 admitted into evidence]

24 BY MR. ZAVITSANOS:

25 Q Okay. So Mr. Haben, 273 page 56.

1 MR. ZAVITSANOS: Right here, Michelle. Just this. Keep
2 going. No, no, no. Up. I want the whole thing right here. No, no, just
3 the premium increase.

4 BY MR. ZAVITSANOS:

5 Q Mr. Haben, while you're cutting us by up to 85 percent during
6 this time, you're charging members 62 percent higher during that time.
7 You're going up and we're going down, right?

8 A I didn't write the document. I don't know what this means.

9 Q In your opinion, Mr. Haben, which one is more egregious,
10 this or this?

11 A I don't think they're related.

12 Q Which one is more egregious, sir?

13 MR. BLALACK: Objection. Asked and answered.

14 THE COURT: Sustained.

15 MR. ZAVITSANOS: You can close it, Michelle.

16 BY MR. ZAVITSANOS:

17 Q By the first quarter of 2019, Mr. Haben, the rate for
18 emergency room doctors under this proprietary methodology, Data
19 iSight, it had dropped to 250 percent, right, sir?

20 A Sorry. Can you ask it again, please?

21 Q By the first quarter of 2019, the rate for emergency room
22 doctors, under this OCM, Data iSight, SSPE, shared savings, benchmark,
23 yada yada, it had dropped to 250 percent of Medicare, right, which is a
24 60 to 70 percent reduction off of our billed charges, right?

25 A You're confusing me a little bit with all the programs you

1 threw in there.

2 Q You got your deposition there?

3 A Yeah, which page?

4 Q Go to page 121. Line 19.

5 A Okay. Let me get there.

6 Q Yes, sir. 121, line 19.

7 "Q Does that refresh your recollection that in the Q1 of 2019 that
8 United reduced the OCM emergency room rate to 250 percent of
9 Medicare?

10 "A Yes, it does."

11 Did I read that correctly?

12 A You did.

13 Q Why did you do that?

14 A Why did we drop it down to 250, the benchmark?

15 Q Yeah. Yeah, why did you do that?

16 A Because that was still a premium above Medicare rate. It
17 was more in line with the market and what our clients wanted.

18 Q And remember we looked at Exhibit 43 --

19 MR. ZAVITSANOS: Pull that up, please. First paragraph.
20 Right there, Michelle.

21 BY MR. ZAVITSANOS:

22 Q We talked about this, Mr. Haben?

23 A Yeah, can I --

24 Q Yeah, yeah. Sure. Absolutely. Please take your time.

25 MR. ZAVITSANOS: Yep. And Michelle, you got a line thing

1 going on. Okay. All right.

2 BY MR. ZAVITSANOS:

3 Q So before Data iSight, the cuts were random, populated
4 amounts, right?

5 A That's incorrect.

6 Q But if Data iSight is doing whatever you want to do, and it's
7 coming out to exactly 350 or later, 250, does that tell you, Mr. Haben,
8 that you're really not doing this, the legally sound process, you're still
9 doing this random, calculated amounts just because you can?

10 A I would disagree, and I can explain why.

11 Q No, sir. Now, let's -- please go to Exhibit 229 and take a
12 moment to look at this, please?

13 MR. ZAVITSANOS: Is that in, please?

14 MR. KILLINGSWORTH: It's in.

15 MR. ZAVITSANOS: Okay. That's in. Let's go to page 3.

16 Okay. She's going to pull it up while you're getting there. Right here,
17 Michelle, circle -- a lot faster -- right here to here. And this is -- oh, I'm
18 sorry, Michelle, I need the date. Can we get the top in? Okay. Right
19 there. A little further down. Perfect. And Michelle, right here, can you
20 highlight this one fully?

21 THE WITNESS: Which page, please?

22 MR. ZAVITSANOS: It's page 3.

23 BY MR. ZAVITSANOS:

24 Q Okay. So here you are, here you all are, internally saying
25 you're going to drop it from 350 to 250. And it's going to be 250 of

1 Medicare or Data iSight, whichever is greater, right?

2 A That's correct. It's the floor.

3 Q Mr. Haben, are you aware of even one document anywhere
4 where the Data iSight rate exceeded these two numbers? Did that ever
5 happen?

6 A The --

7 Q For the claims at issue in this case, or otherwise?

8 A I don't know if I can answer that question.

9 Q Well, we looked at one example, where it worked out to
10 exactly 350, right?

11 A The example you had was 350.

12 Q Yeah. Okay. So if we go to page 8, of the same document,
13 right here. Who's Jacqueline, is it Buccini?

14 A I believe that's how you pronounce her name.

15 Q Okay. Out-of-network strategy and affordability, right, she's
16 the manager of that?

17 A Correct.

18 Q Well, okay, "Hi Mark, we're thinking we would like the lower
19 OCM paid amounts for professional emergency services from 350 to
20 250," right?

21 A That's what that says.

22 Q Who is she writing to?

23 A I believe it's Mark Edwards at MultiPlan.

24 Q But, I thought MultiPlan is the umpire. I thought they were
25 supposed to be objective? Say what? They're supposed to be objective,

1 right?

2 MR. BLALACK: Object to the form. Argumentative.

3 THE COURT: Overruled.

4 BY MR. ZAVITSANOS:

5 Q They're supposed to be objective, right?

6 A MultiPlan is the administrator of the repricing engine for us.

7 Q Yeah. So this, Mr. Haben, is a wink-wink. We set your Data
8 iSight engine to come out to 250. That's what this is, right?

9 A I disagree, and I can explain why.

10 Q No, sir. You all are writing to MultiPlan, and you're telling
11 them that you want to lower the amount, right?

12 A We're asking them to adjust the repricing engine.

13 Q To what?

14 A Instead of the 250 --

15 Q Adjust the repricing engine? Is that what you just said?

16 A Yeah, and I can explain why.

17 Q The engine is Data iSight?

18 A No, because we have criteria we need to meet for the
19 Affordable Care Act.

20 Q Data iSight is sometimes referred to as the Data Pricing
21 Engine, right?

22 A It's a machine.

23 Q Do you know what a Freudian slip is?

24 A I believe so, yeah.

25 Q Did you just do one of those, a Freudian slip?

1 A No, it's a -- Data iSight is a repricing engine.

2 Q Okay. And by the way, when you did this, dropping it from
3 350 to 250, you as the head of out-of-network, you have no idea what
4 analysis United did before using this out-of-network rate for emergency
5 room doctors under OCM to 250 percent, correct?

6 A I don't know what you're asking.

7 Q You have no idea what type of analysis, if there was any,
8 United did, before doing what we're looking at up on the screen? They
9 just did it, right?

10 A That's a mischaracterization.

11 Q Open your deposition, page 138. 138, line 17.

12 "Q Okay. So let's talk about that change. What analysis did
13 United conduct prior to reducing the OCM rate from 350 percent of
14 Medicare to 250 percent of Medicare?

15 "A I don't know specifically, but I believe we looked at the par
16 median rates and determined the par median and the aggregate, which
17 was less than 200. So we could safely move from 350 to 250 and still be
18 in compliance with PPAC.

19 "Q Did you conduct any other analysis, other than looking at the
20 par median rates?

21 "A I don't know if we did."

22 Did I read that right?

23 A Yes, you did.

24 Q Okay. You began the answer with you don't know
25 specifically what was done, right?

1 A Right. I did not conduct the analytics.

2 Q But this was your program. OCM was your program.

3 A OCM was an out-of-network program, yes. And I didn't do
4 the analytics.

5 Q And I mean you don't even know if there was a written
6 analysis done, right?

7 A I don't know.

8 Q Yeah, you don't know specifically if there was or was not a
9 written analysis done, even though you were the guy in charge, right?

10 A Correct. I trust my group.

11 Q Thank you, sir. And you don't know if a written analysis was
12 done, but if we go to page -- is 418 in?

13 THE COURT: I show that it is.

14 MR. ZAVITSANOS: Okay.

15 THE COURT: Defendant do you show 418 is admitted?

16 MR. BLALACK: Your Honor, I think that's a conditional, I
17 thought.

18 MR. ZAVITSANOS: No, I thought it was --

19 MR. BLALACK: Oh, it's in. My apologies. It is in, Your
20 Honor.

21 MR. ZAVITSANOS: 418.

22 THE COURT: Just a minute.

23 THE WITNESS: Can I get it?

24 MR. ZAVITSANOS: Sure. And Michelle while Mr. Haben is
25 doing that, can we from here to here, please? And Michelle, follow me

1 here. Highlight this, and highlight this, and then highlight attachments.

2 Okay.

3 THE WITNESS: Can I just --

4 BY MR. ZAVITSANOS:

5 Q So this is --

6 A Can I take a look please?

7 Q Sure. Take your time.

8 [Witness reviews document]

9 A Okay. I can -- I'll ask questions if I need to.

10 Q So this is Ms. Paradise writing to you with an attachment,
11 right?

12 A I believe so.

13 Q And go to the -- go to page 3, please. Who prepared this
14 attachment?

15 A I believe I probably did.

16 Q Yeah, page 3, Exhibit 1 -- 418, page 3.

17 MR. ZAVITSANOS: Pull out the whole thing, Michelle. And
18 please highlight the name.

19 BY MR. ZAVITSANOS:

20 Q Is that you?

21 A That's my name.

22 Q Okay. So this is a privileged and confidential report. Let's go
23 to the next page, page 4. Okay. This is a little hard to read, Mr. Haben.

24 A Yeah, I'm not able to read it.

25 Q Okay. Here's what I'm going to --

1 MR. ZAVITSANOS: Michelle, can you close this out? And I
2 want you to pull out this part right here. See if we can read it a little
3 easier. The report that Mr. Haben prepared. Okay.

4 BY MR. ZAVITSANOS:

5 Q So this is your report, right?

6 A Yes. My team helped me put it together.

7 Q Thank you. Okay. Okay. So effective March of '19, ASO
8 Professional -- now, that's ER doctors -- that includes ER. doctors, right?

9 MR. ZAVITSANOS: Hold on, Michelle.

10 BY MR. ZAVITSANOS:

11 Q That includes ER doctors, professional, right?

12 A I am not always -- ERs are not always in the professional
13 services.

14 Q The doctors, sir. Not the facilities.

15 A I'm sorry, but I've got to look at the context.

16 Q Anyway, well, let me keep going.

17 A Okay.

18 Q ASO professional and facility ER reimbursement reduced
19 from 350 to 250 of CMS or Data iSight, whichever is greater, right?

20 A Yes, I do see that.

21 Q So you prepared the report identifying what's going to
22 happen, but you don't know what documentation there is to justify that?

23 A My team put the report together, and I presented it.

24 Q It's got your name on it, sir.

25 A Yeah, but I don't write all my documents.

1 Q Okay. I mean Mr. Haben, you all just kind of reached in the
2 pocket and just pulled out a number, right?

3 MR. BLALACK: I object to form. Argumentative.

4 THE COURT: Sustained.

5 BY MR. ZAVITSANOS:

6 Q Mr. Haben, you just picked whatever number you wanted,
7 right?

8 A I disagree.

9 MR. ZAVITSANOS: Michael is 273 in?

10 MR. KILLINGSWORTH: Yes.

11 BY MR. ZAVITSANOS:

12 Q All right. Let's go back to 273, page 2.

13 A Okay. Let me get it.

14 Q Yes, sir. And this is November of '19. Towards the latter part
15 of the timeline. Okay. So please go to page 8. Now we've seen similar
16 language in other documents. In '16, in '17, in '18. Now we're in '19.
17 And what you all are telling yourselves internally is there's an
18 opportunity every second to achieve high margins, right?

19 A I don't know this document. I didn't write it.

20 Q That's what it says, right?

21 A Where does it say that?

22 Q At the top.

23 A Oh, I'm sorry.

24 Q In big letters.

25 A Yep, I see it.

1 Q Okay. And the other thing it says is ASO profitability is
2 driven heavily by making the customer buy the extended warranty of the
3 rustproofing.

4 MR. BLALACK: Object to form. Argumentative.

5 THE COURT: Overruled.

6 THE WITNESS: Where does it say that?

7 BY MR. ZAVITSANOS:

8 Q ASO profitability is driven heavily by add-on sales and
9 shared savings pricing. Mechanisms deployed by nationals, right?

10 A That's what that says.

11 Q Yeah. So the PMPM, that's the one fee. But then the add-on
12 fees, like the percentages for this new PCOC mechanism, that's going to
13 help achieve high margins, right?

14 A I don't agree with your statement.

15 Q So Mr. Haben, if you are charging more in premiums, and
16 you're paying way less, and you're constantly cutting, premiums are
17 going up and reimbursements are going down, profits are going to be at
18 record levels, right?

19 A I would disagree.

20 Q The profits United had in '19 were at record levels, right?

21 A I don't know that.

22 Q Exhibit 220. And let's please -- oh, hold on. Exhibit 220,
23 page 1.

24 A Okay. I need to get that.

25 Q Yes, sir.

1 MR. ZAVITSANOS: Michelle, will you pull up the title and the
2 date, please?

3 BY MR. ZAVITSANOS:

4 Q Okay.

5 A Can I get there, please?

6 Q Yes, sir.

7 A Okay.

8 MR. ZAVITSANOS: And let me ask counsel first, Your Honor,
9 if he has an objection to 220, and also if he has an objection to 380.

10 MR. BLALACK: I believe 220 has been conditionally
11 admitted, Your Honor.

12 MR. ZAVITSANOS: Yeah, I'm asking for unconditional
13 admission of 220 and the admission of 380. And I just want to ask
14 counsel first, before I go through this.

15 MR. BLALACK: No objection to 380. And on 220, no
16 objection to 220.

17 THE COURT: Exhibits 220 and 380 will be admitted.

18 [Plaintiffs' Exhibit 220 and 380 admitted into evidence]

19 BY MR. ZAVITSANOS:

20 Q 220, page 8. SSPE utilizes a vendor that prices the claims.
21 Now there's some proprietary pricing logic. You see that?

22 A I do.

23 Q That sounds official. Would you agree?

24 A It sounds like it's proprietary.

25 Q Okay. Proprietary means we're going to -- that there's a

1 secret way that we do this, and I can't really tell you. Like the formula to
2 Coke, that's proprietary, right?

3 A Which question are you asking me?

4 Q The formula to Coke is proprietary. That's what people
5 typically say, right?

6 A I would assume so.

7 Q Okay. Propriety means you're not going to get to go behind
8 the curtain and see what the reserve officer is doing, right?

9 A I would disagree with that characterization.

10 Q Let's now go to Exhibit 380 and see if we can get to the
11 bottom of this Data iSight issue. 380. Out --

12 A Can I get it?

13 Q Yes, sir, please.

14 MR. ZAVITSANOS: And Michelle, while he's doing that, let's
15 go to page 10, please. Okay.

16 THE WITNESS: Can I just --

17 MR. ZAVITSANOS: Further down, Michelle.

18 THE WITNESS: Can I just take a quick peek, please?

19 MR. ZAVITSANOS: I just need the part on Data iSight. All
20 the way down. Okay. And Michelle follow me here. Right here,
21 Michelle. Highlight this last sentence.

22 THE WITNESS: Can I just --

23 MR. ZAVITSANOS: Sure.

24 THE WITNESS: -- take a look, please. What page are you on?
25 What page?

1 MR. ZAVITSANOS: I'm on page 10.

2 [Witness reviews document]

3 THE WITNESS: Okay.

4 BY MR. ZAVITSANOS:

5 Q Mr. Haben, that sounded pretty darn official.

6 A What does?

7 Q That definition. I mean it's a bunch of big words, and
8 acronyms, and sources, right?

9 A It's very complex.

10 Q It's very --

11 MR. BLALACK: Objection. Compound.

12 THE COURT: Objection sustained.

13 BY MR. ZAVITSANOS:

14 Q This is very complex?

15 A It's complex.

16 Q Yeah. Have you ever seen -- has it ever been demonstrated
17 to you exactly how this proprietary method works, sir? Have you ever
18 seen it operate?

19 A No, I have not seen the mechanics of it.

20 Q What does that last sentence mean? A median conversion
21 factor is applied. What does that mean?

22 A I don't know. You will have to ask Data iSight.

23 Q Well, this is a United document.

24 MR. ZAVITSANOS: Page 1, please, Michelle.

25 BY MR. ZAVITSANOS:

1 Q This is a United document concerning the out of network
2 cost management programs, right, while you were in charge?

3 A I don't know the date of this. Does it have a date on it?

4 Q I don't know, sir. This is your document. Do you know when
5 this document was created?

6 A I'm not super-familiar with it.

7 MR. ZAVITSANOS: Well, back to page 10, Michelle. Close
8 that out. I just want the Data iSight form. I want to point out one other
9 thing.

10 BY MR. ZAVITSANOS:

11 Q Sometimes you bury the truth in a bunch of fancy words,
12 right, Mr. Haben?

13 MR. BLALACK: Object to form. Argumentative.

14 THE COURT: Sustained.

15 MR. ZAVITSANOS: Michelle, highlight this. Claims are
16 edited and priced using widely recognized something.

17 BY MR. ZAVITSANOS:

18 Q Do you see that? And other -- and other CMS guidelines.

19 A I see that.

20 Q Like for example, whatever United says 350 percent, that's
21 the guideline. That's what we're going to do, right?

22 A I disagree with that characterization.

23 Q What does that mean, other CMS guidelines?

24 A I don't know. You'll have to ask MultiPlan. I believe this is
25 their language.

1 Q Mr. Haben, we are here in trial, and you understand that we
2 are saying that this Data iSight is garbage? You understand that, right?

3 A I disagree with you.

4 Q Did you think about maybe looking into before you came into
5 Court and explaining to the jury why this really is objective or
6 proprietary, or how they do this?

7 MR. BLALACK: Object to the form. Foundation. Witnesses
8 are on the list. He knows that. That's an improper question.

9 THE COURT: Sustained.

10 BY MR. ZAVITSANOS:

11 Q Mr. Haben, did you personally look into what any of this stuff
12 means in this definition that was put out in your department while you
13 were in charge?

14 A No, I didn't need to.

15 Q Well, let's look at --

16 MR. ZAVITSANOS: Michael is 444 in?

17 MR. KILLINGSWORTH: Yes.

18 BY MR. ZAVITSANOS:

19 Q Okay, let's look at another Data iSight calculation.

20 A Can I go get it? Can I go get it?

21 Q Yes, sir. That's the one we were talking about earlier. That
22 same issue. Let's just remember what we're talking about.

23 MR. ZAVITSANOS: Up here, Michael -- or Michelle.

24 BY MR. ZAVITSANOS:

25 Q That's that AT&T document we went through earlier, right?

1 A Just let me get there, please.

2 Q Sure. The same one, right?

3 A This is the current one? This is a different binder?

4 Q Yes, sir. The one that I handed you, sir.

5 A Okay. The binders look different than what they were before,
6 so I'm assuming it's' the same one.

7 Q Okay. So this is the one we discussed earlier, right?

8 A I'm assuming so. Yeah.

9 MR. ZAVITSANOS: Let's go to page 2, Michelle. And let's
10 see how this proprietary thing works. From here to here, Michelle.

11 BY MR. ZAVITSANOS:

12 Q This is an -- this is an EOB for Ruby Crest on an ASO claim
13 for AT&T, right?

14 MR. ZAVITSANOS: Highlight the first sentence, Michelle.

15 THE WITNESS: Does this go with the Ruby Crest --

16 BY MR. ZAVITSANOS:

17 Q Yes, sir.

18 A -- provider or [indiscernible] device? Okay.

19 MR. ZAVITSANOS: This -- keep going. Right there.

20 BY MR. ZAVITSANOS:

21 Q This service was provided by an out-of-network provider.
22 You paid the provider according to your benefits and data provided by
23 Data iSight. Do you see that?

24 A I do.

25 Q Okay. Now let's take a look at what Data iSight did here. If

1 we go to page 5, all right. Now do you remember we looked at that Data
2 iSight document and the Medicare break was 174.08? Remember that?

3 A Yes.

4 Q Now -- okay. 99285, \$862. Allowed amount is 435, right, sir?

5 A Yes. It's hard to read, but, yes.

6 Q 435.20.

7 MR. ZAVITSANOS: Circle that, Michelle. Actually, can you
8 circle the one above it? It's a little easier to read. 435.20. Okay.

9 BY MR. ZAVITSANOS:

10 Q Now what is 174.08 times 250 percent?

11 A Can Michael do the math?

12 MR. ZAVITSANOS: Michael?

13 MR. KILLINGSWORTH: 435.20.

14 BY MR. ZAVITSANOS:

15 Q 435.20. Wow. What a coincidence? Right, sir?

16 A I --

17 Q That is some coincidence that this sophisticated propriety
18 logic computer engine works out to exactly what you want to pay. 250
19 percent after you drop the rate, right?

20 A I disagree on the characterization it's a coincidence, and I can
21 explain why.

22 Q 174.08 -- I don't want to put Mr. Killingsworth on the stand,
23 so please say yes. 174.08 times 250 percent equals exactly what Data
24 iSight objectively determined using all that fancy language is the
25 appropriate rate, right?

1 A I'm sorry, I'm trying to do the math in my head. So ask the
2 question again.

3 Q You don't take issue with his math; do you?

4 A You asked me to accept it, otherwise you're going to put him
5 on the stand.

6 Q Would you like his calculator?

7 A No.

8 Q It's got some texts there with his girlfriend, don't read those,
9 okay.

10 A No.

11 Q Okay. All right. So ,Mr. Haben, come on, what's going on
12 here? What's going on here?

13 A On his texting?

14 Q No. You got me on that one.

15 A All right. You opened the door. What was your question
16 again?

17 Q What's going on here? How come all these -- how come all
18 the Data iSight things we've looked at, work out to exactly what you
19 want to pay?

20 A I can explain why.

21 Q Let's move on, sir. Will you please get Exhibit 230 and just
22 take a moment --

23 MR. ZAVITSANOS: Let me ask counsel if he's opposed to the
24 first one.

25 MR. BLALACK: No objection, Your Honor.

1 THE COURT: 230 will be admitted.

2 [Plaintiffs' Exhibit 230 admitted into evidence]

3 BY MR. ZAVITSANOS:

4 Q Okay. So --

5 A Can I just get there, please?

6 Q Sure.

7 A Okay.

8 Q By the way, Mr. Haben, I know that I've been asking you
9 questions about UnitedHealthcare, all these shared savings programs,
10 those do not relate to the Health Plan of Nevada or Sierra, correct?

11 A No, they do not.

12 Q Okay. We're going to talk to someone else about that and
13 talk to them about why they were doing what they were doing. You
14 understand?

15 A Understood.

16 Q Okay. Our questions are about the programs you were in
17 charge of, right?

18 A Understood.

19 Q Thank you, sir. Okay. So now we're at 230. And this
20 appears to be a comparison between UMR and UNET. Just -- I know I've
21 asked you this earlier, but just refresh our recollection on what that is.
22 UNET and UMR.

23 A UNET is the claims processing platform in the programs I
24 manage. UMR is the third-party administrator that I do not have
25 responsibility for.

1 Q Okay. So --

2 A I'm sorry, and they're part of UnitedHealthcare.

3 Q -- so UMR is under the United umbrella, right?

4 A UnitedHealthcare.

5 Q UnitedHealthcare. And UnitedHealthcare itself is a third-
6 party administrator, right?

7 A For self-employed groups, you could characterize it that way.

8 Q And in addition to UnitedHealthcare, UMR is also a third-
9 party administrator?

10 A Yes, they are.

11 Q So you've got kind of two parts of United, among others,
12 acting as third-party administrators?

13 A Generally, yes.

14 Q Right. Okay. And I'm not going to ask why.

15 A Yeah.

16 Q And UNET is a platform, right?

17 A It is a claims platform.

18 Q Yes. Okay, so let's go to page 2. And if we could, if we can
19 pull up the bottom part, the very bottom part. UHC and UMR
20 opportunities. All right. First of all, it uses the word opportunity like
21 we've been talking about, right?

22 A It does have the word opportunity.

23 Q And it says we're going to continue the strategy of reducing
24 dollar and Medicare thresholds, right?

25 A Yes, it does say that.

1 Q We're just going to keep -- that snowball is going to keep
2 going downhill, right?

3 A I disagree with that characterization.

4 MR. BLALACK: Objection. Argumentative.

5 THE COURT: Overruled.

6 BY MR. ZAVITSANOS:

7 Q That snowball is going to keep going downhill, right?

8 A I disagree with that characterization.

9 Q Okay, continuing. It says you're going to redesign for both
10 -- both sides, redesign shared savings revenue model to transition into
11 total cost of care model. Do you see that?

12 A I do see that.

13 Q Okay. So you're going to keep making the same amount of
14 money, you're just going to call it something else, right?

15 A I disagree with that characterization.

16 Q And you're doing it all in the name of egregious billing
17 practices, right?

18 A It's not just that.

19 Q What does it mean redesign shared savings revenue model
20 to transition into total cost of care model? I'm going to give you the
21 floor, Mr. Haben, and you explain all you want.

22 A I did not write this document. I believe finance did. So I
23 don't know if I can answer their question on what they mean by total
24 cost of care in the revenue model.

25 Q So you know some of the casinos here in town, I'll get fliers

1 from them periodically that say, hey, come out to Las Vegas, we'll give
2 you a discounted room rate. And when I show up, I see they're charging
3 me a resort fee. When you add those two together, it's what the old
4 room rate used to be. You follow me?

5 A Yeah.

6 Q That's what you're doing here, right?

7 A I disagree.

8 MR. ZAVITSANOS: Your Honor, how long have we been
9 going?

10 THE COURT: It's a good time for a break. It's 2:06, and we
11 started back at 12:52. So let me give you the admonition.

12 This will be our afternoon recess, or after lunch recess.
13 During recess don't talk with each other or anyone else on any subject
14 connected with the trial. Don't read, watch, or listen to any report of or
15 commentary on the trial. Don't discuss this case with anyone connected
16 to it by any medium of information, including, without limitation,
17 newspapers, television, radio, internet, cellphones or texting.

18 Don't conduct any research on your own relating to the case.
19 Don't consult dictionaries, use the internet or use reference materials.
20 Don't do any social media. Don't talk, text Tweet, Google issues, or
21 conduct any other type of book or computer research with regard to any
22 issue, party, witness, or attorney involved in the case.

23 Do not form or express any opinion on any subject
24 connected with the trial until the jury deliberates. It is now 2:07. Let's be
25 back at 2:20 sharp.

1 THE MARSHAL: All rise for the jury.

2 THE COURT: Sir, you may step down.

3 THE WITNESS: Thank you.

4 [Jury out at 2:07 p.m.]

5 [Outside the presence of the jury]

6 THE COURT: So a couple of things. Brendon has to reboot
7 the system to get the audio to work. And you now have 189 people on
8 the phone. So I'll see you at 2:20.

9 MR. ZAVITSANOS: Thank you.

10 [Recess taken from 2:07 p.m. to 2:20 p.m.]

11 THE COURT: Please remain seated. Can we bring the jury?

12 MR. ZAVITSANOS: From the Plaintiffs, Your Honor, yes.

13 MR. BLALACK: Can we bring Mr. Haben, in, Your Honor?

14 THE COURT: Thank you.

15 [Pause]

16 THE MARSHAL: All rise for the jury.

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

18 THE COURT: Thank you. Please be seated. Plaintiff, please
19 continue.

20 MR. ZAVITSANOS: Thank you, Your Honor. If it may please
21 the Court, counsel. Michelle, will you please pull up Exhibit 376?

22 BY MR. ZAVITSANOS:

23 Q Okay, Mr. Haben. In the movie, The Wizard of Oz, when they
24 complete the tasks that the Grand Wizard tells them to complete, they
25 come back to the Great Hall. And Toto goes up to the curtain, pulls the

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1 curtain. And the wizard says, ignore the man behind the curtain. Don't
2 look behind the curtain? Remember that?

3 A I do.

4 Q Okay. This Data iSight tool. It's correct that before this trial
5 started, TeamHealth -- before all this stuff was assembled and we got all
6 these documents, TeamHealth attempted to try to understand how it
7 works, right?

8 A I don't know if that's true or not.

9 Q Well, let's look at 376.

10 MR. ZAVITSANOS: Michelle, there's an email that straddles
11 pages 2 and 3. Can we pull that up, please? The front two, down to the
12 bottom. Right there. Thank you, Michelle. All the way to the bottom.
13 Keep going. Keep going. Nope -- oh, yeah. Okay, I see what you're
14 doing.

15 BY MR. ZAVITSANOS:

16 Q Okay, so. "Subject: Data iSight TeamHealth"; do you see
17 that?

18 A I do.

19 Q Okay. And it looks like this Michael -- and I may be
20 mispronouncing it, so forgive me if I do -- McEttrick is with MultiPlan. Do
21 you see that signature line at the bottom?

22 A I do.

23 MR. ZAVITSANOS: Michelle, can you highlight, that please?

24 BY MR. ZAVITSANOS:

25 Q And he's a vice president like you, right? With MultiPlan?

1 A He is a vice president.

2 Q Okay. And this Mike Bandomer and Susan Dominey; they're
3 with United, right? Oh, excuse me. No. They're with -- they're also with
4 MultiPlan Data iSight, right?

5 A I don't know who they are.

6 Q Okay. We're going to catch up in just a minute, but let's see
7 what this email says. From Mr. McEttrick to these two people.

8 MR. ZAVITSANOS: Okay. Hold on, Michelle. Don't highlight
9 anything -- actually, let's get rid of all the highlighting. Okay.

10 BY MR. ZAVITSANOS:

11 Q "Good afternoon, Susan and Mike. Have you ever met with a
12 provider to provide some general education on Data iSight? Bruce's
13 contact at TeamHealth, Kent Bristow, has requested a meeting with
14 someone from our organization knowledgeable about Data iSight to
15 learn more about the pricing methodology. It would mainly be just
16 HCFA" -- what does that stand for, sir?

17 A I'm not sure the acronym. It's what we call [hic-fa].

18 Q Okay, whatever.

19 "It would mainly be just HCFA pricing that impacts
20 TeamHealth. Bruce was planning on including me in a meeting with
21 Kent, but I let him know that neither Sean Crandell nor I have ever
22 discussed this with a provider. We are typically involved on the client
23 side". Do you see that?

24 A I do.

25 MR. ZAVITSANOS: Okay. So let's stop right there. Michelle,

1 right here. So if -- render from here to here.

2 BY MR. ZAVITSANOS:

3 Q So it looks like what that's saying is because the umpire is on
4 team United, they don't talk about this with doctors, right?

5 A No --

6 MR. BLALACK: Objection to form and also foundation.

7 THE COURT: Sustained.

8 BY MR. ZAVITSANOS:

9 Q This is -- this literally says these two people have never
10 discussed this, never, with a provider. "We are typically involved on the
11 client side", right?

12 A They said they have -- nor they have ever discussed, so I'm
13 assuming that means never.

14 Q Yeah. That, "neither Sean nor I have ever discussed this with
15 a provider. We are typically involved on the client side. I am okay with
16 handling the call if needed, but figured I would check in case this is
17 something either of you have more experience handling. It is obviously
18 a fine line to walk with providing enough information to satisfy the
19 provider without going too much in detail about a proprietary pricing
20 methodology that impacts their claims," right?

21 A That's what that says, yes.

22 Q Okay. So let's see what happened.

23 MR. ZAVITSANOS: Let's go -- and this is July 8. And we can
24 go to page 1. At the bottom. From here to here. All the way down.

25 BY MR. ZAVITSANOS:

1 Q Okay. July 10th, 2019. "Mike, if Sean is available this
2 morning, can he join us on the call? Gail really wants you or Sean, and
3 he knows Sean has done this with customers." Customers are you,
4 right? You're the customer? The insurer is the customer?

5 A I didn't write this. I don't know what he means.

6 Q Well, the customers of MultiPlan. I mean, we saw it in the
7 email. They're normally on the insurer side. The customer is the
8 insurance company, right?

9 A So it could be us, Aetna, Cigna, Blue --

10 Q Fair enough.

11 MR. ZAVITSANOS: Michelle, highlight this.

12 BY MR. ZAVITSANOS:

13 Q "We're trying to keep it high-level with TeamHealth," right?

14 A That's what that says.

15 Q Meaning we're going to talk in generalities and use those big
16 fancy terms, but we're not going to look behind the curtain to get a look
17 at who the Wizard of Oz really is, right?

18 A I disagree. You'd have to ask Bruce.

19 Q Well, what we know is you don't fault TeamHealth before we
20 go to trial here. We're trying to understand this because he maybe --
21 maybe if we're getting it wrong, and maybe there is some substitute.
22 You don't fault us for that, do you?

23 A I don't know what Kent's intent was.

24 Q If that was his intent, Mr. Haben, would you agree with me
25 that you don't fault us for trying to figure out before we tie up a court

1 and jurors for a long period of time maybe we got it wrong; let's try to
2 get to the bottom of this?

3 A I have no issue with that.

4 Q Okay. And when we did it, we didn't have Toto to go behind
5 the curtain, right?

6 MR. BLALACK: Objection to form.

7 MR. ZAVITSANOS: Let me rephrase.

8 THE COURT: The objection is sustained.

9 BY MR. ZAVITSANOS:

10 Q When we did that, Mr. Haben, according to this, all we got
11 was the kind of high-level stuff we looked at on that description, which
12 all circulated internally, right?

13 A I don't know what the discussion was. You'd have to ask
14 Bruce.

15 Q Okay. Now --

16 Okay. Okay, Mr. Haben. Let's go to Exhibit --

17 MR. ZAVITSANOS: Michael, there's [indiscernible] please.

18 BY MR. ZAVITSANOS:

19 Q While he's looking for that, let's go to 246, page 3. Okay.

20 A I need -- I need to go get that.

21 Q Sure. Okay. Mr. Haben --

22 A Hold on. Hold on.

23 Q Yes, sir. All right. Now, let me see if we can catch up to
24 where we are here. So we've talked about the wrap networks. We've
25 talked about reasonable and customary. We've talked about OCM. Now,

1 we're at ENRP, right? That's the latest alleged program, right? ENRP,
2 right, sir?

3 A It's a program that we have, yes.

4 Q And this is the one with the single highest discount, right?

5 A ENRP prices at a par median rate.

6 Q This is the one with the highest discount. 70 to 79 percent,
7 right?

8 A Yes.

9 Q And in fact -- and Mr. Killingsworth is looking for it -- there is
10 a later version that says discounts up to 85 percent, right?

11 A The more the providers charge, the deeper the reduction
12 based on the par median.

13 Q There is a later version that says up to 85 percent reduction
14 under this ENRP, right?

15 A I would have to see it. And I'll take a look at it if you find it.

16 Q Now, one thing you told the jury was that ENRP is free, right?

17 A We did not charge for ENRP at that time.

18 Q Right. And so what you did was -- we looked at the
19 documents that talked about repackaging or redesigning. Remember the
20 redesigning documents?

21 A I believe so.

22 Q Now, let's go to Exhibit 354.

23 A It's going to take me a little bit. I got to fold these back.

24 Q Yes, sir.

25 A 354?

1 Q Yes, sir.

2 MR. BLALACK: Hey, John?

3 MR. ZAVITSANOS: Yeah.

4 MR. BLALACK: May we approach, Your Honor?

5 THE COURT: You may.

6 MR. ZAVITSANOS: Michelle, take that down, please.

7 [Sidebar at 2:37 p.m., ending at 2:37 p.m., not transcribed]

8 THE COURT: Thank you, both.

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

10 THE COURT: Yes.

11 MR. ZAVITSANOS: Okay. Okay. Michelle, pull that back up.

12 What exhibit was that?

13 MS. RIVERS: 354.

14 MR. ZAVITSANOS: I'm sorry?

15 MS. RIVERS: 3-5-4.

16 MR. ZAVITSANOS: 3-5-4. Thank you, Michelle.

17 BY MR. ZAVITSANOS:

18 Q Okay, so. Okay. So now, we're in 2019 midyear, end of May,
19 right?

20 A Yes.

21 Q And this is written to the CEO of United, Dan Schumacher,
22 right?

23 A It's -- Dan Schumacher is on there, yes.

24 Q Dan Schumacher is CEO of UnitedHealthcare?

25 A I believe Steve Nelson was the CEO of UnitedHealthcare.

1 Q What was Mr. Schumacher's title at this time?

2 A I believe he was the -- I could be wrong. I thought he was
3 just the commercial book of business CEO.

4 Q Fair enough. The commercial book of business CEO, which
5 covers the area we're talking about, right?

6 A Yes.

7 Q Okay. And it looks like after you all launched this ENRP, and
8 after you -- after the documents we saw that said, we're going to
9 redesign to take Shared Savings and go to Total Cost of Care. After that
10 date, this gentleman is writing to the CEO and says, whatever this Project
11 Airstream is -- which we're going to talk about in a minute. This is one
12 play to replace the Shared Savings earnings stream over time. You see
13 that?

14 A I do.

15 Q So you're migrating over to Total Cost of Care, which is
16 going to raise the PMPM fee. But like the movie, The Blob, you want
17 more and now, you're coming up with something to replace the Shared
18 Savings earnings stream, right?

19 MR. BLALACK: Objection to form. Compound.

20 MR. ZAVITSANOS: Let me rephrase.

21 BY MR. ZAVITSANOS:

22 Q The highest levels of the company are looking at a play to
23 replace this Shared Savings earnings stream, right?

24 A That's what Saurabh has put in there.

25 Q And that is Project Airstream. Naviguard, right?

1 A Project Airstream is a member advocacy program.

2 Q Would you please look at Exhibit 477 before we get into
3 Naviguard? Just so we can button this up?

4 A I got to go get that.

5 Q What's the standard tip on a restaurant bill, Mr. Haben?

6 A I don't know what people's standard is. I give 20 percent.

7 Q I'm sorry?

8 A I don't know what the standard is. I give 20 percent.

9 Q Okay. Now, let's go to 477. And this is, I believe, the latest
10 version of the out-of-network programs before you left.

11 A I don't know the date of this.

12 MR. ZAVITSANOS: Well, actually, don't pull it up yet,
13 Michelle. Can I ask Counsel if he has an objection to it, Your Honor?

14 MR. BLALACK: I have no objection to this exhibit.

15 THE COURT: Okay. And the number again?

16 MR. ZAVITSANOS: 477.

17 THE COURT: 477 will be admitted.

18 [Plaintiffs' Exhibit 477 admitted into evidence]

19 BY MR. ZAVITSANOS:

20 Q Okay. So out-of-network programs; do you see that?

21 A I do.

22 Q Let's go to page 2. And so if the jury wanted to get where
23 this five-year period, we're talking about ends up, they should go to
24 Exhibit 477, page 2 because that lays out all the programs, the latest and
25 greatest, right?

1 A I don't know what you mean by "ends up".

2 Q Well, let me move on.

3 MR. ZAVITSANOS: Now, Michelle, highlight this last one
4 here. "ENRP".

5 BY MR. ZAVITSANOS:

6 Q By this time, the discount off of our bill charge is 85 percent,
7 right?

8 A That's what that says. Yes.

9 Q That means we're getting 15 percent of our bill charge, right?

10 A That also could mean that your bill charges are going up
11 compared to par median.

12 Q That means we're getting 15 percent of our bill charge, right?

13 A To the staffing companies, yes.

14 Q Okay. Now, everybody in our society serves a valuable
15 function, right?

16 A Of course.

17 Q Okay. Would you agree with me that doctors are at least as
18 important as waiters?

19 A Everybody's important.

20 Q Would you agree with me that emergency room doctors are
21 at least as important as waiters?

22 A Extremely.

23 MR. ZAVITSANOS: Okay. Now, Michelle, what was the last
24 exhibit we pulled up? Project Airstream?

25 MR. KILLINGSWORTH: 354.

1 MR. ZAVITSANOS: 354.

2 BY MR. ZAVITSANOS:

3 Q Let's go back to 354.

4 A Can I put this one away?

5 Q Sure.

6 A 354?

7 Q Yes, sir.

8 THE COURT: There's someone on the phone who needs to
9 mute themselves. Hello? This is the judge. There's someone who needs to
10 mute themselves. Someone's on the phone. I think we're better? Thank
11 you. Please proceed.

12 MR. ZAVITSANOS: Thank you, Your Honor.

13 BY MR. ZAVITSANOS:

14 Q Okay, Mr. Haben.

15 MR. ZAVITSANOS: So Michelle, pull up the top email just so
16 we can orient ourselves again.

17 BY MR. ZAVITSANOS:

18 Q Now, this is kind of a business term. But when somebody
19 says, this is the play, that's a vehicle to make money, right?

20 A I disagree. You'd have to ask Saurabh what he meant.

21 Q Well, during your -- how many accounting courses did you
22 take to get your degree?

23 A I have no idea. I don't remember.

24 Q Well, if -- typically, it's about 12 to 14 classes over 4 years;
25 does that sound about right?

1 A It felt like that. Yeah.

2 Q So during those 12 to 14 classes in accounting reading
3 balance sheets and debits and credits, you never heard about what -- this
4 kind of business term; an investment play, a merger play? You never
5 heard that term?

6 A No, not in accounting, no.

7 Q Okay. Well, let's look at what the play is. Let's go to the next
8 page. So the play is Project Airstream.

9 MR. ZAVITSANOS: And let's pull out the date.

10 BY MR. ZAVITSANOS:

11 Q So this is around the time that you all had gotten to this, the
12 15 percent, right? This is the end of the journey for purposes of our
13 five-year discussion, right, Mr. Haben?

14 A I'm sorry. What are you asking me?

15 Q Remember we talked about this five-year time period?

16 A Yes.

17 Q This is at the end of that five-year time period, right?

18 A Oh, I'm sorry. Yeah. Because what -- the time period ends --

19 Q Well, the time period ends in January 2020.

20 A 2020.

21 Q This is towards the backend of it, right?

22 A Yes.

23 MR. ZAVITSANOS: Okay. Let's go to the next page,
24 Michelle. All right. Pull that out. Let's see what's going on here.

25 MR. BLALACK: Counsel? Just, Counsel. Your Honor, just so

1 you know -- may I approach Counsel, Your Honor?

2 THE COURT: You may. Take that down for him. Take it
3 down.

4 MR. ZAVITSANOS: Ma'am? Take it down, Michelle.

5 [Sidebar at 2:48 p.m., ending at 2:48 p.m., not transcribed]

6 BY MR. ZAVITSANOS:

7 Q Okay. Mr. Haben. All right. So here's what we're going to
8 do. So the part I'm going to ask you about, is Multiplan went from
9 being a valuable partner --

10 MR. ZAVITSANOS: Right here. Highlight that, all the way.

11 BY MR. ZAVITSANOS:

12 Q Multiplan is not a problem, right?

13 A It does not say that Multiplan is a problem.

14 Q Wrap networks, i.e. "I.E." means it's some Latin thing, in
15 other words, right?

16 A I don't know what I.E. means, but yeah, I think it means other
17 words.

18 Q Okay. Wrap networks, in other words, Multiplan, perpetuate
19 the out-of-network problem, right?

20 A I didn't write this, but I can try to explain what she's tried to
21 say.

22 Q No, sir. I'm sorry. Oh, wait a minute, so let me get this
23 straight. So even though you don't know what "the play" means, and
24 even though I gave you the opportunity earlier to explain why premiums
25 were going up, and you couldn't, now you want to explain this, right?

1 A Well, I know why the networks are an issue, and I can explain
2 that.

3 Q Let's keep going, sir. Shared savings fees are making United
4 Healthcare uncompetitive, right?

5 A Yes. That's what that says.

6 Q I mean, if you want to be competitive, why wouldn't you just
7 cut the fee, right?

8 A I think in some cases they did.

9 Q Well, okay. Solution? Oh, boy, draining the funding supply,
10 that sound familiar. Draining the funding supply from egregious billers,
11 by pairing,

12 MR. ZAVITSANOS: Circle pairing.

13 BY MR. ZAVITSANOS:

14 Q Referenced-based pricing, ENRP.

15 MR. ZAVITSANOS: Circle that, Michelle.

16 BY MR. ZAVITSANOS:

17 Q With a consumer protection New Co. removing the risk for
18 members, and here's the informed part, and generating a high return on
19 investment revenue migration strategy, right?

20 A Yes. I do see that.

21 Q Okay. So Multiplan was the problem, and what you're going
22 to do is you're going to go to 15 percent, and you're going to start a new
23 company, and you're going to charge for that new company, and you're
24 going to pair it, and that's going to generate a high return on investment,
25 right?

1 A There are some pieces in there that are incorrect, of what you
2 said.

3 Q Is there anything on this page that you know to be wrong?

4 A I didn't write this document.

5 Q But you can explain?

6 A Because you said something that was incorrect.

7 MR. ZAVITSANOS: Okay. Let's go to the next page.

8 Actually, hold on Michelle. Okay, page 6. Okay, so we're still on the
9 play, move this up.

10 BY MR. ZAVITSANOS:

11 Q And this NewCo which is Project Airstream, which is -- which
12 became Naviguard, in connection with ENRP. And by the way, MultiPlan
13 is not involved with the ENRP, right?

14 A No, they are not.

15 Q Right. So right off the bat, not only are you paying even less,
16 you're saving \$300 million a year by not paying Multiplan, right?

17 A If everybody converts over to ENRP, we would not have to
18 use a vendor.

19 Q Yeah. So we're not talking about this ENRP, this new thing,
20 and pairing it with this NewCo, and the purpose of it is a solution; what
21 do you list first, in the list of benefits.

22 MR. ZAVITSANOS: Michelle, highlight that.

23 BY MR. ZAVITSANOS:

24 Q What's first?

25 A I'm sorry, what's -- oh, retains revenue?

1 Q Yeah.

2 A Yes.

3 Q Okay.

4 MR. ZAVITSANOS: So let's now go to page 21. Right there,
5 Michelle. The box, the whole box.

6 BY MR. ZAVITSANOS:

7 Q Okay. There is a path to building a \$200 million business in
8 five years.

9 MR. ZAVITSANOS: Michelle, right here, please.

10 MR. BLALACK: John, what's on the document.

11 THE COURT: Take that down --

12 MR. ZAVITSANOS: I'm not going to mention the --

13 THE COURT: Okay. Thank you.

14 MR. ZAVITSANOS: Okay. Pull that back up, Michelle? Thank
15 you, counsel. Pull that back up, please, it's page 21. Okay. Pull it up.

16 BY MR. ZAVITSANOS:

17 Q And I'm not going to read the numbers, Mr. Haben, I'm just
18 going to have Michelle highlight --

19 MR. ZAVITSANOS: Michelle, follow me, right here, the third
20 right, all the way across, all the way across. And if you will circle this
21 last line. Okay. And Michelle, will you please highlight this.

22 BY MR. BLALACK:

23 Q So I'm not going to mention the number, but that's up on the
24 screen, right, sir, in a circle?

25 A Which number?

1 Q The number of what you are projecting this NewCo --
2 MR. ZAVITSANOS: Michelle, I need you to keep those
3 highlights on this. And circle that number, please. Thank you, Michelle.

4 BY MR. ZAVITSANOS:

5 Q Okay. So this Naviguard -- the project that became
6 Naviguard, this is the projection now, right, of what -- where you want to
7 end up by 2024, right?

8 A That's from the Ventures Group.

9 Q Right. And this is in addition to this migration to the TCOC
10 fee that we've talked about, right?

11 A I disagree.

12 Q Okay.

13 MR. ZAVITSANOS: Take that down, Michelle. Okay. Let's
14 go to page 26.

15 BY MR. ZAVITSANOS:

16 Q Okay. Problem Gap solution detail. Do you see that?

17 A I do.

18 Q All right. So --

19 MR. ZAVITSANOS: Highlight, Michelle.

20 BY MR. ZAVITSANOS:

21 Q What does Gap mean, do you know?

22 A I don't know. You'll have to ask who wrote the document.

23 Q Is that a [indiscernible] store. It's a joke. Okay. MultiPlan or
24 other wrap networks perpetuate the problem, right?

25 A That's what that says.

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1 Q And it looks like this, this NewCo --

2 MR. ZAVITSANOS: Right here Michelle. Right here, not that,
3 the next right, beside it.

4 BY MR. ZAVITSANOS:

5 Q This NewCo is designed to replace shared savings. What is
6 that IOI?

7 A Internal operating income.

8 Q Okay. So this new play, that was sent to your CEO, is
9 designed to replace --

10 MR. ZAVITSANOS: Circle "replace" Michelle.

11 BY MR. ZAVITSANOS:

12 Q The shared savings internal operating income, right?

13 A That is not what that says.

14 Q Oh, the Gap is no revenue model to replace shared savings
15 internal operating income, right?

16 A That's what that does say.

17 Q Okay. Well, let 's go down here. The last bullet point, on the
18 right-hand side. And this NewCo is Naviguard, you're going to hold
19 them out as being a third party. In other words, they're not going to
20 have "United" in their name, so that people don't associate them with
21 United, so that you could tell clients you're going to a third party, just
22 like you went with Multiplan. But instead of Multiplan getting the
23 money, you're getting it, right?

24 A If you were to ask them who wrote that.

25 Q Well, positioning entity as a third party enables United

1 Healthcare BNI, revenue retention, and growth potential. MultiPlan,
2 Naviguard, they both do the same thing, let's use Naviguard, it's a third
3 party. Right? Just like MultiPlan, we're going to replace one empire with
4 another one, right?

5 A I disagree with how you characterize that.

6 Q Mr. Haben, let me just ask you. So what we've been looking
7 at over the last few days, do you think this shows unchecked greed?

8 MR. BLALACK: Argumentative, Your Honor.

9 THE COURT: Overruled.

10 BY MR. ZAVITSANOS:

11 Q Do you think everything we've looked at, over the last four
12 days, demonstrates uncontrolled, unchecked greed?

13 A I disagree.

14 Q But you do agree this demonstrates greed?

15 A I disagree.

16 Q It's egregious.

17 A Oh, there's context that has to be put around it.

18 Q Well, your lawyer, in opening statement said something like,
19 these are egregious charges that we're seeking in this case. Now do you
20 agree they're egregious, or not?

21 A I don't know if he was referring to that, or not.

22 MR. ZAVITSANOS: Okay. Take it down, Michelle. So let's
23 go back. Hold it. 236, is that in Michael?

24 MR. KILLINGSWORTH: Yes.

25 BY MR. ZAVITSANOS:

1 Q Have you ever given blood?

2 A Can I go and get it?

3 Q Yeah. And by the way --

4 A Okay.

5 Q Are you telling the jury that it was 12 to 14 accounting
6 classes that you took the term enterprise value never came up?

7 A I don't remember, that was 30 something years ago.

8 Q All right. Enterprise value. TCOC, total cost of care, right?
9 Right?

10 A Yes.

11 Q Okay. That's the new model, that we looked at, right? That's
12 the new model that we looked at earlier, that we're going to move away
13 from short savings, into total cost of care?

14 A No, I disagree.

15 Q Okay. Well, I want to go back and cover it; so let's move on.
16 Have you ever given blood?

17 A Yes, I have.

18 MR. BLALACK: Your Honor, objection. Relevance?

19 MR. ZAVITSANOS: Well, I was going to get to it.

20 THE COURT: No. It's foundational. Overruled.

21 BY MR. ZAVITSANOS:

22 Q And when they stick that needle in your arm, and they pull
23 blood out of it, do they extract it; is that extracting blood?

24 A I think so.

25 Q Okay. So let's look at 236, and let's go to page 2.

1 MR. ZAVITSANOS: Right there, the top of that box.

2 BY MR. ZAVITSANOS:

3 Q Okay. So we're going to ask Ms. Paradise this, but do you
4 know whether Ms. -- one of Ms. Paradise's favorite words is this word
5 glidepath [phonetic]?

6 A I don't know; you'd have to ask her.

7 MR. ZAVITSANOS: Well, okay. Michelle, highlight that.

8 BY MR. ZAVITSANOS:

9 Q It looks like a short term view from 2019, is reduce non-par
10 spending while creating a glidepath away from ASO shared savings
11 action plan in place. Do you see that?

12 A I do.

13 Q Let's see what the action plan is.

14 MR. ZAVITSANOS: So let's go to Exhibit -- it's the same
15 exhibit, we'll get the page number, please. Let's go to page 11.

16 Michelle, let's pull this whole thing off the shelf. All the way down, all
17 the way down. Keep going. Perfect.

18 BY MR. ZAVITSANOS:

19 Q All right.

20 MR. ZAVITSANOS: First of all, where is it? There it is, right here.
21 Highlight Haben.

22 BY MR. ZAVITSANOS:

23 Q Planning. You're on this planning document, right?

24 A Yes. I see my name.

25 Q Current shared savings revenue for ASO. And what is it in

1 2019? What is this?

2 A It says 1.1 billion.

3 Q And what's the objective; read it out loud.

4 MR. ZAVITSANOS: Highlight that, Michelle.

5 BY MR. ZAVITSANOS:

6 Q Will you please read it out loud? Read it out loud.

7 MR. ZAVITSANOS: Come on, highlight it again.

8 BY MR. ZAVITSANOS:

9 Q Spit all out.

10 A Object --

11 Q Come on, I know you can.

12 MR. BLALACK: Objection, Your Honor.

13 THE WITNESS: I can do it, if you don't interrupt me.

14 MR. ZAVITSANOS: I'm sorry.

15 THE COURT: Objection sustained. Disregard the last
16 comment, please.

17 BY MR. ZAVITSANOS:

18 Q My apology. Go ahead, Mr. Haben.

19 A Are you ready?

20 Q Yes, sir.

21 A "Objective: And created a UHC as ACO model, to contract
22 with clients on total cost of care, and extract" --

23 Q Oh, stop.

24 A Can I -- did you want me to read the whole thing?

25 Q No. I want you to stop right there.

1 A Okay.

2 MR. ZAVITSANOS: Michelle, circle the word "extract." Keep
3 going.

4 BY MR. ZAVITSANOS:

5 Q Go ahead, Mr. Haben.

6 A I'll start over.

7 Q Yes, sir.

8 A "Objective: Created a UHC as a ACO model, to contract with
9 clients on a total cost of care, and extract economics through an
10 administrative fee. "

11 Q And that was you all's plan, right? You'd play in the race, for
12 the total cost of care, and extract the economics through an
13 administrative fee, right?

14 A You would have to ask Sarah, Randy Weinstock, and CBC.

15 Q No. I'm asking the guy who's on the planning committee?

16 A I'm not on that column.

17 Q Did you look at this document, before it went up?

18 A I don't recall the document.

19 Q Well, you see the column that you are part of?

20 A Yes.

21 Q You're going to shift to the total cost of care story?

22 MR. ZAVITSANOS: Highlight that whole thing, Michelle.

23 BY MR. ZAVITSANOS:

24 Q OCM driven approach with reduction in shared savings
25 charge from 35 percent, to be determined, and opportunity to run

1 additional revenue based on total cost of care. Do you see that?

2 A I do.

3 Q Okay. So we're going -- we're going to charge a higher fee,
4 total cost of care, and we're now going to charge for this New Co, that's
5 positioned as a third party. More, more, more. Right, Mr. Haben?

6 A It doesn't say the position of New Co is a new third party.

7 Q Sir, this is the part that you're in charge of; do you see that?
8 This applied fully insured rates and policies to the ASO clients, right?

9 A Yeah. We felt that our ASO clients should have the benefit of
10 what fully insured clients have.

11 Q In other words, on the fully-insured side of the business, by
12 2019 you were already doing this, right?

13 A Clients were asking for a competitive medical cost reduction,
14 yes.

15 Q That's not my question, sir. By 2019, on the fully-insured
16 side, you were already doing this, this total cost of care story, right?

17 A I disagree, that's not applicable to fully insured.

18 MR. ZAVITSANOS: May I ask counsel if there is an objection
19 to 472? And Your Honor, I believe this is also on Defendant's exhibit list.

20 THE COURT: They have initially objected based on
21 foundation, according to my notes.

22 MR. ZAVITSANOS: Yeah. This is also on their list.

23 MR. BLALACK: No, Your Honor. We're not going to object to
24 this one.

25 THE COURT: Oh.

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MR. BLALACK: 472, you said?

MR. ROBERTS: Yeah. It's already been admitted.

MR. ZAVITSANOS: Oh, it has?

MR. ROBERTS: Yes.

MR. BLALACK: So no objection.

THE COURT: 472 is admitted.

[Plaintiffs' Exhibit 472 is admitted in evidence]

BY MR. ZAVITSANOS:

Q Okay. So --

MR. ZAVITSANOS: Michelle, highlight the three bullet points.

BY MR. ZAVITSANOS:

Q Mr. Haben, is this where United is headed?

A Which part?

Q All right. I thought -- I mean, this is -- this is where you're headed, right, 140 percent of Medicare, suggesting to your reasonable and customary customers when they do review, and if they would insist of fair health, cap it at 50 percent, right? That's where we're headed, right, sir?

A I disagree with your characterization.

Q Okay. Well, you see where it says recommendations -- findings and recommendations?

A I do.

Q Okay. I mean, there's talk about 140 percent of Medicare, 110 percent of Medicare, right?

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1 A I see those.

2 Q Down, down, down, while your profits go up, up, up, right,
3 sir?

4 A I disagree.

5 MR. ZAVITSANOS: Your Honor, may I ask counsel if he has
6 an objection to 270, please?

7 MR. BLALACK: One second. No objection.

8 THE COURT: All right. 270 will be admitted.

9 [Plaintiffs' Exhibit 270 admitted into evidence]

10 MR. ZAVITSANOS: Michelle, pull up page 1. All right.
11 Michelle, let's pull up this section here.

12 THE WITNESS: Could I just take a quick peak, please?

13 MR. ZAVITSANOS: Yes, sir. Just let me know when you're
14 ready.

15 THE WITNESS: I will. Okay.

16 BY MR. ZAVITSANOS:

17 Q Okay. Go to the last page of this document.

18 MR. ZAVITSANOS: Close that out, Michelle. Let's go to 270,
19 page 12. No, I need the whole org chart, please. Okay.

20 BY MR. ZAVITSANOS:

21 Q Who's at the top?

22 A Myself.

23 Q Okay. So now let's go back to page 1, the same document,
24 Exhibit 270. And I'm jumping around a little bit. But this is -- this third
25 bullet point is not the ASO business, it's the fully insured business,

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1 meaning where you're acting as the insurer, right?

2 A That is correct.

3 Q And this new program, this ENRB, where you're paying 15
4 percent of the bill charge, has no member protection, right?

5 A In this case, it's a reduction of -- we're paying between 30
6 and 20 percent. And the program has been in place for almost ten years
7 at that point.

8 Q Well, you see where it says, "Minimal member noise?" You
9 see that?

10 A I do.

11 Q Okay. Now, did you -- did you -- under your direction, did
12 you send a letter to all United members that were on the fully insured
13 plans to tell them that if you get balance billed, we'll pay it? Did you do
14 that?

15 A They get an EOB that says they can call if they have
16 questions on the reimbursement.

17 Q Sir, I'm not talking about this fine print that says, call the
18 office if you have a question. My question is when you cut these rights
19 the way you did, did you notify the membership that if you get balance
20 billed, United will pay for it?

21 A There's a message on the EOB.

22 Q That says that? That says what I just said?

23 A I don't know specifically what it says. But to that point.

24 Q Well, the jury can look at the EOB and see if that's on there.
25 My question to you is separate and apart from the EOB. While you were

1 in charge, the head man that we saw, you were at the top --

2 A Uh-huh.

3 Q -- did you issue a directive to the members that a letter needs
4 to go out that clearly and simply says, if you get balance billed, United
5 will pay for it?

6 A No. There's no letter that goes out.

7 Q And so because there's minimal member noise, maybe
8 people pay for it thinking they have to pay for it, what are you going to
9 do?

10 A The State's approve these and allow us to do this.

11 Q The State of Nevada? Are you telling me the State of Nevada
12 approved the CNPRP program?

13 A I'm talking in general. I don't operate the State of Nevada.

14 Q You don't know, do you, whether the State of Nevada has
15 anything to do with the NRP?

16 A I do not. I thought you were asking me in general.

17 MR. ZAVITSANOS: If there's long pauses of silence, it's
18 because I'm skipping stuff, okay, that I think we've already covered.

19 [Pause]

20 BY MR. ZAVITSANOS:

21 Q Pull up 344, please. So Mr. Haben --

22 A Can I get it, please?

23 Q Yes, sir. Please.

24 [Pause]

25 MR. ZAVITSANOS: So Michelle, close this out. And let's pull

1 out right here, the bottom.

2 BY MR. ZAVITSANOS:

3 Q Now, you seem to -- and if this is unfair, Mr. Haben, please
4 let me know. But I thought you gave me a number of I don't know
5 when I was asking you for details or on project air streak. Do you know
6 how that delays the show? It seems that according to this document,
7 you were one of the ones with charges, right?

8 A I think when you asked me, you asked me what that
9 individual intended in that document, that word or word.

10 MR. BLALACK: I don't know what they attempted.

11 BY MR. BLALACK:

12 Q Yeah. I mean, according to this, John Haben was one of the
13 two people tasked with this five-year roadmap critical initiative on
14 project air strength, right?

15 A Yes.

16 Q Page 2. And on page 2, again -- April 2019, right here.
17 You're going to reduce the out-of-network restroom to part or below, do
18 you see that? You see that?

19 A I do. And emergency room physicians are the first movers.

20 Q Oh, that's incorrect. I haven't --

21 A Excuse me, lab DME, and emergency room physicians are
22 the first movers, right?

23 A That's what that says. Yes.

24 Q Okay. That's the part of me that -- but --

25 MR. BLALACK: They were the first movers.

1 Q Yes, sir. Okay. Let's parse that out with Horn? And this
2 sounds a little redundant. But it's from a different medic.

3 BY MR. ZAVITSANOS:

4 Q And this sounds a little redundant, but it's a different
5 document. Let's see. Owe affirmed it, page 5. Very quickly.

6 MR. ZAVITSANOS: Right here, Michelle. Problem gap
7 solution.

8 BY MR. ZAVITSANOS:

9 Q And it looks like one of the problems with the NRP and the
10 reason you couldn't deploy it full scale is the member balance billing
11 risk. You see that?

12 A Yes, I do see that.

13 Q Yes. And this NewCo, this Project Airstream, this -- what is
14 it? Anyway, this NewCo is going to drive customer and revenue
15 retention, right?

16 A That's what that says.

17 Q All right.

18 A And NPS.

19 Q Yeah. So by creating -- so you've cut -- you've cut the
20 reimbursement rates under ENRP. The member is now exposed to
21 balance billing. And now these employers are going to have to pay a
22 surcharge for Naviguard to act as a supplement because of these deep
23 discounts, to help avoid balance billing. That's what that says?

24 A I would disagree with how you characterize that.

25 MR. ZAVITSANOS: Okay. Okay. 478, is that in, Michael?

1 THE WITNESS: Which one?

2 THE COURT: 478.

3 MR. ZAVITSANOS: Let me ask counsel first, Your Honor.

4 And if there is --

5 THE COURT: Go ahead.

6 MR. ZAVITSANOS: Well, let me -- let me look.

7 MR. BLALACK: Your Honor, I think we have a foundation and
8 authentication --

9 THE COURT: You know, it's 3:25. Let's take our last break for
10 the afternoon.

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

17 Do not conduct any research on your own relating to the
18 case. Don't consult dictionaries, use the internet, or use reference
19 materials. Don't post on social media, don't talk, text, Tweet, Google
20 issues, or conduct any other type of research with regard to any issue,
21 party, witness, or attorney involved in the case.

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

24 Let's be back sharp at 3:40. And then we'll be --

25 THE MARSHAL: All rise for the jury.

1 THE COURT: -- we'll go to 4:45 today.

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

3 [Outside the presence of the jury]

4 THE COURT: The room is clear. Plaintiff, do you have
5 anything for the record?

6 MR. ZAVITSANOS: I do, Your Honor. And this 478 merits a
7 special discussion. And if I could -- where's Mr. Fineberg?

8 So Your Honor, this document was not produced by
9 UnitedHealthcare. We found this by accident. And I'm going to let Mr.
10 Fineberg respond to this or address this further. I will note, the request
11 for production's number 6, 7, 18, and 32, would make this document
12 responsive. And I do not think it is appropriate for them to lodge any
13 objection to this document in light of the fact that this was never
14 produced, and it is a very material document. I'm going to let Mr.
15 Fineberg explain how we found it.

16 MR. FINEBERG: Our clients found it in the ordinary course of
17 business through communications with payors. They were looking up,
18 researching, trying to understand how recent claims were being paid.
19 They were directed to Naviguard. Went on the internet, found the
20 website, located the document. That link is no longer active. That link
21 was found within the last week.

22 MR. ZAVITSANOS: And the link was taken down during the
23 course of this case.

24 MR. FINEBERG: We found the document. We have now
25 produced it to the other side and added it to our exhibit list.

1 MR. BLALACK: Okay. Your Honor --

2 THE COURT: Are you prepared to respond? Because if you
3 want a chance to --

4 MR. BLALACK: Well, I can respond with what I know, Your
5 Honor, which is the document that's listed on this exhibit list is Plaintiffs'
6 Exhibit 478, is -- I have no idea what it is. But it's labeled Naviguard sub-
7 funded internal talking points. And then at the bottom, it's dated
8 January 2021, internal only use. So I don't know who created it, where it
9 came from, whose possession it was. And it appears to be some kind of
10 internal document. But it wasn't something that we have. So I'm not
11 able to address authentication of it or foundation for it.

12 MR. ZAVITSANOS: And can we reply, Your Honor? Your
13 Honor, the very first -- can I approach?

14 THE COURT: Only if you show it in here.

15 MR. ZAVITSANOS: At the very top, Your Honor --

16 THE COURT: Hang on. You're talking over each other.

17 MR. BLALACK: I believe I referenced January 2021. And
18 what I referenced is listed up there.

19 MR. ZAVITSANOS: Oh, no, no, no. That -- the rest of the
20 sentence about January 2021 is important. And here's what it says. This
21 is on the very first page, first sentence. "The latest updates are
22 highlighted in yellow as of January 4, 2021." There are very few
23 highlights on this document, meaning there was an earlier version.

24 Now, I do not intend to ask all of the highlights. But Your
25 Honor, this -- this is a document that unequivocally should have been

1 produced in response to the request for production.

2 THE COURT: Well, let's see where we get with the witness.
3 And we'll deal with it from there.

4 MR. ZAVITSANOS: Okay.

5 THE COURT: So it's 3:29. Please be back in 11 minutes.

6 MR. ZAVITSANOS: Yes, Your Honor.

7 MR. ROBERTS: Thank you, Your Honor.

8 THE COURT: And we'll go to 4:45.

9 [Recess taken from 3:29 p.m. to 3:40 p.m.]

10 [Outside the presence of the jury]

11 THE COURT: Thanks, everyone. Please remain seated.

12 What I wanted to bring up off the record is that we are going four days
13 with Mr. Haben. It was represented it would be three. I'm not going to
14 let you -- and you're asking him questions in a repetitive way. I'm not
15 going to let you jam them up that the Defendant doesn't get to put their
16 case on.

17 MR. ZAVITSANOS: Yes, Your Honor. I -- yes, Your Honor.

18 THE COURT: Thank you. Let's bring in the jury.

19 MR. BLALACK: I think we need Mr. Haben, Your Honor.

20 THE COURT: Thanks, everybody, for being ready right at
21 3:40.

22 [Jury in at 3:42 p.m.]

23 THE COURT: Thank you. Please be seated. Plaintiff, please
24 proceed.

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

1 the Court. Okay, Mr. Haben, we're almost done. I think I have probably
2 30 to 40 minutes left.

3 BY MR. ZAVITSANOS:

4 Q All right. Okay. Can you please pull out Exhibit 478, please,
5 and take a moment to look at that for yourself?

6 A Okay.

7 Q While you're looking at that, we just looked at a document
8 that identified you as one of the people in charge of Project Naviguard,
9 right?

10 A The prior --

11 Q You said about this crew?

12 A Yes.

13 Q Okay. Does this document appear to be an update of talking
14 points around Naviguard?

15 A I did not create this. I don't know who did. So I don't know if
16 I could answer that question.

17 Q Well, just read it to yourself. Does it appear to be an update
18 involving talking points about Naviguard?

19 A It's a document that has talking points about Naviguard.

20 Q Which is the project that you were in charge of, right?

21 A Yes.

22 Q Okay. And in looking at this, do you see anything in here
23 that seems out of order or inconsistent with what you understood the
24 purpose of Naviguard was?

25 A I have not read this whole document. I'm not familiar with it.

1 So I don't -- you're asking me about the entire document?

2 Q Yeah. So I'm just trying to finish on time, but if you need
3 time to look at it, my question is whether you see anything in there that
4 jumps out at you that seems inconsistent with what you understood the
5 purpose of Naviguard was.

6 A I haven't read it. It's a 15-page document with a lot of detail,
7 so I couldn't answer that question.

8 Q Look at the section about why you all are developing
9 Naviguard and just read that to yourself and tell me if that seems
10 consistent with what the purposes of Naviguard were.

11 A What's your question again about it?

12 Q Yes, sir. My question is in looking at that section I just
13 directed you to, does that seem consistent with what you understood the
14 purpose of Naviguard was?

15 A Yes.

16 MR. ZAVITSANOS: Okay. Your Honor, we move for the
17 admission of 478.

18 MR. BLALACK: I object on authentication and foundation
19 grounds.

20 THE COURT: You've got to lay a more thorough foundation.

21 BY MR. ZAVITSANOS:

22 Q In looking at the description of what Naviguard is, Mr. Haben,
23 does that seem consistent with what you understood Naviguard to be?

24 A Is that the section above, What is Naviguard?

25 Q Yes. Yes, sir. Yes, sir.

1 A Okay. Let me read it.

2 Q Yes, sir.

3 [Witness reviews document]

4 A Okay. Can you ask your question again?

5 Q Yes, sir. Does the section about what is Naviguard, does that
6 seem consistent with what you understood Naviguard was going to be
7 while you were in charge of it?

8 A Yes.

9 MR. ZAVITSANOS: I move for the admission of 478, Your
10 Honor.

11 THE COURT: You need to authenticate it, as well.

12 BY MR. ZAVITSANOS:

13 Q Does this identify that it is a Naviguard document, sir?

14 A I don't know.

15 Q Well, does it say up at the top, Naviguard ASO?

16 A I'm sorry. It says Description of Naviguard ASO.

17 Q Yes, sir.

18 A That's the header.

19 Q Yes, sir. And look at page three. Are those folks that work
20 with United Healthcare?

21 A Which section? The SMEs and contacts?

22 Q Yes, sir.

23 A The first four, I believe, or three, are Naviguard individuals.

24 Q All right.

25 A The next two are United Healthcare E&I individuals.

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1 Q Okay.

2 A And the bottom three are UnitedHealthcare underwriting. All
3 of them are not part of my group.

4 Q All of them are?

5 A Are not part of my team.

6 Q Okay. But they appear to be under the United umbrella?

7 A Not all of them.

8 MR. ZAVITSANOS: Okay. Your Honor, I move for the
9 admission of 478.

10 MR. BLALACK: I haven't changed our position, Your Honor.

11 THE COURT: Good enough. Objection is overruled. He was
12 in charge of the program. He's testified that it was not inconsistent, that
13 it explained why Naviguard was developed, and at least most of the
14 people listed on there were associated with the program. I find that
15 there's a foundation and it's been authenticated.

16 [Plaintiffs' Exhibit 478 admitted into evidence]

17 BY MR. ZAVITSANOS:

18 Q Okay, Mr. Haben. I'll just try to this quickly as I can.

19 A Okay.

20 Q Okay. So this is a talking points memo and -- later in time.
21 And it looks like at this point --

22 MR. ZAVITSANOS: Michelle, can you pull out this third
23 bullet point?

24 BY MR. ZAVITSANOS:

25 Q Now, is it fair to say, Mr. Haben, that as of the time you left,

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1 which I think you said was August of this year?

2 A Yes.

3 Q There were still a bunch of clients that had reasonable and
4 customary in their plans, right?

5 A I don't know how many had.

6 Q Well, there were some. Will you agree with me on that?

7 There was --

8 A There was more -- there was more than one.

9 Q More than -- okay. Fair enough, sir. Okay. So one of the
10 things you were doing is the key account -- and by the way, key account
11 is sometimes abbreviated KA, right?

12 A That's correct.

13 Q Okay. So if the jury sees KA in the documents, they'll -- that
14 means key account, right?

15 A Yeah, most likely.

16 Q And NA means national account, right?

17 A Yes, another abbreviation.

18 Q Okay. So the key account and national account sales
19 strategy for Naviguard was to roll out and support E&I sales strategies
20 by providing a better option for clients who have remained on
21 reasonable and customary, right?

22 A I see that.

23 Q Okay. So for those clients, at least one, in the ASO contacts
24 that remained on reasonable and customary, you were trying to sell
25 Naviguard to basically do what MultiPlan used to do, right?

1 A That's incorrect.

2 Q Okay. Well, let me just move on and I'm not going to go
3 through the whole document, at least. Let me see if there's anything
4 else we need to cover here. Okay. Let's move on. All right. And like I
5 said, Mr. Haben, if I'm quiet, that means I'm skipping stuff, all right?

6 MR. ZAVITSANOS: Michael, is 360 in?

7 MR. KILLINGSWORTH: No.

8 BY MR. ZAVITSANOS:

9 Q Okay. Mr. Haben, will you look at Exhibit 360, please?

10 A Three six zero?

11 Q Yes.

12 MR. ZAVITSANOS: And while you're doing that, let me ask
13 Counsel -- Your Honor, may I ask Counsel if there's an objection to 360?

14 THE COURT: Yes.

15 MR. BLALACK: No objection, Your Honor.

16 THE COURT: All right, 360 will be admitted.

17 [Plaintiffs' Exhibit 360 admitted into evidence]

18 BY MR. ZAVITSANOS:

19 Q Okay. Mr. Haben, I'll just go through. I have a few loose
20 ends before we get to what's happening in the State of Nevada, okay?
21 So 360 is an email. Let's pull up the top, please. And this is an email to
22 you, among other people, right? And Ms. Paradise.

23 A Yes, I believe so.

24 Q Okay. So this appears to be a revenue --

25 MR. ZAVITSANOS: Pull up the -- this section here, Michelle.

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1 I want to see what the subject matter is.

2 BY MR. ZAVITSANOS:

3 Q The subject matter are national accounts, SSP. Is that shared
4 savings programs?

5 A I believe so.

6 Q Okay. And I think we said this earlier, but when we see SSP,
7 sometimes that means all the programs, right?

8 A It actually depends on the author of --

9 Q Yes, sir. I understand.

10 A Because people get confused.

11 Q Yes, sir. Okay. And here, this says even though there is an
12 SSP program, this is talking about all of them, right?

13 A I don't know what Craig's is actually covering.

14 Q Well, let's take a look real quick.

15 MR. ZAVITSANOS: Close this off, Michelle. And from here
16 to here, please.

17 BY MR. ZAVITSANOS:

18 Q And it looks like on these, on the plans that you still had as of
19 this time in 2019, there were still some plans where you were earning a
20 percentage of the shared savings, right? You still had some OCM clients
21 at this time?

22 A I believe so, yeah.

23 Q And what's going on here is that the revenues were down
24 because there was a decrease in billed charges, right?

25 A Yes, caused by many factors.

1 Q Okay. So billed charges are coming down and that's
2 affecting your revenue on the shared savings plans where you're getting
3 a percentage of the savings, right?

4 A Yes.

5 Q Let's go to page two. And one of the things that happened to
6 cause the revenue to go down is that one of these out of network groups
7 went in network, right?

8 A That is correct.

9 Q And you lost \$42 million of revenue as a result.

10 A That is correct. And I was the negotiator on that contract.

11 Q Okay. So let's close that out and let's go to page four.

12 MR. ZAVITSANOS: Okay. Michelle, let's -- simpler if you just
13 pull out the whole thing. We'll just do this quickly. All the way up.
14 Thank you.

15 BY MR. ZAVITSANOS:

16 Q Okay. So let's do this quickly. So this is a memo going
17 through all the factors why revenue is down from shared savings, right?

18 A I don't remember the context of all of this.

19 Q Well, this is number 11, and the jury can go through the
20 others. But I just want to point out a couple of things. You with me?

21 A Yes.

22 Q Okay. So if we go to C, it says, "based on the data we have
23 received from the out of network team, it appears that billed charges
24 through April of 2019 are actually down seven percent versus the
25 assumed eight percent increase. I believe this gap is driving a large

1 percentage of the projected miss." Do you see that?

2 A I do.

3 Q The "projected miss" being you had assumed you were
4 going to make so much from these percentage of reduction, but because
5 the billed charge dropped, you were going to make less, right?

6 A Yeah. I didn't make those assumptions. I believe Finance
7 made those assumptions.

8 Q Fair enough. But whoever did, that's kind of what it's saying
9 there, right?

10 A I think so. I'm not sure.

11 Q Okay. So -- and all -- I'm not going to go through it and read
12 all this. The jury can do this on their own time. It's Exhibit 360. But all
13 of this stuff that's going on here --

14 MR. ZAVITSANOS: Right here, Michelle.

15 BY MR. ZAVITSANOS:

16 Q -- is causing a significant drop. Right here. This is causing a
17 significant drop in SSP revenue projection, right?

18 A Yes, that's what that says.

19 Q Okay. So Mr. Haben, do you agree that while you are telling
20 the outside world that the problem is that billed charges are too high,
21 internally, United is saying the problem is that billed charges are too
22 low?

23 A I disagree. I can explain. There is --

24 Q No. No, sir. That's -- it's all right. You'll get a chance, I
25 promise. Let's move on. Okay.

1 MR. ZAVITSANOS: Michael, 378 is in, right?

2 MR. KILLINGSWORTH: It is not.

3 MR. ZAVITSANOS: Oh, okay. Let me ask Counsel real quick
4 if he has -- Your Honor, may I ask Counsel if he has a --

5 THE COURT: Yes. Sure.

6 MR. ZAVITSANOS: -- objection?

7 THE COURT: Yes, please.

8 MR. BLALACK: One moment, Your Honor.

9 MR. ZAVITSANOS: I'm sorry?

10 MR. BLALACK: One moment.

11 MR. ZAVITSANOS: Okay.

12 MR. BLALACK: No objection, Your Honor.

13 THE COURT: Two -- I'm sorry, 378 will be admitted.

14 [Plaintiffs' Exhibit 378 admitted into evidence]

15 MR. ZAVITSANOS: Okay. Mr. Haben, I just needed to admit
16 it. We're not going to look through it. I think it's a little repetitive of what
17 we've talked about. Your Honor, may I ask Counsel if he has an
18 objection to 421, please?

19 THE COURT: You may.

20 MR. ZAVITSANOS: Thanks, Your Honor.

21 MR. BLALACK: Court's indulgence. One second. No
22 objection, Your Honor.

23 THE COURT: 421 will be admitted.

24 [Plaintiffs' Exhibit 421 admitted into evidence]

25 MR. ZAVITSANOS: Okay. Mr. Haben, likewise, this one is a

1 little repetitive. But I just want to identify one thing just so we get a little
2 clarity. Michelle, will you pull out the bottom fourth. "And the following
3 benefits program adoption."

4 BY MR. ZAVITSANOS:

5 Q Okay. So this is a document entitled Medical Cost Reduction
6 Best Practices. Do you see that?

7 A I do.

8 Q Okay. So I'm not going to go through it. I just want to ask
9 one thing. There's a sentence here that says, "Perform continuous
10 evaluation and reduction of out of network reimbursement levels for SG
11 and KA-FI." Do you see that?

12 A I do.

13 Q SG stands for what?

14 A Small group.

15 Q Small group.

16 A That's fully insured, by the way.

17 Q And -- right. Hold on. Small group. And KA is key accounts?

18 A Yes. Key accounts says fully insured and ASO. This is the
19 fully insured side.

20 Q Okay. So let me just make sure we're clear here. SG is small
21 groups, KA is key accounts, FI is fully insured, right?

22 A Yes. They're both fully insured.

23 Q All right. Okay.

24 MR. ZAVITSANOS: You can take that down, Michelle.

25 BY MR. ZAVITSANOS:

1 Q Do you all have an ink budget in United? Is that why you use
2 all these acronyms? Okay. Let me move on.

3 A It is a science of its own.

4 Q Yes, sir. Okay.

5 MR. ZAVITSANOS: Michael, is 379 in? It is, right? Yes.

6 MR. KILLINGSWORTH: Yes, it's in.

7 MR. ZAVITSANOS: It is. Okay.

8 BY MR. ZAVITSANOS:

9 Q Okay. Now, Mr. Haben, will you please -- let me --

10 MR. ZAVITSANOS: I'm sorry, Your Honor. Let me ask
11 Counsel, if I may, on 478.

12 THE COURT: Yeah. It's in.

13 MR. ZAVITSANOS: Oh, that's in. That's in.

14 MR. BLALACK: That's in. Are we on 379, Your Honor? I'm
15 lost.

16 MR. ZAVITSANOS: I'm on -- I just need to get a bunch of
17 documents admitted. So 478 I think has been admitted.

18 MR. KILLINGSWORTH: Yes.

19 THE COURT: 478 is admitted.

20 MR. ZAVITSANOS: All right. So here's what I'd like to do.
21 Let's put up -- all right. So here's what I'd like to do. I want to put up
22 Exhibit 464, which we looked at a little while ago.

23 MR. KILLINGSWORTH: 464 has not been admitted.

24 MR. ZAVITSANOS: I'm sorry?

25 MR. KILLINGSWORTH: 464 has not been admitted.

1 MR. ZAVITSANOS: Your Honor, may I ask Counsel if he has
2 an objection to 464?

3 THE COURT: You may. Yes.

4 MR. BLALACK: No objection, Your Honor.

5 THE COURT: 464 will be admitted.

6 [Plaintiffs' Exhibit 464 admitted into evidence]

7 MR. ZAVITSANOS: Okay.

8 MR. BLALACK: Counsel, this is an AEO document, so --

9 MR. ZAVITSANOS: Yes. I'm not going to get opinion on this.

10 MR. BLALACK: Okay.

11 MR. ZAVITSANOS: All right. Let's put up, Michelle, 464,
12 page 1 next to 478, page 14.

13 THE WITNESS: Page what?

14 MR. ZAVITSANOS: Page 14.

15 MR. BLALACK: Counsel -- Your Honor, could I provide
16 counsel this version?

17 THE COURT: Yes.

18 MR. BLALACK: This just may help capture it, if you need it.

19 MR. ZAVITSANOS: Okay. I'm not going to need that.

20 MR. BLALACK: Fair enough.

21 MR. ZAVITSANOS: Okay. So Mr. Haben -- Michelle, let's pull
22 this part out here, talking about OCM. Just this column here.

23 BY MR. ZAVITSANOS:

24 Q I think everybody's got it, but OCM is Data iSight, right?

25 A Yes. I believe so.

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1 MR. ZAVITSANOS: Michelle, will you please highlight this,
2 "member proprietary reference-based pricing".

3 BY MR. ZAVITSANOS:

4 Q And that's what we talked about before the break, right? The
5 Data iSight is a vendor proprietary reference-based pricing, right?

6 A That is correct.

7 Q And when you set up Naviguard --

8 MR. ZAVITSANOS: Michelle, pull up this number two. And
9 let's put it -- I want to compare number two, which is the Naviguard
10 system, compared to the Data iSight system. Can you move it down,
11 please?

12 THE WITNESS: Which document is this one in?

13 BY MR. ZAVITSANOS:

14 Q This is 478. Okay. So let's see if we can figure this out. So
15 when it comes to Data iSight, the way you were pitching it was that it
16 was a proprietary reference-based pricing, right?

17 A Data iSight is a proprietary reference-based pricing.

18 Q And then, when you created Naviguard to replace Data
19 iSight, what you called it was that the pricing is based on proprietary
20 reimbursement logic, situation factors, industry benchmarks, and
21 geographically adjusted. Highlight that whole sentence there. Right?
22 That sounds identical to what we saw about Data iSight, right?

23 A It is not, though.

24 Q It sounds similar? Will you agree with that?

25 A No. I don't agree with that.

1 Q Is what happened here that you replaced one Wizard of Oz
2 with another?

3 MR. BLALACK: Object to form. Argumentative.

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

5 THE COURT: Objection sustained.

6 MR. ZAVITSANOS: Let me rephrase.

7 BY MR. ZAVITSANOS:

8 Q Is what you did, Mr. Haben, when you figured out that Data
9 iSight was just pulling out a number and doing what you wanted, you
10 just used the same language to promote Naviguard?

11 A I disagree. I can explain it.

12 Q No, sir. Okay. Almost done, Mr. Haben. Let me just put this
13 back, please.

14 A Are you done with those documents?

15 Q We're done with this document. Yes, sir. Okay.

16 MR. ZAVITSANOS: Your Honor, can I ask Counsel if he has
17 an objection to 467?

18 MR. BLALACK: Yes, we do, Your Honor. Foundation.

19 THE COURT: Okay.

20 MR. ZAVITSANOS: And Your Honor --

21 MR. BLALACK: And also, Your Honor, may we approach on
22 this one, Your Honor?

23 THE COURT: You may.

24 MR. BLALACK: Very good. Okay.

25 [Sidebar at 4:07 p.m., ending at 4:08 p.m., not transcribed]

1 MR. ZAVITSANOS: Your Honor, may I confer with Mr.
2 Leyendecker for one second, so I don't forget.

3 THE COURT: You may.

4 [Counsel confer]

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

6 THE COURT: Yes.

7 MR. ZAVITSANOS: Thank you, Your Honor.

8 BY MR. ZAVITSANOS:

9 Q Okay. Let's talk about Nevada now and how this state fits
10 into everything we've just talked about, okay?

11 A Okay.

12 Q All right. And this is this is my final point. All right. So
13 Exhibit 66 we looked at it some time ago.

14 A Can I go get it, please?

15 Q Yes, sir.

16 MR. ZAVITSANOS: And Your Honor, while Mr. Haben is
17 reviewing that, may I ask counsel, please, if he's opposed to the
18 admission of 462 and 426, which are --

19 MR. BLALACK: 462 and 4 --

20 THE COURT: 26.

21 MR. ZAVITSANOS: 426.

22 MR. BLALACK: 26. Yes, Your Honor, foundation on both of
23 those.

24 MR. ZAVITSANOS: Okay.

25 THE COURT: Okay.

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1 MR. ZAVITSANOS: I'll get to it, Your Honor.

2 BY MR. ZAVITSANOS:

3 Q All right. Let's start here. So this -- we've looked at this
4 earlier. Let's go to page 2.

5 MR. ZAVITSANOS: And, Michelle, please pull out the first
6 few paragraphs. Okay.

7 BY MR. ZAVITSANOS:

8 Q This is the document, Mr. Haben, that talked about we will
9 continue this growth by advancing our already industry leading gross
10 margins by \$5 PMPM, while continuing -- well, do you see that?

11 A I do.

12 Q And that's what you wrote down here in 2016, right?

13 A I see that.

14 Q Okay. And this is a 2017 business plan. It was prepared in
15 2016.

16 A I believe --

17 Q Right?

18 A I believe it was.

19 Q All right. Now let's go to Exhibit 462. And remember we
20 looked at documents talking about the West Region that you were
21 involved in?

22 A I was involved with?

23 Q Well, remember the document that had your name talking
24 about a meeting involving the West Region?

25 A You're going to have to refresh my memory.

1 Q I think it was yesterday. Let me ask it this way. The West
2 Region includes the State of Nevada, right?

3 A Yes, it does.

4 Q Okay. And this document here, 462, if we -- does it talk about
5 financial performance in the West Region, which includes Nevada?

6 A I am not familiar with this document, nor did I write it.

7 Q I understand, Mr. Haben. My question is in looking at this
8 document, which was produced by United in this case, if you will look at
9 -- in fact, let's do this, sir. Let's go to Exhibit 423. Is 423 in, Michael?

10 THE COURT: I don't think so.

11 BY MR. ZAVITSANOS:

12 Q I don't need to admit it. I just need you to go to 423. Look at
13 the cover.

14 A Let me get it, please.

15 Q Yes.

16 MR. KILLINGSWORTH: 423 is not in.

17 MR. ZAVITSANOS: Yes.

18 THE CLERK: 423 is not in.

19 THE COURT: 423.

20 MR. ZAVITSANOS: I'm just going to use it to refresh his
21 recollection, Your Honor.

22 THE COURT: Thank you.

23 MR. ZAVITSANOS: I don't need to admit it.

24 BY MR. ZAVITSANOS:

25 Q Do you see that Ms. Paradise -

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1 A Hold on.

2 Q Oh, I'm sorry. Ms. Paradise reported to you?

3 A Yes, she did.

4 Q And do you see that Ms. Paradise was involved in this non-
5 par out-of-network meeting on October 17, 2019, involving the West
6 Region, which includes the State of Nevada?

7 A I see that she's in this meeting.

8 Q And she reported to you during this time?

9 A Yes, she did.

10 Q Okay. Now let's go back to 462, which is the document I was
11 asking you about. That's the same West Region that Ms. Paradise was
12 involved in that meeting, that we just looked at right?

13 A The West Region?

14 Q Yes, same West Region, right?

15 A Yes, Becky was asked to come with me.

16 Q Okay. Which again includes the State of Nevada, right?

17 A West Region includes the State of Nevada.

18 Q And if you turn please to page 23, and page 26, on the right
19 hand side of the page, do you see this is talking about the financial
20 performance in the State of Nevada?

21 A Which part on 26?

22 Q Okay. Let's go -- I gave you two pages. That wasn't fair. Let
23 me do it this way. Let's go to page 23 first. And do you see there's a
24 heading? I'm not going to read it, up at the top. Do you see the State of
25 Nevada mentioned?

1 A The abbreviation for Nevada is at the top.

2 Q Yes, sir, NV, right?

3 A Yes.

4 Q Okay. And then we go to page 26. And do you see that the
5 fourth bullet point on that document in the text on the side of the page --

6 A In the orange or in the blue?

7 Q In the -- I'm a little colorblind, Mr. Haben. I think that's
8 orange.

9 A Upper right?

10 Q Yes, sir. Do you see that mentions the State of Nevada and
11 the financial performance for the State of Nevada?

12 A I'm sorry, which bullet, the fourth?

13 Q The -- I'm sorry, sir, the fourth bullet, yes, sir, from the top.
14 The first line.

15 A It's got referenced Nevada in the fourth bullet.

16 MR. ZAVITSANOS: Okay. Your Honor, we move for the
17 admission of 462.

18 MR. BLALACK: Object to the foundation, Your Honor. The
19 witness has never seen it, didn't write it, didn't participate in developing
20 it. The fact that it references the State of Nevada doesn't establish a
21 foundation.

22 THE COURT: Lay more foundation.

23 BY MR. ZAVITSANOS:

24 Q Yes. The people on the front page are employees of
25 UnitedHealthcare; is that correct?

1 A On 462, I believe so.

2 Q And one of the things UnitedHealthcare was doing not only
3 in 2019, but every year, is measuring the financial performance of a
4 number of programs, including the out-of-network programs for the
5 different regions, right?

6 A I don't know if they were measuring the out-of-network
7 programs by region.

8 Q Well, you were measuring performance, region by region,
9 right?

10 A I was not.

11 Q Well, your company was, sir.

12 A The company was.

13 Q Yes, sir. And this document that we're looking at right now
14 is talking about the financial performance in the West Region, which
15 includes the State of Nevada, right?

16 A I believe it does.

17 Q Yes. And all four of these people on the front are United
18 employees, right?

19 A I don't know Tammy, and I don't know -- I don't know
20 Tammy.

21 Q Do you know the other three? Derrick Daniels, Sachin Shah.

22 A Sachin Shah. I know --

23 Q Sachin Shah.

24 A I know who they are.

25 Q Okay.

1 MR. ZAVITSANOS: Your Honor, we move for the admission
2 of 462.

3 MR. BLALACK: Same position, Your Honor. The fact that the
4 witness knows some people who work for United that are referenced in
5 the document doesn't lay a foundation in our opinion.

6 THE COURT: The objection is overruled. 462 will be
7 admitted.

8 [Plaintiffs' Exhibit 462 admitted into evidence]

9 BY MR. ZAVITSANOS:

10 Q Okay. Now I need to do this in two stages. This is the first
11 stage is this document, and then we're going to talk about one other
12 document, and then I think I'm done. Okay. All right. That's the West
13 Region, right?

14 A Yes.

15 Q And there's the great State of Nevada?

16 A Yep. Yes.

17 Q Okay. And if we go to page 23 -- excuse me, let's go to page
18 26. And let's pull out ---

19 MR. ZAVITSANOS: Michelle, will you please pull out, you
20 see those bullets on the side in orange? Pull out the bottom, fourth -- the
21 fourth one from the top, please.

22 BY MR. ZAVITSANOS:

23 Q Okay. Primary year over year internal operating income
24 pressure. Status from our top two outperforming markets in '19,
25 California and Nevada, right?

1 A That's what that says.

2 Q Okay. So the best financial performers, the most margin in
3 the west was California and Nevada, according to this, right?

4 A I am not a finance person. I did not write it. I don't know
5 what they mean.

6 Q Well, let's go to page 23, please.

7 MR. ZAVITSANOS: Michelle, please pull out the top
8 paragraph only, with the heading.

9 BY MR. ZAVITSANOS:

10 Q Our 2019 performance delivering on commitments what
11 went right. Do you see that?

12 A I do.

13 Q Okay. In 2019, internal operating income 99 million favorable
14 to budget. Meaning you made 99 million more than you had budgeted,
15 right?

16 A Again, I'm not a finance person, I did not write it. I don't
17 know what they mean.

18 Q Sir, 99 million favorable to budget, does that not mean to
19 you 99 million more than you expected?

20 A I'm assuming that's what it means to them, but I don't know.

21 MR. ZAVITSANOS: And Michelle, highlight the stuff inside
22 the parenthesis. And what states drove that windfall?

23 MR. BLALACK: Objection to that characterization.

24 MR. ZAVITSANOS: Let me rephrase.

25 BY MR. ZAVITSANOS:

1 Q What states drove this \$99 million favorable to budget?

2 A It says driven by California, Nevada, Colorado.

3 Q All right. Now let's look at one last document. Let's go
4 please to -- can you please get 426? And take a moment to look at that to
5 yourself, please. And if you could, please turn to page 5, and tell me if
6 this again deals with the West Region.

7 A It says the West Region.

8 Q And is that Dan -- is Dan Rosenthal mentioned on this
9 document?

10 A Yes, he is.

11 Q Was he your boss?

12 A Not at that time, no.

13 Q Was he the CEO according to this document?

14 A Of the West Region, yes.

15 Q Okay. And this is another financial performance report for
16 2019, just like the one we saw?

17 A I don't know what it is. I've never seen it before.

18 Q Well, look at the first page, sir. Excuse me, the second page.
19 Does it appear to be a Summit of the West Region that took place in
20 October 2019?

21 A That's what it says.

22 Q And if you will turn, please, to -- and the West Region
23 obviously includes Nevada, right?

24 A Yes.

25 Q And this is the same year -- this is the same year in the

1 document we just looked at about California, Nevada, and I think
2 Colorado exceeding the budget --

3 A Yes.

4 Q -- right?

5 A Yes.

6 Q Okay. Would you please turn to page 12? Does that have
7 financial results for the West Region, which includes Nevada for 2019, up
8 until that point?

9 A That says West Region financial results. Again --

10 MR. ZAVITSANOS: Your Honor, I move for the admission of
11 426, please.

12 MR. BLALACK: Object to the foundation, Your Honor. The
13 witness didn't write it, hasn't seen I, wasn't part of the West Region,
14 didn't work for this business. That's enough.

15 THE COURT: You'll have to lay a little bit more additional
16 foundation.

17 MR. ZAVITSANOS: Thank you, Your Honor.

18 BY MR. ZAVITSANOS:

19 Q Okay. Would you please turn to page 8, sir? Are you there?
20 Okay. I don't know how many this is, but it's about somewhere between
21 20 to 30 individuals. Are all of those individuals United employees?

22 A I don't know for a fact that they are or not.

23 Q Are some of them United employees?

24 A Yes.

25 Q Okay. The next page, page 9. Mr. -- help me with this

1 pronunciation again.

2 A Sachin Shah.

3 Q Sachin Shah. Is he a United employee?

4 A Yes, he is.

5 Q Was he the Chief Financial Officer for the West Region?

6 A Yes, he was.

7 Q Does this appear to be a report by Sachin Shah and Dan
8 Rosenthal regarding the financial performance of the West Region for
9 2019?

10 A I don't know. I have never seen this before.

11 Q Does it -- well, do you see the page we just left off, on page
12 12, does this appear to be the West Region Financial Result for 2019?

13 A That's what it says.

14 Q Okay. Any reason to doubt that this is a United document?

15 A No.

16 Q Okay.

17 MR. ZAVITSANOS: Your Honor, I move for the admission
18 of -- excuse me, Your Honor, 426.

19 MR. BLALACK: Stand on our objection, Your Honor.

20 THE COURT: Objection is overruled. 426 will be admitted.

21 [Plaintiffs' Exhibit 426 admitted into evidence]

22 BY MR. ZAVITSANOS:

23 Q Okay. Now --

24 MR. BLALACK: Counsel -- Your Honor, I just wanted to ask
25 counsel this also, is one of the AEO documents. So depending on what

1 you want to do, I wanted to --

2 MR. ZAVITSANOS: Okay, let me -- I'll do it the way we've
3 done it, okay.

4 MR. BLALACK: Okay. Just let me know, and I can help you.

5 MR. ZAVITSANOS: Yes, sir, okay.

6 BY MR. ZAVITSANOS:

7 Q All right. So let's orient ourselves here. We just looked at a
8 document that said that the top performers in the West Region were
9 California, Nevada and Colorado, right?

10 A I believe --

11 Q For 2019?

12 A I believe so, yes.

13 Q 2019 was at the tail end of the five year period that I began
14 your examination with, right?

15 A I believe so, yes.

16 Q So let's see what the result was of this five year timetable
17 we've been talking about in the West Region that includes the State of
18 Nevada, okay?

19 A Okay.

20 Q Let's go to page 12, please.

21 MR. ZAVITSANOS: Michelle, can you flip that? Okay.

22 Michelle, I need you to pull out this part here.

23 BY MR. ZAVITSANOS:

24 Q Okay. So in terms of expansion in the West Region, in 2019,
25 the budget was negative 36 cents per member per member, right?

1 MR. ZAVITSANOS: Michelle, can you highlight that at the
2 bottom?

3 BY MR. ZAVITSANOS:

4 Q Right, sir?

5 A That's what that says.

6 Q Okay, that's what --

7 A It's per member per month. You said per member per
8 member.

9 Q I'm sorry. Thank you, sir. Per member per month. The 2020
10 budget. In 2019, the growth exceeded by \$23.93 per member per
11 month, right?

12 A I don't know what that means. So I can't answer that
13 question.

14 Q Right, sir?

15 A I don't know what that means. I didn't write this.

16 Q Well, what it says is, I mean you blew the doors off what you
17 did in '16, in the West Region, right?

18 MR. BLALACK: Objection. Foundation.

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

20 BY MR. ZAVITSANOS:

21 Q You exceeded, and you were ahead of everybody by \$5
22 nationally in '16. But in '19, almost five times as much, led by what you
23 all were doing in this state, right, Mr. Haben?

24 A I have no context. You all will have to ask Dan.

25 MR. ZAVITSANOS: Pass the witness, Your Honor.

1 THE COURT: All right. So do you wish to begin cross
2 examination or are you going to wait for your case-in-chief?

3 MR. BLALACK: Your Honor, I'll take guidance from you. We
4 can get started now. We'll need to clean up the obstacle course before
5 we start. But in addition to that, I think we probably have a handful of
6 housekeeping measures. So if you want to let the jurors go, Your Honor,
7 and then we can start fresh.

8 THE COURT: All right. So it sounds like we're going to let
9 you guys go a little early tonight, which is a treat, given the fact that
10 we're now driving home in the dark.

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

17 Don't conduct any research on your own relating to the case.
18 You can't consult dictionaries, use internet or use reference materials.
19 Don't post on social media, don't talk, text Tweet, Google, or conduct
20 any other type of book or computer research with regard to any issue,
21 party, witness, or attorney involved in the case.

22 Most importantly, do not form or express any opinion on any
23 subject connected with the trial until the matter is submitted to you.
24 Thank you for your attention all day. Have a great day. See you
25 tomorrow. I'll bring the lawyers in at 9:15, so we can be prompt at 9:30.

1 THE MARSHAL: All rise for the jury.

2 [Jury out at 4:30 p.m.]

3 [Outside the presence of the jury]

4 THE COURT: Okay.

5 MR. BLALACK: Two things, Your Honor. I wanted to -- oh,
6 I'm sorry.

7 THE COURT: The room is clear.

8 MR. BLALACK: The first item I want to raise, Your Honor, in
9 relation to deposition transcripts that will be presented during the case.
10 And I'm going to give you a really trial level summary, and then I'm
11 going to ask Mr. Levine to explain it in more detail, so the Defense can
12 respond. I mean, to cut to the chase of what I'm going to ask for, and
13 then he can explain why.

14 It is my expectation that all the work we've been doing to
15 designate, counter-designate, objections, that process has been going on
16 for a [indiscernible]. It is going to result in a substantial revision of all of
17 that work.

18 THE COURT: Substantial what?

19 MR. BLALACK: Revision because it is inconceivable that all
20 that evidence is going to be offered. I think Mr. Levine will explain why.
21 And what's going to happen is that my colleagues on the other side are
22 going to substantially reduce what it is they previously designated to the
23 Court that have been offered down to something dramatically less. I
24 expect if they did not, we've got a different conversation that I'm going
25 to talk about in a minute.

1 Assuming that happens, we're going to then be faced with
2 the prospect of responding to a new set of designations and reevaluating
3 our prior objections and what we had planned for this. So, in other
4 words, we're going to have to go back and kind of redo some of that
5 work. If that's unavoidable, we're going to do it. What I object to is any
6 situation in the course of the trial where that happens, I want 24 hour
7 notice, the night before the transcript has to be read because once we
8 get their final final designations, we have to then do our work to decide
9 what's our final position is going to be on objections and counter-
10 designations, and that's got to be presented to Your Honor, and Your
11 Honor has to rule, and here any argument, and then there has to be
12 cutting of the tape.

13 That's going to be a process that's going to require a couple
14 three days from the time we get the final word when something is going
15 to be played. And what I don't want to have happen is get jammed with
16 something that's presented to us at 5:00 on the night before they want to
17 play it, and we have to scramble to get something done by the next
18 morning, and then we're trying to resolve objections and cutting in order
19 to meet the schedule for the trial.

20 So to avoid that outcome, I'm going to give you the punch
21 line now, and then I'll ask Mr. Levine to explain more in detail. What
22 we're asking is give us three days before any -- the final designation
23 before they're going to be played, three days in advance so we have a
24 chance to review the new target, respond, and then we can present
25 everything to Your Honor in time for you to rule. But we still have time

1 to orderly cut the videos when it needs to be played, but not have things
2 be done overnight. And with that introduction, I'll ask Mr. Levine to give
3 you just a little more context.

4 THE COURT: Well, and tell me, how many people do you
5 have working on your team?

6 MR. BLALACK: We have six --

7 THE COURT: I'm going to be there are 20 on each side --

8 MR. BLALACK: -- six or seven -

9 THE COURT: -- full time.

10 MR. BLALACK: -- to eight, something like that.

11 THE COURT: You don't have others working remotely full
12 time on the case?

13 MR. BLALACK: Not full time. I mean, I'm calling on other
14 lawyers too for sure, Your Honor, but they're not all doing deposition
15 designations. And, in fact, most of those lawyers spent a good deal of
16 time in the last month to get to the point we are now, which is to
17 designate and review the designations. And what I'm worried about is
18 we're about to redo a lot of the work. So I'll Mr. Levine explain.

19 MR. LEVINE: Good afternoon, Your Honor. And just to give
20 you a sense of the scope, last Wednesday -- it was actually Thursday,
21 after midnight on Wednesday, when we broke for the four day weekend,
22 Plaintiffs filed their designations. We also filed earlier on Wednesday
23 our designations, including objections to the affirmative designations
24 and counters. Plaintiffs' designations were from 32 different transcripts,
25 24 different witnesses. We spent substantial time objecting to those

1 transcripts -- to do those designations, excuse me, and the sort of
2 counter-designations. Then Plaintiffs had objections to those counters.

3 That was the process we laid out. We agreed that we would
4 file those things last Wednesday. Those were supposed to be the final
5 designations, and then at some point we were going to schedule time
6 with Your Honor to address the objections. And after that, if they were
7 addressed, then the video can be cut.

8 THE COURT: What I normally do is just take your objections
9 and give you rulings. We don't argue it.

10 MR. LEVINE: That would be fine as well, Your Honor.

11 THE COURT: Yeah.

12 MR. LEVINE: That would be fine as well. But we cannot cut
13 the video --

14 THE COURT: I got it.

15 MR. LEVINE: -- until Your Honor rules on those things -- on
16 those objections. And, as we understood Your Honor wanted to have
17 the Plaintiffs' play their appropriate designations at one point, then the
18 counters be played afterwards at another point. So assuming those are
19 the final designations and Your Honor rules on the objections, I think
20 would be fine.

21 Last night we received as to one of those 32 transcripts what
22 we'll call the final designations, which deleted 166 line items from the
23 table for that one witness and added 23 line items of designations for
24 that one witness. And I don't mean lines of the transcript, I mean
25 excerpts that were on a table of excerpts. And while one is not a big

1 deal, if that's all it is. If it's one, we can adjust, and I think they wanted to
2 play that on Friday, and we can, in that time period look at what they've
3 done, determine whether based on what they've deleted if we need to
4 counter with anything they deleted. Based on what they've added,
5 determine whether we want to object to anything they added, submit it
6 Your Honor to rule, and then I think we will have time to cut the video as
7 the process calls for.

8 That's fine. If it's going to be happening on a broader scale,
9 we need a protocol in place giving some order, and efficiency, and
10 fairness to this, frankly, so we can proceed accordingly. So that's the
11 issue and that's why we're raising it to Your Honor.

12 THE COURT: Thank you. And the spokesperson.

13 MR. MCMANIS: Yes, Your Honor. Jason McManis. Let me
14 start first with the 32 witness issue. You heard counsel say that these
15 designations have been going on for over a month now, I think. The
16 reason we had 32 witnesses is at the time the subpoena issue was
17 unresolved. We had to preserve our ability to be able to call witnesses if
18 they're not going to be here. Obviously, Your Honor, if we could have
19 live witnesses here, that's our preference. And so that's the reason for
20 the initial broad scope of those designations.

21 As to the designations that were sent last night, I think you
22 just heard the numbers, 166 of the revisions were deletions from the
23 original designations. And the reason for that is we have a tight time
24 schedule. They were up here yesterday telling Your Honor that we
25 needed to move things along more quickly, we needed to streamline

1 things down so that they had an opportunity to present their case.

2 We want to avoid repetition. We want to cut down any
3 depositions to only that which needs to be played and not simply the
4 same things that have been covered by a live witness here on the stand.
5 So absolutely, we're going to continue to cut down and streamline those
6 designations. And I don't think cutting out substantial portions really
7 adds a significant workload to either side.

8 THE COURT: So you have 32 witnesses designated. How
9 many are actually going to testify?

10 MR. MCMANIS: I think we're probably looking somewhere
11 between 3 to 5 max.

12 MR. LEYENDECKER: Yeah, less than half a dozen, Your
13 Honor.

14 MR. MCMANIS: Yeah. Three to five.

15 MR. LEYENDECKER: In light of the way things are going and
16 our colleague who loves to hear his own voice, we're cutting. So my
17 guess is half a dozen or less.

18 THE COURT: All right. Can you give us a definitive answer
19 tomorrow of what -- that preference? You know, the most important
20 witnesses and down, and when you can get them knew designations.

21 MR. MCMANISL Yes, we can. So if I could -- yes, we can,
22 Your Honor. And if I could address the new designations issue. The,
23 quote/unquote, "new designations that were added they really fall into
24 two primary categories. One is an example of there was already a Q and
25 A designated about an exhibit, but the line saying here's the document,

1 you know, marked as Exhibit 13, wasn't part of the original admissions.
2 And so there was cleanup to make sure that you can actually understand
3 what's going on.

4 And then the other category is really specific to the witness
5 that we sent last night, Mr. Rosenthal. And that had to do with the
6 argument that Your Honor heard yesterday with respect to the Yale
7 study, the foundation objections, and our ability to prove up those
8 documents through Mr. Rosenthal. They are directly in response to that
9 argument, Your Honor.

10 And so those are the -- that's the only reason that we had any
11 new designations. I think, otherwise, everything that was in there it was
12 significantly turned down and no new subjects are being added to any of
13 the designations.

14 THE COURT: Okay. So you'll have an update for us
15 tomorrow.

16 MR. MCMANIS: Yes, Your Honor.

17 THE COURT: Thank you. And in reply please, Mr. Levine.

18 MR. LEVINE: That should work well. I mean what we're
19 looking for is a fair and efficient process, and give advance notice, and
20 we're able to see --

21 THE COURT: Right.

22 MR. LEVINE: -- the five or six witnesses who they intend to
23 designate tomorrow. And if they're going to revise the designations, let
24 us know that --

25 THE COURT: Right.

1 MR. LEVINE: -- so that we can adjust accordingly and --

2 THE COURT: You've got a crack [phonetic] tech team -- you
3 have a crack tech team. I don't see why it would take three days, but we
4 do have Thursday as a holiday. So when you get the report tomorrow,
5 that should give you a chance Thursday to pare things down or
6 redesignate, if necessary.

7 Now to give you guys an update from the Chief Judge, I get
8 texts on my Fitbit, so she's not crazy about us working on a Saturday,
9 because there just isn't enough security in the building, and she likes the
10 idea of having a schedule to work overtime in the evenings. So I'm
11 going to ask you guys to talk about that, give me some ideas tomorrow.
12 Because my staff -- I have one person on vacation. So I just have to
13 make sure that we can do that without too much inconvenience to the
14 court staff across the board. Okay.

15 MR. BLALACK: Well, thank you, Your Honor. And we would
16 -- we'll confer on that. We would certainly welcome more time in the
17 day --

18 THE COURT: Yeah.

19 MR. BLALACK: -- if it's available.

20 THE COURT: Well, you know, I can try to get my calendars
21 covered next week. I've already done a preliminary review of them
22 because with Business Court things can't go just anywhere. So I'm
23 working on my end as well.

24 MR. BLALACK: Well, thank you, Your Honor. And I just -- I
25 do think I need to make my record if I can.

1 THE COURT: Of course.

2 MR. BLALACK: And I do think notwithstanding Mr.
3 Zavitsanos' valiant efforts to get done as fast as possible, in light of how
4 things have played out, I think -- and I haven't broken the news to Mr.
5 Haben yet, but I think it's unlikely he finishes tomorrow, assuming
6 there's going to be redirect.

7 So, you know, I just think we're in a situation where unless
8 something dramatic happens, and I don't see how -- unless -- they're
9 going to have to really pare down their case for us to be able to put on
10 our defense in the time we have. So I'm going to, again, state my
11 concern about the pace. I'll come back and revisit the question of a clock
12 on Friday or at the end of the day, Wednesday after we finish or make
13 progress with Mr. Haben.

14 THE COURT: Right.

15 MR. BLALACK: But if we're -- if it's Friday morning, and we
16 haven't gotten to our second witness yet, after two weeks of trial, I think
17 we're going to be in a difficult spot.

18 THE COURT: All right.

19 MR. ZAVITSANOS: Brief response, Your Honor?

20 THE COURT: Yeah.

21 MR. ZAVITSANOS: So, Your Honor, last night we eliminated
22 three witnesses we were going to call based on --

23 THE COURT: Have you notified them?

24 MR. ZAVITSANOS: No.

25 THE COURT: Okay.

1 MR. ZAVITSANOS: No, this is our internal --

2 THE COURT: Okay.

3 MR. ZAVITSANOS: -- secret list. So we've cut three off.

4 And, Your Honor, I know Your Honor has heard me say this now a
5 number of times, I just -- I beg the Court's indulgence to wait until the
6 second witness gets on and --

7 THE COURT: Who will be your second witness?

8 MR. ZAVITSANOS: Rebecca Paradise. And, Your Honor, I
9 think you're going to see a dramatic change of pace. And so it's going to
10 be real fast. And I recommit to Your Honor, that we're going to finish by
11 the time that we set with enough time for the Defendants to put on their
12 full defense. I'm very confident. I mean, we, I think, got from Mr. Haben
13 a substantial amount of the information that we need for the
14 UnitedHealthcare side.

15 Now we have the witness that's going to be for Health Plan
16 of Nevada and Sierra, Your Honor, you can put me on the clock on that.
17 I'm not going to take more than two hours.

18 THE COURT: I'm going to hold you to it.

19 MR. ZAVITSANOS: Okay. Yes.

20 THE COURT: Okay. And where are you on jury instructions,
21 because I have both sets. At some point, and it should be early next
22 week, you should tell me the agreed version, and we'll set a time to
23 argue the --

24 MR. BLALACK: Your Honor, I believe we have met and
25 conferred on some group of instructions, which there is a joint

1 agreement --

2 THE COURT: Okay.

3 MR. BLALACK: -- and a vast majority of the substantive ones
4 that are in dispute. But I think we have some [indiscernible].

5 THE COURT: We're going to tackle that early next week.

6 MR. BLALACK: Understood, Your Honor. Thank you.

7 THE COURT: Okay.

8 MR. MCMANIS: Your Honor, can I clarify one thing?

9 THE COURT: Yes, of course.

10 MR. MCMANIS: On the depositions, we should have -- we
11 should be able to give them notice to get through next Monday at least
12 by tomorrow, and we'll continue to work on that for whoever those
13 [indiscernible].

14 THE COURT: Thank you. Okay. What else.

15 MS. LUNDVALL: Your Honor, one last point as far as our jury
16 instructions. Opposing is counsel is correct, there has been efforts of
17 meeting and conferring to try to agree to a set that we can present that
18 would be agreed upon, but also the disputed. And there are also
19 supplemental instructions then that are going to be tendered to the Court
20 based upon the evidence that been admitted thus far.

21 THE COURT: Good enough.

22 MS. LUNDVALL: Which is standard and everything.

23 MR. BLALACK: And I would expect that would happen with
24 us as well, Your Honor.

25 THE COURT: All right. Anything else?

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MR. BLALACK: Not from us, Your Honor. Thank you.

THE COURT: Then everybody stay safe and healthy. See you tomorrow. Lawyers be here at 9:15.

MR. BLALACK: Thank you, Your Honor.

MR. ZAVITSANOS: Thank you, Your Honor.

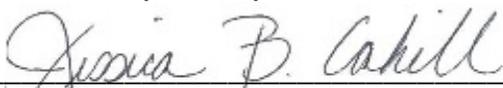
THE COURT: Thanks.

[Proceedings adjourned at 4:45 p.m.]

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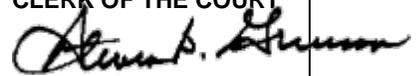
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

Defendants.

CASE#: A-19-792978-B
DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
TUESDAY, NOVEMBER 9, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 9

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.
HANNAH DUNHAM, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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1 Las Vegas, Nevada, Tuesday, November 9, 2021

3 [Case called at 9:19:32 a.m.]

4 [Outside the presence of the jury]

5 THE MARSHAL: District Court 27 is now in session, the
6 Honorable Judge Alf presiding.

7 THE COURT: Thanks everyone, please be seated. Good
8 morning.

9 GROUP RESPONSE: Good morning, Your Honor.

10 THE COURT: All right. So IT is on their way, but we think we
11 can -- we're on the record; is that correct?

12 THE COURT RECORDER: Yes.

13 THE COURT: Good enough. Calling the case of Fremont v.
14 United. Appearances, please, starting first with the Plaintiff.

15 MS. LUNDVALL: Good morning, Your Honor. Pat Lundvall,
16 from McDonald Carano, on behalf of healthcare providers.

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

19 MR. AHMAD: Good morning, Your Honor. Joe Ahmad, also
20 on behalf of the healthcare providers.

21 MR. MCMANIS: Jason McManis, on behalf of the healthcare
22 providers.

23 MR. LEYENDECKER: Good morning, Your Honor. Kevin
24 Leyendecker.

25

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1 THE COURT: Thank you. And for the Defense, please?

2 MR. BLALACK: Lee Blalack , Your Honor, on behalf of the
3 Defendants.

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

6 MR. GORDON: Jeff Gordon, on behalf of the Defendants.

7 MR. POLSENBERG: And Dan Polsenberg, Your Honor.

8 THE COURT: Thank you, all.

9 MR. BLALACK: Thank you, Your Honor.

10 THE COURT: All right. We've got a few minutes before the
11 jury comes in. I believe -- did the Defendant have something for the
12 record?

13 MR. BLALACK: I don't -- not at this time, Your Honor.

14 THE COURT: No.

15 MR. BLALACK: I don't believe so.

16 THE COURT: Okay. Plaintiff, anything?

17 MR. ZAVITSANOS: Yeah. Your Honor, I think we have one
18 exhibit that's not contested.

19 MR. MCMANIS: Yes, Your Honor. One minor exhibit issue,
20 from the conditionally admitted exhibits, before opening. There's three
21 numbers on that list that we want to withdraw. There's not actually an
22 exhibit associated with those numbers; those are Plaintiffs' Exhibits 315,
23 316 and 494.

24 THE COURT: And have you conferred with opposing
25 counsel?

1 MR. MCMANIS: I have, Your Honor.

2 THE COURT: Any objection?

3 MS. DUNHAM: No objection, Your Honor.

4 THE COURT: All right. So 315, 316 and 494 will be
5 withdrawn.

6 MR. ZAVITSANOS: Thank you, Your Honor.

7 THE COURT: So, Marshal, why don't you see if the people
8 are here?

9 THE MARSHAL: Yes, ma'am.

10 THE COURT: Thanks everybody for being early today, I want
11 to maximize our time in the courtroom.

12 MR. ZAVITSANOS: And, Your Honor, just so -- this doesn't
13 necessarily need to be on the record, but just from a housekeeping
14 standpoint, we lost some time yesterday because of the situation with
15 the evacuation. I intend to take probably, although I'm going to try to do
16 my best not to do this, use probably the rest of the day and then I'm
17 going to pass Mr. Haben. The goal -- I conferred with Mr. Blalack, the
18 goal is to get him completely off the stand, by the close of business
19 Wednesday.

20 And then as I've told Your Honor, I fully expect that the pace
21 of the case is going to kick up considerably.

22 THE COURT: Good enough.

23 MR. ZAVITSANOS: There will not be any witness, I don't
24 believe, at least from our standpoint, that's going to be more than half a
25 day.

1 THE COURT: Okay. The Chief Judge is taking my motions'
2 calendar in the morning, so I can give you a full day.

3 MR. BLALACK: Oh, wonderful.

4 MR. ZAVITSANOS: Oh, that's great.

5 THE COURT: Uh-huh.

6 MR. BLALACK: And you're referring to next week, Your
7 Honor?

8 THE COURT: No, tomorrow?

9 MR. BLALACK: Oh, tomorrow.

10 THE COURT: Yeah. And I would suggest lawyers at 9:15,
11 jury at 9:30, again, to maximize our time.

12 MR. ZAVITSANOS: Yes.

13 MR. BLALACK: To that end, Your Honor, I've lost track of the
14 scheduling issue for next week. I think originally there were two days
15 that were half days. Is that still the case, or will they be full days?

16 THE COURT: I won't know until the end of the week, what I
17 can get farmed out for next week. Some of the cases I can't, because we
18 went dark last week, so the Chief Judge could do two weeks for
19 tomorrow.

20 MR. BLALACK: Yes.

21 THE COURT: I'll just have to see how things shape up. I'll let
22 you know as soon as I can.

23 MR. BLALACK: Thank you, Your Honor.

24 MR. ZAVITSANOS: Yes, Your Honor.

25 [Counsel confer]

1 MS. LUNDVALL: Your Honor, while we're waiting for the
2 jury to be brought in, I think that we can take advantage as far as the
3 time. Yesterday you heralded the idea that without foundation it was
4 hard to make any determination that in fact the documents may be
5 received with Health Plan of Nevada. We brought certain exhibits that
6 lay foundation for that, and then I have got copies for opposing counsel,
7 as well as for the Court, so that as this issue comes up later on
8 throughout the course of the trial then you know what we're talking
9 about.

10 It particularly concerned the custodian that was identified
11 during the testimony, yesterday, of Mr. Haben. Mr. Haben claimed to
12 disclaim knowledge of certain documents, because certain programs
13 were under the purview of a woman by the name of Tina Brown-
14 Stevenson. Tina Brown-Stevenson, quite obviously, given Mr. Haben's
15 testimony, should have been a custodian for whom -- that their
16 documents should have been searched in response to production
17 obligations that were placed upon United, not only through our request,
18 but also due too many court orders concerning that.

19 And what I brought to the Court then, is a copy of this for
20 clarification purposes of the Court's order of our adverse inference. I
21 brought to the Court, also, the excerpts in from the testimony of the
22 United representative that identified which custodians were searched,
23 and an exhibit that he had created then of the names of those
24 custodians, and Tina Brown-Stevenson is not on that exhibit list. And
25 with the Court's permission I can hand you these documents --

1 THE COURT: Have you shown --

2 MS. LUNDVALL: -- and I have copies for counsel, as well.

3 THE COURT: Have you provided them to opposing counsel?

4 MS. LUNDVALL: I have now.

5 THE COURT: You may.

6 MS. LUNDVALL: Thank you, Your Honor.

7 THE COURT: And, Mr. Blalack, since you're just seeing these,
8 I'm going to give you a chance to review it before I ask for your
9 response.

10 MR. BLALACK: I will be glad to respond just preliminarily
11 now, Your Honor. I will look at this more closely. I disagree with the
12 premise that Tina Brown-Stevenson would have been a custodian,
13 whose added duty is to have a record search, and I disagree that there's
14 any basis for Plaintiffs to argue now, having participated in the whole ESI
15 protocol, where the custodians were exchanged and disclosed, and the
16 fact that many, many communications involving Ms. Brown-Stevenson
17 were produced in the case, because they're communications with other
18 relevant witnesses, and I disagree with the premise of this argument.
19 But I don't think it's appropriate for the Court to entertain, and resolve, or
20 question as severe as an adverse inference without a motion and without
21 some briefing that would give us a chance to respond.

22 So my position is, I'll review this, but if they want to ask for
23 something like a sanction of an adverse inference, I would ask for a
24 motion and a response opportunity.

25 THE COURT: I would suggest that we can take that up when

1 we settle jury instructions.

2 MR. BLALACK: Thank you, Your Honor.

3 MS. LUNDVALL: Thank you, Your Honor. But also, just in an
4 effort to try to help, Mr. Blalack, there already is a sanction of an adverse
5 inference that has been imposed, and that's why I included a copy of the
6 Court's order imposing that sanction. Thank you.

7 THE COURT: Good enough.

8 One of the things I want to talk to the Chief about, and we
9 still haven't been able to connect, due to calendars, is about overtime,
10 maybe a Saturday, the weekend before you're going to close, to settle
11 jury instructions. There's expense to you, but that way it doesn't
12 inconvenience the jury, so --

13 MR. BLALACK: Thank you, Your Honor. The only wrinkle on
14 my father-in-law passed away.

15 THE COURT: Oh, I'm sorry.

16 MR. BLALACK: And his memorial service is that Saturday,
17 and they scheduled it that Saturday so that I wouldn't have to interfere
18 with the Court calendar. If it becomes absolutely necessary I will --

19 THE COURT: No, no.

20 MR. BLALACK: -- revisit that.

21 THE COURT: No, no. Family comes first.

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

23 THE COURT: We'll find a way. I would take Thursday this
24 week, but we're not far enough along.

25 MR. BLALACK: That would be fine, Your Honor.

1 MR. ZAVITSANOS: And, Your Honor, from our standpoint,
2 we certainly extend our sympathies to Mr. Blalack --

3 THE COURT: Of course.

4 MR. ZAVITSANOS: -- and we obviously insist that he come
5 first. On any other day, it would have been at any time.

6 THE COURT: Yeah. But when we get closer we'll know
7 where we're going.

8 MR. BLALACK: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. ZAVITSANOS: And, Your Honor, from our standpoint it
11 will be primarily Ms. Lundvall and Ms. Robinson on our side. And I --
12 Ms. Lundvall obviously is here and Ms. Robinson will stay here. So any
13 time before, like we have no opposition at all to the overtime issue, so --

14 THE COURT: So is the 20th the day of the service?

15 MR. BLALACK: Correct, Your Honor. My plan was to, after
16 Court on Friday, fly off and get to -- it's Jefferson City, Missouri -- get to
17 Jefferson, then do the service and fly back early on Sunday morning.

18 THE COURT: Wow. Wow, wow. Okay.

19 MR. BLALACK: But we can -- you know, if that's the only way
20 to keep this trial over before Thanksgiving, you know, we'll do what we
21 need to do.

22 THE COURT: Good enough.

23 I'm just waiting to see the marshal, to give him the high sign
24 to bring in the jury.

25 THE CLERK: A couple minutes. He said he's still waiting on

1 one more.

2 THE COURT: Oh, thank you.

3 MR. ZAVITSANOS: Can I ask counsel about one exhibit, Your
4 Honor?

5 THE COURT: You may.

6 [Counsel confer]

7 THE COURT: And just to let you guys know, I'm not able at
8 this point to keep up with what's in and not, you're going to have rely
9 more on the clerk.

10 MR. ZAVITSANOS: Yeah. We're -- I think between the two of
11 us --

12 THE COURT: I'm too out of order on my notes.

13 MR. BLALACK: Agreed, Your Honor.

14 [Counsel confer]

15 MR. ZAVITSANOS: Your Honor, so can I -- I would move --

16 THE COURT: All right. So Exhibit 175 will be admitted.

17 [Plaintiffs' Exhibit 175 admitted into evidence]

18 THE COURT: And let's bring Mr. Haben in, please.

19 MR. BLALACK: The marshal asked Mr. Haben to wait.

20 THE COURT: I'm sorry?

21 MR. BLALACK: The marshal asked Mr. Haben to wait.

22 THE MARSHAL: All rise for the jury.

23 [Jury in at 9:29 a.m.]

24 THE COURT: Thank you. Please be seated.

25 Good morning, everyone. Welcome to Tuesday, which we

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1 hope will be evacuation-free. And unfortunately that happens now and
2 then in the courthouse, and I am not concerned about your safety, so
3 that you know that this is still a safe place.

4 Mr. Haben, you're under the same oath you swore
5 previously, there's no reason to re-swear you.

6 THE WITNESS: Okay.

7 JOHN HABEN, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

8 THE COURT: Go ahead, please.

9 MR. ZAVITSANOS: Thank you, Your Honor. May it please
10 the Court, counsel.

11 DIRECT EXAMINATION CONTINUED

12 BY MR. ZAVITSANOS:

13 Q Mr. Haben, good morning.

14 A Good morning.

15 Q Just as a housekeeping matter, I had originally budgeted that
16 it would take three full days to cross-examine you, with all the material
17 we have here. We lost a little bit of time yesterday, so we'll probably
18 take the balance of the day today, and then you'll have full opportunity to
19 explain, whatever you'd like to explain to the jury. Good? Okay. All
20 right.

21 Okay. Now, today I'd like to cover a few things, I want to go
22 through the different programs, and what differentiates one versus the
23 other, and mechanically how they work, okay? And then I want to talk
24 about this Naviguard issue, okay?

25 A Okay.

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1 Q Okay, now -- and what I've written here, I just -- I added to
2 the chart yesterday, and I've shown Mr. Blalack this -- is this is this SSPE,
3 which is shared savings program enhanced, it includes OCM, right?

4 A I believe to, yes.

5 Q Okay. And OCM, this outlier cost management that often
6 uses a MultiPlan service to help with that, right?

7 A Yes.

8 Q And the MultiPlan service that goes with this is something
9 called Data iSight, right?

10 A I believe, so, yes.

11 Q Data iSight, and the acronym for that is DIS, right?

12 A Yes.

13 Q Okay. So this gets a little confusing, but -- so DIS, Data iSight
14 is the tool for OCM that goes with SSPE. Generally, is that correct?

15 A Generally, that's correct.

16 Q Okay. Thank you, sir. All right. Now --

17 [Pause]

18 MR. MCMANIS: It's been conditionally.

19 MR. ZAVITSANOS: Excuse me.

20 MR. MCMANIS: It's been conditionally admitted.

21 MR. ZAVITSANOS: Okay. Oh, it's been conditionally
22 admitted?

23 MR. MCMANIS: Yes.

24 MR. ZAVITSANOS: Okay. So, Your Honor, we'll refer now to
25 Exhibit 43, and Mr. Haben, if you'd be so kind as to get that binder. And,

1 Michelle, can you put that, please? Thank you. Michelle, just pull out the
2 top part where the title is.

3 MR. MCMANIS: John, it looks like this monitor is not on.
4 How do we --

5 [Counsel confer]

6 MR. ZAVITSANOS: Well, hold on, let's -- I want to make sure
7 you got -- you can see what I'm highlighting --

8 THE WITNESS: Yeah, it says out of range.

9 MR. ZAVITSANOS: I'm sorry?

10 THE WITNESS: It says out of range. I don't know what that
11 means.

12 MR. ZAVITSANOS: I'm very technically challenged, so I have
13 no idea what that means.

14 UNIDENTIFIED SPEAKER: That's going to be a resolution
15 issue.

16 THE COURT: So I have it on my screen. Mr. Haben, do you
17 need it on the screen, we can call IT?

18 THE WITNESS: I think he says he wants me to see the
19 highlights, so, yes.

20 THE COURT: Yes. Okay. Sorry, guys, technical.

21 [Pause]

22 MR. ZAVITSANOS: Is yours on the screen?

23 THE WITNESS: It is not.

24 MR. ZAVITSANOS: Okay. All right. We'll do the best we
25 can, and we'll try to deal with it maybe --

1 THE COURT: Is it on the screen here?

2 MR. ZAVITSANOS: It is, Your Honor.

3 THE COURT: Because I can't see it. Mr. Haben, if you'd like
4 to, you could step around to that screen.

5 MR. ZAVITSANOS: Let me --

6 THE WITNESS: You know, if you just tell me where you're
7 looking.

8 MR. ZAVITSANOS: Yes, sir. We'll do that then.

9 BY MR. ZAVITSANOS:

10 Q You have the document in front of you, right?

11 A Yes, I do.

12 Q Okay. So we're on Exhibit 43, and this is July 2016, right?

13 A Yes.

14 Q Okay. So this would be closer in time to kind of the
15 beginning of this five-year period we've been talking about, right?

16 A It's early on in the process.

17 Q All right. And this is something called OCM optimization,
18 right?

19 A Yes. That's what that says.

20 Q Okay. And optimization means "making it better," right?

21 A Yes.

22 Q Okay. So this document is talking about this OCM program
23 for the FI business, the fully insured business on the unit platform, right?

24 A That's what it says, yes.

25 Q Okay. And that is an area of your responsibility, right?

1 A The out-of-networks programs on the unit platform is my
2 responsibility.

3 Q Yes, sir. And this is occurring during the time when you had
4 those responsibilities, right?

5 A Yes.

6 MR. ZAVITSANOS: Your Honor, we move for the
7 unconditional admission of Plaintiffs' 43.

8 MR. BLALACK: No objection.

9 THE COURT: Exhibit 43 will be admitted.

10 [Plaintiffs' Exhibit 43 admitted into evidence]

11 BY MR. ZAVITSANOS:

12 Q Okay. Now, Mr. Haben, generally speaking, and I'm going to
13 be at 100,000 feet here, okay, it's fair to say that when United began
14 going down this road, setting up these programs, things got increasingly
15 more in focus as we went further along, right? There were ideas that
16 were proposed, rejected, they were shaped more, until we end up in
17 2019 when these programs have definite characteristics.

18 MR. BLALACK: Object to the form of the question.

19 Compound

20 THE COURT: It is compound.

21 BY MR. ZAVITSANOS:

22 Q Did these programs develop over time?

23 A All programs develop over time, including these.

24 Q All right. And this is at the beginning of the OCM program,
25 this document here, right?

1 A It's in July of 2016.

2 MR. ZAVITSANOS: Okay. So, Michelle, let's pull out the
3 background section please.

4 BY MR. ZAVITSANOS:

5 Q Okay. Now as you all are trying to implement this program
6 for the fully insured business --

7 MR. ZAVITSANOS: Right here, Michelle, FI business.

8 THE WITNESS: Can you just, as you're doing that? FI --

9 BY MR. ZAVITSANOS:

10 Q Yes. So it's the first, it's the first line.

11 A FI business [indiscernible]?

12 Q FI business I just highlighted.

13 A Okay.

14 Q Okay.

15 A Thank you.

16 Q All right. So this paragraph is talking about physician
17 egregious billing. All right. And non-par providers. That would be
18 somebody like us, right?

19 A A provider not in the network.

20 Q Okay. For fully insured INN benefit level for claims that could
21 be reimbursed at bill charges. And the same seal edit looks for these
22 claims and then reprices at 350 percent of CMS. CMS is Medicare, right?

23 A It is.

24 Q Okay. And we're going to talk -- that 350 percent, we used
25 the term override, and we used the term benchmark. Which one is that?

1 Is that the benchmark or is that the override?

2 A I don't know if you put context to either yet. I would say it's
3 neither. It's a reimbursement amount that will be put on the claim and
4 paid.

5 Q Internally within United, how did you all refer to this 350
6 percent, as an override or as a benchmark?

7 A It was a repricing amount.

8 Q Are you --

9 A It's neither.

10 Q Okay. So are you telling the jury that, internally, there are no
11 documents that you received or authored referring to that 350 percent as
12 an override or a benchmark?

13 A I don't know. But from experience of when this went into
14 place, it was a repricing amount that was applied to the claim, and then
15 the payment was made out to the provider.

16 Q Okay. We're going to talk about that a little bit later, but let's
17 move on to the part I want to get to.

18 MR. ZAVITSANOS: Okay. Michelle, delete the highlighting
19 here if you can. And we're going to, we're going to highlight something
20 else. Okay. Stay where we are.

21 BY MR. ZAVITSANOS:

22 Q We will shut off the seal edit and move it to Data iSight. And
23 this is optimizing OCM, parentheses --

24 MR. ZAVITSANOS: Hold on, Michelle. Don't highlight that
25 yet. Don't highlight -- okay. Let's not highlight any of that. Thank you,

1 Michelle.

2 BY MR. ZAVITSANOS:

3 Q Okay. Now in describing what Data iSight is, or OCM, you all
4 know it's owned by MultiPlan, a vendor that works with
5 UnitedHealthcare on pricing, processing, consistency -- here's the part
6 we want to highlight -- legally sound process versus our random
7 calculated amounts. You see that?

8 A I do see that.

9 Q Okay. So in the absence of Data iSight, at least internally, the
10 numbers you were using were random calculated amounts, right?

11 A I disagree with that.

12 Q Okay. All right. No this -- again, we're going get to it a little
13 bit later. This repricing of 350, a couple years later, that moved down to
14 250, right?

15 A That's incorrect.

16 Q The next year?

17 A I don't believe so.

18 Q When did it move to 250?

19 A You're, I think, conflating two different components.

20 Q When did the 350 move to 250?

21 A Are you asking about benchmark or are you asking about
22 repricing?

23 Q Did you all implement a 250 percent of CMS number during
24 this five-year period?

25 A As a benchmark, yes.

1 Q Okay. What year was that?

2 A I don't remember off the top of my head.

3 Q Okay. All right. Okay. Now and -- okay. So since we're on
4 this topic --

5 MR. ZAVITSANOS: Is 229 in, Michael? Can I ask counsel,
6 Your Honor, if he has an objection to it?

7 MR. BLALACK: One moment, Your Honor.

8 THE COURT: And the number again?

9 [Pause]

10 MR. BLALACK: No objection.

11 THE COURT: Exhibit 229 will be admitted.

12 [Plaintiffs' Exhibit 229 admitted into evidence]

13 BY MR. ZAVITSANOS:

14 Q Okay. Let's go to page 3.

15 A Can I take a quick peek?

16 Q Sure.

17 MR. ZAVITSANOS: And, Michelle, will you please pull up
18 from here and to here.

19 THE WITNESS: Where are you pulling up?

20 MR. ZAVITSANOS: To here, Michelle. Keep going. Okay.

21 BY MR. ZAVITSANOS:

22 Q It's the email on page 3 from Mark Edwards to a bunch of
23 folks, including Rebecca Paradise.

24 MR. ZAVITSANOS: Michelle, right here. And circle the word
25 change.

1 THE WITNESS: Can you kind of just tell me where you start
2 and ended?

3 MR. ZAVITSANOS: No, hold on, Michelle. Michelle. Okay.
4 We're only highlighting the word change, and we're highlighting this
5 entire sentence, the first full one.

6 BY MR. ZAVITSANOS:

7 Q Okay. So here's what I've done, Mr. Haben.

8 A Yeah.

9 Q On the first line of that email, I've highlighted the word
10 change, and I've highlighted the first bullet point, okay? You with me?

11 A Does it say change to current OCM DIS rules?

12 Q Yes. I'm going to show you.

13 A I think I see it.

14 Q Yeah. Do you see mine?

15 A Yes.

16 Q Okay.

17 A Can I just take a peek at the email for a second?

18 Q Sure.

19 A Okay.

20 Q Okay. So 2016, we saw that 350 percent number. And now,
21 in 2018, it looks like that's changing from 350 to 250. That's what that
22 says, right?

23 A I don't know if it correlates back to the 2016. I'm not on this
24 email chain, but I do see that professional ER services moving from 350
25 to 250.

1 Q Well, Mr. Haben, I don't want to get bogged down with the
2 issue here. I'm just asking, in 2018, you being the head guy of these
3 programs, did you move this number from 350 to 250?

4 A That is what that says, yes.

5 Q Okay. All right. Now here's what I'd like to do. You're
6 comfortable in looking at these EOBs, right? And you know what an EOB
7 is, right?

8 A Yes, I do. Yeah.

9 Q Okay. That's another acronym. So EOB stands for what?

10 A Explanation of benefits.

11 Q Okay. And that's that document, if you go to the doctor,
12 whether you're in network or out of network and you have health
13 insurance, you get this form with all this kind of financial on it like what
14 was charged, what was paid, et cetera, right?

15 A Yeah. It's a highly regulated form typically by the states or
16 the Department of Labor.

17 Q Who typically -- who issues the EOB?

18 A The insurer or -- yeah.

19 Q So that would be United?

20 A The administrator. Yeah.

21 Q Okay. So United issues the EOB, right? And then who
22 receives it?

23 A EOB goes to the member.

24 Q Okay. So the member --

25 A Or the patient.

1 Q Yes, sir. The patient. I'm just going to put PT, okay?

2 A Yeah.

3 Q Since we're in this acronym game, right? So member
4 receives the EOB. Okay. And you've seen lots of EOBs I guess over
5 time, right?

6 A I've seen many.

7 Q Okay. So, for example, if you go to -- here's one. 375,
8 please. If you could turn to that and tell me if that is, if that is a United
9 EOB.

10 A Yes, it looks like it.

11 Q Okay. And then what about 444? Is that a United EOB?

12 A Let me get that.

13 [Pause]

14 A Yeah, it appears so.

15 BY MR. ZAVITSANOS:

16 Q Okay. So if you will turn to the second page of 444.

17 A Okay.

18 Q Does that seem to indicate that this EOB, this explanation of
19 benefits for this out of network service, provided by --

20 [Pause]

21 Q If you'll turn to page 5 and tell me who the doctor group is.
22 Is that Ruby Crest?

23 A Is this provider remitted by -- associated with that EOB?

24 Q Yes. Yes, sir. Is that Ruby Crest? Is that the name of the -- is
25 that -- is Crum, Stefanko, and Jones -- we've been referring to them as

1 Ruby Crest, right?

2 A I don't know if you have or not.

3 Q Okay. I'll represent to you that's Ruby Crest, okay?

4 A Okay.

5 Q All right. So now there's one more thing we need to define
6 before we talk about these two documents. And that is the provider
7 remittance advice. Right?

8 A Yes.

9 Q Okay. And what is -- well, first of all -- oh, provide
10 [indiscernible], okay. Who issues this?

11 A United.

12 Q Okay. So -- and who receives it?

13 A The provider.

14 Q Okay. Okay. All right. So let's see if we can make sense of
15 this. A United member goes to the emergency room. It's staffed by
16 Ruby Crest doctors. They get the service. And following that service,
17 being out of network, the member will get an EOB, right?

18 A Yeah.

19 Q And the provider for that same treatment will get this
20 remittance advice, correct?

21 A Correct. Correct.

22 Q And both of them essentially, among other things, identify
23 the allowed amount.

24 A Yes, I believe so.

25 Q Okay. The allowed amount is the amount that United has

1 determined it will pay, right?

2 A It also includes the member cost share.

3 Q Yes, sir. Yes, sir.

4 A Yes.

5 Q And --

6 A But -- yes.

7 Q Yeah. And by the way, and you keep mentioning that. So let
8 me just get one thing out of the way so that we -- we're not confused
9 here. There's always a member co-share part of this, right?

10 A Not always.

11 Q Well, a lot of times, right?

12 A Depends on the service and the benefit plan.

13 Q Sure. I'm not going to ask about member co-share. I'm only
14 asking about the discount off of the bill charge. You with me. The
15 allowed amount.

16 A The allowed amount is what is allowed on that claim.

17 Q Right. Okay. So looking at these two documents, Exhibit
18 444, okay, and --

19 MR. ZAVITSANOS: What was the other one, Michael?

20 MR. KILLINGSWORTH: 375.

21 MR. ZAVITSANOS: What is it?

22 MR. KILLINGSWORTH: 375.

23 BY MR. ZAVITSANOS:

24 Q And 375, are those United EOBs?

25 A Without pulling that one back up, yes.

1 Q Okay. And you're comfortable understanding these numbers
2 and what these mean in these documents, right?

3 A At a very high level. I am not a member service expert. So
4 there are people that are smarter than me that know how to navigate
5 these better.

6 Q I'm not going to ask your opinions. I just wanted to be able
7 to identify the information so that we can make sense of it, okay?

8 A I will try my best, yes.

9 Q Yes. Okay.

10 MR. ZAVITSANOS: Okay. Your Honor, I move for the
11 admission of 375 and 443.

12 MR. LEYENDECKER: 375 and 444.

13 MR. ZAVITSANOS: 375 and 444.

14 MR. BLALACK: No objection.

15 THE COURT: Exhibits 375 and 444 will be admitted.

16 [Plaintiffs' Exhibit 375 and 444 admitted into evidence]

17 BY MR. ZAVITSANOS:

18 Q Okay. So let's just look at what the cover of an EOB looks
19 like, okay?

20 A Do I need 375 or where are you now?

21 Q Actually, let's stay with 444 so that you don't have to get up,
22 okay?

23 A Okay.

24 Q All right.

25 MR. ZAVITSANOS: Let's pull up 444, Michelle.