

Case Nos. 85525 & 85656

**In the Supreme Court of Nevada**

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

Appellants,

*vs.*

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

Respondents.

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Case No. 85525

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

Petitioners,

*vs.*

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

Respondents,

*vs.*

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

Real Parties in Interest.

Case No. 85656

**APPELLANTS' APPENDIX  
VOLUME 36  
PAGES 8751-9000**

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**CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX**

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
1.	Complaint (Business Court)	04/15/19	1	1–17
2.	Peremptory Challenge of Judge	04/17/19	1	18–19
3.	Summons - UMR, Inc. dba United Medical Resources	04/25/19	1	20–22
4.	Summons – United Health Care Services Inc. dba UnitedHealthcare	04/25/19	1	23–25
5.	Summons – United Healthcare Insurance Company	04/25/19	1	26–28
6.	Summons – Health Plan of Nevada, Inc.	04/30/19	1	29–31
7.	Summons – Sierra Health-Care Options, Inc.	04/30/19	1	32–34
8.	Summons – Sierra Health and Life Insurance Company, Inc.	04/30/19	1	35–37
9.	Summons – Oxford Health Plans, Inc.	05/06/19	1	38–41
10.	Notice of Removal to Federal Court	05/14/19	1	42–100
11.	Motion to Remand	05/24/19	1	101–122
12.	Defendants’ Statement of Removal	05/30/19	1	123–126
13.	Freemont Emergency Services (MANDAVIA), Ltd’s Response to Statement of Removal	05/31/19	1	127–138
14.	Defendants’ Opposition to Fremont Emergency Services (MANDAVIA), Ltd.’s Motion to Remand	06/21/19	1 2	139–250 251–275
15.	Rely in Support of Motion to Remand	06/28/19	2	276–308
16.	Civil Order to Statistically Close Case	12/10/19	2	309
17.	Amended Motion to Remand	01/15/20	2	310–348

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
18.	Defendants' Opposition to Plaintiffs' Amended Motion to Remand	01/29/20	2	349–485
19.	Reply in Support of Amended Motion to Remand	02/05/20	2 3	486–500 501–518
20.	Order	02/20/20	3	519–524
21.	Order	02/24/20	3	525–542
22.	Notice of Entry of Order Re: Remand	02/27/20	3	543–552
23.	Defendants' Motion to Dismiss	03/12/20	3	553–698
24.	Notice of Intent to Take Default as to: (1) Defendant UnitedHealth Group, Inc. on All Claims; and (2) All Defendants on the First Amended Complaint's Eighth Claim for Relief	03/13/20	3 4	699–750 751
25.	Plaintiffs' Opposition to Defendants' Motion to Dismiss	03/26/20	4	752–783
26.	Appendix of Exhibits in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss	03/26/20	4	784–908
27.	Recorder's Transcript of Proceedings Re: Motions	04/03/20	4	909–918
28.	Defendants' Reply in Support of Motion to Dismiss	05/07/20	4	919–948
29.	Recorder's Transcript of Proceedings Re: Pending Motions	05/14/20	4	949-972
30.	First Amended Complaint	05/15/20	4 5	973–1000 1001–1021
31.	Recorder's Transcript of Hearing All Pending Motions	05/15/20	5	1022–1026
32.	Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint	05/26/20	5	1027–1172

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
33.	Defendants' Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	05/26/20	5	1173–1187
34.	Plaintiffs' Opposition to Defendants' Motion to Dismiss First Amended Complaint	05/29/20	5 6	1188–1250 1251–1293
35.	Plaintiffs' Opposition to Defendants' Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	05/29/20	6	1294–1309
36.	Defendants' Reply in Support of Motion to Dismiss Plaintiffs' First Amended Complaint	06/03/20	6	1310–1339
37.	Defendants' Reply in Support of Their Supplemental Brief in Support of Their Motions to Dismiss Plaintiff's First Amended Complaint	06/03/20	6	1340–1349
38.	Transcript of Proceedings, All Pending Motions	06/05/20	6	1350–1384
39.	Transcript of Proceedings, All Pending Motions	06/09/20	6	1385–1471
40.	Notice of Entry of Order Denying Defendants' (1) Motion to Dismiss First Amended Complaint; and (2) Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	06/24/20	6 7	1472–1500 1501–1516
41.	Notice of Entry of Stipulated Confidentiality and Protective Order	06/24/20	7	1517–1540
42.	Defendants' Answer to Plaintiffs' First Amended Complaint	07/08/20	7	1541–1590

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
43.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	07/09/20	7	1591–1605
44.	Joint Case Conference Report	07/17/20	7	1606–1627
45.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	07/23/20	7	1628–1643
46.	Transcript of Proceedings, Plaintiff's Motion to Compel Defendants' Production of Unredacted MultiPlan, Inc. Agreement	07/29/20	7	1644–1663
47.	Amended Transcript of Proceedings, Plaintiff's Motion to Compel Defendants' Production of Unredacted MultiPlan, Inc. Agreement	07/29/20	7	1664–1683
48.	Errata	08/04/20	7	1684
49.	Plaintiffs' Motion to Compel Defendants' Production of Claims File for At-Issue Claims, or, in the Alternative, Motion in Limine on Order Shortening Time	08/28/20	7 8	1685–1700 1701–1845
50.	Defendants' Opposition to Plaintiffs' Motion to Compel Defendants' Production of Claims File for At-Issue Claims, Or, in The Alternative, Motion in Limine on Order Shortening Time	09/04/20	8	1846–1932
51.	Recorder's Transcript of Proceedings Re: Pending Motions	09/09/20	8	1933–1997
52.	Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiffs to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	09/21/20	8 9	1998–2000 2001–2183
53.	Notice of Entry of Order Granting, in Part Plaintiffs' Motion to Compel Defendants' Production of Claims for At-Issue Claims,	09/28/20	9	2184–2195

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Or, in The Alternative, Motion in Limine			
54.	Errata to Plaintiffs' Motion to Compel Defendants' List of Witnesses Production of Documents and Answers to Interrogatories	09/28/20	9	2196–2223
55.	Plaintiffs' Opposition to Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	09/29/20	9-10	2224–2292
56.	Defendants' Opposition to Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents, and Answers to Interrogatories on Order Shortening Time	10/06/20	10	2293–2336
57.	Reply in Support of Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures	10/07/20	10	2337–2362
58.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	10/08/20	10	2363–2446
59.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	10/22/20	10	2447–2481
60.	Defendants' Objections to Plaintiffs' Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/23/20	10 11	2482–2500 2501–2572
61.	Defendants' Objections to Plaintiffs to Plaintiffs' Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/26/20	11	2573–2670

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
62.	Notice of Entry of Order Denying Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on Order Shortening Time	10/27/20	11	2671–2683
63.	Notice of Entry of Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/27/20	11	2684–2695
64.	Defendants' Objections to Plaintiffs' Order Denying Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiffs' to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	11/02/20	11	2696–2744
65.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	11/04/20	11 12	2745–2750 2751–2774
66.	Notice of Entry of Order Setting Defendants' Production & Response Schedule Re: Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	11/09/20	12	2775–2785
67.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/23/20	12	2786–2838
68.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/30/20	12	2839–2859
69.	Notice of Entry of Stipulated Electronically Stored Information Protocol Order	01/08/21	12	2860–2874

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
70.	Appendix to Defendants' Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/08/21	12 13 14	2875–3000 3001–3250 3251–3397
71.	Defendants' Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/11/21	14	3398–3419
72.	Plaintiffs' Opposition to Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/12/21	14	3420–3438
73.	Recorder's Partial Transcript of Proceedings Re: Motions (Unsealed Portion Only)	01/13/21	14	3439–3448
74.	Defendants' Reply in Support of Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/19/21	14	3449–3465
75.	Appendix to Defendants' Reply in Support of Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/19/21	14 15	3466–3500 3501–3658
76.	Recorder's Transcript of Proceedings Re: Motions	01/21/21	15	3659–3692
77.	Notice of Entry of Order Granting Defendants' Motion for Appointment of Special Master	02/02/21	15	3693–3702
78.	Notice of Entry of Order Denying Defendants' Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	02/04/21	15	3703–3713
79.	Motion for Reconsideration of Order Denying Defendants' Motion to Compel	02/18/21	15 16	3714–3750 3751–3756



<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Plaintiffs Responses to Defendants' First and Second Requests for Production			
80.	Recorder's Transcript of Proceedings Re: Motions	02/22/21	16	3757–3769
81.	Recorder's Transcript of Proceedings Re: Motions	02/25/21	16	3770–3823
82.	Recorder's Transcript of Hearing Defendants' Motion to Extend All Case Management Deadlines and Continue Trial Setting on Order Shortening Time (Second Request)	03/03/21	16	3824–3832
83.	Plaintiffs' Opposition to Motion for Reconsideration of Order Denying Defendants' Motion to Compel Plaintiffs Responses to Defendants' First and Second Requests for Production	03/04/21	16	3833–3862
84.	Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/08/21	16	3863–3883
85.	Errata to Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/12/21	16	3884–3886
86.	Notice of Entry of Report and Recommendation #1	03/16/21	16	3887–3894
87.	Reply in Support of Motion for Reconsideration of Order Denying Defendants' Motion to Compel Plaintiffs Responses to Defendants' First and Second Requests for Production	03/16/21	16	3895–3909
88.	Recorder's Transcript of Hearing All Pending Motions	03/18/21	16	3910–3915

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
89.	Defendants' Opposition to Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not be Held in Contempt and for Sanctions	03/22/21	16	3916–3966
90.	Recorder's Transcript of Hearing All Pending Motions	03/25/21	16	3967–3970
91.	Notice of Entry of Report and Recommendation #2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	03/29/21	16	3971–3980
92.	Recorder's Transcript of Hearing Motion to Associate Counsel on OST	04/01/21	16	3981–3986
93.	Recorder's Transcript of Proceedings Re: Motions	04/09/21	16 17	3987–4000 4001–4058
94.	Defendants' Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	04/12/21	17	4059–4079
95.	Notice of Entry of Report and Recommendation #3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time	04/15/21	17	4080–4091
96.	Recorder's Transcript of Hearing All Pending Motions	04/21/21	17	4092–4095
97.	Notice of Entry of Order Denying Motion for Reconsideration of Court's Order Denying Defendants' Motion to Compel Responses to	04/26/21	17	4096–4108

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Defendants' First and Second Requests for Production			
98.	Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Request for Production on Order Shortening Time	04/28/21	17	4109–4123
99.	Defendants' Errata to Their Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production	05/03/21	17	4124–4127
100.	Defendants' Objections to Plaintiffs' Proposed Order Granting Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	05/05/21	17	4128–4154
101.	Recorder's Transcript of Hearing Motion for Leave to File Opposition to Defendants' Motion to Compel Responses to Second Set of Requests for Production on Order Shortening Time in Redacted and Partially Sealed Form	05/12/21	17	4155–4156
102.	Notice of Entry of Order of Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Question	05/26/21	17	4157–4165
103.	Recorder's Transcript of Proceedings Re: Motions	05/28/21	17	4166–4172
104.	Notice of Entry of Report and Recommendation #7 Regarding Defendants'	06/03/21	17	4173–4184

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Motion to Compel Plaintiffs' Responses to Defendants' Amended Third Set of Requests for Production of Documents			
105.	Recorder's Transcript of Proceedings Re: Motions Hearing	06/03/21	17	4185–4209
106.	Recorder's Transcript of Proceedings Re: Motions Hearing	06/04/21	17	4210–4223
107.	Recorder's Transcript of Hearing Motion for Leave to File Plaintiffs' Response to Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Second Set of Request for Production on Order Shortening Time in Redacted and Partially Sealed Form	06/09/21	17	4224–4226
108.	Defendants' Objections to Special Master Report and Recommendation No. 7 Regarding Defendants' Motion to Compel Responses to Defendants' Amended Third Set of Requests for Production of Documents	06/17/21	17	4227–4239
109.	Recorder's Transcript of Proceedings Re: Motions Hearing	06/23/21	17 18	4240–4250 4251–4280
110.	Plaintiffs' Response to Defendants' Objection to Special Master's Report and Recommendation #7 Regarding Defendants' Motion to Compel Responses to Amended Third Set of Request for Production of Documents	06/24/21	18	4281–4312
111.	Notice of Entry Report and Recommendations #9 Regarding Pending Motions	07/01/21	18	4313–4325
112.	United's Reply in Support of Motion to Compel Plaintiffs' Production of Documents	07/12/21	18	4326–4340

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	About Which Plaintiffs' Witnesses Testified on Order Shortening Time			
113.	Recorder's Transcript of Proceedings Re: Motions Hearing	07/29/21	18	4341–4382
114.	Notice of Entry of Order Granting Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	08/03/21	18	4383–4402
115.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order and Overruling Objection	08/09/21	18	4403–4413
116.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time and Overruling Objection	08/09/21	18	4414–4424
117.	Amended Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order and Overruling Objection	08/09/21	18	4425–4443
118.	Amended Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 3 Regarding Defendants' Second Set of Requests for Production on Order Shortening Time and	08/09/21	18	4444–4464

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Overruling Objection			
119.	Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt and Sanctioned for Violating Protective Order	08/10/21	18	4465–4486
120.	Notice of Entry of Report and Recommendation #11 Regarding Defendants’ Motion to Compel Plaintiffs’ Production of Documents About Which Plaintiffs’ Witnesses Testified	08/11/21	18	4487–4497
121.	Recorder’s Transcript of Proceedings Re: Motions Hearing (Unsealed Portion Only)	08/17/21	18 19	4498–4500 4501–4527
122.	Plaintiffs’ Opposition to United’s Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt and Sanctioned for Allegedly Violating Protective Order	08/24/21	19	4528–4609
123.	Recorder’s Transcript of Proceedings Re: Motions Hearing	09/02/21	19	4610–4633
124.	Reply Brief on “Motion for Order to Show Cause Why Plaintiffs Should Not Be Hold in Contempt and Sanctioned for Violating Protective Order”	09/08/21	19	4634–4666
125.	Recorder’s Partial Transcript of Proceedings Re: Motions Hearing	09/09/21	19	4667–4680
126.	Recorder’s Partial Transcript of Proceedings Re: Motions Hearing (Via Blue Jeans)	09/15/21	19	4681–4708
127.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 6 Regarding Defendants’ Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions and Overruling Objection	09/16/21	19	4709–4726

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
128.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 7 Regarding Defendants' Motion to Compel Responses to Defendants' Amended Third Set of Request for Production of Documents and Overruling Objection	09/16/21	19	4727–4747
129.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed No to Answer and Overruling Objection	09/16/21	19 20	4748–4750 4751–4769
130.	Defendants' Motion for Partial Summary Judgment	09/21/21	20	4770–4804
131.	Defendants' Motion in Limine No. 1: Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Agreements with other Market Players and Related Negotiations	09/21/21	20	4805–4829
132.	Defendants' Motion in Limine No. 2: Motion Offered in the Alternative to MIL No. 1, to Preclude Plaintiffs from Offering Evidence Relating to Defendants' Agreements with Other Market Players and Related Negotiations	09/21/21	20	4830–4852
133.	Motion in Limine No. 4 to Preclude References to Defendants' Decision Making Process and Reasonableness of billed Charges if Motion in Limine No. 3 is Denied	09/21/21	20	4853–4868
134.	Defendants' Motion in Limine No. 10 to Exclude Reference of Defendants' Corporate Structure (Alternative Motion to be Considered Only if court Denies Defendants' Counterpart Motion in Limine No. 9)	09/21/21	20	4869–4885

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
135.	Defendants' Motion in Limine No. 13: Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	09/21/21	20	4886–4918
136.	Defendants' Motion in Limine No. 14: Motion Offered in the Alternative to MIL No. 13 to Preclude Plaintiffs from Contesting Defendants' Defenses Relating to Claims that were Subject to Settlement Agreement Between CollectRX and Data iSight; and Defendants' Adoption of Specific Negotiation Thresholds for Reimbursement Claims Appealed or Contested by Plaintiffs	09/21/21	20	4919–4940
137.	Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	09/21/21	20	4941–4972
138.	Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	09/22/21	20 21	4973–5000 5001–5030
139.	Defendants' Motion in Limine No. 8, Offered in the Alternative to MIL No. 7, to Preclude Plaintiffs from Offering Evidence as to the Qualitative Value, Relative Value, Societal Value, or Difficulty of the Services they Provided	09/22/21	21	5031–5054
140.	Defendants' Motion in Limine No. 9 to Authorize Defendants to Offer Evidence of Plaintiffs Organizational, Management, and Ownership Structure, Including Flow of Funds Between Related Entities, Operating Companies, Parent Companies, and Subsidiaries	09/22/21	21	5055–5080
141.	Defendants' Opposition to Plaintiffs' Motion	09/29/21	21	5081–5103



<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	in Limine No. 1: to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges			
142.	Notice of Entry of Order Regarding Defendants' Objection to Special Master's Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents about which Plaintiffs' Witnesses Testified on Order Shortening Time	09/29/21	21	5104–5114
143.	Plaintiffs' Opposition to Defendants' Motion in Limine Nos. 3, 4, 5, 6 Regarding Billed Charges	09/29/21	21	5115–5154
144.	Plaintiffs' Opposition to Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	09/29/21	21	5155–5169
145.	Plaintiffs' Motion for Leave to File Second Amended Complaint on Order Shortening Time	10/04/21	21	5170–5201
146.	Transcript of Proceedings Re: Motions (Via Blue Jeans)	10/06/21	21	5202–5234
147.	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Second Amended Complaint on Order Shortening Time	10/07/21	21	5235–5245
148.	Second Amended Complaint	10/07/21	21 22	5246–5250 5251–5264
149.	Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and-or Argument Regarding the Fact that Plaintiffs Have	10/08/21	22	5265–5279

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Dismissed Certain Claims and Parties on Order Shortening Time			
150.	Defendants' Answer to Plaintiffs' Second Amended Complaint	10/08/21	22	5280–5287
151.	Defendants' Objections to Plaintiffs' NRCP 16.1(a)(3) Pretrial Disclosures	10/08/21	22	5288–5294
152.	Plaintiffs' Objections to Defendants' Pretrial Disclosures	10/08/21	22	5295–5300
153.	Opposition to Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Regarding the Fact that Plaintiffs have Dismissed Certain Claims and Parties on Order Shortening Time	10/12/21	22	5301–5308
154.	Notice of Entry of Order Denying Defendants' Motion for Order to Show Cause Why Plaintiffs Should not be Held in Contempt for Violating Protective Order	10/14/21	22	5309–5322
155.	Defendants' Opposition to Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	10/18/21	22	5323–5333
156.	Media Request and Order Allowing Camera Access to Court Proceedings (Legal Newslane)	10/18/21	22	5334–5338
157.	Transcript of Proceedings Re: Motions	10/19/21	22 23	5339–5500 5501–5561
158.	Amended Transcript of Proceedings Re: Motions	10/19/21	23 24	5562–5750 5751–5784
159.	Amended Transcript of Proceedings Re: Motions	10/20/21	24	5785–5907
160.	Transcript of Proceedings Re: Motions	10/22/21	24	5908–6000

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
			25	6001–6115
161.	Notice of Entry of Order Denying Defendants’ Motion for Partial Summary Judgment	10/25/21	25	6116–6126
162.	Recorder’s Transcript of Jury Trial – Day 1	10/25/21	25 26	6127–6250 6251–6279
163.	Recorder’s Transcript of Jury Trial – Day 2	10/26/21	26	6280–6485
164.	Joint Pretrial Memorandum Pursuant to EDRC 2.67	10/27/21	26 27	6486–6500 6501–6567
165.	Recorder’s Transcript of Jury Trial – Day 3	10/27/21	27 28	6568–6750 6751–6774
166.	Recorder’s Transcript of Jury Trial – Day 4	10/28/21	28	6775–6991
167.	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 28	6992–6997
168.	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 29	6998–7000 7001–7003
169.	Defendants’ Objection to Media Requests	10/28/21	29	7004–7018
170.	Supplement to Defendants’ Objection to Media Requests	10/31/21	29	7019–7039
171.	Notice of Entry of Order Denying Defendants’ Motion in Limine No. 1 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs’ Agreements with Other Market Players and Related Negotiations	11/01/21	29	7040–7051
172.	Notice of Entry of Order Denying Defendants’ Motion in Limine No. 2: Motion Offered in the Alternative to MIL No. 1, to Preclude Plaintiffs from Offering Evidence	11/01/21	29	7052–7063

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Relating to Defendants' Agreements with Other Market Players and Related Negotiations			
173.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 3 to Allow Reference to Plaintiffs' Decision Making Processes Regarding Setting Billed Charges	11/01/21	29	7064–7075
174.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 4 to Preclude References to Defendants' Decision Making Processes and Reasonableness of Billed Charges if Motion in Limine No. 3 is Denied	11/01/21	29	7076–7087
175.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 12, Paired with Motion in Limine No. 11, to Preclude Plaintiffs from Discussing Defendants' Approach to Reimbursement	11/01/21	29	7088–7099
176.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 5 Regarding Argument or Evidence that Amounts TeamHealth Plaintiffs Billed for Services are Reasonable [An Alternative Motion to Motion in Limine No. 6]	11/01/21	29	7100–7111
177.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	11/01/21	29	7112–7123
178.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 8, Offered in the Alternative to MIL No. 7, to Preclude Plaintiffs from Offering Evidence as to the	11/01/21	29	7124–7135

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Qualitative Value, Relative Value, Societal Value, or Difficulty of the Services they Provided			
179.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 10 to Exclude Evidence of Defendants' Corporate Structure (Alternative Motion to be Considered Only if Court Denies Defendants' Counterpart Motion in Limine No. 9)	11/01/21	29	7136–7147
180.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 11, Paired with Motion in Limine No. 12, to Authorize Defendants to Discuss Plaintiffs' Conduct and Deliberations in Negotiating Reimbursement	11/01/21	29	7148–7159
181.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 13 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	11/01/21	29	7160–7171
182.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 14: Motion Offered in the Alternative MIL No. 13 to Preclude Plaintiffs from Contesting Defendants' Defenses Relating to Claims that were Subject to a Settlement Agreement Between CollectRx and Data iSight; and Defendants' Adoption of Specific Negotiation Thresholds for Reimbursement Claims Appealed or Contested by Plaintiffs	11/01/21	29	7172–7183
183.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 15 to Preclude Reference and Testimony	11/01/21	29	7184–7195

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Regarding the TeamHealth Plaintiffs Policy not to Balance Bill			
184.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 18 to Preclude Testimony of Plaintiffs' Non-Retained Expert Joseph Crane, M.D.	11/01/21	29	7196–7207
185.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 20 to Exclude Defendants' Lobbying Efforts	11/01/21	29	7208–7219
186.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	11/01/21	29	7220–7231
187.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 27 to Preclude Evidence of Complaints Regarding Defendants' Out-Of-Network Rates or Payments	11/01/21	29	7232–7243
188.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 29 to Preclude Evidence Only Relating to Defendants' Evaluation and Development of a Company that Would Offer a Service Similar to Multiplan and Data iSight	11/01/21	29 30	7244–7250 7251–7255
189.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 32 to Exclude Evidence or Argument Relating to Materials, Events, or Conduct that Occurred on or After January 1, 2020	11/01/21	30	7256–7267
190.	Notice of Entry of Order Denying Defendants' Motion in Limine to Preclude Certain Expert Testimony and Fact Witness Testimony by Plaintiffs' Non-Retained	11/01/21	30	7268–7279

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Expert Robert Frantz, M.D.			
191.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 38 to Exclude Evidence or Argument Relating to Defendants' use of MultiPlan and the Data iSight Service, Including Any Alleged Conspiracy or Fraud Relating to the use of Those Services	11/01/21	30	7280–7291
192.	Notice of Entry of Order Granting Plaintiffs' Motion in Limine to Exclude Evidence, Testimony And-Or Argument Regarding the Fact that Plaintiff have Dismissed Certain Claims	11/01/21	30	7292–7354
193.	Notice of Entry of Order Denying Defendants' Motion to Strike Supplement Report of David Leathers	11/01/21	30	7355–7366
194.	Plaintiffs' Notice of Amended Exhibit List	11/01/21	30	7367–7392
195.	Plaintiffs' Response to Defendants' Objection to Media Requests	11/01/21	30	7393–7403
196.	Recorder's Transcript of Jury Trial – Day 5	11/01/21	30 31	7404–7500 7501–7605
197.	Recorder's Transcript of Jury Trial – Day 6	11/02/21	31 32	7606–7750 7751–7777
198.	Defendants' Deposition Designations and Objections to Plaintiffs' Deposition Counter-Designations	11/03/21	32	7778–7829
199.	Defendants' Objections to Plaintiffs' Proposed Order Granting in Part and Denying in Part Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	11/03/21	32	7830–7852
200.	Notice of Entry of Order Affirming and	11/03/21	32	7853–7874

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Adopting Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified			
201.	Recorder's Transcript of Jury Trial – Day 7	11/03/21	32 33	7875–8000 8001–8091
202.	Notice of Entry of Order Granting Defendants' Motion in Limine No. 17	11/04/21	33	8092–8103
203.	Notice of Entry of Order Granting Defendants' Motion in Limine No. 25	11/04/21	33	8104–8115
204.	Notice of Entry of Order Granting Defendants' Motion in Limine No. 37	11/04/21	33	8116–8127
205.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 9	11/04/21	33	8128–8140
206.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 21	11/04/21	33	8141–8153
207.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 22	11/04/21	33	8154–8165
208.	Plaintiffs' Notice of Deposition Designations	11/04/21	33 34	8166–8250 8251–8342
209.	1st Amended Jury List	11/08/21	34	8343
210.	Recorder's Transcript of Jury Trial – Day 8	11/08/21	34 35	8344–8500 8501–8514
211.	Recorder's Amended Transcript of Jury Trial – Day 9	11/09/21	35	8515–8723
212.	Recorder's Transcript of Jury Trial – Day 9	11/09/21	35 36	8724–8750 8751–8932
213.	Recorder's Transcript of Jury Trial – Day 10	11/10/21	36	8933–9000



<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
			37	9001–9152
214.	Defendants’ Motion for Leave to File Defendants’ Preliminary Motion to Seal Attorneys’ Eyes Only Documents Used at Trial Under Seal	11/12/21	37	9153–9161
215.	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs’ Motion in Limine to Exclude Evidence Subject to the Court’s Discovery Orders	11/12/21	37	9162–9173
216.	Plaintiffs’ Trial Brief Regarding Defendants’ Prompt Payment Act Jury Instruction Re: Failure to Exhaust Administrative Remedies	11/12/21	37	9174–9184
217.	Recorder’s Transcript of Jury Trial – Day 11	11/12/21	37 38	9185–9250 9251–9416
218.	Plaintiffs’ Trial Brief Regarding Specific Price Term	11/14/21	38	9417–9425
219.	2nd Amended Jury List	11/15/21	38	9426
220.	Defendants’ Proposed Jury Instructions (Contested)	11/15/21	38	9427–9470
221.	Jointly Submitted Jury Instructions	11/15/21	38	9471–9495
222.	Plaintiffs’ Proposed Jury Instructions (Contested)	11/15/21	38 39	9496–9500 9501–9513
223.	Plaintiffs’ Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/15/21	39	9514–9521
224.	Recorder’s Transcript of Jury Trial – Day 12	11/15/21	39 40	9522–9750 9751–9798
225.	Defendants’ Response to TeamHealth Plaintiffs’ Trial Brief Regarding Defendants’ Prompt Pay Act Jury Instruction Re: Failure to Exhaust Administrative	11/16/21	40	9799–9806

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Remedies			
226.	General Defense Verdict	11/16/21	40	9807–9809
227.	Plaintiffs’ Proposed Verdict Form	11/16/21	40	9810–9819
228.	Recorder’s Transcript of Jury Trial – Day 13	11/16/21	40 41	9820–10,000 10,001–10,115
229.	Reply in Support of Trial Brief Regarding Evidence and Argument Relating to Out-Of-State Harms to Non-Parties	11/16/21	41	10,116–10,152
230.	Response to Plaintiffs’ Trial Brief Regarding Specific Price Term	11/16/21	41	10,153–10,169
231.	Special Verdict Form	11/16/21	41	10,169–10,197
232.	Trial Brief Regarding Jury Instructions on Formation of an Implied-In-Fact Contract	11/16/21	41	10,198–10,231
233.	Trial Brief Regarding Jury Instructions on Unjust Enrichment	11/16/21	41	10,232–10,248
234.	3rd Amended Jury List	11/17/21	41	10,249
235.	Defendants’ Motion for Judgment as a Matter of Law	11/17/21	41 42	10,250 10,251–10,307
236.	Plaintiffs’ Supplemental Jury Instruction (Contested)	11/17/21	42	10,308–10,313
237.	Recorder’s Transcript of Jury Trial – Day 14	11/17/21	42 43	10,314–10,500 10,501–10,617
238.	Errata to Source on Defense Contested Jury Instructions	11/18/21	43	10,618–10,623
239.	Recorder’s Transcript of Jury Trial – Day 15	11/18/21	43 44	10,624–10,750 10,751–10,946
240.	Defendants’ Supplemental Proposed Jury Instructions (Contested)	11/19/21	44	10,947–10,952

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
241.	Errata	11/19/21	44	10,953
242.	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	11/19/21	44	10,954–10,963
243.	Plaintiffs' Proposed Special Verdict Form	11/19/21	44	10,964–10,973
244.	Recorder's Transcript of Jury Trial – Day 16	11/19/21	44 45	10,974–11,000 11,001–11,241
245.	Response to Plaintiffs' Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/19/21	45 46	11,242–11,250 11,251–11,254
246.	Plaintiffs' Second Supplemental Jury Instructions (Contested)	11/20/21	46	11,255–11,261
247.	Defendants' Supplemental Proposed Jury Instruction	11/21/21	46	11,262–11,266
248.	Plaintiffs' Third Supplemental Jury Instructions (Contested)	11/21/21	46	11,267–11,272
249.	Recorder's Transcript of Jury Trial – Day 17	11/22/21	46 47	11,273–11,500 11,501–11,593
250.	Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,594–11,608
251.	Defendants' Opposition to Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,609–11,631
252.	4th Amended Jury List	11/23/21	47	11,632
253.	Recorder's Transcript of Jury Trial – Day 18	11/23/21	47 48	11,633–11,750 11,751–11,907

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
254.	Recorder's Transcript of Jury Trial – Day 19	11/24/21	48	11,908–11,956
255.	Jury Instructions	11/29/21	48	11,957–11,999
256.	Recorder's Transcript of Jury Trial – Day 20	11/29/21	48 49	12,000 12,001–12,034
257.	Special Verdict Form	11/29/21	49	12,035–12,046
258.	Verdict(s) Submitted to Jury but Returned Unsigned	11/29/21	49	12,047–12,048
259.	Defendants' Proposed Second Phase Jury Instructions	12/05/21	49	12,049–12,063
260.	Plaintiffs' Proposed Second Phase Jury Instructions and Verdict Form	12/06/21	49	12,064–12,072
261.	Plaintiffs' Supplement to Proposed Second Phase Jury Instructions	12/06/21	49	12,072–12,077
262.	Recorder's Transcript of Jury Trial – Day 21	12/06/21	49	12,078–,12,135
263.	Defendants' Proposed Second Phase Jury Instructions-Supplement	12/07/21	49	12,136–12,142
264.	Jury Instructions Phase Two	12/07/21	49	12,143–12,149
265.	Special Verdict Form	12/07/21	49	12,150–12,152
266.	Recorder's Transcript of Jury Trial – Day 22	12/07/21	49 50	12,153–12,250 12,251–12,293
267.	Motion to Seal Defendants' Motion to Seal Certain Confidential Trial Exhibits	12/15/21	50	12,294–12,302
268.	Motion to Seal Defendants' Supplement to Motion to Seal Certain Confidential Trial Exhibits	12/15/21	50	12,303–12,311
269.	Notice of Entry of Order Granting Defendants' Motion for Leave to File Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at	12/27/21	50	12,312–12,322

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Trial Under Seal			
270.	Plaintiffs' Opposition to United's Motion to Seal	12/29/21	50	12,323–12,341
271.	Defendants' Motion to Apply the Statutory Cap on Punitive Damages	12/30/21	50	12,342–12,363
272.	Appendix of Exhibits to Defendants' Motion to Apply the Statutory Cap on Punitive Damage	12/30/21	50 51	12,364–12,500 12,501–12,706
273.	Defendants' Objection to Plaintiffs' Proposed Order Denying Defendants' Motion for Judgment as a Matter of Law	01/04/22	51	12,707–12,717
274.	Notice of Entry of Order Denying Defendants' Motion for Judgement as a Matter of Law	01/06/22	51	12,718–12,738
275.	Motion to Seal Defendants' Reply in Support of Motion to Seal Certain Confidential Trial Exhibits	01/10/22	51	12,739–12,747
276.	Motion to Seal Defendants' Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits	01/10/22	51 52	12,748–12,750 12,751–12,756
277.	Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing on Defendants' Motion to Seal Certain Confidential Trial Exhibits on Order Shortening Time	01/11/22	52	12,757–12,768
278.	Plaintiffs' Opposition to Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing	01/12/22	52	12,769–12,772
279.	Plaintiffs' Opposition to Defendants' Motion to Apply Statutory Cap on Punitive Damages and Plaintiffs' Cross Motion for	01/20/22	52	12,773–12,790

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Entry of Judgment			
280.	Appendix in Support of Plaintiffs' Opposition to Defendants' Motion to Apply Statutory Cap on Punitive Damages and Plaintiffs' Cross Motion for Entry of Judgment	01/20/22	52	12,791–12,968
281.	Notice of Entry of Order Granting Plaintiffs' Proposed Schedule for Submission of Final Redactions	01/31/22	52	12,969–12,979
282.	Notice of Entry of Stipulation and Order Regarding Schedule for Submission of Redactions	02/08/22	52	12,980–12,996
283.	Defendants' Opposition to Plaintiffs' Cross-Motion for Entry of Judgment	02/10/22	52 53	12,997–13,000 13,001–13,004
284.	Defendant' Reply in Support of Their Motion to Apply the Statutory Cap on Punitive Damages	02/10/22	53	13,005–13,028
285.	Notice of Entry of Order Shortening Time for Hearing Re: Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits	02/14/22	53	13,029–13,046
286.	Defendants' Response to Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits on Order Shortening Time	02/15/22	53	13,047–13,053
287.	Plaintiffs' Reply in Support of Cross Motion for Entry of Judgment	02/15/22	53	13,054–13,062
288.	Defendants' Index of Trial Exhibit Redactions in Dispute	02/16/22	53	13,063–13,073
289.	Notice of Entry of Stipulation and Order Regarding Certain Admitted Trial Exhibits	02/17/22	53	13,074–13,097
290.	Transcript of Proceedings Re: Motions Hearing	02/17/22	53	13,098–13,160

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
291.	Objection to Plaintiffs' Proposed Judgment and Order Denying Motion to Apply Statutory Cap on Punitive Damages	03/04/22	53	13,161–13,167
292.	Notice of Entry of Judgment	03/09/22	53	13,168–13,178
293.	Notice of Entry of Order Denying Defendants' Motion to Apply Statutory Cap on Punitive Damages	03/09/22	53	13,179–13,197
294.	Health Care Providers' Verified Memorandum of Cost	03/14/22	53	13,198–13,208
295.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 1	03/14/22	53 54	13,209–13,250 13,251–13,464
296.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 2	03/14/22	54 55	13,465–13,500 13,501–13,719
297.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 3	03/14/22	55 56	13,720–13,750 13,751–13,976
298.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 4	03/14/22	56 57	13,977–14,000 14,001–14,186
299.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 5	03/14/22	57 58	14,187–14,250 14,251–14,421
300.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 6	03/14/22	58 59	14,422–14,500 14,501–14,673
301.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 7	03/14/22	59 60	14,674–14,750 14,751–14,920
302.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of	03/14/22	60 61	14,921–15,000 15,001–15,174

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Cost Volume 8			
303.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 9	03/14/22	61 62	15,175–15,250 15,251–15,373
304.	Defendants' Motion to Retax Costs	03/21/22	62	15,374–15,388
305.	Health Care Providers' Motion for Attorneys' Fees	03/30/22	62	15,389–15,397
306.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 1	03/30/22	62 63	15,398–15,500 15,501–15,619
307.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 2	03/30/22	63 64	15,620–15,750 15,751–15,821
308.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 3	03/30/22	64 65	15,822–16,000 16,001–16,053
309.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 4	03/30/22	65	16,054–16,232
310.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 5	03/30/22	65 66	16,233–16,250 16,251–16,361
311.	Defendants Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions on Order Shortening Time	04/05/22	66	16,362–16,381
312.	Defendants' Motion for Remittitur and to Alter or Amend the Judgment	04/06/22	66	16,382–16,399
313.	Defendants' Renewed Motion for Judgment as a Matter of Law	04/06/22	66	16,400–16,448
314.	Motion for New Trial	04/06/22	66 67	16,449–16,500 16,501–16,677



<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
315.	Notice of Appeal	04/06/22	67	16,678–16,694
316.	Case Appeal Statement	04/06/22	67 68	16,695–16,750 16,751–16,825
317.	Plaintiffs’ Opposition to Defendants’ Rule 62(b) Motion for Stay	04/07/22	68	16,826–16,831
318.	Reply on “Defendants’ Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions” ( <i>on Order Shortening Time</i> )	04/07/22	68	16,832–16,836
319.	Transcript of Proceedings Re: Motions Hearing	04/07/22	68	16,837–16,855
320.	Opposition to Defendants’ Motion to Retax Costs	04/13/22	68	16,856–16,864
321.	Appendix in Support of Opposition to Defendants’ Motion to Retax Costs	04/13/22	68 69	16,865–17,000 17,001–17,035
322.	Defendants’ Opposition to Plaintiffs’ Motion for Attorneys’ Fees	04/20/22	69	17,036–17,101
323.	Transcript of Proceedings Re: Motions Hearing	04/21/22	69	17,102–17,113
324.	Notice of Posting <i>Supersedeas</i> Bond	04/29/22	69	17,114–17,121
325.	Defendants’ Reply in Support of Motion to Retax Costs	05/04/22	69	17,122–17,150
326.	Health Care Providers’ Reply in Support of Motion for Attorneys’ Fees	05/04/22	69	17,151–17,164
327.	Plaintiffs’ Opposition to Defendants’ Motion for Remittitur and to Alter or Amend the Judgment	05/04/22	69	17,165–17,178
328.	Plaintiffs’ Opposition to Defendants’ Motion for New Trial	05/04/22	69 70	17,179–17,250 17,251–17,335
329.	Plaintiffs’ Opposition to Defendants’ Renewed Motion for Judgment as a Matter	05/05/22	70	17,336–17,373

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	of Law			
330.	Reply in Support of Defendants’ Motion for Remittitur and to Alter or Amend the Judgment	06/22/22	70	17,374–17,385
331.	Reply in Support of Defendants’ Renewed Motion for Judgment as a Matter of Law	06/22/22	70	17,386–17,411
332.	Reply in Support of Motion for New Trial	06/22/22	70	17,412–17,469
333.	Notice of Supplemental Attorneys Fees Incurred After Submission of Health Care Providers’ Motion for Attorneys Fees	06/24/22	70 71	17,470–17,500 17,501–17,578
334.	Defendants’ Response to Improper Supplement Entitled “Notice of Supplemental Attorney Fees Incurred After Submission of Health Care Providers’ Motion for Attorneys Fees”	06/28/22	71	17,579–17,593
335.	Notice of Entry of Order Granting Plaintiffs’ Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	06/29/22	71	17,594–17,609
336.	Transcript of Proceedings Re: Motions Hearing	06/29/22	71	17,610–17,681
337.	Order Amending Oral Ruling Granting Defendants’ Motion to Retax	07/01/22	71	17,682–17,688
338.	Notice of Entry of Order Denying Defendants’ Motion for Remittitur and to Alter or Amend the Judgment	07/19/22	71	17,689–17,699
339.	Defendants’ Objection to Plaintiffs’ Proposed Order Approving Plaintiffs’ Motion for Attorneys’ Fees	07/26/22	71	17,700–17,706
340.	Notice of Entry of Order Approving Plaintiffs’ Motion for Attorney’s Fees	08/02/22	71	17,707–17,725

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
341.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Retax Costs	08/02/22	71	17,726–17,739
342.	Amended Case Appeal Statement	08/15/22	71 72	17,740–17,750 17,751–17,803
343.	Amended Notice of Appeal	08/15/22	72	17,804–17,934
344.	Reply in Support of Supplemental Attorney's Fees Request	08/22/22	72	17,935–17,940
345.	Objection to Plaintiffs' Proposed Orders Denying Renewed Motion for Judgment as a Matter of Law and Motion for New Trial	09/13/22	72	17,941–17,950
346.	Recorder's Transcript of Hearing Re: Hearing	09/22/22	72	17,951–17,972
347.	Limited Objection to "Order Unsealing Trial Transcripts and Restoring Public Access to Docket"	10/06/22	72	17,973–17,978
348.	Defendants' Motion to Redact Portions of Trial Transcript	10/06/22	72	17,979–17,989
349.	Plaintiffs' Opposition to Defendants' Motion to Redact Portions of Trial Transcript	10/07/22	72	17,990–17,993
350.	Transcript of Proceedings re Status Check	10/10/22	72 73	17,994–18,000 18,001–18,004
351.	Notice of Entry of Order Approving Supplemental Attorney's Fee Award	10/12/22	73	18,005–18,015
352.	Notice of Entry of Order Denying Defendants' Motion for New Trial	10/12/22	73	18,016–18,086
353.	Notice of Entry of Order Denying Defendants' Renewed Motion for Judgment as a Matter of Law	10/12/22	73	18,087–18,114
354.	Notice of Entry of Order Unsealing Trial Transcripts and Restoring Public Access to	10/12/22	73	18,115–18,125

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Docket			
355.	Notice of Appeal	10/12/22	73 74	18,126–18,250 18,251–18,467
356.	Case Appeal Statement	10/12/22	74 75	18,468–18,500 18,501–18,598
357.	Notice of Entry of Order Denying “Motion to Redact Portions of Trial Transcript”	10/13/22	75	18,599–18,608
358.	Notice of Entry of Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits	10/18/22	75 76	18,609–18,750 18,751–18,755
359.	Recorder’s Transcript of Hearing Status Check	10/20/22	76	18,756–18,758
360.	Notice of Entry of Stipulation and Order Regarding Expiration of Temporary Stay for Sealed Redacted Transcripts	10/25/22	76	18,759–18,769
361.	Notice of Filing of Writ Petition	11/17/22	76	18,770–18855
362.	Trial Exhibit D5502		76 77	18,856–19,000 19,001–19,143
491.	Appendix of Exhibits in Support of Plaintiffs’ Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/08/21	145 146	35,813–36,062 36,063–36,085
492.	Transcript Re: Proposed Jury Instructions	11/21/21	146	36,086–36,250

***Filed Under Seal***

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
363.	Plaintiffs’ Motion to Compel Defendants’ List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	09/28/20	78	19,144–19,156

364.	Plaintiffs' Reply in Support of Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	04/01/21	78	19,157–19,176
365.	Appendix of Exhibits in Support of Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	04/01/21	78	19,177–19,388
366.	Plaintiffs' Response to Defendants Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	04/19/21	78 79	19,389–19,393 19,394–19,532
367.	Plaintiffs' Response to Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Request for Production on Order Shortening Time	05/05/21	79	19,533–19,581
368.	Appendix to Defendants' Motion to Supplement the Record Supporting Objections to Reports and Recommendations #2 & #3 on Order Shortening Time	05/21/21	79 80 81	19,582–19,643 19,644–19,893 19,894–20,065
369.	Plaintiffs' Opposition to Defendants' Motion to Supplement the Record Supporting Objections to Reports and Recommendations #2 and #3 on Order Shortening Time	06/01/21	81 82	20,066–20,143 20,144–20,151
370.	Defendants' Objection to the Special Master's Report and Recommendation No. 5 Regarding Defendants' Motion for Protective Order Regarding Confidentiality	06/01/21	82	20,152–20,211

	Designations (Filed April 15, 2021)			
371.	Plaintiffs' Response to Defendants' Objection to Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions	06/16/21	82	20,212–20,265
372.	United's Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time	06/24/21	82	20,266–20,290
373.	Appendix to Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time	06/24/21	82 83 84	20,291–20,393 20,394–20,643 20,644–20,698
374.	Plaintiffs' Opposition to Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time	07/06/21	84	20,699–20,742
375.	Defendants' Motion for Leave to File Defendants' Objection to the Special Master's Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Under Seal	07/15/21	84	20,743–20,750
376.	Plaintiffs' Response to Defendants' Objection to Special Master Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Questions	07/22/21	84	20,751–20,863
377.	Objection to R&R #11 Regarding United's Motion to Compel Documents About Which Plaintiffs' Witnesses Testified	08/25/21	84 85	20,864–20,893 20,894–20,898

378.	Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	09/21/21	85	20,899–20,916
379.	Appendix of Exhibits in Support of Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	09/21/21	85	20,917–21,076
380.	Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges	09/21/21	85	21,077–21,089
381.	Appendix of Exhibits in Support of Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges	09/21/21	85 86	21,090–21,143 21,144–21,259
382.	Motion in Limine No. 3 to Allow References to Plaintiffs' Decision Making Process Regarding Settling Billing Charges	09/21/21	86	21,260–21,313
383.	Defendants' Motion in Limine No. 5 Regarding Arguments or Evidence that Amounts TeamHealth Plaintiffs billed for Services are Reasonable [an Alternative to Motion in Limine No. 6]	09/21/21	86	21,314–21,343
384.	Defendants' Motion in Limine No. 6 Regarding Argument or Evidence That Amounts Teamhealth Plaintiffs Billed for Services are Reasonable	09/21/21	86	21,344–21,368
385.	Appendix to Defendants' Motion in Limine No. 13 (Volume 1 of 6)	09/21/21	86 87	21,369–21,393 21,394–21,484

386.	Appendix to Defendants' Motion in Limine No. 13 (Volume 2 of 6)	09/21/21	87	21,485–21,614
387.	Appendix to Defendants' Motion in Limine No. 13 (Volume 3 of 6)	09/21/21	87 88	21,615–21,643 21,644–21,744
388.	Appendix to Defendants' Motion in Limine No. 13 (Volume 4 of 6)	09/21/21	88	21,745–21,874
389.	Appendix to Defendants' Motion in Limine No. 13 (Volume 5 of 6)	09/21/21	88 89	21,875–21,893 21,894–22,004
390.	Appendix to Defendants' Motion in Limine No. 13 (Volume 6 of 6)	09/21/21	89	22,005–22,035
391.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 1 of 8	09/21/21	89 90	22,036–22,143 22,144–22,176
392.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 2 of 8	09/21/21	90	22,177–22,309
393.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 3 of 8	09/22/21	90 91	22,310–22,393 22,394–22,442
394.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 4 of 8	09/22/21	91	22,443–22,575
395.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 5 of 8	09/22/21	91	22,576–22,609
396.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 6 of 8	09/22/21	91 92 93	22,610–22,643 22,644–22,893 22,894–23,037
397.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 7a of 8	09/22/21	93 94	23,038–23,143 23,144–23,174
398.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 7b of 8	09/22/21	94	23,175–23,260
399.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 8a of 8	09/22/21	94 95	23,261–23,393 23,394–23,535
400.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 8b of 8	09/22/21	95 96	23,536–23,643 23,634–23,801
401.	Defendants' Motion in Limine No. 11 Paired	09/22/21	96	23,802–23,823



	with Motion in Limine No. 12 to Authorize Defendants to Discuss Plaintiffs' Conduct and deliberations in Negotiating Reimbursement			
402.	Errata to Defendants' Motion in Limine No. 11	09/22/21	96	23,824–23,859
403.	Defendants' Motion in Limine No. 12 Paired with Motion in Limine No. 11 to Preclude Plaintiffs from Discussing Defendants' Approach to Reimbursement	09/22/21	96	23,860–23,879
404.	Errata to Defendants' Motion in Limine No. 12	09/22/21	96 97	23,880–23,893 23,894–23,897
405.	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 1)	09/22/21	97	23,898–24,080
406.	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 2)	09/22/21	97 98	24,081–24,143 24,144–24,310
407.	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 3)	09/22/21	98 99 100	24,311–24,393 24,394–24,643 24,644–24,673
408.	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 4)	09/22/21	100 101 102	24,674–24,893 24,894–25,143 25,144–25,204
409.	Appendix to Defendants' Motion in Limine No. 14 – Volume 1 of 6	09/22/21	102	25,205–25,226
410.	Appendix to Defendants' Motion in Limine No. 14 – Volume 2 of 6	09/22/21	102	25,227–25,364
411.	Appendix to Defendants' Motion in Limine No. 14 – Volume 3 of 6	09/22/21	102 103	25,365–25,393 25,394–25,494
412.	Appendix to Defendants' Motion in Limine No. 14 – Volume 4 of 6	09/22/21	103	25,495–25,624
413.	Appendix to Defendants' Motion in Limine	09/22/21	103	25,625–25,643

	No. 14 – Volume 5 of 6		104	25,644–25,754
414.	Appendix to Defendants’ Motion in Limine No. 14 – Volume 6 of 6	09/22/21	104	25,755–25,785
415.	Plaintiffs’ Combined Opposition to Defendants Motions in Limine 1, 7, 9, 11 & 13	09/29/21	104	25,786–25,850
416.	Plaintiffs’ Combined Opposition to Defendants’ Motions in Limine No. 2, 8, 10, 12 & 14	09/29/21	104	25,851–25,868
417.	Defendants’ Opposition to Plaintiffs’ Motion in Limine No. 3: To Exclude Evidence Subject to the Court’s Discovery Orders	09/29/21	104 105	25,869–25,893 25,894–25,901
418.	Appendix to Defendants’ Opposition to Plaintiffs’ Motion in Limine No. 3: To Exclude Evidence Subject to the Court’s Discovery Orders - Volume 1	09/29/21	105 106	25,902–26,143 26,144–26,216
419.	Appendix to Defendants’ Opposition to Plaintiffs’ Motion in Limine No. 3: To Exclude Evidence Subject to the Court’s Discovery Orders - Volume 2	09/29/21	106 107	26,217–26,393 26,394–26,497
420.	Plaintiffs’ Opposition to Defendants’ Motion for Partial Summary Judgment	10/05/21	107	26,498–26,605
421.	Defendants’ Reply in Support of Motion for Partial Summary Judgment	10/11/21	107 108	26,606–26,643 26,644–26,663
422.	Plaintiffs’ Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants’ Reply in Support of Motion for Partial Summary Judgment	10/17/21	108	26,664–26,673
423.	Appendix of Exhibits in Support of Plaintiffs’ Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants’ Reply in Support of Motion for	10/17/21	108 109	26,674–26,893 26,894–26,930

	Partial Summary Judgment			
424.	Response to Sur-Reply Arguments in Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	10/21/21	109	26,931–26,952
425.	Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties	10/31/21	109	26,953–26,964
426.	Plaintiffs' Response to Defendants' Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties	11/08/21	109	26,965–26,997
427.	Excerpts of Recorder's Transcript of Jury Trial – Day 9	11/09/21	109	26,998–27003
428.	Preliminary Motion to Seal Attorneys' Eyes Documents Used at Trial	11/11/21	109	27,004–27,055
429.	Appendix of Selected Exhibits to Trial Briefs	11/16/21	109	27,056–27,092
430.	Excerpts of Recorder's Transcript of Jury Trial – Day 13	11/16/21	109	27,093–27,099
431.	Defendants' Omnibus Offer of Proof	11/22/21	109 110	27,100–27,143 27,144–27,287
432.	Motion to Seal Certain Confidential Trial Exhibits	12/05/21	110	27,288–27,382
433.	Supplement to Defendants' Motion to Seal Certain Confidential Trial Exhibits	12/08/21	110 111	27,383–27,393 27,394–27,400
434.	Motion to Seal Certain Confidential Trial Exhibits	12/13/21	111	27,401–27,495
435.	Defendant's Omnibus Offer of Proof for Second Phase of Trial	12/14/21	111	27,496–27,505

436.	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 1	12/14/21	111 112	27,506–27,643 27,644–27,767
437.	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 2	12/14/21	112 113	27,768–27,893 27,894–27,981
438.	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 3	12/14/21	113 114	27,982–28,143 28,144–28,188
439.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 1 of 18	12/24/21	114	28,189–28,290
440.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 2 of 18	12/24/21	114 115	28,291–28,393 28,394–28,484
441.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 3 of 18	12/24/21	115 116	28,485–28,643 28,644–28,742
442.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 4 of 18	12/24/21	116 117	28,743–28,893 28,894–28,938
443.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 5 of 18	12/24/21	117	28,939–29,084
444.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 6 of 18	12/24/21	117 118	29,085–29,143 29,144–29,219
445.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 7 of 18	12/24/21	118	29,220–29,384
446.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 8 of 18	12/24/21	118 119	29,385–29,393 29,394–29,527

447.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 9 of 18	12/24/21	119 120	29,528–29,643 29,644–29,727
448.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 10 of 18	12/24/21	120 121	29,728–29,893 29,894–29,907
449.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 11 of 18	12/24/21	121	29,908–30,051
450.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 12 of 18	12/24/21	121 122	30,052–30,143 30,144–30,297
451.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 13 of 18	12/24/21	122 123	30,298–30,393 30,394–30,516
452.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 14 of 18	12/24/21	123 124	30,517–30,643 30,644–30,677
453.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 15 of 18	12/24/21	124	30,678–30,835
454.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 16 of 18	12/24/21	124 125	30,836–30,893 30,894–30,952
455.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 17 of 18	12/24/21	125	30,953–31,122
456.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 18 of 18	12/24/21	125 126	30,123–31,143 31,144–31,258
457.	Defendants’ Reply in Support of Motion to Seal Certain Confidential Trial Exhibits	01/05/22	126	31,259–31,308
458.	Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial	01/05/22	126	31,309–31,393

	Exhibits		127	31,394–31,500
459.	Transcript of Proceedings Re: Motions	01/12/22	127	31,501–31,596
460.	Transcript of Proceedings Re: Motions	01/20/22	127 128	31,597–31,643 31,644–31,650
461.	Transcript of Proceedings Re: Motions	01/27/22	128	31,651–31,661
462.	Defendants’ Index of Trial Exhibit Redactions in Dispute	02/10/22	128	31,662–31,672
463.	Transcript of Proceedings Re: Motions Hearing	02/10/22	128	31,673–31,793
464.	Transcript of Proceedings Re: Motions Hearing	02/16/22	128	31,794–31,887
465.	Joint Status Report and Table Identifying the Redactions to Trial Exhibits That Remain in Dispute	03/04/22	128 129	31,888–31,893 31,894–31,922
466.	Transcript of Proceedings re Hearing Regarding Unsealing Record	10/05/22	129	31,923–31,943
467.	Transcript of Proceedings re Status Check	10/06/22	129	31,944–31,953
468.	Appendix B to Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits (Volume 1)	10/07/22	129 130	31,954–32,143 32,144–32,207
469.	Appendix B to Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits (Volume 2)	10/07/22	130 131	32,208–32,393 32,394–32,476
470.	Appendix B to Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits (Volume 3)	10/07/22	131 132	32,477–32,643 32,644–32,751
471.	Appendix B to Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits (Volume	10/07/22	132 133	32,752–32,893 32,894–33,016

	4)			
472.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 5)	10/07/22	133 134	33,017–33,143 33,144–33,301
473.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 6)	10/07/22	134 135	33,302–33,393 33,394–33,529
474.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 7)	10/07/22	135 136	33,530–33,643 33,644–33,840
475.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 8)	10/07/22	136 137	33,841–33,893 33,894–34,109
476.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 9)	10/07/22	137 138	34,110–34,143 34,144–34,377
477.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 10)	10/07/22	138 139 140	34,378–34,393 34,394–34,643 34,644–34,668
478.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 11)	10/07/22	140 141	34,669–34,893 34,894–34,907
479.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 12)	10/07/22	141 142	34,908–35,143 35,144–35,162
480.	Appendix B to Order Granting in Part and	10/07/22	142	35,163–35,242

	Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 13)			
481.	Exhibits P473_NEW, 4002, 4003, 4005, 4006, 4166, 4168, 4455, 4457, 4774, and 5322 to "Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits" (Tabs 98, 106, 107, 108, 109, 111, 112, 113, 114, 118, and 119)	10/07/22	142	35,243–35,247
482.	Transcript of Status Check	10/10/22	142	35,248–35,258
483.	Recorder's Transcript of Hearing re Hearing	10/13/22	142	35,259–35,263
484.	Trial Exhibit D5499		142 143	35,264–35,393 35,394–35,445
485.	Trial Exhibit D5506		143	35,446
486.	Appendix of Exhibits in Support of Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	09/28/20	143	35,447–35,634
487.	Defendants' Motion to Supplement Record Supporting Objections to Reports and Recommendations #2 & #3 on Order Shortening Time	05/24/21	143 144	35,635–35,643 35,644–35,648
488.	Motion in Limine No. 3 to Allow References to Plaintiffs; Decision Making Processes Regarding Setting Billed Charges	09/21/21	144	35,649–35,702
489.	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: to Exclude Evidence Subject to the Court's Discovery Orders (Exhibit 43)	09/29/21	144	35,703–35,713
490.	Notice of Filing of Expert Report of Bruce Deal, Revised on November 14, 2021	04/18/23	144	35,714–35,812



**ALPHABETICAL TABLE OF CONTENTS TO APPENDIX**

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
209	1st Amended Jury List	11/08/21	34	8343
219	2nd Amended Jury List	11/15/21	38	9426
234	3rd Amended Jury List	11/17/21	41	10,249
252	4th Amended Jury List	11/23/21	47	11,632
342	Amended Case Appeal Statement	08/15/22	71 72	17,740–17,750 17,751–17,803
17	Amended Motion to Remand	01/15/20	2	310–348
343	Amended Notice of Appeal	08/15/22	72	17,804–17,934
117	Amended Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 2 Regarding Plaintiffs’ Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order and Overruling Objection	08/09/21	18	4425–4443
118	Amended Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 3 Regarding Defendants’ Second Set of Requests for Production on Order Shortening Time and Overruling Objection	08/09/21	18	4444–4464
158	Amended Transcript of Proceedings Re: Motions	10/19/21	23 24	5562–5750 5751–5784
159	Amended Transcript of Proceedings Re: Motions	10/20/21	24	5785–5907
47	Amended Transcript of Proceedings, Plaintiff’s Motion to Compel Defendants’ Production of Unredacted MultiPlan, Inc. Agreement	07/29/20	7	1664–1683

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
468	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 1) (Filed Under Seal)	10/07/22	129 130	31,954–32,143 32,144–32,207
469	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 2) (Filed Under Seal)	10/07/22	130 131	32,208–32,393 32,394–32,476
470	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 3) (Filed Under Seal)	10/07/22	131 132	32,477–32,643 32,644–32,751
471	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 4) (Filed Under Seal)	10/07/22	132 133	32,752–32,893 32,894–33,016
472	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 5) (Filed Under Seal)	10/07/22	133 134	33,017–33,143 33,144–33,301
473	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 6) (Filed Under Seal)	10/07/22	134 135	33,302–33,393 33,394–33,529
474	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 7) (Filed Under Seal)	10/07/22	135 136	33,530–33,643 33,644–33,840
475	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 8) (Filed Under Seal)	10/07/22	136 137	33,841–33,893 33,894–34,109
476	Appendix B to Order Granting in Part and	10/07/22	137	34,110–34,143

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 9) (Filed Under Seal)		138	34,144–34,377
477	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 10) (Filed Under Seal)	10/07/22	138 139 140	34,378–34,393 34,394–34,643 34,644–34,668
478	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 11) (Filed Under Seal)	10/07/22	140 141	34,669–34,893 34,894–34,907
479	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 12) (Filed Under Seal)	10/07/22	141 142	34,908–35,143 35,144–35,162
480	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 13) (Filed Under Seal)	10/07/22	142	35,163–35,242
321	Appendix in Support of Opposition to Defendants' Motion to Retax Costs	04/13/22	68 69	16,865–17,000 17,001–17,035
280	Appendix in Support of Plaintiffs' Opposition to Defendants' Motion to Apply Statutory Cap on Punitive Damages and Plaintiffs' Cross Motion for Entry of Judgment	01/20/22	52	12,791–12,968
306	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 1	03/30/22	62 63	15,398–15,500 15,501–15,619
307	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 2	03/30/22	63 64	15,620–15,750 15,751–15,821
308	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees	03/30/22	64 65	15,822–16,000 16,001–16,053

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Volume 3			
309	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 4	03/30/22	65	16,054–16,232
310	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 5	03/30/22	65 66	16,233–16,250 16,251–16,361
295	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 1	03/14/22	53 54	13,209–13,250 13,251–13,464
296	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 2	03/14/22	54 55	13,465–13,500 13,501–13,719
297	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 3	03/14/22	55 56	13,720–13,750 13,751–13,976
298	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 4	03/14/22	56 57	13,977–14,000 14,001–14,186
299	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 5	03/14/22	57 58	14,187–14,250 14,251–14,421
300	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 6	03/14/22	58 59	14,422–14,500 14,501–14,673
301	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 7	03/14/22	59 60	14,674–14,750 14,751–14,920
302	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 8	03/14/22	60 61	14,921–15,000 15,001–15,174
303	Appendix of Exhibits in Support of Health	03/14/22	61	15,175–15,250

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Care Providers' Verified Memorandum of Cost Volume 9		62	15,251–15,373
486	Appendix of Exhibits in Support of Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time (Filed Under Seal)	09/28/20	143	35,447–35,634
423	Appendix of Exhibits in Support of Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment (Filed Under Seal)	10/17/21	108 109	26,674–26,893 26,894–26,930
379	Appendix of Exhibits in Support of Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders (Filed Under Seal)	09/21/21	85	20,917–21,076
381	Appendix of Exhibits in Support of Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges (Filed Under Seal)	09/21/21	85 86	21,090–21,143 21,144–21,259
26	Appendix of Exhibits in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss	03/26/20	4	784–908
491	Appendix of Exhibits in Support of Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/08/21	145 146	35,813–36,062 36,063–36,085
365	Appendix of Exhibits in Support of Plaintiffs' Renewed Motion for Order to	04/01/21	78	19,177–19,388

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions (Filed Under Seal)			
272	Appendix of Exhibits to Defendants' Motion to Apply the Statutory Cap on Punitive Damage	12/30/21	50 51	12,364–12,500 12,501–12,706
436	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 1 (Filed Under Seal)	12/14/21	111 112	27,506–27,643 27,644–27,767
437	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 2 (Filed Under Seal)	12/14/21	112 113	27,768–27,893 27,894–27,981
438	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 3 (Filed Under Seal)	12/14/21	113 114	27,982–28,143 28,144–28,188
429	Appendix of Selected Exhibits to Trial Briefs (Filed Under Seal)	11/16/21	109	27,056–27,092
405	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 1) (Filed Under Seal)	09/22/21	97	23,898–24,080
406	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 2) (Filed Under Seal)	09/22/21	97 98	24,081–24,143 24,144–24,310
407	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 3) (Filed Under Seal)	09/22/21	98 99 100	24,311–24,393 24,394–24,643 24,644–24,673
408	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 4) (Filed Under Seal)	09/22/21	100 101 102	24,674–24,893 24,894–25,143 25,144–25,204
391	Appendix to Defendants' Motion for Partial Summary Judgment Volume 1 of 8 (Filed Under Seal)	09/21/21	89 90	22,036–22,143 22,144–22,176

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
392	Appendix to Defendants' Motion for Partial Summary Judgment Volume 2 of 8 (Filed Under Seal)	09/21/21	90	22,177–22,309
393	Appendix to Defendants' Motion for Partial Summary Judgment Volume 3 of 8 (Filed Under Seal)	09/22/21	90 91	22,310–22,393 22,394–22,442
394	Appendix to Defendants' Motion for Partial Summary Judgment Volume 4 of 8 (Filed Under Seal)	09/22/21	91	22,443–22,575
395	Appendix to Defendants' Motion for Partial Summary Judgment Volume 5 of 8 (Filed Under Seal)	09/22/21	91	22,576–22,609
396	Appendix to Defendants' Motion for Partial Summary Judgment Volume 6 of 8 (Filed Under Seal)	09/22/21	91 92 93	22,610–22,643 22,644–22,893 22,894–23,037
397	Appendix to Defendants' Motion for Partial Summary Judgment Volume 7a of 8 (Filed Under Seal)	09/22/21	93 94	23,038–23,143 23,144–23,174
398	Appendix to Defendants' Motion for Partial Summary Judgment Volume 7b of 8 (Filed Under Seal)	09/22/21	94	23,175–23,260
399	Appendix to Defendants' Motion for Partial Summary Judgment Volume 8a of 8 (Filed Under Seal)	09/22/21	94 95	23,261–23,393 23,394–23,535
400	Appendix to Defendants' Motion for Partial Summary Judgment Volume 8b of 8 (Filed Under Seal)	09/22/21	95 96	23,536–23,643 23,634–23,801
385	Appendix to Defendants' Motion in Limine No. 13 (Volume 1 of 6) (Filed Under Seal)	09/21/21	86 87	21,369–21,393 21,394–21,484
386	Appendix to Defendants' Motion in Limine No. 13 (Volume 2 of 6) (Filed Under Seal)	09/21/21	87	21,485–21,614
387	Appendix to Defendants' Motion in Limine	09/21/21	87	21,615–21,643

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	No. 13 (Volume 3 of 6) (Filed Under Seal)		88	21,644–21,744
388	Appendix to Defendants’ Motion in Limine No. 13 (Volume 4 of 6) (Filed Under Seal)	09/21/21	88	21,745–21,874
389	Appendix to Defendants’ Motion in Limine No. 13 (Volume 5 of 6) (Filed Under Seal)	09/21/21	88 89	21,875–21,893 21,894–22,004
390	Appendix to Defendants’ Motion in Limine No. 13 (Volume 6 of 6) (Filed Under Seal)	09/21/21	89	22,005–22,035
409	Appendix to Defendants’ Motion in Limine No. 14 – Volume 1 of 6 (Filed Under Seal)	09/22/21	102	25,205–25,226
410	Appendix to Defendants’ Motion in Limine No. 14 – Volume 2 of 6 (Filed Under Seal)	09/22/21	102	25,227–25,364
411	Appendix to Defendants’ Motion in Limine No. 14 – Volume 3 of 6 (Filed Under Seal)	09/22/21	102 103	25,365–25,393 25,394–25,494
412	Appendix to Defendants’ Motion in Limine No. 14 – Volume 4 of 6 (Filed Under Seal)	09/22/21	103	25,495–25,624
413	Appendix to Defendants’ Motion in Limine No. 14 – Volume 5 of 6 (Filed Under Seal)	09/22/21	103 104	25,625–25,643 25,644–25,754
414	Appendix to Defendants’ Motion in Limine No. 14 – Volume 6 of 6 (Filed Under Seal)	09/22/21	104	25,755–25,785
373	Appendix to Defendants’ Motion to Compel Plaintiffs’ Production of Documents About Which Plaintiffs’ Witnesses Testified on Order Shortening Time (Filed Under Seal)	06/24/21	82 83 84	20,291–20,393 20,394–20,643 20,644–20,698
70	Appendix to Defendants’ Motion to Compel Plaintiffs’ Responses to Defendants’ First and Second Requests for Production on Order Shortening Time	01/08/21	12 13 14	2875–3000 3001–3250 3251–3397
368	Appendix to Defendants’ Motion to Supplement the Record Supporting Objections to Reports and Recommendations #2 & #3 on Order Shortening Time (Filed	05/21/21	79 80 81	19,582–19,643 19,644–19,893 19,894–20,065



<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Under Seal)			
418	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders - Volume 1 (Filed Under Seal)	09/29/21	105 106	25,902–26,143 26,144–26,216
419	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders - Volume 2 (Filed Under Seal)	09/29/21	106 107	26,217–26,393 26,394–26,497
489	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: to Exclude Evidence Subject to the Court's Discovery Orders (Exhibit 43) (Filed Under Seal)	09/29/21	144	35,703–35,713
75	Appendix to Defendants' Reply in Support of Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/19/21	14 15	3466–3500 3501–3658
316	Case Appeal Statement	04/06/22	67 68	16,695–16,750 16,751–16,825
356	Case Appeal Statement	10/12/22	74 75	18,468–18,500 18,501–18,598
16	Civil Order to Statistically Close Case	12/10/19	2	309
1	Complaint (Business Court)	04/15/19	1	1–17
284	Defendant' Reply in Support of Their Motion to Apply the Statutory Cap on Punitive Damages	02/10/22	53	13,005–13,028
435	Defendant's Omnibus Offer of Proof for Second Phase of Trial (Filed Under Seal)	12/14/21	111	27,496–27,505

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
311	Defendants Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions on Order Shortening Time	04/05/22	66	16,362–16,381
42	Defendants’ Answer to Plaintiffs’ First Amended Complaint	07/08/20	7	1541–1590
150	Defendants’ Answer to Plaintiffs’ Second Amended Complaint	10/08/21	22	5280–5287
198	Defendants’ Deposition Designations and Objections to Plaintiffs’ Deposition Counter-Designations	11/03/21	32	7778–7829
99	Defendants’ Errata to Their Objection to the Special Master’s Report and Recommendation No. 3 Regarding Defendants’ Motion to Compel Responses to Defendants’ Second Set of Requests for Production	05/03/21	17	4124–4127
288	Defendants’ Index of Trial Exhibit Redactions in Dispute	02/16/22	53	13,063–13,073
462	Defendants’ Index of Trial Exhibit Redactions in Dispute (Filed Under Seal)	02/10/22	128	31,662–31,672
235	Defendants’ Motion for Judgment as a Matter of Law	11/17/21	41 42	10,250 10,251–10,307
375	Defendants’ Motion for Leave to File Defendants’ Objection to the Special Master’s Report and Recommendation No. 9 Regarding Defendants’ Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Under Seal (Filed Under Seal)	07/15/21	84	20,743–20,750
214	Defendants’ Motion for Leave to File Defendants’ Preliminary Motion to Seal Attorneys’ Eyes Only Documents Used at	11/12/21	37	9153–9161

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Trial Under Seal			
130	Defendants' Motion for Partial Summary Judgment	09/21/21	20	4770–4804
312	Defendants' Motion for Remittitur and to Alter or Amend the Judgment	04/06/22	66	16,382–16,399
131	Defendants' Motion in Limine No. 1: Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Agreements with other Market Players and Related Negotiations	09/21/21	20	4805–4829
134	Defendants' Motion in Limine No. 10 to Exclude Reference of Defendants' Corporate Structure (Alternative Motion to be Considered Only if court Denies Defendants' Counterpart Motion in Limine No. 9)	09/21/21	20	4869–4885
401	Defendants' Motion in Limine No. 11 Paired with Motion in Limine No. 12 to Authorize Defendants to Discuss Plaintiffs' Conduct and deliberations in Negotiating Reimbursement (Filed Under Seal)	09/22/21	96	23,802–23,823
403	Defendants' Motion in Limine No. 12 Paired with Motion in Limine No. 11 to Preclude Plaintiffs from Discussing Defendants' Approach to Reimbursement (Filed Under Seal)	09/22/21	96	23,860–23,879
135	Defendants' Motion in Limine No. 13: Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	09/21/21	20	4886–4918
136	Defendants' Motion in Limine No. 14: Motion Offered in the Alternative to MIL No. 13 to Preclude Plaintiffs from Contesting Defendants' Defenses Relating to Claims that were Subject to Settlement Agreement	09/21/21	20	4919–4940

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Between CollectRX and Data iSight; and Defendants' Adoption of Specific Negotiation Thresholds for Reimbursement Claims Appealed or Contested by Plaintiffs			
132	Defendants' Motion in Limine No. 2: Motion Offered in the Alternative to MIL No. 1, to Preclude Plaintiffs from Offering Evidence Relating to Defendants' Agreements with Other Market Players and Related Negotiations	09/21/21	20	4830–4852
137	Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	09/21/21	20	4941–4972
383	Defendants' Motion in Limine No. 5 Regarding Arguments or Evidence that Amounts TeamHealth Plaintiffs billed for Services are Reasonable [an Alternative to Motion in Limine No. 6] (Filed Under Seal)	09/21/21	86	21,314–21,343
384	Defendants' Motion in Limine No. 6 Regarding Argument or Evidence That Amounts Teamhealth Plaintiffs Billed for Services are Reasonable (Filed Under Seal)	09/21/21	86	21,344–21,368
138	Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	09/22/21	20 21	4973–5000 5001–5030
139	Defendants' Motion in Limine No. 8, Offered in the Alternative to MIL No. 7, to Preclude Plaintiffs from Offering Evidence as to the Qualitative Value, Relative Value, Societal Value, or Difficulty of the Services they Provided	09/22/21	21	5031–5054
140	Defendants' Motion in Limine No. 9 to Authorize Defendants to Offer Evidence of	09/22/21	21	5055–5080

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Plaintiffs Organizational, Management, and Ownership Structure, Including Flow of Funds Between Related Entities, Operating Companies, Parent Companies, and Subsidiaries			
271	Defendants' Motion to Apply the Statutory Cap on Punitive Damages	12/30/21	50	12,342–12,363
71	Defendants' Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/11/21	14	3398–3419
52	Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiffs to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	09/21/20	8 9	1998–2000 2001–2183
23	Defendants' Motion to Dismiss	03/12/20	3	553–698
32	Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint	05/26/20	5	1027–1172
348	Defendants' Motion to Redact Portions of Trial Transcript	10/06/22	72	17,979–17,989
304	Defendants' Motion to Retax Costs	03/21/22	62	15,374–15,388
277	Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing on Defendants' Motion to Seal Certain Confidential Trial Exhibits on Order Shortening Time	01/11/22	52	12,757–12,768
487	Defendants' Motion to Supplement Record Supporting Objections to Reports and Recommendations #2 & #3 on Order Shortening Time (Filed Under Seal)	05/24/21	143 144	35,635–35,643 35,644–35,648
169	Defendants' Objection to Media Requests	10/28/21	29	7004–7018

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
339	Defendants' Objection to Plaintiffs' Proposed Order Approving Plaintiffs' Motion for Attorneys' Fees	07/26/22	71	17,700–17,706
273	Defendants' Objection to Plaintiffs' Proposed Order Denying Defendants' Motion for Judgment as a Matter of Law	01/04/22	51	12,707–12,717
94	Defendants' Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	04/12/21	17	4059–4079
98	Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Request for Production on Order Shortening Time	04/28/21	17	4109–4123
370	Defendants' Objection to the Special Master's Report and Recommendation No. 5 Regarding Defendants' Motion for Protective Order Regarding Confidentiality Designations (Filed April 15, 2021) (Filed Under Seal)	06/01/21	82	20,152–20,211
61	Defendants' Objections to Plaintiffs to Plaintiffs' Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/26/20	11	2573–2670
151	Defendants' Objections to Plaintiffs' NRCP 16.1(a)(3) Pretrial Disclosures	10/08/21	22	5288–5294
64	Defendants' Objections to Plaintiffs' Order Denying Defendants' Motion to Compel	11/02/20	11	2696–2744

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiffs' to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time			
60	Defendants' Objections to Plaintiffs' Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/23/20	10 11	2482–2500 2501–2572
199	Defendants' Objections to Plaintiffs' Proposed Order Granting in Part and Denying in Part Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	11/03/21	32	7830–7852
100	Defendants' Objections to Plaintiffs' Proposed Order Granting Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	05/05/21	17	4128–4154
108	Defendants' Objections to Special Master Report and Recommendation No. 7 Regarding Defendants' Motion to Compel Responses to Defendants' Amended Third Set of Requests for Production of Documents	06/17/21	17	4227–4239
431	Defendants' Omnibus Offer of Proof (Filed Under Seal)	11/22/21	109 110	27,100–27,143 27,144–27,287
14	Defendants' Opposition to Fremont Emergency Services (MANDAVIA), Ltd.'s Motion to Remand	06/21/19	1 2	139–250 251–275
18	Defendants' Opposition to Plaintiffs' Amended Motion to Remand	01/29/20	2	349–485
283	Defendants' Opposition to Plaintiffs' Cross-	02/10/22	52	12,997–13,000

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Motion for Entry of Judgment		53	13,001–13,004
322	Defendants’ Opposition to Plaintiffs’ Motion for Attorneys’ Fees	04/20/22	69	17,036–17,101
155	Defendants’ Opposition to Plaintiffs’ Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants’ Reply in Support of Motion for Partial Summary Judgment	10/18/21	22	5323–5333
141	Defendants’ Opposition to Plaintiffs’ Motion in Limine No. 1: to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges	09/29/21	21	5081–5103
417	Defendants’ Opposition to Plaintiffs’ Motion in Limine No. 3: To Exclude Evidence Subject to the Court’s Discovery Orders (Filed Under Seal)	09/29/21	104 105	25,869–25,893 25,894–25,901
50	Defendants’ Opposition to Plaintiffs’ Motion to Compel Defendants’ Production of Claims File for At-Issue Claims, Or, in The Alternative, Motion in Limine on Order Shortening Time	09/04/20	8	1846–1932
56	Defendants’ Opposition to Plaintiffs’ Motion to Compel Defendants’ List of Witnesses, Production of Documents, and Answers to Interrogatories on Order Shortening Time	10/06/20	10	2293–2336
251	Defendants’ Opposition to Plaintiffs’ Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,609–11,631
89	Defendants’ Opposition to Plaintiffs’ Renewed Motion for Order to Show Cause	03/22/21	16	3916–3966



<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Why Defendants Should Not be Held in Contempt and for Sanctions			
220	Defendants' Proposed Jury Instructions (Contested)	11/15/21	38	9427–9470
259	Defendants' Proposed Second Phase Jury Instructions	12/05/21	49	12,049–12,063
263	Defendants' Proposed Second Phase Jury Instructions-Supplement	12/07/21	49	12,136–12,142
313	Defendants' Renewed Motion for Judgment as a Matter of Law	04/06/22	66	16,400–16,448
421	Defendants' Reply in Support of Motion for Partial Summary Judgment (Filed Under Seal)	10/11/21	107 108	26,606–26,643 26,644–26,663
74	Defendants' Reply in Support of Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/19/21	14	3449–3465
28	Defendants' Reply in Support of Motion to Dismiss	05/07/20	4	919–948
36	Defendants' Reply in Support of Motion to Dismiss Plaintiffs' First Amended Complaint	06/03/20	6	1310–1339
325	Defendants' Reply in Support of Motion to Retax Costs	05/04/22	69	17,122–17,150
457	Defendants' Reply in Support of Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	01/05/22	126	31,259–31,308
37	Defendants' Reply in Support of Their Supplemental Brief in Support of Their Motions to Dismiss Plaintiff's First Amended Complaint	06/03/20	6	1340–1349
334	Defendants' Response to Improper Supplement Entitled "Notice of	06/28/22	71	17,579–17,593

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Supplemental Attorney Fees Incurred After Submission of Health Care Providers’ Motion for Attorneys Fees”			
286	Defendants’ Response to Plaintiffs’ Motion to Unlock Certain Admitted Trial Exhibits on Order Shortening Time	02/15/22	53	13,047–13,053
225	Defendants’ Response to TeamHealth Plaintiffs’ Trial Brief Regarding Defendants’ Prompt Pay Act Jury Instruction Re: Failure to Exhaust Administrative Remedies	11/16/21	40	9799–9806
12	Defendants’ Statement of Removal	05/30/19	1	123–126
33	Defendants’ Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs’ First Amended Complaint Addressing Plaintiffs’ Eighth Claim for Relief	05/26/20	5	1173–1187
247	Defendants’ Supplemental Proposed Jury Instruction	11/21/21	46	11,262–11,266
240	Defendants’ Supplemental Proposed Jury Instructions (Contested)	11/19/21	44	10,947–10,952
48	Errata	08/04/20	7	1684
241	Errata	11/19/21	44	10,953
402	Errata to Defendants’ Motion in Limine No. 11 (Filed Under Seal)	09/22/21	96	23,824–23,859
404	Errata to Defendants’ Motion in Limine No. 12 (Filed Under Seal)	09/22/21	96 97	23,880–23,893 23,894–23,897
54	Errata to Plaintiffs’ Motion to Compel Defendants’ List of Witnesses Production of Documents and Answers to Interrogatories	09/28/20	9	2196–2223
85	Errata to Plaintiffs’ Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for	03/12/21	16	3884–3886

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Sanctions			
238	Errata to Source on Defense Contested Jury Instructions	11/18/21	43	10,618–10,623
430	Excerpts of Recorder’s Transcript of Jury Trial – Day 13 (Filed Under Seal)	11/16/21	109	27,093–27,099
427	Excerpts of Recorder’s Transcript of Jury Trial – Day 9 (Filed Under Seal)	11/09/21	109	26,998–27003
481	Exhibits P473_NEW, 4002, 4003, 4005, 4006, 4166, 4168, 4455, 4457, 4774, and 5322 to “Appendix B to Order Granting in Part and Denying in Part Defendants’ Motion to Seal Certain Confidential Trial Exhibits” (Tabs 98, 106, 107, 108, 109, 111, 112, 113, 114, 118, and 119) (Filed Under Seal)	10/07/22	142	35,243–35,247
30	First Amended Complaint	05/15/20	4 5	973–1000 1001–1021
13	Freemont Emergency Services (MANDAVIA), Ltd’s Response to Statement of Removal	05/31/19	1	127–138
226	General Defense Verdict	11/16/21	40	9807–9809
305	Health Care Providers’ Motion for Attorneys’ Fees	03/30/22	62	15,389–15,397
326	Health Care Providers’ Reply in Support of Motion for Attorneys’ Fees	05/04/22	69	17,151–17,164
294	Health Care Providers’ Verified Memorandum of Cost	03/14/22	53	13,198–13,208
44	Joint Case Conference Report	07/17/20	7	1606–1627
164	Joint Pretrial Memorandum Pursuant to EDRC 2.67	10/27/21	26 27	6486–6500 6501–6567
465	Joint Status Report and Table Identifying	03/04/22	128	31,888–31,893

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	the Redactions to Trial Exhibits That Remain in Dispute (Filed Under Seal)		129	31,894–31,922
221	Jointly Submitted Jury Instructions	11/15/21	38	9471–9495
255	Jury Instructions	11/29/21	48	11,957–11,999
264	Jury Instructions Phase Two	12/07/21	49	12,143–12,149
347	Limited Objection to “Order Unsealing Trial Transcripts and Restoring Public Access to Docket”	10/06/22	72	17,973–17,978
156	Media Request and Order Allowing Camera Access to Court Proceedings (Legal Newslane)	10/18/21	22	5334–5338
167	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 28	6992–6997
168	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 29	6998–7000 7001–7003
314	Motion for New Trial	04/06/22	66 67	16,449–16,500 16,501–16,677
119	Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt and Sanctioned for Violating Protective Order	08/10/21	18	4465–4486
79	Motion for Reconsideration of Order Denying Defendants’ Motion to Compel Plaintiffs Responses to Defendants’ First and Second Requests for Production	02/18/21	15 16	3714–3750 3751–3756
488	Motion in Limine No. 3 to Allow References to Plaintiffs; Decision Making Processes Regarding Setting Billed Charges (Filed Under Seal)	09/21/21	144	35,649–35,702

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
382	Motion in Limine No. 3 to Allow References to Plaintiffs' Decision Making Process Regarding Settling Billing Charges (Filed Under Seal)	09/21/21	86	21,260–21,313
133	Motion in Limine No. 4 to Preclude References to Defendants' Decision Making Process and Reasonableness of billed Charges if Motion in Limine No. 3 is Denied	09/21/21	20	4853–4868
11	Motion to Remand	05/24/19	1	101–122
432	Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	12/05/21	110	27,288–27,382
434	Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	12/13/21	111	27,401–27,495
267	Motion to Seal Defendants' Motion to Seal Certain Confidential Trial Exhibits	12/15/21	50	12,294–12,302
275	Motion to Seal Defendants' Reply in Support of Motion to Seal Certain Confidential Trial Exhibits	01/10/22	51	12,739–12,747
276	Motion to Seal Defendants' Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits	01/10/22	51 52	12,748–12,750 12,751–12,756
268	Motion to Seal Defendants' Supplement to Motion to Seal Certain Confidential Trial Exhibits	12/15/21	50	12,303–12,311
315	Notice of Appeal	04/06/22	67	16,678–16,694
355	Notice of Appeal	10/12/22	73 74	18,126–18,250 18,251–18,467
292	Notice of Entry of Judgment	03/09/22	53	13,168–13,178
115	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 2	08/09/21	18	4403–4413

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order and Overruling Objection			
116	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time and Overruling Objection	08/09/21	18	4414–4424
127	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions and Overruling Objection	09/16/21	19	4709–4726
128	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 7 Regarding Defendants' Motion to Compel Responses to Defendants' Amended Third Set of Request for Production of Documents and Overruling Objection	09/16/21	19	4727–4747
129	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed No to Answer and Overruling Objection	09/16/21	19 20	4748–4750 4751–4769
200	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified	11/03/21	32	7853–7874

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
340	Notice of Entry of Order Approving Plaintiffs' Motion for Attorney's Fees	08/02/22	71	17,707–17,725
351	Notice of Entry of Order Approving Supplemental Attorney's Fee Award	10/12/22	73	18,005–18,015
357	Notice of Entry of Order Denying "Motion to Redact Portions of Trial Transcript"	10/13/22	75	18,599–18,608
40	Notice of Entry of Order Denying Defendants' (1) Motion to Dismiss First Amended Complaint; and (2) Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	06/24/20	6 7	1472–1500 1501–1516
274	Notice of Entry of Order Denying Defendants' Motion for Judgement as a Matter of Law	01/06/22	51	12,718–12,738
352	Notice of Entry of Order Denying Defendants' Motion for New Trial	10/12/22	73	18,016–18,086
154	Notice of Entry of Order Denying Defendants' Motion for Order to Show Cause Why Plaintiffs Should not be Held in Contempt for Violating Protective Order	10/14/21	22	5309–5322
161	Notice of Entry of Order Denying Defendants' Motion for Partial Summary Judgment	10/25/21	25	6116–6126
338	Notice of Entry of Order Denying Defendants' Motion for Remittitur and to Alter or Amend the Judgment	07/19/22	71	17,689–17,699
171	Notice of Entry of Order Denying Defendants' Motion in Limine No. 1 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Agreements with Other Market Players and Related Negotiations	11/01/21	29	7040–7051

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
172	Notice of Entry of Order Denying Defendants' Motion in Limine No. 2: Motion Offered in the Alternative to MIL No. 1, to Preclude Plaintiffs from Offering Evidence Relating to Defendants' Agreements with Other Market Players and Related Negotiations	11/01/21	29	7052–7063
173	Notice of Entry of Order Denying Defendants' Motion in Limine No. 3 to Allow Reference to Plaintiffs' Decision Making Processes Regarding Setting Billed Charges	11/01/21	29	7064–7075
174	Notice of Entry of Order Denying Defendants' Motion in Limine No. 4 to Preclude References to Defendants' Decision Making Processes and Reasonableness of Billed Charges if Motion in Limine No. 3 is Denied	11/01/21	29	7076–7087
175	Notice of Entry of Order Denying Defendants' Motion in Limine No. 12, Paired with Motion in Limine No. 11, to Preclude Plaintiffs from Discussing Defendants' Approach to Reimbursement	11/01/21	29	7088–7099
176	Notice of Entry of Order Denying Defendants' Motion in Limine No. 5 Regarding Argument or Evidence that Amounts TeamHealth Plaintiffs Billed for Services are Reasonable [An Alternative Motion to Motion in Limine No. 6]	11/01/21	29	7100–7111
177	Notice of Entry of Order Denying Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	11/01/21	29	7112–7123
178	Notice of Entry of Order Denying	11/01/21	29	7124–7135



<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Defendants' Motion in Limine No. 8, Offered in the Alternative to MIL No. 7, to Preclude Plaintiffs from Offering Evidence as to the Qualitative Value, Relative Value, Societal Value, or Difficulty of the Services they Provided			
179	Notice of Entry of Order Denying Defendants' Motion in Limine No. 10 to Exclude Evidence of Defendants' Corporate Structure (Alternative Motion to be Considered Only if Court Denies Defendants' Counterpart Motion in Limine No. 9)	11/01/21	29	7136–7147
180	Notice of Entry of Order Denying Defendants' Motion in Limine No. 11, Paired with Motion in Limine No. 12, to Authorize Defendants to Discuss Plaintiffs' Conduct and Deliberations in Negotiating Reimbursement	11/01/21	29	7148–7159
181	Notice of Entry of Order Denying Defendants' Motion in Limine No. 13 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	11/01/21	29	7160–7171
182	Notice of Entry of Order Denying Defendants' Motion in Limine No. 14: Motion Offered in the Alternative MIL No. 13 to Preclude Plaintiffs from Contesting Defendants' Defenses Relating to Claims that were Subject to a Settlement Agreement Between CollectRx and Data iSight; and Defendants' Adoption of Specific Negotiation Thresholds for Reimbursement Claims Appealed or Contested by Plaintiffs	11/01/21	29	7172–7183
183	Notice of Entry of Order Denying	11/01/21	29	7184–7195

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Defendants' Motion in Limine No. 15 to Preclude Reference and Testimony Regarding the TeamHealth Plaintiffs Policy not to Balance Bill			
184	Notice of Entry of Order Denying Defendants' Motion in Limine No. 18 to Preclude Testimony of Plaintiffs' Non-Retained Expert Joseph Crane, M.D.	11/01/21	29	7196–7207
185	Notice of Entry of Order Denying Defendants' Motion in Limine No. 20 to Exclude Defendants' Lobbying Efforts	11/01/21	29	7208–7219
186	Notice of Entry of Order Denying Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	11/01/21	29	7220–7231
187	Notice of Entry of Order Denying Defendants' Motion in Limine No. 27 to Preclude Evidence of Complaints Regarding Defendants' Out-Of-Network Rates or Payments	11/01/21	29	7232–7243
188	Notice of Entry of Order Denying Defendants' Motion in Limine No. 29 to Preclude Evidence Only Relating to Defendants' Evaluation and Development of a Company that Would Offer a Service Similar to Multiplan and Data iSight	11/01/21	29 30	7244–7250 7251–7255
189	Notice of Entry of Order Denying Defendants' Motion in Limine No. 32 to Exclude Evidence or Argument Relating to Materials, Events, or Conduct that Occurred on or After January 1, 2020	11/01/21	30	7256–7267
191	Notice of Entry of Order Denying Defendants' Motion in Limine No. 38 to Exclude Evidence or Argument Relating to	11/01/21	30	7280–7291

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Defendants' use of MultiPlan and the Data iSight Service, Including Any Alleged Conspiracy or Fraud Relating to the use of Those Services			
190	Notice of Entry of Order Denying Defendants' Motion in Limine to Preclude Certain Expert Testimony and Fact Witness Testimony by Plaintiffs' Non-Retained Expert Robert Frantz, M.D.	11/01/21	30	7268–7279
293	Notice of Entry of Order Denying Defendants' Motion to Apply Statutory Cap on Punitive Damages	03/09/22	53	13,179–13,197
62	Notice of Entry of Order Denying Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on Order Shortening Time	10/27/20	11	2671–2683
78	Notice of Entry of Order Denying Defendants' Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	02/04/21	15	3703–3713
193	Notice of Entry of Order Denying Defendants' Motion to Strike Supplement Report of David Leathers	11/01/21	30	7355–7366
353	Notice of Entry of Order Denying Defendants' Renewed Motion for Judgment as a Matter of Law	10/12/22	73	18,087–18,114
97	Notice of Entry of Order Denying Motion for Reconsideration of Court's Order Denying Defendants' Motion to Compel Responses to Defendants' First and Second Requests for Production	04/26/21	17	4096–4108

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
77	Notice of Entry of Order Granting Defendants' Motion for Appointment of Special Master	02/02/21	15	3693–3702
269	Notice of Entry of Order Granting Defendants' Motion for Leave to File Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at Trial Under Seal	12/27/21	50	12,312–12,322
202	Notice of Entry of Order Granting Defendants' Motion in Limine No. 17	11/04/21	33	8092–8103
203	Notice of Entry of Order Granting Defendants' Motion in Limine No. 25	11/04/21	33	8104–8115
204	Notice of Entry of Order Granting Defendants' Motion in Limine No. 37	11/04/21	33	8116–8127
205	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 9	11/04/21	33	8128–8140
206	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 21	11/04/21	33	8141–8153
207	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 22	11/04/21	33	8154–8165
341	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Retax Costs	08/02/22	71	17,726–17,739
358	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits	10/18/22	75 76	18,609–18,750 18,751–18,755
215	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion in Limine to Exclude Evidence Subject to the	11/12/21	37	9162–9173

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Court's Discovery Orders			
147	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Second Amended Complaint on Order Shortening Time	10/07/21	21	5235–5245
242	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	11/19/21	44	10,954–10,963
192	Notice of Entry of Order Granting Plaintiffs' Motion in Limine to Exclude Evidence, Testimony And-Or Argument Regarding the Fact that Plaintiff have Dismissed Certain Claims	11/01/21	30	7292–7354
63	Notice of Entry of Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/27/20	11	2684–2695
335	Notice of Entry of Order Granting Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	06/29/22	71	17,594–17,609
281	Notice of Entry of Order Granting Plaintiffs' Proposed Schedule for Submission of Final Redactions	01/31/22	52	12,969–12,979
114	Notice of Entry of Order Granting Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	08/03/21	18	4383–4402
53	Notice of Entry of Order Granting, in Part Plaintiffs' Motion to Compel Defendants'	09/28/20	9	2184–2195

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Production of Claims for At-Issue Claims, Or, in The Alternative, Motion in Limine			
102	Notice of Entry of Order of Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Question	05/26/21	17	4157–4165
22	Notice of Entry of Order Re: Remand	02/27/20	3	543–552
142	Notice of Entry of Order Regarding Defendants' Objection to Special Master's Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents about which Plaintiffs' Witnesses Testified on Order Shortening Time	09/29/21	21	5104–5114
66	Notice of Entry of Order Setting Defendants' Production & Response Schedule Re: Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	11/09/20	12	2775–2785
285	Notice of Entry of Order Shortening Time for Hearing Re: Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits	02/14/22	53	13,029–13,046
354	Notice of Entry of Order Unsealing Trial Transcripts and Restoring Public Access to Docket	10/12/22	73	18,115–18,125
86	Notice of Entry of Report and Recommendation #1	03/16/21	16	3887–3894
120	Notice of Entry of Report and Recommendation #11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs'	08/11/21	18	4487–4497

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Witnesses Testified			
91	Notice of Entry of Report and Recommendation #2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	03/29/21	16	3971–3980
95	Notice of Entry of Report and Recommendation #3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time	04/15/21	17	4080–4091
104	Notice of Entry of Report and Recommendation #7 Regarding Defendants' Motion to Compel Plaintiffs' Responses to Defendants' Amended Third Set of Requests for Production of Documents	06/03/21	17	4173–4184
41	Notice of Entry of Stipulated Confidentiality and Protective Order	06/24/20	7	1517–1540
69	Notice of Entry of Stipulated Electronically Stored Information Protocol Order	01/08/21	12	2860–2874
289	Notice of Entry of Stipulation and Order Regarding Certain Admitted Trial Exhibits	02/17/22	53	13,074–13,097
360	Notice of Entry of Stipulation and Order Regarding Expiration of Temporary Stay for Sealed Redacted Transcripts	10/25/22	76	18,759–18,769
282	Notice of Entry of Stipulation and Order Regarding Schedule for Submission of Redactions	02/08/22	52	12,980–12,996
111	Notice of Entry Report and Recommendations #9 Regarding Pending Motions	07/01/21	18	4313–4325

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
490	Notice of Filing of Expert Report of Bruce Deal, Revised on November 14, 2021 (Filed Under Seal)	04/18/23	144	35,714–35,812
361	Notice of Filing of Writ Petition	11/17/22	76	18,770–18855
24	Notice of Intent to Take Default as to: (1) Defendant UnitedHealth Group, Inc. on All Claims; and (2) All Defendants on the First Amended Complaint's Eighth Claim for Relief	03/13/20	3 4	699–750 751
324	Notice of Posting <i>Supersedeas</i> Bond	04/29/22	69	17,114–17,121
10	Notice of Removal to Federal Court	05/14/19	1	42–100
333	Notice of Supplemental Attorneys Fees Incurred After Submission of Health Care Providers' Motion for Attorneys Fees	06/24/22	70 71	17,470–17,500 17,501–17,578
291	Objection to Plaintiffs' Proposed Judgment and Order Denying Motion to Apply Statutory Cap on Punitive Damages	03/04/22	53	13,161–13,167
345	Objection to Plaintiffs' Proposed Orders Denying Renewed Motion for Judgment as a Matter of Law and Motion for New Trial	09/13/22	72	17,941–17,950
377	Objection to R&R #11 Regarding United's (Filed Under Seal) Motion to Compel Documents About Which Plaintiffs' Witnesses Testified (Filed Under Seal)	08/25/21	84 85	20,864–20,893 20,894–20,898
320	Opposition to Defendants' Motion to Retax Costs	04/13/22	68	16,856–16,864
153	Opposition to Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Regarding the Fact that Plaintiffs have Dismissed Certain Claims and Parties on Order Shortening Time	10/12/21	22	5301–5308



<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
20	Order	02/20/20	3	519–524
21	Order	02/24/20	3	525–542
337	Order Amending Oral Ruling Granting Defendants’ Motion to Retax	07/01/22	71	17,682–17,688
2	Peremptory Challenge of Judge	04/17/19	1	18–19
415	Plaintiffs’ Combined Opposition to Defendants Motions in Limine 1, 7, 9, 11 & 13 (Filed Under Seal)	09/29/21	104	25,786–25,850
416	Plaintiffs’ Combined Opposition to Defendants’ Motions in Limine No. 2, 8, 10, 12 & 14 (Filed Under Seal)	09/29/21	104	25,851–25,868
145	Plaintiffs’ Motion for Leave to File Second Amended Complaint on Order Shortening Time	10/04/21	21	5170–5201
422	Plaintiffs’ Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants’ Reply in Support of Motion for Partial Summary Judgment (Filed Under Seal)	10/17/21	108	26,664–26,673
378	Plaintiffs’ Motion in Limine to Exclude Evidence Subject to the Court’s Discovery Orders (Filed Under Seal)	09/21/21	85	20,899–20,916
380	Plaintiffs’ Motion in Limine to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges (Filed Under Seal)	09/21/21	85	21,077–21,089
149	Plaintiffs’ Motion in Limine to Exclude Evidence, Testimony and-or Argument	10/08/21	22	5265–5279

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

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

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Complaint Addressing Plaintiffs' Eighth Claim for Relief			
83	Plaintiffs' Opposition to Motion for Reconsideration of Order Denying Defendants' Motion to Compel Plaintiffs Responses to Defendants' First and Second Requests for Production	03/04/21	16	3833–3862
55	Plaintiffs' Opposition to Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	09/29/20	9-10	2224–2292
72	Plaintiffs' Opposition to Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/12/21	14	3420–3438
122	Plaintiffs' Opposition to United's Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt and Sanctioned for Allegedly Violating Protective Order	08/24/21	19	4528–4609
270	Plaintiffs' Opposition to United's Motion to Seal	12/29/21	50	12,323–12,341
222	Plaintiffs' Proposed Jury Instructions (Contested)	11/15/21	38 39	9496–9500 9501–9513
260	Plaintiffs' Proposed Second Phase Jury Instructions and Verdict Form	12/06/21	49	12,064–12,072
243	Plaintiffs' Proposed Special Verdict Form	11/19/21	44	10,964–10,973
227	Plaintiffs' Proposed Verdict Form	11/16/21	40	9810–9819
84	Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/08/21	16	3863–3883

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
287	Plaintiffs' Reply in Support of Cross Motion for Entry of Judgment	02/15/22	53	13,054–13,062
364	Plaintiffs' Reply in Support of Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions (Filed Under Seal)	04/01/21	78	19,157–19,176
366	Plaintiffs' Response to Defendants Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order (Filed Under Seal)	04/19/21	78 79	19,389–19,393 19,394–19,532
195	Plaintiffs' Response to Defendants' Objection to Media Requests	11/01/21	30	7393–7403
371	Plaintiffs' Response to Defendants' Objection to Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions (Filed Under Seal)	06/16/21	82	20,212–20,265
376	Plaintiffs' Response to Defendants' Objection to Special Master Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Questions (Filed Under Seal)	07/22/21	84	20,751–20,863
110	Plaintiffs' Response to Defendants' Objection to Special Master's Report and Recommendation #7 Regarding Defendants' Motion to Compel Responses to Amended	06/24/21	18	4281–4312

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Third Set of Request for Production of Documents			
367	Plaintiffs' Response to Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Request for Production on Order Shortening Time (Filed Under Seal)	05/05/21	79	19,533–19,581
426	Plaintiffs' Response to Defendants' Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties (Filed Under Seal)	11/08/21	109	26,965–26,997
246	Plaintiffs' Second Supplemental Jury Instructions (Contested)	11/20/21	46	11,255–11,261
261	Plaintiffs' Supplement to Proposed Second Phase Jury Instructions	12/06/21	49	12,072–12,077
236	Plaintiffs' Supplemental Jury Instruction (Contested)	11/17/21	42	10,308–10,313
248	Plaintiffs' Third Supplemental Jury Instructions (Contested)	11/21/21	46	11,267–11,272
216	Plaintiffs' Trial Brief Regarding Defendants' Prompt Payment Act Jury Instruction Re: Failure to Exhaust Administrative Remedies	11/12/21	37	9174–9184
223	Plaintiffs' Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/15/21	39	9514–9521
218	Plaintiffs' Trial Brief Regarding Specific Price Term	11/14/21	38	9417–9425
428	Preliminary Motion to Seal Attorneys' Eyes Documents Used at Trial (Filed Under Seal)	11/11/21	109	27,004–27,055
211	Recorder's Amended Transcript of Jury Trial – Day 9	11/09/21	35	8515–8723

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
73	Recorder's Partial Transcript of Proceedings Re: Motions (Unsealed Portion Only)	01/13/21	14	3439–3448
125	Recorder's Partial Transcript of Proceedings Re: Motions Hearing	09/09/21	19	4667–4680
126	Recorder's Partial Transcript of Proceedings Re: Motions Hearing (Via Blue Jeans)	09/15/21	19	4681–4708
31	Recorder's Transcript of Hearing All Pending Motions	05/15/20	5	1022–1026
88	Recorder's Transcript of Hearing All Pending Motions	03/18/21	16	3910–3915
90	Recorder's Transcript of Hearing All Pending Motions	03/25/21	16	3967–3970
96	Recorder's Transcript of Hearing All Pending Motions	04/21/21	17	4092–4095
82	Recorder's Transcript of Hearing Defendants' Motion to Extend All Case Management Deadlines and Continue Trial Setting on Order Shortening Time (Second Request)	03/03/21	16	3824–3832
101	Recorder's Transcript of Hearing Motion for Leave to File Opposition to Defendants' Motion to Compel Responses to Second Set of Requests for Production on Order Shortening Time in Redacted and Partially Sealed Form	05/12/21	17	4155–4156
107	Recorder's Transcript of Hearing Motion for Leave to File Plaintiffs' Response to Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Second Set of Request for Production on Order Shortening Time in Redacted and Partially Sealed Form	06/09/21	17	4224–4226
92	Recorder's Transcript of Hearing Motion to Associate Counsel on OST	04/01/21	16	3981–3986

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
483	Recorder's Transcript of Hearing re Hearing (Filed Under Seal)	10/13/22	142	35,259–35,263
346	Recorder's Transcript of Hearing Re: Hearing	09/22/22	72	17,951–17,972
359	Recorder's Transcript of Hearing Status Check	10/20/22	76	18,756–18,758
162	Recorder's Transcript of Jury Trial – Day 1	10/25/21	25 26	6127–6250 6251–6279
213	Recorder's Transcript of Jury Trial – Day 10	11/10/21	36 37	8933–9000 9001–9152
217	Recorder's Transcript of Jury Trial – Day 11	11/12/21	37 38	9185–9250 9251–9416
224	Recorder's Transcript of Jury Trial – Day 12	11/15/21	39 40	9522–9750 9751–9798
228	Recorder's Transcript of Jury Trial – Day 13	11/16/21	40 41	9820–10,000 10,001–10,115
237	Recorder's Transcript of Jury Trial – Day 14	11/17/21	42 43	10,314–10,500 10,501–10,617
239	Recorder's Transcript of Jury Trial – Day 15	11/18/21	43 44	10,624–10,750 10,751–10,946
244	Recorder's Transcript of Jury Trial – Day 16	11/19/21	44 45	10,974–11,000 11,001–11,241
249	Recorder's Transcript of Jury Trial – Day 17	11/22/21	46 47	11,273–11,500 11,501–11,593
253	Recorder's Transcript of Jury Trial – Day 18	11/23/21	47 48	11,633–11,750 11,751–11,907
254	Recorder's Transcript of Jury Trial – Day 19	11/24/21	48	11,908–11,956
163	Recorder's Transcript of Jury Trial – Day 2	10/26/21	26	6280–6485
256	Recorder's Transcript of Jury Trial – Day 20	11/29/21	48 49	12,000 12,001–12,034



<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
262	Recorder's Transcript of Jury Trial – Day 21	12/06/21	49	12,078–,12,135
266	Recorder's Transcript of Jury Trial – Day 22	12/07/21	49 50	12,153–12,250 12,251–12,293
165	Recorder's Transcript of Jury Trial – Day 3	10/27/21	27 28	6568–6750 6751–6774
166	Recorder's Transcript of Jury Trial – Day 4	10/28/21	28	6775–6991
196	Recorder's Transcript of Jury Trial – Day 5	11/01/21	30 31	7404–7500 7501–7605
197	Recorder's Transcript of Jury Trial – Day 6	11/02/21	31 32	7606–7750 7751–7777
201	Recorder's Transcript of Jury Trial – Day 7	11/03/21	32 33	7875–8000 8001–8091
210	Recorder's Transcript of Jury Trial – Day 8	11/08/21	34 35	8344–8500 8501–8514
212	Recorder's Transcript of Jury Trial – Day 9	11/09/21	35 36	8724–8750 8751–8932
27	Recorder's Transcript of Proceedings Re: Motions	04/03/20	4	909–918
76	Recorder's Transcript of Proceedings Re: Motions	01/21/21	15	3659–3692
80	Recorder's Transcript of Proceedings Re: Motions	02/22/21	16	3757–3769
81	Recorder's Transcript of Proceedings Re: Motions	02/25/21	16	3770–3823
93	Recorder's Transcript of Proceedings Re: Motions	04/09/21	16 17	3987–4000 4001–4058
103	Recorder's Transcript of Proceedings Re: Motions	05/28/21	17	4166–4172
43	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	07/09/20	7	1591–1605

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
45	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	07/23/20	7	1628–1643
58	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	10/08/20	10	2363–2446
59	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	10/22/20	10	2447–2481
65	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	11/04/20	11 12	2745–2750 2751–2774
67	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/23/20	12	2786–2838
68	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/30/20	12	2839–2859
105	Recorder's Transcript of Proceedings Re: Motions Hearing	06/03/21	17	4185–4209
106	Recorder's Transcript of Proceedings Re: Motions Hearing	06/04/21	17	4210–4223
109	Recorder's Transcript of Proceedings Re: Motions Hearing	06/23/21	17 18	4240–4250 4251–4280
113	Recorder's Transcript of Proceedings Re: Motions Hearing	07/29/21	18	4341–4382
123	Recorder's Transcript of Proceedings Re: Motions Hearing	09/02/21	19	4610–4633
121	Recorder's Transcript of Proceedings Re: Motions Hearing (Unsealed Portion Only)	08/17/21	18 19	4498–4500 4501–4527
29	Recorder's Transcript of Proceedings Re: Pending Motions	05/14/20	4	949-972
51	Recorder's Transcript of Proceedings Re: Pending Motions	09/09/20	8	1933–1997
15	Rely in Support of Motion to Remand	06/28/19	2	276–308
124	Reply Brief on “Motion for Order to Show	09/08/21	19	4634–4666

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Cause Why Plaintiffs Should Not Be Hold in Contempt and Sanctioned for Violating Protective Order”			
19	Reply in Support of Amended Motion to Remand	02/05/20	2 3	486–500 501–518
330	Reply in Support of Defendants’ Motion for Remittitur and to Alter or Amend the Judgment	06/22/22	70	17,374–17,385
57	Reply in Support of Defendants’ Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures	10/07/20	10	2337–2362
331	Reply in Support of Defendants’ Renewed Motion for Judgment as a Matter of Law	06/22/22	70	17,386–17,411
332	Reply in Support of Motion for New Trial	06/22/22	70	17,412–17,469
87	Reply in Support of Motion for Reconsideration of Order Denying Defendants’ Motion to Compel Plaintiffs Responses to Defendants’ First and Second Requests for Production	03/16/21	16	3895–3909
344	Reply in Support of Supplemental Attorney’s Fees Request	08/22/22	72	17,935–17,940
229	Reply in Support of Trial Brief Regarding Evidence and Argument Relating to Out-Of-State Harms to Non-Parties	11/16/21	41	10,116–10,152
318	Reply on “Defendants’ Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions” ( <i>on Order Shortening Time</i> )	04/07/22	68	16,832–16,836
245	Response to Plaintiffs’ Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/19/21	45 46	11,242–11,250 11,251–11,254

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
230	Response to Plaintiffs' Trial Brief Regarding Specific Price Term	11/16/21	41	10,153–10,169
424	Response to Sur-Reply Arguments in Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment (Filed Under Seal)	10/21/21	109	26,931–26,952
148	Second Amended Complaint	10/07/21	21 22	5246–5250 5251–5264
458	Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	01/05/22	126 127	31,309–31,393 31,394–31,500
231	Special Verdict Form	11/16/21	41	10,169–10,197
257	Special Verdict Form	11/29/21	49	12,035–12,046
265	Special Verdict Form	12/07/21	49	12,150–12,152
6	Summons – Health Plan of Nevada, Inc.	04/30/19	1	29–31
9	Summons – Oxford Health Plans, Inc.	05/06/19	1	38–41
8	Summons – Sierra Health and Life Insurance Company, Inc.	04/30/19	1	35–37
7	Summons – Sierra Health-Care Options, Inc.	04/30/19	1	32–34
3	Summons - UMR, Inc. dba United Medical Resources	04/25/19	1	20–22
4	Summons – United Health Care Services Inc. dba UnitedHealthcare	04/25/19	1	23–25
5	Summons – United Healthcare Insurance Company	04/25/19	1	26–28
433	Supplement to Defendants' Motion to Seal Certain Confidential Trial Exhibits (Filed	12/08/21	110 111	27,383–27,393 27,394–27,400

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Under Seal)			
170	Supplement to Defendants' Objection to Media Requests	10/31/21	29	7019–7039
439	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 1 of 18 (Filed Under Seal)	12/24/21	114	28,189–28,290
440	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 2 of 18 (Filed Under Seal)	12/24/21	114 115	28,291–28,393 28,394–28,484
441	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 3 of 18 (Filed Under Seal)	12/24/21	115 116	28,485–28,643 28,644–28,742
442	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 4 of 18 (Filed Under Seal)	12/24/21	116 117	28,743–28,893 28,894–28,938
443	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 5 of 18 (Filed Under Seal)	12/24/21	117	28,939–29,084
444	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 6 of 18 (Filed Under Seal)	12/24/21	117 118	29,085–29,143 29,144–29,219
445	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 7 of 18 (Filed Under Seal)	12/24/21	118	29,220–29,384
446	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 8 of 18 (Filed Under Seal)	12/24/21	118 119	29,385–29,393 29,394–29,527
447	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 9 of 18 (Filed Under Seal)	12/24/21	119 120	29,528–29,643 29,644–29,727
448	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial	12/24/21	120 121	29,728–29,893 29,894–29,907

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Exhibits – Volume 10 of 18 (Filed Under Seal)			
449	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 11 of 18 (Filed Under Seal)	12/24/21	121	29,908–30,051
450	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 12 of 18 (Filed Under Seal)	12/24/21	121 122	30,052–30,143 30,144–30,297
451	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 13 of 18 (Filed Under Seal)	12/24/21	122 123	30,298–30,393 30,394–30,516
452	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 14 of 18 (Filed Under Seal)	12/24/21	123 124	30,517–30,643 30,644–30,677
453	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 15 of 18 (Filed Under Seal)	12/24/21	124	30,678–30,835
454	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 16 of 18 (Filed Under Seal)	12/24/21	124 125	30,836–30,893 30,894–30,952
455	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 17 of 18 (Filed Under Seal)	12/24/21	125	30,953–31,122
456	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 18 of 18 (Filed Under Seal)	12/24/21	125 126	30,123–31,143 31,144–31,258

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	Seal)			
466	Transcript of Proceedings re Hearing Regarding Unsealing Record (Filed Under Seal)	10/05/22	129	31,923–31,943
350	Transcript of Proceedings re Status Check	10/10/22	72 73	17,994–18,000 18,001–18,004
467	Transcript of Proceedings re Status Check (Filed Under Seal)	10/06/22	129	31,944–31,953
157	Transcript of Proceedings Re: Motions	10/19/21	22 23	5339–5500 5501–5561
160	Transcript of Proceedings Re: Motions	10/22/21	24 25	5908–6000 6001–6115
459	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/12/22	127	31,501–31,596
460	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/20/22	127 128	31,597–31,643 31,644–31,650
461	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/27/22	128	31,651–31,661
146	Transcript of Proceedings Re: Motions (Via Blue Jeans)	10/06/21	21	5202–5234
290	Transcript of Proceedings Re: Motions Hearing	02/17/22	53	13,098–13,160
319	Transcript of Proceedings Re: Motions Hearing	04/07/22	68	16,837–16,855
323	Transcript of Proceedings Re: Motions Hearing	04/21/22	69	17,102–17,113
336	Transcript of Proceedings Re: Motions Hearing	06/29/22	71	17,610–17,681
463	Transcript of Proceedings Re: Motions Hearing (Filed Under Seal)	02/10/22	128	31,673–31,793

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
464	Transcript of Proceedings Re: Motions Hearing (Filed Under Seal)	02/16/22	128	31,794–31,887
38	Transcript of Proceedings, All Pending Motions	06/05/20	6	1350–1384
39	Transcript of Proceedings, All Pending Motions	06/09/20	6	1385–1471
46	Transcript of Proceedings, Plaintiff's Motion to Compel Defendants' Production of Unredacted MultiPlan, Inc. Agreement	07/29/20	7	1644–1663
482	Transcript of Status Check (Filed Under Seal)	10/10/22	142	35,248–35,258
492	Transcript Re: Proposed Jury Instructions	11/21/21	146	36,086–36,250
425	Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties (Filed Under Seal)	10/31/21	109	26,953–26,964
232	Trial Brief Regarding Jury Instructions on Formation of an Implied-In-Fact Contract	11/16/21	41	10,198–10,231
233	Trial Brief Regarding Jury Instructions on Unjust Enrichment	11/16/21	41	10,232–10,248
484	Trial Exhibit D5499 (Filed Under Seal)		142 143	35,264–35,393 35,394–35,445
362	Trial Exhibit D5502		76 77	18,856–19,000 19,001–19,143
485	Trial Exhibit D5506 (Filed Under Seal)		143	35,446
372	United's Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time (Filed Under Seal)	06/24/21	82	20,266–20,290
112	United's Reply in Support of Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified	07/12/21	18	4326–4340



<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
	on Order Shortening Time			
258	Verdict(s) Submitted to Jury but Returned Unsigned	11/29/21	49	12,047–12,048

**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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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

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DISTRICT COURT JUDGE – DEPT. 27  
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/s/ Jessie M. Helm  
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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.

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

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.

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

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



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 --

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

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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 95 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

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]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [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 Freemont 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           A     I see that it's in there. I don't -- did he ask me a question  
2 about it?

3           Q     I believe he did. But I just wanted to see if it would refresh  
4 your recollection that this was addressed during the deposition.

5           A     If there's a question in there, I'd be glad to look at it. Sorry. I  
6 don't remember that far back.

7           Q     Right. Okay. And take a look for a second. Does this appear  
8 to be consistent, this document, with the kind of statement that United  
9 was discussing internally about how Data iSight works? Specifically,  
10 look on pages 2 and 3, please.

11          A     Can I read it?

12          Q     Sure.

13                                 [Witness reviews document]

14          Q     Let me know when you're ready.

15          A     I'm ready.

16          Q     Okay. So does this appear to contain the same type of  
17 general discussion regarding what -- how Data iSight operates and  
18 works?

19          A     It create -- it contains a description of how they determine the  
20 reimbursement amount.

21          Q     And this is the tool that United used to administer some of  
22 the claims at issue in this case, right?

23          A     I believe so.

24          Q     Okay.

25                 MR. ZAVITSANOS: Your Honor, we move for the admission

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

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.

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

08880

08880

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.

1 MR. BLALACK: 472, you said?

2 MR. ROBERTS: Yeah. It's already been admitted.

3 MR. ZAVITSANOS: Oh, it has?

4 MR. ROBERTS: Yes.

5 MR. BLALACK: So no objection.

6 THE COURT: 472 is admitted.

7 [Plaintiffs' Exhibit 472 is admitted in evidence]

8 BY MR. ZAVITSANOS:

9 Q Okay. So --

10 MR. ZAVITSANOS: Michelle, highlight the three bullet  
11 points.

12 BY MR. ZAVITSANOS:

13 Q Mr. Haben, is this where United is headed?

14 A Which part?

15 Q All right. I thought -- I mean, this is -- this is where you're  
16 headed, right, 140 percent of Medicare, suggesting to your reasonable  
17 and customary customers when they do review, and if they would insist  
18 of fair health, cap it at 50 percent, right? That's where we're headed,  
19 right, sir?

20 A I disagree with your characterization.

21 Q Okay. Well, you see where it says recommendations --  
22 findings and recommendations?

23 A I do.

24 Q Okay. I mean, there's talk about 140 percent of Medicare, 110  
25 percent of Medicare, right?

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,



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 knows  
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.

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,

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.

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.

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.



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 -

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. MCMANIS: 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?



1 MR. BLALACK: Not from us, Your Honor. Thank you.

2 THE COURT: Then everybody stay safe and healthy. See  
3 you tomorrow. Lawyers be here at 9:15.

4 MR. BLALACK: Thank you, Your Honor.

5 MR. ZAVITSANOS: Thank you, Your Honor.

6 THE COURT: Thanks.

7 [Proceedings adjourned at 4:45 p.m.]

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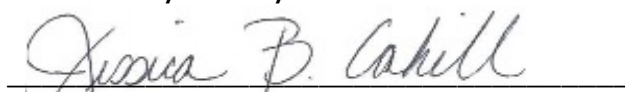
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-visual recording of the proceeding in the above entitled case to the  
best of my ability.

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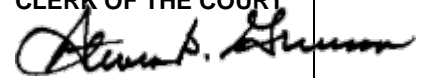


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DISTRICT COURT  
CLARK COUNTY, NEVADA

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  
WEDNESDAY, NOVEMBER 10, 2021

**RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 10**

APPEARANCES:

For the Plaintiffs:

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

For the Defendants:

D. LEE ROBERTS, JR., ESQ.  
K. LEE BLALACK, ESQ.  
JEFFREY E. GORDON, ESQ.  
DANIEL F. POLSENBERG, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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21  
22  
23  
24  
25

INDEX

Testimony .....10

WITNESSES FOR THE PLAINTIFFS

JOHN HABEN

Cross-Examination by Mr. Blalack ..... 10

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX OF EXHIBITS

<u>FOR THE PLAINTIFFS</u>	<u>MARKED</u>	<u>RECEIVED</u>
154		45
<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
5502		105
5503		119
5499		126
4569		139
4570		147

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1 Las Vegas, Nevada, Wednesday, November 10, 2021

2  
3 [Case called at 9:19 a.m.]

4 [Outside the presence of the Jury]

5 THE COURT: Good morning, everyone.

6 MR. ROBERTS: Good morning.

7 THE COURT: Calling the case of Fremont Emergency versus  
8 UnitedHealthcare. State appearances for the record.

9 MR. ZAVITSANOS: Yes, Your Honor. Good morning. John  
10 Zavitsanos for the healthcare providers.

11 MR. MCMANIS: Good morning, Your Honor. Jason  
12 McManis for the healthcare providers.

13 MR. LEYENDECKER: Good morning, Your Honor. Kevin  
14 Leyendecker for the healthcare providers. Mr. Ahmad and Dr. Scherr are  
15 here, but they may have just stepped out.

16 MR. ZAVITSANOS: And Ms. Lundvall I think is running a few  
17 minutes late, Your Honor.

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

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

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

23 MR. POLSENBERG: Good morning, Your Honor. Dan  
24 Polsenberg also for the Defendants.

25 MR. BLALACK: And Mr. Roberts will join us later,

1 Your Honor.

2 THE COURT: Thank you.

3 All right. So let's have an update from the Plaintiff.

4 MR. ZAVITSANOS: Your Honor, I don't think we have any  
5 updates other than we made additional progress last night and cutting  
6 additional -- both time with witnesses and witnesses. So I remain  
7 optimistic that we're going to meet the deadline that we represented to  
8 the Court.

9 MR. LEYENDECKER: One other point, Your Honor. At this  
10 point we think we're just going to play two tapes in our case;  
11 Mr. Rosenthal and Mr. Schumacher. And they've got some objections to  
12 Rosenthal, but they haven't yet reduced them to the specific objection for  
13 page and line. I've talked to Mr. Gordon and the -- and the goal would be  
14 to get you today, by day's end, the list of those clips with the page and  
15 line objections, and a highlighted transcript so that you can go through  
16 and break a tie however you see it.

17 THE COURT: Good enough. Thank you.

18 MR. BLALACK: So I -- that's how I see it. No comment on  
19 the progress of the trial. I'll address that -- we'll see how we do here,  
20 and I'll address that later, Your Honor.

21 THE COURT: Okay. Good enough.

22 Do we have anything else to take up before we bring in the  
23 jury? It's --

24 MR. BLALACK: Not from us.

25 MR. ZAVITSANOS: Your Honor, could I just ask a question

1 on the -- again, with this -- with the scheduling issue, because I know  
2 Your Honor is working very hard to try and fit additional time in where  
3 we can. I don't know what the Court's appetite would be for this, but in  
4 connection with the jury charge, I don't know if Your Honor is -- if your  
5 preference is to do it here in the court, but obviously we have offices  
6 downtown that would -- that are near the courthouse, and certainly from  
7 our standpoint, we have no objection to everybody meeting in one of the  
8 offices. We can even do it at their office. I have no objection to that.

9 THE COURT: Well, it has to be on the record. The settling of  
10 the jury instructions --

11 MR. ZAVITSANOS: Yes.

12 THE COURT: -- has to be on the record.

13 MR. ZAVITSANOS: Okay. I'm --

14 THE COURT: So --

15 MR. ZAVITSANOS: I'm just raising that and so I --

16 THE COURT: Yeah. We worked remotely for like eight  
17 months last year. So it can be done remotely, but it does have to be on  
18 the record.

19 MR. BLALACK: Yeah. Your Honor --

20 THE COURT: Response?

21 MR. BLALACK: -- we're -- we are also open to some sort of  
22 mechanism, whether that's somewhere off site with a court reporter or  
23 remote to have the jury charge conference in a way that doesn't occupy  
24 time for proof.

25 THE COURT: I'm going to see --



1 MR. BLALACK: So we're open to --

2 THE COURT: -- how it goes --

3 MR. BLALACK: -- those as well.

4 THE COURT: And pardon my interruption.

5 MR. BLALACK: No. I'm sorry, Your Honor.

6 THE COURT: I want to see how it goes today and Friday, but

7 I think we should consider longer days next week, whether we start at

8 8:30 or 9. And then we can work for an hour afterwards.

9 MR. BLALACK: All right.

10 THE COURT: I can get approval for that overtime.

11 MR. BLALACK: Okay.

12 THE COURT: Let the jury go at 4:45.

13 MR. BLALACK: That -- that would --

14 MR. ZAVITSANOS: And --

15 MR. BLALACK: -- be good.

16 MR. ZAVITSANOS: -- one additional follow-up, Your Honor,  
17 on that. And this is just to kind of chew on it, for lack of a better term, to  
18 the extent that the court reporter's unavailable and if we do meet off site,  
19 we would have no problem in splitting the cost that the other side to  
20 range for another court reporter to transcribe that portion of it. I'm just  
21 offering it. I mean --

22 THE COURT: You could --

23 MR. ZAVITSANOS: -- our preference would be --

24 THE COURT: Yeah.

25 MR. ZAVITSANOS: -- to have -- obviously, though our

1 preference would be to have the current court reporter. But I'm just  
2 throwing out options. That's all.

3 THE COURT: Why don't you guys talk about it and let me  
4 know Friday?

5 MR. ZAVITSANOS: Okay.

6 MR. BLALACK: We're glad to do that, Your Honor.

7 THE COURT: Thank you.

8 Anything else? Any other housekeeping matters?

9 MR. ZAVITSANOS: Not from the Plaintiff, Your Honor.

10 MR. BLALACK: Not from us, Your Honor.

11 THE COURT: Okay.

12 MR. BLALACK: Would you like me to bring Mr. Haben in and  
13 get him seated or would you --

14 THE COURT: That would be great.

15 THE MARSHAL: Well, we're still missing some jurors,  
16 Your Honor.

17 THE COURT: We're still missing a few jurors.

18 MR. BLALACK: Okay.

19 THE COURT: So why don't you guys just -- it's 9:23. At ease  
20 until 9:30.

21 MR. BLALACK: Thank you, Your Honor.

22 MR. ZAVITSANOS: Thank you, Your Honor.

23 THE COURT: And I'll be back.

24 MR. BLALACK: Thank you.

25 [Recess taken from 9:23 a.m. to 9:31 a.m.]

1 THE MARSHAL: We're back in session.

2 THE COURT: Please remain seated.

3 And can we bring in the jury? Everybody ready?

4 MR. BLALACK: I believe we are. Would you like me to bring  
5 in Mr. Haben, Your Honor?

6 THE COURT: Yes, please.

7 MR. ZAVITSANOS: And, yes, Your Honor, we're ready.

8 [Pause]

9 THE COURT: And just a polite reminder to everyone. We  
10 have to stop at 11:50. I have a meeting in this courtroom from 12 to 1.

11 MR. BLALACK: Your Honor, just for planning, is there a  
12 particular target I should hit for trying to break for a break?

13 THE COURT: You know --

14 THE MARSHAL: All rise --

15 THE COURT: -- when you get --

16 THE MARSHAL: -- for the jury.

17 THE COURT: -- to a natural breaking point, let me know.

18 MR. BLALACK: Will do. Thank you, Your Honor.

19 [Jury in at 9:32 a.m.]

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

22 GROUP RESPONSE: Good morning.

23 THE COURT: Welcome to Wednesday. We're going to have  
24 to take a longer lunch today from 11:50 to about ten after 1 p.m. So we'll  
25 just have one short break in the morning.

1 And, with that, cross-examination, please.

2 MR. BLALACK: Thank you, Your Honor.

3 JOHN HABEN, PLAINTIFFS; WITNESS, PREVIOUSLY SWORN

4 CROSS-EXAMINATION

5 BY MR. BLALACK:

6 Q Good morning, Mr. Haben.

7 A Good morning.

8 Q I wasn't sure I was going to get to speak with you.

9 A Thank you.

10 Q But I want to promise you that I am not going to take three  
11 days to complete your examination. And I'm going to promise the jury  
12 I'm not going to do it. And I'm promising counsel I'm not going to do it.

13 So let me start by this, Mr. Haben, do you recall Mr. Zavitsanos  
14 telling you last week that in another life I was in the Marine Corps?

15 A Yes, I do.

16 Q Well, when I was in boot camp at Parris Island, South  
17 Carolina my drill instructor would frequently ask my platoon a question,  
18 and then before we could give an answer, he would shout out the  
19 answer to us in front of us. And I always had the impression that my  
20 drill instructor didn't really care what the answer to the question was and  
21 he was really just doing it for show.

22 Have you ever had an experience like that?

23 A Yes, I have.

24 Q I don't think that sort of process is a very useful process for  
25 learning facts. So I want to make sure the jury gets to hear your answers

1 to key questions and not just what the lawyers have to say. Is that okay  
2 with you?

3 A Yes, sir.

4 Q Now, Mr. Zavitsanos and I are not witnesses, and we are not  
5 under oath, but you are. Do you take that obligation seriously, sir?

6 A Very seriously.

7 Q I hope to do my examination -- what I hope to do in this  
8 examination is to cover some basic questions about UnitedHealthcare's  
9 out-of-network program. And then I'm going to give you an opportunity  
10 to respond to each of the allegations that my colleague, Mr. Zavitsanos,  
11 made against you during the questioning. But first I'd like to start with  
12 your background; is that okay?

13 A Yes, sir.

14 Q Let's start, sir, where you live.

15 A I live in Edina, Minnesota.

16 Q Are you married?

17 A I am.

18 Q How long have you been married?

19 A Over 30 years.

20 Q Do you have any children?

21 A We have two sons.

22 Q How old are your boys?

23 A The oldest is 23 and the youngest is 21.

24 Q Did you attend college?

25 A I did.

1 Q Did you receive a college degree?

2 A I did. That was a bachelor's of business administration and  
3 major in accounting at the University of Wisconsin-Eau Claire.

4 Q And after graduating from college, did you go on to any  
5 other studies or did you go immediately into the workforce?

6 A I think as I alluded either yesterday or the day before, I tried  
7 to take the CPA twice and failed that. No, but nothing beyond that.

8 Q Where did you start working after graduating?

9 A Right after college I actually went into UnitedHealthcare.

10 Q What year was that?

11 A 1989.

12 Q Now, you testified last week that you retired from  
13 UnitedHealthcare sometime this year?

14 A I did.

15 Q Okay. So were you employed with UnitedHealthcare  
16 continuously from 1989 until when you retired?

17 A No. I spent two years at a third-party administrator, and then  
18 came back to United.

19 Q What years were those?

20 A 1999 to 2001.

21 Q So excluding the time you were away, 1999 to 2001, how  
22 many total years were you employed with UnitedHealthcare?

23 A Just over 30 years.

24 Q What was your first position at UnitedHealthcare?

25 A It was what's called billing and reconciliation. We received

1 premiums from employer groups, and we would have to reconcile to the  
2 membership on the -- actually, it was a green bar of paper, and we'd  
3 have to physically account for who they're paying for and who they're  
4 terminating, who they're adding on, et cetera.

5 Q Okay. And what was your job position when you retired  
6 earlier this year?

7 A I was Vice President of the out of network programs.

8 Q When did you first take on responsibility for out of network  
9 programs at UnitedHealthcare?

10 A Probably in about 2003.

11 Q Did you maintain a leadership role for out of network  
12 programs continually between 2003 and your retirement this year?

13 A Yes, I did.

14 Q Okay. Now, Mr. Haben, I want to explain a little more to the  
15 jury about the five Defendants in this case and how you do, or you don't  
16 relate to those Defendants, okay?

17 A Okay.

18 Q So I believe you testified last week that you were employed  
19 by UnitedHealth Networks; is that right?

20 A That's correct.

21 Q Okay. Now, the five Defendants in this case are  
22 UnitedHealthcare Insurance Company, UnitedHealth Services, United  
23 Medical Resources, or UMR, Sierra Health and Life, and Health Plan of  
24 Nevada. Do you understand that?

25 A Yes.

1 Q Okay. Are you an employee of any of these five Defendants?

2 A I am.

3 Q Which one?

4 A UnitedHealthcare Services. I was. I am no longer.

5 Q That's a fair question. Thank you.

6 A Yeah.

7 Q Have you ever worked for Sierra Health and Life Insurance  
8 Co?

9 A I have not.

10 Q Have you ever worked for Health Plan of Nevada?

11 A I have not.

12 Q Have you worked for UMR?

13 A I did not.

14 Q Okay. Now, Mr. Haben, you testified last week that you  
15 signed a severance agreement when you retired. Do you remember that  
16 testimony?

17 A Yes, I do.

18 Q I believe you said that that agreement required you to  
19 cooperate with any lawsuits filed against UnitedHealthcare?

20 A Yes, it does.

21 Q What does that agreement require you to do?

22 A To provide truthful testimony and information.

23 Q Does that agreement condition your severance payments as  
24 a retiree on giving testimony helpful to my clients in this case or any  
25 other case?



1 A It does not.

2 Q Now, last week Mr. Zavitsanos mentioned that the time  
3 period at issue in this case ran from July 1, 2017 through January 31st,  
4 2020. And I take it you were the Vice President of Out of Network  
5 Programs for UnitedHealth Networks during that entire time?

6 A Yes, I was.

7 Q Okay. What were your responsibilities as Vice President of  
8 Out of Network Programs during that period?

9 A At a high level, it was to help our clients achieve competitive  
10 medical cost reimbursement. So we would meet with the sales  
11 organizations, the healthcare economics folks, the finance teams to get  
12 information about, you know, hey -- our satisfied clients, they demand  
13 more. You know, what could we do to help address medical expend?

14 Q You mentioned a couple of entities there. You said  
15 healthcare economics. What is healthcare economics?

16 A At a high level, I mean they're actuaries or individuals that  
17 know claims economics. They can look at the claims data. They  
18 understand the industry. And they'll provide actuary analytics.

19 Q And you mentioned a salesforce; is that correct?

20 A Yeah.

21 Q Okay. And there's a separate sales organization in  
22 UnitedHealthcare?

23 A Yes, there is.

24 Q So when you mentioned healthcare economics and the sails  
25 force, are those groups within your group of out of network programs

1 personnel?

2 A No, they're not.

3 Q Now, how many people did you supervise during the period  
4 at issue in this case, just generally, in the out of network program crew?

5 A Just about 80 to 90 people.

6 Q Did anyone report directly to you?

7 A Yes.

8 Q Who was that?

9 A In that time period, Becky Paradise and Sarah Peterson, and  
10 then Sarah retired.

11 Q Now, had you ever had responsibility, you personally, for the  
12 out of network programs for Sierra Health?

13 A No.

14 Q Have you ever had responsibility for the out of network  
15 programs for Health Plan of Nevada?

16 A No.

17 Q Have you ever had responsibility for the out of network  
18 programs for UMR?

19 A I have not.

20 Q Do you know if UMR, Sierra, and Health Plan of Nevada use  
21 out of network programs that were different from the programs you  
22 managed for UnitedHealthcare?

23 A There was some similarities.

24 Q Okay. Are there differences?

25 A Yes, there are.

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1 Q Okay. Now, you were asked a few questions by  
2 Mr. Zavitsanos about UMR yesterday. Do you recall those questions?

3 A Yes, I do.

4 Q Do you know if UMR has any out of network programs that  
5 are similar to those of UnitedHealthcare?

6 A There are some similarities, yes.

7 Q Are there any that are different?

8 A Yes.

9 Q And have you ever supervised any out of network programs  
10 operated by United Medical Resources, or UMR?

11 A No, I have not.

12 Q So if the jury wanted to understand what the out of network  
13 programs were for Sierra, Health Plan of Nevada, or UMR, you would not  
14 be the person to speak to?

15 A I would not be.

16 Q Okay. Now, you testified for three days in response to  
17 questions from Mr. Zavitsanos. Did any of your testimony regarding out  
18 of network programs relate to Sierra or Health Plan of Nevada?

19 A No, they did not.

20 Q Now, where did your organization, UnitedHealthcare  
21 Networks sit in the broader UnitedHealth corporate structure?

22 A So we were -- if you're saying UnitedHealthcare --  
23 UnitedHealth Group corporate structure, there's Optum, there's  
24 UnitedHealthcare. Inside UnitedHealthcare, there's many organizations.  
25 UnitedHealth Networks is an organization inside the UHC arm. I believe

1 the legal entity is UnitedHealth Services.

2 Q And you mentioned there's a number of entities. Is one of  
3 the entities within United -- within UnitedHealth be what's called the E&I  
4 group, or Employer & Individual group?

5 A Yes.

6 Q What does that group -- what is the function of that group?

7 A As we talked before, they're the commercial book of  
8 business. E&I stands for Employer & Individual. And I think we covered  
9 some individual business yesterday.

10 Q Are you -- were you ever an employee of E&I?

11 A No.

12 Q And is there a separate group that's responsible for  
13 government programs, benefit programs, that UnitedHealthcare  
14 participates in?

15 A Yes.

16 Q And what's that called?

17 A There's a Medicare and a Medicaid group.

18 Q Were you ever employed by any of those groups?

19 A No. I would have not been.

20 Q Now, in July 2017, in the beginning of this period, to whom  
21 did you report?

22 A July of 2017, I reported to Dan Rosenthal.

23 Q What was his title?

24 A He was the President of UnitedHealth Networks.

25 Q And just, again, to make sure the jury's clear, when you say

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1 President of UnitedHealth Networks, you don't mean president of all of  
2 United?

3 A No.

4 Q And you don't mean president of the commercial  
5 businesses?

6 A No. That was a separate individual.

7 Q So he was president of the group known as UnitedHealth  
8 Networks within which you participated?

9 A That is correct.

10 Q Okay. Now, did it -- did you report to Mr. Rosenthal  
11 continuously until January of 2020, which is the end of the period at  
12 issue in this case?

13 A No, I did not.

14 Q To whom did you report after Mr. Rosenthal?

15 A Vicki Miller. Her name's Katherine V. Miller. And that was  
16 around 2018.

17 Q Now, Mr. Haben, I'm now going to ask you to define for the  
18 jury some key healthcare terms and concepts. We've talked about some  
19 of these, but I want to see if you just can do it in a more straightforward  
20 way than you were able to do before. So let's walk through a couple of  
21 basic terms to make sure we all agree what they are before we start  
22 looking at some [indiscernible].

23 Have you heard the terms fully-insured health plan and self-  
24 insured health plan?

25 A I have.

1 Q What is a fully-insured health plan?

2 A A fully-insured health plan or business is a health plan that's  
3 responsible for the medical cost risk.

4 Q And what is a self-funded health plan?

5 A Is self-funded health plan employer groups that are  
6 assuming the risk of the medical cost payments. They fund the claims  
7 payment.

8 Q What are principal differences between a self-funded plan  
9 and a fully-insured plan?

10 A As I kind of touched on, so fully insured, there's the risk, the  
11 medical loss risk, associated with that. That's part of the health plan,  
12 part of UnitedHealthcare. For self-funded or ASO they have the medical  
13 cost risk. And they look to third-party administrators like us to do the  
14 administration of not only claims but many other services.

15 Q Sir, I'll represent to you that in this case one of the plans for  
16 when claims were submitted and are in dispute relates to the Las Vegas  
17 Metropolitan Police Department. And I'll represent to you that it's an  
18 ASO plan or self-funded plan.

19 A Okay.

20 Q If that employer is a self-funded plan and one of its employee  
21 seeks medical care in the emergency room, is the administrator of that  
22 plan responsible for paying those medical costs or is the money used to  
23 pay those claims coming from the Las Vegas Metropolitan Police  
24 Department?

25 A The funds are coming from the Las Vegas Police Department.

1 Q Okay. Now, if you have a different situation, let's say an  
2 employer that has a fully-insured plan, their -- if one of their employees  
3 goes to the emergency room and incurs medical costs, the funds are  
4 coming from where?

5 A They're coming from the UnitedHealthcare health plan.

6 Q Not the employer?

7 A Not the employer group.

8 Q Now, have you ever heard the term third-party administrator,  
9 or TPA?

10 A Yes, I have.

11 Q And what is a TPA?

12 A As I indicated before, they're the administrator for self-  
13 funded employer groups. So the employer groups look to that  
14 administrator to do services, which include claims payment and  
15 enrollment, billing, directory, many other things.

16 Q And does the TPA have any responsible for assembling and  
17 providing a network of providers for the employers who hire you?

18 A Yes, they do.

19 Q Okay. How is a TPA different, if at all, from a health  
20 insurance company?

21 A The TPA does not incur the medical cost risk. We're like a  
22 health insurance company. That's one of the primary components.

23 Q Okay. Now, Mr. Haben, I'd like to show you a few slides that  
24 I shared with jury in the opening that illustrates the differences in these  
25 plans, to help make sure we can agree on what it is -- how these two

1 types of models work, okay?

2 A Yeah.

3 Q The first one I'm going to show you -- I'm going to ask Shane  
4 to bring up -- is slide 9. Can you see it? It will come up. Can you see it  
5 on your screen when it comes up?

6 A Yes. I can see it. Thank you.

7 Q All right. Now, sir, I've depicted here what's labeled as a  
8 "fully insured health plan arrangement." Can you describe for the jury  
9 what -- who the parties are and how the funds are transferring between  
10 those parties?

11 A So -- and thank you for fixing the screen, whoever did that,  
12 because I can actually see things.

13 Q Well, I can assure you it wasn't me.

14 A Thank you. On the left-hand side there are three entities, the  
15 insurance company at the top, the employer group who buys the health  
16 plan from the insurance company, and the employee, in cases of medical  
17 treatment, the patient is the third entity at the bottom.

18 Q And do you see dollars associated with arrows, flowing  
19 toward the staffing company, in that slide?

20 A I do.

21 Q Can you describe what those two different groups of  
22 payments are?

23 A So there's the claims payment that comes from the insurance  
24 company. I think we might have touched on that before, that could --  
25 that's the allowed amount, and I can explain that later. And then there's



1 the patient cost share. So again, like we talked on, earlier, that's the  
2 co-pay, the co-insurance, any deductible.

3 THE COURT: I just want to interrupt for a second. Everyone  
4 can see him okay? Thank you.

5 THE WITNESS: I'm sorry.

6 THE COURT: Thank you.

7 MR. BLALACK: If I need to move that, Your Honor, just let  
8 me know.

9 THE WITNESS: No, I --

10 THE COURT: I just need to make sure that Ms. Ross has a  
11 line of sight. Thank you.

12 BY MR. BLALACK:

13 Q All right. So when the employee of this employer seeks care  
14 from the emergency room, that is affiliated with Team Health, there  
15 would be payments flowing to the staffing company from two sources,  
16 one from the insurance company, and the other from the  
17 employer/patient; is that fair?

18 A Yes, that's correct. And both of those together is what's  
19 called the "allowed amount."

20 Q Okay. And I want to cover those terms and define those in a  
21 moment. I just make sure the jury understands the flow of funds here.  
22 All right. I'm showing the next line, which is line 10. This one is labeled  
23 "self-funded health plan." So in this model, please explain the parties  
24 that are in the flow of funds.

25 A So similar on the left-hand side you have the claims

1 administrator at the top, which would be the third-party administrator,  
2 you have the employer group, and then you have the employee/patient.

3 Q And you still have the same kind of payments being made to  
4 the staffing company?

5 A Yes.

6 Q Except this time, that one of the payments is coming from  
7 the employer instead of the insurer?

8 A Yeah. The employer will fund the claims, the administrator  
9 will release those funds to the provider.

10 Q Does UnitedHealthcare offer a fully insured health plan?

11 A Yes.

12 Q Does UnitedHealthcare offer administrative services, to  
13 sponsor a self-funded health plan?

14 A Yes.

15 Q Does UnitedHealthcare sometimes operate both as an  
16 insurance company and as a dba?

17 A Yes, they do.

18 Q Now in responses to questions from Mr. Zavitsanos you  
19 referred to the bill charge in the allowed amount. I think you just alluded  
20 to that; is that right?

21 A Yes.

22 Q All right. Let's define those terms again, before we get into  
23 the document, to make sure everyone's clear, what is a bill charge?

24 A The bill charge is the charge amount that is set by the  
25 provider, or the staffing company.

1 Q And what is the allowed amount?

2 A The allowed amount is what is allowed in that claim in total,  
3 per the benefit plan.

4 Q Okay. In your 30 some odd years in the industry, in your  
5 experience, is the provider's bill charge typically different from the  
6 allowed amount?

7 A Yes.

8 Q And why is that?

9 A Typically, the provider rarely ever gets the bill charge  
10 amount. That's typically what's not expected.

11 Q And is that because the bill charge is typically much greater  
12 than the allowed amount?

13 A Yes.

14 Q Okay. Now what is patient responsibility, Mr. Haben?

15 A As I touched on before, patient responsibility is your co-pay,  
16 which is usually a flat amount, your co-insurance, which is a percentage  
17 of the allowed amount, and then a deductible.

18 Q How is the patient responsibility calculated?

19 A Co-pay is a flat amount, typically defined -- everything is  
20 defined in the benefit plan. The co-insurance is calculated off of the  
21 allowed, and then the deductible is an accumulation of both.

22 Q When you say that the co-insurance is calculated off of the  
23 "allowed" what do you mean by that?

24 A So there's the, as we talked before, there's the bill charge  
25 amount, there's an allowed amount, which is defined by the benefit plan.

1 That is the amount that is allowed for that payment in total, and the  
2 percentage, let's say you have a 10 percent co-insurance, it's calculated  
3 off of that allowed amount.

4 Q Not the bill charges?

5 A Not the bill charges.

6 Q All right. Mr. Haben, I'd like to show you a few slides that  
7 illustrate the differences between the bill charge, an allowed amount,  
8 and patient responsibility, okay?

9 A Yes.

10 Q All right. This first one -- oh, by the way, I should have, I  
11 skipped this, I should have mentioned this. Let's go back. On the fully  
12 insured self-funded health plan, how is the payment for the risk of  
13 paying for medical costs borne in a fully insured plan?

14 A The risk is borne by the insurance company.

15 Q And does the employer pay for it?

16 A They pay a premium for that --

17 Q So they pay --

18 A -- insurance.

19 Q -- an insurance premium?

20 A Yes, they do.

21 Q So in this slide what's depicted under the fully insured plan?

22 A So I think as you have here, the employer group is on the  
23 left-hand side, they pay a premium, they send those premiums over to  
24 the insurance company, the insurance company has the risk of paying  
25 those -- paying the medical claims out of the premiums that were

1 received.

2 Q And then in a self-funded plan, what is the nature of the  
3 assumption of risk and the payment of --

4 A So the employer group is over on the left-hand side. They  
5 pay an administrative fee to do all the functions that I have kind of  
6 highlighted, but they have the risk, much like the insurance company did  
7 above, of the medical cost.

8 Q Thank you. Now let's go on to slide 13.

9 MR. BLALACK: Bring that up, Shane.

10 BY MR. BLALACK:

11 Q And again, as I was saying, let's just make sure we  
12 understand how these terms work in combination with each other, and  
13 you calculated patient responsibility.

14 So first of all I'm showing you, in a hypothetical, a claim for a CPT  
15 code 99285, which is an emergency room evaluation and management  
16 code, and I'm assuming in this example, an allowed amount of \$200. Do  
17 you see that?

18 A Yes.

19 Q Now here in the next image, I'm showing you an assumption  
20 of a bill charged for that service of \$1,000. Do you see that?

21 A I do.

22 Q Okay. Now, I want you to walk the jury through, if you can,  
23 how the calculation of patient responsibility occurs when you have a bill  
24 charge of a 1,000, and the benefit plan has an allowed amount of 200,  
25 can you walk them through that for me?

1           A     Yes, I can. So you'll see on the left-hand side, sorry, bill  
2 charges of a \$1,000. The benefit plan will define what's allowed for  
3 those -- that type of service. The allowed amount in this situation is  
4 \$200. Your co-insurance is calculated off of that 200, so 30 percent of  
5 200 is \$60.

6           Q     So in a situation where this emergency room encounter  
7 occurred and the charge was a 1,000, under this benefit plan the patient  
8 responsibility would be \$60?

9           A     That's correct.

10          Q     Okay. Now are you aware, sir, that in this case, I think Mr.  
11 Zavitsanos mentioned it to you, that the female plaintiffs in this case  
12 allege that the allowed amounts for the disputed claims in this case,  
13 should have been bill charges; are you aware of that?

14          A     I am.

15          Q     Okay. Now let's -- what I'd like you to do, is I'm going to  
16 change the assumption here so that the bill charge and the allowed  
17 amount are the same, so that the allowed amount was a 1,000, not 200 of  
18 this claim, okay? If you could walk the jury through how to calculate  
19 patient responsibility if the allowed amount was the full charged?

20          A     Sure. So in this situation bill charge is a 1,000, the allowed  
21 amount, based on the benefit plan, would be \$1,000, if you paid that and  
22 if that's what the benefit plan said, the co-insurance is 30 percent, 30  
23 percent calculated off the 1,000 is \$300.

24          Q     So now the -- on a charge of a 1,000 for that account, the  
25 patient would be responsible for 300, or 30 percent of the total?

1 A That's correct.

2 Q Now you may -- and I think you said this. Did you testify a  
3 moment ago that what determines the allowed amount is the benefit  
4 plan?

5 A Yes.

6 Q When you refer to the benefit plan, are you referring to the  
7 actual documents, the health plan documents?

8 A Yes, I am.

9 Q Okay. What types of documents do you mean?

10 A For a fully insured, it's the -- it's commonly known as the  
11 certificate of coverage, and for the self and employee group, it's the  
12 summary plan description, or SPD.

13 Q And then is there some sort of document called an  
14 administrative services agreement?

15 A Yes, there is.

16 Q And what does an administrative service agreement say?

17 A So the ASA is the document that is the agreement between  
18 the employer group, with the third-party administrator to perform  
19 services on their behalf.

20 Q Okay. I just want to make sure I heard you correctly, and that  
21 the jury understands this. Did you say that a certificate of coverage is  
22 associated with a fully insured plan?

23 A Yes.

24 Q And did you say a summary plan description would be  
25 associated with a self-insured or ASO plan?

1 A Yes.

2 Q Okay. So if the jury sees a COC, or a certificate of coverage,  
3 they should interpret that as being associated with a fully insured plan?

4 A That's correct.

5 Q And if they see a summary plan description, they should  
6 associate it with a self-insured plan?

7 A That's correct.

8 Q What about an ASA, does that apply to just one, or both?

9 A The ASA is typically -- it's an administrative service  
10 agreement, it's typically a self-funded employer group.

11 Q Now precisely what is a certificate of coverage, what does  
12 that mean?

13 A It's the contract between the insurance company and the  
14 employee of the employer group, and so that is the promise of what is  
15 going to be covered for services and other components.

16 Q Okay. And in your experience aren't COCs typically filed with  
17 any regulatory authority?

18 A Yeah. COCs are filed in the states, in terms of where you're  
19 doing business. The states are very different in how you approach it.

20 Q All right. And then it's -- what type of information is typically  
21 contained in an administrative services agreement?

22 A The administrative services agreement covers the  
23 responsibilities that the third-party administrator would perform on  
24 behalf of the employer group, that could be, obviously, the benefit -- you  
25 know, the type of programs they've adopted, requirements for provider



1 directory. It might be clinical, member services, many other things.

2 Q Okay. Is it fair to call it an administrative service agreement  
3 contract?

4 A Yes.

5 Q And the parties to the administrative service agreement are  
6 who?

7 A It's between the employer group and the third-party  
8 administrator.

9 Q In your experience, sir, are health plan documents usually  
10 identical for all UnitedHealthcare's clients?

11 A No.

12 Q Okay. And why do health plan documents typically differ, in  
13 your experience, by client?

14 A You could ask me to get into details, but I'll give you at a  
15 general high level --

16 Q That's fine.

17 A -- that self-funded employer groups have different needs,  
18 they're different sizes in what they want to have performed. Some of  
19 them bring their own benefit plan in, and say, I want you to do this, and  
20 some will ask for some type of recommendation. For fully insured, like I  
21 said before, there are state rules you have to follow, and so the states  
22 will approve or deny a benefit plan, and you have to follow those, and  
23 there could be a variety inside a state.

24 Q And then the clients can choose among those options that  
25 are in the state --

1 A Yes.

2 Q -- that are offered? But it sounds like clients of employers  
3 who purchase health insurance for their employees, seek to tailor their  
4 plans to the needs of their particular workforce; is that fair?

5 A Very much so.

6 Q And is it -- what's the relationship between the size and  
7 sophistication of the employer to come, once that occurred?

8 A The bigger the employer group, the greater variety, and you  
9 can deal with unions, bargain groups, municipalities. They're very  
10 different.

11 Q All right. Let's talk about some other e-concepts, employers  
12 in the health insurance and healthcare market. What is a "participating  
13 provider"?

14 A A participating provider has a contract with the health plan to  
15 be in their network, we commonly call that "par. "

16 Q Okay. And does that contract typically include some rate, or  
17 amount of reimbursement for services rendered to the members of the  
18 health plan?

19 A Yes, it does.

20 Q And in those contracts do they typically indicate that if  
21 services are rendered to a member of the plan, covered services, and  
22 reimbursements are made at the agreed rates, that the participating  
23 provider will accept that payment in full satisfaction of the insured?

24 A Yes. Along with the patient cost share.

25 Q And would a participating provider agreement, or network

1 agreement, would that typically include a term in the contract, like a lien  
2 of time, in which the contract would be in place?

3 A Yeah. There's a period of time where that contract -- it would  
4 say, here's the start date, here's the end date, and there's options for  
5 renewals, depending on the contract.

6 Q What is a non-participating provider?

7 A A non-participating provider is a provider that does not have  
8 a contract with the insurance company to be in their network.

9 Q I think you just said that participating providers are called  
10 "par providers," that's a shorthand phrase?

11 A Correct.

12 Q And are non-participating providers often called non-par?

13 A Correct.

14 Q When a healthcare provider is out-of-network, does that  
15 provider ever have a direct contract with UnitedHealthcare that specifies  
16 the reimbursement that UnitedHealthcare will pay for the services the  
17 provider vendors to a United member?

18 A No.

19 Q Is the very definition of a non-network provider, a provider  
20 who has no contract?

21 A That they're not in our broad network.

22 Q Now when you were at the company did UnitedHealthcare  
23 receive a claim coming out of that work provider, that's what I'm asking  
24 about, if you were there and a claim came in from an out-of-network  
25 provider, how did the company -- how did you all decide how much to

1 allow on that out-of-network claim?

2 A It's all based on what's defined in the benefit plan.

3 Q What do you mean by that?

4 A Well, you have to look at the summary plan description,  
5 where the certificate of coverage, depending on what that patient has for  
6 coverage, and then you would look at what's the allowable amount for  
7 that type of service, and then you would reimburse that amount.

8 Q In response to questions from Mr. Zavitsanos, you frequently  
9 referred to the term "balance billing," do you recall that?

10 A Yes, I do.

11 Q What is balance billing?

12 A That is when the provider will bill the patient, and if I can  
13 explain a little bit further, is there's two components, the cost share, the  
14 co-pay, co-insurance, and deductible, and then there's anything that's  
15 above the allowed amount to the bill of charges.

16 Q So this would be the provider or the staffing company  
17 seeking reimbursement for amounts above the allowed amount?

18 A That is correct.

19 Q Is a provider that participates in UnitedHealthcare's network,  
20 can that provider legally balance bill the United member under their  
21 contract?

22 A I'm sorry, say that again.

23 Q I'm sorry. Let me -- that was a poor question. If a provider is  
24 in UnitedHealthcare's network, is a par provider --

25 A Yes.

1 Q -- or the network provider; that's the assumption, can that  
2 network provider, legally, under its agreement, balance bill the patient  
3 who is the United member.

4 MR. ZAVITSANOS: I'm sorry, Your Honor. I don't mean to  
5 interrupt here, but that opinion on an ultimate issue, it also calls for legal  
6 conclusion. If counsel would rephrase --

7 MR. BLALACK: Sure --

8 MR. ZAVITSANOS: -- I would have no objection.

9 THE COURT: Rephrase.

10 BY MR. BLALACK:

11 Q In your understanding of the relationship between  
12 UnitedHealthcare and its participating or network provider, that's the fact  
13 [indiscernible].

14 A Yeah.

15 Q In your understanding are the network providers who signed  
16 up with UnitedHealthcare permitted to balance bill members who are in  
17 the network?

18 A No. Only for their co-pay, co-insurance and deductible.

19 Q Now during the period at issue in this case, if a provider was  
20 out-of-network, and I'm not talking about in the network, out-of-network,  
21 and was located in the State of Nevada, could the provider legally  
22 balance bill the patient, to your understanding?

23 A Yes.

24 Q Now what is United Healthcare's position on whether out-of-  
25 network providers should balance bill under United's terms? I'm not

1 asking whether they can, but whether they should?

2 A We believe that the reimbursement amount is reasonable,  
3 based on the allowed amount, and they should not bill the member.

4 MR. BLALACK: Can we approach with counsel, real quick,  
5 before I move into my next section?

6 THE COURT: You may.

7 [Sidebar at 10:05:43 a.m., ending at 10:06 a.m., not transcribed]

8 BY MR. BLALACK:

9 Q Sir, I'd now like to ask you -- we were talking about whether  
10 United believed it was appropriate for out-of-network providers to  
11 balance bill United's members for an amount above the amounts  
12 allowed for an out-of-network service. Do you remember me asking you  
13 that question?

14 A Yes, I do.

15 Q Okay. What is United Healthcare's position about the  
16 reasonable value of out-of-network service? I'm just asking for your  
17 corporate general view on that question.

18 A Yeah, we try to set the value for out-of-network services at a  
19 reasonable rate, typically what providers accept in the market.

20 Q And is one of the criteria you use the Medicare rate plus the  
21 small market?

22 A Yes.

23 MR. ZAVITSANOS: Objection. Leading.

24 MR. BLALACK: Okay. Let me ask it this way, sir. What is --

25 THE COURT: Re-ask.

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1 MR. BLALACK: I'll rephrase, Your Honor.

2 BY MR. BLALACK:

3 Q What is United's view about how to determine a reasonable  
4 value of an out-of-network service?

5 A We will look at Medicare and we will pay above that with a  
6 reasonable premium above that.

7 Q And you said what providers accept in the market, you've  
8 referenced several times during the course of your responses to Mr.  
9 Zavitsanos, I think you referred to some of the documents to a term  
10 called "par medium"; do you remember saying that?

11 A Yes, I do.

12 Q What do you mean when you say -- I'm not sure the jury  
13 knows what par medium is. What is par medium?

14 A It's a -- I'm trying not to get, like, too detailed, but it's  
15 basically what is accepted in the market, so there's --

16 MR. ZAVITSANOS: Your Honor, can we approach for a  
17 second?

18 THE COURT: You may.

19 MR. BLALACK: Yup.

20 [Sidebar at 10:08 a.m., ending at 10:10 a.m., not transcribed]

21 THE COURT: Okay. There was an objection. Counsel's  
22 going to move on, and we'll take it outside your presence later. Thank  
23 you. Please go ahead.

24 BY MR. BLALACK:

25 Q So now, Mr. Haben, I'd like to make sure the jury

1 understands about some information about the claims in dispute in this  
2 case and how this relates. I want to show you a slide that I showed the  
3 jury in opening statement, okay? And ask you about it, okay?

4 A Understood.

5 MR. BLALACK: This will be slide 23, Shane.

6 BY MR. BLALACK:

7 Q Now, sir, in this case the Plaintiffs have alleged that they are  
8 entitled to reimbursement of billed charge equaling \$13,242,789; do you  
9 see that?

10 A I do.

11 Q And you've described for the jury what bill charges are  
12 already, correct?

13 A I have.

14 Q Okay. And then they identified -- and the parties have agreed  
15 that the allowed amounts on those claims were \$2,843,448. Do you see  
16 that?

17 A I do.

18 Q And you described what allowed amount is, right?

19 A I have.

20 Q In that middle column you'll see that the average amount of  
21 charge at issue in those two claims is referenced there along with the  
22 average amount of the allowed, it's 1,145 was billed, 246 in allowed. Do  
23 you see that?

24 A I do.

25 Q Okay. In the far-hand column, far right-hand column, sir, I'm



1 expressing those same numbers as a percentage of the Medicare rate.

2 Do you see that?

3 A I do.

4 Q And what is the amount of the plaintiffs' bill charges when  
5 expressed as a percentage of the Medicare rate?

6 A 763 of Medicare.

7 Q And then what is the amount, of the allowed amount for the  
8 amount that United pay for these disputed claims when expressed as a  
9 percentage amount here?

10 A 164 percent of Medicare.

11 Q And sir, as a former executive in UnitedHealthcare, in your  
12 opinion, is the bill charged at issue here a reasonable amount for the  
13 value of these services?

14 A No, it is not.

15 Q And in your experience based on running out-of-network  
16 programs for many years, and the valuation of what is a reasonable rate  
17 in healthcare, do you believe that the 164 percent or \$246 on average or  
18 2.8 million dollars in allowed, it represents reasonable value in your  
19 experience?

20 A Yes, it is.

21 Q Now for three days Mr. Zavitsanos took this jury through  
22 kind of all over the place on various out-of-network programs, and I think  
23 the jury probably understands what those programs are from that, that  
24 questioning, but it was not linear, and I want to try to make sure the jury  
25 understands clearly what all the out-of-network programs are that

1 touched claims for out-of-network services, how they worked, when they  
2 were in place, and how they related to each other.

3 So I'm going to devote this portion of the examination to just  
4 clearly getting that out so the jury can have confidence they understand  
5 when they get to deliberations how each of these programs work and  
6 what they related to.

7 So let me start first, Mr. Haben, by saying when you refer to an  
8 out-of-network program, what do you mean? What does that mean?

9 A Out-of-network program is a program that was designed to  
10 be able to address medical expense, medical cost, and developed for the  
11 need to have the market, so the employer groups or the fully insured  
12 plans.

13 Q Why does UnitedHealthcare even offer out-of-network  
14 programs? What's -- why would you do that?

15 A It's to help manage medical expenses and address high bill  
16 charges.

17 Q And is one of the needs that employer groups find that need  
18 to be addressed by out-of-network programs the issues with respect to  
19 collections activities directed at their employees?

20 A Yes.

21 Q Why doesn't UnitedHealthcare simply pay the full bill charge,  
22 whatever that is, on every claim submitted by an out-of-network  
23 physician?

24 A Providers set the bill charges, and they can set it whatever  
25 they want to set it at, so we're trying to base it on a reasonable

1 reimbursement to the market.

2 Q Okay. And in your experience over the last ten years, have  
3 provider charges risen and gone up over that period?

4 A The provider, what we call charge masters, the individual  
5 provider charges, in some cases have gone up.

6 Q Okay. What about hospital-based physicians, particularly  
7 physicians like emergency room, anesthesia; what about them?

8 A Yes, those have increased.

9 MR. ZAVITSANOS: Objection, Your Honor. Best evidence  
10 rule, foundation, and also -- yeah, those two, Your Honor.

11 THE COURT: You can lay a little more foundation.

12 BY MR. BLALACK:

13 Q Sir, in your role as head of the out-of-network programs have  
14 you over the last ten years reviewed data within UnitedHealthcare  
15 regarding the charges that are being reported by providers on an out-of-  
16 network basis for members of the United Healthcare benefit plan?

17 A Yes, Healthcare Economics has provided me data based on  
18 that.

19 Q Okay. And in fact, were you shown charts and reports and  
20 emails over the last three -- last week, discussing some of that data and  
21 what it did and didn't show regarding the charges?

22 A Yes.

23 MR. ZAVITSANOS: Can we approach, Your Honor? I'm  
24 sorry.

25 THE COURT: You may.

1 [Sidebar at 10:16 a.m., ending at 10:20 a.m., not transcribed]

2 THE COURT: Okay. I've tentatively overruled the objection,  
3 but we'll hash it out on the next break. Thank you for your professional  
4 courtesy.

5 BY MR. BLALACK:

6 Q All right. Sir, I think we were talking about why didn't  
7 UnitedHealthcare simply pay the full billed charges on every claim. I  
8 think you answered that question earlier?

9 A Correct.

10 Q Okay. Does UnitedHealthcare ever pay providers the bill  
11 charged ever?

12 A Yeah, if it's a reasonable bill charge amount or in some rare  
13 circumstances, if the employer group says please take the member out  
14 of the middle, they're getting harassed, they're getting sent to  
15 collections, they're -- you know, they're in a touch spot, they will tell us  
16 to pay billed charges, but it's very rare.

17 Q When you say take the member out of the middle, what's  
18 that mean?

19 A The member, like we were talking about, getting balance bill  
20 between the billed, the what's allowed, and the bill charge amount, and  
21 so the member gets a collection notice or a bill from the staffing  
22 company, the billing entity, saying you owe us, and they will pursue  
23 them.

24 Q And in those kind of circumstances you're saying someone  
25 from the employer group might contact you; how does that work?

1           A     So we'll -- we call that member in the middle, we've talked  
2 about member advocacy, so the employer group might get a complaint  
3 from the employee and say, you know, I'm getting harassed, please help  
4 me. The employer group will contact member services, or the employee  
5 will contact member services or a vendor, and then they will be asked if  
6 they want us to pay bill charges, they have to put that in writing.

7           Q     All right. So at this point, Your Honor, or excuse me, Mr.  
8 Haben, I want to transition to discussing what those programs are and  
9 make sure me and the jury understand what they are. So I'm going to  
10 utilize one of the exhibits you were shown by Mr. Zavitsanos last week,  
11 which is Plaintiff's Exhibit 154, which is already in evidence. I'm going to  
12 ask Shane to bring that up, please.

13          A     Do I have that here or are you just going to --

14          Q     It should be in one of those binders on the right probably,  
15 and try to find it right there and see if you see a Plaintiffs' Exhibit 154.  
16 And if you'd like to work off the hard copy or the screen, whatever works  
17 best for you.

18          A     I'm tactile.

19          Q     I'm aware that you like the paper, so we'll work off that. All  
20 right. Sir, do you recognize this document, Plaintiff's Exhibit 154, which  
21 again is a notice entitled "Core Essentials Out-Of-Network Program  
22 Overview?"

23          A     Yes.

24          Q     This was a document you were shown last week?

25          A     I believe so.

1 Q All right Can you tell from the document, sir, what the date  
2 of it is?

3 A February of 2018.

4 Q And were you the leader of the United Healthcare's out-of-  
5 network program for that time?

6 A Yes, I was.

7 Q I'll direct you to page 6 of this document, if you go to page 6,  
8 and you'll see a title that reads "Out-Of-Network Landscape"; do you see  
9 that?

10 A I do.

11 Q And then down below it there's a header underneath that  
12 icon with a -- what looks like a dollar sign on the left.

13 MR. BLALACK: Shane, could you bring that up?

14 BY MR. BLALACK:

15 Q And you'll see there, it says, "typically 90-95 percent of  
16 claims are captured in the United Healthcare contracted provider  
17 network, about 5-10 percent of claims are out-of-network"; do you see  
18 that?

19 A I do.

20 Q What does that mean?

21 MR. ZAVITSANOS: Your Honor, may I visit with Mr. Blalack  
22 briefly for one second?

23 THE COURT: Yes, you may.

24 [Counsel confer]

25 MR. BLALACK: My colleague kindly reminded me this was

1 conditionally admitted, Your Honor, so I think we need to do the honors  
2 and formally move it for admitting.

3 THE COURT: And give me the number again.

4 MR. BLALACK: It's 154, I believe, Plaintiffs' Exhibit 154.

5 MR. ZAVITSANOS: And obviously, no objection, Your  
6 Honor.

7 THE COURT: All right. Exhibit one-fifty --

8 MR. BLALACK: It would still be conditionally admitted if he  
9 hadn't reminded me. That's okay.

10 THE COURT: All right. 154 will be admitted.

11 [Plaintiffs' Exhibit 154 admitted into evidence]

12 BY MR. BLALACK:

13 Q All right. Sir, we were looking at that highlighted phrase, 59-  
14 95 percent of claims are captured in the UnitedHealthcare contracted  
15 provider network, about 5-10 percent of claims are out-of-network; do  
16 you see that?

17 A I do.

18 Q What does that mean?

19 A So that means, and just kind of rounding, 95 percent of the  
20 claims that are received through UnitedHealthcare for either fully insured  
21 or ASO business are performed by providers that are inside the United  
22 network. That means they're a par provider, they're a contracted  
23 provider, they have agreed-upon rates.

24 Q And so those would be providers where the rate of  
25 reimbursements already specified?

1 A Yes.

2 Q And then what's the five to ten percent that's referenced?

3 A So that five percent is the percent of claims that are received  
4 and administered for providers that are non-par, not in the network, no  
5 agreed upon rate.

6 Q Okay. And just -- I think everyone understands, but you  
7 understand, sir, that the claims at issue in this case are limited to out-of-  
8 network claims, correct?

9 A Correct.

10 Q So that's in that five to ten percent, approximately?

11 A Correct.

12 Q Now if you look at the next column under the clipboard there  
13 it says, "Out-of-network programs are in place to help control costs when  
14 non-contracted providers are chosen, or when a member gets treated by  
15 a non-network provider within a network facility." Do you see that?

16 A I do.

17 Q What does that mean?

18 A So basically, at a high level it means that there are programs  
19 in place to address non-par billed charges, there's two avenues that a  
20 member could typically see a non-par provider. One is by choice, so if  
21 you bump up knee, you don't have to go right away, and you're like  
22 schedule surgery, that's your choice if you went to a non-par provider.

23 And then there is a non-par provider that could be a -- in a par  
24 facility. So large, national hospital systems typically use staffing  
25 companies to support their emergency rooms, anesthesiologists. You



1 would never know when you're getting treated that they're non-par, and  
2 so you would, you know, that is another circumstance where you would  
3 step into that.

4 Q So in that last pause there, when a member is treated by a  
5 non-network provider within their facility, so just so I'm clear, that would  
6 be a scenario where you went to a hospital. Say you looked in your  
7 provider handbook, that hospital would be in your network at your  
8 participating hospital; is that what I understand that to be?

9 A Yes. If you had the luxury of doing that and not being taken  
10 by ambulance or emergency, yes.

11 Q But you arrived at that facility thinking and knowing the  
12 facility was in the network, but you might find out that one of the  
13 professionals that works in the hospital is not a member there?

14 A That's is correct.

15 Q Now if you look at the next column, right-hand side. And  
16 below that is says quote, efforts to control cutting costs, ongoing  
17 management and application of existing out-of-network programs,  
18 continual evaluation of program performance and new ideas around  
19 OON cost containment. Do you see that?

20 A Yes, I do.

21 Q What does that mean?

22 A We continuously look at our out-of-network programs to  
23 make sure we're paying a fair and reasonable rate, and we're addressing  
24 costs.

25 Q Okay. And so, it sounds like there's two functions here.

1 There's one that's managing the existing programs and then cost at  
2 looking to improve; is that fair?

3 A That's correct.

4 Q Now let me show you another page, page 11, of this  
5 document.

6 MR. BLALACK: Shane, if you could move to that.

7 THE WITNESS: Sure.

8 BY MR. BLALACK:

9 Q David, and if you could turn to page 11. And do you see a  
10 header there, it says none contracted providers?

11 A Yes, they do.

12 Q Okay. Now there's two columns. One says paid at network  
13 benefit level. One says paid at out-of-network benefit level. Do you see  
14 that?

15 A I do.

16 Q This is going to be a little tricky, so I just want to make sure  
17 the jury has clarity about what we need when we refer to a benefit level.  
18 So first, why don't you describe for the jury what is the network or  
19 in-network benefit level?

20 A The way -- there's a lot of nuances, but the way I kind of  
21 explained it to you is claims that are paid at the in-network benefit level  
22 are claims to the providers first that are participating in the network. So  
23 you get the highest benefit. The lowest co-insurance. The lowest  
24 co-pay. And services where you didn't have the choice and if you were  
25 going non par. So think about it as I described before. If you go to the

1 hospital and you were admitted to the ER, there might be providers that  
2 are not participating, but you would never know anesthesiologists, ER  
3 physicians, you didn't physically make that choice to go see that  
4 provider.

5 On the out-of-network benefit level, those are always the providers  
6 that are not in the provider network for United Healthcare. And also,  
7 circumstance -- so they're non-par. All of them are non-par. And then  
8 we also call that kind of the choice. So my example of let's just say you  
9 tweaked your knee. You wanted to go get it scoped. You schedule  
10 something two weeks down the road to get it done, but you'd make a  
11 decision. I'm going to go to a provider that I've known before but they're  
12 not in my network. That's a no choice or that's a choice. You made a  
13 conscious choice to go that way.

14 Those services you usually have a higher out-of-pocket expense. A  
15 higher co-insurance deductible, et cetera.

16 Q Okay. So just see if I can summarize. Is it the case that all  
17 out-of-network benefit level services are out-of-network provider claims?

18 A Yes.

19 Q Okay. For in-network benefit level however, can there be  
20 out-of-network claim for services under the in-network benefit?

21 A Yes, there can.

22 Q Give me an example on that.

23 A As I was talking before, we call it the no choice. You didn't  
24 make the choice to go see that doctor. They came in and treated you. It  
25 could be an ER physician, anesthesiologist. Those are two common

1 examples.

2 Q Okay. And in this case, it's stipulated that all of the disputed  
3 services are out-of-network emergency room services. Do you  
4 understand that, Mr. Haben?

5 A Yes, I do.

6 Q On which of these two benefit levels, network benefit level,  
7 in-network benefit level or out-of-network benefit level are emergency  
8 room claims, out-of-network emergency room claims process?

9 A At the highest benefit level, which is the in-network benefit  
10 level.

11 Q So out-of-network emergency room claim is an example of  
12 an out-of-network claim that's paid on an in-network benefit level?

13 A That is correct.

14 Q All right. Now sir, I'm going to show you -- and in fact, if you  
15 look under that left hand column page of in-network, you'll see service  
16 categories there. Would you describe for the jury this service category is  
17 describing under that benefit level?

18 A Yeah. As I've talked before, the examples in here are  
19 emergency hospital-based physicians, so ER physicians. And they could  
20 also be radio -- what we called last -- the other day RAPL, radiology,  
21 anesthesiology, pathology, lab, emergency room. And under the  
22 service categories, could you describe us some examples there?

23 A Yeah. So like again, where I've talked before, they're not  
24 emergent. You made a decision. It could be ambulatory surgery  
25 centers, so that could be where you're going to go get your knee scoped

1 or something replaced. There could be other specialist facilities, et  
2 cetera.

3 Q Now I'd like to talk about some of these programs. And if  
4 you would Shane, go to page 12 of this document. Mr. Haben, if you  
5 could turn to page 12. And you'll see a big header that reads out-of-  
6 network programs. Do you see that?

7 A I do.

8 Q Okay. Can you please just tell the jury what is being  
9 described on this page of this document?

10 A At a high level, those are the programs that we have for our  
11 out-of-network program.

12 Q And you talked about these programs off and on over the last  
13 few weeks; is that right?

14 A That's correct.

15 Q Now I want to go to discuss the first of these that I want to  
16 talk about is on page 15 of this document. So can you go to page 15? So  
17 do you see a title there for maximum reimbursement program?

18 A Yes. Maximum out-of-network reimbursement program.

19 Q And look to the right, in the upper right-hand corner. Read to  
20 the jury, sir, what that first bullet says.

21 A The first bullet says, provide more predictable costs using  
22 CMS reimbursement methodology. Typically, 110 percent of CMS are  
23 fully insured, and 140 percent of the CMS are self-funded or ASL.

24 Q Thank you. When you say CMS, what is that referring to?

25 A That's Medicare.

1 Q Okay. All right. Now, sir, we're going to go page 16. And  
2 Mr. Haben, can you tell the jury what this slide describes?

3 A This is what we call ENRP. It's the extended out-of-network  
4 reimbursement program.

5 Q And if you go the right-hand column and pull up that first  
6 bullet. It says lowers costs of noncontracted provider claims, helps to  
7 lower member coinsurance deductible if members receive care outside  
8 of the United Healthcare Network, open paren, or in an emergency  
9 situation where member receive such services, close paren.

10 MR. ZAVITSANOS: Your Honor, I have an unrelated issue. If  
11 I could approach please?

12 THE COURT: You may. But it's probably a good time to give  
13 everyone a recess.

14 MR. ZAVITSANOS: Okay.

15 THE COURT: So would you rather take the recess now? It's  
16 about time -- is this a good stopping point?

17 MR. BLALACK: I'm ready whenever. Yeah, whatever's best  
18 for the jury.

19 THE COURT: Yeah. We have just been an hour. It's 10:35.  
20 We'll go ahead and take a 15-minute recess.

21 During the recess, you're instructed to not talk with each  
22 other or anyone else on any subject connected to the trial. Don't read,  
23 watch or listen to any report of or commentary on the trial. Don't  
24 discuss this case with anyone connected to it by any medium of  
25 information. Including without limitation, newspapers, television, radio,

1 internet, cells phones or texting.

2 Don't conduct any research on your own or get -- relating to  
3 the case. Don't consult dictionaries, use the internet, or use reference  
4 materials. Don't talk, text, tweet, Google issues, or post any social media  
5 or conduct any other type of book or computer research with regard to  
6 any issue, party, witness, or attorney involved in this case. Do not form  
7 or express any opinion on any subject connected with the trial until the  
8 matter is submitted to you.

9 Please be ready at 10:50.

10 THE MARSHAL: All rise for the jury.

11 [Jury out at 10:36 a.m.]

12 [Outside the presence of the jury]

13 THE COURT: All right. The room is clear. Mr. Zavitsanos?

14 MR. ZAVITSANOS: Yes, Your Honor. And by standing when  
15 I did, I do not mean to waive or open the door to the Court's in limine  
16 ruling. I did not stand and object when this came up, because I did not  
17 want to draw attention to it. If I may approach, Your Honor, and I can  
18 show counsel.

19 THE COURT: You may.

20 MR. ZAVITSANOS: This is the slide that he had up. And can  
21 I hand this to the Court, Your Honor?

22 So one of the -- this is the slide that was up immediately  
23 before the break. And it concerns -- I'm just going to use the acronym,  
24 Your Honor. It concerns the MNRP program. This is something that has  
25 been limined [sic] out. This is something that is not part of this case. It

1 expressly says on that document that the Court -- I just handed the Court,  
2 that it only applies to non-emergent claims.

3 The reason, I believe, that that was put up there, was to  
4 suggest that this program for non-emergent claims, which is something  
5 that the patient elects to do is the appropriate out-of-network rate. Now  
6 that is in the Court's order in limine. In fact, it was their motion in limine  
7 that raised this, which I understand to be mutual. And I understand it's  
8 in the document, but I did not ask any questions about the MNRP  
9 program. And the reason I didn't ask about that, is because of the  
10 Court's order in limine.

11 Now I had, believe it or not, I had even more questions for  
12 Mr. Haben on this program and why the rates are so low. But because it  
13 was off limits, I didn't ask it. So the only thing I would ask is that -- and I  
14 understand this is kind of a work in progress and we're -- and I do not  
15 believe counsel intentionally violated the Court's order in limine. I would  
16 simply ask that counsel please avoid any explicit reference to MNRP  
17 going forward because that has no application here.

18 MR. BLALACK: Okay. All right. Your Honor, I mean, I'm  
19 confused. Because they must have discussed MNRP 20 times over the  
20 last week during the course of questioning back and forth. Documents  
21 and emails with MNRP all over it. The document I'm using right now, is  
22 a document they introduced and offered into evidence and is in  
23 evidence. So I'm permitted to question the witness about the document  
24 in evidence. The slides that has the chart on it, that has the listing,  
25 MNRP is liable, and I think we've shown that question about them in the



1 case.

2 Now, I'm doing my best to observe in limine and agreements  
3 and rulings, but we've got so many tripwires here where you can't talk  
4 about Medicare and then you talk about it a lot and then you talk about it  
5 a little. It's impossible to try this case when we don't have clear rulings.  
6 And I want to obviously respect the Court's authority, and I want to abide  
7 by it vigorously, but we've got to have some rules where it applies to  
8 both sides. And if the Court's ruling is neither party will reference the  
9 term MNRP a single more time in the case, I'm fine with that. But it can't  
10 be a world where documents are shown to the witness. It's got MNRP all  
11 over it and then the witness mentions in testimony and the jury hears it  
12 and then I can't ask anything about it.

13 So I just got to have some bright lines that I can follow and  
14 adhere to and if they will follow and adhere to it, I'm fine.

15 MR. ZAVITSANOS: And brief reply, Your Honor. I did not  
16 ask one question, not one, about MNRP, not one. I asked about ENRP,  
17 and I know the mask sometimes makes it difficult to hear. I did not ask  
18 any questions about MNRP. And, Your Honor, I invite counsel to go  
19 through the transcript and find where I did. I did not.

20 I understand it's on the document. This was their limine  
21 point, not ours, okay. And I deliberately avoided asking any questions.  
22 And frankly, to counsel's comment that the rulings are confusing, they're  
23 not. I think we are very clear about what the Court -- the Medicare line  
24 is. We're very clear about the rulings. I've not heard any confusion  
25 about what we should avoid and what we should not. But this MNRP

1 issue is clear as day. I mean, this was the subject of one of their limine  
2 points. And so --

3 THE COURT: So I'm going to sustain the objection. But if  
4 you open the door, you open the door.

5 MR. BLALACK: Of course. Okay. And I'm fine with it, Your  
6 Honor. As long as both sides stay away from it, I'm fine. No documents  
7 showing it. No writing it on the boards or anything like that then I'm  
8 fine.

9 THE COURT: Good enough. Do we have other issues that  
10 we don't want at the bench? Let's take those up --

11 MR. BLALACK: Not from me, Your Honor.

12 MR. ZAVITSANOS: From us, Your Honor, very briefly. So  
13 while we -- during the course of the examination, counsel asked  
14 questions about -- and counsel will correct me if I misstate this, but it  
15 was a question around charges and elevated charges over a period of  
16 time. And the question was whether he had looked at data to support  
17 the opinion the charges were escalating.

18 We have a couple of objections to that. Number one, it's  
19 hearsay. Number two, none of those, none of that information was  
20 produced. Counsel should be limited to what is in evidence. Number  
21 three, this gentleman was not designated as a non-retained expert. And  
22 if the Court will remember, there was a pretty vigorous back and forth  
23 about a couple of doctors that we designated as non-retained experts  
24 that they took issue with. We gave them fair notice that we designated  
25 them.

1           This is brand new. This is getting sprung on us for the first  
2 time. He was not designated. And finally, the only evidence in the case  
3 -- now this is a weight, not an admissibility issue, but the only evidence  
4 in the case is the opposite. The charges were going down. And -- which  
5 underscores why I would need the data to be able to decipher it to be  
6 able to impact that. Because there's no question that in terms of what  
7 would make the most impact on a jury. You know, we all tend to think of  
8 how is this going to affect me?

9           So if the jury's thinking the charges are going up and my  
10 premiums are going up, that's going to make more of an impact. And I  
11 can't contradict that. I can't challenge it. I can't question that without the  
12 underlying data to which he's referring to.

13           THE COURT: Any response please?

14           MR. BLALACK: Got a couple. Your Honor, we're not offering  
15 any opinion testimony here. He's testifying to his own personal  
16 knowledge as an executive in healthcare based on his own experience,  
17 working in the company, what he observed and saw. They are free to  
18 impeach him by showing that he -- the documents in evidence, I mean,  
19 both parties did a list, don't support his understanding or to argue that  
20 he has no basis for that. Those are both fair game for cross-  
21 examination. But there's not an opinion about this. That's point one.

22           Well two, their own data that they're relying on, the Fair  
23 Health Data, plus their own charges that they produced in this case for  
24 themselves are indisputable that the charges are going up. So we're not  
25 going to have to debate about who knew what when, because their own

1 evidence that they are paid and produced from their own files, shows  
2 that the charges were going up. And that will be explored in depth with  
3 their witnesses and with the expert.

4           So just to respond, there is no opinion testimony. He's  
5 giving personal knowledge testimony based on his own role and time in  
6 Humana Healthcare. There are regions of documents on both party's  
7 exhibit list that discuss charges going up. And in fact, he was cross-  
8 examined about some of them over the last week. And there is raw data  
9 that has been produced showing what the charges for the Plaintiffs were  
10 and what the charges in this state are during the period in question,  
11 which is only in evidence and will be the subject of a substantial factor in  
12 expert testimony.

13           So I think this is a grounds for impeachment, but it's not a  
14 basis for arguing about the admissibility of the testimony or impropriety  
15 of the claim. So I'll leave that. And unless the Court has anything else  
16 for me, I do want to come back to the MNRP point just before we close.

17           THE COURT: We will.

18           MR. BLALACK: I got one final point on that.

19           THE COURT: That's fine. And you reply?

20           MR. ZAVITSANOS: Brief reply, Your Honor. The question  
21 was not about our charges, which again, he was designated as a non-  
22 retained expert on that. He's welcome, if he's reviewed our charges, and  
23 we welcome that, to go through what our charges were. The question  
24 was really more kind of much broader nation why and kind of what's  
25 going on in the medical community in general and what they're looking

1 at. And that data, Your Honor, has never been produced, never.

2 THE COURT: Okay. I'm going to overrule your objection.

3 You can take it up -- you can test his credibility when you redirect him?

4 MR. ZAVITSANOS: Okay. May I approach, Your Honor? I  
5 can take my --

6 THE COURT: Yes, of course.

7 MR. BLALACK: The last piece, Your Honor, before we close  
8 out and get a little break is Mr. Roberts was kind enough to bring up the  
9 transcript's day seven of Mr. Zavitsanos' examination.

10 THE COURT: Let me -- I can pull it up too.

11 MR. BLALACK: This is page 48 of 217 on the transcript.

12 There's a question at line 11. It starts with ASO for Mr. Haben. Mr.  
13 Zavitsanos asks, "Available options for clients instead of MNRP. We'll  
14 talk about that later. Majority of ASO clients still use this out-of-network  
15 reimbursement methodology, right?" Answer on line 14, "Yes. That's  
16 what that says."

17 So that's an example of this other thing I was remembering.  
18 And not to mention documents and everything else. So that's what my  
19 view is.

20 MR. ZAVITSANOS: I -- when we -- I'm sorry, Your Honor. I  
21 didn't mean to go on. Brief response? I was reading from a document  
22 from an email. I never asked any questions about what MNRP is. What  
23 the program is. What the reimbursement is. It was something from an  
24 email that I was reading, okay. And I never -- I did not ask any questions  
25 about what MNRP is.

1 THE COURT: So thank you for the clarification. The ruling  
2 still stands.

3 MR. BLALACK: Thank you, Your Honor.

4 THE COURT: What else do we need to do --

5 MR. ZAVITSANOS: Nothing else from me, Your Honor.

6 THE COURT: -- before you got a few minutes.

7 MR. BLALACK: Thank you, Your Honor.

8 THE COURT: See you in a few minutes.

9 MR. BLALACK: Thank you, Your Honor.

10 [Recess taken from 10:47 a.m. to 10:54 a.m.)

11 THE MARSHAL: Court is back in session.

12 THE COURT: Are we ready to bring in the jury?

13 MR. BLALACK: We're ready, Your Honor.

14 THE COURT: And please remain seated for me.

15 MR. ZAVITSANOS: Your Honor, Your Honor -- and I checked  
16 with counsel. He doesn't have an objection. With the Court's  
17 permission, I neglected to introduce two other client reps today. May I  
18 do that five seconds before counsel starts?

19 THE COURT: No objection?

20 MR. BLALACK: Absolutely. That'll be fine.

21 THE COURT: Thank you.

22 MR. BLALACK: And Your Honor, you indicated we'll go  
23 until --

24 THE COURT: 11:50.

25 MR. BLALACK: 11:50? Yeah. Because some of the judges

1 will come into this courtroom for the meeting.

2 MR. BLALACK: That'll work perfect, Your Honor. Thank you.

3 THE MARSHAL: All rise for the jury.

4 [Jury in at 10:56 a.m.]

5 THE COURT: Thank you. Please be seated.

6 MR. ZAVITSANOS: Your Honor, Mr. Zavitsanos wanted to  
7 have the opportunity to introduce one of his clients. He can do that  
8 before I proceed.

9 THE COURT: Yes. Go ahead, please.

10 MR. ZAVITSANOS: Thank you, Your Honor. I neglected to  
11 do this earlier. My apologies. With us today, two additional  
12 representatives. Dr. Crystal Sturgis. Can you please stand? And Dr.  
13 Cole Soundrup, who was here previously. Thank you, Your Honor.

14 THE COURT: Thank you, and thank you for your professional  
15 courtesy.

16 MR. BLALACK: Of course.

17 BY MR. BLALACK:

18 Q All right. We were about to dig into the next --

19 MR. BLALACK: Pull that off the screen, please.

20 BY MR. BLALACK:

21 Q We were about to dig into the next program that was being  
22 described in Exhibit -- Plaintiffs' Exhibit 154. I believe that was the  
23 Extended Out-Of-Network Reimbursement Program, ENRP. And what I  
24 was going to start with, Mr. Haben, is that upper right-hand bullet. You  
25 see where it says, "Lowers cost of noncontracted provider claims, helps

1 lower coinsurance and deductibles when members receive care outside  
2 of the UnitedHealthcare Network or in emergency situations where the  
3 member receive such care."

4 What does that mean?

5 A So ENRP applies to noncontracted providers to address their  
6 cost shares. We've kind of gone through some of those examples. For  
7 non-par providers, when they've gone outside the UnitedHealthcare  
8 network and you seek services or you have services in an ER situation,  
9 like a no choice situation.

10 Q Now, it says underneath that bullet -- you'll see a bullet that  
11 reads, "Applies to non-par emergent or non-emergent claims at in-  
12 benefit level preferred benefit."

13 What is that referring to?

14 A So when we were looking at one of the charts before, kind of  
15 on the right -- or left-hand side. Sorry. I'm looking in a mirror. Left-hand  
16 side is in-network. No choice. Right. Inside is out-of-network benefit  
17 level choice. This would be the in-network benefit level. The left-hand  
18 side of that chart, where it's paid at the highest benefit level, there's no  
19 choice.

20 Q Does ENRP apply to out-of-network ER services?

21 A Yes, it does.

22 Q Now, is the ENRP program -- you see that bullet, where it  
23 says -- next bullet, the third bullet, standard for fully insured plan?

24 A Yes, I see that.

25 Q What does that refer to?



1           A     As I've explained before, benefit plans outline what  
2 programs apply. It's a standard benefit inside the fully insured benefit  
3 plans we are allowed and approved by the state.

4           Q     Okay. Does ENRP provide protections for members from  
5 balance billing typically?

6           A     The program does not.

7                     MR. BLALACK: Now, if you pull out of that, Shane, and go  
8 back and look in the blue box down at the bottom.

9 BY MR. BLALACK:

10          Q     You'll see a little word, the sentence or phrase that says no  
11 client fee. You see that?

12          A     I see that.

13          Q     Is that correct? There is no fee to charge to clients for the  
14 ENRP program?

15          A     Correct. If the client adopts it, we do not charge them the fee  
16 for that program.

17          Q     Okay. When did UnitedHealthcare first begin offering ENRP  
18 as an out of network program to its clients?

19          A     ENRP is in place -- been in place for probably about ten  
20 years.

21          Q     Is ENRP still in use today?

22          A     Yes, it is.

23          Q     And was ENRP offered continually through that period from  
24 when it was introduced up 'til today?

25          A     Yes.

1 Q All right. Let's talk about another program. Pull out of this  
2 one and go to page 13 of exhibit -- Plaintiffs' Exhibit 154. And you'll see  
3 a reference to a shared savings program. Do you see that, sir?

4 A I do.

5 Q If you would just review that slide very quickly and tell me if  
6 you think it accurate describes the program?

7 A Could I just take a minute?

8 [Witness reviews document]

9 A Okay.

10 Q And does that slide accurately describe the shared savings  
11 program as you understand it?

12 A Yes, it does.

13 Q Do you see in the upper right-hand corner, there's a bullet --  
14 MR. BLALACK: And Shane, can you bubble that out?

15 BY MR. BLALACK:

16 Q It says "UHC contracts with MultiPlan access third-party  
17 networks as well as fee negotiation services to obtain discounts on out-  
18 of-network claims." Do you see that?

19 A I do.

20 Q What are you referring to when you refer to a third party  
21 network?

22 A So that's not a network that United has contracted, so  
23 MultiPlan could be a third party network. There are other third party  
24 networks out there we have used in the past. First Health Group, which  
25 is part of Aetna now. What we call non-logoed small discount networks

1 as well.

2 Q So a third party network is not a network that is directed by  
3 or controlled by United?

4 A It is not.

5 Q And what were the names of the various vendors you've  
6 used over the years?

7 A So we've used multiple vendors, MultiPlan is one of the  
8 biggest. First Health Group, so FHG, which is now owned by Aetna.  
9 There's other entities called TC3. I couldn't tell you the purpose of the  
10 acronym. And other third party networks that are out there.

11 Q Okay. The jury's heard several times references to  
12 something called a wrap network and that's spelled w-r-a-p?

13 A Yes. That's correct.

14 Q Is a wrap network a third party network, as described here?

15 A Yes. It could be viewed that way.

16 Q And just so the jury's clear, would you describe for them how  
17 does a wrap network operate? Who are the participants in a wrap  
18 network and how does it function?

19 A So first of all, I don't know why -- who invented the word  
20 wrap with a capital W, but think about it wrapping around your par  
21 network. Okay. So it's used in what you would call an out-of-network  
22 setting, so provider is not in the primary network. So for United's case,  
23 it's not in United. Almost kind of like gap fill. It's to help mitigate costs.  
24 It wraps around your primary network. It's used for, as I described  
25 before, in or out-of-network benefit level. I don't remember the rest of

1 your question.

2 Q Okay. Well, let me ask it this way. In a wrap network, who  
3 are the parties to the wrap contract or network wrap?

4 A Well, the -- there's the contract between the contracting  
5 entity, like a MultiPlan or First Health Group and the provider. And then  
6 they have agreed upon rates. And inside those, those typically say --  
7 those can be used by other entities with some requirements.

8 Q And then what is the relationship between the health insurer  
9 or administrator and the vendor, who enters the wrap network with  
10 provider?

11 A So entities like United, or Aetna, or Cigna, or the Blues will  
12 go contract with a vendor like your MultiPlan or a First Health group to  
13 access those networks. Typically they have, at least United does, the  
14 right to not use certain wrap networks if we deem so.

15 Q And I was going to ask you that. When you say access the  
16 network, what does that mean?

17 A So we can access the discount arrangements with those third  
18 party providers or third party vendors that have contracts with providers.

19 Q Are you obligated to access them?

20 A No, we're not.

21 Q Now, in that sentence describing the shared savings  
22 program, in -- excuse me -- in addition to referring to accessing third  
23 party networks, it refers to fee negotiation services. Do you see that?

24 A Yes, I do.

25 Q Please describe to the jury what that means.

1           A     So those are what we call like a prospective fee negotiation,  
2 so usually done before the claim is finally paid. So again, think about it  
3 as another layer, almost like a waterfall. You got your primary network  
4 of United Healthcare. That's not this. The provider's non-participating in  
5 UnitedHealth network. If there's a wrap network agreement, we choose  
6 to use that, we'll use that. If that's not available, then in this situation,  
7 there's prospective fee negotiation. So then the vendor, you know, like a  
8 MultiPlan, or former Concentra, or other entities. There's Zelis, there's  
9 entities out there that will go reach out to the provider and say hey,  
10 would you take this discount arrangement. They might have a standing  
11 agreement with those providers in writing or they might actually  
12 physically call and say for this service, we believe this reasonable  
13 amount is this. Would you accept that and promise not to balance bill  
14 the patient. If they do that, the claim gets priced and sent back.

15           Q     That was my next question. For both -- well, let me back up.  
16 For the shared savings program, what are the components of the  
17 program? When someone says what are the components of the shared  
18 savings program, what would you say?

19           A     The components of the shared savings program are the wrap  
20 network and the fee negotiation, prospective fee negotiations.

21           Q     Two pieces.

22           A     Two pieces.

23           Q     And you've been focusing on prospective negotiation. Is  
24 there another kind of negotiation that's different than prospective?

25           A     There could be. This -- there could be, just like with outlier

1 cost management, where we'll pay what we feel is a reasonable amount.  
2 We'll put a statement in the EOB saying, "Hey, call us if you don't agree  
3 with that amount," and then there's kind of a retrospective negotiation.  
4 There might be situations where the provider says, hey, I think I deserve  
5 this and this is why, and they will negotiate.

6 Q Okay. We'll talk about outlier cost management in a  
7 moment, but for shared shavings, the negotiation service is a  
8 prospective negotiation?

9 A That's correct.

10 Q Meaning there hasn't been any payment on the claim at the  
11 time MultiPlan engages with a provider?

12 A Right.

13 Q For both components of this program, fee negotiation and  
14 wrap network, if a payment is made under this program and the provider  
15 accepts the prospectively negotiated payment for his pay pursuant to the  
16 wrap third party network agreement, is there any balance billing  
17 permitted of the members?

18 A No, there's not.

19 Q So with that, those two scenarios, is the provider agreeing to  
20 accept that payment as paid in full?

21 A Yes, they are.

22 Q Now when would you ever have this fee -- prospective fee  
23 negotiation, if you've also got a wrap network in place? Why would you  
24 ever get to the fee negotiation with [indiscernible]?

25 A If the provider's not the wrap network.