

Case Nos. 85525 & 85656

**In the Supreme Court of Nevada**

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

Appellants,

*vs.*

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

Respondents.

Electronically Filed  
Apr 18 2023 09:00 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 85525

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

Petitioners,

*vs.*

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

Respondents,

*vs.*

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

Real Parties in Interest.

Case No. 85656

**APPELLANTS' APPENDIX  
VOLUME 45  
PAGES 11,001-11,250**

K. LEE BLALACK II  
(*pro hac vice*)  
JONATHAN D. HACKER (*pro hac*  
*vice forthcoming*)  
O'MELVENY & MYERS LLP  
1625 Eye Street, N.W.  
Washington, D.C. 20006

DANIEL F. POLSENBERG (SBN 2376)  
JOEL D. HENRIOD (SBN 8492)  
ABRAHAM G. SMITH (SBN 13,250)  
KORY J. KOERPERICH (SBN 14,559)  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Pkwy., Ste. 600  
Las Vegas, Nevada 89169

D. LEE ROBERTS (SBN 8877)  
COLBY L. BALKENBUSH  
(SBN 13,066)  
WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC  
6385 South Rainbow Blvd.,  
Ste. 400  
Las Vegas, Nevada 89118

*Attorneys for Appellants/Petitioners*

**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



Tab	Document	Date	Vol.	Pages
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.

Electronic notification will be sent to the following:

Pat Lundvall  
Kristen T. Gallagher  
Amanda M. Perach  
MCDONALD CARANO LLP  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

*Attorneys for Respondents (case no. 85525)/Real Parties in Interest (case no. 85656)*

Richard I. Dreitzer  
FENNEMORE CRAIG, PC  
9275 W. Russell Road, Suite 240  
Las Vegas, Nevada 89148

*Attorneys for Real Parties in Interest (case no. 85656)*

Dennis L. Kennedy  
Sarah E. Harmon  
BAILEY KENNEDY  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148

*Attorneys for Respondents (case no. 85525)*

Constance. L. Akridge  
Sydney R. Gambee  
HOLLAND & HART LLP  
9555 Hillwood Drive, Second Floor  
Las Vegas, Nevada 89134

*Attorneys for Amicus Curiae (case no. 85656)*

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:

The Honorable Nancy L. Allf  
DISTRICT COURT JUDGE – DEPT. 27  
200 Lewis Avenue  
Las Vegas, Nevada 89155

*Respondent (case no. 85656)*

Joseph Y. Ahmad  
John Zavitsanos  
Jason S. McManis  
Michael Killingsworth  
Louis Liao  
Jane L. Robinson  
Patrick K. Leyendecker  
AHMAD, ZAVITSANOS, & MENSING, PLLC  
1221 McKinney Street, Suite 2500  
Houston, Texas 77010

Justin C. Fineberg  
Martin B. Goldberg  
Rachel H. LeBlanc  
Jonathan E. Feuer  
Jonathan E. Siegelaub  
David R. Ruffner  
Emily L. Pincow  
Ashley Singrossi  
LASH & GOLDBERG LLP  
Weston Corporate Centre I  
2500 Weston Road Suite 220  
Fort Lauderdale, Florida 33331

*Attorneys for Respondents (case no. 85525)/Real Parties in Interest (case  
no. 85656)*

/s/ Jessie M. Helm  
An Employee of Lewis Roca Rothgerber Christie LLP

1           Q     Do you think a good expert before they talk to the jury about  
2 what they say are examples would bother to check how many times the  
3 CPT code they highlight for the jury actually appears in the 11,563  
4 claims?

5           A     It totally depends on what you're using it for. For the  
6 purpose I'm using it here, it makes no difference. What I'm looking at  
7 here, the primary point, as you may recall from my testimony, was  
8 looking at the initial CPT code, the 99285 -- or excuse me -- 291 on the  
9 left side, and this is a 99283. Those codes appear lots of times, and I had  
10 slides describing how frequently they appear. I talked about the fact that  
11 sometimes there's an additional code. This is an example of an  
12 additional code. There's lots of additional codes. This one may show up  
13 once or more times. There's other codes that will show up once or more  
14 times. There's all kinds of different other codes that show up. But the  
15 primary codes at the top are the ones that are -- that I've illustrated in  
16 terms of the breakdown of the codes. There's been lots of discussion of  
17 the 99281, 283. So for illustration purposes, this is absolutely fine.

18           Q     And you know to a moral certainty that when these jurors go  
19 back there and check my claim file, they're going to find exactly one of  
20 the 11,563 claims that involves the code and the money you chose to  
21 show the jury, right?

22                   MR. BLALACK: Object to the form. Asking for Mr. Deal to  
23 explain his morality.

24                   THE COURT: Rephrase.

25                   BY MR. LEYENDECKER:

1 Q The jury's going to find only one of these, right, sir?

2 A I don't know. It wouldn't surprise me one way or the other. I  
3 don't know how many there are.

4 Q Do you often, when you take the stand and testify to the jury,  
5 where you're telling them you're not going to pick a side, do you often  
6 not do enough homework to figure out whether the example you're  
7 giving might be viewed as a little bit of cherry picking?

8 A I'm certainly not trying to cherry pick. I think I've been very  
9 clear about what these are. These are illustrative examples of types of  
10 claims. There's going to be lots of other kinds of claims out there.

11 Q Okay. Thank you, sir.

12 MR. LEYENDECKER: I'm not sure what slide number this is.  
13 Jason, can you figure that out for me?

14 BY MR. LEYENDECKER:

15 Q I want to look at another slide you showed the jury. I'll tell  
16 you what -- I'll tell you what testimony -- I'll put it up on that. You may  
17 have --

18 MR. LEYENDECKER: Do you have it? It's the one where he  
19 was describing the TeamHealth services. Let me just put it up on the --  
20 oh, no. That's okay.

21 Brendan, may I have the ELMO, please?

22 MR. BLALACK: Which one is this Kevin? Do you know the  
23 number?

24 MR. LEYENDECKER: Do you know the number on that, sir?  
25 I'm handing --

011002

011002

1 MR. BLALACK: It was printed on the original. I don't know  
2 what it is.

3 BY MR. LEYENDECKER:

4 Q Okay. Let's go back to the ELMO, sir. Do you remember this  
5 slide?

6 A Yes, I do.

7 Q It's a little hard to read but I think it says something about  
8 TeamHealth's -- oh okay, here we go.

9 MR. LEYENDECKER: : Let's -- can I switch back? This one's  
10 hard to read. There we go.

11 BY MR. LEYENDECKER: :

12 Q Remember this slide, sir?

13 A Yes, I do.

14 Q Do me a favor? Tell the jury who came up with the title.

15 A I did.

16 Q Excuse me?

17 A Who came up with the title?

18 Q Yes, sir.

19 A I came up with the title of the slide that "Services identified  
20 by Dr. Frantz are not reasons why TeamHealth should be reimbursed  
21 more than other providers." Is that what you're asking?

22 Q Yes, sir.

23 A Yeah, those are my words.

24 Q The services identified by Dr. Frantz. Did you make an effort  
25 to actually fully and completely identify the services that Dr. Frantz told

1 the jury about, or did you cherry pick?

2 A What I originally had done is I had the list from his  
3 deposition. He talked about a subset of those, so I tried to go through  
4 the testimony and identify which subset of those services were things  
5 that he talked about in his testimony.

6 Q And so the homework you did from his deposition, after  
7 listening to him in this case, that led you to believe he talked about  
8 recruiting, position training, billing collections, contracting payroll  
9 services. Is that your best estimate of it?

10 A So relative to the -- you may recall I had a rebuttal report  
11 where I talked about various services and so this was from my rebuttal  
12 report. These are the subset of services that he discussed that were  
13 relevant to my rebuttal analysis. It wasn't all of them that he talked  
14 about in his deposition, but a subset of them. He talked about other  
15 things as well.

16 Q Didn't he talk about all the services TeamHealth provides?  
17 For that matter --

18 A I don't think he talked -- I'm sorry. Was that a question?

19 Q A little role reversal there. Mr. Beal, didn't he -- didn't  
20 Dr. Frantz talk about all the services TeamHealth provides that are aimed  
21 at improving the patient experience and the quality of care delivered in  
22 the emergency room?

23 A He certainly talked about the best practices for instance.  
24 Yeah, so I mean, you can characterize that however you want. But he  
25 did -- he talked about things other than this. These were the things that

1 were relevant for my discussion. But he talked about other things,  
2 certainly.

3 Q Were you cherry picking when you decided not to put up on  
4 the screen any discussion about all the services TeamHealth provides  
5 that are designed to improve the quality of care and the patient  
6 experience. Were you cherry picking?

7 A I was not cherry picking. If the jury heard the testimony,  
8 these are the things that are relevant for my analysis. The underlying  
9 question which Dr. Frantz I think was very clear that he wasn't offering  
10 any opinions about the reasonable value and how any of these services  
11 would reflect on it. These are particular services that he had identified in  
12 his deposition. So these are the ones that were in my rebuttal report.

13 Actually it was a subset of what was in my rebuttal report, so these  
14 are the ones that I identified. It's my overall view that the clinical  
15 services that are coded in the CPT codes are things that are reimbursed  
16 in a standard way, across physician groups.

17 Q As a Ph.D. economist, public health expert from Harvard, do  
18 you think it's good for the community? Bad for the community? Or you  
19 have no idea that TeamHealth does a lot of things that are designed to  
20 improve the patient experience and the quality of care received in  
21 emergency rooms in the state of Nevada?

22 A Oh, that's a different question. I would certainly agree that in  
23 general, improving the patient experience is a good thing. I used to do  
24 that when I worked at Arthur Andersen. I did consulting with the ER  
25 departments myself, and we would try and decrease wait times, things.



1 That's all great. None of us like waiting in the emergency room, waiting  
2 room, for example.

3 Those are all good things. They don't impact the amount that  
4 payers reimburse. They're a good thing, certainly.

5 Q Sir, did you just make reference to the good work that Arthur  
6 Andersen did in the time you were there?

7 A I made reference to the fact when I was at Arthur Andersen, I  
8 did consulting work with hospitals and ER departments.

9 Q Arthur Andersen used to be one of the biggest accounting  
10 firms in the country, right?

11 A It was the biggest accounting and consulting firm for many  
12 years.

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

14 THE MARSHAL:

15 [Sidebar at 9:15 a.m., ending at 9:15 a.m., not transcribed]

16 BY MR. LEYENDECKER: :

17 Q Okay. Let's look at another one of your charts, Mr. Deal.  
18 Remember this one?

19 A Oh, yes.

20 Q This is the one where you were making the point to the jury.  
21 By the way, is that your title again?

22 A Yes.

23 Q And your title was "no constraints on large one-time changes  
24 to charges." And you decided to focus the jury on Ruby Crest, didn't  
25 you?

1           A     I was showing an example. This happens to be from Ruby  
2 Crest. I discussed how there were some off cycle, if you describe them,  
3 changes. Sometimes up, sometimes down. This is a pretty good  
4 example of a large, one-time up change, yes.

5           Q     What's the CPT code for this example you chose to illustrate  
6 to the jury that one of my clients just got excessive charges? What was  
7 the CPT example you chose?

8           A     Well, first of all, you mischaracterized what the slide is about  
9 in your question, so I wasn't -- this one isn't about excessive charges.  
10 And frankly, charges are irrelevant for reasonable value as I described  
11 many times.

12                This is about the process of setting charges, that there's no  
13 particular time constraints or regular -- regulatory constraints that you  
14 can do it mid-year. You can do it once a year. You can do it off cycle.  
15 You can change some. That the point that I was making with this slide.

16           Q     And which CPT code --

17                MR. LEYENDECKER: : Michelle can I get it highlighted right  
18 here?

19 BY MR. LEYENDECKER: :

20           Q     Which CPT code did you elect to illustrate the concept of  
21 willy nilly setting charges to this jury?

22           A     Again, I think you're mischaracterizing. I never said wily nilly  
23 setting charges. But I used 10120.

24           Q     Does this case have anything to do with 10120 CPT code?

25           A     To the extent that's the CPT code that's in the claims in

1 dispute, sure.

2 Q Are you telling the -- wait a minute. You've run up over a  
3 half million dollars in bills and are you here to tell the jury that we're  
4 fighting over the value of a 10120?

5 A Certainly, that's not the specific. Again, this is a general -- I'd  
6 say this -- at its core, this is a general principle kind of case, in terms of  
7 what's the basis on what's determining reasonable value. There's  
8 obviously particular codes that will, and we've talked a lot about the  
9 primary E and M codes, as I call them. And in those, we've -- there's lots  
10 of those codes. There's all kinds of little smaller codes. We just talked  
11 about the one with the toe. There can be the excision. There can be lots  
12 of other codes.

13 The point on this slide, as I said just a minute ago and I said  
14 yesterday was just to make the point, billed charges are unilaterally set.  
15 They can raise them at different points. They can lower them at different  
16 points. There really are no constraints, no market constraints on billed  
17 charges. So it's not a good basis for determining reasonable value.

18 Q Did you present a single solitary slide yesterday because by  
19 the way, you do know that this CPTs is at issue are 99281, 99282, 99283,  
20 99284, 99285, and 99291. Right, sir?

21 A Those are the primary ones, but you just got through going  
22 the whole toenail example. That's also in there. There's other line items  
23 there. Those are the primary ones, and they account for the bulk of it but  
24 there are other codes, for sure.

25 Q Did you share with the jury a single slide in your six-hour

1 presentation, that actually showed the percentage growth of any of the  
2 charges from my clients on the core CPT codes? Did you do that?

3 A Yes.

4 Q Showed them the percentage growth?

5 A I showed them the absolute dollar amount and I discussed  
6 the percentage growth on those, yes. Yeah, I'd be happy to go over  
7 them again if you'd like.

8 Q Why didn't you pick 99285? And you know that's the single  
9 largest claim in dispute in this case, the straight 99285. That's it, right,  
10 sir?

11 A Yeah. That's on Slide 33.

12 Q Okay. Slide 33.

13 A Yeah, if you'd like to look at it, I'd be happy to go over it.

14 Q Hang on. Hold on one second. I'm just -- why, when you  
15 were illustrating the idea of no constraints on large one-time charges, is  
16 the reason you didn't do that with the core CPT codes, is because that  
17 didn't happen?

18 A Yeah. I think I said that yesterday. It's certainly, in general  
19 with the primary E and M codes, those tended to be once a year  
20 increases, typically about 5 percent or so. It's largely these one-time  
21 changes were happening in some of the other codes.

22 Q Do good experts pick examples of CPT codes to talk about  
23 increasing charges that have nothing to do with the case?

24 A I didn't pick something that had nothing to do with the case.  
25 I was using these codes as an example of the off cycle changes.

1 MR. LEYENDECKER: : Michelle, can I get 55, 18 and 34?

2 BY MR. LEYENDECKER: :

3 Q This is one of the slides you showed when you were talking  
4 about the absolute growth in dollars. Let's zoom in if you can for the  
5 99285. This is for all three plaintiffs, right, sir?

6 A That's correct, yes.

7 MR. LEYENDECKER: : Just zoom in right across the top so  
8 we can see the numbers better on the charges. There you go. Right  
9 there. Thank you.

10 BY MR. LEYENDECKER: :

11 Q Okay. Did you -- why didn't you put the percentage growth  
12 on this chart, sir?

13 A I clearly said the percentage growth yesterday. There's a lot  
14 of numbers already on this chart. But I clearly described it. I said it was  
15 about a 5 percent per year. It varied a little bit, up and down.

16 Q Well, as a Ph.D. economist, I assume you or your team,  
17 perhaps it was the Yale fellow that you didn't know, you do know that  
18 the average increase in our charges, year over year during the claim  
19 period, is less than 5 percent, right?

20 A I'd have to do the exact math. The primary codes, again, it's  
21 right around 5 percent.

22 Q How much -- what investigation did you do so that you could  
23 compare and contrast, since you're a good expert, what investigation did  
24 you do that -- so that you could tell the jury how much the defendants'  
25 premiums had increased during this period?

011010

011010

1           A     I don't think that's relevant for this case. This case is about  
2 emergency room services, so I did -- it's certainly the case that  
3 healthcare costs in this country have gone up a lot and continue to go up  
4 a lot here. So, but I haven't -- it's not something I've studied, the  
5 particular premium amounts for the United Healthcare defendants.

6           Q     Well, in your 30 years as an expert Ph.D. economist from  
7 Harvard University, have you ever looked at premium rates?

8           A     Oh sure.

9           Q     Rate increases?

10          A     Oh sure, yeah, yeah, yeah. Lots of times.

11          Q     Well do you think if we wanted to give a fair and balanced  
12 point of view to this jury, and we're going to talk about skyrocketing  
13 charges, do you think that a more fair and balanced approach would  
14 include testimony from an independent mutual expert about how much  
15 the defendants raised their rates during the same period?

16          A     It's not relevant for the question of the reasonable value of  
17 the emergency room services. It's an interesting question and it is a  
18 relevant question in other cases, and largely it stems from growth in  
19 healthcare costs. 85 percent of health insurance premiums are actual  
20 payments to providers.

21                So it's very related as a public policy question to healthcare costs.  
22 But it's not related to the specific question of what's the value of the  
23 services provided in this case. That's the core question here, the  
24 reasonable value of those services.

25                MR. LEYENDECKER: : Okay. Michelle, can I get Plaintiff's 273

1 at 56?

2 BY MR. LEYENDECKER: :

3 Q This document's in evidence. It's one of the internal United  
4 presentations. You reviewed a bunch of those, right?

5 A I reviewed some of them, yes.

6 Q Did you review the one that said, from 2014 to 2018, single  
7 employee plans, a 62 percent increase in premiums? Did you review  
8 that one?

9 A I don't recall this particular slide. I'm generally familiar with  
10 this issue but I don't recall the specific slide.

11 Q So during this period, which is four years or five years, sir?

12 A 20 -- you're asking what the range from 2014 to 2018 is? Is  
13 that what you're saying?

14 Q That's the exact question.

15 A '15, '16, '17, '18, so four years.

16 Q Go ahead and tell the jury what 62 divided by 4 is,  
17 approximately.

18 A It's about 15 percent.

19 Q 15 percent. More than three times what you just told the  
20 jury. My client's charges increased by that. Did I hear that right?

21 A Yes, this is the premium. It's related to -- primarily it's  
22 related to healthcare costs which is a function of healthcare payments  
23 and healthcare utilization. The volume, the single employee plans, and  
24 along with the Affordable Care Act plans, have had a lot of sensitivity to  
25 overall healthcare costs, yes.

1 MR. LEYENDECKER: : You can take that down, Michelle.

2 BY MR. LEYENDECKER: :

3 Q Simple question. Whose charges grew more during this time  
4 period? My clients or the defendants'?

5 A I'm not sure I'd characterize premiums as charges. The  
6 premiums for this particular plan that they were describing in this slide  
7 grew at 15 percent. That's more than 5 percent. But many of these plans  
8 are self-insured plans that are relevant in this particular matter. And  
9 that's not something I've studied and that's not what that slide was  
10 addressing.

11 MR. LEYENDECKER: Michelle, can I get 55, 18, and 23?

12 BY MR. LEYENDECKER:

13 Q Remember this one?

14 A Yes.

15 Q FAIR Health billed charges have increased at a much faster  
16 rate than payments, right?

17 A Yes.

18 MR. LEYENDECKER: And Michelle, I want you to highlight  
19 just right in here, please. Right in there. No actually, right here. No.  
20 My bad. I got you too tight. Can you take out -- I'd like you to break out,  
21 if you can, break out this right here and then show the rest. I want to see  
22 the whole chart, okay? I want to be able to see the increase. Make that a  
23 little smaller, please. Just a little bit above. A little more. Okay.

24 BY MR. LEYENDECKER:

25 Q Who decided to describe this as an increase in billed charges



1 over five years as 413 percent? Who made that decision?

2 A I did.

3 Q Sir, have you ever heard the phrase, intellectual dishonesty?

4 A Yes.

5 Q Tell the jury what that means.

6 A I suppose it could mean different things, but as a general  
7 matter, would mean some form of you've done the analysis and you see  
8 the data, and you're misrepresenting it in some fashion.

9 Q Is that what you did on this chart?

10 A Not at all.

11 Q Well, you just -- the chart is depicting an increase in billed  
12 charges over five years at 413 percent, right?

13 A Yes. I clearly said that this is a growth over five years, not an  
14 annual change.

15 Q When did the growth actually occur? Wasn't it between May  
16 of 2019 and November of 2019? Six months?

17 A Well, that was a much bigger increase, yes, that's right. That  
18 was -- in terms of an annual change, then over the whole period. But  
19 yes, it's clear from the slide speaks for itself. It actually went down for a  
20 little bit and then it was really tracking pretty closely to overinflation and  
21 then it bumped way up in that period that you're describing between  
22 May of '19 and November of 2019.

23 Q So fair to say that the 400 bump --that essentially the lion's  
24 share or maybe 400 percent or more of the increase. Actually if I'm  
25 doing my math, down here's at the bottom, you say that's a 6.6 percent

1 growth, right?

2 A Yes. Over the five years, so a little over one or two percent a  
3 year.

4 Q So if a Ph.D. economist, expert from Harvard, wanted to be  
5 precise about when the increase occurred, he could have said actually  
6 it's 407 percent from May of '19 to November of '19. Do you agree?

7 A I'll take your representation on the math. It's pretty obvious  
8 from the chart that's when it happened, so. That's -- you can actually see  
9 it by looking at -- that's why I presented the data over time, and I give the  
10 overall total.

11 Q Well, I don't understand why would you put a title of a 413  
12 percent increase over five years, when the increase occurred in 2019?

13 A Because I'm comparing the 2015 point to the 2020 point on  
14 every one of these slides. I'm doing it. I clearly described that  
15 yesterday.

16 Q Were you cherry picking?

17 A Obviously not.

18 Q Okay. Let's move on.

19 THE COURT: So I'm going to ask for a short comfort break.

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

1 consult dictionaries, use the internet or use reference materials.

2           During the recess, do not post on social media about the  
3 trial. Don't talk, text, tweet, Google issues, or conduct any other type of  
4 research with regard to any issue, party, witness or attorney involved in  
5 the case. Most importantly, do not form or express any opinion on any  
6 subject connected with the trial until the matter is submitted to you.

7           It's 9:29. Let's make it a short one. Let's be back at 9:40.

8           THE MARSHAL: All rise for the jury.

9                               [Jury out at 9:29 a.m.]

10                           [Outside the presence of the jury]

11           MR. LEYENDECKER:: I'm sorry, Your Honor.

12           THE COURT: Anything -- all right? Yes?

13           MR. POLSENBERG: Not to be a nudnik, but --

14           MR. ZAVITSANOS: A what?

15           MR. POLSENBERG: Yiddish. Scheduling jury instruction  
16 conferences. You and I had talked in the middle of the day without  
17 Demetri and Jane here about doing it tonight. And then Jane mentioned  
18 last night that she has a flight today.

19           THE COURT: Right. And she talked about perhaps appearing  
20 remotely. If we can get done Sunday, then I'd rather not work late  
21 tonight.

22           MR. POLSENBERG: Very good. Thank you, Your Honor.

23           THE COURT: All right. Now just to let you guys know, we're  
24 doing -- we have -- a third of our bench retired last year. We're doing a  
25 lot of inhouse CLEs for judges, and I'm in charge of one today at noon. I

1 have told them I can only be there for a half an hour. But we're going to  
2 have to break at 11:50 because we only have one elevator back here and  
3 it takes ten minutes to get upstairs. So 11:50 to 12:35 today.

4 MR. POLSENBERG: Thank you, Your Honor.

5 MR. ZAVITSANOS: Thank you, Your Honor.

6 MR. LEYENDECKER:: Thank you, Your Honor.

7 THE COURT: Thank you.

8 [Recess taken from 9:30 a.m. to 9:42 a.m.]

9 THE COURT: Thanks, everyone. Please remain seated. Are  
10 we ready to bring in the jury?

11 MR. LEYENDECKER: Yes, Your Honor.

12 THE COURT: Okay.

13 THE MARSHAL: All rise for the jury.

14 [Jury in at 9:42 a.m.]

15 THE COURT: Thank you. Please be seated. Call the case.

16 MR. LEYENDECKER: Thank you, Your Honor. I'd like to  
17 introduce Dr. David Hart. He's our medical director of the residency  
18 program at MountainView. He's here this morning, and I would like to  
19 introduce him.

20 THE COURT: Thank you, and welcome.

21 BY MR. LEYENDECKER:

22 Q Okay. Mr. Deal, just a couple more questions about this  
23 chart, the one that shows the 400- and -- this increase. Did you bother to  
24 look at what happened on the FAIR Health 80th in the very next period,  
25 November 2020?

1           A     No, that would have been outside the period of -- that I  
2 analyzed.

3           Q     Do you know that in reality of what happened is in November  
4 2020, and then again in May of 2021, these FAIR Health 80th came way  
5 down?

6           A     That wouldn't surprise me one way or the other. Again, that  
7 seems to be an illustration of the volatility.

8           Q     Okay.

9           A     These, which is another issue that I identified in this, but it  
10 wouldn't surprise me. These FAIR Health 80th can move around quite a  
11 bit.

12                   MR. LEYENDECKER: May I have the demo real quick, please?

13 BY MR. LEYENDECKER:

14           Q     Let me show you, Mr. Deal. My colleague, Jason McManis,  
15 put together a little chart for me last night, just to illustrate FAIR Health  
16 80th and the 99283, that's one of the core codes, right?

17           A     That's one of them, yes.

18           Q     This is November 17, after May of 2021?

19           A     Yes.

20           Q     You see the big slide here, like we just looked at between  
21 May and November?

22           A     Yes, I do.

23                   MR. BLALACK: Your Honor, I have a question. I don't know  
24 what this is based on. There's no data, no what? What is this exhibit  
25 here?

1 MR. LEYENDECKER: Speaking objection.

2 MR. BLALACK: That's not an exhibit.

3 THE COURT: All right. Why don't you approach?

4 [Sidebar at 9:44 a.m., ending at 9:45 a.m., not transcribed]

5 THE COURT: All right. I've sustained an objection.

6 BY MR. LEYENDECKER:

7 Q Okay. Let's move on, Mr. Deal. Did you -- now, am I right  
8 that in your -- one of your reports, you relied on Mr. Mizenko from FAIR  
9 Health?

10 A Yes, I relied on the data that he had provided, yes.

11 Q Okay.

12 MR. LEYENDECKER: Can I get this slide up, Michelle?

13 BY MR. LEYENDECKER:

14 Q Okay. Do you remember this slide?

15 A Yes, this was talking about the various combinations of years  
16 and codes.

17 Q And it says there are many occasions where Team Health,  
18 Plaintiffs, billed charges exceed the FAIR Health amount, right?

19 A Yes, that's right.

20 Q And then was this your editorial down here at the bottom,  
21 where you say nearly one-third of the time, Team Health charges  
22 actually exceed FAIR Health 80th?

23 A Yes, again, referencing the various combinations of years in  
24 sales.

25 Q And you're referring to the 35 -- Mr. Mizenko's finding at 35

1 of the 108 peers he surveyed; is that your reference?

2 A It's -- there's 108 possible combinations of Plaintiff, year, and  
3 code. And for 35 of those combinations, the Team Health number  
4 exceeds the percentile.

5 Q Well, the actual charges in the case?

6 A Well, when you -- the actual charge masters in the case, yes.

7 Q Well, is it -- is the jury being asked to evaluate the claims  
8 charge masters, or the actual charges on the claims at issue, as best you  
9 understand it?

10 A Well, I don't think it's really either of those questions. The  
11 jury is being asked to determine the reasonable value of the services. I  
12 have a very clear opinion on that. I think billed charges are irrelevant.  
13 But there are billed charges associated with the claims in dispute.  
14 There's been a lot of discussion of that, and I presented those summary  
15 numbers. So that -- from a, quote/unquote, "damages perspective," it  
16 would be based on those numbers.

17 Q Did you do anything to figure out whether Mr. Mizenko had  
18 made errors in his assumption to support his analysis?

19 A We certainly reviewed his data, as I recall, but I don't  
20 remember finding any errors.

21 Q Okay. Well, Mr. Mizenko will be on the stand today and there  
22 will be discussion there, so we'll just sit, and we'll wait for that.

23 A Okay.

24 Q Did you -- did you analyze the actual charges in the case  
25 yourself? The core charges on a claim-by-claim basis to see whether

1 they were above, at, or below the 80th percentile for FAIR Health?

2 A I gave some examples. If you recall, as part of my testimony  
3 around this, where there were examples of individual charge, you know,  
4 sort of actual charges from individual claims that were in excess of it. So  
5 I have examples of that.

6 Q Did you analyze it on a --

7 MR. LEYENDECKER: Brynn, may I have the Elmo, please?

8 BY MR. LEYENDECKER:

9 Q Okay. I'm showing you Plaintiffs' Exhibit 473 now. Do you  
10 recognize this as a summary of the number of claims, before and  
11 bundled in the case?

12 A I don't know that I've seen this before. I think I understand  
13 what you're -- what you're -- I'll take your word for it that that's what it is,  
14 but I don't recall seeing it before.

15 Q So you know there's 11,563 claims?

16 A Yes.

17 Q And from the work you did, do you know that 8,159 involved  
18 core CPT codes only?

19 A That doesn't sound wrong to me, yes. I mean, I didn't  
20 analyze it in quite that same way, but I -- but I -- that sounds right.

21 Q Okay. And of the -- of all the codes in the case, the single  
22 most frequently occurring is the straight 99285, would you agree with  
23 that?

24 A Yes, I think I talked about that yesterday.

25 Q Okay. Did you analyze the 8,159 codes to see how many of



1 those actually exceeded the FAIR Health 80th?

2 A I don't know that -- I don't recall doing a complete analysis. I  
3 remember, because again, we have the data from Mr. Leathers, looking  
4 at his data that includes that. It's a -- it's a few percent, as I recall.

5 Q Right. Less than five, right, sir?

6 A I don't remember exact -- the exact number, but it's certainly  
7 not 36 percent. That's the combinations. I was very clear about that.  
8 The actual number of codes would be smaller than that, that exceed the  
9 80th percentile.

10 Q So I just want to know whether you -- are you contesting Mr.  
11 Leathers' analysis on a claim-by-claim basis, that's well under five  
12 percent -- I'll just say under five percent, of the actual charges in the  
13 case, exceeded the FAIR Health 80th; are you going to contest that, or --  
14 one way or the other?

15 A I don't have any reason to --

16 MR. BLALACK: Wait a minute.

17 THE WITNESS: Oh, sorry.

18 MR. BLALACK: Object to the form of the question. Misstates  
19 the evidence in the record.

20 THE COURT: Overruled.

21 THE WITNESS: I don't have any particular reason to think  
22 that that's not a correct calculation under five percent. I don't remember  
23 the exact number, so I can't give you an exact number, but that sounds  
24 in the ballpark of right.

25 MR. LEYENDECKER: Brynn, can we go back to the normal,

1 please? I think that you can take that down.

2 BY MR. LEYENDECKER:

3 Q I think, Mr. Deal, that you told the jury you reviewed the  
4 Defendants all -- claim file with all the other providers?

5 A Yes.

6 Q Okay. That's a big file that had everything from government  
7 claims to commercial claims, contracted, noncontracted; do you  
8 remember that?

9 A Yeah. Yeah. I had -- it had lots of data in it, yeah.

10 Q And yesterday, we talked about the concept of co-insurance?

11 A We did, yes.

12 Q And do you understand that co-insurance represents the  
13 percentage and how much the patient is going to pay the allowed  
14 amount?

15 A It's one element. There's actually several elements of patient  
16 responsibility. There's the deductible, a copay, and a co-insurance, and  
17 those can all be zero; any of them can be positive. So there's several  
18 elements. It's one of the elements.

19 Q Deductible is like you have to reach a certain threshold,  
20 whether you're going to the family doctor or the dentist, and once you're  
21 above that, the percentage changes; is that the basic concept?

22 A I agree with that, yes. A deductible, you think about is that  
23 you owe 100 percent. It gets more complicated because certain things  
24 are not included in there. You typically get a couple well visits a year,  
25 things like that, but setting aside that detail, the first bit of dollars are 100

1 percent in the deductible, and then there's some co-insurance, and there  
2 may be copays for each visit as well, so that's another element. But  
3 ultimately, then you hit your maximum plan out of pocket, and then at  
4 that point, you may still have copays, but you don't have co-insurance or  
5 deductible.

6 Q Let's look at summary of Defendant's Exhibit 5322. It's  
7 marked as DX 5332-A.

8 MR. LEYENDECKER: And Michelle, if you'll just zoom in on  
9 the top? Right there.

10 BY MR. LEYENDECKER:

11 Q Do you see this summary exhibit, analyze it by year? First of  
12 all, out-of-network allowed amounts, and you did look at the out-of-  
13 network allowed amounts, right, sir? From this big claim file?

14 A I did, yes. Largely in the context of analyzing Mr. Leathers  
15 work, because it's not -- it's not a direct measure, as we talked about  
16 yesterday, of reasonable value. So it wasn't part of my primary analysis,  
17 but I did -- I did review them.

18 Q And you know they're about 66,000 of those during the claim  
19 period?

20 A I think this is for all of Nevada. I'm taking a representation;  
21 this is not my chart. I think this is your representation of the Nevada  
22 data, right?

23 Q It's a summary of the Defendants' Exhibit 5322, of the out-of-  
24 network allowed amounts for the other ER providers in Nevada.

25 A Okay.

1 Q Does that sound about right, about 66,000?

2 A Yeah, it sounds about right, yeah.

3 Q And the average allowed on those 66,000 was 528 bucks?

4 A That sounds about right, yeah.

5 Q Okay. And am I right that the average co-insurance, if you  
6 look across the whole spectrum, was six percent of the average allowed?

7 A Again, kind of going from memory, and this wasn't -- it's not  
8 directly relevant for the analysis because the analysis is on the allowed  
9 amount, but I don't have reason to think that's wrong. The patient  
10 responsibility would, of course, be more because it would have copays  
11 and deductibles, but that's all -- that seems -- I don't have any reason to  
12 dispute that number, let's put it that way.

13 MR. LEYENDECKER: Your Honor, the Plaintiffs would offer  
14 Defendants' 5322-A.

15 MR. BLALACK: No objection.

16 THE COURT: 5322-A will be admitted.

17 MR. BLALACK: Well, just, Your Honor, if I could? The  
18 underlying data is not in evidence, so as long as we've got an agreement  
19 that 5322 is in evidence, then the summary is fine.

20 THE COURT: It is. 5322 is in evidence.

21 MR. BLALACK: Oh, it is? Because we have it as not.

22 THE COURT: Do you -- do you --

23 MR. LEYENDECKER: If it's not, Your Honor, I'd offer to  
24 provide it. It's got the right claims mixed in it.

25 THE COURT: We're going to take a look.

1 MR. LEYENDECKER: If it's not, we're more than willing to  
2 move it in ourselves.

3 THE CLERK: November 17th.

4 THE COURT: It's in.

5 MR. LEYENDECKER: Okay.

6 [Defendants' Exhibit 5322-A admitted into evidence]

7 BY MR. LEYENDECKER:

8 Q Let me just ask you a couple of questions here. So -- you  
9 know, I had it right, but once the deductible is met, setting aside a copay,  
10 that's like a \$45, or \$50, something like that?

11 A Yeah, it's oftentimes -- I'd say \$20 is pretty common for a  
12 visit.

13 Q Okay.

14 A Yeah. So it's a -- it's just like a fixed amount per visit, yeah.

15 Q So once the deductible is met and setting aside the copay,  
16 am I right then that in the real world of these claims, that if the insurance  
17 companies in this case were to allow, say \$1,000 for an emergency room  
18 visit, that that would mean in reality, on average, for all these folks, they  
19 would owe -- they would owe about \$60 on that visit?

20 A Yeah, that's the right math. I mean, presume it's a  
21 combination. You don't typically see six percent as a copay. You'd  
22 typically be, say 20 or 30. So this is really a combination of if you  
23 haven't yet met your maximum out of pocket, you're probably hitting a  
24 20 or 30 percent. And if you've hit your maximum out of pocket, it's  
25 probably zero co-insurance. So it's a mix, but on average, I agree with

1 you, that you've got 60 bucks on \$1,000 allowed.

2 Q Okay. Do you think the consuming public would prefer to  
3 have board certified emergency room physicians where insurance  
4 companies would allow them \$1,100 a claim where they were paying  
5 \$66? Do you think the consuming public would prefer that over a  
6 situation where ERs didn't have board certified doctors, but maybe were  
7 staffed by someone less than that, but have a few dollars less on co-  
8 insurance?

9 MR. BLALACK: Object to the form of the question.  
10 Compound.

11 THE COURT: Rephrase.

12 BY MR. LEYENDECKER:

13 Q Mr. Deal, during the course of the case, up to this point, did  
14 you see in the testimony and questions where Mr. Blalack was giving  
15 examples of, okay, if there's a \$300 allow and a 30 percent co-insurance  
16 all led to a \$1,000 allow at 30 percent co-insurance. Do you remember  
17 all of those?

18 A I've seen examples of those. I'm aware of the math, yes.

19 Q Okay. So an example of a 30 percent co-insurance with a  
20 \$1,000 allow, would be \$300.

21 A I agree with that, yeah.

22 Q But in reality we know that if there were -- if these statistics  
23 held truth, and it was \$1,000 allow, it really would only be about \$60 on  
24 average.

25 A Yeah. As I said a minute ago, that's probably a mix of people

1 who are paying the 300. or let's say 200. Twenty percent is quite  
2 common for co-insurance and other people who are paying zero.

3 Q But we're talking about the public here, not one individual,  
4 sir. That's what I'm asking about.

5 A Okay.

6 Q And so if actual co-insurance spread across the public here is  
7 the 6 percent and not 30 percent, you recognize that 6 percent of \$1,000  
8 is only a few dollars more than 6 percent of \$200. Do you follow me?

9 A 6 percent of 1,000?

10 Q Is just a few dollars more than 6 percent of 200?

11 A It's quite a few dollars. I mean it's 60 bucks versus \$12, so --

12 Q \$48.

13 A You said I thought you said \$200. 6 percent of \$200.

14 Q 6 percent of 1,000 is 60.

15 A What's that?

16 Q 6 percent of 1,000 is 60.

17 A I agree with that, yeah.

18 Q 6 percent of 200 is 12.

19 A Yeah.

20 Q The difference between 60 and 12 is \$48.

21 A Yeah. I thought that's what I just said.

22 Q So here's the question. Do you think the public at large  
23 would prefer to live in a community where they have board certified  
24 emergency room physicians staffing the ER departments where they're  
25 paying \$60 on average of co-pay for a community where for whatever

1 reason the board certified ER doctors left to go somewhere else? And  
2 now we got something different staffing, but their copay is only \$12.00.

3 MB. BLALACK: Your Honor, I'm going to object to the  
4 question. It's compound, but even more objectionable, there's  
5 absolutely no evidence in this record about physician compensation,  
6 board certification or anything else.

7 MR. LEYENDECKER: I'll move on.

8 THE COURT: Objection sustained.

9 MR. LEYENDECKER: I'll move on.

10 BY MR. LEYENDECKER:

11 Q Okay, let's move on to a different subject. Am I right that you  
12 told the jury yesterday that even when there's no express written signed  
13 contract between insurance companies and emergency room doctors,  
14 that the insurance company is legally obligated to pay those bills?

15 A There's an obligation on both sides. The physicians and  
16 other providers have to provide the care up to stabilization and the  
17 insurance company has to provide reasonable value compensation.

18 Q That's -- so in an out-of-network basis, insurance companies,  
19 as you understand, are legally obligated to pay the reasonable value of  
20 those services to the emergency room provider?

21 A That's my understanding.

22 Q Okay. Now does that obligation arise, that legal obligation  
23 arise -- let me back up. So that legal obligation is there even though  
24 there's no expressed written signed contract between the insurance  
25 company and the emergency room provider, right?



1           A     That's my understanding, yes.

2           Q     And is it your understanding that obligation is there because  
3 once the emergency room provider treats, in our case, agrees not to  
4 balance bill, and submits the claim form the way the Defendants want it,  
5 that at that point in time, the Defendants understand that there is an  
6 implied agreement for them to pay the reasonable value of the services?

7                   MB. BLALACK: Your Honor, I object to the question. It calls  
8 for a legal conclusion. I have no problem with him asking Mr. Deal with  
9 that basis of Mr. Deal's understanding.

10                   THE COURT: It does. And let's avoid the speaking  
11 objections, please.

12                   MR. BLALACK: Fair enough, Your Honor.

13                   THE COURT: The objection is sustained with regard to the  
14 legal conclusion request.

15                   MR. LEYENDECKER: Okay. May we approach the bench,  
16 Your Honor?

17                   THE COURT: You may.

18                   [Sidebar at 10:01 a.m., ending at 10:02 a.m., not transcribed]

19 BY MR. LEYENDECKER:

20           Q     Okay. I'd like to spend a few minutes talking about your bill  
21 in the case. Let me show you your October 12th, 2021, invoice that's  
22 admitted.

23           A     Okay.

24           Q     May I have that back?

25           A     Sure.

1 Q Or did you need to refer to it if I ask you --

2 A It depends on what you're going to ask me. But it might be  
3 helpful to have it. But it's up --

4 Q Easier if I put it up on the screen?

5 A Oh, sure. That's fine, too. Yeah.

6 MR. LEYENDECKER: Michelle, do you have the October 12th,  
7 2021, bill in the system or not? Oh, perfect, thank you.

8 BY MR. LEYENDECKER:

9 Q Okay. So Mr. Deal, this is the October 12th, 2021, bill. That's  
10 about a month ago, right?

11 A Yes.

12 Q And you sent this bill to Mr. Wong, Associate General  
13 Counsel, at UnitedHealthcare, right?

14 A Yes. I'm not in charge of the billing, but that's where it was  
15 sent, yes.

16 MR. LEYENDECKER: Okay. Great. Take it down, Michelle.

17 BY MR. LEYENDECKER:

18 Q The part that I'm interested in is down here of summary of  
19 prior billings that remain unpaid. Do you see that?

20 A Yes.

21 Q And I noticed that when Mr. Blalack asked you about your  
22 compensation in the case, you used the word an invoice about a half a  
23 million dollars.

24 A Yes.

25 Q At least as of the middle of last October these Defendants

1 hadn't paid you a dollar of that; had they?

2 A I'm not sure. I'm not in charge of that. And in looking at the  
3 prior billings, it looks like there's certainly a number of invoices that  
4 haven't been paid.

5 Q Well, the total there is \$425,000 remains unpaid as of October  
6 12th, 2021. Do you agree?

7 A Yes.

8 MR. LEYENDECKER: Okay. Take it down, Michelle. And just  
9 highlight current billing through the unpaid. I'd like the current billing  
10 plus the unpaid, Michelle. Thank you. There you go.

11 BY MR. LEYENDECKER:

12 Q So if I add the 100 -- the 98,000 on the October bill with the  
13 425 that they hadn't paid over the last, it looks like 120 days, is that the  
14 \$525,000 you told the jury about?

15 A Yes.

16 Q Have you asked the Defendants why they haven't paid your  
17 bill?

18 A Again, I'm not in charge of the billing and collections. I know  
19 we have collections people that follow up. It's not uncommon for clients  
20 to be slow in paying.

21 Q Four months slow?

22 A I wish it weren't the case, but, yes, that actually isn't that  
23 uncommon.

24 Q And the two times you've been hired by the 25 to 30  
25 insurance companies, do they slow pay you like this too?

1           A     It's not uncommon. And it's not usually an intentional slow  
2 pay, there's slow processes and things like that. I wish they would pay  
3 more promptly. I wish all my clients would pay more promptly, but this  
4 is a reality of the industry, and this is not uncommon.

5           Q     The two times you represent healthcare providers, did they  
6 pay promptly, or did they delay you out four months like this?

7           A     I don't actually recall. I mostly don't do the billing on it. But I  
8 do recall one, they were almost 12 months before we got paid. It was  
9 slow. So it can happen.

10          Q     Was that an emergency room doctor?

11          A     No. That was not an emergency room doctor.

12          Q     Do you know whether they're going to run your half million  
13 dollar bill through some kind of attorney cost Data iSight program to cut  
14 the charges?

15          A     I'm not aware of any, but I'm not in charge of that part of the  
16 billing and collections. But I'm not aware of any.

17          Q     And how much do charge per hour?

18          A     \$890.

19          Q     So about \$900 per hour?

20          A     Little less, yeah.

21          Q     Are there any folks that worked on your case, that are on  
22 your team that charge more than that?

23          A     Not -- I don't think so, no.

24          Q     Do you know if the Defendants are waiting on the outcome of  
25 the case to see how it turns out before they decide whether they're going

1 to pay your bill?

2 A I'm not aware of that, and that would be absolutely non-  
3 standard. We don't get paid on a timing or contingency basis, so I'm not  
4 aware of anything like that.

5 Q Does your billing department on occasion reach out to you  
6 as the head of the team and ask you to follow up on late bills?

7 A It depends on the case. I'm not in charge of the billing on  
8 this case. So now, they haven't reach out to me. They may have  
9 reached out to somebody else, but I don't know.

10 Q Do you know whether any efforts have been made to ask  
11 United -- the Defendants to pay this bill?

12 A I don't know. It wouldn't surprise me, but I actually don't  
13 know.

14 Q Now a little different subject. Can I have slide 5518 at 70,  
15 please. Do you recognize this slide, Mr. Deal?

16 A I do, yes.

17 Q Summary -- this is a summary of bill charges and allowed  
18 amounts for the disputed claims, right?

19 A That's correct.

20 Q And what comparator metric did you decide to put on this  
21 chart to show the jury?

22 A I'm not sure what you mean.

23 Q Of the \$2.84 million, what did you decide to compare that to?

24 A Oh, I see what you mean. Oh, yeah, it's a premium to  
25 Medicare. Does that answer your question?

1 Q Yes, sir.

2 A Yeah. Premium to Medicare.

3 Q Was that your choice?

4 A Yes.

5 Q By the way, it is your opinion in this case that the \$2.84  
6 million is the reasonable value of the services my clients provided?

7 A I believe that is -- it's actually in excess of the reasonable  
8 value they provided, but it's certainly consistent with reasonable value.  
9 There's -- reasonable value is not above the number.

10 Q And that 2.84 million you get to by adding the individual  
11 allowed amounts on all of those thousand claims, right?

12 A I agree with that.

13 Q Okay. There were other slides where you chose to make  
14 Medicare comparisons, right, sir?

15 A Oh, it's -- I would say it's the standard to use. And related to  
16 the issue of the bill charges that we talked about that -- because bill  
17 charges are unilaterally set, measuring is a percentage of bill charges is  
18 in view not a good way to do it. Medicare is an objective as a payment  
19 methodology, and so it's very, very common for an analysis to look at a  
20 premium to Medicare. We talked about that Med-Pac study yesterday.  
21 That had a premium to Medicare. A lot of analysis. Some of the  
22 contracts even are multiples of Medicare. So very, very industry  
23 standard.

24 MR. LEYENDECKER: Okay. Mr. Blalack, is there any  
25 objection to Plaintiffs' 299?

1 MB. BLALACK: Hold on one second. I have to find the  
2 document. What was the number?

3 MR. LEYENDECKER: 299.

4 MB. BLALACK: One second here. No objection.

5 THE COURT: Exhibit 299 will be admitted.

6 [Plaintiffs' Exhibit 299 admitted into evidence]

7 MR. LEYENDECKER: Okay. Thank you, Your Honor.

8 BY MR. LEYENDECKER:

9 Q Did you study various MultiPlan documents, or at least  
10 looked at MultiPlan documents in the case, sir?

11 A Not in any detail.

12 Q Okay.

13 A No. I may have seen one or two, but I don't -- I certainly  
14 didn't do a detailed study.

15 Q And MultiPlan is the company that runs the Data iSight  
16 Program, right?

17 A Yes.

18 Q And they tout that program as independent proprietary.  
19 Capable of giving the public a realistic fair point of view on what the  
20 reasonable value is?

21 A That sounds right. But again I haven't studied all of their  
22 marketing materials.

23 Q Do you know what the MultiPlan folks think about Medicare-  
24 based reference points?

25 A That's not something I've studied, no.

1 MR. LEYENDECKER: Michelle, can I get over there at 299 at  
2 3, pleas?

3 BY MR. LEYENDECKER:

4 Q So right here in the middle of the page, pitfalls of Medicare-  
5 based references. Do you see that, sir?

6 A Can you make it bigger? I can't really see it. Oh, yes the  
7 title, I see it, yeah.

8 Q I'll tell you what. Let me just back up for a second and get  
9 oriented as to where we are in time.

10 MR. LEYENDECKER: Michelle, can I have the first page,  
11 please? And I would like to highlight down here at the bottom.

12 BY MR. LEYENDECKER:

13 Q Do you see, Mr. Deal, that this is a white paper developed by  
14 MultiPlan in August of 2019?

15 A I see that.

16 Q Okay. And so that's right here in the middle of the period  
17 where my clients are making claims of improper conduct, right?

18 A It's within the range of claims and dispute, yes.

19 Q Okay.

20 MR. LEYENDECKER: Now can I go back to 3, please,  
21 Michelle?

22 BY MR. LEYENDECKER:

23 Q And according to MultiPlan, they believe that a Medicare-  
24 based reference point is inherently misleading. I take it you agree with  
25 those folks? Disagree?



1           A     I definitely disagree with that statement.

2           Q     Okay. As between you and this independent company, who  
3 processes and analyzes more claims, healthcare claims, on a daily basis?

4           A     They certainly process -- I don't -- I don't individually process  
5 any claims. I spend a lot of my time analyzing reasonable value and  
6 reviewing lots of claims, but I don't process any claims.

7           Q     Do you think you know more about whether the  
8 Medicare-based reference points are a good metric to compare or  
9 inherently misleading? Do you know better than MultiPlan?

10          A     I can tell you I disagree with this white paper. I think -- I think  
11 Medicare reference pricing -- and I've held this view for many years -- I  
12 think that is the best way to do reasonable value-type analyses. And  
13 they're talking about, presumably, reasonable and customary  
14 reimbursement and out-of-network reimbursement, so it's a slightly  
15 different topic. But I can tell you I've been advocating in terms of  
16 discussions and analysis as my view that a Medicare reference is a very  
17 appropriate way to do it. And it's by far the best way to do research and  
18 standardize, in my experience.

19          Q     That's your opinion.

20          A     It's certainly my opinion. It's also the -- I would say it's the  
21 standard in research. It's what we talked about in the Medipac study. To  
22 analyze what commercial rates are relative to some standard, you need  
23 an objective standard that isn't based on bill charges because they're  
24 unilaterally set. Medicare has a consistent methodology across the  
25 country, by specialty, by code. Very industry standard. By looking at it

1 relative to Medicare, which is what it means, that's a way of comparing  
2 different specialties, comparing different codes. Very standard in  
3 research. Very standard in the work that I do. Very standard even in  
4 contracts.

5 Q Well, do you agree a Medicare comparison is a flawed  
6 valuation methodology for healthcare providers?

7 A No, I don't.

8 Q By the way, there are plenty of experts that agree with  
9 MultiPlan, aren't there, sir?

10 A I haven't read the studies, so I don't know exactly what  
11 they're saying. I would say among the research community and my  
12 work, I would say Medicare reference is a very, very standard -- there are  
13 certainly some experts out there that -- that continue to use billed  
14 charges. I think that's flawed for all the reasons that I -- that I stated. But  
15 it's very standard.

16 Q Can you identify any of the major insurance companies in the  
17 country that don't use MultiPlan services?

18 A Well, there's a lot of different MultiPlan services at issue, so I  
19 don't -- I don't know their exhaustive list of clients.

20 Q Well, you know the Defendants all use MultiPlan.

21 A I don't know -- did they all use it? I think that's wrong.

22 MR. BLALACK: Object to the foundation of that question.  
23 Misstates the record.

24 THE COURT: Overruled. Overruled. You have to let me rule.

25 THE WITNESS: My apologies for -- that's fine. I'm -- I am

1 sorry.

2 BY MR. LEYENDECKER:

3 Q Do the companies owned by UnitedHealthcare Group -- and  
4 by the way, you understand UnitedHealthcare Group owns all the  
5 Defendants in the case, right?

6 A I haven't studied the corporate structure. That doesn't sound  
7 wrong, but that's not something I've studied.

8 Q And it's your understanding that at least some of the  
9 Defendants in this case have been using MultiPlan for many years?

10 A The -- certainly the Data iSight program has been -- is  
11 something I'm aware of. So yeah, I'm certainly aware that some of the  
12 Defendants use some of MultiPlan's services.

13 Q Do Aetna and Blue -- you do a lot of work for Blue Cross,  
14 don't you?

15 A I do a lot of work for Anthem. In California, Blue Cross and  
16 Blue Shield are separated. So I've worked for both Blue Shield in  
17 California and Anthem, which is the Blue Cross in California.

18 Q Now, earlier, I thought I heard you say that it's okay to  
19 increase or look at billed charges when an insurance company wants to  
20 set its premium. Did I hear you right?

21 A I didn't say anything like that.

22 Q Okay. Well --

23 A I was speaking about overall healthcare costs. That's  
24 absolutely an input. In fact, it's the primary input into setting premiums,  
25 costs.

1 Q The costs include the charges by folks like emergency room  
2 doctors, right?

3 A Not charges. It includes the amounts that are allowed --

4 Q Okay.

5 A -- by the insurer. So it's looking at -- I mean, I'm happy to go  
6 through -- the overall framework for setting premiums if that -- would  
7 that helpful for you?

8 Q I don't think so.

9 A Okay.

10 Q Have you ever taken the time to reach out and sit down  
11 across the aisle with the folks at MultiPlan to understand why they  
12 believe that Medicare-based reference points are inherently misleading?

13 A No.

14 Q Do you agree with the next sentence that says, "The average  
15 consumer does not understand just how low Medicare rates are"?

16 A I agree that the average consumer doesn't know exactly what  
17 Medicare pays. I'm not sure -- I don't know that the average consumer  
18 thinks Medicare is low. Medicare is a very large program.

19 Q Are you suggesting to the jury that Medicare rates aren't  
20 low?

21 A I mean, lower than what? They're lower than charges,  
22 typically, for sure. They're typically lower than what commercial rates  
23 are. That's why we measure it as a premium to Medicare. The question  
24 about whether they're low in some absolute terms is obviously a much  
25 different question. And that's what that Medipac study that we talked

1 about, which I'm happy to look at again if you'd like to. It addresses  
2 those questions.

3 MR. LEYENDECKER: Mr. Blalack, is there any objection to  
4 Plaintiff's 506?

5 MR. BLALACK: One moment. No objection.

6 THE COURT: Exhibit 506 will be admitted.

7 [Plaintiffs' Exhibit 506 admitted into evidence]

8 MR. LEYENDECKER: Thank you, Your Honor.

9 BY MR. LEYENDECKER:

10 Q Okay. Mr. Deal, Exhibit 506 is another MultiPlan document,  
11 although this one is focused on the Data iSight methodology. Do you  
12 see that?

13 A I see it, yes. I don't think this is a document I've seen before,  
14 but I see it.

15 Q Okay. And if we look right here beneath the title, Data iSight  
16 Methodology, it says, "The most defensible, transparent way to value  
17 non-contracted medical claims." Do you see that?

18 A I do.

19 Q And this case -- this whole case is about non-contracted  
20 medical claims, isn't it, sir?

21 A I agree with that.

22 Q And you know that at least some of the Defendants in the  
23 case use this iSight methodology?

24 A I understand for some of the claims, iSight was used, yes.

25 Q And you understand that lots of other insurance companies

1 out there in the country use this iSight methodology?

2 A Not from any firsthand research. That -- that doesn't surprise  
3 me, and I've seen reference to it, but I haven't studied it.

4 Q Okay. I think I heard you say early in your discussion with  
5 Mr. Blalack that you weren't, you know, going to comment on whether  
6 iSight is a legitimate or illegitimate. Those kinds of issues were not part  
7 of what you were doing here.

8 A That's right. I wasn't studying -- there's lots of different  
9 methodologies that are used to reimburse out-of-network claims.  
10 There's various methods that were used by the Defendants. There's lots  
11 of other methods used by other payers. I have not been asked to study  
12 and comment on any particular methodology.

13 MR. LEYENDECKER: Michelle, can I get over to page five,  
14 please?

15 BY MR. LEYENDECKER:

16 Q This is a little bit more on your view that Medicare is a good,  
17 reliable metric for comparison. Right here, "A better reference for  
18 pricing." Do you see that, sir?

19 A Yes.

20 Q Okay. The sentence I want to focus you on --

21 MR. BLALACK: Your Honor, can we approach?

22 THE COURT: You can.

23 [Sidebar at 10:21 a.m., ending at 10:22 a.m., not transcribed]

24 THE COURT: Mr. Deal, I'll ask you to step out during the  
25 recess, please.

1 THE WITNESS: Oh, we're going to do a recess right now?

2 THE COURT: Yeah.

3 THE WITNESS: Should I step out right now?

4 THE COURT: That would be fine.

5 THE WITNESS: That would be fine. Okay. Thank you.

6 THE COURT: All right. So we have a matter to take up  
7 outside your presence. During this recess, don't talk with each other or  
8 anyone else on any subject connected with the trial. Don't read, watch,  
9 or listen to any report of or commentary on the trial. Don't discuss this  
10 case with anyone connected to it by any medium of information,  
11 including without limitation newspapers, internet, cell phones, texting,  
12 and radio.

13 Don't conduct any research on your own relating to the case.  
14 Don't consult dictionaries, use the internet, or use reference materials.  
15 Don't talk, text, tweet, Google, or post any social media, or conduct any  
16 other type of research with regard to any issue, party, witness, or  
17 attorney involved in the case. Do not form or express any opinion on  
18 any subject connected with the trial until the matter is submitted to you.

19 It's 10:23. I'm going to say probably 10:35, so be ready then.  
20 If we need more time, we'll let you know. Thank you.

21 THE MARSHAL: All rise for the jury.

22 [Jury out at 10:23 a.m.]

23 [Outside the presence of the jury]

24 THE COURT: Mr. Blalack.

25 MR. BLALACK: I'll just put on the record what I said at the

1 bench. The document has been published to the jury and admitted into  
2 evidence. The document from MultiPlan describing this Data iSight  
3 methodology and describing why Data iSight views this methodology as  
4 preferable, but only to a billed charge-based methodology. Medicare  
5 referenced-based methodology. And the description that's in the  
6 document that was published to the jury and was about to be the subject  
7 of questioning describes why that is, why MultiPlan believes that's true.

8 One of the principal reasons they believe it's true it because  
9 it's a cost-based reference methodology. It is building a rate based on  
10 their estimation of the providers' costs. Which is fine, and that seems  
11 fair game and Plaintiffs should be able to get into it, ask Mr. Deal his  
12 views, and I'm all for it. Got no problem with it whatsoever.

13 I just want to make clear on the record that if he's questioned  
14 about that document and that document is published and shown to the  
15 jury the way it has been, then we're entitled to them come back and  
16 explain to the jury and to ask Mr. Deal about the fact that the TeamHealth  
17 Plaintiffs' costs on an average basis in the record in this case is \$150 per  
18 encounter and ask Mr. Deal what his views are of that relative to  
19 reasonable value and various methodologies for determining out-of-  
20 network reimbursement.

21 So I have no objection to using the document. It's in  
22 evidence. No objection to publishing and no objection as to questions. I  
23 just don't want to learn later, after it's done, that we're foreclosed from  
24 getting into the same subject that they've talked about.

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



1 THE COURT: Please.

2 MR. ZAVITSANOS: Okay. So let's be clear what all we're  
3 talking about here. The description that was up on the screen is already  
4 in a bunch of documents that -- where we've read the description of the  
5 Data iSight methodology. Our position on this is first of all, we have  
6 never been provided with the ability to look behind the curtain, and see  
7 what it is that they do, exactly. Our position at a -- not a granular level,  
8 see, but at a higher level is that Data iSight does nothing other than  
9 engineer an outcome that's dictated by their insurance clients. And  
10 there's an enormous amount of bias built in. We have never gone into  
11 the cause for trying to break out.

12 In fact, I think it was Mr. Haben, when I asked him what some  
13 of those variables were in the description, he said he didn't know. And  
14 guess what? I am reasonably confident that when these MultiPlan  
15 people allegedly show up next week, they are not going to answer  
16 questions that enable me to look behind the curtain at a very granular  
17 level about how they do this, because they claim that's a trade secret.

18 THE COURT: Well, the question, though, is are you going to  
19 object to the redirect on --

20 MR. ZAVITSANOS: Oh, absolutely, Your Honor. Because I'm  
21 not -- look, the issue is this: I don't think Mr. Leyendecker was going to  
22 get into cost or make an issue of that point. I think what he's doing is  
23 he's essentially -- I think --

24 THE COURT: Well, if you go there, they get to go there.  
25 That's all. That's the ruling.

1 MR. LEYENDECKER: That's understood, Your Honor.

2 MR. ZAVITSANOS: Yeah. Yeah. I understand that, Your  
3 Honor.

4 THE COURT: So --

5 MR. ZAVITSANOS: And all he's doing is just -- is making a --

6 MR. LEYENDECKER: Yeah. Understood, Your Honor.

7 THE COURT: Okay. Take a break. You've got until 10:35.

8 MR. LEYENDECKER: Thank you, Your Honor.

9 THE COURT: And Andrew, let them know -- well, 10:35 is  
10 when we'll come back. 10:35.

11 [Recess taken from 10:27 a.m. to 10:37 a.m.]

12 [Outside the presence of the jury]

13 THE MARSHAL: Back in session.

14 THE COURT: Thanks everyone. Please remain seated. Are  
15 we ready to bring in the jury?

16 MR. BLALACK: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. BLALACK: Your Honor, what is -- just so we've got  
19 some ground rules. You know, we've been all getting along pretty good  
20 here on observing the designation of new exhibits on our exhibit list.  
21 That held deadline has long sense left and they've been adding things  
22 every day. That's fine. I'm okay with that. We're starting to add them in  
23 the middle of examination. So we just got a new exhibit list with five  
24 new exhibits like right now. I believe some of which are about to be  
25 [indiscernible]. So if that's how it's going to be --

1 MR. ZAVITSANOS: Hey Lee, it's not for --

2 UNIDENTIFIED SPEAKER: It's not for Kevin.

3 MR. BLALACK: Well one of them relates to the FAIR Health  
4 benchmark. Is that not going to be shown to him?

5 MR. LEYENDECKER: I'm not.

6 MR. BLALACK: Okay. All right.

7 MR. LEYENDECKER: No, I'll move on. I'm not saying --  
8 you're right. In addition exhibits on both sides have been fast and  
9 furious.

10 MR. BLALACK: So if that's going to be how it is, can we pick  
11 somebody who can literally mark an exhibit? Like the one yesterday that  
12 happened. An exhibit was marked in the middle of the examination on  
13 your side. We just -- we're going to have to have the opportunity to see  
14 these things before. We have to have a chance to review them and  
15 decide whether we're going to object. So I'm fine with it generally, but I  
16 just want to make sure that we have the same set of expectations on the  
17 freedom of which people have to add exhibits in connection with it.

18 THE COURT: Okay.

19 MR. BLALACK: I'm going to add some right now.

20 THE COURT: Let them know on the next break and let's  
21 bring in the jury.

22 THE MARSHAL: All rise for the jury.

23 [Jury in at 10:39 a.m.]

24 THE COURT: Thank you please be seated. Go ahead, please.

25 BY MR. LEYENDECKER:

1 Q Thank you, Your Honor. Let me ask you, the jury kind of had  
2 this -- what I call the substantive issue preview. And do you have a little  
3 familiarity with what I'm talking about?

4 A I do, yes.

5 Q Here's what I want to ask you. If a provider submits a bill  
6 that actively identifies the doctor and actively identifies the facility where  
7 the treatment took place and accurately identifies the county where the  
8 treatment took place, accurately identifies the CPT code for the services  
9 that were provided, and the charges are consistent with all the other  
10 charges by that group and by the group the Defendants are calling  
11 TeamHealth Plans, if all those are consistent, do you think there's  
12 something misleading about that?

13 A You're talking specifically now about the Sub 10 (phonetic)  
14 issue?

15 Q I just want to know if I've accurately identified the doctor, the  
16 name, the service provided, the county, and the hospital and the charges  
17 are the same that I've been submitting for Clark County, do you think  
18 there's something misleading about that?

19 A Oh, there certainly could be. Because as I understand the  
20 issue here is those things might be true, but they submitted the provider  
21 name and the TIN, the tax ID number, which is often a key variable in  
22 adjudicated the claim up in Ruby Crest when that wasn't where this care  
23 was provided. So I'm not offering a legal opinion. That's not a standard  
24 approach in my analysis. And it certainly drove some oddities in the  
25 data.

1           Q     Well a lot of what the name of the Plaintiff make a difference  
2 if the charges are the same as the charges in the community at issue.  
3 And one other fact, I know you talked about in-network and  
4 out-of-network the other day. I don't understand. If the charges are  
5 consistent and everything is accurately identified, the doctor name ta-da,  
6 ta-da, ta-da, ta-da. And it's an out-of-network payor, why would they be  
7 paid as a function of the name of the group as opposed to the service  
8 and the county?

9           A     I think there's two different issues. I think the second  
10 question you just asked me was, would they be paid out-of-network on a  
11 differential basis. And the answer is I don't know, but I don't have any  
12 reason to think they would be. Because again, they're not  
13 out-of-network. As I understand the issue in this case and the Sub 10,  
14 why that was done was there was a --

15               MR. LEYENDECKER: Just one second. May we approach,  
16 Your Honor?

17               THE COURT: You may.

18               [Sidebar at 10:42 a.m., ending at 10:43 a.m., not transcribed]

19               THE COURT: Okay. The question will be revised.

20 BY MR. LEYENDECKER:

21           Q     Mr. Deal, it's a -- I'm asking a specific question or I'm trying  
22 to at least. If there's an out-of-network claim that gets submitted to one  
23 of the Defendants that accurately identifies the county and the location  
24 and the charges are consistent with that county and location, just on that  
25 information alone, do you think there'd be something misleading?

1           A     Just on that set of specific hypotheticals, I know it doesn't  
2 sound like there would be anything wrong with that particular for an out-  
3 of-network situation. But there -- as I understand, the Sub 10 issue has  
4 other things going on. But to answer your question is I don't see  
5 anything different.

6                     MR. LEYENDECKER: Thank you. Brynn, may I have the  
7 Elmo, please?

8                     THE COURT: And what are you putting up?

9                     MR. LEYENDECKER: Plaintiff's 473-B and a summary of  
10 Defendant's 4005, which is already in evidence.

11                    THE COURT: Thank you.

12 BY MR. LEYENDECKER:

13           Q     Okay. Mr. Deal, you have seen Plaintiffs' 473-B, a summary  
14 of some claims out of my clients claim file, right?

15           A     I don't actually think I've seen this before.

16           Q     Okay. Well before I --

17           A     Is this a trial exhibit?

18           Q     Yes, sir.

19           A     Okay. I don't think I've seen it but keep going and I think I  
20 understand generally what it may be.

21           Q     Here's my first question. You see, these claims have a date  
22 of service all a couple weeks apart.

23           A     I agree with that, yes.

24           Q     In Clark County?

25           A     Yes.

1 Q At Sunrise, right?

2 A Yes.

3 Q Same 99285 CPT?

4 A Yes. Yeah, I agree with that.

5 Q And it's your testimony to the jury that even though these  
6 are all Sunrise Hospital in Clark County a couple weeks apart, that the  
7 reasonable value of these services were \$294 on one day and \$609 a  
8 couple weeks earlier?

9 A That's not at all my testimony. You just pointed to what the  
10 allowed amounts would be based on the actual planned documents, the  
11 employer, all that information. I -- remember I said earlier, I'm not  
12 opining on exactly the methodology for determining what was allowed.  
13 I'm opining ultimately on is the aggregated allowed amount -- how  
14 consistent is that with a measure of reasonable value? I'm not endorsing  
15 any particular value as being the measure of reasonable value.

16 Q I thought when I asked you this question about 30 minutes  
17 ago, when you said the 2.48 million was reasonable, and I said you get  
18 there because each of the claims that make up that is why that's  
19 reasonable. I thought you said yeah, that's right.

20 A That's exactly what I just said. I said an aggregate, I agree  
21 that it's reasonable value. That doesn't mean that any particular number  
22 might be higher or lower than my measure of reasonable value.

23 Q Was \$609.28 the reasonable value of a 285 claim on February  
24 16th of 2019 over there at Sunrise Hospital?

25 A I'd have to go back. I don't know is the answer to my

1 question. I have an opinion on what the reasonable value is. I'd be  
2 happy to go to my report and look at that market price data that makes  
3 up my affirmative estimate, but I don't have it memorized.

4 Q No sir, I'm just asking you. Was \$294 the reasonable value of  
5 the 285 -- of that same service at Sunrise 15 days later?

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

7 THE COURT: Overruled.

8 THE WITNESS: It is the same answer. I'm not looking at any  
9 individual row. There is a value that I believe is the reasonable value for  
10 that code for that time period for that provider, but I don't have it  
11 memorized.

12 Q Were any of the allowed amounts of 11,563 claim, were any  
13 of those below the reasonable value of those services?

14 A Oh, they certainly could be on an individual basis and there's  
15 others that are above. I evaluate in the aggregate amounts.

16 Q How many were below?

17 A I don't remember.

18 Q Is \$185 for a 285 claim in this same period, is that below the  
19 reasonable value?

20 A I -- yeah, I don't know. I'd have to look back in my --

21 Q Would it be reasonable -- I apologize. I thought I heard you  
22 say yesterday -- well, don't want to preface it. Would it be reasonable  
23 value to pay a 99281 claim, the same \$185, that gets paid for a 99291  
24 where you know a doctor is at the patient's bedside delivering critical  
25 care services for 30 minutes; is that reasonable?



1           A     That's not a -- I'm not even sure how to answer that question.  
2     Because what I'm answering the question is the total 2.8 million dollars  
3     that was allowed, how does that compare to reasonable value? And it's  
4     my opinion that it is at or above reasonable value. I haven't been asked  
5     to evaluate any particular methodology that arrives at a particular  
6     number for a particular claim.

7           Q     You can take that down, Michelle. Mr. Deal, tell the jury what  
8     was the very -- what metric did you describe in the very first chart or  
9     graph you put in your affirmative report? What was the metric that you  
10    were describing?

11          A     In my very first chart? You mean what my measure of  
12    reasonable value is?

13          Q     No, sir. The very first chart you put in your original  
14    affirmative report. Do you have that report there with you?

15          A     I don't think I do, no.

16          Q     Let me see if I can job your memory.

17          A     Okay.

18          Q     Am I right that the very first graph where you were depicting  
19    a metric in your affirmative report, that that depicted the average  
20    allowed for the Plaintiffs in this case?

21          A     It could be. You can certainly show me my report. That's  
22    exactly what I looked at in my -- the graphs that we looked at here.

23          Q     Do you have reason to doubt what I'm telling you that the  
24    very first chart you put in your 100 plus page report, the very first one  
25    you did in this case, the affirmative report, any reason to doubt me when

1 I say that chart depicted the average allowed to my clients in this case?

2 A That would be completely sensible since that is the key  
3 question is, is that 2.48 million consistent with reasonable value above  
4 it? Below it? That's exactly the question I was studying, so I don't have  
5 any reason to believe that's not the first chart.

6 Q No, sir. The average allowed per claim.

7 A Oh, I presented that yesterday, the proclaimed numbers.  
8 Yeah, I think it was 246, yes.

9 Q So the very first metric you put in your report, your current  
10 report, was the average allowed per claim for the Plaintiffs of the 246,  
11 true?

12 A Might be in other things in there, but that doesn't surprise  
13 me that it would be in there, sure.

14 Q Okay. And am I right that before you reached -- and that's an  
15 out-of-network claim?

16 A I agree with that.

17 Q And am I right that you went and did what -- did you say you  
18 were hired in May?

19 A Yes.

20 Q So May, June, July, you spent 90 days working up that  
21 original report?

22 A Yes.

23 Q And am I right that in those 90 days, at the end of which you  
24 reached a conclusion about what was the reasonable value. Right, sir?

25 A I did.

1 Q Am I right -- and how much of a half million dollars do you  
2 think you all ran up I the first 90 days?

3 A I don't remember.

4 Q Couple hundred maybe?

5 A That wouldn't surprise me.

6 Q How many team members did you have on your team?

7 A Five or six as I recall.

8 Q Am I right that in the first 90 days, neither you nor any of  
9 your team members -- let's stick to you first. Am I right I those first 90  
10 days, you did not bother to look at what the average allowed was on an  
11 out-of-network basis for all the other ER doctors as paid by the  
12 Defendants?

13 A I wouldn't -- I didn't. It's not because I didn't bother. I  
14 couldn't be bothered. It's because it's not the measure of reasonable  
15 value as I clearly described yesterday. It's closer, but I actually looked at  
16 the right measure of reasonable value in my report.

17 Q So when I asked you did you do anything to see what the  
18 average allowed was for those out-of-network claims once you filtered it  
19 the way I filtered it, which is the same way you did, did you do that  
20 analysis to see what the average allowed was on the out-of-network  
21 basis for the others and did you say not affirmative?

22 A That's exactly what I just said now.

23 Q And that means even though the very first metric that you  
24 put in your report was the averaged allowed for the Plaintiff on an  
25 out-of-network basis, you never bothered to look before you reached

1 your opinions of what the apple-to-apple comparison was for all the  
2 other providers as paid by the Defendants an amount; is that true?

3 A I would disagree with your characterization of apples-to-  
4 apples. I agree they're both out-of-network rates. But the right  
5 comparison is to compare each of them to the proper reasonable value  
6 metric. So I compared the allowed amount to the right metric. I would  
7 do exactly the same thing if I was asked to evaluate the out-of-network  
8 payments to the other providers. So you should compare each of those  
9 two numbers to an independent reasonable value estimate. I can do  
10 that, but that wasn't -- my assignment was just to focus on the left side  
11 of that.

12 Q Well I thought your assignment was to look at the reasonable  
13 value.

14 A Absolutely was.

15 Q And if I'm hearing you, the first thing you cited was the  
16 average allow for the Plaintiffs, but you didn't lift one finger or spend  
17 one minute comparing that to the average allowed out-of-network for  
18 everybody else as paid by the Defendants; is that right?

19 A The way you characterize it is lift one finger. It's a little bit  
20 odd, but it's not relevant. I didn't do it. I don't think it's the measure of  
21 reasonable value. As I said it's closer, but I did exactly the right thing to  
22 do.

23 Q When you taught your classes of economics at Harvard, did  
24 you tell and teach your students to consider all potentially relevant data?

25 A Yeah. None of the classes were exactly of that nature, but

1 sure. I totally endorsed that idea.

2 Q Consider, review it, consider it and then you can reach  
3 whatever opinion you want, fair?

4 A I mean, sure.

5 Q But you didn't even consider it, did you?

6 A It's not the right measure, so no. I didn't directly analyze it  
7 and consider it. It's not the right measure.

8 Q Well you didn't analyze it at all.

9 A Because it's not the right measure. I have a very clear  
10 framework. I've been doing these cases a long time. I know what the  
11 right measure of reasonable value is. It's market data. It's market prices.  
12 That's not market prices, willing buyer, willing seller. It's not relevant.  
13 It's closer, but it's not relevant.

14 Q Out-of-network average allow -- everybody else out-of-  
15 network average allow, and you didn't even consider it before you  
16 decided what you thought was right?

17 A I'm happy to give you the same answer, but it's the same  
18 answer.

19 Q Is this is an apples-to-apples -- whether you think it's right or  
20 wrong, is this an apples-to-apples comparison?

21 A If you were asking a different question, sure. If you're asking  
22 the question in this case, no.

23 Q Because in your view -- well, if it's just me, you, and the  
24 fence post drinking a cold beer after a round of golf, and I asked you did  
25 you take a peak before deciding you'd looked down some other path,

1 what would you tell me?

2 A The 528 number, no. Well, are you asking a more just  
3 general question or are you asking about this?

4 Q I'm saying --

5 A I got distracted by the beer and the golf.

6 Q I'm saying, if we weren't here in this law case and it's just  
7 me, you, and the fence post drinking a cold beers, not under oath, and I  
8 asked you, seriously, you tell me you didn't look at the most obvious  
9 apple to apple comparison, and you're telling this jury, you'd say, I never  
10 looked at it?

11 A Absolutely right. For the kitchen that I was answering here,  
12 it's not relevant.

13 Q Do you remember in your deposition I asked you about a  
14 provider that the defendants processed, about 19,000 claims during the  
15 claim period, and allowed an average of 636; do you remember that  
16 question?

17 A Yeah. I think so.

18 Q Let me show you, exhibit -- it 512-N

19 MR. BLALACK: What's the number?

20 MR. LEYENDECKER: It's 512-N.

21 THE COURT: It's not in.

22 MR. LEYENDECKER: It's not in yet, Your Honor?

23 [Pause]

24 MR. LEYENDECKER: Let's focus in on the bottom of that,  
25 Michelle, please.

011059

011059

1 BY MR. LEYENDECKER:

2 Q This is, moving to your deposition, I used your file. I was  
3 doing a pivot table in real time, and I created the summary of your  
4 market data, for provider 10419.

5 A That all sounds accurate, except the real time, I think you've  
6 done it ahead of time.

7 Q Well, I practiced it ahead of time?

8 A I don't think we had the live data up, did we?

9 Q Okay. Maybe that was another witness.

10 So provider 10419, that's not the plaintiffs in this case?

11 A That I'll take a representation, I don't have them all  
12 memorized, but I'll take your representation.

13 Q And so you see here, like us, this divider has got claims with  
14 some of the same defendants that are in the case here?

15 A Yes. I agree with that, at least a couple.

16 Q Claim period, July 17 through January 20, do you see that?

17 A Yes. First -- yes, I see that.

18 Q "Non-par" means out-of-network, right, sir?

19 A That's correct.

20 Q And so my question to you is, did the defendants pay  
21 reasonable value to this provider 10, who had a similar number of  
22 claims, maybe a little bit more, actually, about twice as much, almost,  
23 was the 636 they're allowed, for those 19,000 claims, reasonable then?

24 A I'd have to do the analysis, looking at the specific mix of  
25 claims and so forth, but I can tell you that my expectation would be, yes,

1 that it certainly was in excess of it. When I find that 246 is sufficient, I  
2 suspect that 636, which is higher than that, I suspect that's also going to  
3 be sufficient, but you have to do that actual analysis to know that.

4 Q Did the defendants willing pay this provider \$636 on average  
5 claims, allowed an average of 636; did they do that willingly?

6 A I'm not aware of anything on -- that would suggest that they  
7 didn't. Obviously all of these are happening, as I discussed extensively  
8 yesterday, in the context of forced transactions, so I don't have any  
9 reason to think that they didn't willingly pay that, given that they had an  
10 obligation to pay, but it's not the same as a true market transaction.

11 Q Am I right, that when I asked a similar question in your  
12 deposition you told me that odd definition, non-par claims are not the  
13 basis for any reasonable value estimate?

14 A I think I said that many times today. I don't think it's the right  
15 measure. It's closer, but it's not the right measure.

16 Q So this is not useful for any basis, whatsoever, is what you're  
17 telling the jury?

18 A I -- that is what I'm telling the jury. There is a way to do it  
19 correctly, which I've done, and I'm confident that 246 is in excess of it.  
20 So as I said before, Mr. Leathers did his calculation, it's getting closer,  
21 but it's not the right number, and so it's not -- it's not the right number to  
22 use.

23 Q Did you teach your students at Harvard that they ought to  
24 have an open mind and look at all the data, even stuff that looks like an  
25 obvious apple-to-apple comparison, did you do that?



1 MR. BLALACK: Objection. Argumentative.

2 THE COURT: Overruled. It's based upon his prior job.

3 THE WITNESS: Again, that's obviously not a specific subject  
4 I was teaching in my class, but as a general proposition, sure.

5 BY MR. LEYENDECKER:

6 Q Okay. I've got one main subject left, and then I've got a few  
7 that I want to make sure on. You made a comment, in my notes here,  
8 that you said that there were very few transactions and charges into the  
9 before period; do you remember that, during your direct examination?

10 A Yes.

11 Q Okay. Did you see, or were you watching when I went  
12 through with Mr. Leathers, the out-of-network world, before the period  
13 where my clients are alleging wrongful behavior took place, and during  
14 that period?

15 A Yeah. I guess I just want to actually clarify the last question.  
16 I'm not -- I definitely talked about the few percent of out-of-network,  
17 those were during the relevant period. I don't remember speaking about  
18 them before, but I do remember you asking questions about before, so  
19 I'm happy to keep continuing with your line of questioning here.

20 Q Well, you are aware that before the time period, that the  
21 documenting evidence establishes the defendants and their ASO class  
22 were using UCR FAIR Health as a methodology for adjudicated claims?

23 A I actually haven't studied that, so I don't know if there was  
24 other methodologies, as well.

25 Q Have you seen Mr. Bristow's depositions?

1 A I have.

2 Q And the exhibits of those depositions?

3 A I have. I can't say I memorized all of them, but I have, I read  
4 all of his depositions.

5 Q Did you see the one, when he was talking the claims paid by  
6 United, the Ruby Crest and Team Physicians, before the claim period,  
7 that 97 to 99 percent were paid between 90 and 100 percent of bill  
8 charges; did you see that, sir?

9 A That sounds consistent with what, but I don't have a memory  
10 of the exact quote, but I'm not disagreeing with that.

11 Q Let me just ask you, because I saw -- you do some anti-trust  
12 work, don't you, sir?

13 A I do, yes.

14 Q And am I right, that the concept of an anti-trust to this, okay,  
15 there's normal non-illegal behavior during period A, and then after  
16 period A is when the alleged improper, unlawful behaviors occur,  
17 concept-wise, right?

18 A That's a general concept that can apply to anti-trust, it can  
19 apply to lots of things.

20 Q And in a world where there's no -- in a period where there's  
21 no alleged misbehavior, and a period where there's alleged anti-trust  
22 illegal behavior, am I right that the accepted methodology for analyzing  
23 damages, caused during the alleged bad behavior period, is a little just  
24 before.

25 A I'd say that's a standard approach and anti-trust, you're often

1 looking at price -- we call it price premium or price elevation, as a result  
2 of that. So in that context it's relevant, it's not relevant here, but this is  
3 not an anti-trust case. But, sure the before and after is a concept in  
4 certain kinds of cases, I agree with that.

5 Q And so if -- and the jury is going to decide what there is, or is  
6 not, we've alleged there's unlawful behavior going on in this period right  
7 here, and I just want to make sure I've got your testimony on this. If the  
8 jury was to conclude that there was unlawful, inappropriate behavior,  
9 and whatever way, it's going on during the time period, I'm asking you  
10 as an independent expert would you agree that the appropriate measure  
11 of damages would be to look at what was going on before?

12 A No.

13 Q No?

14 A No.

15 Q Okay. So if because of the unlawful conduct their prices  
16 were being brought way down, you're saying it wouldn't make sense, to  
17 look at what it looked like before there was any [indiscernible]?

18 A I am saying that, that's definitely my opinion, that in both  
19 periods you would want to look at the independent measure of  
20 reasonable value. This is a case about was the amount paid the  
21 reasonable value amount, or above that amount?

22 You could do it in a before period, you could do it in an after  
23 period, it may be that the amount was well above it in the earlier period,  
24 and above it in the later period, that's the right way to do this kind of a  
25 case; it's not a before or after case.

1 Q Okay. Let's go on to the last sentence, and just take a look.  
2 Could reasonable minds differ, about whether, if there were unlawful  
3 conduct, the jury were to find unlawful conduct in this period, could  
4 reasonable, qualified minds differ about whether the appropriate  
5 measure of damage would be to look back here, before there was any  
6 alleged unlawful conduct?

7 A Not in this case. Not anyone who's trained in damages'  
8 analysis, that this is a reasonable value case, it's comparing an allowed  
9 amount to an objective measure of reasonable value. So this is not a  
10 before and after case. I would not endorse -- this is not -- you could do  
11 this method, you could do that method, that would not be the right  
12 method.

13 Q Now. Yesterday we ended on a sound position topic; do you  
14 recall that?

15 A I do.

16 Q Did you meet with the defendants' lawyers last night, have  
17 dinner, a telephone call or anything?

18 A Yes. We had dinner. Yeah.

19 Q Did you ask them whether any of the defendants in this case  
20 have any kind of ownership interest in Sound Physicians?

21 A No.

22 Q Why not?

23 A It's not relevant for my analysis. I found it to be a  
24 distraction, honestly, but --

25 Q Well, you were studying, and you've given a lot of testimony

1 about how to charge this, and how they're inappropriate, shouldn't be  
2 viewed as reasonable value, correct?

3 A My view is billed charges from anybody are not the right  
4 measure of reasonable value.

5 Q Were any discussions about how high some physicians'  
6 charges were, whether that's what caused the terminal data to spike in  
7 2019?

8 MR. BLALACK: Well, first of all, Your Honor, he should not  
9 be discussing counsel's communications.

10 THE WITNESS: He's an expert.

11 MR. LEYENDECKER: He's an expert.

12 THE COURT: He's not your client.

13 MR. LEYENDECKER: Right.

14 MR. BLALACK: Right.

15 THE COURT: But I think there's very limited, you can -- you  
16 need to hit it and go on, it's not relevant.

17 BY MR. LEYENDECKER:

18 Q Do you have any uncertainty in your mind about whether  
19 some of the defendants in this case have an ownership over Sound  
20 Physicians.

21 A I have no idea. The only information I have is what Dr. Frantz  
22 said.

23 Q Okay. Well, you're familiar with interrogatories, aren't you,  
24 sir?

25 A Yes.

1 Q Okay.

2 MR. LEYENDECKER: Let me -- Your Honor, may I approach  
3 the witness?

4 THE COURT: You may.

5 MR. LEYENDECKER: So that we -- I have one copy of this,  
6 just look at this together?

7 THE COURT: You may. And what is it, and is it admitted?

8 MR. LEYENDECKER: This is -- isn't not an exhibit, Your  
9 Honor, it's defendants' supplemental responses to Fremont's second set  
10 of interrogatories.

11 THE COURT: Have you shown it to your opposing counsel?

12 MR. LEYENDECKER: They saw it.

13 [Counsel confer]

14 MR. BLALACK: Your Honor, I have no concern with the  
15 document being referenced and used but it should be marked for the  
16 record, so people will be able to know what we're talking about.

17 THE COURT: Usually, though, it would be used to refresh  
18 memory, so --

19 MR. LEYENDECKER: Your Honor, he's an expert, and I'm just  
20 trying to engage with him on the subject --

21 THE COURT: All right.

22 MR. LEYENDECKER: -- but he is the one that brought up  
23 Sound Physicians, yesterday.

24 THE COURT: Good enough. Please proceed.

25 MR. ROBERTS: Your Honor, may we approach?

1 THE COURT: You may.

2 MR. ROBERTS: Thank you.

3 [Sidebar at 11:09:03 a.m., ending at 11:11:21 a.m., not transcribed]

4 THE COURT: Okay. We provided some direction to the  
5 lawyers.

6 BY MR. LEYENDECKER:

7 Q Mr. Deal, is the Sound Physician charge in -- between 19 and  
8 99285, here in Las Vegas? Is that charge of \$1,761 reasonable?

9 A It's not reasonable value, for sure. I haven't been asked to  
10 analyze whether any particular charge is reasonable, they're irrelevant,  
11 all of them.

12 Q Well, do you have an opinion about whether -- well, not  
13 opinion. Is the Sound Physician charge is for a 285 claim in 2019, of  
14 \$1,761; is that a reasonable charge?

15 MR. BLALACK: Objection. Asked and answered, he just  
16 answered it..

17 THE WITNESS: I don't --

18 THE COURT: Overruled.

19 THE WITNESS: It's not even a question that really an expert  
20 can answer. It's unilateral, they can set the charge at whatever level  
21 they want. The relevant question here is, the reasonable value of the  
22 service, totally unrelated to bill charges. So it's not a question that I can  
23 really answer, as an expert.

24 BY MR. LEYENDECKER:

25 Q Did you just say an expert couldn't analyze whether this is a

1 reasonable charge?

2 A It's not a concept that makes sense, really. You could  
3 analyze how that charge lined up against some other charges. So you  
4 could say it's at the 80 percentile, or 50th percentile; you could do that.  
5 But to then opine as to what the reasonableness of that, I think would be  
6 -- it's not something I've ever been asked to do and it's not relevant for  
7 this kind of a case.

8 Q Was the plaintiffs' 2019 charge for 99285, of \$1,423, was that  
9 a reasonable charge?

10 A The same answer, they're both well above the actual  
11 reasonable value of the service, that's the relevant question, comparing  
12 the allowed to the reasonable value of the service. So it's not something  
13 -- I mean, I could answer a mathematical question of what percentile are  
14 they in, things like that, but it's not -- reasonable value of the charge isn't  
15 a concept that's relevant in this case.

16 Q As a public policy expert, you talk about this forced  
17 transaction; I'll see if I can find that, none of you should have got my  
18 attention there.

19 MR. LEYENDECKER: Michelle, can I have yesterday's  
20 transcript, at page 66, please. I want to show Mr. Deal something he told  
21 the jury; down there at lines 18, 325.

22 BY MR. LEYENDECKER:

23 Q See the question, sir?

24 A Yes.

25 Q "What is a forced transaction?" And you say, "Yeah. Maybe



1 it's easiest to start with what the opposite. So a voluntary transaction is  
2 I want to go buy a pair of pants. I can go to this store, or that store, or  
3 this mall and get it, I have a choice as to where I'm going." An  
4 emergency situation," and that's what we got in our case, right?

5 A I agree.

6 Q "This whole emergency situation, typically you don't have a  
7 choice, and just from a public policy perspective we typically don't want  
8 you to make a choice. We don't want you -- at least a choice that would  
9 endanger your health, I should say." Do you see that?

10 A Yes.

11 Q So in this dynamic of a forced transaction you were giving  
12 the jury your opinion about public policy perspective and a potential risk  
13 to the community health class, right?

14 A Sort of. I'm talking about why this the nature of a forced  
15 transaction. The context of that is the relevant measure is a true market  
16 transaction, willing buyer, willing seller, both able to walk away. This is  
17 a situation where you can't walk away -- and I'm noting from a public  
18 policy perspective -- we don't want -- we don't want you shopping  
19 around if you've got -- if you're bleeding profusely. You don't want to go  
20 ER to ER and say, what's your charge, oh, this that, and the other. That  
21 would be a bad idea. And so EMTALA addresses that.

22 Q Let me ask you, were you here when Mr. Leif Murphy  
23 testified?

24 A Who's that?

25 Q Leif Murphy.

1 A I was not in the courtroom, no.

2 Q Do you know who he is?

3 A I recognize the name, but I honestly don't remember the title.

4 Q Okay. Well, let me refresh you with what he told the jury.

5 MR. LEYENDECKER: Michelle, this is November 16th at page  
6 51. And I want to focus in on lines 3 through 18, please.

7 BY MR. LEYENDECKER:

8 Q The question is, "Okay. All right. Let's talk about  
9 TeamHealth. First of all, who started TeamHealth?" Mr. Murphy said,  
10 "TeamHealth was founded by a physician leader. His name is Dr. Lynn  
11 Massingale. He was an emergency medicine physician in Knoxville,  
12 Tennessee. And he started our first contract site with the university of  
13 Tennessee Medical Center about 43 years ago." He goes on to say, "Is  
14 Dr. Massingale still alive"? Mr. Murphy said, "Yeah, he is. He's actually  
15 an active member of our board of directors." "Okay. And that was going  
16 to be my next question. Does TeamHealth have a board of directors"?  
17 "We do." "And does it have a chairman"? And Mr. Murphy says,  
18 "Dr. Massingale." Do you see that?

19 A Yeah.

20 Q And you understand the board of directors oversees, as a  
21 practical matter, senior leadership, senior officers of the company?

22 A I agree with that.

23 Q And --

24 A They may have other duties too, but I agree with that.

25 Q And the chairman of the board is at the absolute top. That's

1 where the buck stops. Would you agree?

2 A On the board, yes. The CEO in terms of the daily operations.  
3 But the chairman of the board in terms of the board, yes.

4 Q Right. But the CEO reports to the chairman of the board?

5 A Reports to the whole board, but the chairman chairs the  
6 board.

7 Q Okay. Is it fair to say the chairman of the board and  
8 Dr. Massingale, who started TeamHealth and is the emergency medicine  
9 physician, fair to say that he is Mr. Murphy's boss?

10 MR. BLALACK: Objection. Foundation.

11 THE WITNESS: I honestly don't know the direct reporting  
12 relationships in terms of that.

13 THE COURT: Hang on. There's an objection.

14 THE WITNESS: Oh, I'm sorry.

15 THE COURT: The objection's overruled. So you can answer.

16 THE WITNESS: Yeah. I apologize. I sometimes go a little  
17 too fast on the answer. I don't know the direct reporting relationship, but  
18 certainly the board is overseeing all of the operations. So conceptually I  
19 agree with your question.

20 BY MR. LEYENDECKER:

21 Q So here's my question to you. I want to go back to your  
22 forced transaction discussion with the jury about endangering the public  
23 and public policy. Okay?

24 A Okay.

25 Q Do you think the community, whether it's here in Nevada,

1 Las Vegas -- you live out in California?

2 A I'm from California, yes.

3 Q Okay. Whether it's California, Las Vegas, Houston, Texas,  
4 where I'm from, do you -- from a public policy standpoint, do you think  
5 the community is better if the ER doctors who are working in emergency  
6 rooms, if their ultimate boss is an emergency room physician as  
7 compared to an insurance executive? Which of those two things is  
8 better and safer for the community?

9 A I don't think you can answer that question with a yes or no  
10 or -- I mean you can have a physician that's not very good as a boss and  
11 chairman of the board and vice versa, you could have an insurance guy  
12 who's not very good. And that's -- really it varies. You'd have to  
13 evaluate the -- what the issues are, what -- the credentials and so forth.  
14 So you cannot answer that with a yes or no or a simple answer.

15 Q Can we agree that doctors, as compared to insurance  
16 executives, are more likely to make sure patients get the enough tests so  
17 that they're evaluated, and they're taken care of? That's what doctors  
18 want to do. Would you agree with that?

19 A As a general matter. Of course, my father is an orthopedic  
20 surgeon, my brother's a doctor, my nephew's a doctor. A doctor should  
21 provide good care.

22 Q All right. And I take it your family members there, they want  
23 to examine patients, run whatever tests they think are necessary because  
24 they're looking out for the patient first? That's what your family does,  
25 right, sir?

1           A     That's sort of the Hippocratic Oath I guess in some levels. So  
2     sure, you -- that's what you want in physicians. Certainly there's lots of  
3     research that physicians sometimes overorder tests, do other kinds of  
4     things. So they're not perfect. But conceptually you want them to do the  
5     necessary care. Not more than that, because that can get expensive and  
6     wasteful. But you want them to do the necessary care.

7           Q     Expensive and wasteful. Those are the kinds of things that  
8     insurance companies want to try and identify so they can keep costs  
9     down, right?

10          A     Among other things, sure.

11          Q     Right.

12          A     Yeah. None of us should want that. It raises all of our  
13     premiums; it results in lower wages for us at our work if healthcare  
14     costs are excessive.

15          Q     So on one hand, we could have a world like TeamHealth  
16     where the top guy is an emergency room physician that's only focused  
17     on patients, and on the other hand, we could have emergency room  
18     physicians whose boss are insurance executives. And I just want to  
19     know which do you think is less likely to endanger the community?

20                MR. BLALACK: Object to the form of the hypothetical,  
21     Your Honor. There's no facts to support --

22                THE COURT: Rephrase.

23                MR. LEYENDECKER: I thank you for your time. Those are all  
24     the questions I have for you right now.

25                THE WITNESS: Yeah. Thank you very much.

1 THE COURT: Okay. And redirect, please?

2 MR. BLALACK: Yes, please, Your Honor.

3 THE COURT: Is everybody comfortable going through  
4 between 11:45 and 11:50? And we're going to have to take a longer  
5 lunch today to 12:35. So --

6 Okay. Redirect, please.

7 MR. BLALACK: Thank you, Your Honor. Let me just get  
8 organized up here a little bit. All right. I got the message. All you had to  
9 do was ask. Kevin, can I give you this back?

10 MR. LEYENDECKER: Yeah. I'm sorry. Yes, sir.

11 MR. BLALACK: Actually, can I -- can I use that? Do you have  
12 markings on it, or I can get mine out, but --

13 MR. LEYENDECKER: Is that the deposition?

14 MR. BLALACK: Yeah, that's just the deposition.

15 MR. LEYENDECKER: Yes, sir, you can use that.

16 MR. BLALACK: Thank you.

17 REDIRECT EXAMINATION

18 BY MR. BLALACK:

19 Q Okay. Mr. Deal, let's try to just go through a handful of  
20 things that Mr. Leyendecker asked you today. And I'm hoping to get this  
21 done real quick and get the jury out for lunch.

22 Let me start with this question of how often you've been testifying  
23 in a court proceeding or other kind of dispute on before of insurance  
24 companies. Do you remember the questions you received on that  
25 question?

1 A I do, yeah.

2 Q And I think Mr. Leyendecker used a number of 200 or  
3 something?

4 A That's right.

5 Q Have you testified as an expert witness on behalf of  
6 insurance companies 200 times?

7 A No. I think I've testified and given depositions more than 200  
8 times, but not of them are for insurance companies. So he was  
9 conflating two concepts there I think. I've done it many times for  
10 insurance companies but not 200.

11 Q So the 200 related to like all of your experience testifying as  
12 an expert. Is that what you were referring to?

13 A That's right.

14 Q Now -- and that includes trial and depositions?

15 A That's correct.

16 Q And just for the jury's benefit, although they've become legal  
17 experts here now I suppose, there would be occasions where you would  
18 hear the deposition of -- in a case, but --

19 MR. LEYENDECKER: Your Honor, I'm going to object as  
20 leading.

21 MR. BLALACK: Let me -- I'll rephrase, Your Honor.

22 THE COURT: Rephrase.

23 BY MR. BLALACK:

24 Q Are there occasions in an engagement where you're hired  
25 where you give testimony at depositions but never give testimony as

1 trial?

2 MR. LEYENDECKER: Same objection, Your Honor.

3 MR. BLALACK: I asked are there occasions, Your Honor.

4 THE COURT: I'm going to overrule that.

5 THE WITNESS: Yes. In fact, I'd say that's more common  
6 than not, is that I've given more depositions -- certainly many more  
7 depositions than I've had trial testimony. And many cases settle or go  
8 away for some legal ruling or something like that.

9 BY MR. BLALACK:

10 Q Okay. The next thing Mr. Leyendecker mentioned is you've  
11 talked about how sophisticated TeamHealth was and that they were used  
12 as a data keeper. Do you remember that?

13 A I do, yeah.

14 Q Have you seen any evidence in this case that indicate that  
15 TeamHealth is a sophisticated data keeper?

16 A I certainly know that they have -- they certainly have  
17 symptoms, and they keep data. I'm not sure exactly what he meant by  
18 sophisticated. They're a big company, but they're not perfect certainly.

19 Q In fact, how many -- in the time you've been involved in this  
20 case, how many different lists of disputed claims have you been given  
21 from the Plaintiffs that purport to capture the allegations they have in the  
22 case of disputed claims?

23 MR. LEYENDECKER: Your Honor, it's cumulative testimony.

24 THE COURT: Overruled.

25 THE WITNESS: Oh, gosh, just since I've been involved,



1 probably four or five. Something like that.

2 BY MR. BLALACK:

3 Q And, in fact, you're aware there were some before you got  
4 involved?

5 A That's my understanding. I haven't seen those. I had plenty  
6 to do focusing on each one that came in and having to kind of update my  
7 analysis and so forth.

8 Q Now, I want to talk about the -- one other point when you  
9 were test there at the end, when he was asking you about all the times  
10 you've testified on behalf of health insurance companies, you made  
11 some statement about the fact that you don't -- you're not testifying for  
12 them, that they align with your views, or something like that. Do you  
13 remember some statement like that?

14 A I do, yes.

15 Q What did you mean by that?

16 A Yeah. So I think I -- as I understood Mr. Leyendecker's line of  
17 questioning, it was sort of implying that an expert, you know, may be  
18 should or could be hired on an issue like reasonable value by both  
19 parties in equal proportions. In my experience, that's not accurate. That  
20 I have a professional view long held as to how to measure reasonable  
21 value. Okay? It's what I used here, it's what I use in all my other cases.  
22 It's market transactions. I think that's my view. That's very well  
23 accepted in the economics and finance and health economics. As a  
24 result of that, I would say most frequently providers are asking for  
25 something much higher. Billed charges, some other very high number.

011078

011078

1 So it would be very unusual in that setting, given I have a long record  
2 and a point of view of how to measure this, that I would be hired by a  
3 provider.

4 So there's some cases, and maybe it's -- call it a breach of  
5 contract case, where I work for plaintiffs, I work for defendants, then I'm  
6 analyzing that. But in a case like this where there's kind of a framework  
7 question in how to do it, I have a point of view and that -- it tends to be a  
8 point of view that's more consistent with oftentimes how payers do it. I  
9 think it's the right point of view. But I wouldn't expect to be hired by  
10 providers. I could be, I'd be happy to do it, but I'd be giving testimony  
11 just like I gave today.

12 Q So you haven't found many providers who are found of the  
13 market-base theory that you rely upon?

14 A I would say that's fair to say. That's not the general  
15 approach that they prefer to use.

16 Q What's the approach they prefer to use more often?

17 A Well, it's interesting. It certainly -- bill charges has  
18 historically been the approach. I would say that has evolved. So I was a  
19 little surprised to see it here in this case. Most of them are looking more  
20 towards now something like the out-of-network or some other kind of  
21 measure that is less than full billed charges. I think -- my experience in  
22 these cases is it's pretty well recognized now that full billed charges are  
23 not relevant. But it's a variety of things that they'll do.

24 Q Now, let's ask it this way: Do you have some innate hostility  
25 toward healthcare providers or toward their profession or do you think

1 they don't do good work as servers of our community or anything like  
2 that?

3 A Quite the opposite. As -- as I just mentioned in response to  
4 Mr. Leyendecker's questions, my father's a surgeon, my brother is a  
5 doctor, my nephew's a doctor, my wife is a nurse, my daughter's in  
6 nursing school, my wife ran a Hospice as a CEO, I work with hospitals. I  
7 think it's a great industry. I think we do wonderful things. But as an  
8 economist, of course, I'm worried about costs and efficiency, and it's a --  
9 we spend a huge portion of our resources on healthcare.

10 And I want to make sure we're getting good value for that as an --  
11 as a concept. So I would say I have lots of clients who are insurance  
12 companies. I think many of them are good companies, but I wouldn't  
13 say I have any absolute love for insurance companies versus providers. I  
14 have lots of respect for healthcare providers.

15 Q Okay. Thank you, sir. I want to talk about these studies that  
16 you rely upon, and that Mr. Leyendecker asked you about. You talked  
17 about the Yale study and then we -- you also talked about the Brookings  
18 study. And, by the way, what is Brookings?

19 A Brookings is a -- is a research organization that does lots of --  
20 of economics and public policy research.

21 Q And is this -- what is -- on your presentation yesterday, you  
22 referred to some of that study with USC-Brookings Schaeffer Initiative  
23 for Health Policy. Do you know what that is?

24 A Yeah. I think that's a kind of a collaboration between USC,  
25 the school, the college.

1 Q University of Southern California?

2 A It is the University of Southern California, yes. And  
3 Brookings, they have a particular collaboration involving studying  
4 particular issues. And I think it's referencing that.

5 Q Okay. Now, the suggestion Mr. Leyendecker was that  
6 somehow Brookings and USC were on the take because of influence by  
7 UnitedHealthcare. Do you remember questions like that?

8 A I do, yes.

9 Q Okay. And let me show you an exhibit that he indicated -- he  
10 showed you. It was Defendants' Exhibit -- actually, I don't know what --  
11 you just handed me this --

12 MR. BLALACK: You just handed me this. What was this  
13 Exhibit 1000? And if you pull that up.

14 BY MR. BLALACK:

15 Q All right. Sir, I want you to just skim through from -- back  
16 and skim to the front. I want you to tell me, sir. Do you see anything in  
17 this Exhibit 1000 suggesting anyone at UnitedHealthcare paid any  
18 money to the University of Southern California, Berkeley ins

19 MR. BLALACK: And, Shane, stagger back and skim up to the  
20 front.

21 BY MR. BLALACK:

22 Q And I want you to tell me, sir, if you see anything in this  
23 Exhibit 1000 suggesting that anyone at UnitedHealthcare paid any  
24 money to the University of Southern California, Brookings Institute, or  
25 the Schaeffer Initiative for Health Policy in connection with the study.

1           A     Okay.

2                   MR. BLALACK: Just keep scrolling.

3                   THE WITNESS: You can keep scrolling up. I can read fairly  
4 quickly here. And hang on one second. Maybe not quite that fast. Okay.  
5 Keep scrolling up. And I think this is the part you focused in on. Okay.  
6 And then just go to the top a little bit.

7 BY MR. BLALACK:

8           Q     Is there anything in this exhibit saying anything about  
9 anyone associated with UnitedHealthcare or any other Defendant in this  
10 case paying any financial value of any kind to anyone at Brookings, the  
11 University of Southern California, or the Schaeffer Initiative for Health  
12 Policy?

13          A     No.

14          Q     Okay. Is there anything that you see in this email that, in  
15 your experience, would be inappropriate or untoward for purposes of  
16 academic research?

17          A     No. Getting input from industry participants is not -- there's  
18 certainly nothing wrong with that as a concept.

19          Q     When we started out this whole thing, the Yale study was  
20 supposedly this big scam. Now apparently from the questioning from  
21 Mr. Leyendecker, we've also now implicated USC and the Brookings  
22 Institute in this conspiracy. Is that what you understood, sir?

23          A     I'm not sure if he characterized it as a conspiracy, but he  
24 certainly seemed to look askance at some respected research  
25 institutions.

1 Q Okay. And that was my next question. With respect to Yale  
2 University, Brookings Institute, the University of Southern California, the  
3 National -- what's the --

4 A National Bureau of Economic Research, NBER.

5 Q Those institutions, in your experience, are those well-  
6 regarded, established, ethical institutions?

7 A Oh, they're among the very, very best, yes.

8 Q Okay. Now, I want to talk about this researcher that you  
9 were asked about. Nathan Takeda [phonetic], I believe was that  
10 somehow he was an employee of Analysis Group, and he had some  
11 connection whether is his name. The suggestion was that somehow he  
12 was an employee of Analysis Group and that that had some connection  
13 to whether the research -- that somehow he'd been bought off by  
14 Analysis Group, or did you understand something different?

15 A It was unclear what he was implying, but maybe some  
16 variation of that. I'm not sure.

17 Q Until Mr. Leyendecker asked you about whether this  
18 gentleman had ever worked in an Analysis Group, had you ever met him  
19 or seen him?

20 A No. I -- I have not. I mean we have more than 1,000  
21 employees, so there are many, many employees I don't -- I don't know  
22 personally.

23 Q Okay. Sitting here today, could you pick him out of a lineup?

24 A Not even close.

25 Q Okay. Let me show you a document marked for

1 identification as Defendants' Exhibit 5592 [sic]. Well, let me ask you --

2 MR. BLALACK: Counsel --

3 UNIDENTIFIED SPEAKER: It says, "New world order"?

4 [Counsel confer]

5 MR. BLALACK: Your Honor, I want to show Mr. -- move  
6 Exhibit 5529 into evidence.

7 MR. LEYENDECKER: No objection, Your Honor.

8 THE COURT: Exhibit 5529 will be admitted.

9 [Defendants' Exhibit 5529 admitted into evidence]

10 BY MR. BLALACK:

11 Q Okay. Sir, I'm showing you what we just pulled off the web,  
12 the -- I believe the profile is for a guy Nathan Takeda, whoever he is.  
13 And you can just -- I just want you to skim --

14 MR. BLALACK: And, Shane, if you could, skim down slowly,  
15 please.

16 BY MR. BLALACK:

17 Q You see he was -- well, where was he affiliated from an  
18 academic standpoint, sir?

19 A It looks like prior to Analysis Group he was at the Yale School  
20 of Management.

21 MR. BLALACK: Okay. Let's keep going down. Keep going.

22 BY MR. BLALACK:

23 Q All right. Now, he's got his experience there. And he's got  
24 Yale University research analysis 2015 to 2017. Do you see that?

25 A Yes.

1 Q And in fact, he references the paper you relied a lot upon in  
2 your report, right?

3 A Yes.

4 Q 3/20/17. And look at this, two years later, the poor guys joins  
5 analysis group in Boston as a summer associate; do you see that?

6 A I do, yeah.

7 Q All right. So I take it you weren't in the Boston office down at  
8 the water cooler any time between June and August of 2019?

9 A No, I was not, no.

10 Q Now, he eventually did join your firm, didn't he?

11 A Yes, it looks like in this year in 2021.

12 Q And it says present, less than a year; is that right?

13 A Yes.

14 Q So is it fair to say -- so as far as you know, there's no  
15 relationship between Mr. Shekita being affiliated with Analysis Group  
16 starting this year in his work in the 27 -- '16 and '17 on the research  
17 paper cited in your report?

18 A There certainly isn't any direct connection. The fact that he  
19 has been a researcher and that he has the right credentials and good  
20 experience, that would all be relevant for us in our hiring for anybody.  
21 But certainly, the direct connection, there's zero relevance to that.

22 Q Okay. Now, I want to --

23 MR. BLALACK: You can pull that down for us.

24 BY MR. BLALACK:

25 Q I want to talk a little bit about the co-insurance issue that Mr.



1 Leyendecker brought up. And yesterday, sir, we went through some  
2 specific examples of claims that the Team Health Plaintiffs introduced  
3 into the record; do you recall that?

4 A I do, yes.

5 Q And at -- what did -- do you recall what we found when we  
6 reviewed those sample claims, what it is you were identifying and  
7 explaining to the jury about those claims and that data underneath  
8 them?

9 A Yes. We were reviewing the demonstrative, and it seemed to  
10 imply that there was inconsistent adjudication of the allowed amounts  
11 on those claims, when they were from the same employer, same year,  
12 same provider, same CPT code.

13 Q And sir, when there are inconsistencies between the claims  
14 data of a health insurer or healthcare payer and a healthcare provider, do  
15 you have a viewpoint on whose data is more likely to be accurate?

16 A I do, depending on what the -- what the particular question is  
17 and the particular type of information.

18 Q So give an example of the type of information where you  
19 might think the provider might have warranted that?

20 A Yeah. In my experience, the provider would be more  
21 accurate where there's a discrepancy, for instance, on the treating  
22 physician. As an example, if it's a physician claim, or the actual code,  
23 say 99285, that sort of thing. That's something that's really under their  
24 control. Those are examples where I -- more likely than not, they would  
25 be accurate on that.

1 Q Okay. Are there examples of data that were -- where you, in  
2 your experience, the payer and health insurer would more likely have the  
3 accurate information?

4 A Yes.

5 Q Can you explain what those would be?

6 A Yeah. A couple of examples there, and specifically the things  
7 we were looking at yesterday, so the allowed amount, that's something  
8 that the insurer, or payer, or the TPA actually does. That's their role and  
9 responsibility is to determine the allowed amount, so that would  
10 typically be more accurate on the payer's side.

11 The employer would typically be more accurate on the -- they  
12 have to keep accurate records of which member is associated with which  
13 plan, which is typically tied to employment, so those are good examples  
14 where typically the payer has more accurate information.

15 Q Okay. Now, during his questioning, Mr. Leyendecker said  
16 something to you about how the UMR claims data that we looked at did  
17 not include the co-insurance; do you remember that?

18 A I do, yes.

19 Q First off, can you remind us what -- again, you just talked  
20 about it today, what the co-insurance reflects?

21 A It's part of the patient responsibility, all of which sits  
22 underneath the allowed amount. So there's a portion that's owed by the  
23 payer and a portion that's owed by the patient. It's one of those  
24 elements.

25 Q So is there -- is the -- knowing the co-insurance amount is,

1 does that have any bearing on the term and what the allowed amount is?

2 A No, none whatsoever.

3 Q Now, was Mr. Leyendecker correct that the UMR claims data  
4 does not include co-insurance amount for each of the disputed claims?

5 A Yes, that's accurate that that particular field is not present.  
6 It's not relevant, but it's not present.

7 Q If it did not include -- that data did not include the co-  
8 insurance amount, how were you able to determine that the allowed  
9 amount in UMR claims data was consistent for the claims with the same  
10 patient, same CPT code, same provider, same employer?

11 A Oh, because what you're focusing on is the actual allowed  
12 amount. So remember the first step in the process is actually to  
13 determine the allowed amount, and then there's a subprocess that  
14 allocates it into payer and patient responsibility, irrelevant for this case,  
15 so it had no bearing on the calculations.

16 Q Okay. Sir, I'd like to walk the jury quickly through an  
17 example and illustrate how the co-insurance is calculated and make sure  
18 they understand how it does or doesn't relate to determining the allowed  
19 amounts.

20 A Uh-huh. Uh-huh.

21 MR. BLALACK: Bring up the demonstrative, please.

22 BY MR. BLALACK:

23 Q And sir, I'm showing you what's titled illustrative example of  
24 two claims with allotment of \$1,000. Do you see that?

25 A Yes.

1 Q On one it has listed a 20 percent co-insurance, and the other  
2 it has listed a zero percent co-insurance; do you see that?

3 A I do, yes.

4 Q Would you walk the jury through and explain these two  
5 examples?

6 A Sure. And again, this is a demonstrative of a couple of  
7 examples. In both cases, and I noted -- or this is noted on the right-hand  
8 side of it, it's \$1,000 of the allowed amount. That's the relevant measure,  
9 and that's what I'm comparing to reasonable value. But underneath that,  
10 you could certainly have a different proportion paid by the health  
11 insurer, the payer and the patient. Start with the right-hand side where  
12 there's no co-insurance. Let's say you had \$100 left on your deductible.  
13 You pay that \$100, no co-insurance; the health insurer pays \$900.

14 The left-hand side, same thousand dollars, same hundred  
15 dollar deductible; now you've used up your deductible, but in this case,  
16 the plan might call for a co-insurance, a 20 percent co-insurance, in  
17 which case, another couple hundred dollars for the patient. So it's all  
18 about the allocation of the thousand dollars. The patient would owe 300  
19 on the left, 100 on the right; insurer would pay 700 on the left, 900 on the  
20 right. In both cases, the right measure is the top, the allowed amount,  
21 which doesn't vary.

22 Q So for purposes of going through the data you went through  
23 with the jury yesterday, was determined whether the demonstratives in  
24 the Plaintiffs' disputed claims list accurately described the underlying  
25 records in the claim status. Did the co-insurance have any relevance to

1 those at all?

2 A No, not at all. Not at all.

3 Q Now, on this question, do you remember the chart that Mr.  
4 Leyendecker showed you today that had the average co-insurance  
5 amounts in the claims data that he represented to you, in something like  
6 six to eight percent each year in terms of the co-insurance amount?

7 A Yes.

8 Q You said something I didn't quite understand, and I want to  
9 make sure the jury understands. Have you ever seen, in your  
10 experience, a health plan where the co-insurance is the amount of six  
11 percent?

12 A No. I -- as I mentioned, you typically would be something  
13 like a 20 percent. Sometimes even zero. Sometimes 30. I've -- six  
14 would be a very odd co-insurance.

15 Q So how -- based on an average, what is the six or the eight?  
16 What does that represent?

17 A You can just think about it conceptually. If it was -- if the co-  
18 insurance on all claims was 20 percent, that would mean that about a  
19 third of the time, the patient would owe the 20 percent, and about two-  
20 thirds of the time, they must have used up their -- all their other, and  
21 they owe zero on those. So it's a mix of, probably zeros, and say 20  
22 percent or 30 percent, or something like that.

23 Q So to get to a six, you have to have some values where there  
24 was no co-insurance or --

25 A Correct.

1 Q -- other co-insurance, correct?

2 A That would be my experience, yes.

3 Q So what are the kinds of things that might produce an  
4 outcome where there's no co-insurance?

5 A There's really two. One would be a situation where the plan  
6 itself may call for no co-insurance. That's kind of unusual and relatively  
7 generous, if you will, to the -- to the patient. Those tend to be more  
8 expensive plans. But I'd say the most common is, as I mentioned a  
9 moment ago, where the patient has fulfilled their maximum out-of-  
10 pocket for the year. So you might have a plan that says between  
11 deductibles and everything else, maximum you'll ever pay is 2,000.  
12 Once you hit that level, then you don't owe the co-insurance any more.

13 Q So in that scenario, you had some poor soul who's incurred  
14 very, very large healthcare costs, blown through their maximum, and  
15 now they're not incurring a co-insurance?

16 A That's right, yeah. It's not -- yeah. They're not lucky in that  
17 sense because they've had to blow through their -- as you -- as you  
18 characterized it, their maximum out of pocket, but that's right.

19 Q Okay. But in the standard situation, when there's co-  
20 insurance, where it's applicable, using a 20 or 30 percent, does the, you  
21 know, \$1,000 allowed amount in your example, would that -- what would  
22 be -- let's use 20 percent, what would be the co-insurance there for  
23 \$1,000?

24 A \$200.

25 Q And what would be the co-insurance for 30 percent?

1 A \$300.

2 Q And if the allowed amount was \$200, what's the co-insurance  
3 for 20 percent?

4 A \$40.

5 Q And then for co-insurance at 30 percent?

6 A On \$200, it would be \$60.

7 Q All right. Significant delta, correct?

8 A Oh, sure, there would be a meaningful difference, yes.

9 Q So it would be much more to the patient's benefit to have the  
10 allowed amount be 200 or 300 --

11 MR. LEYENDECKER: It's leading, Your Honor.

12 MR. BLALACK: Okay. Fair.

13 BY MR. BLALACK:

14 Q Mr. Deal, is it better for the patient to have an allowed  
15 amount of 1,000 or 300?

16 A 300, unless there's a threat of balance billing.

17 Q Now, let's talk about this Medicare equivalent.

18 MR. BLALACK: And can we bring up Plaintiffs' Exhibit 299?

19 BY MR. BLALACK:

20 Q You were asked about expressing the amount dispute of  
21 the charges and the allowed amount that's a percent of Medicare; do you  
22 recall that?

23 A And I believe we talked about that, expressing the reasonable  
24 value as a multiple of Medicare as well --

25 Q Right.

1 A -- percentage, but, yes.

2 Q Correct. And you said -- I thought you said that that is typical  
3 and standard in the industry?

4 A Absolutely.

5 Q Okay.

6 MR. BLALACK: Would it be -- do you have -- is this your  
7 exhibit?

8 THE COURT: It's 299.

9 MR. BLALACK: 299, is that admitted, Your Honor?

10 THE COURT: I'm not sure.

11 MR. LEYENDECKER: Yeah, it was. You didn't object to it. It  
12 was admitted today.

13 MR. BLALACK: Oh, it was admitted today.

14 MR. LEYENDECKER: Yeah, we sent it over yesterday or the  
15 day before.

16 THE WITNESS: Hold on. Hold on. Hold on. Hold on.

17 MR. BLALACK: I'll keep going.

18 THE COURT: Okay.

19 MR. BLALACK: Let me -- let me address, while he's looking  
20 for that, Your Honor, let me come back and do another subject.

21 BY MR. BLALACK:

22 Q The Sound Physician subject, we're going to come back to  
23 that here. Yesterday, do you recall Mr. Leyendecker getting all excited  
24 about Sound Physician?

25 A Yes.



1 Q I know he's excited about a lot of things, but do you  
2 remember him being excited about that?

3 A Yeah. I think he characterized that as being what the case is  
4 about at some point.

5 Q Okay. That's my memory, too, that he said Sound Physicians  
6 is what the case is about. Mr. Deal, I want to show you a demonstrative.  
7 Let me ask you, do you like -- do you like multiple choice questions?

8 A Yes.

9 Q Okay. I want to show you a demonstrative. I want you to  
10 help me walk through this. What is this case about? Is it about Sound  
11 Physicians?

12 A You want me --

13 Q About the quality of medical care? Is it about the reasonable  
14 value that TeamHealth Plan's disputed claims? Is it about out-of-network  
15 programs? So let me -- the reason I've got these four up here is in the  
16 course of the last three or four weeks, we've heard our friends on the  
17 other side tell the jury that all -- this case is about all of these. This case  
18 really is about this. Let's talk about Sound Physicians.

19 MR. BLALACK: Okay. Could you bring that one up, please?  
20 If you can go to the relevant passage there, Shane.

21 BY MR. BLALACK:

22 Q Do you remember when Mr. Leyendecker told you -- told  
23 you, he says Sound Group, and what is Sound Physicians? It's a  
24 physician's services [indiscernible] work. They started out at hospital. I  
25 think they may also do anesthesia, but that's the ER.

1 MR. BLALACK: Keep going, Shane.

2 THE WITNESS: This is Dr. Frantz's testimony; is that right?

3 BY MR. BLALACK:

4 Q No, this is not. I'm not looking for Dr. Frantz's testimony, I'm  
5 looking for the first book from Mr. Leyendecker yesterday. Do you have  
6 that? This case is going to get real interesting in a hurry; I promise you  
7 that, sir.

8 THE COURT: You only have three more minutes, so --

9 MR. BLALACK: All right. Thank you, Your Honor. All right.  
10 Let's go to the next one, please. Go back. Let's go back and then bring  
11 this up. This is Ms. Lundvall, quality of medical care.

12 BY MR. BLALACK:

13 Q He told the jury, I believe in opening, because I indicate,  
14 ladies and gentlemen, this case is about a little bit more. It's about the  
15 quality of medical care across the State of Nevada, including emergency  
16 medical care.

17 MR. BLALACK: All right. Let's go -- let's go -- you can skip --  
18 actually, let's do C, reasonable value.

19 BY MR. BLALACK:

20 Q So I believe it was counsel who said, now, what -- she said  
21 perhaps the core issue of this case is whether the reasonable value of  
22 out-of-network emergency room services were provided; do you  
23 understand that? He answered, yes. Last line, out-of-network program.  
24 I believe this was Mr. Zavitsanos, you see I have a lot of the doctors  
25 [indiscernible]. That's what this case is about, right? Let me ask you

1 this, sir, my daughter -- high school daughter is about to take the SAT  
2 through one of those French courses. She asked me how to do it, and I  
3 told her my -- when I was in college and I took those tests, I just circled C  
4 every time. Let me ask you this, what do you think the reason -- I'll get a  
5 prize if you can pick -- figure out, what is this case about?

6 A Well, it's a -- it's clearly about C, not just because one would  
7 just always guess C. That is the core issue in my understanding of this  
8 case.

9 Q Well, I'm going to tell you that in fact Mr. Leyendecker and I  
10 actually agree on something.

11 MR. BLALACK: Go ahead, show the next excerpt, please.

12 BY MR. BLALACK:

13 Q And I believe this is the questioning of Dr. Frantz two days  
14 ago.

15 A Right.

16 Q Okay. And this is what you heard, right?

17 A Yes, I was here for that.

18 Q Okay. What is Sound Physicians? And Dr. Frantz says it's a  
19 group, not unlike Team Health, Physician Service's Group owned by  
20 Optum, which is the company that's owned by United Healthcare. And  
21 then Mr. Leyendecker said, you said similar sized to all here in Nevada.  
22 It keeps going. I think they're in the top three, so I think the top three and  
23 the size in Nevada probably Team Health and Gratuity and Sound. And  
24 then look what he says here -- well, actually, okay. Let me get back to  
25 this. The core issue in this case, and you think you have an expertise in

1 what the rate of pay is?

2 So let's -- Mr. Deal, I think Mr. Leyendecker and I agree that the key  
3 issue in this case is the reasonable value of the Team Health plan's out-  
4 of-network emergency services.

5 MR. BLALACK: You need to bring that down.

6 BY MR. BLALACK:

7 Q Is there anything you've been presented with in this  
8 courtroom related to Sound Physicians that has any bearing whatsoever  
9 on how to measure reasonable value of an out-of-network emergency  
10 services?

11 A None whatsoever.

12 Q Does it matter in any way, shape, or form who owns Sound  
13 Physicians? Who doesn't own Sound Physicians, to determining what is  
14 the reasonable value for an out-of-network emergency service?

15 A No.

16 Q In your data, analyzing the data you reviewed, if there is an  
17 entity called Sound Physicians that provided out-of-network emergency  
18 services in this area, would the payments to those -- to that group be  
19 captured in the data you were reviewing?

20 A Yeah, it would be in Mr. Leathers' calculation of the 528.

21 MR. BLALACK: Thank you, Your Honor, we'll take a break.

22 THE COURT: All right. We'll take a recess for lunch. During  
23 the recess, don't talk to each other or anyone else on any subject  
24 connected with the trial. Don't read, watch, or listen to any report of, or  
25 commentary on the trial. Don't discuss it with anyone connected to it by

1 any medium of information. Don't do any research on your own relating  
2 to the case. Don't talk, text, Tweet, Google, or conduct any other type of  
3 book or computer resource, and do not do any social media with regard  
4 to any issue, party, witness or attorney involved in the case.

5 Do not form or express any opinion on any subject  
6 connected with the trial until the matter is submitted to you. We're  
7 halfway through the day. So see you at 12:35.

8 THE MARSHAL: All rise for the jury.

9 [Jury out at 11:51 a.m.]

10 THE COURT: And Mr. Deal, you may step down.

11 THE WITNESS: Oh, thank you.

12 THE COURT: Okay. The room is clear. If you have anything  
13 to put on the record, we'll do it at 12:35. Thank you.

14 MR. LEYENDECKER: Thank you, Your Honor.

15 MR. BLALACK: Thank you, Your Honor.

16 [Recess taken from 11:52 a.m. to 12:38 p.m.]

17 [Outside the presence of the jury]

18 THE COURT: Please remain seated. And are we ready to  
19 bring in the jury or do you have something for the record?

20 MR. LEYENDECKER: Just for the record.

21 THE COURT: Yes.

22 MR. LEYENDECKER: Your Honor, Plaintiffs would offer in  
23 Exhibit number 297 and 297-A, and I understand there's no objection to  
24 those.

25 MR. BLALACK: That's correct.

1 THE COURT: All right. As soon as they get in, I'll admit  
2 those.

3 THE MARSHAL: All rise for the jury.

4 [Jury in at 12:39 p.m.]

5 THE COURT: Thank you. Please be seated. And welcome  
6 back to your after lunch afternoon, and everybody told me lunch was  
7 fabulous. Go ahead, Mr. Blalack.

8 MR. BLALACK: Thank you, Your Honor.

9 BY MR. BLALACK:

10 Q Hi, Mr. Deal. I'm just going to wrap up here. When we left  
11 we were talking, I think, about Sound Physicians. And you were shown  
12 the numbers by Mr. Leyendecker regarding Sound Physicians and  
13 representations were made about what their charges were and how they  
14 compared. Do you remember that?

15 A I do, yes.

16 Q Have you seen any of the data related to any payments that  
17 were made by anybody to Sound Physicians for what their charges  
18 were? Have you looked at that?

19 A Yes, in the sense that they're in the main data --

20 Q Okay.

21 A -- that I have.

22 Q Okay. You mean, the large pool of data that you analyzed for  
23 purposes of your work?

24 A That's right. Yes.

25 Q As opposed to just discreetly focusing on one provider as

1 opposed to --

2 A I certainly didn't discreetly focus on one provider. Mr.  
3 Leyendecker, I think, had given me a data set or referenced a data set  
4 that was specific to that.

5 Q Okay. Now Mr. Leyendecker pointed to you to charges --  
6 made representations about what Sound Physicians' charges were, and  
7 then he also made representations about how those charges may relate  
8 to other -- to the Team Health Plaintiff. Do you know whether that's true  
9 or not?

10 A I don't.

11 Q Okay. Are either of these numbers, the average charge for  
12 the Team Health Plaintiffs or the represented, I guess, average charge for  
13 one code of Sound Physicians at all relevant to evaluating from an  
14 economic perspective the reasonable value of service?

15 A No. As I think I've said many times bill charges are not the  
16 right measure of reasonable value.

17 Q Would the allowed amount be the more relevant data point  
18 for purposes of analysis?

19 A Certainly, as a general matter. Again, within allowed  
20 amounts the market prices, the willing buyer, willing seller are the most  
21 relevant.

22 Q So, in other words, you wouldn't just rely on the allowed  
23 amounts and make that determination, you would have to measure it  
24 against something?

25 A Correct.

1 Q There would have to be a benchmark; is that right?

2 A Correct.

3 Q Team Health Plaintiffs that argued for one benchmark, which  
4 is full charges, right?

5 A Correct.

6 Q They would also argue for a second benchmark, which is the  
7 -- kind of the alternative, the out-of-network rates paid to providers other  
8 than Team Health?

9 A That would be my --

10 MR. LEYENDECKER: Leading, Your Honor.

11 MR. BLALACK: Okay. I'll withdraw, Your Honor.

12 THE COURT: The jury will disregard the last question.

13 MR. BLALACK: I'll withdraw that.

14 BY MR. BLALACK:

15 Q What is the name of the benchmark that you would use --  
16 what is the concept that you would use to compare those two to  
17 measure a reasonable value?

18 A You need to compare it to a reasonable value, which is  
19 measured based on market prices, willing buyer, willing seller, and  
20 transactions.

21 Q And are either of these two numbers -- charge numbers,  
22 willing buyers, willing sellers?

23 A No.

24 Q Those are unilateral numbers, correct?

25 A That's correct. They set unilateral.



1 Q There's two parties to the transaction?

2 A There's not two parties.

3 Q All right. And then in the out-of-network setting is the out-of-  
4 network a willing buyer, willing seller transaction?

5 A Not in the way that it needs for purposes of reasonable  
6 value. I mean, you're compelled to provide a service, compelled to  
7 provide a payment. Neither party can walk away, so it doesn't meet  
8 those criteria.

9 Q If you had to choose between two, the out-of-network  
10 benchmark or the charge benchmark, which would be more reliable?

11 A I don't love either one of them, but certainly the out-of-  
12 network would be closer.

13 Q Okay. Now I showed you my multiple choice question  
14 earlier. It occurred to me, one of my colleagues mentioned that I forgot  
15 one. That would be question E, which is all of the above. Do you believe  
16 question E would be a correct answer to that multiple choice question?

17 A No, C, which was the -- it's about the reasonable value of the  
18 services compared to the alloweds, that's clearly the economic issue  
19 that's at the center of this dispute.

20 Q Okay. And you were also shown a document that discussed  
21 premium increases for small -- I think it was called small employer or  
22 single employer plans. Do you remember that?

23 A Yes.

24 Q Okay. What's --

25 A Single employee plans, I think it was.

1 Q Single employee plans. What is a single employee plan?

2 A That's literally you've got a business like Bruce Deal,  
3 Incorporated, and it's just me. I would be the only employee of the  
4 business.

5 Q So is it sort of like individual insurance?

6 A Yeah, the category of individual insurance is typically called  
7 IFP, individual and family plans. So it's a variation of that. It's  
8 technically an employee plan, but it's a one employee plan.

9 Q And did I understand you say, in response to Mr.  
10 Leyendecker's questions, that those kind of plans are particularly subject  
11 to health premium increases tied to costs?

12 A All plans are subject to premium increases that are primarily  
13 driven by costs, but those plans, in particular, the single, the Affordable  
14 Care Act plans that are person by person or family by family, and single  
15 employees, have been an area that's been particularly sensitive over the  
16 last few years.

17 Q Is there a reason for that?

18 A There's been certainly -- well, in general, of course, it's the  
19 increase in healthcare costs. It's the prices and the utilization, meaning  
20 how many services are provided. And some of it has to do with the so-  
21 called risk pools, if you will, that are underneath it. Getting this area  
22 here, but there's been a lot of volatility and uncertainty in that area and,  
23 frankly, some higher costs.

24 Q Okay. Would any of the numbers that you were shown and  
25 that was shown to the jury that relate to a single employer or single

1 employee plan or for an individual insurance plan, for that matter, be in  
2 any way relevant to evaluate premium increases for a large group, self-  
3 funded health plan?

4 A No. In my experience, the premium setting is different for  
5 those two types of insurance. I haven't studied the premium setting of  
6 these particular plans, but my overall experience would be that it would  
7 be done separately.

8 Q So, for example, we looked at a number of employer groups  
9 or clients of UnitedHealthcare self-fund, their plans are in the county, Las  
10 Vegas Metropolitan Police Department, Las Vegas --

11 MR. LEYENDECKER: Leading, Your Honor.

12 MR. BLALACK: I'm running through just a list, Your Honor. I  
13 didn't ask the question.

14 THE COURT: I think it's foundational.

15 BY MR. BLALACK:

16 Q Caesars, Walmart. Are those small group plans or large  
17 employer plans?

18 A Those would typically be large employer plans. Midsize or  
19 larger, yes.

20 Q Is there anything about the documentation that Mr.  
21 Leyendecker provided that you found relevant to an analysis -- that  
22 would be relevant to an analysis of premium increases for larger plans?

23 A No is the answer. And, of course, premium increases for  
24 large plans wasn't the primary topic of my analysis to begin with.

25 Q Now I want to make sure I understood something you said --

1 or actually, before I move on from Sound Physicians --

2 MR. BLALACK: Could I bring up the Elmo, please?

3 THE COURT: And is this a good time for someone to move  
4 in 297 and 297-A.

5 MR. BLALACK: I thought it had been done --

6 MR. LEYENDECKER: Yes, Your Honor. The Plaintiffs move  
7 for admission of 297 and 297-A.

8 MR. BLALACK: Without objection.

9 THE COURT: 297 and 297-A will be admitted.

10 [Plaintiffs' Exhibits 297 and 297-A admitted into evidence]

11 MR. BLALACK: Okay.

12 BY MR. BLALACK:

13 Q Now, Mr. Deal, you remember Mr. Leyendecker showing you  
14 this summary of data that Plaintiffs have identified from a Sound  
15 Physicians' claim file? Do you see that?

16 A Yes.

17 Q Okay. So this is not the data itself, it's just a summary of the  
18 data?

19 A It looks to be -- I don't know if it's to specific claims or -- it's  
20 some kind of a summary, yes.

21 Q Okay. So am I correct here, sir, that what was represented  
22 on this spreadsheet was a summary, in terms of numbers, it includes in  
23 the second column the amount charged --

24 A Yeah, I think --

25 Q -- allegedly?

1           A     Excuse me. I think it ties to what's written on the piece of  
2 paper there.

3           Q     Did the summary include the amount allowed and the  
4 amount paid?

5           A     No.

6           Q     So that's been omitted from the jury, correct?

7           A     It's not present here, yes.

8           Q     And you see the right hand column it says par status?

9           A     I do.

10          Q     What does that -- what are the two references under par  
11 status?

12          A     So non-par means out-of-network, non-contracted.

13          Q     And what's the second one refer to?

14          A     The second one would be an actual contract between the two  
15 entities, a willing buyer, a willing seller situation. It's sometimes referred  
16 to as participating. That's what par stands for. It's a shorthand for  
17 participating. Think of it as in-network.

18          Q     So that first line would relate to a service provided by out-of-  
19 network providers?

20          A     That's correct.

21          Q     And the second one would relate to a service provided by a  
22 contracted participating provider?

23          A     That's correct.

24          Q     So the data file that Mr. Leyendecker had provided includes  
25 both out-of-network claims data and in-network claims data, according to

1 the summary?

2 A According to the summary, yes.

3 Q So if the jury wanted to know, not just what this provider,  
4 whoever it is, chose to charge, but also what was allowed by the payor,  
5 you would have to look in that data file to find that out, correct?

6 A That's correct.

7 Q And you could find it out both for what they were paid as a  
8 contracted provider and also what they were paid as an out-of-network  
9 provider, correct?

10 A Yes, that's correct.

11 Q Thank you, sir. All right. So in your testimony to the jury in  
12 response to Mr. Leyendecker's questions, you mentioned -- he asked you  
13 about looking at data regarding out-of-network rates. Do you remember  
14 that?

15 A Yes.

16 Q Okay. I want to make sure I understood what you said.  
17 There's the question of what you relied upon to form your opinion and  
18 the question of what you considered.

19 A Yes.

20 Q Do you understand that?

21 A I do, yeah.

22 Q Okay. Are there a difference between those two things?

23 A There certainly can be, yes.

24 Q Okay. So I guess my first question is did you rely upon out-  
25 of-network reimbursement rates for your primary opinion about what is

1 reasonable value for the disputed services?

2 A No, I've tried to be very clear about that. I've not relied on  
3 that out-of-network.

4 Q Did you have access to, and did you consider out-of-network  
5 claims data as part of formulating your opinion?

6 A Oh, sure. I had access to it, and I mentioned the claims  
7 matching, for example, where we matched the claims in dispute to the  
8 underlying data. So I certainly have out-of-network data and considered  
9 it for certain purposes, but I definitely did not rely on it for my opinion.

10 Q And you remember being asked whether you had studied  
11 United's out-of-network payments when you gave your deposition and  
12 being asked that question by Mr. Leyendecker?

13 A Yes, I think I recall that.

14 Q And I think what you said was that you had the data, that it's  
15 in the market data that we had from United, but you didn't think it was  
16 right for your analysis, but that you certainly considered it and studied it,  
17 and determined that it's not the appropriate basis for a willing buyer,  
18 willing seller analysis. Does that sound right?

19 MR. LEYENDECKER: We're leading, Your Honor.

20 THE COURT: So there's a leading objection. Sustained.

21 BY MR. BLALACK:

22 Q My question is does that sound right?

23 THE COURT: Well, the first part of the question was leading.

24 MR. BLALACK: Okay.

25 BY MR. BLALACK:

1 Q The description, sir -- I just read the description from your  
2 deposition. Did my description of your prior testimony sound  
3 consistently --

4 MR. LEYENDECKER: Your Honor, we're just bolstering at this  
5 point in time.

6 MR. BLALACK: No, I want to make sure the record is clear  
7 about what he did and did not do with respect to out-of-network data,  
8 Your Honor. That was the subject of cross-examination.

9 THE COURT: Then reask.

10 BY MR. BLALACK:

11 Q I just want to make sure the jury is clear, sir. When you did  
12 your analysis, did you have access to out-of-network claims data?

13 A I did.

14 Q Did you review and consider it?

15 A Yes, for certain purposes.

16 Q Did you believe it was relevant for your reasonable value  
17 opinions?

18 A No.

19 Q Did you rely upon it for that purpose?

20 A I did not rely upon it for my reasonable value opinion.

21 Q Would it be fair if someone said that you ignored the out-of-  
22 network data?

23 A No, I certainly didn't ignore it. Again, as I said, I used it for  
24 matching purposes and other purposes, but it wasn't -- I did not directly  
25 use it for purposes of my reasonable value opinion.



1 Q Sir, before I pass you back to Mr. Leyendecker for any follow-  
2 up questions, you, I think, concluded that the allowed amounts in this  
3 case represented about 164 percent of Medicare; is that right?

4 A That's correct.

5 Q And that the bill charges the Plaintiffs seek represent almost  
6 800 percent of Medicare?

7 A That's correct.

8 Q And based on your 20 some odd years of experience doing  
9 this, are you confident that that 164 percent of Medicare value represents  
10 the equal value?

11 A I am, yes. It's consistent with the market benchmarks.

12 MR. BLALACK: Thank you very much.

13 THE WITNESS: You're welcome.

14 THE COURT: Recross.

15 MR. LEYENDECKER: Just a few questions, Your Honor.

16 RECROSS-EXAMINATION

17 BY MR. LEYENDECKER:

18 Q On the Sound Physicians?

19 A Yes.

20 Q This outfit is owned by United?

21 A I'm sorry.

22 Q The outfit is owned by United?

23 A I don't know if that's true or not. I heard Dr. Frantz reference  
24 that. I don't know.

25 Q Do you have any reason to disagree with Dr. Frantz, who's

1 responsible for the activities of this [indiscernible]?

2 A I don't have any particular reason to agree or disagree with  
3 it. I don't know.

4 Q You just got asked a few questions about if the jury wanted  
5 to go through the claim files, they could figure out information about the  
6 Sound Physicians, where they're charging the 1761 in 2019, right?

7 A I think I said that data would be in the data.

8 Q And you know that also in that data it would identify how  
9 many times, how many claims the United Defendants, this group here,  
10 were making a 35 percent fee between this charge and what got allowed  
11 on iSight claims, right?

12 A If I follow your question, I think -- there is a field in the data  
13 that would say what this a Data iSight field. I think that was work that  
14 was done by some of your experts. So conceptually you could say, this  
15 is an out-of-network claim. This is from Sound Physicians. It was -- Data  
16 iSight used it, so if -- I'm not the expert on the particular fees, but to your  
17 representation in that particular case, then I think that's right. It would  
18 be based on the difference between bill charges and the allowed  
19 amounts.

20 Q Well, let's be clear. Exhibit 297 is the Defendants' claim file,  
21 not mine. Do you understand that?

22 A I understand that, yeah.

23 Q And so, we could look to the Defendants' claim, these  
24 Defendants, and find out how many times they earned a 35 percent fee  
25 on the difference between the charges they set at 1761 and whatever

1 gets allowed, right?

2 A That was -- what I was referencing is I'm -- I would have to go  
3 back and look. I don't recall whether literally there is a Data iSight  
4 adjudication field in that data. There is one in the claims in dispute that  
5 was added recently by Mr. Leathers. I just don't remember one way or  
6 another whether that's in the underlying data.

7 Q Well, wait a minute. Didn't you take this claim file on the  
8 Defendants' side and tag it with what's iSight claims and other things  
9 like that? Didn't you do that?

10 A I didn't personally do that, no.

11 Q Did somebody on your team do that, sir? Looking at the  
12 Defendants' claim file and put various tags, is this an iSight, is this et  
13 cetera, et cetera? Did you all do that or not?

14 A We did not do that, no. Somebody had done that prior to our  
15 involvement. I don't actually know who did it.

16 Q Okay. Before you got the Defendants' claim file of the Sound  
17 Physicians claims, somebody on the Defendants' side identified which of  
18 those -- put information in there that would indicate whether it was an  
19 iSight claim or not?

20 A I don't know who did it, but somebody did it.

21 Q Okay. By the way, just a smidge on this premium increase  
22 question. Did you or did you not study how much the Defendants'  
23 premiums, to the extent that they're fully insureds, how much their  
24 premiums grew between the beginning of the claim period and the end?  
25 Did you study that?

1 A No.

2 Q It wouldn't surprise you if it grew far more fast than our  
3 charges during that period; would it?

4 A I honestly don't have a good basis for knowing one way or  
5 another. The charges grew about five percent a year. I don't know  
6 whether the premiums grew or more less than five percent a year.

7 Q Would it surprise you if they grew faster than that?

8 A It wouldn't really surprise me either way.

9 MR. LEYENDECKER: Brynn, is the Elmo on? May I have the  
10 Elmo, please?

11 BY MR. LEYENDECKER:

12 Q Okay. What's this case about? I like the catch, E, all of the  
13 above, so I wrote it in there for them. So we can agree there's no  
14 question that the Defendants used various out-of-network programs to  
15 figure out how much they wanted to pay us in this case, right, sir?

16 A Various out-of-network programs were used to identify the  
17 allowed amounts.

18 Q We can agree that Sound Physicians were in the data file  
19 that's related to why you think the FAIR Health charges represent  
20 skyrocketing information, right, sir?

21 A Well, we have been talking about the Sound Health data in  
22 the Defendants data. They may well be in the FAIR Health data as well,  
23 but that wasn't directly what we were talking about. But no reason to  
24 think Sound Physicians isn't in various data places.

25 Q Right. I showed you an example of 2019 charges in Las

1 Vegas where it was 1761 for 285.

2 A That's if I were just looking at the demonstrative.

3 Q And so in this case, this jury has been hearing information  
4 about how out of control the egregious charges are in the Nevada  
5 market, and those charges include Sound Physicians; don't they, sir?

6 A Yes, I think that's right. They would include -- presumably,  
7 Sound Physicians has charges on their claims, yes.

8 Q Now there's no debate about whether the reasonable value  
9 of the services -- actually, I make -- the reasonable value of the disputed  
10 claims or the reasonable value of the ER services? Do you agree with  
11 that?

12 A I mean, I think those are essentially the same thing, but I  
13 don't disagree with that. Yeah, the services are what generates the  
14 claims.

15 Q Now are you going to tell the jury that there's absolutely no  
16 connection between whether are doctors are well paid or very poorly  
17 paid, and the potential impact on the quality of medical care?

18 MR. BLALACK: Objection to the foundation of the question,  
19 Your Honor. There's zero evidence connecting the compensation in this  
20 case to physician rates.

21 THE COURT: Objection sustained.

22 BY MR. LEYENDECKER:

23 Q As a public policy over trained experts, is it fair to say you  
24 understand that the quality of care can be impacted if the rates are too  
25 low that are paid to doctors?

1 MR. BLALACK: Objection. Calls for speculation.

2 THE COURT: Overruled.

3 THE WITNESS: I would say that's certainly not any type of a  
4 typical finding. It's not -- there's no evidence of that, that I've seen,  
5 certainly related to this case, so you can imagine the extreme case of  
6 paying zero for something. That could potentially have an impact, but as  
7 to the relationship between prices paid and quality, where that's been  
8 studied, it's been very ambiguous. There's not a direct relationship.

9 Q Sometimes there are studies that say there is a relationship,  
10 and you're saying sometimes there's a study that says there's not,  
11 correct?

12 A I would say -- fair enough. And across countries the same  
13 types of studies. So there's not a clear relationship on that.

14 Q Are you saying that the correlation between the impact on  
15 the quality of care only exists if insurance companies pay zero for the  
16 services?

17 A I'm saying you could imagine an extreme case where you  
18 paid zero for it, and then you wouldn't have people willing to provide  
19 any services. No one would go into the medical field. I was using that  
20 as a hypothetical extreme case. I think your question was about if  
21 doctors get paid, say, 164 percent of Medicare, versus 200, versus 500,  
22 those kind of studies there is no clear relationship that I'm aware of.

23 Q Well, what about if the rates are just low enough that it  
24 caused good board certified ER doctors to go out of state and work  
25 somewhere else where the wages are better?

1 MR. BLALACK: Calls for speculation.

2 THE COURT: Overruled.

3 BY MR. LEYENDECKER:

4 Q As an expert, what's your point of view? Does that happen?  
5 Have you ever seen that?

6 A That -- I'm not sure if I follow your question.

7 Q That low rates might cause, for example, an ER doctor or  
8 some other kind of doctor to leave one state and go to another state  
9 where there's different reimbursement situations?

10 A I haven't actually ever seen any study directly on that  
11 question. I don't know.

12 Q Okay. I just want to make sure I get your point of view.  
13 You're telling the jury you don't think that there is any circumstance,  
14 other than the zero dollar pay -- that the amount is paid for emergency  
15 room services, unless it's zero, that's the only situation, in your mind, it  
16 could impact the quality of care?

17 A That wasn't what I said. I gave you an extreme case. Let me  
18 put it this way. In the range we're talking about here, the 164 percent of  
19 Medicare, that's very much market prices. I've not seen any evidence  
20 that any payment in that level of relationship to Medicare, that there's  
21 any evidence that that would impact quality of care.

22 Q Well, how about if the folks that are doing this over here  
23 decide maybe I should go to the state because they treat all my  
24 competitors a whole lot better than me? Does that impact the quality of  
25 care from our board certified ER doctors here in Nevada?

1           A     You're saying if they're driven by money, and they want to  
2 go to another state and make more money? I suppose people could do  
3 that, but there's no evidence that quality of care in the range that we're  
4 talking about here differs.

5           Q     Okay. So Dr. Deal said no -- excuse me, Mr. Deal, I apologize.  
6 Mr. Deal says no, but yes to three of four. Is that a fair statement?

7           A     I don't agree that the case is about three of four of those  
8 things. I think they're -- you ask me a different question. You said, for  
9 instance, are there different programs that set the out-of-network rates?  
10 I agree with that as a concept. That's not an issue in this case. It's not an  
11 issue that's relevant to the underlying question. There's one of these  
12 that's actually the relevant question, it's number C. That's what the jury  
13 needs to decide.

14               MR. LEYENDECKER: Thank you for your time.

15               THE WITNESS: You're welcome.

16               THE COURT: And redirect.

17               MR. BLALACK: None, Your Honor. Thank you.

18               THE COURT: Does the jury have any questions for Mr. Deal?  
19 If so, give me a high sign. I see a few hands going up. Why don't you  
20 guys make your way up here.

21               [Sidebar at 1:03 p.m., ending at 1:06: p.m., not transcribed]

22               THE COURT: Okay. The lawyers, thank you for your  
23 questions, and all of them can be asked. Now, I get to ask the questions.

24               THE WITNESS: Okay.

25               THE COURT: Okay. I haven't read them all yet, so if I



1 stumble, bear with me.

2 First one. Regarding the overall physician payment inflation  
3 rate over five years, 2015 to 2020, of 6.6 percent, would you say this is a  
4 direct reflection of insurance companies/payors, adjudication programs,  
5 and policies in place during this time frame?

6 THE WITNESS: I'd say it's mostly driven by the contractual  
7 relationships. So most physician transactions happen under the in-  
8 network. So it is the adjudication, but it's largely the adjudication of  
9 contracted claims, so agreements between parties. There  
10 certainly -- there is an element of out-of-network in there as well, but it's  
11 mostly driven by the contractual relationships.

12 THE COURT: Next question. Have you been retained  
13 previously by any of the Defendants or attorneys for the Defendants to  
14 provide expert services for other matters? If so, how many times and in  
15 what type of case or dispute?

16 THE WITNESS: Yeah, I've never been retained by the  
17 attorneys in this matter on either side of that. I have a recollection I  
18 worked on a United matter a number of years ago. It wasn't a  
19 reasonable value case, and I honestly don't remember exactly what the  
20 topic was, and it didn't go to trial. So I have been retained by some  
21 United entity; I don't honestly remember which one.

22 THE COURT: Next. The 2019 Brooking study compared bill  
23 charges with "objectively reasonable prices". Can you elaborate on your  
24 understanding of how the study defined/used the concept of "objectively  
25 reasonable price"?

1 THE WITNESS: It's a great question. These are all good  
2 questions. It reminds me of being a teaching fellow at -- back in the day.  
3 I don't remember all the details. My recollection is that it was based on  
4 an analysis of these commercial contracted rates in terms of trying to  
5 analyze, again, market prices. So willing buyer, willing seller contracted  
6 rates, which are typically in the 125 to 175 percent of Medicare range.

7 THE COURT: Next question. How does your proposed  
8 evaluation approach relate to "objectively reasonable prices" referenced  
9 in the 2019 Brookings study?

10 THE WITNESS: It looks like two of you had a very similar  
11 idea. I think it's the -- it's the same answer. That, again, I don't  
12 remember all the details. I'd have to go back and look at it. But  
13 that -- typically, when researchers are looking at "objective standards",  
14 they're looking at market data, looking at market prices, willing buyer,  
15 willing seller, typically commercial and typically contracted commercial.

16 THE COURT: Last. When referring to "geo 890", does that  
17 include the zip codes associated with Las Vegas that start with 891 or  
18 Henderson 891?

19 THE WITNESS: It's a great question. The answer is no.

20 THE COURT: Well, there's a little more.

21 THE WITNESS: Oh, I'm sorry. I'm sorry.

22 THE COURT: The reason I asked is because when I see mail,  
23 890 is in North Las Vegas and cities outside of Las Vegas.

24 THE WITNESS: Yeah. So I think I -- the last part sounds like  
25 a little bit of local knowledge maybe beyond my understanding. But

1 certainly 890 is literally the first three digits. So if there's a zip code, say  
2 Henderson where my in-laws used to live, it's 891, that would not be  
3 included in that particular geo zip. So 890 is specific to all of the last two  
4 digits that start with an 890.

5 THE COURT: Okay. Follow-up questions?

6 MR. BLALACK: Just one on that last question.

7 FURTHER REDIRECT EXAMINATION

8 BY MR. BLALACK:

9 Q Mr. Deal, the descriptions by geo zip. You know, so it says  
10 890 and then it has a description of the area associated. Do you know  
11 what I'm talking about?

12 A Yes, I do.

13 Q Did you create those, or did they come from FAIR Health?

14 A Oh, that's a FAIR Health designation. That's not something  
15 that I characterized in this.

16 Q So if there is a label that FAIR Health applies to a geozip, like  
17 an 890 or 891, that's not coming from you that's coming from them?

18 A That's correct.

19 THE COURT: Follow-up questions?

20 FURTHER RECROSS-EXAMINATION

21 BY MR. LEYENDECKER:

22 Q Mr. Deal, as between you and Mr. Mizenko from FAIR Health,  
23 who do you think knows better which zip codes in and around Las Vegas  
24 are covered by geozip 890?

25 A I'm not sure that either one of us would have any different

1 views. I think it's pretty clear. I'm not aware that there's anything other  
2 than 890 zip codes in there. So if there is, that would be Mr. Mizenko.  
3 But my -- I certainly have used geozips many times.

4 Q Okay. Next question. Do you understand Mr. Blalack works  
5 for the O'Melveny law firm?

6 A I do. Yes.

7 Q Have you worked for the O'Melveny firm before?

8 A I probably have worked for the firm. I haven't worked for  
9 these attorneys in this case, but I probably have worked for O'Melveny  
10 before.

11 Q Do you have on the top of your mind how many times you've  
12 done that?

13 A Not very many. I can't remember any particular cases, but  
14 it's certainly a firm I'm familiar with.

15 MR. LEYENDECKER: That's all I have, Your Honor.

16 THE COURT: Very good.

17 Last bite at the apple?

18 MR. BLALACK: Nothing more from me, Your Honor.

19 THE COURT: May we excuse the witness?

20 MR. BLALACK: Yes, Your Honor,

21 MR. LEYENDECKER: Yes, Your Honor.

22 THE COURT: All right. Mr. Deal, you may step down, and  
23 you're excused.

24 THE WITNESS: Thank you. I appreciate your time.

25 THE COURT: Defendant, please call your next witness.

1 MR. BLALACK: Your Honor, the Defendants call Alexander  
2 Mizenko.

3 THE COURT: And Plaintiffs' counsel, can these be taken  
4 down? Plaintiffs' counsel, can these be taken down? Mr. Z, can these be  
5 taken down?

6 MR. ZAVITSANOS: I'm sorry, Your Honor. I didn't  
7 know -- I'm sorry. I didn't [indiscernible]. My apologies.

8 THE COURT: No problem.

9 THE CLERK: Raise your right hand.

10 ALEXANDER MIZENKO, DEFENDANTS' WITNESS, SWORN

11 THE CLERK: Please have a seat, and state and spell your  
12 name for the record.

13 THE WITNESS: First name is Alexander, A-L-E-X-A-N-D-E-R.  
14 Last name is M-I-Z-E-N-K-O.

15 THE COURT: Thank you.

16 And go ahead, please, Mr. Blalack.

17 MR. BLALACK: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. BLALACK:

20 Q Good afternoon, Mr. Mizenko.

21 A Good afternoon.

22 Q So one moment if I could? Just to get a little bit of  
23 organization here. All right. Thank you for being here. And if you could  
24 just state where you live, sir?

25 A I live in Beachwood, New Jersey.

1 Q And where are you employed?

2 A I'm employed at FAIR Health, Incorporated.

3 Q And what is FAIR Health?

4 A It's a national independent not-for-profit that seeks to bring  
5 transparency to healthcare pricing.

6 Q And where is FAIR Health located?

7 A In New York, New York.

8 Q And how long have you been with FAIR Health?

9 A Six and a half years.

10 Q Did you attend college, sir?

11 A Yes, I did.

12 Q Did you receive a degree?

13 A Yes. I have a bachelor's in science in public health from  
14 George Washington University, and a master's in public health from  
15 Columbia University.

16 Q Sir, did you go directly into the workforce after receiving  
17 your master's degree?

18 A Yes, I did.

19 Q And was that FAIR Health?

20 A Yes, it was.

21 Q And you've been there six and a half years, you said?

22 A Correct.

23 Q What is your position at FAIR Health?

24 A I'm the manager of product and data analytics.

25 Q And what are your responsibilities in that role?

1           A     I lead the quality assurance and review of our data products  
2 before they're delivered to customers.

3           Q     What does that mean you review quality assurance of your  
4 data products?

5           A     So looking at our data products such as our FH Medical,  
6 which is being used in this case. Looking at changes over time, looking  
7 at what goes into the product, volumes of procedures, the benchmark  
8 amounts, et cetera. And putting those through rigorous statistical and  
9 data checks.

10          Q     You referenced your clients. Who do you mean when you  
11 refer to a FAIR Health client?

12          A     So there's a number of stakeholders in the industry that use  
13 FAIR Health from the payor side, providers, government agencies,  
14 research institutions. For example, our benchmarks are referred to in a  
15 number of states by statute or regulation.

16          Q     And when you refer to providers, do you mean healthcare  
17 providers?

18          A     Yes, I do.

19          Q     And you said payors; is that one of the things you said?

20          A     Yes, it was.

21          Q     Would a commercial health insurer be a payor in your  
22 language?

23          A     Yes, it would.

24          Q     So your clients would include both healthcare providers and  
25 health insurers?

1 A Yes, it would.

2 Q And you mentioned your FH Medical product; did I  
3 understand that?

4 A I did.

5 Q What is FH Medical product?

6 A Those contain percentiles for dollar amounts charged for CPT  
7 codes, which are services in medical that's maintained by the American  
8 Medical Association.

9 Q Now, in your role at FAIR Health, do you oversee the design  
10 or creation of medical analytics like the products you just referenced and  
11 other products at FAIR Health?

12 A So my role specifically is to do review quality assurance of  
13 those products right before they go out to customers, and also answer  
14 any questions that may come in on the products.

15 Q Have you testified in court before on behalf of FAIR Health in  
16 the past?

17 A I have.

18 Q And when you testified previously, had your testimony  
19 involved the FAIR Health benchmark data and databases?

20 A It has.

21 Q Sir, have you ever published research or studies in your  
22 field?

23 A Yes, I have.

24 Q Can you describe them?

25 A So once study that I published was using the American



1 Automobile Association or Triple A's Foundation for Traffic Safety's data  
2 on people's attitudes towards safe driving, driving laws, et cetera. My  
3 research specifically focused on older drivers to help get a better  
4 understanding of older drivers' attitudes and behaviors, as there is more  
5 older drivers on the road, and it was part of a larger study on older  
6 drivers.

7 Q And I should have asked this earlier. In what discipline or  
8 field have you published and written?

9 A Sure. So it's been in -- in healthcare, specifically focusing on  
10 statistics and data.

11 Q And can you -- are there other studies besides the one you  
12 just referenced regarding traffic --

13 A Sure. So I --

14 Q -- safety?

15 A Yeah. I also did a study on the use of opioids and  
16 involvement in fatal motor vehicle crashes.

17 Q And what journal was that published in?

18 A That study was not published in a journal, but was presented  
19 before the Society for Epidemiological Research, as well as the American  
20 Public Health Association.

21 Q And have you ever published in the journal, Citizen Science?

22 A Yes, I have.

23 Q What sort of research?

24 A My research there focused on -- first, was a -- had a -- not a  
25 data study, but a summary of what could be the result of climate change

1 in New York City. And then a data study looking at the effect of distance  
2 from the coast on ozone concentrations throughout the State of New  
3 Jersey.

4 Q Now, sir, do you understand that you're appearing here  
5 today as a representative of FAIR Health to give testimony as what's  
6 called a specially employed expert?

7 A I do.

8 Q And did you issue an expert report in this case?

9 A I did.

10 Q Did you prepare a report stating affirmative opinions or in  
11 response to the opinions of another expert in the case?

12 A I don't believe that I gave opinions, but it just basically stated  
13 what the data in the FAIR Health database was showing.

14 Q And was that in response to an expert named Scott Phillips?

15 A That was my understanding, yes.

16 Q He was an expert for the Plaintiffs?

17 A That's my understanding.

18 Q Now, do you recall when you were engaged by my firm to  
19 offer -- actually by the client, by United Healthcare, to offer expert  
20 testimony in this case?

21 A I believe it was sometime in August.

22 Q And if you could, please describe generally the scope of your  
23 engagement in this case. So just high level, what you understand you  
24 were engaged to do.

25 A Create histograms or charts showing our data, to review the

1 data, to prepare that expert report, and then to appear at trial and in a  
2 deposition in preparation for this trial.

3 Q For purposes of explaining your analysis?

4 A Correct.

5 Q Okay. Now, what I'd like to do is starting after you were  
6 engaged in August, in response to Mr. Phillips' report, generally describe  
7 at a high level the steps you took to prepare your analysis and then your  
8 report.

9 A So reviewed the benchmark dollar amounts. We were  
10 provided the charges from the TeamHealth providers to compare to, and  
11 did comparisons to the median, which is the 50th percentile, the mean or  
12 the average, and then the 80th percentile, and then prepare a written  
13 report summarizing both what FAIR Health is and the findings of the data  
14 analysis.

15 Q And do you recall, sir, that the charges and codes that you  
16 received and reviewed for purposes of your report came from the expert  
17 report of Mr. Phillips?

18 A Yes, that's my understanding.

19 MR. BLALACK: Your Honor, at this time, I'd like to move Mr.  
20 Mizenko to be qualified as a specially employed expert in the field of  
21 statistics and creation and interpretation of fiscal analysis using data in  
22 the FAIR Health database as well as the role of FAIR Health in the  
23 healthcare industry.

24 MR. MCMANIS: No objection, Your Honor.

25 THE COURT: The witness may testify.

1 BY MR. BLALACK:

2 Q Mr. Mizenko, would you please explain to the jury again,  
3 you've mentioned that FAIR Health is a nonprofit organization. Just your  
4 own, what do you consider FAIR Health's mission or missions to be?

5 A Our key mission is to bring transparency to healthcare  
6 pricing. We do that in a threefold way. One is maintaining a -- an  
7 independent database of healthcare claims. Second is maintaining a  
8 website for consumers to use to better understand healthcare and  
9 healthcare costs. And then third, to maintain a research platform for  
10 researchers looking to understand both healthcare costs, utilization,  
11 sometimes outcomes.

12 Q What kind of data does FAIR Health typically make available  
13 in the market?

14 A So we maintain the claims database. What we're putting out  
15 to market are generally percentile values for charges. So kind of like a  
16 height and weight chart, you have a 5th through 95th percentile, and it  
17 shows the range of charges that are seen in the marketplace.

18 Q And are those datasets ever customized for purposes of use  
19 by your client?

20 A Yes. For example, a provider looking to set up a practice  
21 here in Nevada might only be interested in the charges in the State of  
22 Nevada and may only be interested in certain codes that they do.  
23 Obviously, a heart surgeon doesn't care about kidney surgery codes, for  
24 example.

25 Q Okay. But you also, in addition to these custom approaches,

1 you have your standard like the one you mentioned earlier?

2 A Correct. The FH Medical, which contains all CPT codes in all  
3 geographies in the United States at a range of percentiles.

4 Q Okay. Beyond providing these products, data products, does  
5 FAIR Health offer any other services to clients or [indiscernible]?

6 A Yes. So we also create custom analytics for clients. Like I  
7 said, they might be looking at charges. They might want to know about  
8 outcomes, utilization. For example, with the advent of telehealth, people  
9 are looking to understand how telehealth is being used. We create a  
10 monthly tracker of telehealth utilization, what codes are people using,  
11 where are they using it, why are they using it?

12 Q Now, how do clients access your standard products? If they  
13 want to access the data in your standard products, how do they get  
14 access to it?

15 A They can get it in the format of a few different files. We have  
16 a web-based portal where they would get the dollar amounts. And we  
17 offer various electronic means for them to get it.

18 Q Do they -- can they get it for free or do they have to pay  
19 something for it?

20 A They would have to pay for it.

21 Q Yeah. And is that through some sort of licensing fee or?

22 A Correct.

23 Q Okay. Do you know whether entities affiliated with  
24 UnitedHealth Group or United Healthcare licensed the FAIR Health data?

25 A That's my understanding.

1 Q Okay. And do you know whether entities affiliated with the  
2 TeamHealth organization licensed the FAIR Health data?

3 A That's my understanding, as well.

4 Q So it would be fair to say in some respects that the parties in  
5 this case are clients of FAIR Health?

6 A That would be fair to say.

7 Q Now, sir, have you ever heard the term usual, customary, or  
8 reasonable rates?

9 A Yes.

10 Q Have you ever heard the acronym UCR?

11 A Yes.

12 Q Does FAIR Health define for the healthcare marketplace the  
13 usual, customary, or reasonable rates for healthcare services?

14 A Absolutely not. And that's part of our mission to maintain  
15 neutrality, independence, is that we publish these amounts, but we don't  
16 tell people how to use them, how to interpret them, what they mean.

17 Q So I take it FAIR Health does not determine the so-called UCR  
18 for any given service?

19 A We do not.

20 Q Does FAIR Health act as an industry setting standard for what  
21 is the reasonable value for an out-of-network ER service?

22 A No, we do not. People may choose to use FAIR Health data.  
23 They may choose to use other forms of data. They may choose to use  
24 combinations of different types of data.

25 Q Does FAIR Health even state a publicization, much less

1 enforce, a public position on what the reasonable value of any out-of-  
2 network service should be?

3 A We do not.

4 Q Now, I want to talk about the FAIR Health data that you've  
5 referenced there. Can you describe at a high level the kind of data stored  
6 in the FAIR Health databases, and I'm using that plural right now.

7 A Okay. I mean, the main data point of interest here is the  
8 charge, which is the billed charge, the sticker price for the healthcare  
9 procedure before there's been any negotiation or discounts applied.

10 Q Okay. And where does that data that you just referred to in  
11 the FAIR Health database come from? How do you get it?

12 A We have over 60 health insurance companies and third-party  
13 administrators that give us their claims data.

14 Q So does FAIR Health conduct any sort of a analytical -- strike  
15 that. Does FAIR Health conduct any other statistical or other analysis of  
16 the data after it comes in from those health insurers and administrators?

17 A Yeah. So when we take on a new contributor, we do an audit  
18 to make sure that the amount of data we're getting from them matches  
19 their membership, comparing them to other contributors to make sure  
20 the types of services we're seeing, the charges we're seeing, make  
21 sense. And then, on each incoming data submission, we do an A-to-Z  
22 validation process starting from A, the amounts, to Z, the ZIP codes,  
23 making sure that we're not getting things in like \$2 heart surgeries,  
24 \$100,000 band aids, that we're not getting ZIP codes that are occurring in  
25 a P.O. Box where you obviously can't get a doctor's visit. And that's, you

1 know, developed by people who are experts in the field of statistics,  
2 computer science, and all automated to look at large amounts of data at  
3 one time.

4 Q Okay. And the goal of that is to make sure that the data that  
5 you're capturing is representative of the observations in the market?

6 MR. MCMANIS: Your Honor, I object to the leading.

7 MR. BLALACK: I'll rephrase.

8 BY MR. BLALACK:

9 Q What is the goal of that exercise?

10 A The goal is to make sure that we have correct, valid data  
11 coming to the database.

12 Q Now, you understand, sir, that the Plaintiffs' expert in this  
13 case is relying only on the FAIR Health charges -- billed charges  
14 database?

15 A That's my understanding.

16 Q Have you seen anything suggesting that the Plaintiffs'  
17 experts are relying upon FAIR Health's database of amounts allowed for  
18 payment?

19 A That's not -- I don't believe so.

20 Q Okay. And you have two data sources. You have a FAIR  
21 Health charges benchmark and a FAIR Health allowed amount  
22 benchmark?

23 A Yes. And we have other things for things like dental  
24 anesthesia. But for medical, we have billed medical and allowed  
25 medical.



1 Q So between the FAIR Health charges benchmark and the  
2 FAIR Health allowed payments benchmark, the one that Plaintiffs are  
3 relying on that you've responded to is just the charge benchmark?

4 A That's correct.

5 Q Okay. Now, would you please describe the methodologies  
6 that FAIR Health uses to develop these benchmarks, the actual  
7 benchmarks?

8 A So we take each of the -- one of those CPT codes that I  
9 mentioned, which are maintained by the American Medical  
10 Association -- so say, a ten-minute office visit has a code -- and organize  
11 it by what we call geozip, which is -- roughly aligns with the first three  
12 digits of a ZIP code. In some places, they're combined. And then, we  
13 organize all data for that CPT code in geozip order from highest to  
14 lowest, and then create percentiles, kind of like the height and weight  
15 chart that I mentioned.

16 Q Now, in your report, you described a methodology that  
17 involves using an actual data analysis and then a derived data analysis.  
18 Do you remember that?

19 A Yes, I do.

20 Q Can you describe to the jury what the difference between  
21 those two is?

22 A So the actual methodology is what I described here. You just  
23 take the data for the one code, so say, the ten-minute office visit, in that  
24 geography, take it highest to lowest, and create percentiles.

25 For codes that don't have a lot of volume, so say, a heart surgery

1 that really only happens a few times a year, we group codes that are  
2 similar in clinical nature together and we have a system that values -- a  
3 relative value system that says, you know, a heart transplant is worth  
4 more than a minor heart procedure and it's based on the actual charges  
5 for those. So it's not a judgment call. It's just a data-driven system that  
6 values one thing compared to another. We take the charge, divide it by  
7 the codes' relative value, and create what's called a conversion factor for  
8 that group of codes. So then we have a conversion factors for all cardiac  
9 surgeries, and we can take that, multiply it by the relative value for each  
10 code in that group, and create a dollar amount from there.

11 And those conversion factors would also be created by  
12 percentile. So you'd have an 80th percentile conversion factor, a 50th  
13 percentile conversion factor, and so forth.

14 Q Okay. So if I understand, the principal difference between  
15 the actual methodology and the derived methodology is you would use  
16 the actual methodology in any instance where you had enough data?

17 A Yes. If we had nine or more frequency.

18 Q And only in a circumstance where your data was sparse,  
19 below your threshold, would you engage in the derivative exercise.

20 A That's correct.

21 Q In the work you did for the purpose of your opinions in this  
22 case, did you use the actual or derived methodology?

23 A The actuals methodology.

24 Q So what does that say about the volume of data you had in  
25 the geozips you were using?

1           A     It says that they have -- they're done frequently enough, at  
2     least nine or more times, to create benchmarks for them.

3           Q     So just, again, before we move on, I want to make sure the  
4     jury has clarity on this. In the billed charges database that you're  
5     describing, is that defined by what the provider chooses to bill on the  
6     claim form or by the payment amount that's allowed?

7           A     It's what the providers charges. So equivalent to the sticker  
8     price on a car, what you actually see before there's any negotiation that  
9     occurs.

10          Q     Okay. All right. All right, sir. We discussed earlier that FAIR  
11     Health was asked to prepare certain data analytics in this case, correct?

12          A     That's correct.

13          Q     Okay. I'd like you to -- sir, you should have a binder of  
14     exhibits. And I'm going to direct you to Defense Exhibit 5424.

15          A     Yeah.

16          Q     And you should see a stack of documents. And I'm going to  
17     ask you to review them and tell me if you've ever seen them before.

18          A     So obviously, without scrutinizing each of the hundred or so,  
19     these are histograms prepared by FAIR Health in conjunction with this  
20     case.

21          Q     So are these the actual histograms that you prepared as part  
22     of your data analysis in this case?

23          A     Correct.

24          Q     And did you have a personal role in creating these  
25     histograms that are collected in Defense Exhibit 5425?

1           A     Either myself or somebody on my team, but this is  
2 something that I reviewed in preparation of the expert report.

3           MR. BLALACK: Your Honor, at this time, the Defendants  
4 move into evidence Defense Exhibit 5424.

5           MR. MCMANIS: Your Honor, we object on hearsay grounds.  
6 We have no problem if he wants to use it as demonstratives, but this is  
7 part of his expert report. It's not admissible evidence.

8           MR. BLALACK: Your Honor, the report is not being offered.  
9 This is just the output data analysis.

10          MR. MCMANIS: May we approach?

11          THE COURT: You may.

12          [Sidebar at 1:33 p.m., ending at 1:34 p.m., not transcribed]

13          THE COURT: Okay. Some directions to the lawyers. Thank  
14 you.

15 BY MR. BLALACK:

16          Q     Okay. Now I want to direct you to a couple of this  
17 histograms, sir.

18          A     Yeah.

19          Q     I want to ask you this. These histogram, do you generate --  
20 and by you, I mean Fair Health. Do you generate histograms like this in  
21 the ordinary course of Fair Health's business?

22          A     Yes.

23          Q     And are the elements on this histogram standard elements?  
24 I'm talking about the ones [indiscernible] 5424, are they standard  
25 elements that Fair Health includes on all of its histograms?

1 A Yes.

2 Q Are these histograms in front -- the ones that are in front of  
3 you, that Fair Health created using certain data provided specifically for  
4 this case, as well as Fair Health's proprietary data?

5 A Yes.

6 Q And to your knowledge -- best of your knowledge, is the  
7 information reflected in these histograms truthful and accurate?

8 A Yes.

9 Q They have your familiarity in forming these analysis for Fair  
10 Health?

11 A Yes.

12 Q And these were attached exhibits to your expert report?

13 A I believe so, yes.

14 Q Okay. I want to show the jury one of these. We're going to  
15 go through a number of them, but I want to show the jury several, and  
16 then just have you describe them and walk them through it. Let's go to  
17 the one -- look at the bottom, and you'll see Exhibit Number 5240-24.  
18 And then you'll see a page number that trails it?

19 A Uh-huh.

20 Q So let's go to page 7.

21 MR. BLALACK: And I'll ask Shane to bring up page 7.

22 MR. MCMANIS: Lee, I think you're on --

23 UNIDENTIFIED SPEAKER: The Elmo.

24 MR. MCMANIS: I think you're on the Elmo.

25 MR. BLALACK: Oh, my apologies. Thank you.

1 BY MR. BLALACK:

2 Q Mr. Mizenko, can you see the page 7 of Defense Exhibit  
3 5424?

4 A Yes, I can.

5 Q And do you recognize this document, sir?

6 A Yes. This is a Fair Health histogram.

7 Q And is this one of the histograms that you prepared for the  
8 purposes of your expert report?

9 A Correct.

10 Q All right. We're going to go through the specifics of this in a  
11 minute. But I want to explain to the jury a high level -- what a histogram  
12 is and shows. Can you just -- what is a histogram for purposes of  
13 statistics? What do you with it?

14 A It's a visual representation of data.

15 Q And so if you would, sir, we're going to walk through each of  
16 these elements, to make sure the jury understands it. Let's go first, the  
17 upper right hand side.

18 A Okay.

19 Q I'm going to approach you, so we can -- my eyesight is sadly  
20 going. And if you look in the upper right hand side, there's a box, right?

21 A Yeah.

22 Q Could you describe the information, the values described in  
23 that box?

24 A So the first number is the procedure code, which is the CPT  
25 code established by the American Medical Association. And a

1 description of what that code means. So in this case, critical care for an  
2 injured patient. The initial 30 to 74 minutes.

3 Q I'm going to stop you right there. Where are you getting that  
4 description from?

5 A That description comes from the American Medical  
6 Association.

7 Q Got it. All right. What's the next code?

8 A The next is the Geo ZIP, which represents the first three  
9 digits of the ZIP Code, which is 890.

10 Q Okay. And how are Geo ZIP's that are used by Fair Health  
11 created?

12 A We just -- we basically take the first three digits. But in some  
13 areas there's low population or it just make sense to combine two --  
14 collapse two into one.

15 Q Okay. And when does Fair Health decide to use just one  
16 geozip or multiple geozips together?

17 A Could you rephrase that?

18 Q Sure. When are there circumstances where Fair Health  
19 would decide to use more than one geozip together as opposed to just a  
20 single geozip?

21 A So more than one first three digits is what I think you're  
22 asking. And that would be -- you know, an example would be if there's  
23 not a lot of population in one area.

24 Q Yes. Okay. And then there's a listing that says geozip  
25 description, do you see that?

1 A Yeah.

2 Q Okay. And in this area it says NV-Las Vegas and area. Do  
3 you see that?

4 A I do.

5 Q How are those geographic descriptions determined?

6 A I believe they were created by Fair Health before I started  
7 there. But you know, based on a logical description of what localities are  
8 in that area. And obviously Las Vegas is the largest locality in Geo ZIP  
9 890.

10 Q These descriptions are standardized to the numbers? Like if  
11 you -- you don't ever change the description of what 890 is versus 891 --

12 MR. MCMANIS: Your Honor, it's leading.

13 THE COURT: It's leading. Just rephrase.

14 BY MR. BLALACK:

15 Q Do you -- what is -- I'm trying to determine sir, if every day  
16 you come up with a new description for 890.

17 A No, we do not.

18 Q So two years ago would the description for 890 be the same?

19 A Correct.

20 Q And do you change the descriptions for the geozips  
21 frequently?

22 A I don't -- they've never been changed in the six and half years  
23 I've been at Fair Health.

24 Q Okay, fair enough. What's that last line refer to?

25 A That's the product, which in this case is F.H. Medical. And



1 then the date that it was released, which was May 2017.

2 Q How often does Fair Health release product?

3 A Once every six months.

4 Q So for every year there would be two releases?

5 A That's correct.

6 Q Okay. All right. Now let's go down to the lower left hand  
7 corner, you'll see a box.

8 A Okay.

9 Q And on the left hand side there's a column that starts with a  
10 header statistics. And on the right a column that stars with value. Do  
11 you see that?

12 A Yes.

13 Q Describe what that first row refers to.

14 A So the first is the number of total occurrences in the one year  
15 period used in the May 2017 release for Code 99291 in geozip 890. And  
16 that's 8,096 occurrences.

17 Q Okay. And then what's the next row?

18 A The next row is the mean or average charge, which is  
19 \$943.66.

20 Q And then what's the next?

21 A The median charge, or the middle of the distribution. So 50  
22 percent is below that point, and 50 percent is above that point. And  
23 that's \$766.

24 Q And what's the 80th percentile refer to?

25 A The 80th percentile is the point in the data distribution at

1 which 80 percent is at or below, 20 percent is at or above. And that is  
2 \$1,601.

3 Q Okay. And then the last line is what?

4 A The last is the provider charge as provided by you. Which is  
5 \$1,688.25.

6 Q Okay. Now when you do a histogram and graph a provider's  
7 charge, in this case, this is referring to a Team Health claimant charge?

8 A Correct.

9 Q Have you -- but when you do this exercise of doing a  
10 histogram, are there other providers where you benchmark the data  
11 against a different kind of provider? Different than TeamHealth?

12 A So it would just be one provider charge that would be listed.  
13 That red diamond would only represent one provider at a time.

14 Q Okay. And that's not unusual -- is it unusual for you to do a  
15 histogram like this, where you're graphing the Fair Health data against a  
16 provider's charge?

17 A No.

18 Q Now these diamonds that you refer to have colors on them.

19 A Yes.

20 Q And then if you'd look on the graph, you'll see colors,  
21 correct?

22 A Correct.

23 Q So for the jury's benefit what is being signified by the  
24 colored diamonds on the actual horizontal line graph?

25 A So the orange diamond is the median. Once again the

1 middle of the distribution. It's sometimes referred to as the 50th  
2 percentile. The yellow diamond is the average or mean charge. The  
3 green diamond is the 80th percentile charge. And then the red is the  
4 provider's charge.

5 Q Okay. So again, looking at the median, if I understood what  
6 you said, half of the charges in the data for this release are above \$766  
7 and half are below?

8 A Correct.

9 Q And then again for the mean, is that another way of saying  
10 an average?

11 A Yes.

12 Q And then for the 80th percentile, if I'm looking at this  
13 correctly that's far to the right, that's the green?

14 A Yes.

15 Q So if I'm looking at this right, what that means is 80 percent  
16 of the charges for this data period for this code were at or below \$1601?

17 A Correct.

18 Q And for this one code, this one provider, this one geozip, the  
19 provider charge was above that mark?

20 A That's correct.

21 Q All right. Let's look at a second example. We'll go to page 3  
22 of that exhibit, sir, to the top.

23 A Okay. Okay.

24 Q Now sir, again, we're looking now -- we're looking now, sir,  
25 at another of your histograms, correct?

1 A Yes.

2 MR. BLALACK: Could you please Shane, bring up the top  
3 right hand bar.?

4 BY MR. BLALACK:

5 Q And if you could describe for the jury what's being reflected  
6 in this histogram?

7 A So same thing as the previous. You first have the CPT code,  
8 which in this case is 99282. The description of it, which is emergency  
9 department visit for low or moderate severity. Once again the geozip,  
10 which is 890. The description of the geozip, which is Las Vegas and area.  
11 And then the product, which is F.H. Medical and the release, which is  
12 May of 2017.

13 Q Now in this case, the one we looked at a moment ago, the  
14 Team Health Plan, which I think in this case was Fremont. Fremont's  
15 charge in that last histogram was above 80 percentile. In this case, for  
16 this code 99282 from May of 2017, how does the Plaintiff's charge  
17 compare to the 80th percentile?

18 A They are below it.

19 Q And how does it compare to the median?

20 A They are below it.

21 Q So this is an example where their charge is below both the  
22 80th and the median?

23 A That's correct.

24 Q And in fact, if you look at this exhibit, you'll notice are there  
25 providers with this code that are billing less than \$100 for this service?

1 A Yes, there are.

2 Q And are there providers for this code that are billing more  
3 than \$750 for this service?

4 A More than 750? No, there are not.

5 Q Maybe I'm looking at the wrong thing. I'm sorry. Are there  
6 providers that are billing more than \$510?

7 A Yes, there are.

8 Q Okay. In fact several over 100.

9 A So I just want to caveat that these aren't individual providers.  
10 These are a number of occurrences, so it could be 113 and 129 distinct  
11 ER positions. It could be one. We don't -- we don't know that  
12 information from this graph.

13 Q That's an excellent point. In other words these observations  
14 that are at the very high end, 129 that are up north of 540; could that be a  
15 single provider?

16 A It could be.

17 Q Let's look at another example. Go to page 14.

18 MR. BLALACK: If you could, Shane, pull up that box.

19 BY MR. BLALACK:

20 Q And again, sir, if you could explain what the jury is looking  
21 at.

22 A So once again, procedure code in this case 99281. A  
23 description of it, which is an emergency department visit for a limited or  
24 minor problem in geozip 890, which Las Vegas and area. And this is for  
25 the FH Medical release. But this time we're looking at May of 2019.

1 MR. BLALACK: You can pull that down.

2 BY MR. LEYENDECKER:

3 Q You can pull that down for a second. So this is a Fremont  
4 charge. And in this case, sir, what is the median?

5 A The median is \$167.

6 Q And what is the 80th percentile?

7 A Also \$167.

8 Q So what does that mean if the 80th percentile and the  
9 median are exactly the same?

10 A That means all percentiles between at least the 50th and  
11 80th, and there could be more below or above, I wouldn't know without  
12 looking. The data are \$167. That indicates that it's a pretty commonly  
13 charged value.

14 Q So in this case, there would be 133 observations?

15 A Yes. Well, it's in that range. I would just caveat between 165  
16 and 172. So it may -- it could all be 167, but it may not be without  
17 seeing, you know, all the underlying claims data.

18 Q And then this demonstration, the one we saw previously, just  
19 before this one, I believe the Fremont charge was below the 80th,  
20 correct?

21 A Yes, it was.

22 Q And this one is a Fremont charge above the 80th?

23 A Yes, it is.

24 Q Okay. Now, let's look at page 34. This is an interesting  
25 looking one. It is kind of like a hard glass. If you could, describe what

1 you see in the upper right-hand box, sir, what we've shown the jury.

2 A So this time we're looking at procedure code 99283, which is  
3 also an emergency room department visit, but for moderate severity.  
4 Geozip 890, which is Las Vegas and area, and this is the FH medical  
5 release for November of 2019.

6 Q What's the 80th percentile reflected in this release in the Las  
7 Vegas area?

8 A It is \$1,991.

9 Q And is that associated with this tall bar just north of the  
10 green diamond, it has 21,409 observations?

11 A Yes, it is.

12 Q So if I'm reading it right, you have 40,000 -- over 40,000 total  
13 occurrences in this data set, and over 21,000 are the exact same amount,  
14 give or take?

15 A Or -- yeah, within like, you know, a few dollars.

16 Q And in this case, is the Fremont charge below or above the  
17 80th percentile?

18 A It is below.

19 Q Okay. Let's look at one more Fremont example, and then I  
20 want to show something of 1:50:40. Can you go to 37, please?

21 A Okay.

22 Q Okay. Now --

23 MR. MCMANIS: Shane, go ahead and pull up the upper  
24 right-hand box.

25 BY MR. MCMANIS:

1 Q If you would, describe, Mr. Mizenko, what the jury is seeing?

2 A So this is another histogram for CPT 99291, which is the code  
3 for critical care for an ill or injured patient for the initial 30 to 74 minutes.  
4 geozip 890, which is Las Vegas and area. This is for the November 2019  
5 release of FH Medical.

6 Q Now, in this one, what is the median?

7 A The median is \$845.

8 Q And so let me make sure I'm looking at the right thing. So  
9 the median here would be this orange diamond?

10 A Yes, the orange diamond.

11 Q Okay. And that's where you got all of these observations to  
12 the left of the orange diamond, below the \$845 rank -- is that -- am I  
13 looking at the right thing?

14 A Correct.

15 Q And then you have the 80th percentile all the way over to the  
16 right, which is the green diamond; is that right?

17 A Yes.

18 Q So in this case, the 80th percentile is \$1,765?

19 A That's correct.

20 Q So that's -- is that almost -- that's over twice the median; is  
21 that right?

22 A Yes, it is.

23 Q And then you have a very -- you have an observation of --  
24 you have \$1,123 observations up at 2,160; is that right?

25 A That's correct.



1 Q And then even a handful of 2,700?

2 A Yes.

3 Q In this case, what is the Fremont billed charge, and how -- is  
4 it below or above the 80th percentile?

5 A It's above the 80th percentile.

6 Q All right. Let's look at some of the other Plaintiffs. We just  
7 looked at some examples from Fremont. Let's look at some examples  
8 for Ruby Crest.

9 Q Sir, if you go to page 71.

10 A Okay.

11 Q And if you would, pull that out. Mr. Mizenko, describe to the  
12 jury what they're seeing.

13 A So this is the code 99284 for the -- an emergency department  
14 of higher urgent severity. This is in geozip 893, and that is for Reno,  
15 Nevada, and other parts of Northern Nevada. And this is for the FH  
16 Medical release in November of 2019.

17 Q Okay. Now, for this one, sir, where is the median?

18 A The median is \$675.

19 Q Am I missing the language on here?

20 A It's -- so sometimes when two diamonds are close to one  
21 another, one covers up the other, and in this case, orange is being  
22 obscured by red.

23 Q Okay.

24 A Which is \$1.19 apart.

25 Q Okay. So I see your point. So there's a red diamond, which

1 is associated with the Ruby Crest provider's charge of \$673.81, and  
2 you're saying the median is 675, correct?

3 A Yes. And because they are in such close proximity, you  
4 know, just picturewise, the red covers the orange.

5 Q Okay. And this -- you have -- you have a lot -- this one, the  
6 data is distributed very broadly across the entire range; would you agree  
7 with me?

8 A That's fair to say.

9 Q And then there's this big spot right around the median  
10 charge; do you see that?

11 A Correct.

12 Q 3,500 -- 3,250 out of 8,591 occurrences, right?

13 A Correct.

14 Q Is there any way to tell whether that's a single provider  
15 contributing all those observations or not?

16 A Not without looking at the underlying data.

17 Q Okay. And is that something you all do, typically?

18 A If asked to, we are able to.

19 Q Okay. In this case, where is the 80th percentile?

20 A The 80th percentile is the -- once again, the green diamond,  
21 and it's \$1,003.

22 Q Okay. So you've got providers with the 80th percentile being  
23 \$1,003, you've got hundreds of providers that are billing down between,  
24 say, \$250 and \$500; is that fair?

25 A I'll just stipulate that's not --

1 Q Well, hundreds of observations; I that right?

2 A Yeah, hundred -- hundred thousands of observations.

3 Q Okay. Let's go to the next example, page 68. This is another  
4 Ruby Crest, I believe. Yes?

5 A Yes.

6 MR. MCMANIS: Shane, if you could pull that up?

7 BY MR. MCMANIS:

8 Q What are we seeing here, sir?

9 A So this is procedure code 99281 again, and that's the  
10 emergency department visit for the limited or minor problem. This is in  
11 geozip 893, which is Reno, Nevada, and other parts in Nevada in  
12 November 2019.

13 Q And going back on the geozip issue, so is this geozip --  
14 geozip 893, what area in the state does that cover?

15 A I'd have to look to confirm, but I think that 893 is like Reno,  
16 Carson City, Northern Nevada, whereas 890 is Clark County.

17 Q Okay.

18 A So pretty much anything not Clark County, I believe is 893.  
19 And 890 is just Clark County.

20 Q Okay. Well, the reason I wanted to ask, sir, is I think when  
21 you look at Team Physicians, it is also identified as 893.

22 A Okay.

23 Q So is -- from your understanding, does geozip 893 cover  
24 everything in the state, north of the Las Vegas area that's covered in  
25 890?

011152

011152

1 A Correct.

2 Q Okay. All right. So walk the jury through, sir, what they're  
3 seeing in terms of the observations on this again.

4 A Sure. So you see the red diamond, the provider charge is  
5 \$137.37. You have the yellow diamond, which is the average charge,  
6 which is at \$148.19. You have the orange diamond, representing the  
7 median charge, or 50th percentile at \$152.21. And then the 80th  
8 percentile charge, represented by the green diamond at \$168.

9 Q Okay. So in this case, is the Ruby Crest charge at, or above  
10 or below the 80th percentile?

11 A Below.

12 Q All right. Let's look at a couple of examples for Team  
13 Physicians. If you'll go to page 104 of Exhibit 5423.

14 A Okay.

15 Q Okay.

16 MR. MCMANIS: If you could, Shane, pull that out at the box  
17 at the top.

18 BY MR. MCMANIS:

19 Q Mr. Mizenko, please describe for the jury what they're seeing.

20 A So this is a histogram for code 99281, the emergency  
21 department visit for a limited or minor problem in geozip 893, which is  
22 Reno and Northern Nevada for the November 2019 release.

23 Q And if we pull this down, this example, you've got a lot of  
24 observations around the \$120; is that right?

25 A Yes.

1 Q What is the 80th percentile for this code and geozip and  
2 after?

3 A It is \$168.

4 Q And what is the median?

5 A It is \$152.21.

6 Q So the difference here between the median and the 80th  
7 percentile is about 16 -- a little over \$16?

8 A Yes, a little under \$16.

9 Q Okay. What's the provider charge for Team Physicians on --  
10 in this code?

11 A \$249.29.

12 Q So in this case, the provider charge is above the 80th  
13 percentile?

14 A That's correct.

15 Q Okay. Is my -- is my math about right, it's almost \$100 more  
16 than the median?

17 A That's about -- it's a little under 100.

18 THE COURT: Is this a good time for a recess?

19 MR. MCMANIS: Thank you, Your Honor.

20 THE COURT: We've been at it about an hour-and-a-half. So  
21 we'll take a recess until 2:15. During the recess, don't talk to each other  
22 or anyone else on any subject connected with the trial. Don't read,  
23 watch, or listen to any report of, or commentary on the trial. Don't  
24 discuss it with anyone connected to it by any medium of information,  
25 including without limitation, newspapers, television, radio, internet, cell

1 phones, or texting.

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

3 Don't consult dictionaries, use the internet, or use reference materials.

4 Don't post on social media. Don't talk, text, Tweet, Google, or conduct  
5 any other type of research with regard to any issue, party, witness or  
6 attorney involved in the case.

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

9 Thank you for that. It's Friday. We're in the home stretch of the week, so  
10 have a good recess. See you at 2:15.

11 THE MARSHAL: All rise for the jury.

12 [Jury out at 2:00 p.m.]

13 [Outside the presence of the jury]

14 THE COURT: And Mr. Mizenko, you may step down during  
15 the recess.

16 THE WITNESS: Thank you.

17 THE COURT: Anything for the record?

18 MR. MCMANIS: Not from me, Your Honor.

19 MR. BLALACK: Nothing from us, Your Honor.

20 THE COURT: Good enough. Enjoy your break.

21 MR. MCMANIS: Thank you, Your Honor.

22 [Recess taken from 2:00 p.m. to 2:16 p.m.]

23 THE COURT: Please remain seated. Are we ready to bring in  
24 the jury?

25 MR. ZAVITSANOS: Oh, Your Honor.

1 THE COURT: Uh-huh.

2 MR. ZAVITSANOS: I'm sorry; can I raise one thing, Your  
3 Honor, before we --

4 THE COURT: Yes.

5 MR. ZAVITSANOS: So --

6 MR. MCMANIS: Mask.

7 MR. ZAVITSANOS: -- can we excuse the --

8 MR. MCMANIS: Mask.

9 MR. ZAVITSANOS: Oh, I'm sorry.

10 MR. BLALACK: Alex if you could step out real quick. I'm  
11 sorry I brought you up here. We'll bring you right back.

12 MR. ZAVITSANOS: I'll be 45 seconds, Your Honor.

13 So, Your Honor, I applaud Mr. Blalack for staying away from  
14 [indiscernible] issues during Mr. Deal's direct testimony. When the jury  
15 posited some questions to Your Honor and none of us have objections to  
16 them, the question was put to Mr. Deal. And in a completely  
17 unresponsive portion, completely unresponsive.

18 THE COURT: I thought you were going to object and move  
19 to strike.

20 MR. ZAVITSANOS: Well, I think the sedative that I gave Mr.  
21 Leyendecker this morning actually worked a little bit better than I  
22 thought.

23 MR. LEYENDECKER: No.

24 MR. ZAVITSANOS: That's a joke.

25 MR. LEYENDECKER: No. In all seriousness, Your Honor, I

1 felt the jury --

2 MR. ZAVITSANOS: Well, let me finish. Let me finish. So Mr.  
3 Deal made a comment that the appropriate rate is to use the in-network  
4 rate at a 100 and --

5 MR. MCMANIS: 25.

6 MR. ZAVITSANOS: -- 125 or 150. I don't know what he said.  
7 And Your Honor -- and I do not believe, in fact I know that Mr. Blalack did  
8 not encourage that. It was not responsive to the question. And, Your  
9 Honor, that -- I mean, the skunk is now in the jury box. And so just as a  
10 preview we are going to ask in the jury charge -- well, either -- we would  
11 either like an instruction to ignore that, which of course would highlight  
12 it, or --

13 THE COURT: I'd rather --

14 MR. ZAVITSANOS: -- or some kind of an instruction.

15 THE COURT: -- consider that when we settle the instructions.

16 MR. ZAVITSANOS: Yes.

17 MR. LEYENDECKER: Yes, Your Honor. I just want you to  
18 know, I didn't stand up because it was a little -- the jury asked a question  
19 and it got answered and then I just -- it was a strange dynamic there. I  
20 didn't want to --

21 THE COURT: I got it. All right. And is there a response?

22 MR. BLALACK: There is, Your Honor. Mr. Deal was  
23 responding to a question from the juror about what the objective basis  
24 was in the study that he was referring to. The objective basis is the  
25 market rate which is [indiscernible]. So I don't think there was anything



1 he was -- I don't think there was anything he was going to be validated.  
2 He was simply being responsive to the question of the juror. If there  
3 was, given the nature of the question and the --

4 THE COURT: Well --

5 MR. BLALACK: -- nature of the study --

6 THE COURT: -- it was really inappropriate. I know you didn't  
7 prompt it in any way, but he had gotten a little beaten up on cross and  
8 that was his way to lash out. So I'll listen to both sides fairly when we  
9 settle the jury instructions.

10 MR. BLALACK: Okay, thank you.

11 THE COURT: And we'll bring in the jury.

12 MR. ZAVITSANOS: Thank you, Your Honor.

13 THE COURT: And I didn't say he was beaten to a pulp. Just  
14 a little bit beaten up.

15 THE MARSHAL: All rise for the jury.

16 [Jury in at 2:19 p.m.]

17 THE COURT: Thank you. Please be seated.

18 MR. BLALACK: May I proceed, Your Honor?

19 THE COURT: Please.

20 BY MR. BLALACK:

21 Q So Mr. Mizenko, when we broke I was running through a  
22 selection of your histograms you prepared related to the Plaintiffs in this  
23 case. And the last one I wanted to discuss, and I think even looked at  
24 one from Team Physicians. I want to show the jury one more of those --

25 A Okay.

1 Q -- involving Team. If you go to page 109 please. Go ahead,  
2 Mr. Mizenko, and describe what the jury's looking at here.

3 A So this is a histogram for CPT code 99291 which is the code  
4 for critical care for an ill or injured patient initial 30 to 74 minutes, and  
5 geo zip 893 which is Reno, Nevada, Northern Nevada in November of  
6 2019.

7 Q And let's look at the -- what the histogram displays. Now in  
8 this case we have a very large number of observations somewhat in the  
9 middle here. What is the orange diamond reflecting?

10 A So the orange diamond reflects the median charge.

11 Q So half are at or below that value and half are at or below --  
12 above it I mean?

13 A That's correct.

14 Q About \$643?

15 A Correct.

16 Q And then the 80th percentile is what?

17 A Is the green diamond and that's \$705.

18 Q Okay. Now the 80th percentile in this case is reasonably  
19 close to the median, right, of 643. So maybe if my math is right, 57, 62  
20 roughly dollars; is that about right?

21 A It's \$52 higher than the median.

22 Q Is there any relationship typically between the median charge  
23 and the 80th percentile or is it somewhat random in terms of how it's  
24 [indiscernible]?

25 A I mean, it's somewhat random in -- except for the fact that

1 the 80th percentile is obviously always going to be higher than the 50th  
2 which is --

3 Q Right.

4 A -- the median.

5 Q Right. But in term -- other than that statistical truth, is there  
6 any relationship between those two that is repeated frequently?

7 A Not in an abnormally distributed data of distribution like  
8 healthcare claims data.

9 Q Okay. And then what's the provider charge in this case, this  
10 would be Team Physicians for this code that had release?

11 A It was \$1,349.

12 Q That's all the way over in the right?

13 A That's correct.

14 Q So in this case the provider charge is above the 80th  
15 percentile?

16 A That's correct.

17 Q And almost double; is that right?

18 A That's correct.

19 Q Okay. So based on your analysis sir, it sounds like you found  
20 numerous examples where the TeamHealth Plaintiff charges were below  
21 the 80th percentile?

22 A I did.

23 Q And some that were above the 80th percentile?

24 A That's correct, I did.

25 Q Okay. Now did you, after completing this analysis

1 summarize your findings in your report?

2 A Correct. I did in section nine of the expert report.

3 Q And what were the three ways -- what were the three metrics  
4 you used to summarize your findings?

5 A I compared the Team Physician, Ruby Crest, Fremont and  
6 then the combination of all three charges to the 80th percentile, to the  
7 50th percentile and to the mean or average.

8 Q Okay. Now I'd like to show you and the jury Defense Exhibit  
9 5365. Show you a different chart there. And what I'm going to ask you  
10 is, does this chart accurately summarize your findings in your report?

11 A Let me just do a quick comparison to make sure. Yes, it  
12 does.

13 Q All right. My first question, sir, I noticed that for each of  
14 these columns, and as you noted one is for the median, one is for the  
15 mean, one is for the 80th percentile. For each of these columns the  
16 denominator in your analysis is 108, correct?

17 A Correct.

18 Q Why is it 108?

19 A That represents the number of -- for the total, that represents  
20 the total number of combinations.

21 Q And when you refer to combinations, what do you mean by  
22 combinations?

23 A Those were the CPT code geo zip release combinations.

24 Q So let's just make sure the jury follows that. So for each of  
25 the three TeamHealth Plaintiffs there were 36 combinations of geo zip,

011161

011161

1 release date and CPT code?

2 MR. MCMANIS: Your Honor, I object to leading.

3 MR. BLALACK: All right. I'll rephrase.

4 THE COURT: Please.

5 BY MR. BLALACK:

6 Q What were the combinations that made up the 36?

7 A They're -- that's how many CPT code releases geo zips were  
8 evaluated.

9 Q Okay. Code, date and geo zip?

10 A Correct.

11 Q And then the Plaintiff?

12 A Correct.

13 Q So 36 for each, times three, that gives you 108?

14 A Correct.

15 Q Okay. When you undertook your analysis were you  
16 attempting to measure how the Plaintiff's charges in dispute in this case,  
17 meaning the total bill charges in dispute in this case for the claims at  
18 issue in this case, corresponded or didn't correspond to any particular  
19 FAIR Health metric?

20 A We were just evaluating how the charge compared to these  
21 three percentiles of FAIR Health data.

22 Q Okay. So taking a charge for Plaintiff in a geo zip for a date  
23 and measure it in the total observations available for that period?

24 A So what we did was take that code and that release and that  
25 geo zip, take the Plaintiff charge and compare it to either the median, or

1 the mean or the 80th and that's how you get these percentages that are  
2 here.

3 Q Okay. Now in looking at this information how many across  
4 all three Plaintiffs, how many instances were there combinations of  
5 codes, geo zips and releases time period where the TeamHealth  
6 Plaintiff's charge was above the 80th percentile -- at or above the 80th  
7 percentile?

8 A Thirty-two percent. And it's greater than, not greater than  
9 equal to.

10 Q Okay. Greater than not. And then same question as to the  
11 median.

12 A That occurred 69 percent of the time.

13 Q And then as to the mean?

14 A Forty-nine percent of the time.

15 Q Okay. So about half of the combinations were right at the  
16 mean, half were right at the mean so pretty much at the midpoint for the  
17 average?

18 A Well, I -- two things I'd clarify. I wouldn't call -- the median is  
19 more a midpoint than average is more a summary statistic. And half  
20 were below it and half were above it. We don't really say in this report  
21 how far below or above.

22 Q Got it. And then for the median as you put it, that's the  
23 midpoint, that would be 69 percent of the occasions the combination of  
24 code, date, geo zip for those Plaintiffs would be above the 50 midpoint?

25 A Correct.

1 Q Now sir, you know that the TeamHealth Plaintiffs in this case  
2 and the Defendants have a dispute about the reasonable value of certain  
3 out-of-network emergency room services?

4 A That's my understanding, yes.

5 Q And as you said earlier TeamHealth and the Defendants are  
6 clients of FAIR Health, correct?

7 A Correct.

8 Q Does FAIR Health have a view one way or the other on any of  
9 the merits of the dispute between the parties here?

10 A We do not.

11 Q Thank you for your time, sir. We appreciate it.

12 THE COURT: Cross-examination please.

13 MR. MCMANIS: Thank you, Your Honor. May I have just a  
14 moment so I can get setup?

15 THE COURT: You may.

16 MR. MCMANIS: May I proceed, Your Honor?

17 THE COURT: Please.

18 CROSS-EXAMINATION

19 BY MR. MCMANIS:

20 Q Mr. Mizenko, good afternoon.

21 A Good afternoon.

22 Q I thought I heard you talking a little bit about what FAIR  
23 Health calls a derived methodology; is that right?

24 A Correct.

25 Q Okay. And I think you said as part of that -- well, let me start

1 here. When you use the derived methodology as we don't have enough  
2 actual claims to determine what the values were for a given geo zip and  
3 a given CPT code; is that right?

4 A Correct.

5 Q All right. And as part of the derived methodology, you are  
6 performing some analysis, computations, determining the relative value  
7 of procedure codes based on their severity, right?

8 A Correct. But just that it's not clinically based. We don't sit  
9 down, or doctors don't sit down and determine it. It's based on the data.  
10 Like it should align with clinical severity.

11 Q Sure. You guys do that in the same fair and objective way  
12 that you do all of your other analysis at FAIR Health, right?

13 A Yes.

14 Q All right.

15 MR. MCMANIS: Could I get the Elmo?

16 BY MR. MCMANIS:

17 Q All right. So I've got two CPT codes from your histograms up  
18 on the screen, do you see that?

19 A Yes.

20 Q And you have an understanding that a 99281 and a 99285 are  
21 both emergency department codes, right?

22 A Correct.

23 Q And a 99285 is a more severe -- is a code for a more severe  
24 treatment than a 99281?

25 A That's correct.



1 Q Okay. So I know that you had an actual methodology, and  
2 you could do actual methodologies for your work. I understand that,  
3 right?

4 A Yes.

5 Q Okay. But assume with me that you had to do on a relative  
6 value analysis using your derived methodology, the 99285 would have  
7 more weight from a severity perspective than the 99281, right?

8 A That's correct.

9 MR. BLALACK: Objection. Vague.

10 THE COURT: Overruled.

11 BY MR. MCMANIS:

12 Q Is that right, sir?

13 A That's correct.

14 Q Okay. And you perform that analysis, you do that  
15 objectively, rigorously, just like FAIR Health does all of its other work?

16 A Correct.

17 Q Okay.

18 MR. MCMANIS: Could I go back to the computer over here  
19 and could I see 473(b)(1)? Just pull out that top please.

20 BY MR. MCMANIS:

21 Q All right. Mr. Mizenko, do you see here that we have five  
22 different CPT codes ranging in different severity?

23 A Yes.

24 Q Okay.

25 A Well, no. The 99291 is a different type of code that is not

1 related to the other four codes that are on there.

2 Q Okay. Do you have an understanding that a 99291 is a critical  
3 care code?

4 A Yes. I'm not sure exactly how it relates to one of the ER  
5 codes. I don't know if it's more than the highest ER code. So I just want  
6 to make that caveat.

7 Q Okay, fair enough. Now if you had to do a derived  
8 methodology for these different levels of CPT codes, are you with me?

9 A Yes.

10 Q All right. Using FAIR Health's rigorous, independent,  
11 objective, neutral analysis you're not telling me that you get the exact  
12 same value for every single one of those codes, are you, sir?

13 A I would not.

14 Q You would expect them to be different; would you not?

15 A I would expect them to be different.

16 Q Okay. Do you see these charges on the screen, the allowed  
17 amount for each one of these?

18 A Yes, I do.

19 Q All the same?

20 A Yes.

21 Q Now I heard you say at the beginning of your testimony that  
22 you have testified previously; is that right?

23 A Correct.

24 Q Okay. But this is your first time serving as an expert witness  
25 in a case; is that true?

1 A That's correct.

2 Q Okay. And are you familiar with the concept of learning from  
3 experience?

4 A I mean, it kind of speaks for itself, but --

5 Q Sure. It's something that you know just from -- as life goes  
6 on you experience different things and looking back you think, you know,  
7 I wouldn't do it that way again, right?

8 A Sure.

9 Q Okay. One other thing. Have you ever heard the phrase;  
10 numbers don't lie?

11 A I have.

12 Q Okay. Do you agree with that?

13 A I think that numbers can be -- I would say I don't -- I don't  
14 know that I have an opinion on that. It could -- they -- if it's presented in  
15 an objective fashion, sure. Like FAIR Health does then sure, but you can  
16 put, you know, any number into the universe and say it is that and it  
17 might not be true.

18 Q Okay. So fair to say that in an objective reporting of  
19 numbers, the numbers don't lie, but it's also possible for the numbers to  
20 be manipulated, do you agree with that?

21 A I think any fact can be manipulated.

22 Q Okay. And when we're talking about numbers and statistics  
23 there's a couple of different ways you can manipulate. You can do it on  
24 the frontend in data collection, that's one possibility, right?

25 A Sure.

1 Q Okay. You can do it in the middle as part of your data  
2 validation and an analysis, that's an option, right?

3 A If you wanted to, sure.

4 Q All right. Or you can do it at the end in the presentation of  
5 whatever the analysis shows, right?

6 A Sure.

7 Q Okay. So I want to talk -- I want to start talking a little bit  
8 about FAIR Health. FAIR Health does not manipulate numbers, correct?

9 A No.

10 Q All right. FAIR Health is a reliable source of data?

11 A Yes.

12 Q It's prepared like we said, rigorously. It's intended to be used  
13 and accurate?

14 A Yes.

15 Q Okay. Now I want to talk a little bit about what makes FAIR  
16 Health so reliable, okay? Number one, FAIR Health use actual claims  
17 data, right?

18 A Correct.

19 Q So I'll put FAIR Health and a checkmark right there. Number  
20 two, FAIR Health gets a wide variety of data from a number of  
21 contributors, right?

22 A That's correct.

23 Q Okay. All right. We'll put a checkmark there. Number three,  
24 after FAIR Health receives the data they do a rigorous and extensive  
25 validation of that data, right?

1 A Correct.

2 Q And I think you talked about auditing to look for errors in the  
3 data, right?

4 A Correct.

5 Q Do you ever find -- does FAIR Health ever find errors in the  
6 data?

7 THE COURT: There's an objection?

8 MR. LEYENDECKER: Oh, I'm sorry. I was just trying to see  
9 the board, Your Honor. I can't see it --

10 THE COURT: Oh, okay. Sorry.

11 MR. LEYENDECKER: -- from my seat. Pardon the  
12 interruption.

13 THE COURT: Go ahead.

14 BY MR. MCMANIS:

15 Q Does FAIR Health ever find errors in the data?

16 A Of course.

17 Q Okay. What about data that comes from insurance  
18 companies? Does FAIR Health ever find any errors in that data?

19 A Sure. The computer programs aren't perfect. Things can get  
20 corrupted from point A to point B. As far as I know, we've never  
21 discovered anything intentional, but that's why you have validation  
22 checks to make -- you know -- unintentional [sic] -- unintentional,  
23 attentional; you want to catch that before it goes into your product.

24 Q Okay. And FAIR Health certainly has the expertise to perform  
25 that type of rigorous and extensive validation to determine if there are

1 errors in the data, right?

2 A Correct.

3 Q Did anyone from this side of the room over here ask you to  
4 look at their claims files and validate a single row for any claim for any  
5 one of their claims' files?

6 A I didn't look at any claims data for this.

7 Q Did anyone ask you to?

8 A No.

9 Q What about Plaintiff's claim files; did they ask you to do that?

10 A No, they did not.

11 Q All right. Now, the last piece when we're talking about FAIR  
12 Health is an objective reporting of the results, right?

13 A Yes, we do that.

14 Q Okay. Whatever the numbers are, FAIR Health puts them  
15 out?

16 A Correct.

17 Q No spin, right?

18 A Correct. That's fair to say.

19 Q And each one of these, from top to bottom; all of those are  
20 critical to FAIR Health's reliability and objectivity as a database?

21 A That's correct.

22 Q All right. I want to talk a little bit about data collection.  
23 Okay?

24 A Okay.

25 Q Let's assume you want to run a survey. You want to find out

1 how many people like iPhones versus Android. All right?

2 A Okay.

3 Q You with me on that?

4 A Yep.

5 Q Okay. Would it be a good idea to take that survey standing at  
6 the front door of the Apple store with people who walk out?

7 A Probably not.

8 Q Why not?

9 A I mean, you want to have -- you want to have a random  
10 sample when you take any kind of sample. And you don't want any way  
11 for people to select in or have any biases.

12 Q You take that survey at the front door of the Apple store, you  
13 might end up with a biased sample, right?

14 A It's possible, sure.

15 Q Meaning, if you're only talking to people who are walking  
16 outside of the Apple store on their way out, odds are those are probably  
17 going to be more likely the people who are interested in the iPhone?

18 A Yes.

19 Q Okay. I heard something interesting when you were  
20 speaking with Mr. Blalack. And he was asking you about the charges  
21 that you used to do your analysis. Okay?

22 A Okay.

23 Q And what you said -- hey, it was as provided by you; is that  
24 right? Referring to Mr. Blalack?

25 A Yeah, somebody had to provide me what TeamHealth

1 charges for things.

2 Q And what you received was as single spreadsheet, 54 lines of  
3 data, created by United Health; is that right, sir?

4 A That's my understanding, correct.

5 Q How many claims files did you get?

6 A I don't think I got any claims files. I didn't personally.

7 Q Did you ask for any?

8 A I did not.

9 Q And FAIR Health deals with claims files all the time. You  
10 guys are experts in that, right?

11 A We get raw claims data, but we don't get claim files.

12 Q Fair enough. Had you guys been provided with claims files,  
13 you certainly had the expertise to look at them and evaluate the actual  
14 disputed claims in the case, right?

15 A I mean, I'll just make clear, we don't review claims. We don't  
16 look at medical necessity. We just get a line of data, one of the values  
17 which is charge and -- you know -- and report out what the charges are.

18 Q All right. But all I'm asking right now is whether had you  
19 been provided that data, certainly, FAIR Health has the expertise to look  
20 at that data and evaluate it?

21 A I mean, any format in which we have data we definitely have  
22 the expertise to evaluate data.

23 Q Okay. But instead, the only thing that you guys got was a  
24 spreadsheet created by United?

25 A That's my understanding.



1 Q You went to the Apple store.

2 MR. BLALACK: Objection. Argumentative.

3 THE COURT: Sustained.

4 THE WITNESS: I don't agree with that.

5 THE COURT: I just sustained the objection.

6 BY MR. MCMANIS:

7 Q All right. [Indiscernible] that's here, right? Because there's  
8 only one contributor on this side, which was United, correct?

9 A I mean, this analysis doesn't compare to our benchmark  
10 products.

11 Q Let's talk about the validation step. When FAIR Health  
12 receives data, FAIR Health subjects that data to intense scrutiny, right?

13 A Correct.

14 Q You remove outliers. I head you speak about that with Mr.  
15 Blalack, right?

16 A Correct.

17 Q It goes through a data standardization process so you can  
18 compare apples-to-apples from different data contributors, right?

19 A Correct.

20 Q And then there's also a comparison of new data to old data,  
21 right?

22 A Correct.

23 Q Because you want to see if maybe something is out of  
24 whack, right?

25 A Correct.

1 Q Okay. You may also even compare it to the other data  
2 received from other contributors during the same time?

3 A Correct.

4 Q All of that is part of the validation process that makes the  
5 FAIR Health database so reliable, right?

6 A Correct.

7 Q Does it take a lot of time to do that kind of thing?

8 A I would say so.

9 Q You didn't have a lot of time in this case, did you, sir?

10 A I had a -- I had a few days.

11 Q Six days, right?

12 A That sounds about right.

13 Q From when United hired you to use the spreadsheet they  
14 created and plot those points on the FAIR Health histograms, you had a  
15 total of six days; is that right?

16 A That sounds about right.

17 Q And in that span of time, did you take the data that I had  
18 provided you, and did you do any kind of validation process to  
19 determine whether or not that data accurately reflected the disputed  
20 claims that we're all here talking about?

21 A I believe that charges were in the other report. I mean, I also  
22 see Mr. Blalack is -- you know -- being honest.

23 Q You just took his word for it?

24 A I mean, we're just putting data points and comparing them to  
25 the FAIR Health data points. You could give any data point and say how

1 does this compare to FAIR Health. And we're not opining on right,  
2 wrong, or indifferent. We're just giving you a visual; here's our data and  
3 here's the data point you asked us to compare to.

4 Q Well, I understand that you can compare any two data points.  
5 What I'm asking is whether or not you and the people who helped you at  
6 FAIR Health in your work on this case; did any kind of validation analysis  
7 whatsoever to determine whether or not the charges that were provided  
8 to you by United reflected any of the actual disputed claims in the case?

9 A I don't know. Other people may have. I did not.

10 Q Are you aware of any validation whatsoever?

11 A I don't know what else was done besides the work that I did  
12 personally in creating the data analysis.

13 Q You just accepted the data that was provided by Mr. Blalack  
14 and United and you plotted it on the histograms, right?

15 A That's one data point that's on the histogram. The green,  
16 orange, yellow diamonds are FAIR Health's data, and the red is the  
17 comparison point that we were asked to compare to.

18 Q Fair enough.

19 Let's talk about reporting of the data. Okay?

20 A Okay.

21 Q All right. Now, FAIR Health, I think you said their mission is  
22 to maintain neutrality, right?

23 A Correct.

24 Q So when FAIR Health reports its data, FAIR Health doesn't  
25 care about anything except that the data be accurate and being

1 objectively reported.

2 A Correct.

3 Q Do you agree with that?

4 A Yes.

5 Q Okay. Now, I know you told Mr. Blalack that FAIR Health is  
6 not trying to establish a reasonable rate or something to that effect; do  
7 you recall that?

8 A Correct. We do not establish the UCR.

9 Q All right. But you're not telling this jury that the FAIR Health  
10 data is unreliable if someone wants to use it for that purpose, are you,  
11 sir?

12 A We very explicitly say we don't stipulate how to use our data.  
13 It can be used in a number of fashions.

14 Q Well, my question is, are you telling this jury that the FAIR  
15 Health data is unreliable for the purpose of a provider and insurer setting  
16 a reasonable rate?

17 A I'm not telling them it's unreliable.

18 Q Because it is reliable, right?

19 A Correct.

20 Q And an insurance company like United, they might choose a  
21 certain percentile that they believe to be a reasonable rate, right?

22 A Correct.

23 Q You're aware of insurance companies doing that with FAIR  
24 Health data, right?

25 A I am.

1 Q Right. One of them being United, right?

2 A Correct.

3 MR. MCMANIS: Can I have Plaintiff's Exhibit 363? And I  
4 want to look just at this -- these two bullets in the last sentence right  
5 here. All right. So Exhibit 363, which is in evidence -- well, actually, you  
6 know what? Pull that out real quick. Let's see the full page and pull out  
7 the top. It's right there. And scroll up, please, Michelle. And get the --  
8 get the address at the bottom. Can I have both of those up together?

9 BY MR. MCMANIS:

10 Q All right. This is Plaintiffs' Exhibit 363. It's in evidence.

11 A Okay.

12 Q And you can see from this that it's a United Healthcare  
13 webpage printout. All right?

14 A Okay.

15 MR. MCMANIS: All right. So let's close that out, please, and  
16 pull back the -- that sentence and those two bullet points.

17 BY MR. MCMANIS:

18 Q All right. And what United has said on its website is that the  
19 United Health Group affiliate will pay based on the terms of the  
20 member's healthcare benefit plan that in many cases provides for the  
21 payment for amounts that are the lower of two bullets. Do you see that?

22 A Uh-huh.

23 Q The first bullet is actual charge billed to the member, right?

24 A Okay.

25 Q And the second bullet refers to reasonable and customary

1 amount -- usual, customary and reasonable amount. The kind of terms  
2 that you were talking about with Mr. Blalack, right?

3 A Correct.

4 MR. MCMANIS: Okay. Now, I want to take a look at Page 3.  
5 And I want to just pull out -- right there. That's good. And highlight that  
6 first sentence for me, please, Michelle.

7 BY MR. MCMANIS:

8 Q Affiliates of the United Health Group frequently use the 80th  
9 percentile of the FAIR Health benchmark to calculate how much to pay  
10 for out-of-network services of healthcare professionals. Do you see that?

11 A Yes.

12 Q Nothing wrong with United choosing the 80th percentile,  
13 right?

14 A I'm -- yeah, I'm not here to opine on what is right or wrong.  
15 They can do whatever they feel is best for their business, their plan.

16 Q And it's certainly reliable data underlying that benchmark,  
17 right?

18 A The FAIR Health data is reliable.

19 Q Have you ever seen any of the work that you've done on this  
20 case? Have you ever seen a document that suggests United Healthcare  
21 has selected the median or the mean of the FAIR Health benchmark?

22 A Not that I can recall.

23 Q Just the 80th percentile, right?

24 A If you stipulate that this is -- I -- you know -- I obviously  
25 wasn't on UnitedHealthcare's website in June 2019, so if you stipulate

1 that this is UnitedHealthcare's website, then yes.

2 Q I'm just saying this is the only document that you've seen  
3 that selects a percentile for Untied; is that right?

4 MR. BLALACK: Objection, Your Honor. Can I have a -- is he  
5 asking whether he's seen it right now in this courtroom or some time  
6 before?

7 MR. MCMANIS: As part of his work on this case.

8 MR. BLALACK: Did he see it? All right, because that's news  
9 to me.

10 THE COURT: When did you first show that to him?

11 MR. MCMANIS: We used this document at his deposition,  
12 Your Honor.

13 THE COURT: Oh, good enough.

14 MR. MCMANIS: I'll move on, Your Honor.

15 All right. Michelle, could you please pull up 5424 at Page 74?  
16 And pull up this -- this top right box for me, please.

17 BY MR. MCMANIS:

18 Q Mr. Mizenko, can you see that this is one of your histograms  
19 for the procedure code 99281 geozip 893 for May 2017?

20 A Correct.

21 MR. MCMANIS: Okay. And Michelle, you can close that out.

22 THE COURT: Excuse me, Mr. McManis. We -- we're having a  
23 technical issue. Do -- can you --

24 THE COURT RECORDER: It's still recording, I just can't do  
25 anything. So if you need the Elmo, or anything, or bench conference --

1 THE COURT: Let us get a tech down here. Is this a good  
2 time for a recess?

3 MR. MCMANIS: This is -- that's fine, Your Honor. If it works  
4 for you, it works for me.

5 THE COURT: This was a little early. We weren't expecting  
6 this. So thank you for your courtesy.

7 During the recess, don't talk with each other or anyone else  
8 on any subject connected to the trial. Don't read, watch, or listen to any  
9 report of or commentary on the trial. Don't discuss this case with any  
10 person connected to it by any medium of information. Including,  
11 without limitation, newspapers, radio, internet, cell phones, texting.

12 Don't conduct any research on your own. Don't consult  
13 dictionaries, don't use the internet, don't use reference materials. Don't  
14 talk, post on social media, text, tweet, google issues, or conduct any  
15 other type of research with regard to any issue, party, witness, or  
16 attorney involved in the case.

17 Most importantly, do not form or express any opinion on any  
18 subject connected with the trial until the matter is submitted to you.  
19 Please, be ready at 3:15.

20 THE MARSHAL: All rise for the jury.

21 [Jury out at 2:58 p.m.]

22 THE COURT: You may step down, Mr. Mizenko.

23 THE WITNESS: Thank you.

24 THE COURT: So I just put in a ticket with Court IT, and  
25 usually they run right down. So hopefully we're ready by 3:15. Sorry for



1 the interruption.

2 MR. MCMANIS: No problem, Your Honor. Thank you.

3 MR. ZAVITSANOS: Your Honor, may I just ask a  
4 housekeeping question?

5 THE COURT: Of course.

6 MR. ZAVITSANOS: I'm going to inquire --

7 THE COURT: Make sure -- Mr. Blalack, I don't want you to be  
8 left out of this conversation.

9 MR. BLALACK: Oh, I'm sorry, Your Honor. I'm sorry.

10 MR. ZAVITSANOS: I had inquired about the possibility of  
11 another courtroom, a larger courtroom for closing.

12 THE COURT: I have made inquiries. I don't have a response  
13 yet.

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

15 UNIDENTIFIED SPEAKER: Your Honor, I would like a smaller  
16 courtroom.

17 THE COURT: Yeah, me too.

18 [Recess from 2:59 p.m. to at 3:14 p.m.]

19 THE MARSHAL: All rise for the jury.

20 [Jury in at 3:16 p.m.]

21 THE COURT: Thank you. Please be seated. Mr. McManis, go  
22 ahead, please.

23 MR. MCMANIS: Thank you, Your Honor.

24 BY MR. MCMANIS:

25 Q All right. Mr. Mizenko, when we broke, we were just -- we

1 had started taking a look at your histograms. But before we get there, I  
2 want to circle back on a question that Mr. Blalack asked you, which was  
3 were you attempting to measure how actual claims compared to the  
4 FAIR Health benchmark. Do you recall that question?

5 A Something of that nature, yes.

6 Q Okay. And I just want to be perfectly clear. If FAIR Health  
7 had been asked to do that, you all have the expertise to be able to, right?

8 A We could -- we can -- we know how to look at claims data,  
9 yes.

10 Q Okay. But the reason that you didn't, the reason that we  
11 have these charts, these histogram charts, with the plotted points and a  
12 single provider plotted point for each of the CPT code combinations is  
13 because that's what United asked for, right?

14 A Correct.

15 Q Okay. So I'm going to label this side. All right. So let's go  
16 back to the histograms.

17 MR. MCMANIS: And Michelle, if you could please pull out  
18 that top right corner again real quick.

19 BY MR. MCMANIS:

20 Q I want to clear up, perhaps, a little bit of confusion. When we  
21 see this geozip, 893 --

22 A Yes.

23 Q -- that's not just -- well, let me ask it this way: what are the  
24 ZIP codes contained within the geozip 893? Do you remember?

25 A It's anything beginning with 893, and if you allow me to go to

1 my report, I have the full -- it's 8 -- ones beginning with 893 through 895,  
2 and then 897 through 898.

3 Q Okay. And do me a favor and tell me what the ZIP codes are  
4 that are included within the 890 geozip that we see for free.

5 A 890 and 891.

6 Q Okay. So any ZIP code that begins, the first three numbers  
7 890 or 891, that's going to be within the 890 geozip.

8 A Yes.

9 Q Okay. And then, any ZIP code that begins with the first three  
10 digits for basically the rest of Nevada comes into this 893.

11 A Correct.

12 MR. MCMANIS: Okay. So Michelle, can you close that out,  
13 please, and just pull up the histogram, the whole chart?

14 BY MR. MCMANIS:

15 Q Now, I don't do a lot of statistics. I don't claim to be an  
16 expert. But one thing that I like about histograms is they show you  
17 frequency, right?

18 A Yes.

19 Q And you've labelled that the number of occurrences, right?

20 A Yes.

21 Q And you know, the reason for showing frequency is because  
22 it paints a full picture of the data.

23 A Correct.

24 Q So you can visually see the number of times charges occur  
25 within each one of these bands.

1 A Correct.

2 Q Okay. And that's one of the reasons that you use a  
3 histogram in the first place, right?

4 A Correct.

5 Q Have you heard any of the testimony from Mr. Leathers in  
6 this case? He testified a few days ago.

7 A No, I have not.

8 Q All right. Well, I will represent to you that Mr. Leathers  
9 testified that there was a single --

10 [Pause]

11 THE COURT: Go ahead, please.

12 BY MR. MCMANIS:

13 Q Mr. Mizenko, I will represent to you that when Mr. Leathers  
14 testified, he said that he had looked at the claims data from Plaintiffs'  
15 claims file and there wasn't a single Team Physicians core 9981 -- 99281  
16 claim in the disputed claims file. Do you have any reason whatsoever to  
17 disagree with that?

18 A Not based on my knowledge.

19 MR. MCMANIS: Okay. Now, Michelle, go ahead and close  
20 this out again and pull up the top right corner again.

21 BY MR. MCMANIS:

22 Q All right. Now, this is in 893, page 74, of all of your  
23 histograms. This is a Team Physicians chart, right?

24 A I would have to -- I believe it's Team Physicians but I'd have  
25 to check because they're not labelled by which one it is, each

1 individual --

2 Q Okay. Well, go ahead and check. You got something in front  
3 of you, you can verify?

4 A I don't know that even -- the histograms don't specifically  
5 say, so I'd have to

6 Q Let me ask you this --

7 MR. MCMANIS: Michelle, can you pull out the bottom  
8 right-hand number there?

9 MS. RIVERS: Yeah, it's not letting me. It's not -- if it's just  
10 the chart or --

11 BY MR. MCMANIS:

12 Q Okay. Do you have that number on yours?

13 A Yes.

14 Q Okay. So go take a look at --

15 MR. MCMANIS: Please pull that back up, Michelle?

16 BY MR. MCMANIS:

17 Q Can you verify that 5424-74 is a Team Physicians histogram?

18 A They're not labelled which ones are Team, which ones are  
19 Fremont, which ones are Ruby Crest.

20 Q Well, I'm just asking. You don't have them labelled, sir?

21 A Not for which one they go to.

22 Q All right. So you don't know if this is Team Physicians --

23 A Or Fremont or Ruby Crest. Yeah. No, I do not offhand.

24 Q Okay. Well, go ahead and pull down the number. Assume  
25 with me that this is a Team Physicians histogram, okay?

1 A Okay.

2 Q Because we received histograms for the 99281 from United,  
3 said they were Team Physicians for the May 2017 time period, okay?

4 A Uh-huh.

5 MR. MCMANIS: All right. And Michelle, close that out and  
6 pull down the -- pull out the chart again, please.

7 BY MR. MCMANIS:

8 Q All right. And this red diamond that you have plotted that  
9 United asked you to put on your histogram here, that represents a billed  
10 charge for Team Physicians for a 99281 in May 2017?

11 A To my knowledge, correct.

12 Q Okay. Isn't it true, sir, that there were zero Team Physicians  
13 99281s in the May 2017 time period?

14 A I don't know without looking at the underlying data of Team  
15 Physicians, billed or did not bill.

16 Q Okay. And when United provided you with the data, United  
17 didn't tell you whether or not there were actually any disputed claims in  
18 the case that were Team Physicians, 99218, in the May 2017 time period,  
19 did they?

20 A All they said was that this was what Team Physicians  
21 charged that time period for that code and that geography, and we were  
22 asked to do a data analysis.

23 MR. MCMANIS: Michelle, could I please see 5424, page 80?

24 THE WITNESS: This is 8 and you said 80, right?

25 MR. MCMANIS: Oh, thank you.

1 THE WITNESS: I think that's a discrepancy.

2 MR. MCMANIS: I've got the wrong number. That's eight.

3 Can I get 80? Eight zero. You gave me a heart attack, Michelle.

4 BY MR. MCMANIS:

5 Q All right. 99281, pull out the top, please. All right. Again,  
6 we're at 893 geozip, 99281 procedure code, and now we're in May 2018,  
7 right?

8 A Correct.

9 Q Okay. And if we look at the chart --

10 MR. MCMANIS: Pull out the whole thing, please.

11 BY MR. MCMANIS:

12 Q -- do you see we've got a red diamond plotted for Team  
13 Physicians 99281 --

14 A Yes.

15 Q -- in May of 2018?

16 A Correct.

17 Q Okay. Even though no such charge exists in any of the  
18 disputed claims?

19 MR. BLALACK: Objection. Foundation.

20 THE COURT: Overruled.

21 THE WITNESS: I have -- I have no idea.

22 MR. MCMANIS: Can we see 5424, 86, please?

23 BY MR. MCMANIS:

24 Q We'll try to speed this up a little bit, but you see this is  
25 another 99281, 893, and we've gone to the May 2019 time period?

1 A Correct.

2 Q And can you see that there is a plotted charge for Team  
3 Physicians there on the histogram?

4 A Correct.

5 Q Okay. Let's keep moving forward; 5424, page 92. Another  
6 99281, 893, we've gone back to November of 2017 now.

7 A Correct.

8 Q And do you see we've got a plot for a Team Physicians  
9 charge on this histogram?

10 A Correct.

11 Q Okay. Let's go to page 98, please. Same code, geozip, now  
12 we're in November 2018, right?

13 A Correct.

14 Q And if we look at the histogram itself, again, we've got a  
15 charge provided to you by United that you have plotted on this  
16 histogram for Team Physicians?

17 A Correct.

18 Q Okay. And the last one here, if we go to page 104. And I  
19 think this is one that you looked at with Mr. Blalack. This is a 99281,  
20 geozip 893, from November 2019. Do you remember looking at this one,  
21 sir?

22 A I -- probably.

23 Q Okay. And do you see that we've got the Team Physicians  
24 provider charge out here in red?

25 A I -- yes, I see that.



1 Q Okay. And if --

2 MR. MCMANIS: Can you close this out, please, Michelle, and  
3 pull up the -- this box down here on the bottom left?

4 BY MR. MCMANIS:

5 Q All right. Now, Mr. Blalack asked you about the difference  
6 between the provider charge and maybe it was the 80th percentile,  
7 maybe it was the median. I don't remember which. But he said the  
8 difference is almost a hundred dollars. Do you recall that?

9 A I believe so.

10 Q Do you know one way or the other, sir, whether there is  
11 actually any Team Physicians charge for a 99281 in November of 2019?

12 A I don't know if it's in our claims data. I don't -- I don't know if  
13 it's in one of the disputed claims. I was just told that was the charge and  
14 to do the comparison.

15 Q United told you that was the charge and that's what's -- your  
16 task was to just put that on the histogram?

17 A Correct.

18 Q And then, in doing your analysis, one of the last things you  
19 did, you put up a figure of all the various percentages, and there were  
20 108 comparison points, right?

21 A Correct.

22 MR. MCMANIS: You can take that down, Michelle.

23 BY MR. MCMANIS:

24 Q In doing that analysis, you counted those Team Physicians  
25 histograms, and you gave them exactly the same weight as you did for

1 the Fremont 99285s that account for almost 4,000 claims in dispute,  
2 right?

3 A I don't know the exact numbers. But if you say so, then --

4 Q Okay. Because that wasn't something that United asked you  
5 to look at, right?

6 A We didn't look at frequencies.

7 MR. MCMANIS: Could I get the document changed, please?

8 BY MR. MCMANIS:

9 Q All right. Mr. Mizenko, I'm showing you a slide that Mr.  
10 Blalack put up in his opening statement. And he asked you a couple of  
11 questions earlier today about the pay amounts database. Do you recall  
12 those questions?

13 A Yes.

14 Q Okay. The pay amounts database are the allowed amounts  
15 database. Does that have anything to do with those network payouts?

16 A Only insofar as if someone uses those benchmarks to pay  
17 out of network claims.

18 Q Sir, the paid amount database does not contain a single out  
19 of network payment. Isn't that right, sir?

20 A Well, it's -- there's -- it's based on an imputation  
21 methodology taking all of our billed amounts and applying ratios to  
22 what's billed and what's paid. That -- that ratio only uses out of network  
23 billing. Or in network billing, sorry.

24 Q Okay. Only in network, right?

25 A To calculate the rations that are applied to the billed

1 database.

2 Q Do you understand this is an out of network case?

3 A That's my understanding.

4 [Pause]

5 MR. MCMANIS: Michelle, would you please pull up 297-S?

6 BY MR. MCMANIS:

7 Q All right. Sir, this is a summary of Plaintiff's Exhibit 297. It's  
8 in evidence.

9 A Okay.

10 Q A claims file showing amounts charged and amounts  
11 allowed for Sound Physicians. Do you see that?

12 MR. BLALACK: Your Honor, just to make sure I'm clear, are  
13 you saying the summary is in evidence or the underlying?

14 MR. MCMANIS: The underlying exhibit is in evidence.

15 MR. BLALACK: Okay. So not the summary.

16 MR. MCMANIS: The summary is not in evidence.

17 MR. BLALACK: Okay. Wanted to make sure. Thank you.

18 BY MR. MCMANIS:

19 Q All right. Can you see that on your screen, sir?

20 A Yes.

21 Q Okay. And if you take a look, we've got a couple of  
22 procedure codes on this summary. We've got 99285 and 99291. Do you  
23 see that?

24 A Correct.

25 Q Okay. And then we've got -- they all have the same Provider

1 Ten. Do you see that?

2 A Yes.

3 Q All right. And then we've got a few different provider cities.

4 A Correct.

5 Q Does anything jump out to you as strange about having a  
6 different -- the same ten for different cities?

7 MR. BLALACK: Objection. Foundation.

8 THE COURT: Overruled.

9 THE WITNESS: As far as I know, providers can -- provider  
10 groups can operate in multiple localities.

11 BY MR. MCMANIS:

12 Q So I want to take a look at these amounts charged that we  
13 see right here in the amount charged, and I want to see if we can plot  
14 these on your histograms, okay?

15 A Okay.

16 Q All right. So I want to start with the 99285, date of service,  
17 May 25 -- look out -- May 25, 2019. Okay?

18 A Okay.

19 Q All right. And what I'm going to do is I'll write these down so  
20 that when we flip over, we don't have to go back and forth. So tell me  
21 what the 99285 amount charged was for May 25, 2019, in Sound.

22 A Seventeen sixty-one.

23 Q Okay. And then we have a May 31, 2019, amount charged in  
24 Las Vegas, Nevada, right?

25 A Yep.

1 Q Okay. And is that also 1,761?

2 A Yep.

3 Q Okay. So I'm just going to go ahead and put Las Vegas up  
4 top like that, okay? And then we have, it looks like May 19, 2019, in  
5 Reno, also 1,761.

6 A Correct.

7 Q So okay if I put all of those on the same group here?

8 A Yes.

9 Q Okay. All right. And then we have a June 10, 2019, 99291,  
10 from Sound Physicians. That's in Las Vegas. And what's the amount  
11 charged for that one?

12 A One thousand eight fifty-three.

13 Q All right. And then in the last one, July 11, 2019, in Reno,  
14 what's the amount charged for that?

15 A Two thousand two hundred sixty-one.

16 Q All right. Have I written all those down accurately, sir?

17 A Yes, you have.

18 Q Okay.

19 MR. MCMANIS: So if I could get the Elmo, please.

20 BY MR. MCMANIS:

21 Q And is it true, sir, that for the 893 histograms that you put  
22 together, that except for the red provider charge, everything else is  
23 going to be the same?

24 A Yes.

25 Q Okay. So what I'm going to do is I'm going to ask you for the

1 Las Vegas 99285 of \$1,761 from Sound Physicians. Should I put that on  
2 the May 2019 benchmark or the November 2019?

3 A I would say it -- not sure if it's November '18 because it  
4 incurred before the release of the May 2019, or the May 2019. I don't  
5 know that it'll make a material difference.

6 Q Okay. You want to put it on May 2018?

7 A May 2019.

8 Q May 2019?

9 A Yeah.

10 Q I'm sorry. You said November 2018, didn't you?

11 A Yeah. That's -- I think. So the product is released the end of  
12 the month of May, but by the time that bill would get to an insurer, it  
13 would probably be available, and they would be looking at the May 2019  
14 benchmarks.

15 Q All right. Well, I'm just asking you do you think we should  
16 put it on November 2018 or May 2019?

17 A We'll go with May 2019.

18 Q Okay. Let's get there. And that's for 99285?

19 A Correct.

20 Q All right. Charge of 1,761?

21 A Yes.

22 Q All right. Would you say it's about right here?

23 A Yeah, between the 8 and the 17.

24 Q Right here between the 8 and the 17. All right. So I'm going  
25 to put it S for Sound Physicians right there, okay?

1 A Okay.

2 Q All right. And is that higher or lower than the Fremont  
3 charge for May 2019?

4 A That is higher.

5 Q All right. So let's take a look at the 893 geozip. And we can  
6 do the same chart for Reno and Fallon together, right?

7 A I assume that Fallon is outside of Clark County.

8 Q Okay. I --

9 A -- so it's open, yes.

10 Q Okay. So we'll use May 2019 for that one, as well?

11 A Yes.

12 Q All right. And if move at where the 1761 would fall, or May  
13 2019, 99285, we're cut off the chart, aren't we?

14 A Yes. I would say, because the end of the chart would be  
15 around \$1,680.

16 Q All right. So I'm going to put my S for Sound Physicians,  
17 over here. And how does that compare to the provider charge from the  
18 Plaintiff, that's represented on this Instagram?

19 A It is higher.

20 Q All right. And that would cover, because the 893 geozip will  
21 be the same. If you're outside of Clark County, that would be for both  
22 the Reno and the Fallon charge that we looked at, right?

23 A Yes. Assuming Fallon's outside of Clark County, I don't know  
24 exactly where it is.

25 Q All right. Let's go to the 99291 Las Vegas, June 20109.

1 Would that also be a May 2019 chart?

2 A Correct.

3 Q All right. So here we are, May 2019, we're looking at 1853,  
4 and this one, it looks like it's almost exactly the same as the providers  
5 are; do you agree with that?

6 A Yes.

7 Q A little bit higher?

8 A Yes.

9 Q So if you look -- let me know if you can see it?

10 A I can see it.

11 Q Okay. So we'll put it -- we'll put it right here. As per Sound  
12 Physicians; just a little bit higher in this instance?

13 A Correct.

14 Q Okay. Now let's take a look at the last one, for this, Reno, in  
15 July 2019, for 99291. Would you also compare that to the May 2019  
16 benchmark?

17 A Correct.

18 Q All right. Now when I saw this chart, it seemed like it was  
19 being used to create the impression that maybe the plaintiffs were way  
20 off here to the right; is that right?

21 A It's not trying to create an impression, it's just a  
22 representation of the data.

23 Q All right. Well, where does the \$2,261 from Sound  
24 Physicians' fall, compared to this chart here?

25 A It's higher, it's to the right of -- yeah, the chart would have to

011197

011197



1 be extended to represent that.

2 Q All right. So let's use this red line here, here we go. About  
3 how far out do you think we'd have to go before we can plot that Sound  
4 Physician's charge --

5 A And if you --

6 Q -- for July 29th?

7 A If you were to take your finger, and you've got to take the  
8 distance between 1260 and 1350, and that is 90, and then whatever, 2261  
9 minus 1350, divide that by 90, that many more bins to the right.

10 Q Okay. So --

11 A So maybe like --

12 Q -- ten or so?

13 A So, what was that 9 -- could you move your finger. If that  
14 was \$90, and we're talking about like a \$900 difference, so you'd have to  
15 make 10 additional bins.

16 Q All right. So we'd have to go 1, 2, 3, 4, 5, 6, 7, 8, 9 --

17 A It doesn't seem that far proportionate --

18 Q -- 10?

19 A -- but it --

20 Q All right. So --

21 A I don't know that that's -- it's hard, you know, when the paper  
22 is a different --

23 Q Yeah.

24 A -- size, but we'll just say --

25 Q I [indiscernible - speaking at the same time as the witness]

1           A     -- if you were to take ten of those and go to the right, that  
2 would be where the S is.

3           Q     And I didn't mean to cut you off. So I brought it back a little  
4 bit, and we'll just put it right here; is that fair?

5           A     That's fair.

6           Q     Okay. All right. So if we were going to plot the "S" for sound  
7 physicians on this chart, it would be up here, right?

8           A     Right.

9           Q     Okay. There's just one more thing I want to talk about, and  
10 it's that figure 5, that you showed near the very end of your testimony;  
11 do you recall that?

12          A     Yes.

13          Q     Now I've got a board that I had made the very first night of  
14 trial, okay. And this is a slide from Mr. Blalack's opening, that I've been  
15 waiting to get to. All right?

16          A     Okay.

17          Q     All right. And does this look like the same numbers that you  
18 had on your chart?

19          A     It's -- yeah, they are all -- they all match.

20          Q     Okay. So when we are --

21               MR. MCMANIS: Michelle, would you pull up 473-F.

22 BY MR. MCMANIS:

23          Q     So 473-F is another summary in evidence; identifies the  
24 claims that are in dispute, that have a single core CPT code in --

25          A     Uh-huh.

1 Q -- plaintiffs' claim file, okay?

2 A Okay.

3 Q All right. And so if we're going to do a comparison of, you  
4 know, what the 99281s are, these are the charges that you would used,  
5 right?

6 A Yes.

7 Q Okay. Michelle, I'd like to pull up plaintiffs' Exhibit 470 -- I'm  
8 sorry. Yeah. Plaintiffs' Exhibit 473-S, which is a summary of the  
9 underlying claims' files, correct?

10 A Okay.

11 Q And what I've done here, is I've identified, claim-by-claim,  
12 which ones are over and under the 80th percentile of FAIR Health. All  
13 right?

14 A Okay.

15 Q So we might have to do a little bit of math.

16 A That's what I'm here for.

17 Q All right. Now I asked for a copy later, but nobody had one.  
18 So I guess we all just use our phones these days.

19 All right. So if we want to calculate the percentage of the  
20 actual disputed claims for Fremont Energy, total, okay --

21 A Okay.

22 Q -- across the board, they're over/under the fair health median.  
23 We take the subset here, and we divide it into the total, 75/24, right?

24 A Okay.

25 Q And do you know what 217 divided by 7524 is?

1 A Not off the top of my head.

2 Q All right. It's almost three percent, right?

3 A Yes.

4 Q Okay. So the total for Fremont, they're greater than FAIR  
5 Health 80th percentile, that's three percent. How about Ruby Crest  
6 Emergency medicine, how many of those are over the FAIR Health 80th  
7 percentile?

8 A None.

9 Q Zero percent. And if we look at the actual disputed claims for  
10 Team Physicians, what's the total percentage for Team Physicians that  
11 over the FAIR Health 80 percentile?

12 A Two percent.

13 Q Now if I want to get to sort of the total overall picture, I'm  
14 going to take that 217, for Fremont, right, and add that to the 6 from  
15 Team Physicians?

16 A Correct.

17 Q It gives me 223?

18 A Correct.

19 Q Then I'm going to divide that 223 into the grand total here, of  
20 8,159?

21 A Correct.

22 Q Does 2.7 percent look about right?

23 A It sound about right, yes.

24 Q So even though United has presented data in a way that  
25 makes is appear as though 32 percent of the bill charges are above the

1 FAIR Health 80th percentile. When you go to the actual claims' data, the  
2 true number, 2.7 percent, right?

3 MR. BLALACK: Object to the foundation, a leading question,  
4 and the witness has no idea what's in the claim's data.

5 THE COURT: Overruled.

6 THE WITNESS: I mean, I would -- yeah, I would have to  
7 stipulate that I have -- I don't know each individual claim. My analysis is  
8 focused on, at a combination level, and in that analysis 32 percent  
9 combinations were over. You could look at any analysis in different  
10 fashions and, you know, you stipulate that, you know, your analysis is  
11 correct, you know, you came up with a different number.

12 MR. MCMANIS: Michelle, could we please take a look at  
13 473-Y?

14 BY MR. MCMANIS:

15 Q All right. Mr. Mizenko, it's another summary of the plaintiffs'  
16 disputed claims file. This time it's compared to the FAIR Health mean,  
17 the second column right here, from Mr. Blalack's slide, okay?

18 A Okay.

19 Q Now the mean is going to be a little bit lower number than  
20 the 80th percentile, usually, right?

21 A In a typical data distribution, correct?

22 Q Okay. So the numbers here are a little bit different, but if we  
23 want to find out what the percentage of Fremont's claims are they're  
24 over that mean, FAIR Health mean, we would divide that \$1,421, again,  
25 by 7,524. Right?

1 A Correct.

2 Q All right. About 19 percent?

3 A Correct.

4 Q Nineteen percent is a lot lower than 53 percent, right, sir?

5 A That's correct.

6 Q How about Ruby Crest?

7 A 42 over 335, 12.5 percent.

8 Q And Team Physicians, how about that one?

9 A 117 over 300, which is 35.6 percent.

10 Q All right. I'm getting 39 --

11 A Okay.

12 Q -- so let's check that.

13 A Okay.

14 Q Go ahead.

15 A 39 percent.

16 Q Okay.

17 A That's why you need the calculator.

18 Q I don't want to shortchange you. That's half of how it was

19 originally presented, correct?

20 A Correct.

21 Q All right. Now to get the total, we add up 1421, 42, 117,

22 divide that 8,159?

23 A Correct.

24 Q I get 19.4 percent?

25 A Yes.

1 Q All right, sir. We've got one more row to work with here.

2 MR. MCMANIS: Can I get plaintiffs' Exhibit 473-Z.

3 BY MR. MCMANIS:

4 Q All right. Now I'll give credit where it's due. We've got one  
5 that's right this time, don't we?

6 A Team Physicians is 100 percent over in both analyses.

7 Q On the median, right?

8 A Yes.

9 Q Okay. Now so we don't have to change that one, right?

10 A Right.

11 Q Okay. But if I want to take the Ruby Crest, I'm going to  
12 divide 6 into 334, right?

13 A Right.

14 Q It's about a shade under 2 percent?

15 A Correct.

16 Q And for Fremont, take the 600, divide it by 7524?

17 A Yes.

18 Q I got just under 8 percent?

19 A Sounds about right.

20 Q And then if we want to do the total?

21 A 906 divided 8159.

22 Q 906 divided by 8159. I get 11.1 percent.

23 A Okay.

24 Q Those are the percentages for the actual claims in dispute,  
25 right, sir?

1 MR. BLALACK: Object to the foundation. The witness has no  
2 idea what this claim's going be.

3 THE COURT: Overruled.

4 THE WITNESS: I don't know the claims, but if you stipulate  
5 that they're correct, then those numbers are correct.

6 BY MR. MCMANIS:

7 Q Sir, you used data that was created by United, correct?

8 A I wouldn't say it was created by them; it was provided to us  
9 by them. I don't know who created it.

10 Q Did you use the spreadsheet that was given to you by  
11 United?

12 A That's correct.

13 Q You didn't validate it against any of the claims' data; did you  
14 sir?

15 A I didn't look at the disputed claims.

16 Q You didn't look at even specific chargemasters for any the  
17 claims, did you sir?

18 A No, I did not.

19 Q You had, in addition to the spreadsheet provided by United,  
20 you had an expert report, right?

21 A Correct.

22 Q Okay. Did you dig into the data under the expert report, to  
23 evaluate the disputed claims.

24 A I did not.

25 Q Sir, if you had to do this all over again, present this data to



1 the jury, looking back would you do it any differently?

2 A No. Because I was asked to perform an analysis, based on  
3 certain parameters, using certain data, and that's what I did.

4 Q United gave you the parameters?

5 A They gave us the charges and said, "compare these against  
6 FAIR Health benchmarks, and that's what I did.

7 A And those numbers are correct.

8 Q And you followed United's instructions?

9 A Correct.

10 MR. MCMANIS: Thank you, Mr. Mizenko. I pass the witness,  
11 Your Honor.

12 THE COURT: Redirect, please.

13 [Counsel confer]

14 REDIRECT EXAMINATION

15 BY MR. BLALACK:

16 Q All right. Mr. Mizenko, I'll just run through a couple of points  
17 that Mr. McManis raised with you. I want to make sure the jury has  
18 clarity on what he was driving at and what your testimony is.

19 All right. First of all, would you, Shane, bring up -- I think we  
20 already have this, so I don't need to ask for it. Plaintiffs' Exhibit 473-B, or  
21 maybe 473-B1, I believe is one of the first? No, that's not it. 473-B-1.

22 MR. MCMANIS: Yeah. That one was shown a couple of days  
23 ago, I think you guys had that.

24 MR. BLALACK: Yeah. I think it's -- do you have that one,  
25 473-B-1.

1 [Counsel confer]

2 BY MR. BLALACK:

3 Q All right. Well, I'll try to be my best to do grammatic  
4 recreation. Do you remember seeing a chart, sir, that listed -- it was  
5 another one of these, just word documents with a chart on it, that  
6 reported to have different charges for different codes, and in the same  
7 allowed amount, I think it was like \$185?

8 A Something like that --

9 Q Does that ring a bell?

10 A -- it's familiar, yeah.

11 Q Okay. And he was asking you about relative value analysis --

12 A Yeah.

13 Q -- do you remember that?

14 And how do you use that concept in the work you do at FAIR  
15 Health, relative value analysis?

16 A We're using it when we can't -- we can't put a value on  
17 something using actual claims data, because there's not enough actual  
18 claims data. So the example I gave the heart transplant, that only  
19 happens maybe once a year in Clark County, but if it's performed people  
20 are interest to know what the market value is of that.

21 Q Okay. And in those kind of situations you would use some  
22 sort of relative value amount?

23 A Correct. We'd know because that heart transplant is done  
24 more than nine times, naturally we know what the average charge is, we  
25 can create a relative value of that, other things, and then say, well, if the

1 heart transplant was done in Clark County, this is what it would be.

2 Q So it's an inference, so-to-speak?

3 A Correct.

4 Q Okay. If you have the data, you actually have the underlying  
5 data, and you don't have to draw an inference, would you use that sort  
6 of relative analysis?

7 A No.

8 Q Okay. So for example, in the scenario that Mr. McManis  
9 showed, if the health insurer in that case, that was reimbursing claims at  
10 \$185 for each of those claims, had -- there we go. Had market data and  
11 information showing that \$185 represented reasonable value, and they  
12 had data to that effect, there's be nothing inconsistent with a good  
13 methodology --

14 MR. MCMANIS: Your Honor, I object to the leading.

15 MR. BLALACK: Strike that. I'll withdraw.

16 BY MR. BLALACK:

17 Q Okay. From your perspective as a statistician, would there be  
18 anything wrong with using the same value, in the allowed amount  
19 column for reimbursement, if there was underlying data supporting it?

20 A Not to be flippant, they can use whatever value makes sense  
21 to them, It's, you know, a business decision and not a statistical  
22 decision.

23 Q Okay. So nothing about the relative analysis that you  
24 discussed, within that question?

25 MR. MCMANIS: Your Honor, leading.

1 BY MR. BLALACK:

2 Q Would anything about the relative value analysis impact that  
3 question, sir?

4 A No.

5 Q That's what I thought. Now you were asked about the data  
6 you received to conduct your analysis. Do you recall those questions?

7 A Yes.

8 Q And you mentioned that you received a file of combinations  
9 of codes, and charges, and dates from my law firm, correct?

10 A Okay.

11 Q Now do you remember, sir -- do you have your report with  
12 you, and accessible?

13 A It's -- yes. It's on the witness stand.

14 Q Would you turn to your report, this is Defense Exhibit 5186,  
15 and I'm not going to publish it to the jury, I just want to make sure, to  
16 refresh your recollection and have you refer to something. If you go to  
17 page 6 of the report.

18 A Okay.

19 Q Your requested data. Do you see that?

20 A Okay.

21 Q And in your report do you describe where the charges that  
22 the O'Melveny Law Firm provided you where they came from, in that  
23 paragraph, first -- the second full fair under VIII?

24 A It was from Mr. Phillips report.

25 Q Let's remind the jury of Mr. Phillips, you understood -- you

1 read Mr. Phillips' report, that was one of the things you had in your  
2 materials to rely upon?

3 A Yes. It's been awhile, but I read it.

4 Q Just to remind the jury, who is Mr. Phillips?

5 A He's the expert for the Plaintiff.

6 Q So you got the charges that you got from the O'Melveny firm  
7 derived from Mr. Phillips' report, correct?

8 A Correct.

9 Q Okay. And you said Mr. Phillips was the Plaintiff's expert,  
10 correct?

11 A Correct.

12 Q Actually, he was the Plaintiff's expert. He's not their expert  
13 now, did you know that?

14 A I did not.

15 Q So while O'Melveny transmitted the charges to you, the  
16 charges derived from the Plaintiff's expert, that's what you said in your  
17 report, correct?

18 A Yes.

19 Q Okay. Now while you were questioned by Mr. McManis  
20 about the data you received, he showed you a lot of things. But what he  
21 didn't show you was a single charge master or any other data  
22 suggesting that one of the charges you used was incorrect, right?

23 A Not to my recollection.

24 Q So sitting here right now do you have any reason to believe  
25 that one of the charges that you used for your analysis does not

1 accurately represent the charges of the three TeamHealth Plaintiffs?

2 A I do not have reason to believe that.

3 Q All right. He also asked you if you had asked to look at the  
4 Plaintiff's claims file, do you remember that?

5 A Yes.

6 Q To conduct the kind of analysis you conduct frequently for  
7 TeamHealth, did you need the Plaintiff's claims file?

8 A No. I don't -- in my role I don't need to look at claims data.  
9 In fact, as few people that can have to look at sensitive claims that is  
10 possible is ideal because it is sensitive data. I'm reviewing charges  
11 therefore I don't need to see the full claim.

12 Q And I want to come back to that in a minute when we discuss  
13 this handy-dandy charge that Mr. McManis drew all over. But let me go  
14 to another topic first. You testified earlier that the FAIR Health data is  
15 reliable, do you remember that?

16 A Yes.

17 Q What'd you mean by that?

18 A That it's based on a robust large volume dataset. It's been --  
19 the incoming data has gone through all of these audits, quality  
20 assurances, data products have gone through quality assurances. And if  
21 you were to repeat the methodology in six months you would get similar  
22 results minus any data changes in the six months.

23 Q So by reliable do you mean reliable in the sense that the data  
24 is what it is?

25 A Yes.

1 Q By reliable are you making any other statements the  
2 reliability for any particular use?

3 A No. Just that it's reliable for any use.

4 Q Now the -- I want to ask kind of an analytical question here  
5 sir. If the jury wanted to know how to bill charges of a specific provider  
6 compared to the bill charges of other providers in a geographic area, in a  
7 particular time period, with the data analysis that you conducted and  
8 reported in this testimony here, provide a reliable comparison for that  
9 purpose?

10 A Yes.

11 Q And if that was your objective, if that's what the jury was  
12 trying to determine, would you need to look at a claim file containing  
13 11,500 disputed claims to make that kind of comparison?

14 A I would not. If it's summarized and accurate then I can just  
15 look at the numbers and compare number A to number B.

16 Q In other words if there's 10,000 instances of a 99285, to  
17 prepare a histography of a 99285 in a particular time period, in a  
18 particular day, does it matter how many instances there are to run your  
19 analysis? Could it be one or 5,000?

20 A I think there would need to be the nine to create an actual  
21 benchmark, but other than that it doesn't matter how many occurrences  
22 there are.

23 Q Right. Because the charge is the same for 99285 no matter  
24 how many times it's used?

25 A Correct.

1 Q Did you -- I want to ask you another one for 297S if I didn't  
2 ask you? Pardon me.

3 MR. BLALACK: Shane, can you bring up Plaintiffs' Exhibit --  
4 summary exhibit demonstrative 297-S please?

5 MR. MCMANIS: S as in Sam?

6 MR. BLALACK: That's what I have. 297-S; is that right?

7 MR. MCMANIS: Sorry, I forwarded it to -- did you forward  
8 it --

9 MR. BLALACK: Oh, I'm sorry.

10 MR. MCMANIS: -- did you forward it to Shane?

11 MR. BLALACK: My apologies, my apologies. Yeah. Shane  
12 would be better, but you're right. Court's indulgence and the jury's  
13 indulgence.

14 [Pause]

15 MR. BLALACK: Thank you, Judge. So the first one I'm  
16 looking for Shane, once you've got it, is Plaintiffs' Exhibit 297-S.

17 BY MR. BLALACK:

18 Q All right. Sir, do you remember being shown this chart?

19 A Yes, I do.

20 Q Just so everyone's clear, this is just a summary prepared by  
21 lawyers, okay. That's what we're looking at. Do you understand that?

22 A Yes.

23 Q This is not the actual data. And what we appear to have is  
24 representative of five different claim lines with dates of service in May to  
25 July of 2019, correct?



1 A Correct.

2 Q And you have three of those have a charge amount of 1761,  
3 one 1853, one 2261, correct?

4 A Correct.

5 Q And then you have allowed amounts of varying five different  
6 amounts, correct?

7 A Correct.

8 Q And the procedure codes are either a 99285, 99291, correct?

9 A Correct.

10 Q Different locations, but all under the same tax identification  
11 number, correct?

12 A Correct.

13 Q Okay. I just want to make sure -- and just to remind the jury,  
14 have you ever seen this summary or this data or anything about it before  
15 in your life?

16 A No.

17 Q Okay. Now I just want to make sure I'm reading this correctly  
18 sir. So would you agree with me -- I'm sorry. I'm going to have to do  
19 calculator work too. Would you agree with me so that for two of these  
20 claims the full charge was paid?

21 A Correct.

22 Q And then for three of the claims some amount less than the  
23 full charge was paid, do you agree with that?

24 A Correct.

25 Q I'm going to represent to you sir that by my math for that

1 first claim whoever paid this claim allowed the claim at about 24.8  
2 percent. You're a statistician. Does that sound about right?

3 A That sounds about right.

4 Q Okay. And then if you look at the third claim, whoever paid  
5 this claim allowed payment at about 24.9 percent, does that sound about  
6 right?

7 A Correct.

8 Q And then in the third claim again, this was the one with the  
9 charge of -- so the first one then was allowed at 24.8. That was the one  
10 date of service May 25th, 2019. The one that was allowed at 24.9 was  
11 May 19th, 2019. And then the third one which is June 10th, 2019 date of  
12 service, according to my math was allowed at about 30 percent. Does  
13 that all sound about right?

14 A Yes.

15 Q All right. So in your database for the FAIR Health bill charge  
16 benchmarks, would the benchmarks be based entirely on the amount  
17 charged column?

18 A Yes.

19 Q And for your database that's the allowed amount database,  
20 would that be based solely on the amounts that's listed under the third  
21 column amount allowed?

22 A No. Because we don't use actual allowed amounts in that  
23 because of the proprietary nature of allowed amounts.

24 Q Okay. What do you use?

25 A We would use the ratio of the charge divided by allowed, or

1 allowed divided by charged, and imply that to the billed amounts --

2 Q Got it.

3 A -- to the --

4 Q So for example the math I just did?

5 A Yes.

6 Q So instead of using in your amount allowed, your allowed  
7 amount charge -- strike that. Instead of in your amount allowed  
8 benchmark product, instead of using these actual numbers under this  
9 column, you would use the percentage this represents of the chart?

10 A So we would -- yeah. So say the average -- the multiplier for  
11 ER services was 25 percent we would multiply the bill charges by 25  
12 percent to impute what the allowed amount would be.

13 Q Okay. So for these five claims if they were contributing in  
14 that benchmark, two of them would be at 100 percent, correct? And then  
15 the other three would be at the percentages I identified?

16 A Correct.

17 Q All right. Now when I -- or when Mr. McManis was asking  
18 you about these two products you have, the bill charge and the allowed  
19 amount --

20 A Uh-huh.

21 Q -- he asked you about the paid -- I think he called it the paid  
22 amount there. Is that what's it called or is it --

23 A It's the allowed amount.

24 Q Allowed amount, okay. He asked you about that and he  
25 asked you whether it could ever be used to pay out of network -- or it

1 would ever relate to out of network claims, you said, I wrote it down,  
2 someone could use it to pay out of network claims. Did I hear you  
3 correctly?

4 A Correct.

5 Q Okay. What are you describing there, sir, just as a practical  
6 matter?

7 A I mean, someone could use the allowed amounts --

8 MR. MCMANIS: Your Honor, can we approach?

9 THE COURT: You may.

10 [Sidebar at 4:20 p.m., ending at 4:22 p.m., not transcribed]

11 BY MR. BLALACK:

12 Q All right. Thank you, sir. All right. Let's talk about some of  
13 the histograms. And focused on the histogram that Mr. McManis wrote  
14 on when he was at the Elmo where he took one of your histograms and  
15 he wrote S --

16 A Okay.

17 Q -- supposedly for Sound related to the charges that were on  
18 this summary, do you remember that?

19 A Yes.

20 Q And there were several he had on there where the charge  
21 was very far off the page, do you remember that --

22 A Correct.

23 Q -- or off the line; is that correct?

24 A Yes.

25 Q And I think there was even in one of your histograms from

1 the Team Health Plaintiffs, one of their charges was like way out on the  
2 edge where there was no data reflected on the chart, do you remember  
3 that?

4 A Correct, yes.

5 Q Is that unusual or unique, or is that something happens with  
6 your data periodically?

7 A There will always be outlier providers.

8 Q What do you mean by an outlier provider?

9 A Someone who statistically speaking, an outlier is a statistical  
10 term that says -- that basically says if you look at the distribution of data  
11 that one statistically is very different from the rest of them. And it could  
12 be that it's a mistake. It could be that that's just what they do.

13 Q So do you have some methodology when you're evaluating  
14 your data for your product to address those outlier situations?

15 A Yes. There's a statistical methodology that looks at the  
16 median and then looks at how far everything deviate -- every datapoint  
17 deviates from the median and looks at four deviations from the median.  
18 So it's a very permissive conservative methodology that aims to flag and  
19 remove the true outliers.

20 Q Okay. So for the case of the very high charge 2261 that was  
21 -- that Mr. McManis wrote off the page for the -- I think it was a Team  
22 Physician charge that was all the way out, but you couldn't see any dots  
23 on the line. Because those aren't on one of your histograms does that  
24 mean they never showed up in the data?

25 A It could be that they never showed up in the data or it could

1 be that they were flagged by the outlier methodology as outliers. I can't  
2 say without looking at the underlying data.

3 Q So when an extremely high or an extremely low charge is  
4 flagged by your methodology, how does that capture or not captured in  
5 the [indiscernible]?

6 A It's not included in the benchmark data.

7 Q What does it mean to not include it in the benchmark data?

8 A So in the calculation of those percentiles, those extreme lows  
9 and extreme highs are not there.

10 Q And why did you go through that exercise?

11 A It's a data quality measure to make sure like I said, an  
12 extreme high and extreme low could be a data quality issue.

13 Q Okay. Thank you. All right. Let me show you one more  
14 exhibit. This is Mr. McManis' 473-F as in Frank I believe. Okay. Yes.  
15 This was another one of these summaries where the suggestion was that  
16 you could look at these numbers and then do some kind of calculation to  
17 get a more accurate description of how the Team Health Plaintiff's  
18 charges are or are not below these various metrics. Do you remember  
19 that question?

20 A Yes.

21 Q Okay.

22 MR. BLALACK: Now if you could go to -- Shane, go to  
23 Plaintiff 73-Y, I believe if memory serves. Yeah, here we go.

24 BY MR. BLALACK:

25 Q Now I believe this is one of the summaries, Mr. Mizenko, that

1 Mr. McManis used to do these calculations with you --

2 A Correct.

3 Q -- where he marked on the board, do you remember that?

4 A Yes.

5 Q Okay. And the suggestion was that somehow the analysis

6 you conducted at our request were misleading because it wasn't

7 capturing the charges for the disputed claims, do you remember that?

8 A Yes.

9 Q Let me start with one foundational point. If the goal of your  
10 analysis was to determine -- the jury wanted to know and determine  
11 whether it is actually true that the Team Health Plaintiffs hold themselves  
12 to a standard of the 80th percentile of reasonableness. If that was the  
13 question you wanted to answer yes or no, or if you wanted to know how  
14 their charges, the price list compared to these metrics, would the  
15 analysis you did answer that question?

16 A Yes.

17 Q Now if you wanted to answer a different question which is  
18 how do their charges in dispute in this trial relate to the FAIR Health  
19 metrics and the frequency with which they used some of those charges  
20 on the disputed claims, you might look at it a different way; is that fair?

21 A Correct. Different types of scenarios require different types  
22 of analyses.

23 Q All right. But at a minimum if you wanted to do that kind of  
24 analysis, if you wanted to actually measure their disputed claims, the  
25 actual disputed claims against these metrics, you have to use all of the

1 codes on their disputed claims list, wouldn't you?

2 A I would think so.

3 Q So there are over 11,500 claims in dispute in this case that  
4 include both emergency room CPT codes or like evaluation management  
5 codes, do you know what those are?

6 A Yes.

7 Q And also a variety of procedure and service codes, do you  
8 know that?

9 A Yes.

10 Q In this case the summaries that Mr. McManis used for this  
11 analysis involved how many claims?

12 A 8,159.

13 Q Did it involve the full list of 11,500 claims?

14 A Based on that, no.

15 Q And the reason it didn't is look up here. It was limited to core  
16 CPT codes, correct?

17 A Correct.

18 Q Do you know what a core CPT code is in this case?

19 A I do not.

20 Q You ever heard that term?

21 A I have not.

22 Q Okay. So this math, even assuming that's what you were  
23 trying to do, this math does not correspond to all of the codes in dispute  
24 on the disputed claims list, just those tentative core CPT codes, right?

25 A That's my understanding.



1 Q Are you trying to answer the question Mr. McManis  
2 identified here in this writeup?

3 A Could you rephrase that?

4 Q Yeah. Were you trying to answer the question that Mr.  
5 McManis is suggesting in this analysis or something else?

6 A My report was trying to answer a different question I believe.

7 Q Which was how did the Plaintiff's listed price compare to the  
8 FAIR Health benchmark?

9 A Correct.

10 Q That's all I've got, thank you.

11 THE COURT: Okay. Any recross?

12 MR. MCMANIS: Yes, Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. MCMANIS:

15 Q All right. Mr. Mizenko, you were asked a couple of questions  
16 about the summary Exhibit 297, do you recall that?

17 A Yes.

18 Q Okay. And there was a comment that I heard about the, you  
19 know, whoever paid it. Do you recall that comment from Mr. Blalack?

20 A Yes.

21 Q Okay.

22 MR. MCMANIS: I'd like to pull up if we could the native  
23 version of Plaintiffs' Exhibit 297. All right. And if we -- let's go down to  
24 row 1866.

25 BY MR. MCMANIS:

1 Q All right. And do you see that's a May 25th, 2019 claim just  
2 like the summary that we looked at?

3 A Yes.

4 Q Okay. And the amount charged is that 1761?

5 A The -- I mean, the top wasn't present, but I assume that's  
6 correct.

7 Q Okay. And then I'll -- this next row here that we had on the  
8 summary, that's the allowed amount of 438.23 and Mr. Blalack walked  
9 you through a little bit of math with that?

10 A Yeah.

11 Q Okay.

12 MR. MCMANIS: Let's scroll to the right, column U. All right.  
13 And let's actually -- let's go all the way to the top so we can see the title.  
14 BY MR. MCMANIS:

15 Q All right. Do you see the title of this is, it looks like  
16 adjudication reason or description?

17 A Sounds fair.

18 Q Okay. So let's go back down to row 1866 and let's look at the  
19 adjudication reason or description for the claim that Mr. Blalack asked  
20 you about.

21 MR. MCMANIS: See if we can make that -- there we go. Go  
22 to the other side. Try zooming out. Shrink it and then bring it back  
23 down.

24 THE WITNESS: That's good enough for me to read if that's  
25 all you're asking.

1 BY MR. MCMANIS:

2 Q All right. Well, scroll down, make sure everybody can see it.  
3 All right. Now this service was rendered by an out of network provider.  
4 Do you see that how it starts?

5 A Yeah.

6 Q Okay. And then it says, "if you're asked to pay more than the  
7 deductible copay and co-insurance amounts, please call" who?

8 A Data iSight.

9 Q Do you know whether United makes an additional  
10 percentage, not just on what it pays to its own physicians at Sound  
11 Physicians, but on the amount saved through Data iSight?

12 A I don't know.

13 MR. MCMANIS: Let's take a look at row 1806. All right. Let's  
14 go back to the front. See if we can match this up. That looks like the  
15 wrong one. I'm sorry, it's 1807.

16 BY MR. MCMANIS:

17 Q All right. And that is a May 19, 99285 that we looked at in  
18 Reno --

19 A Yeah.

20 Q -- right? Let's go to column U. All right. Does this one  
21 reference Data iSight as well?

22 A It does.

23 Q Do you know whether United made a percentage on the  
24 amount saved after what it paid to its physicians as well?

25 A I do not.

1 Q All right.

2 MR. MCMANIS: Let's go to -- let's go down to 2286. Let's go  
3 all the way to the left. Make sure it's the right one. Okay.

4 BY MR. MCMANIS:

5 Q Now this is the June 2019 99291 with the charge of \$1,853,  
6 right?

7 A Yeah.

8 Q Just like the one we looked at, right?

9 A Yeah.

10 Q Okay. Let's go over to column U. There's Data iSight again,  
11 correct?

12 A Correct.

13 Q So for the only claims and summary that you looked at,  
14 United either paid its physicians the full bill of charges, or it took a cut on  
15 whatever Data iSight saved, right, sir?

16 MR. BLALACK: Objection, foundation.

17 THE COURT: Overruled.

18 THE WITNESS: I don't know anything about Data iSight, so I  
19 don't know what happened. I just know that paid in full or Data iSight is  
20 cited here.

21 BY MR. MCMANIS:

22 Q Okay. Thank you.

23 MR. MCMANIS: No further questions, Your Honor.

24 THE COURT: Any redirect?

25 MR. BLALACK: Nothing further.

1 THE COURT: Good enough. May we excuse the witness?

2 MR. BLALACK: Please.

3 THE COURT: All right. Thank you sir. You may step down  
4 and you are excused. I'm going to meet with -- is everybody good  
5 without a break until 5:00 o'clock? I need to meet with the lawyers out in  
6 the hall for just a couple of minutes.

7 [Recess taken from 4:36 p.m. to 4:41 p.m.]

8 THE COURT: Thanks everyone. Defendant please call your  
9 next witness.

10 MR. ROBERTS: Thank you, Your Honor. The Defendants  
11 would call Karen King to the stand.

12 THE COURT: And let's go to like 4:57.

13 KAREN KING, DEFENDANTS' WITNESS, SWORN

14 THE CLERK: Please have a seat and state and spell your  
15 name for the record.

16 THE WITNESS: My name is Karen B. King, K-A-R-E-N B as in  
17 boy, K-I-N-G.

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

19 MR. ROBERTS: Thank you. Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. ROBERTS:

22 Q Ms. King, I notice that you hesitated when you went up there.  
23 Is this your first time?

24 A It is.

25 Q Testifying as an expert in front of a jury?

1 A It is.

2 Q And it's a little hard to hear in the courtroom with the  
3 acoustics, so if you could keep your voice up. And that's a microphone  
4 in front of you.

5 A Okay.

6 Q Thank you, so much. Ms. King, how would you like for me to  
7 refer to you today, as Ms. King or Karen?

8 A You can call me Karen, as long as you don't make any Karen  
9 jokes.

10 Q Karen, who is your current employer?

11 A Karen B. King Consulting.

12 Q And what is your current job title then?

13 A I am the Senior Benefits Consultant and the principal in my  
14 firm.

15 Q Are you also an officer of that firm?

16 A Yes.

17 Q What's your position?

18 A President.

19 Q How long have you been self employed as a benefits  
20 consultant?

21 A Approximately a year. Although I have been employed as a  
22 benefits consultant previously on a self-employed basis.

23 Q Could you tell the jury a little bit about your responsibilities  
24 as an employee benefits consulting -- consultant at your consulting firm?

25 A Sure. My responsibilities are to work with employers, mid-

1 market, which is approximately 4,000 to 5,000 employees and large  
2 market, 5,000 employees and above. To help them create benefit  
3 programs where they get the best value for their programs. My primary  
4 responsibility is to help them develop short-term, which is about a year,  
5 and long-term strategies. To enhance the benefit plans, save them  
6 money and improve employee satisfaction.

7 Q I think you said that large market is one of the areas you  
8 work in, correct?

9 A Yes.

10 Q And that's 5,000 and above.

11 A Yes.

12 Q What's the largest number of employees a company has had  
13 that you have consulted with?

14 A About 60,000.

15 Q Okay. So for you, large market is between 5,000 and 60,000  
16 employees?

17 A Correct.

18 Q Now you're here and I've previewed this to the jury. But  
19 you're here as an expert witness, correct?

20 A Correct.

21 Q And the Defendants are compensating you for your time in  
22 court today, correct?

23 A Correct.

24 Q And they also paid you to read a bunch of documents?

25 A Yes.

1 Q And write a report in writing, correct?

2 A That is correct.

3 Q Okay. Now all together could you tell the jury how much  
4 you've been paid up until today?

5 A Somewhere between 30 and \$50,000. I don't have the exact  
6 number.

7 Q Okay. Now does United pay you directly.

8 A No.

9 Q Or is -- no.

10 A It goes through another consulting firm that -- that has  
11 engaged me.

12 Q And then they write you a check?

13 A Right.

14 Q And before they do, they keep some of it?

15 A They do.

16 Q Okay. But as far as your personal compensation, it's  
17 somewhere between 30 and 50,000. Did you go back and look at that?

18 A I did not. I know that's approximately what I've been paid.

19 Q Okay. Prior to opening your own consulting firm a little over  
20 a year ago, how were you employed?

21 A I was a vice president, senior benefits consultant, account  
22 executive at Aon Corporation.

23 Q All right. Tell the jury a little bit about Aon. Is that a little  
24 company?

25 A It's the largest consulting firm in the world. So yes, it's not a



1 little company. It's very large. My role there was similar to what I do  
2 now. I worked with the upper end of mid-market and large market  
3 clients to help them develop strategies, to maximize their investment in  
4 employee benefits and obtain the greatest value for the dollars that  
5 they're spending.

6 Q And when you -- when you mention employee benefits, did  
7 that include self-insured or self-funded health plans for their employees?

8 A Yes. In the United States about 70 percent of all people are  
9 covered by -- when they're covered by employer based coverage, it's  
10 self-funded. It's not fully insured, which is something that a lot of people  
11 don't understand.

12 Q And the jury has heard a lot about the difference.

13 A Okay.

14 Q Between fully insured and self-funded plans already.

15 A Okay.

16 Q So what kind of clients did you work with at Aon  
17 Corporation?

18 A My clients were all self-funded, except maybe over the 15  
19 years I was there, I might have had less than 5 that were fully insured.

20 Q How long did you work for Aon in this role?

21 A About 15 years.

22 Q I forgot to mention, were you an officer of any type at Aon?

23 A I was. I was an officer.

24 Q What was your exact title there when you left?

25 A Vice president. Vice president.

1 Q Prior to Aon, and I know that's going back, what 16 years  
2 ago.

3 A Uh-huh.

4 Q How were you employed?

5 A I was a principal for Washington Work Group, which was,  
6 again a benefits consulting firm. And I had a team of people who  
7 worked for me. We worked with large corporations. Very similar work.

8 Q Very similar work. So that means you also worked with them  
9 on their self-funded benefit plans?

10 A Correct.

11 Q How long did you hold that role at Washington Work Group?

12 A About five years.

13 Q Okay. Let's go prior to that. So we're going back 21 years  
14 now.

15 A I've been doing this a long time.

16 Q How were you employed prior to Washington Work Group?

17 A I was the vice president of Benefit Resources at Marriott  
18 International.

19 Q Okay. And that's a pretty big company, too, right?

20 A Yes, it's a very big company.

21 Q And what were your responsibilities there at Marriott?

22 A I was responsible for the benefit administration at Marriott.  
23 It was even a larger corporation then than it is now. It was made up of  
24 many, many different diverse divisions. We had a trucking organization,  
25 a senior living services organization, a services organization that did

1 food service. Hotels, obviously. So my job was to try and work with all  
2 of those very diverse departments and create a benefits plan and  
3 administration that served those very diverse needs.

4 Q Do you have anything to do with Marriott's self-funded  
5 health plan?

6 A Yes. Yes.

7 Q What percentage of your job was that?

8 A Probably 70.

9 Q What -- did you also work with fully insured plans or not?

10 A We had fully insured HMOs, so we had about 30 fully insured  
11 HMO's. But there's much less work with a fully insured plan. You don't  
12 get to make -- design the plan. You don't get to make decisions about  
13 the plan. You basically -- you purchase what they have off the shelf, and  
14 you pay for it. So even though it was 30 plans, that sounds like a lot of  
15 work, it's mainly just negotiating premiums and paying for it. Which is  
16 very different than a self-funded plan.

17 Q Was there anyone more senior than you in benefits  
18 administration, when you left Marriott?

19 A No.

20 Q So you were the top person in the country for Marriott?

21 A Yes.

22 Q And you had all 50 states?

23 A Yes.

24 Q And all their benefit plans?

25 A Yes.

1 Q How many self-funded -- different self-funded plans did  
2 Marriott have?

3 A I think it was about four. I can't remember exactly. But  
4 that's pretty close. Four or five.

5 Q Okay. Thank you, ma'am.

6 A Uh-huh.

7 Q So how long were you in the employee benefits area at  
8 Marriott International?

9 A I was there ten years.

10 Q Okay, so now we've covered about 31 years, correct?

11 A Yeah, but I go back a little bit further than that.

12 Q Let's just leave it at --

13 A Yeah, let's stop there.

14 Q -- you've been in employee benefits for at least 30 years?

15 A Uh-huh. Yes.

16 Q Okay. Thank you, ma'am. Let's talk about your academic  
17 credentials. Can you tell the jury about your education?

18 A Sure. I have an MBA from the University of Kansas. I have  
19 an Executive Development Certification from the University of Maryland  
20 Aspen Institute and I have a bachelor's degree from SMU in Dallas,  
21 Texas.

22 Q Do you hold any professional licenses?

23 A Yes.

24 Q Can you tell --

25 A I am a licensed insurance professional in health, accident,

1 sickness and life insurance.

2 Q And did you have any post-graduate work at University of  
3 Maryland? Did I --

4 A It was -- it was an executive development program that my  
5 company sent me to for a year. It -- so you would go like once a month  
6 every month for a year and they would work, you know, teach you to be  
7 a better executive. And then you got a certification at the end.

8 Q Right. What about continuing education? Do you regularly  
9 attend any continuing education courses in this area of benefits  
10 administration?

11 A Yes. In order to be licensed I have to attend a continuing  
12 education every year. I think it's 24 hours every two years. So I've  
13 maintained a license since 2006.

14 Q Now this is going to make the lawyers cringe. Do you just sit  
15 there and take your continuing education courses and get your credit, or  
16 is there something you have to do that we don't have to do to get that  
17 credit?

18 A We have to take and pass an exam.

19 Q You have to take a test to make sure you were listening?

20 A Yes. You have to pass it, too.

21 Q The jury has heard a lot about ASO's or administrative  
22 services only --

23 A Yes.

24 Q -- arrangements.

25 A Uh-huh.

1 Q Where someone like the Defendants with a self-funded plan  
2 will act to just administer the benefits. Administrative services only.

3 A Uh-huh.

4 Q Are you familiar with that?

5 A I'm very familiar with that.

6 Q And in your various roles, do you regularly deal with that  
7 type of contractual relationship?

8 A Yes. That's one of my primary responsibilities.

9 Q Okay. And an ASA is an administrative services agreement.

10 A That's right.

11 Q Which is one of the names for a contract for an ASO, right?

12 A Right.

13 Q And explain to the jury what a TPA is.

14 A TPA stands for a third-party administrator. So TPAs can go  
15 by many different names. We often deal with TPAs that are  
16 administered through an insurance carrier. There's no underlying  
17 insurance agreement. But you'll think of like United Healthcare or Aetna  
18 or Blue Cross Blue Shield or Cigna or -- well, not usually, well, Keiser  
19 does have some. Keiser. Then they -- those firms also have TPAs that  
20 are a little more flexible a little more loose.

21 Like UnitedHealthcare has UMR. Aetna has Meritain. I think Cigna  
22 has Allegiance. So there's a whole lot of TPAs out there in the  
23 marketplace. And I've dealt with most of them.

24 Q So in the situation where my clients are asking as the third-  
25 party administrator for an administrative services only contract for a self-

1 funded plan.

2 A Uh-huh.

3 Q Would you just call them the TPA?

4 A Yeah, I would call them a TPA.

5 Q So when we talk -- and we'll get into some of the things that  
6 you do and some of your experience, when you tell the jury about  
7 negotiations, TPA negotiations, and the market for TPAs, is it fair to say  
8 that's the same thing as the market for these third-party administrative  
9 services only contractors?

10 A Yes. Yes.

11 MR. ROBERTS: Your Honor, at this time, I would move to  
12 qualify the witness as an expert in employee benefit plans, self-funded  
13 health plans, and the national margin for third-party administrators.

14 MR. AHMAD: Your Honor, I don't have an objection, but I  
15 had a question for clarification on the very last topic. I'm not sure I heard  
16 that right. Third-party administrators?

17 MR. ROBERTS: The national margin for third-party  
18 administrators. And if there's any need for clarification, Your Honor, we  
19 can hold the ruling until Monday because I am out of time by my clock.

20 MR. AHMAD: And Your Honor, I don't think I have an  
21 objection. I'm not sure what he means by the national margin. That's  
22 the only thing.

23 THE COURT: Good enough. All right. So we'll take that up  
24 first thing Monday. Now you guys probably figured out that I'm always  
25 the bad guy, right. And so Monday we have to work 8:00 to 5:00. We

1 will start at 8:00. We'll take one 10 minute break in the morning. One 10  
2 minute break in the afternoon, and a second 10 minute break in the  
3 afternoon. You'll get 30 minutes for lunch. It is possible that we may not  
4 finish Tuesday night, and you would have to come back Wednesday  
5 morning to deliberate, and we're not certain about that. It's just a  
6 possibility now. We realize it's a huge imposition on all of you. So I'm  
7 going to get some letters to the marshal. If any of you need letters let  
8 tonight, we will stay and get that done for you.

9           Now let me read the admonition. Monday at 8:00. During  
10 the recess, you're instructed do not talk with each other or anyone else  
11 on any subject connected with the trial. Don't read, watch, or listen to  
12 any report of or commentary on the trial. Don't discuss this case with  
13 anyone connected to it by any medium of information including without  
14 limitation newspapers, television, radio, internet, cell phones, or texting.

15           Do not conduct any research on your own. Don't consult  
16 dictionaries, use the internet or use reference materials. Don't talk, post  
17 on social media, text, tweet, Google or conduct any other type of  
18 research with regard to any issue, party, witness, or attorney. Don't form  
19 or express any opinion on any subject connected with the trial until the  
20 matter is submitted to you.

21           Thank you for another great week. See you Monday bright  
22 and early.

23           THE MARSHAL: All rise for the jury.

24                           [Jury out at 4:58 p.m.]

25                           [Outside the presence of the jury]



1 THE COURT: All right, you may step down from the witness  
2 stand.

3 THE WITNESS: Thank you.

4 THE COURT: Okay, so we do have a letter from Juror  
5 number 2, Springberg, about she thinks the letter to the employers  
6 might be misleading, so --

7 UNIDENTIFIED SPEAKER: I'm sorry.

8 THE COURT: Springberg gave a letter to the Marshal today.  
9 Let's figure out where we are and everything on the record.

10 MR. ROBERTS: Okay.

11 THE COURT: Nicole is overwhelmed with new exhibits  
12 coming in. She missed the first part of the trial. So come on back and  
13 see what we need to put on the record today.

14 [Recess from 4:36 p.m. to 5:10 p.m.]

15 THE MARSHAL: Court is back in session.

16 THE COURT: Okay. Starting with the Plaintiff what do we  
17 need for the record?

18 MR. ZAVITSANOS: Okay. Your Honor, so one wish that's a  
19 clarification really, from Mr. Roberts with regards to the current witness  
20 in this case. So --

21 MR. ROBERTS: Well, hang on. We can clarify that, you  
22 know.

23 THE COURT: Let's do it right now.

24 MR. ZAVITSANOS: Let me just articulate. So the Defendants  
25 have literally taken the position that programs and rates administration,

1 you know, is necessarily contract-language dependent. So there's no  
2 problem with this lady testifying about what TPAs do, what the market  
3 is. How many people -- you know, how many people have self-funded  
4 plans or whatever. When she starts talking about that it's common to  
5 have shared savings programs, she -- first of all we don't have the SPDs  
6 here. Second of all, they have taken the position in this case that shared  
7 savings is dependent on contract language.

8 And so to suggest that there's some kind of external  
9 benchmark that's adopted into these contracts kind of fuses together two  
10 inconsistent things here. That this is contract language dependent. And  
11 so therefore I don't think she can -- respectfully, I don't think she can  
12 testify about that. And then second we're at a disadvantage here  
13 because we don't have the SPDs, as we've told Your Honor many times.

14 So I'm -- it's not really an objection per se, because I don't  
15 know what Mr. Roberts is going to ask her. It's just I'm struggling with  
16 where the line is here. That's all.

17 THE COURT: And without revealing your strategy can you  
18 just give me an outline of what you --

19 MR. ROBERTS: Sure. And I knew that I was running out of  
20 time, and I was hoping to just get her qualified and end the day on a high  
21 point. But I did cut out a little bit of the background. One of the things  
22 she does is assist the clients who are employers in putting out their TPA  
23 contracts for competitive proposals. And therefore she's familiar with  
24 what people are offering in the market and the process. And just as he  
25 said, I think he said I've got no problem with her talking about the market

1 issue.

2 So that's where that national market thing was going. And I  
3 can eliminate the word national, and I think I can work with him over the  
4 weekend and come up with a phrase that will draw no objection,  
5 hopefully.

6 THE COURT: Good.

7 MR. ROBERTS: But as far as the other points, I think if Mr.  
8 Zavitsanos will go and read the deposition they took of this witness he'll  
9 have a pretty good idea of the things she knows, what her answers were  
10 and what questions they asked her.

11 THE COURT: I think it was Mr. Ahmad who was going to --

12 MR. AHMAD: That's correct, Your Honor. And I have read  
13 the deposition. And honestly, I was just going to talk to Lee over the  
14 weekend and get clarification. I am happy to do it now.

15 THE COURT: Well, talk about it over the weekend. What else  
16 do we have to bring up?

17 MR. ZAVITSANOS: You want to do the jury instructions  
18 Sunday at 3:00?

19 THE COURT: Sunday at 3:00.

20 MR. ZAVITSANOS: Very good.

21 THE COURT: My law clerk has been working with the team.  
22 So I don't know who he talks to. I have courtroom 3D for us on Tuesday.

23 MR. ZAVITSANOS: Is that a bigger courtroom?

24 THE COURT: That's where we chose the jury.

25 MR. MCMANIS: The deposition designations, the parties are

1 working very hard on I think there's maybe two or three lists.

2 THE COURT: I've got the binders here.

3 MR. MCMANIS: I haven't seen the binders. I think --

4 THE COURT: I'm taking it home so I can deliver it Monday  
5 when we do jury --

6 MR. ZAVITSANOS: Sunday.

7 THE COURT: Sunday. Yeah, when we do our -- you all call it  
8 the charge, we call it something else. See you Sunday. Court's in  
9 recess.

10 [Proceedings adjourned at 5:15 p.m.]

11

12

13

14

15

16

17

18

19

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

22

23

24

25



Maukele Transcribers, LLC

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

245

245

*Steven D. Grierson*

**RSPN**

D. Lee Roberts, Jr., Esq.  
Nevada Bar No. 8877

*droberts@wwhgd.com*

Colby L. Balkenbush, Esq.

Nevada Bar No. 13066

*cbalkenbush@wwhgd.com*

Brittany M. Llewellyn, Esq.

Nevada Bar No. 13527

*bllewellyn@wwhgd.com*

Phillip N. Smith, Jr., Esq.

Nevada Bar No. 10233

*psmithjr@wwhgd.com*

Marjan Hajimirzaee, Esq.

Nevada Bar No. 11984

*mhajimirzaee@wwhgd.com*

WEINBERG, WHEELER, HUDGINS,

GUNN & DIAL, LLC

6385 South Rainbow Blvd., Suite 400

Las Vegas, Nevada 89118

Telephone: (702) 938-3838

Facsimile: (702) 938-3864

Daniel F. Polsenberg, Esq.

Nevada Bar No. 2376

*dpolsenberg@lewisroca.com*

Joel D. Henriod, Esq.

Nevada Bar No. 8492

*jhenriod@lewisroca.com*

Abraham G. Smith, Esq.

Nevada Bar No. 13250

*asmith@lewisroca.com*

Lewis Roca Rothgerber Christie LLP

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169-5996

Telephone: (702) 949-8200

*Attorneys for Defendants*

Dimitri D. Portnoi, Esq. (Admitted Pro Hac Vice)  
*dportnoi@omm.com*

Jason A. Orr, Esq. (Admitted Pro Hac Vice)  
*jorr@omm.com*

Adam G. Levine, Esq. (Admitted Pro Hac Vice)  
*alevine@omm.com*

Hannah Dunham, Esq. (Admitted Pro Hac Vice)  
*hdunham@omm.com*

Nadia L. Farjood, Esq. (Admitted Pro Hac Vice)  
*nfarjood@omm.com*

O'Melveny & Myers LLP  
400 S. Hope St., 18<sup>th</sup> Floor  
Los Angeles, CA 90071  
Telephone: (213) 430-6000

K. Lee Blalack, II, Esq. (Admitted Pro Hac Vice)  
*lblalack@omm.com*

Jeffrey E. Gordon, Esq. (Admitted Pro Hac Vice)  
*jgordon@omm.com*

Kevin D. Feder, Esq. (Admitted Pro Hac Vice)  
*kfeder@omm.com*

Jason Yan, Esq. (Admitted Pro Hac Vice)  
*jyan@omm.com*

O'Melveny & Myers LLP  
1625 Eye St. NW  
Washington, DC 20006  
Telephone: (202) 383-5374

Paul J. Wooten, Esq. (Admitted Pro Hac Vice)  
*pwooten@omm.com*

Amanda L. Genovese (Admitted Pro Hac Vice)  
*agenovese@omm.com*

Philip E. Legendy (Admitted Pro Hac Vice)  
*plegendy@omm.com*

O'Melveny & Myers LLP  
Times Square Tower, Seven Times Square  
New York, NY 10036  
Telephone: (212) 728-5857

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

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

**HEARING REQUESTED**

**RESPONSE TO PLAINTIFFS' TRIAL  
BRIEF REGARDING PUNITIVE  
DAMAGES FOR UNJUST  
ENRICHMENT CLAIM**



1 vs.

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

12 Defendants.

13 Defendants United Healthcare Insurance Company (“UHIC”), United Health Care  
14 Services Inc. (“UHS”, which does business as UnitedHealthcare or “UHC” and through UHIC),  
15 UMR, Inc. (“UMR”), Sierra Health and Life Insurance Company (“SHL”), and Health Plan of  
16 Nevada, Inc. (“HPN”) (collectively, “Defendants”), by and through their attorneys, and pursuant  
17 to EDCR 7.27, hereby submit this Response to TeamHealth Plaintiffs’ Trial Brief Regarding  
18 Punitive Damages for Unjust Enrichment Claim (“Response”).

19 This Response is made and based upon EDCR 7.27, the following Memorandum of  
20 Points and Authorities, the pleadings and papers on file herein, and any oral argument this Court  
21 may allow on this matter.

## 22 MEMORANDUM OF POINTS AND AUTHORITIES

### 23 **I. INTRODUCTION**

24 TeamHealth Plaintiffs<sup>1</sup>—in the middle of trial—seek to sidestep their own operative  
25 complaint (the “SAC”) and the parties’ Joint Pre-Trial Memorandum (“JPTO”) by seeking  
26 punitive damages for their unjust enrichment claim. They only do so now for the first time in  
27 this lawsuit, in the middle of trial, through their Trial Brief Regarding Punitive Damages for  
28 Unjust Enrichment Claim (“Trial Brief” or “Tr. Br.”). In essence, their Trial Brief is a request to

---

<sup>1</sup> “TeamHealth Plaintiffs” collectively refers to the three Plaintiffs that initiated this action, each of which is owned by and affiliated with TeamHealth Holdings, Inc. (“TeamHealth”): Fremont Emergency Services (Mandavia), Ltd. (“Fremont”), Team Physicians of Nevada-Mandavia, P.C. (“TPN”), and Crum, Stefanko and Jones, Ltd. d/b/a Ruby Crest Emergency Medicine (“Ruby Crest”).





1 amend the JPTO at the eleventh hour. That request should be denied because even if it would  
2 have been proper or fair to seek punitive damages for unjust enrichment in the JPTO where those  
3 damages have not been sought in this lawsuit and were not included in the SAC they themselves  
4 filed on the eve of trial—clearly, it would be neither—that request would be futile because  
5 NRCP 16(e) only allows modification to a final pretrial order to “prevent manifest injustice.”  
6 But there is no issue of injustice to TeamHealth Plaintiffs here, nor do they even attempt to raise  
7 such an argument. To the contrary—to permit TeamHealth Plaintiffs to change their theory of  
8 damages now, more than halfway through the proof at trial, would be to permit trial by surprise  
9 and ambush, and would be highly prejudicial to Defendants.

10 And even setting aside the procedural impropriety of what TeamHealth Plaintiffs would  
11 like to do, TeamHealth Plaintiffs’ unjust enrichment claim is based on alleged conduct by  
12 Defendants arising from contractual obligations. The plain language of NRS 42.005—which  
13 TeamHealth Plaintiffs rely on for punitive damages—forecloses requests for punitive damages  
14 based on conduct arising under non-tortious conduct. Punitive damages are therefore  
15 unavailable.

## 16 **II. LEGAL ARGUMENT**

### 17 **A. Legal Standard**

18 This trial brief is submitted pursuant to EDCR 7.27 which specifically states that:

19  
20 Unless otherwise ordered by the court, an attorney may elect to submit to the  
21 court in any civil case, a trial memoranda of points and authorities at any time  
22 prior to the close of trial. The original trial memoranda of points and authorities  
must be filed and a copy of the memoranda must be served upon opposing  
counsel at the time of or before submission of the memoranda to the court

23 EDCR 7.27. It is the role of the trial court to instruct the jury on the relevant law of the case.  
24 *Am. Cas. Co. v. Propane Sales & Serv., Inc.*, 89 Nev. 398, 401 (1973).

### 25 **B. The JPTO Bars TeamHealth Plaintiffs From Seeking Punitive Damages 26 Under Their Unjust Enrichment Claim**

27 NRCP 2.67(b)(8) requires that parties include a statement “of each principal issue of law  
28 which may be contested at the time of trial [and] include with respect to each principal issue of



1 law the position of each party.” Thus, “a pretrial order ... control[s] the subsequent course of the  
2 trial and supersedes the pleadings” in Nevada. *Walters v. Nev. Title Guar. Co.*, 81 Nev. 231, 234  
3 (1965). “[T]he existence of references to [an] issue in the record of the case compiled before the  
4 pretrial orders is irrelevant. The very purpose of the pretrial order is to narrow the scope of the  
5 suit to those issues that are actually disputed and, thus, to eliminate other would-be issues that  
6 appear in other portions of the record of the case.” *Bobo v. Clark Cty. Collection Serv., LLC*,  
7 2018 WL 4778035, at \*1 (D. Nev. Oct. 3, 2018) (analyzing Fed. R. Civ. P. 16(e)<sup>2</sup>) (citing *Cal.*  
8 *Retail Clerks Union v. Bjorklund*, 728 F.2d 1262, 1264 (9th Cir. 1984)).

9 Claims, issues, defenses, or theories of damages not included in the pretrial order are  
10 waived, even if they appeared in the complaint. *Id.* (“[I]ssues not preserved in the pretrial order  
11 have been eliminated from the action,” and a failure to preserve an issue in the pretrial order will  
12 prevent the party from raising it in the future.”); *Yount v. Criswell Radovan, LLC*, 136 Nev. 409,  
13 469 P.3d 167, 172 (2020) (failure to include a counterclaim in pretrial order and seek damages  
14 pursuant to such counterclaim waived right to damages award at trial); *cf. Reconstruct Co. v.*  
15 *Zhang*, 130 Nev. 1, 317 P.3d 814, 818 (2014) (citing *Walters*) (“Although Zhang argues  
16 otherwise, Countrywide adequately raised equitable subrogation in the district court. The joint  
17 pretrial memorandum, submitted before trial pursuant to NRCP 16 and EDCR 2.67, stipulated  
18 without qualification or objection from Zhang that equitable subrogation was a legal issue in the  
19 case.”).

20 Here, there can be no dispute that TeamHealth Plaintiffs seek for the first time in this  
21 litigation punitive damages for their unjust enrichment claim. But despite having amended their  
22 complaint *less than three weeks before trial*, TeamHealth Plaintiffs’ SAC makes no request for  
23 punitive damages under their unjust enrichment claim. Likewise, the JPTO, like their complaint,  
24 discloses only that TeamHealth Plaintiffs would seek punitive damages under their Nevada  
25 Unfair Insurance Practices Act claim. (*See* JPTO at 5-6.) Indeed, their failure to request those  
26 damages in the SAC would have been obviously prejudicial to Defendants if TeamHealth

---

27  
28 <sup>2</sup> The language of NRCP 16(e) and Fed. R. Civ. P. 16(e) are identical to one another.



1 Plaintiffs had sought to include them out of thin air in a pretrial memorandum. *Cf., e.g., State,*  
 2 *Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 987–88, 103 P.3d 8, 18–19 (2004) (requiring  
 3 amendment to pleadings).<sup>3</sup>

4 But even to the extent that doing so would have been permissible, it is too late to amend  
 5 their theory of damages now. *Yount*, 469 P.3d at 172. TeamHealth Plaintiffs cannot demonstrate  
 6 that “manifest injustice” would be prevented by the Court agreeing to modify the JPTO. There  
 7 have been no new developments or revelations since trial began that were unknown to  
 8 TeamHealth Plaintiffs when the JPTO was stipulated, and TeamHealth Plaintiffs raise no such  
 9 argument in their motion. *Cf. Painters Joint Committee v. J.L. Wallco, Inc.*, 2013 WL 3270529,  
 10 at \*2 (D. Nev. June 26, 2013) (granting motion to amend pretrial order to unbifurcate trial to  
 11 prevent manifest injustice where seven defendants were no longer representing by counsel, thus,  
 12 they would not be able to represent themselves solely on alter-ego issues in first phase of trial).  
 13 Clearly, the opposite would occur. Defendants’ alleged conduct to which TeamHealth Plaintiffs’  
 14 request for punitive damages relates is specific to their Unfair Insurance Practices Act claim—  
 15 that Defendants acted oppressively or maliciously with respect to any Defendant’s improper  
 16 handling of an at-issue claim, resulting in the failure to effectuate prompt, fair, and equitable  
 17 settlement of that claim(s).<sup>4</sup> Trial began weeks ago, and since then, Defendants have developed  
 18 a trial strategy based on evidence and argumentation tailored to TeamHealth Plaintiffs’ request  
 19 for punitive damages under that claim. Yet despite their disproportionate use of time in this  
 20 trial—taking over three and a half days of Court time to conduct voir dire and over three days to  
 21

---

22 <sup>3</sup> In *Sutton*, UNLV had not included the affirmative defense of waiver in its answer but  
 23 nonetheless tried to include it in its separately filed pretrial memorandum. Although the  
 24 Supreme Court noted that an amendment to conform to the evidence might be accomplished  
 through a motion under NRCp 15(b), the district court was justified in denying amendment  
 where the matters were “clearly within UNLV’s knowledge” well before the trial. *Id.*

25 <sup>4</sup> See SAC ¶¶ 41, 92 (citing NRS 686A.310(1)(e)); *Schumacher v. State Farm Fire & Cas. Co.*,  
 26 467 F. Supp. 2d 1090, 1095 (D. Nev. 2006) (“[T]he provisions of NRS 686A.310 address the  
 27 manner in which an insurer handles an insured’s claim whether or not the claim is denied.”);  
 28 *Yusko v. Horace Mann Servs. Corp.*, 2012 WL 458471, at \*4 (D. Nev. Feb. 10, 2012) (“The only  
 damages for which the Court has evidence are a result of the underlying [motorcycle] accident,  
 not the claims process or any conduct by [the insurer].”).



1 directly examine just their first witness, John Haben—TeamHealth Plaintiffs concealed their  
2 request for punitive damages for unjust enrichment until they filed their Trial Brief. Allowing  
3 TeamHealth Plaintiffs to modify their punitive damages theory at the last minute, forcing  
4 Defendants to alter their trial strategy mid-way through trial after many key witnesses have  
5 already been called, would be highly prejudicial to Defendants. TeamHealth Plaintiffs waived  
6 their right to seek punitive damages under their unjust enrichment claim at trial.

7 Finally, while courts sometimes allow a party that does not request damages in a pleading  
8 to seek damages if the parties’ “express or implied” consent demonstrates that such damages are  
9 a triable issue, NRCP 15(b), that did not occur here. Defendants expressly stated at oral  
10 argument on their motion for judgment as a matter of law that they do not consent to this  
11 modification. 11/18/2021 Trial Transcript (“[I]t is absolutely prejudicial to amend the joint  
12 pretrial memorandum to add new claims for damages. . . we are not consenting to that. We are  
13 absolutely not.”). Besides, as noted, TeamHealth Plaintiffs never indicated that they would seek  
14 punitive damages on their unjust enrichment claim in their pleadings or motions filed in this  
15 lawsuit until they filed their Trial Brief. Indeed, the parties even briefed issues concerning  
16 punitive damages in Defendants’ Motion for Partial Summary Judgment and in the October 7,  
17 2021 Stipulation and Order Regarding Evidence of Defendants’ Financial Condition and the  
18 Amount of Punitive Damages Plaintiffs Should Be Awarded, yet TeamHealth Plaintiffs did not  
19 raise this request until now. Implied consent cannot be found in situations like here, *even if*  
20 “evidence relevant to the implied claim is also relevant to another issue in the case,” such as  
21 TeamHealth Plaintiffs’ Nevada Unfair Insurance Practices Act claim. *Yount*, 469 P.3d at 172.

22 **C. Punitive Damages Are Not Available for TeamHealth Plaintiffs’ Unjust**  
23 **Enrichment Claim**

24 Even if the Court were to look beyond TeamHealth Plaintiffs’ failure to disclose that they  
25 were seeking punitive damages under their unjust enrichment claim in the JPTO, TeamHealth  
26 Plaintiffs would be wrong on the merits.  
27  
28





Contrary to TeamHealth Plaintiffs' contention,<sup>5</sup> punitive damages cannot be awarded under NRS 42.005 where an action "sounds in contract, and not in tort." *Rd. Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 284 P.3d 377, 384 (Nev. 2012); *see also Sprouse v. Wentz*, 105 Nev. 597, 602, 781 P.2d 1136, 1140 (1989) ("[P]unitive damages must be based on an underlying cause of action **not based on a contract theory**." (emphasis added)). This prohibition applies not just to breach of contract claims, but *broadly* to any cause of action that "arises from" or "sounds in" contract. *Frank Briscoe Co. v. Clark County*, 643 F. Supp. 93, 100 (D. Nev. 1986) (breach of warranty claim cannot support an award of punitive damages); *e.g., Desert Salon Servs., Inc. v. KPSS, Inc.*, 2013 WL 497599, at \*5 (D. Nev. Feb. 6, 2013) (contract-based causes of action for intentional interference with contractual relations, intentional interference with prospective economic advantage, and breach of the implied covenant of good faith and fair dealing cannot support an award of punitive damages); *Franklin v. Russell Rd. Food & Beverage, LLC*, 2015 WL 13612028, at \*13 (Nev. Dist. Ct. June 25, 2015) (claims alleging failure to pay Plaintiffs Nevada's minimum wage do not "sound in tort, and in fact, are based on a contract theory").

The Nevada Supreme Court has made clear that "[w]here unjust enrichment is found, the law implies a quasi-contract." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 380–81, 283 P.3d 250, 257 (2012) (quoting *Lackner v. Glosser*, 892 A.2d 21, 34 (Pa. Super. Ct. 2006)). Accordingly, Nevada trial courts consistently find that punitive damages are not available for unjust enrichment claims in Nevada because of their quasi-contractual nature, *i.e.*, where they are not a species of tort. *E.g., Gonor v. Dale*, 2015 WL 13772882, at \*2 (Dist. Ct. Nev. July 16, 2015) ("To the extent that any claims for punitive damages against the Dale

---

<sup>5</sup> TeamHealth Plaintiffs only cite *one* case in support of their position, but that case is distinguishable. In *Hester v. Vision Airlines, Inc.*, 687 F.3d 1162 (9th Cir. 2012) there was no allegation of the existence of a contract, and the allegations related to conduct by the defendant amounting to clearly non-contractual, tortious conduct such as conversion. *Id.* at 1166, 1171. The Ninth Circuit did not find as a matter of Nevada law that punitive damages were available for unjust enrichment claims specifically—only that the class members' claims for unjust enrichment, money had and received, and conversion were not, in that case, "based on an action for breach of contract." *Id.* at 1172. Here, TeamHealth Plaintiffs' theory of the case centers squarely on the existence of contract-based obligations that were either breached due to the existence of an implied-in-fact contract, or unfulfilled such that unjust enrichment occurred if an implied-in-fact contract did not exist.

defendants (i.e. unjust enrichment detrimental reliance and quantum meruit) sound in contract, not in tort, such claim for punitive damages against the Defendant is DENIED.”); *Raider v. Archon Corp.*, 2015 WL 13446907, at \*2 n.1 (Dist. Ct. Nev. June 19, 2015); *Hartman v. Silver Saddle Acquisition Corp.*, 2013 WL 11274332, at \*3 (Dist. Ct. Nev. Jan. 28, 2013).

Similarly, other jurisdictions routinely find that punitive damages are not available on a claim for unjust enrichment. See *Priority Healthcare Corp. v. Chaudhuri*, 2008 WL 4459041 \*5 (M.D. Fla. 2008) (“Because unjust enrichment is not intended to be punitive, I find that punitive damages are not available under this theory”); *Moench v. Notzon*, 2008 WL 668612 \*5 n.3 (Tex. Ct. App. 2008) (noting that “exemplary damages are not available for unjust enrichment”); *US. East Telecommunications, Inc. v. U.S. West Information Sys., Inc.*, 1991 WL 64461 \*4 (S.D.N.Y. 1991) (“Neither are punitive damages available on an unjust enrichment cause of action.”); *Edible Arrangements Int’l, Inc. v. Chinsammy*, 446 F. App’x 332, 334 (2d Cir. 2011) (punitive damages not allowed because a “claim of unjust enrichment is a quasi-contract claim for which the right to recovery is ‘essentially equitable.’”); *Guobadia v. Irowa*, 103 F. Supp. 3d 325, 342 (E.D.N.Y. 2015) (no punitive damages for “unjust enrichment and other quasi-contract claims”); *Seagram v. David’s Towing & Recovery, Inc.*, 62 F. Supp. 3d 467, 478 (E.D. Va. 2014) (same); *Conner v. Decker*, 941 N.W.2d 355 (Iowa Ct. App. 2019) (same); *Am. Safety Ins. Serv., Inc. v. Griggs*, 959 So. 2d 322, 332 (Fla. App. 2007) (“Unjust enrichment awards are not punitive, and allowing plaintiffs a recovery worth more than the benefit conferred would result in an unwarranted windfall.”); *Dewey v. Am. Stair Glide Corp.*, 557 S.W.2d 643, 650 (Mo. App. 1977) (“Dewey’s theory of recovery of actual damages is based on the contract theory of unjust enrichment. It is beyond question that punitive damages do not lie for a breach of contract. Thus, Dewey is not entitled to punitive damages.”).

The Nevada Supreme Court’s decision in *Sprouse* is instructive. In that case, the Nevada Supreme Court found that an award of punitive damages could not be based on a non-tort cause of action and that the plaintiff could not “go fishing for a supporting tort.” *Sprouse*, 781 P.2d at 1138. In *Sprouse*, the district court awarded punitive damages to a counterclaim-plaintiff based on “reprehensible conduct.” *Id.* The question before the Nevada Supreme Court was to



1 determine which cause of action could have supported the punitive damages award. The  
2 counterclaim-plaintiff argued that there were four tort theories upon which the court could have  
3 based punitive damages: wrongful repossession, conversion, fraud, and tortious breach of  
4 contract. *Id.* The Court dispensed with the wrongful repossession and tortious breach of  
5 contract theories because those theories were not raised as causes of action in the pleadings or  
6 pretrial order.<sup>6</sup> *Id.* And the Court rejected the fraud theory because the district court had  
7 determined there was no evidence of fraud. *Id.*

8 As for conversion, the only tort-based cause of action that could support punitive  
9 damages in the case, the court found that the counterclaim-plaintiff waived his right to seek  
10 punitive damages under that cause of action because he did not allege any conduct amounting to  
11 fraud, malice or oppression in his pleadings on conversion, therefore, the counterclaim-plaintiff  
12 could not obtain punitive damages under that claim. *Id.* Ultimately, the court concluded that the  
13 counterclaim-plaintiffs' case was, at its core, a contract-based action rescission, restitution and  
14 punitive damages. *Id.* The court accordingly reversed the award, finding that the counterclaim-  
15 defendant "rightfully believed from the pleadings and the pre-trial statements that [the  
16 counterclaim-plaintiff] sought punitive damages based only on fraud. To uphold the punitive  
17 damage award based on [counterclaim-plaintiff's] reasoning now would deny [the counterclaim-  
18 defendant] the opportunity to defend against a substantial punitive damage award." *Id.* at 1140.

19 Like the counterclaim-plaintiff in *Sprouse*, TeamHealth Plaintiffs' lawsuit here is based  
20 on conduct they claim arises from contract. The fact that TeamHealth Plaintiffs are trying to  
21 tack on a cause of action for unjust enrichment now does not change that. TeamHealth Plaintiffs  
22 have simply adduced no evidence of fraud, oppression, or malice in this case that would permit a  
23 finding that any tortious conduct by Defendants is alleged. That TeamHealth Plaintiffs have  
24

25  
26  
27 <sup>6</sup> Although, as noted above, trial by implied consent may arise if evidence relevant to the issue is  
28 received without objection, the court found that the counterclaim-plaintiff could not meet the  
high bar required to demonstrate that the parties' impliedly consented to try the issue of punitive  
damages with respect to either of these claims. *Sprouse*, 781 P.2d at 1139.

