

Case Nos. 85525 & 85656

In the Supreme Court of Nevada

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

Appellants,

vs.

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

Respondents.

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Case No. 85525

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

Petitioners,

vs.

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

Respondents,

vs.

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

Real Parties in Interest.

Case No. 85656

**APPELLANTS' APPENDIX
VOLUME 46
PAGES 11,251-11,500**

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| 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 |

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

CERTIFICATE OF SERVICE

I certify that on April 18, 2023, I submitted the foregoing appendix for filing *via* the Court's eFlex electronic filing system.

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

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DISTRICT COURT JUDGE – DEPT. 27
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/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

1 never purported to adduce this evidence in support of their unjust enrichment theory only
2 underscores this fact.

3 Moreover, the ordinary way that an insurer in Nevada may be held liable for punitive
4 damages in Nevada is through a tortious breach of the implied covenant of good faith and fair
5 dealing in the insurance contract with its insured. *See, e.g., Great Am. Ins. Co. v. Gen. Builders,*
6 *Inc.*, 113 Nev. 346, 354–56, 934 P.2d 257, 263 (1997). In *Great American Insurance Co.*, the
7 Nevada Supreme Court explained that the breach in that situation is considered tortious because
8 of the “inherently unequal bargaining positions” in the insurer-insured relationship, which is one
9 of the “special relationships” creating duties akin to those of a fiduciary. *Id.* Absent that special
10 relationship of trust and reliance, and where both parties are “experienced commercial entities
11 represented ... by professional and experienced agents,” there is no tort liability to support a
12 claim for punitive damages. *Id.* (vacating punitive damages award). Critically, the insurer’s
13 special relationship is specifically with its *insured*, not others to whom the insurer may owe
14 contractual or other duties. *See Ins. Co. of the W. v. Gibson Tile Co., Inc.*, 122 Nev. 455, 462,
15 134 P.3d 698, 702 (2006). In *Insurance Co. of the West*, the Supreme Court held that an insurer
16 acting as surety had no special relationship with its principal, so the insurer’s breach was purely
17 contractual, not tortious: “[t]herefore, as a matter of law, there was no basis for the jury’s award
18 of punitive damages.” *Id.* at 464, 133 P.3d at 703.

19 But TeamHealth Plaintiffs, who are not insureds, correctly dismissed their claim for
20 breach of the covenant of good faith and fair dealing. *Compare* First Amended Complaint *with*
21 SAC. They cannot now attempt to seek punitive damages based on a completely new theory in
22 the middle of trial. Defendants are entitled to rely on the SAC and JPTO in which TeamHealth
23 Plaintiffs disclosed only that they would seek punitive damages for their Unfair Claims Practices
24 Act claim. Permitting Plaintiffs to seek punitive damages now on the basis of their unjust
25 enrichment claim would violate Defendants’ right to a fair trial.

26 **III. CONCLUSION**

27 For the foregoing reasons, this Court should reject TeamHealth Plaintiffs’ request to seek
28 punitive damages for their unjust enrichment claim.



1 Dated this 9th day of November, 2021.

2 /s/ Colby L. Balkenbush

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I hereby certify that on the 19th day of November, 2021, a true and correct copy of the foregoing **DEFENDANTS' RESPONSE TO PLAINTIFFS' TRIAL BRIEF REGARDING PUNITIVE DAMAGES FOR UNJUST ENRICHMENT CLAIM** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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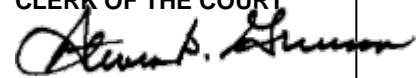
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CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE INSURANCE
COMPANY, a Connecticut corporation;
UNITED HEALTH CARE SERVICES
INC., dba UNITEDHEALTHCARE, a
Minnesota corporation; UMR, INC., dba
UNITED MEDICAL RESOURCES, a
Delaware corporation; SIERRA HEALTH
AND LIFE INSURANCE COMPANY,
INC., a Nevada corporation; HEALTH
PLAN OF NEVADA, INC., a Nevada
corporation; DOES 1-10; ROE ENTITIES
11-20,

Defendants.

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

**PLAINTIFFS' SECOND
SUPPLEMENTAL
JURY INSTRUCTIONS
(CONTESTED)**

Plaintiffs submit the attached additional jury instructions, in addition to the
original set of contested instructions and supplemental set of contested instructions

1 Plaintiffs have already filed.

2 DATED this 20th day of November, 2021.

3 AHMAD ZAVITSANOS ANAIPAKOS ALAVI
4 & MENSING

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For Unfair Insurance Practices Instructions

Instruction No. ____

A defendant is liable for the failure to effectuate prompt, fair, and equitable settlements where (1) the defendant's liability has become reasonably clear on any individual claim and (2) an officer, director, or department head for each defendant knowingly permitted or had prior knowledge of the failure to effectuate a prompt, fair, and equitable settlement of the claim. A defendant knowingly permitted such act or had prior knowledge thereof if an officer, director, and/or department head of the defendant developed, approved, implemented and/or authorized policies and procedures for the settlement of claims, which claims managers followed.

NRS 686A.270 ("No insurer shall be held guilty of having committed any of the acts prohibited by NRS 686A.010 to 686A.310, inclusive, by reason of the act of any agent, solicitor or employee not an officer, director or department head thereof, unless an officer, director or department head of the insurer has knowingly permitted such act or has had prior knowledge thereof."); *My Left Foot Children's Therapy LLC v. Certain Underwriters at Lloyd's London Subscribing to Policy No. HAH15-0632*, 2021 WL 1093094, at * (D. Nev. March 22, 2021) (where claims handler was following policies, procedures, and authority implemented by the chief underwriting officer and department head, the insurance company effectively approved the claims mishandling at issue).

General instruction

Instruction No. ____

You are instructed that you should not consider in-network rates or Medicare rates when determining the reasonable value of Plaintiffs' services.

Replaces previous instruction for Unfair Insurance Practices Damages

Instruction No. ____

The measure of damages for unfair insurance practices is the difference between the amount defendant would have allowed for a claim if it had not engaged in the unfair insurance practice(s) and the amount, if any, defendant did allow for the claim.

652110
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See N.R.S. § 686A.310(2).

Replaces previous instruction for Punitive Damages (Part I)

Instruction No. ____

If you find that plaintiffs suffered damages as a result of the defendants' unjust enrichment, if any, or because of the defendants' unfair insurance practices, if any, and you have found defendants liable for such claim(s), you may then consider whether you should award punitive or exemplary damages against those defendants. Punitive or exemplary damages are to make an example of or punish wrongful conduct. You have discretion to award such damages, only if you find by clear and convincing evidence that defendant was guilty of oppression, fraud, or malice in the conduct providing your basis for liability.

"Malice" means conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others.

"Oppression" means despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of that person.

"Fraud" means an intentional misrepresentation, deception or concealment of a material fact known to a defendant with the intention to injure or deprive a person of rights or property.

"Conscious disregard" means knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to avoid these consequences.

"Person" includes corporations and other business entities.

NEV. J.I. 12.1 (2018) (first part, modified to fill in blanks/brackets, specify relevant claims, and add explanation of "person"); NRS 42.005; *Powers v. United Services Auto. Ass'n*, 114 Nev. 690, 702–03, 962 P.2d 596 (1998); *In re McGill's Estate*, 52 Nev. 35, 280 P. 321, 322 (1929).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C. and on this 20th day of November, 2021, I caused a true and correct copy of the foregoing **PLAINTIFFS' SECOND SUPPLEMENTAL JURY INSTRUCTIONS** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

**DEFENDANTS' SUPPLEMENTAL
PROPOSED JURY INSTRUCTION**



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

10 Defendants.

11 Defendants UnitedHealthcare Insurance Company (“UHIC”), United HealthCare Services,
 12 Inc. (“UHS”), UMR, Inc. (“UMR”), Sierra Health and Life Insurance Co., Inc. (“SHL”), and Health
 13 Plan of Nevada, Inc. (“HPN”) (collectively “Defendants”), by and through their attorneys, submit
 14 the following Supplemental Proposed Jury Instruction. Defendants reserve the right to amend their
 15 proposed jury instructions based on, among other things, the evidence admitted at the trial.

16 Dated this 21st day of November, 2021.

17 /s/ Colby L. Balkenbush

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JURY INSTRUCTION NO. D____

PUNITIVE DAMAGES LIABILITY PHASE:

The purposes of punitive damages are to punish a wrongdoer that acts with fraud, oppression and/or malice in harming a plaintiff and deter similar conduct in the future, not to make the plaintiff whole for its injuries. Consequently, a plaintiff is never entitled to punitive damages as a matter of right and whether to award punitive damages against a defendant is entirely within your discretion.

At this time, you are to decide only whether one or more defendant engaged in wrongful conduct causing actual harm to a plaintiff with the requisite state of mind to permit an award of punitive damages against that defendant, and if so, whether an award of punitive damages against that defendant is justified by the punishment and deterrent purposes of punitive damages under the circumstances of this case. If you decide an award of punitive damages is justified, you will later decide the amount of punitive damages to be awarded, after you have heard additional evidence and instruction.

SOURCE/AUTHORITY:

NEV. J.I. 12PD.1 (2011) (elect “harm” instead of “loss”; modified to include only final two paragraphs and substituting “a plaintiff” for “the plaintiff”).



CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of November, 2021, a true and correct copy of the foregoing **DEFENDANTS' SUPPLEMENTAL PROPOSED JURY INSTRUCTION** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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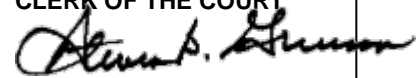
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE INSURANCE
COMPANY, a Connecticut corporation;
UNITED HEALTH CARE SERVICES
INC., dba UNITEDHEALTHCARE, a
Minnesota corporation; UMR, INC., dba
UNITED MEDICAL RESOURCES, a
Delaware corporation; SIERRA HEALTH
AND LIFE INSURANCE COMPANY,
INC., a Nevada corporation; HEALTH
PLAN OF NEVADA, INC., a Nevada
corporation; DOES 1-10; ROE ENTITIES
11-20,

Defendants.

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

**PLAINTIFFS' THIRD
SUPPLEMENTAL
JURY INSTRUCTIONS
(CONTESTED)**

Plaintiffs submit the attached additional jury instructions, in addition to the
original set of contested instructions and two supplemental sets of contested

McDONALD CARANO

011267

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instructions Plaintiffs have already filed.

DATED this 21st day of November, 2021.

AHMAD ZAVITSANOS ANAIPAKOS ALAVI
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By: /s/ Jane Langdell Robinson

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1 **Plaintiffs believe there is insufficient evidence to support an instruction on**
 2 **unclean hands. However, in case the Court is inclined to give an**
 3 **instruction on unclean hands, Plaintiffs submit the following form of**
 4 **instruction.**

5 **Unclean Hands Defense**

6 Instruction No. ____

7 Defendants assert that Plaintiffs' equitable claims for unjust enrichment are
 8 barred by inequitable conduct towards Defendants under the unclean hands doctrine.
 9 In order to prevail on the equitable defense of unclean hands, Defendants must prove
 10 by a preponderance of the evidence that:

- 11 1. Plaintiffs' conduct was inequitable or in bad faith;
- 12 2. Plaintiffs' conduct was egregious and nontrivial;
- 13 3. Plaintiffs' conduct is directly related to the subject matter of Plaintiffs'
- 14 equitable claims for unjust enrichment;
- 15 4. Defendants have clean hands, or in other words, Defendants' conduct was in
- 16 good faith; and
- 17 5. Defendants were injured as a result of Plaintiffs' conduct.

18 The only conduct on which you may make a finding of unclean hands is that
 19 conduct directly related to the subject matter or relationship at issue in this litigation.
 20 Unclean hands does not mean that someone is a bad person in general or in some other
 21 respect; you may find unclean hands only if you find a direct connection between the
 22 alleged unclean hands conduct and the facts of this case and only as to the equitable
 23 claims for unjust enrichment.

24
 25 *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272,
 26 275, 182 P.3d 764, 766 (2008) ("In determining whether a party's connection with an
 27 action is sufficiently offensive to bar equitable relief, two factors must be considered:
 28 (1) the egregiousness of the misconduct at issue, and (2) the seriousness of the harm

1 caused by the misconduct.”); *Truck Ins. Exch. v. Palmer J. Swanson, Inc.*, 124 Nev.
2 629, 637, 189 P.3d 656, 662 (2008) (“[T]he alleged inequitable conduct relied upon
3 must be connected with the matter in litigation, otherwise the doctrine is not available
4 as a defense.”); *Howe v. Blue Bell Creameries, L.P.*, 437 P.3d 1052, 2019 WL 1422862,
5 Dkt. Nos. 73216, 74354 (Nev. Mar. 28, 2019) (unpublished disposition) (unclean hands
6 could not be applied where alleged inequitable conduct did not cause harm); *D.E. Shaw*
7 *Laminar Portfolios, LLC v. Archon Corp.*, 570 F.Supp.2d 1262, 1273 (D.Nev. 2008)
8 (unclean hands only applies as a defense to equitable claims, not legal claims); *Morton*
9 *Salt Co. v. G. S. Sippiger Co.*, 314 U.S. 488, 492 (1942); *Int’l News Serv. v. AP*, 248 U.S.
10 215 (1919).

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Replaces previous instruction for Greatest of Three

Instruction No. ____

You have heard evidence regarding a rule called the “Greatest of Three.” The Greatest of Three is a method of setting a minimum permissible payment amount for out-of-network emergency services. It is not a method of determining what amount is reasonable.

29 C.F.R. § 2590.715-2719A(b)(3)(i), (iii).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C. and on this 21st day of November, 2021, I caused a true and correct copy of the foregoing **PLAINTIFFS' THIRD SUPPLEMENTAL JURY INSTRUCTIONS** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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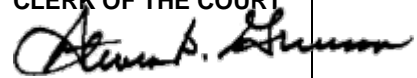
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

Defendants.

CASE#: A-19-792978-B

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
MONDAY, NOVEMBER 22, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 17

APPEARANCES:

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JASON S. MCMANIS, ESQ.
JOSEPH Y. AHMAD, ESQ.
MICHAEL A. KILLINGSWORTH, ESQ.
KEVIN LEYENDECKER, ESQ.

For the Defendants:

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COLBY L. BALKENBUSH, ESQ.
DIMITRI D. PORTNOI, ESQ.
CECILIA PLAZA, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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FOR THE DEFENDANTSMARKEDRECEIVED

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1 Las Vegas, Nevada, Monday, November 22, 2021

2
3 [Case called at 8:03 a.m.]

4 [Outside the presence of the jury]

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

7 MR. ZAVITSANOS: Good morning.

8 MR. BLALACK: Good morning, Your Honor.

9 THE COURT: Can we bring in the jury?

10 MR. AHMAD: I believe so, Your Honor.

11 THE COURT: Did you guys get back to Nicole on exhibits?

12 MR. BLALACK: Whatever we need to do, we just need to
13 make sure you get a copy.

14 THE CLERK: You were supposed to look at them over the
15 weekend because you -- both sides have been sending me additional --

16 MR. BLALACK: I know we have been doing that.

17 MR. GORDON: And we have -- we've looked at them, and we
18 sent them some emails. Some we agree on, some we're still working
19 through. Clearly, Your Honor, we probably have to build in some time
20 today for those that we can't reach agreement on. We have to present --

21 THE COURT: There's no time to build in. You can do it after
22 5.

23 MR. BLALACK: That's fine.

24 THE COURT: I'm not going to jam you up on putting your
25 case on.

1 MR. BLALACK: That's fine.

2 MR. GORDON: That's fine, Your Honor.

3 MR. PORTNOI: Your Honor, do you also want to take up
4 now, or at 5, the motion for relief of amended pleadings?

5 THE COURT: This afternoon. Come on up.

6 MR. ROBERTS: Should we make our appearances, Your
7 Honor?

8 THE COURT: You know, I was going to save time and not do
9 it, but --

10 MR. ROBERTS: Oh, okay.

11 THE COURT: -- since we have the time. I'm going to call the
12 case in of Fremont v. United. Plaintiff's appearances then Defendants.

13 MR. AHMAD: Yes, Your Honor. Joe Ahmad for the Plaintiff
14 healthcare providers.

15 MR. ZAVITSANOS: John Zavitsanos, Your Honor.

16 MR. MCMANIS: Jason McManis.

17 MR. LEYENDECKER: Kevin Leyendecker.

18 MR. KILLINGSWORTH: Michael Killingsworth.

19 MS. LUNDVALL: And Pat --

20 THE COURT: Thank you. And for the defense?

21 MR. ROBERTS: Lee Roberts for the Defendants, Your Honor.

22 MR. BLALACK: Lee Blalack on behalf of the Defendants, Your
23 Honor.

24 MS. PLAZA: Cecilia Plaza on behalf of the Defendants.

25 MR. GORDON: Jeff Gordon. Good morning, Your Honor, on

1 behalf of the Defendants.

2 MR. BALKENBUSH: Colby Balkenbush on behalf of the
3 Defendants as well, Your Honor.

4 THE COURT: Thank you.

5 MR. PORTNOI: Dimitri Portnoi on behalf of the Defendants.

6 MS. LUNDVALL: And Pat Lundvall from McDonald Carano
7 on behalf of the Plaintiffs. Apologies for being late, Your Honor.

8 THE COURT: No problem. I walked in at 7:59, so.

9 [Pause]

10 THE COURT: All right. So Juror number 1 is not here. And
11 Juror number 2, Cindy Springberg, has a cold or maybe a sinus
12 infection. Doesn't feel great, but she's here. And he's going to call Juror
13 number 1 right now.

14 MR. BLALACK: Your Honor, while we're waiting, for
15 planning purposes, our next witness, after Ms. King finishes, which is
16 probably another hour, well, I should say a couple hours between direct
17 and cross, redirect, will be Mr. Bristow. And the plan, I think, is for us to
18 play a video on direct and then bring -- he'll come in live on cross. So
19 we can talk about that more at that time, but I just wanted you to -- I
20 know we got you the final designations, the clips --

21 THE COURT: Right.

22 MR. BLALACK: -- late yesterday, so it may be that Your
23 Honor --

24 THE COURT: I didn't get to it last night. It's in my office. I
25 brought it this morning.

1 MR. BLALACK: Okay.

2 THE COURT: I will do it.

3 MR. BLALACK: You -- okay. Because I'm just trying to game
4 out if we need to have a Plan B for after she is done because the plan
5 would be to play the video.

6 THE COURT: So are the clips of the deposition I need to rule
7 on, is that Bristow?

8 MR. BLALACK: Correct.

9 THE COURT: Oh. Well, I hate to do it up here. I guess I can
10 go get it and --

11 MR. BLALACK: I can do it however you want, Your Honor.

12 THE COURT: Yeah.

13 MR. BLALACK: I mean, it's just --

14 THE COURT: Let me go get it. I'll be right back.

15 [Recess taken from 8:08 a.m. to 8:11 a.m.]

16 THE MARSHAL: Department 27 is back in session.

17 THE COURT: Thanks, everyone. Please remain seated. And
18 let's bring in the jury.

19 MR. ZAVITSANOS: Did the juror make it Your Honor, do you
20 know?

21 THE COURT: Yes.

22 MR. ZAVITSANOS: Okay.

23 THE MARSHAL: All rise for the jury.

24 [Jury in at 8:11 a.m.]

25 THE COURT: Thank you. Please be seated. Okay. Mr.

1 Blalack.

2 MR. BLALACK: Thank you, Your Honor.

3 THE COURT: Mr. Roberts.

4 MR. ROBERTS: Thank you, Your Honor. Good morning.

5 JURORS: Good morning.

6 MR. ROBERTS: Good morning, Karen.

7 THE WITNESS: Good morning.

8 KAREN KING, DEFENDANTS' WITNESS, PREVIOUSLY SWORN

9 DIRECT EXAMINATION CONTINUED

10 BY MR. ROBERTS:

11 Q So let's go back to where we left off on Friday afternoon.

12 And we were talking about your work both for your own consulting firm
13 for Aon and for Marriott International in the area of self-funded
14 employee health benefit plans. Do you recall that?

15 A I do.

16 Q Okay. Let me -- I had one more question to ask you with
17 regard to your background and foundation. How many times have you
18 been through the competitive bidding of an employee health plan TPA
19 contract?

20 A I would say I have been through the competitive bidding RFP
21 process approximately 60 times.

22 Q And of those 60 times, how many times were you acting as
23 the consultant for the insurance company or TPA bidding on the
24 contract?

25 A How many times was I working for the TPA?

1 Q For the insurance company.

2 A Never.

3 Q Okay. Who did you typically represent?

4 A My client was always the employer and the employee --
5 employees of that employer. That's who I worked for. That confused
6 me.

7 MR. ROBERTS: Your Honor -- Thanks. Are you done?

8 THE WITNESS: I'm done.

9 MR. ROBERTS: I didn't mean to cut you off.

10 THE WITNESS: Thank you.

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 employee health benefit plans, and the market for TPA contracts.

14 MR. AHMAD: No objection, Your Honor.

15 THE COURT: The witness may testify.

16 MR. ROBERTS: Thank you, Your Honor.

17 BY MR. ROBERTS:

18 Q So a little bit of background, hopefully I'm not being too
19 repetitive about some of the things the jury's heard, but in your
20 experience, how do most people obtain their health insurance?

21 A Most people obtain their health insurance through their
22 employer.

23 Q And what are the most common types of health benefit plans
24 that employers implement?

25 A Employers have a choice of two types of plans. They can

1 either offer a fully insured plan where the risk is taken by the insurance
2 carrier and the plan is more off the shelf. It's designed by the insurance
3 company, that's fully insured.

4 What's much more common and what covers about 70 percent of
5 employer-based coverage is a self-funded plan design. In a self-funded
6 plan design, the employer designs the plan. They take the risk. So if the
7 employer charges too much for the plan, then they -- you know, they
8 have miscalculated and it's not good for them. If they've -- if they've
9 charged too little for the plan, then they assume more loss than they
10 expected.

11 With a self-funded plan, the risk is shared between the employer
12 and the employees. The employer typically will fund about 70 percent or
13 -- you know, somewhere in that range of the funds towards supporting
14 the plan, and the employees will typically fund approximately 30
15 percent. So when I was working as a consultant for these TPA -- for the
16 RFPs, my client was the employer and the employees because I was
17 acting in the best interests of both.

18 Q And tell the jury again what an RFP is?

19 A An RPF is a process where you go through creating a large,
20 it's called a request for a proposal. You create a large document that
21 includes many, many, many aspects of what an employer is looking for
22 in hiring either a TPA or an insurance carrier.

23 Q What are the advantages of a fully-insured plan to an
24 employer?

25 A The advantages of a fully-insured plan to an employer is

1 there's less work. The insurance company will create the policy. They
2 will do the government filings. They really pretty much do everything.
3 And in return, the employer just pays the premium. So the employer has
4 much less work to do.

5 Q What are the advantages to an employer of a self-funded
6 plan?

7 A There are clearly many advantages to a self-funded plan.
8 That's why about 70 percent of employers offer self-funded plans. With
9 a self-funded plan, the employer is not subject to state mandates, which
10 is big. If you're an employer and you're in many, many states, you don't
11 want to have to comply with every single state mandate. You can design
12 the plan however it best fits your employees' needs and your
13 organization's needs. You're not subject to state premium taxes, FICA,
14 SUTA, all those other taxes. You just have a whole lot more flexibility.
15 However, you do have to -- you have to write your plan document. You
16 have to make sure that you are complying with the ACA and things like
17 that. So it's more work, but it's much more cost effective for both the
18 employer and the employee.

19 Q In your experience, why do employers with self-funded plans
20 need a TPA?

21 A Well, they need a TPA because it's difficult in this day and
22 age to pay your own claims. So the TPA pays the claims. It's -- it would
23 be extremely difficult for an employer to set up their own network of
24 providers, hospitals, physicians, x-ray, lab. So the TPA handles the
25 claims processing. They handle the credentialling. They handle the

1 networks. They really do quite a bit of that work, especially the work
2 that's national in scope. It would be difficult for a nation -- national
3 employer to do all that themselves.

4 Q All right. Karen, I believe you mentioned that an employer
5 with a self-funded plan has more flexibility to customize plan benefits?

6 A Yes, that's definitely one of the advantages.

7 Q What types of benefits can be customized in your
8 experience? In other words, what are the things that vary among the
9 plans --

10 A Oh, okay.

11 Q -- that the employers choose?

12 A Well, there's lots of things that can vary. They can obviously
13 vary the very basic things like deductible, copays, out of pocket. They
14 can also vary what they actually cover. They do have to comply with
15 federal guidelines. Like, they can't decide not to cover maternity claims,
16 but they can -- they can decide the degree to which they cover all kinds
17 of benefits within certain guidelines. They can decide how they cover
18 out-of-network programs for example. So they have a lot of latitude.

19 Q Let's go back to the TPAs. How do employ -- how do
20 employers typically select a TPA?

21 A Most employers who are self-funded will use a consultant
22 because it's difficult for an employer to have the understanding of the
23 whole marketplace. So they'll hire a consultant. In my experience as a
24 consultant, I would usually meet with my clients, my employer clients,
25 several times during the year in setting strategy. So we would look back

1 over the prior year to see what went well, what didn't go well. We'd look
2 at their claims experience. Was it moving forward as expected or was it
3 higher than they expected? We would look at innovations that are out in
4 the marketplace. We would benchmark them against their peers to see if
5 they were offering competitive plans according to their peers. Because
6 one of the things that employ -- the reason that employers offer benefit
7 plans is they want to be able to hire good employees. So they'll look to
8 see what are -- what are their peers offering.

9 And once we've gone through that process, we'll start setting
10 strategy. And we'll look to see what should we change for the coming
11 year. What should we continue to do? And if the results aren't so good
12 or they're dissatisfied with their current TPA, then we might decide to go
13 out to bid and create an RFP.

14 Q Is there usually a -- the best TPA, and then that person would
15 be the best for every employer?

16 A Absolutely not. No. There is a best-fit TPA for each
17 employer. And what's a good fit for, say, a manufacturing client that's
18 located in one state is going to be a very different fit than for, say, a
19 technology client who's operating in all 50 states. So you -- the purpose
20 of the RFP is to describe in the -- in the questionnaire, the things that the
21 employer is looking for, and then have the -- each TPA respond how they
22 expect to fulfill those requirements.

23 Q What kind of specific goals or needs might clients have that
24 would affect their choice of a TPA?

25 A Well, again, it's -- there's a best fit for each client. So clients

1 are going to have different goals and objectives. Some clients are going
2 to want to have a very hands-on approach. They're going to want a TPA
3 that's going to provide lots of customer service to their employees, that's
4 going to -- you know, walk them through all the decision-making and
5 that's going to offer a very broad network because they don't want their
6 employees to have to think too much about picking a provider. Other --

7 Q Are --

8 A Go ahead.

9 Q Are some employers more cost-focused than others?

10 A Yes. Yes. Some employers' cost is their number one focus.
11 And they are going to offer whatever they can that's going to keep their
12 cost as low as possible. Other employers are in a very competitive
13 marketplace, a very competitive area, trying to hire employees. So
14 they're going to offer, say, a more comprehensive plan. It's much like
15 salaries. You know, if you're really trying to hire a very unique type of
16 employee, you might be offering higher salaries than someone who
17 doesn't have any trouble hiring employees.

18 Q As a consultant for employers, do you evaluate the financial
19 performance of TPAs?

20 A Yes, that's one of the critical things that we do.

21 Q And how do you go about doing that?

22 A Well, often what we will do is we will include in the RFP two
23 years of claims history. So we'll go back 24 months and say here's all
24 the claims that they had. Here's the utilization. Here's what it cost to
25 adjudicate those claims, and then we will give that claims history to the

1 different TPAs that are bidding. This is all de-identified. They can't tell
2 who has incurred what claims. But we'll give them those D identified
3 claims and ask them, had this been your client, how much would these
4 claims have cost you? So basically what they do is they run all those
5 claims through the claims -- the type policy that they're recommending,
6 the networks and everything, and they tell you, had this been our client,
7 this is what it would have cost.

8 Q Do you also continue to monitor financial performance after
9 a contract is placed?

10 A Absolutely. That's one of the most important things that we
11 do. With a self-funded claim, usually there's an actuary who's a highly-
12 trained mathematician who every -- at least every quarter, and times
13 every month will evaluate all the claims that are being adjudicated and
14 compare that to what we expected the claims to cost. These are called
15 projections.

16 So they will project forward to say, are we on target Are we
17 charge is right amount for this plan? Are -- the goal is to be right on
18 target. It's hard because you're projecting, you're guessing into the
19 future. So they will -- the actuary will say, are we on target? Are we
20 above, are we below? And then they will do that every month or every
21 quarter during the plan year. And then in usually August of the prior
22 year, we will set rates for the coming year. So we'll look at the claims
23 history.

24 They actually go back again 24 months, weighing the most recent
25 12 months heaviest, and they will say, okay, if this is what we've had up

1 until now and we're going to make these changes to the plan design
2 going forward, say, we're going to change our out-of-network
3 reimbursement level or we're going to put in a wellness vendor or, you
4 know, whatever they're going to change, we're going to the deductibles,
5 then this is what we need to charge in rates for the coming plan year. So
6 they'll do that in August for January through December.

7 Q Do you ever audit how claims are paid?

8 A Yes.

9 Q And what is the purpose of that?

10 A Because you trust but verify. So usually in most full-service
11 consulting agreements there will be a component called a pre-
12 implementation audit and a post-implementation audit. So pre-
13 implementation audit is something that you usually do when you first
14 hire a TPA. And that audit is performed after they have programmed the
15 system but before they've started paying claims. So the audit will look
16 to see have they interpreted the plan design, the plan document correctly
17 in their claims system? And they'll run through test claims to see if that
18 has happened. If they haven't, then they fix it. And this is ideal because
19 you fix it behalf any claims have been paid incorrectly.

20 In a regular audit, you will look -- you will look back to see how
21 were claims adjudicated. Were they adjudicated correctly? Did they use
22 the correct network contracts? Did they pay according to the plan
23 design? And then this you find errors; you will ask the TPA to correct
24 those errors. If they've underpaid employees, you'll ask them to pay
25 them more. If they've overpaid employee, then we have interesting

1 conversations about who's going to pay for that.

2 Q Are you unique in the industrial in performing these types of
3 audits?

4 A No.

5 Q How often does this happen?

6 A In the industry?

7 Q Yes.

8 A I would say with larger consulting firms, it's very, very
9 typical. With smaller firms, with brokers, it might be less typical. But, in
10 my experience, with -- can self-funded plans, it's very typical.

11 Q So let's say one of your clients, an employer group with a
12 self-funded plan is dissatisfied with their TPA, too many interesting
13 conversations, how would they go about selecting a new TPA?

14 A Well, we would -- we would go through the strategy session
15 again, we would decide what we're looking for, we would decide what
16 kind of plan design we want. I mean do we want to continue with the
17 current plan design, or do we want to change to some other, you know,
18 set of offerings, and then we would, you know, create an RFP and send it
19 to -- usually about five different TPAs. We also include the current TPA
20 because sometimes the current TPA gets serious and decides, Oh, I
21 better do a better job or I'm going to lose this client. And sometimes
22 they'll charge you less because you've got out to bid.

23 We do recommend that employers test the market about every
24 three to five years to make sure that they're not overpaying.

25 Q How would you go about selecting the five or so TPAs that

1 would receive the request for proposals?

2 A It depends on the client as to which is going to be a good fit.
3 And because we're -- you know, consultants are in the marketplace all
4 the time. We have a pretty good understanding of which TPAs are going
5 to be, you know, a fairly good fit for this client. You wouldn't want to
6 pick a regional TPA to serve a national client. So if you have -- if it's a
7 national client, you're going to pick the national TPA. And then
8 sometimes you'll look at the industry as well. Some TPAs will specialize
9 in certain industries.

10 For example, I had a hospital system client who was going to bid,
11 and there are certain TPAs that really specialize in hospital systems.
12 They're very unique and paying their claims are -- they're unique. And
13 so you would choose from those TPAs that really specialize in hospital
14 systems. And then you offer them to --

15 Q In your --

16 A Let me finish.

17 -- then you offer them to your clients. You say, here's five or
18 six that we recommend. The client reviews them. They can either add
19 or delete from that list. You get them to sign off on it. It's the client's
20 choice in who we actually go to. And then you proceed with the RFP.

21 Q How often, if at all, do employers focus on a TPA's out-of-
22 network reimbursement method in selecting the TPA?

23 A You always focus on that because out-of-network costs,
24 claims costs are always higher than in-network. So when you are
25 creating a RFP, you want your TPA to offer innovative cost-effective

1 solutions that will provide the employer and the employees with the
2 most value for the dollars that they're spending.

3 Q Okay. You've got five TPAs selected for the request for
4 proposal. What's the next step? How do you go about narrowing that
5 down?

6 A Well, we send them the RFP. We look at all much their
7 responses. We usually create a side-by-side comparison. So we'll look
8 at all different components of the questionnaire and we'll show the
9 employer side by side how each one of the TPAs responded. Oftentimes
10 we'll give a value to the responses. You know, this was a really good
11 response, this was not a good response, this was a medium response,
12 and we'll go through that whole document with the employer. Usually
13 we don't make a recommendation at that stage, but they will often ask
14 us, you know, which one do you think we should choose as a finalist?
15 And if partnership with the employer, we'd pick a final -- we'd pick some
16 finalists. Usually two or three finalists.

17 And then the finalists will come into a finalists meeting, and they
18 will make a presentation to the employer. The employer has the
19 opportunity to ask questions. And ideally after that, they will -- they will
20 choose their new vendor.

21 Q So we've got the finalists. Is that more writing with your
22 clients that you're working for, telling the TPAs what you want and them
23 responding? How does that work?

24 A Okay. So we've got the finalist -- we've chosen the TPA. The
25 TPA will then create a programming document that we will go through.

1 It usually takes several months to go through item by item by item by
2 item how is this claim going to be paid? The RFP's going to be a pretty
3 high-level description of how you want to the claim to be -- the claim to
4 be set up. But the item by item by item by item discussion takes literally
5 months; discussions between the consultant, the TPA and the employer
6 will -- where you will look at the ramifications of each single point, and
7 then you will -- after you've finished that, then you have all the
8 components needed for your plan document. And then they will
9 program the system based on all of that information, and hopefully will
10 go live by January 1.

11 Q You mentioned before the focus on out-of-network
12 programs. Have you observed any high level transferships in the
13 industry as far as how self-funded plans are designed to reimburse out-
14 of-network providers?

15 A Yes. You know, the industry's constantly changing. It's
16 never static. And over the last ten years or so, there's been a shift in
17 how out-of-network claims are reimbursed. About ten years or so ago,
18 out-of-network claims did not have the focus that they do today. Out-of-
19 network providers were often, you know, solo practitioners who just
20 were resistant to joining a network. They just didn't want to. And so
21 they would, you know, charge something for their out-of-network claims,
22 and the claims would be paid based on, you know, fees, a percent of fees
23 being offered.

24 Over time, there has arisen this growth in firms that -- you know,
25 that are owned by private equity, and they will --

1 Q Before you continue, let me just ask. You mentioned paying
2 a percentage of bills. Is there a term for that type of payment
3 methodology in the industry?

4 A Paying usual and customary --

5 Q Charge based?

6 A -- or reasonable -- charge based, yes. Charge based.

7 Q What is a charge-based methodology?

8 A Charge based is you look at what the vendor has charged,
9 and you pay a percentage of that charge.

10 Q And over the last ten years, have you seen employers going
11 toward charge-based methodologies or --

12 A No.

13 Q -- going away from?

14 A No. They're definitely going away from charge based,
15 because there's no -- there's no arm's length transaction? Charge based.
16 It's just the vendor coming up with a charge and charging it versus the
17 normal transaction where there's some kind of a contracting phase
18 between the vendor and the payer.

19 Q So if employers are moving away from charge-based
20 methodologies, what are they demanding in its place?

21 A They're demanding something that is more a reasonable
22 cost, a payment for reasonable cost for the services rendered based on a
23 variety of different criteria.

24 Q The jury has heard a lot about out-of-network cost control
25 programs that have been implemented by United --

1 A Uh-huh.

2 Q -- over the period of time in dispute. In your experience, is
3 United the only one who's been implemented these out-of-network cost
4 control programs in the industry?

5 A No. In my experience, it's universal to have out-of-network
6 cost control programs offered by TPAs. We would not consider a TPA
7 that did that have some kind of a program to control out-of-network
8 reimbursements.

9 Q And when you say, we would not consider, what are you
10 talking about?

11 A As a -- as consulting firms, giving advice to our employers.

12 Q Has United led the way in implementing out-of-network cost
13 control programs, in your experience?

14 A In my experience, United actually lagged for a while in
15 coming with cost control programs. And one of the things we do when
16 we finish an RFP is we have -- we offer to speak to the bidders who didn't
17 get chosen, and we'll give them feedback as to why they didn't get
18 chosen. They find of extremely valuable, because obviously they want
19 to be chosen. And if I had a bidder with no out-of-network programs,
20 that would be some feedback I would give them. I would say, you know,
21 you need to have some kind of programs in place because you're not
22 going to get chosen unless you do.

23 Q So you mentioned several times that there's employer
24 demand for these out-of-network cost control programs. Having been
25 through this process of competitive bidding for TPA contracts over 60

1 times, wouldn't you expect that if employers were actually demanding
2 these aggressive cost control programs, there would be a paper trail on
3 it?

4 MR. AHMAD: Objection, Your Honor. Leading.

5 THE COURT: It was leading. So rephrase.

6 BY MR. ROBERTS:

7 Q Wouldn't you expect to see a paper trail based on your
8 experience in the RFP process if employers were demanding out-of-
9 network cost control programs?

10 MR. AHMAD: Your Honor, I think it's the same question.

11 THE COURT: I think it's the same question.

12 MR. AHMAD: And I'm not sure how there would be a basis
13 to say whether there would be documentation or not.

14 THE COURT: Can you rephrase?

15 MR. ROBERTS: I'll rephrase.

16 BY MR. ROBERTS:

17 Q In your personal experience, having done this over 60 times,
18 do you or do you not usually see a paper trail of what the employers are
19 demanding in their program?

20 MR. AHMAD: Your Honor, I'm sorry, but that -- I'll still have
21 to object as leading.

22 THE COURT: I'm going to overrule it.

23 THE WITNESS: As I explained, the process that we go
24 through with employers is to walk through a series of strategy sessions
25 at the beginning of the year or the end of the prior year. During those

1 strategy sessions, I will go in with oftentimes a PowerPoint, bring my
2 actuary, bring the rest of my team, and we will go through looking at
3 bench marking, trends, their experience. During that conversation, we
4 will discuss what they want, and we'll take notes. But they don't usually
5 write us and tell us, this is what we want, it's part of a discussion that we
6 have and it's very, very normal for us.

7 I mean as consultants, you don't -- you don't tell your client
8 what they -- what they want, what they need, and they don't tell you.
9 You partner together to come up with solutions. So that's the way it
10 would normally happen. And then when they would tell us what they
11 were looking for, we would incorporate those needs and objectives and
12 goals into the RFP or into our interaction with the current vendor if they
13 decide not to go out to bid.

14 BY MR. ROBERTS:

15 Q We've heard a lot about plan documents. So you get to the
16 end of this process. And you need plan documents, right?

17 A Uh-huh.

18 Q In your experience, who usually drafts those plan
19 documents, the employer through its consultant or the insurance
20 company that's going to service the TPA?

21 A Creating a plan document is the plan sponsor's
22 responsibility, which is the employer. And the employer will often look
23 to the consultant to assist with creating that plan document.

24 MR. ROBERTS: Your Honor, I would pass the witness at this
25 time.

1 THE COURT: Okay.

2 MR. ROBERTS: Thank you, Your Honor.

3 THE COURT: Cross-examination, please?

4 MR. AHMAD: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. AHMAD:

7 Q Ms. King, my name is Joe Ahmad. I don't think we've met
8 before. You can call me Joe.

9 A Okay.

10 Q I'll probably --

11 A You can call me Karen.

12 Q I'll -- well, I'll probably call you Ms. King --

13 A Okay.

14 Q -- since the way we're meeting each other is in the
15 courtroom --

16 A Okay.

17 Q -- with me asking questions of you. It's kind of a funny way
18 to meet people, but at least for me it happens. And I'm going to ask you
19 some questions that I wouldn't normally ask people when I meet them
20 out of this setting. And the first one is --

21 MR. AHMAD: Pull it up. And I'm not sure -- that's not me,
22 I'm pretty sure. It was a great method of cross-examination, whatever it
23 is, but --

24 THE WITNESS: It comes from the sky.

25 MR. AHMAD: Yeah.

1 BY MR. AHMAD:

2 Q But I don't know that I heard; on an hourly basis, how much
3 is United being charged per hour for your work in this case?

4 A I am being compensated at \$750 an hour.

5 Q Okay. You personally --

6 A Uh-huh.

7 Q -- correct?

8 A Right.

9 Q And United is being charged twice that?

10 A That's correct.

11 Q \$1,500 an hour --

12 A That's correct.

13 Q -- correct?

14 A Uh-huh.

15 Q Didn't they fight with you at all about the \$1,500 per hour?

16 A I was asked what my rate was. I told them what my rate was.

17 Q And --

18 A They --

19 Q And you told them it was 1,500?

20 A I worked through another firm that often will ask me to
21 provide services. It's another consulting firm. I'm not employed by
22 them, but they will make referrals to me.

23 Q Okay. I mean but did they ask that the rate be lowered or
24 anything like that?

25 A That would have been a discussion that they would have had

1 with that firm. I'm not aware of whether there was a discussion or not.

2 Q Okay. Now, I'd -- as far as United goes, I was a little bit
3 unclear on this; I take it you have worked with United before, at least in
4 this capacity where you're working with an employer as a consultant and
5 then you're taking various insurance company proposals, right?

6 A Well, I would -- what we've been talking about here is not an
7 insurance company. We've been talking about a TPA. So when I've
8 worked with United in I would say 95 percent of the times, I'm working
9 with United as a TPA. There have been maybe one or two cases where
10 I've worked with them as an insurance company, but that's very rare.

11 Q Okay. Fair -- and I appreciate you pointing that out. You
12 have worked with United as a third-party administrator, correct?

13 A That's correct.

14 Q And when we talk about United, it's not just United that
15 you've worked with in the past, there's another United entity called the
16 UMR?

17 A That's correct. That's a --

18 Q And you have worked with them as well in the past --

19 A I have.

20 Q -- is that right?

21 A Yes.

22 Q Now, if I understand this right, you have never testified as an
23 expert, at least in court; is that right?

24 A That's correct.

25 Q You did rely on some materials for your opinions today that

1 United sent you; is that right?

2 A United didn't send me anything directly. The law firm of
3 O'Melveny & Myers did.

4 Q Okay. O'Melveny, United's law firm, sent you materials to
5 consider, correct?

6 A Yes.

7 Q And one of the materials I noticed that you looked at was
8 from the Brookings Institute; is that right?

9 A I may have looked at something from the Brookings Institute.
10 I don't really recall. It wasn't one that I really focused on if I did.

11 Q Okay. United provided that?

12 A I didn't get anything directly from United. I got everything
13 through O'Melveny.

14 Q I'm sorry. O'Melveny provided that?

15 A I would -- I -- if that's on my list. I don't actually recall looking
16 at some --

17 Q Well, you have your report in front of you.

18 A Yeah.

19 Q I think it is on --

20 A I don't.

21 Q -- your list.

22 A It -- that's fine.

23 Q Okay.

24 A I mean there were many, many, many, many documents. So
25 it's difficult for me to recall exactly which ones I focused on.

1 Q Did United share with you that they had one of their
2 executives provide confidential input into that [indiscernible]?

3 MR. ROBERTS: Objection. Beyond the scope.

4 THE COURT: Overruled.

5 THE WITNESS: I don't recall a discussion about that.

6 BY MR. AHMAD:

7 Q You did have direct discussions with United and UMR,
8 correct?

9 A I --

10 Q Not just with the O'Melveny people, right?

11 A Yes, I did have discussions with some of the other people
12 who work for United and UMR.

13 Q And then Bradley, I believe, in United?

14 A Jolene Bradley, yes.

15 Q A Ms. Ziemer or Zymer [phonetic] from UMR?

16 A I don't recall that it was a woman. I thought it was a man,
17 but --

18 Q Oh, I think it's a man.

19 A Oh, okay.

20 Q I'm --

21 A Yes, I did talk to him.

22 Q Okay, great. And I think you said earlier you talked to
23 O'Melveny a lot. I noticed that you talked to them and had discussions
24 with them while reviewing your report; is that right?

25 A Yes. I was explaining to them some of the things that I just

1 explained during this discussion, my experience and my perspective on
2 the healthcare marketplace.

3 Q Yeah. And one of the things though that you didn't discuss
4 and you're not here to provide an opinion is the reasonable value of the
5 services at issue here, the reasonable value of the services that Fremont
6 Emergency, Ruby Crest, Team Physicians provided?

7 A That was not within the scope of what they asked me to
8 opine on.

9 Q And in fact, I mean none of your opinions can help us
10 determine what the reasonable value for those services?

11 A I can talk to you about what the marketplace considers to be
12 an acceptable payment for out-of-network services, and it is not charges.
13 But I can't tell you the exact dollar amounts that things should be. That
14 would be -- that would require an economist, and I'm not an economist.

15 Q And I understand that. And that's what you're not here to do
16 that, are you? For example, you would not be able to tell us what the
17 appropriate percentage of Medicare should be for emergency room care
18 in Nevada.

19 A I could tell you in general what is used for reference base --
20 that's called reference based pricing. I can tell you in general what I've
21 seen in the marketplace that TPAs use as a --

22 Q Well, what about emergency room care in Nevada or just
23 emergency room care?

24 A I have seen different percentages of Medicare used as a
25 reference base for pricing --

1 Q But you're not an expert --

2 A -- emergency room care.

3 Q You're not an expert in that. And what the appropriate
4 percentage would for the reasonable value perspective.

5 A I believe that there is another person who has served as an
6 expert witness in that regard, who's more knowledgeable than I am
7 about medical economics.

8 Q Okay. So that person is not you. That's somebody else that I
9 think the jury has heard from, correct?

10 A Mr. Deal.

11 Q Is that right?

12 A Yes.

13 Q I take it you don't have any criticism of Mr. Leathers, our
14 corresponding expert?

15 A I have some opinions about Mr. Leathers' testimony, but I
16 don't know that that's relevant.

17 Q Okay. Well, I may get into that, because I'm not -- I'll take
18 your word that it's not relevant, but I may touch upon that, on some
19 things that I think might be relevant. One of the issues I was curious
20 about was that you had a long discussion, I think, about the various
21 programs that employers might be interested in, right?

22 A A long discussion with whom?

23 Q With Mr. Roberts?

24 A Oh, yes. Yes.

25 Q Okay. And I'm just curious. I heard a lot about how these

1 plans vary, correct?

2 A Yes.

3 Q It's important to be customizable when you're offering
4 programs to an employer.

5 A Absolutely.

6 Q Some employers want to have generous health benefits for
7 their employees, correct?

8 A I would say all employers want value for the dollars that they
9 spend. They don't necessarily want to spend more than they're getting
10 in return for that investment.

11 Q Well, I mean would it be fair to say that they want to be more
12 generous in their health benefits?

13 A Some employers will offer a plan design that is richer than
14 others. The plan design not what they've spent.

15 Q Okay. I was trying to read from your report. Do you have it
16 in front of you?

17 A Actually, I have Mr. Mizenko's information in front of me.

18 Q Well, that's not going to do a lot of good here.

19 A That's not my name. Alexander Mizenko is not my name.

20 Q Well, I'll do this. I'm going to -- I'll try to quote from it.

21 A Okay.

22 Q And I'll hand it to you. I didn't know you didn't have it.

23 Some employers use their benefit plan as a defining best in the marked
24 differentiator compared to their peers, so they can attract and retain top
25 quality difficult to hire employees. And then others offer less generous

1 benefits that will meet but not exceed their competitive plan design?

2 MR. ROBERTS: Your Honor, may I approach and give the
3 witness a copy of her report?

4 THE COURT: You may.

5 MR. AHMAD: Sure, absolutely.

6 [Counsel confer]

7 THE WITNESS: Does somebody want this back?

8 MR. AHMAD: That'll work.

9 THE WITNESS: This is not me.

10 BY MR. AHMAD:

11 Q Otherwise, it's going to turn into a [indiscernible].

12 A Thank you. I do recall that.

13 Q Okay. It's at the bottom of page 8.

14 A 8. Okay.

15 Q And I guess my point is some employers want to offer more
16 generous health benefits than others.

17 A Uh-huh, yes.

18 Q And some employers will use that as a differentiator to
19 attract top quality talent in a hiring market that's pretty tight?

20 A Yeah. I can explain that. So some plan designs might
21 reimburse an out-of-network doctor's visit at 60 percent, which is not
22 uncommon at all. And some employers might say well, I would like to
23 have a plan design that's a little bit richer than that. So I'll reimburse
24 out-of-network doctor's visits at 70 percent. But that's not talking about
25 the value of that service. That's talking about the percentage that the

1 plan design is paying.

2 Q Sure. And -- but you just said something I think it pretty
3 important. The plans don't necessarily dictate that the TPA pay
4 reasonable value for the services. They don't --

5 A Actually, the plans do talk about what the value -- how the
6 out-of-network service is going to be valued, whether it's going to be
7 based on a schedule, whether it's going to be based on reference based
8 pricing, whether it's going to be based on median, you know, par.
9 There's different ways that those out-of-network services can be valued,
10 and that information is in the plan document.

11 Q And I understand there's very different ways that the out-of-
12 network program can reimburse. But is it always true that the plan says
13 the provider has to be reimbursed at reasonable value of their services?

14 A I can't speak to always.

15 Q Well, let's talk about one program. You're familiar with
16 reasonable and customary, correct?

17 A That's a term that refers to paying something that's
18 reasonable. Yeah.

19 Q Okay. But there are other ways of reimbursing other than
20 reasonable and customary; isn't that right?

21 A There are a whole variety of ways of reimbursing. Yes, you
22 could reimburse based on the schedule. You could say --

23 Q Yes.

24 A -- when you go to the emergency room, we're going to pay
25 you \$200.

1 Q Correct. Just a fixed fee. And that fixed fee could be
2 anything, correct?

3 A Well, subject to the law, yeah.

4 Q Sure.

5 A The Affordable Care Act.

6 Q Yes. And I understand that. But there's nothing in the plan --
7 you know, I'll set aside reasonable and customary. There's nothing in
8 the plan, necessarily, that requires that TPA pay reasonable value for
9 their services. In fact, that's why the jury is here today. That's what
10 they have to determine, correct?

11 A I'd have to see the plan design to see what it said. There's
12 not like a universal plan design. There's different options. That's why
13 people -- that's why employers often want to be self-funded, so that they
14 can choose from a variety of options what's the best fit for them.

15 Q And you know, you said you'd like to see that plan design at
16 issue, but I have to ask, because we've had a lot of conversation about
17 what might be in a plan and how they vary. You haven't seen the plan
18 language that pertains to the 11,000 plan division.

19 A Well, I don't think there's one plan language. I suppose
20 there's maybe thousands.

21 Q There's probably a lot, yes. Have you seen any of them?

22 A I think I briefly saw one, but I certainly haven't seen all of
23 them. And that wasn't what I was engaged to do. I was engaged to
24 discuss trends in the marketplace, what employers, why employers
25 might choose a self-funded plan, how plan documents are used to

1 adjudicate claims. I wasn't asked to look at specific claims. That was not
2 part of my engagement.

3 Q Well, you'd agree with me though that instead of taking
4 about trends or what some employers demand or want, we could
5 actually see what an employer is demanding by looking at the plan
6 length, right?

7 A Probably, yeah.

8 Q And yet, we haven't seen those?

9 A I don't know what you've seen or not seen.

10 Q But you haven't seen it. Represent to you we haven't seen all
11 the plans at issue either.

12 A Uh-huh, okay.

13 Q Would that be the place to look if you wanted to know, with
14 respect to the plan -- excuse me -- the claims at issue?

15 A Well, I think what's at issue here though is there's different
16 parts of a visit. There's the billed charge, which is what the vendor has
17 billed. There's the allowed charge, which is what is considered to be the
18 reasonable value for that service. And then there's the payment. And
19 you're talking about the payment. And I think what's at issue here is the
20 allowed charge if I understand what's at issue.

21 Q Well, I was --

22 A So the allowed charge is going to be based on what is
23 reasonable in the marketplace.

24 Q Well, except that -- I don't necessarily agree with that
25 rendition because you understand that the allowed charge --

1 MR. ROBERTS: Objection to form, Your Honor. Testimony
2 by counsel.

3 THE COURT: Objection sustained.

4 BY MR. AHMAD:

5 Q The allowed charge is just what the insurance company
6 picks.

7 A No, it's not.

8 Q Do we have any say in that number?

9 A The allowed charge is how the plan document says an
10 reasonable value should be arrived at. It's not what the insurance
11 company picks.

12 Q I just --

13 A It's what the employer and -- tells the TPA -- not the
14 insurance company -- tells the TPA this is how we want reasonable value
15 to be arrived at.

16 Q Okay. But reasonable value term may or may not be in the
17 plan language, that term reasonable value.

18 A In my experience, it would be extraordinarily rare for a plan
19 document not to have some kind of reasonable value language. It would
20 extraordinarily rare for a plan to say just pay whatever is billed.

21 Q No, no, no.

22 A We just don't see that.

23 Q And I'm not saying that. I'm saying these programs will have
24 a method of determining the reimbursement rate. And that rate could be
25 reference based.

1 A Could be reference based, yes.

2 Q It could be a percentage of Medicare?

3 A Which is a type of reference base. Yes.

4 Q It could be Fair Health.

5 A It could be.

6 Q Correct.

7 A Could be.

8 Q And those amounts of reimbursements, would you be
9 surprised, can vary a lot?

10 A Oh, that wouldn't surprise me at all. No.

11 Q Okay. And so, ultimately, what the reasonable value of those
12 services could be any of those numbers somewhere in between or none
13 of them, correct?

14 A So you're saying that the reasonable value could be different
15 based on how the plan design --

16 Q Well, no. What I --

17 A -- describes the reasonable value?

18 Q What I'm saying is if you actually look at the services that
19 were written --

20 A The services that were written?

21 Q Yes. The provider provided service.

22 A Oh, okay.

23 Q Somebody comes into the emergency room.

24 A Uh-huh.

25 Q And I don't want to lose sight of the fact that these are -- you

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1 know, these are actual people that come into the emergency room. And
2 a doctor, like some of the doctors here, provide care. And if a jury
3 determines what that reasonable value is, that may or may not have
4 anything to do with what the employer and the insurance company have
5 put in their plan.

6 A I'm sorry. I'm not following you.

7 MR. ROBERTS: Objection. Calls for speculation.

8 THE COURT: Overruled.

9 BY MR. AHMAD:

10 Q Did you understand that the jury was here to make a
11 valuation of the services provided in this case?

12 A Without regard to what the plan document says? Is that
13 what you're saying?

14 Q Well, yes. Were you aware of that?

15 A That they can overrule the plan document?

16 Q Yes. Were you aware of that?

17 A It doesn't seem to be reasonable to me, because the TPA is
18 supposed to be adjudicating according to the terms of the plan
19 document. And the plan document should determine how the plan is
20 paid.

21 Q So is it your thought that when the employer and the
22 insurance get together, they should be able to pick a number that the
23 provider is being paid?

24 MR. ROBERTS: Objection to form.

25 THE COURT: Overruled.

1 BY MR. AHMAD:

2 Q Is that your thought?

3 A Well, let me ask you this question. If you were going to
4 decide how much you needed to fund a plan, and you didn't know how
5 that plan was going to operate, how could you possibly fund the plan if it
6 was up to somebody else how the payments were going to be made?
7 What if somebody decided the deductible wasn't reasonable? How
8 would you possibly be able to fund a plan if you couldn't describe how it
9 was going to be paid?

10 Q And I understand from your perspective. But from a
11 reasonable value perspective, in terms of what the jury is being asked to
12 do, do you understand that the provider is not at the table when the
13 employer and insurance company are getting together to put plan
14 language together, right?

15 A I understand they're not at the table, but they are operating
16 in a marketplace.

17 Q Well, I understand that, but they're not part of that equation.

18 A They're not at the table. That's true.

19 Q And guess what? They have to treat under the law, and they
20 have to treat everybody, right?

21 A They do.

22 Q Does it seem fair that they're not even at the table for this?

23 A They're operating in a marketplace which includes things like
24 Medicare and Medicaid, who's telling them what's going to be paid. So I
25 would think, as a provider in a marketplace, they would take into

1 consideration what is being accepted as reasonable value in a
2 marketplace.

3 Q Well, let me talk about that. So you remember reasonable
4 and customary, right? We talked about that earlier.

5 A I remember we talked about it.

6 Q And that reimburses at a percentage of Fair Health?

7 A Not necessarily.

8 Q Often does?

9 A Sometimes does.

10 Q Sometimes 80th percentile but can be a different percentage?

11 A Could be 50th percentile.

12 Q Could be 80th percentile?

13 A Could be 50th.

14 Q Okay.

15 MR. AHMAD: Well, can we look at Exhibit 25, page 2?

16 [Counsel confer]

17 BY MR. AHMAD:

18 Q And I apologize for coming up this close. It says and this is
19 usual customary -- usual and customary receivable historically known as
20 HIAA and then R and C, reasonable and customary. Do you see that?

21 A I do. I have no idea what this document is. You're just
22 showing me a little piece of it.

23 Q Okay. Well, would you be surprised that the 80th percentile
24 was the predominant way of compensation by United back in 2016?

25 MR. ROBERTS: Objection. Misstates the evidence.

1 THE COURT: Overruled.

2 THE WITNESS: I don't know what United Healthcare
3 predominantly paid in 2016. But I know, in 2016, in the marketplace, that
4 was not the trend that I was seeing.

5 BY MR. AHMAD:

6 Q Well, you know, let's talk about, you know, this trend,
7 because I've heard a lot of discussion about how others are charging
8 more over the last few years. Do you remember that?

9 A You'll have to explain that a little bit closer with others. Who
10 are you referring to?

11 Q Yeah. You talked about providers, out-of-network providers
12 raising their rates over the last 5 to 10 years; correct?

13 A Yes. We've seen the inflation or the medical trend of out-of-
14 network rates at about double the in-network trend, inflation.

15 Q And I've heard a lot about that. And we keep talking about
16 this general trend. But I want to focus on what we charge, Fremont
17 Emergency Service, Ruby Crest, Teams Physicians. Do you have any
18 idea if we are keeping up with the rest of the providers in our rate
19 increases?

20 A No.

21 Q Do you think it should be held against us that others, sound
22 physicians, are charging a lot more, increasing their rates a lot more
23 than we are? Do you think our reimbursement should be going down
24 because of that?

25 MR. ROBERTS: Objection. Compound.

1 THE COURT: It's compound. Rephrase.

2 THE WITNESS: Yeah, I would -- I couldn't follow that.

3 MR. AHMAD: Sure.

4 BY MR. AHMAD:

5 Q Do think it -- first of all, do you think it's fair to reimburse
6 less -- us less because there are other providers charging more?

7 A I think that there is a reasonable market rate for the services
8 being provided. And that reasonable market rate should be what is
9 provided for those services. I don't know that one entity is being paid
10 less than the other.

11 Q Would you be surprised that our rates have gone up about
12 four percent per year in that time period?

13 A What time period are you talking about?

14 Q I'll use this, since 2016.

15 A Your rates have gone up four percent per year. Depends on
16 what the starting point was. The starting point may have been much
17 higher. Have they gone up compared to the median part rate or did they
18 start up here and median part was down here.

19 Q Did you look?

20 A No. That was not something I was asked to do.

21 MR. ROBERTS: Your Honor, can we approach, please?

22 THE COURT: You may.

23 [Sidebar at 9:11 a.m., ending at 9:14 a.m., not transcribed]

24 THE COURT: All right. So I understand this is a good time
25 for our morning recess. Let's take a short one, because it's only been an

MR. ZAVITSANOS: So Your Honor, before the trial began, we had extensive briefing and argument regarding a number of rates. The Court's ruling was crystal clear. As the trial has progressed and as the evidence has come in, there have been now multiple instances where the Defendants have blatantly violated the Court's order in limine. And not just blatantly violated it, did so in a totally nonresponsive way. Where Mr. Deal raised -- in fact Mr. Deal actually gave an opinion. You know, he's their expert, and he gave an opinion on what the percentage

1 of Medicare for in-network is and why we should be tied to that.

2 We asked the Court yesterday during the charge conference,
3 and I was not here, but Mr. McManis was there, for an instruction in the
4 charge, instructing the jury that in-network rates are not relevant, and the
5 Court overruled that.

6 Then today, this lady who is on the stand right now, their
7 other expert witness, who did not raise any of this in deposition, again
8 in non-responsive fashion, on three separate occasions, in response to
9 Mr. Ahmad's questions, talked about how out-of-network needs to be
10 compared to in-network. And it was words to that effect. And I don't
11 want to misstate what she said, but it was clear that she was drawing a
12 reference to in-network rates. And Your Honor, that is a -- these are
13 repeated violations of the Court's order in limine, and I got to say I'm
14 pretty upset right now, because this was an issue that came up the other
15 day.

16 I thought the Court was very clear with the lawyers that this
17 was not an issue and yet, here we go again. And Your Honor, just from
18 the cheap seats, sitting back there, this is nothing other than a Hail Mary.
19 And I know Mr. Ahmad has an additional point to make.

20 MR. AHMAN: Well, I would just point out, Your Honor, that I
21 believe the expert, and I can certainly show Your Honor this testimony,
22 was asked about four different times, whether she had any thoughts or
23 opinions regarding the reasonable value of the charges or services in
24 this claim. Never mentioned anything about, you know, it has to be
25 guided by the TPA, the plan language, anything. Nothing about it.

1 Consistently said that is not within the scope of my report. That's it. I
2 mean it was asked about four different times.

3 And so, you know, I thought that's the answer that I was
4 going to be given. And I thought at the end of the testimony an
5 appropriate instruction regarding that should be given.

6 MS. LUNDVALL: Your Honor, I just want to add one
7 additional point. Every attorney has a duty to inform the witness as to
8 the scope of the Court's order, and to be protective of those.

9 And as an example, when we questioned Ms. Hare as to
10 whether or not that was so informed, her testimony was she wasn't.
11 And so to the extent that this is an issue that falls squarely within the
12 obligation of an attorney preparing the witness for testifying.

13 THE COURT: And the response, please.

14 MR. ROBERTS: Yes, first of all, Your Honor, I was not the
15 initial prep session with Ms. King, but Ms. Plaza who is here with me
16 today, did do that prep. And she informed me that she did review all of
17 the Court's motions in limine with the witness during that initial prep
18 session.

19 I did not reinforce those when I met with the witness for the
20 reason that the testimony that I elicited from this witness was limited to
21 the market for TPA Services, to the trends in the industry, and all of these
22 general things that I talked about on the scope of direct. I did not prep
23 her and did not expect them to ask her what she thought reasonable
24 rates of reimbursement were. Why would they do that if it's beyond the
25 scope of their report?

1 They elicited her personal opinions, and she gave them. This
2 is not something that was prepped.

3 THE COURT: You'll get a chance.

4 MR. ROBERTS: And if he read the deposition, and she said
5 that's beyond the scope of my report, why would he come in here and
6 ask her about it? I did not review these things with her, and I had no idea
7 they would ask her, because as she said, she's not an economist. As to
8 Leathers, if they've got a two page list of the documents she reviewed
9 prior to her deposition, the Leathers report is not there, of course, she'd
10 have no opinion about Leathers. But she's watched Leathers at trial
11 while she's been waiting to testify. So now she has an opinion about it.
12 And I don't understand why they would elicit the opinion of one expert
13 out of the field with another.

14 This was a deliberate strategy to go beyond the scope of a
15 report to bring up all of these things that irrelevant to her opinion. Now I
16 will go out, and I will caution her again about these issues, but I think
17 they should be instructed to move on, and not go beyond the scope.
18 We're stuck for time here, and this is our case. She's got a 20 page
19 report, and I can -- very limited for the purposes of moving efficiently
20 through this process. And they've gone way beyond the scope, Your
21 Honor.

22 THE COURT: You do need to talk to her. In reply, please.

23 MR. AHMAD: Your Honor, if I may. I was doing what is fairly
24 common, confirming that she was not here to testify about something,
25 and just making that clear. She equivocated a little bit, like I said -- and

1 we asked this question four times in her deposition. And as far as
2 moving on, I would have been done by now, if it would have been very
3 clear, other than the testimony she tried to give, somehow reasonable
4 value has to be determined by the Plaintiff.

5 But with that, Your Honor, I'm essentially done. But I do
6 think we need an instruction because of the testimony that she gave,
7 which was not given in her deposition that in-network cannot be
8 considered, which is absolutely the law of this case.

9 THE COURT: She can be instructed by counsel -- Defense
10 counsel on that. Now --

11 MS. LUNDVALL: Your Honor, one last thing --

12 THE COURT: Sure.

13 MS. LUNDVALL: -- as far as to add to this. Because this is
14 more than one witness that has done this, we would revisit -- request
15 then a curative instruction to the jury that advises them that in-network
16 rates are not relevant to their inquiry on reasonable value.

17 THE COURT: I think we did that yesterday; didn't we?

18 MS. LUNDVALL: Understood. But this was before this new
19 violation that has come up.

20 MR. AHMAD: If I may, Your Honor, and I understand the
21 Court's ruling, I may need to confirm with her, and if she just gives me a
22 simple no, I'm not, that she is not here to give any opinion on a
23 reasonable value of the services, and she says, no I'm not, then I think,
24 you know, we're done.

25 THE COURT: All right.

1 MR. ROBERTS: Okay. And I think she already said that, Your
2 Honor. And the typical way you ask those questions is, isn't it true the
3 reasonable value of services is beyond the scope of your report. And
4 then she says, no. You don't ask her, her opinion on the reasonable
5 scope of services. And then expect a surprise when she gives you an
6 answer.

7 THE COURT: Right.

8 MR. AHMAD: Well, except, though, Your Honor, I would like
9 to ask that, and we asked it in her deposition, and all she -- all she said
10 was it's outside my report.

11 THE COURT: All right. So Marshal Allen, why don't you tell
12 them three or four more minutes. Three or four -- can you guys take a
13 break in three or four minutes?

14 MR. ZAVITSANOS: Yes, Your Honor.

15 THE COURT: It's 9:24. I'll be back at 9:28. And anybody
16 who's not here, we're going to start without you.

17 [Recess taken from 9:24 a.m. to 9:28 a.m.]

18 THE COURT: Thanks everyone. Please remain seated.

19 MR. BLALACK: Your Honor, we need to -- we need to talk
20 about -- may we approach, Your Honor?

21 THE COURT: You may.

22 MR. BLALACK: So somebody just announced --

23 [Sidebar at 9:28 a.m., ending at 9:28 a.m., not transcribed]

24 THE COURT: This is the Judge. There's someone on
25 BlueJeans who is a court reporter. Will you please --

1 THE MARSHAL: All rise for the jury.

2 THE COURT: Will you please unmute yourself and identify
3 yourself?

4 THE COURT REPORTER: I don't know how to unmute
5 myself. Oh, there I am. I'm sorry. I'm not too familiar with the program
6 at all.

7 THE COURT: And your name please?

8 THE COURT REPORTER: Silvia S-I-L-V-I-A.

9 THE COURT: And are you reporting the trial?

10 THE COURT REPORTER: Yes. They gave me the link this
11 morning to join the meeting.

12 THE COURT: Who gave you that link?

13 THE COURT REPORTER: I'm thinking Weil Gotshal. I got it
14 forwarded from my office Veritext.

15 THE COURT: The name again?

16 THE COURT REPORTER: Veritext. It's the agency that does
17 the reporting, that hires court reporters.

18 THE COURT: Okay.

19 THE COURT REPORTER: And I'm sorry, maybe I'm in the
20 wrong case. Is this Fremont Emergency Services?

21 THE COURT: Yes, it is. But we can only have one official
22 transcript and that is done in the courtroom. So it's improper for you to
23 be reporting this case today.

24 THE COURT REPORTER: Okay. I'm fine with that. I'm just
25 doing what I'm told.

1 THE COURT: Will you let them know? Let them know that
2 you've been instructed to discontinue and if they have issues they
3 should contact my office.

4 THE COURT REPORTER: Okay, Judge. I will tell them that.
5 And that's A-M-I-T, Nancy Amit?

6 THE COURT: It's Allf, A-L-L-F. And the phone number here is
7 (702) 671-3629.

8 THE COURT REPORTER: Thank you. Sorry about that.

9 THE COURT: And they would ask for Fran.

10 MR. BLALACK: Your Honor, could we ask just for a general
11 statement to the world that is on there, because we've had these AEO
12 conversations. I don't know if people are now bringing court reporters to
13 BlueJeans and --

14 THE COURT: So I did --

15 MR. BLALACK: -- essentially creating new transcripts, but I'd
16 like some sort of instruction that there should be nobody transcribing
17 this trial.

18 THE COURT: Earlier this morning, Brynn confirmed with me
19 that we had 37 people on BlueJeans. Is anyone else out there reporting,
20 or recording, or providing a transcript to any one of these proceedings.

21 THE COURT RECORDER: We're at 51.

22 THE COURT: We're at 51? If there's anyone out there, you
23 are ordered not to do that. You're allowed to sit in. If this courtroom
24 was big enough you could sit in, but there's only one official transcript.
25 No one else should be out there making transcripts. And if I find out

1 about it, I'll deal with it appropriately.

2 THE COURT REPORTER: Okay, so I'm just going to sign off.

3 THE COURT: Thank you.

4 THE COURT REPORTER: Thank you. I'm sorry about that.
5 Have a good day everybody. Happy Thanksgiving. Bye-bye.

6 MR. ZAVITSANOS: Your Honor, for the Plaintiffs, I have no
7 idea who that is. Weil Gotshal is a very large national firm, 2,000 to
8 3,000 lawyers. I have not -- we have not engaged them. They are not
9 associated with us. This is -- I don't know if it's MultiPlan or somebody
10 else.

11 THE COURT: It doesn't matter.

12 MR. ZAVITSANOS: I don't know, but it's a little disturbing
13 honestly.

14 THE COURT: Anything else for the record?

15 MR. BLALACK: Not on this issue, Your Honor.

16 MR. ROBERTS: We have not associated Weil Gotshal.

17 THE COURT: All right. So the Marshal will bring in the jury
18 now. That was a 17-minute break.

19 THE MARSHAL: All rise for the jury.

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

21 THE COURT: Thanks everyone. Please be seated. And thank
22 you again for your courtesy. Five minutes became 17 minutes. We had
23 a matter to take up outside your presence. Go ahead please, Mr. Ahmad.
24 BY MR. AHMAD:

25 Q Thank you, Your Honor. Let me ask this way to sum up.

1 You're not offering any opinions about the value of the services offered
2 by Plaintiffs that are at issue, correct?

3 A That's correct. That's outside the scope of what I was asked
4 to offer an opinion on.

5 Q Okay. And you actually haven't looked at any of the claims at
6 issue?

7 A That's correct.

8 Q You haven't looked at all the plans at issue?

9 A That's correct.

10 Q No idea what reimbursement program applies?

11 A For these particular claims, no.

12 MR. AHMAD: Last thing. Is 513, Exhibit 513 in?

13 MR. ROBERTS: No.

14 THE COURT: 513?

15 BY AHMAD:

16 Q Ms. King, do you mind looking behind you at Exhibit 513?

17 A I don't know what you're saying.

18 Q Oh, there are notebooks back there and they are numbered.

19 You see the one that goes, I think it's volume -- yeah, that's it. Sorry,
20 they're heavy.

21 A Okay.

22 MR. ROBERTS: Your Honor, can you confirm this exhibit has
23 been admitted since it's being displayed to the jury?

24 THE COURT: I don't think it has been.

25 MR. AHMAD: I'm treating it as if it's not been admitted yet.

1 THE COURT: I don't show it on my list. It's not admitted.

2 MR. AHMAD: That's why it's not up on the screen.

3 MR. ROBERTS: Thank you.

4 BY MR. AHMAD:

5 Q Ms. King, do you have in front of you Plaintiff's Exhibit 513?

6 A I do.

7 Q And I think you see a chart. Kind of a dollar bill broken down
8 in terms of where healthcare costs go. Do you see that?

9 A I do.

10 Q Are you familiar with the breakdown of where healthcare
11 costs typically go?

12 MR. ROBERTS: Objection. Beyond the scope of a report.
13 Beyond the scope of direct.

14 THE COURT: Overruled.

15 THE WITNESS: Generally, yes.

16 BY MR. AHMAD:

17 Q Does 3.2 percent for both facility and physician emergency
18 room costs -- does that sound about right?

19 A It sounds within the range of reasonable, yeah.

20 MR. AHMAD: Okay. Your Honor, I would at this time move
21 the admission of Plaintiff's Exhibit 513.

22 MR. ROBERTS: Objection. No foundation for the document
23 and no foundation for the other 12 numbers on this document other than
24 the one which the witness testified to.

25 THE COURT: Overruled. Exhibit 513 will be admitted.

1 [Plaintiff's Exhibit 513 admitted into evidence]

2 MR. AHMAD: Thank you. I'll pass the witness.

3 BY MR. AHMAD:

4 Q Oh, yes. And I'm sorry, you see, I think, the 3.2 cents up
5 there for emergency room? Do you see that?

6 A Oh, yes. I see it.

7 MR. AHMAD: Thank you. I'll pass the witness.

8 THE COURT: Redirect, please.

9 REDIRECT EXAMINATION

10 BY MR. ROBERTS:

11 Q Do you have your report up there, Karen?

12 A I do.

13 Q And can you tell the jury how many single-spaced pages
14 your report was?

15 A It was 19.

16 Q Would it be fair to say that we haven't gone into detail into
17 everything you've talked about in your report here in front of the jury?

18 A We have not gone into detail; is that what you said?

19 Q Yes, we have not.

20 A Yes. It was fair to say we have not.

21 Q Okay. So look for Exhibit B to your report. That should be a
22 list of materials considered and/or relied upon.

23 MR. AHMAD: I may have left exhibit B here.

24 MR. ROBERTS: Thank you.

25 MR. AHMAD: Sure.

1 THE WITNESS: I see it.

2 BY MR. ROBERTS:

3 Q Okay. Is there about two -- one-and-half page's single space
4 of documents you've listed here that you review, correct?

5 A Yes.

6 Q Okay. Did you review everything on this list?

7 A I believe I did, yes.

8 Q Did you rely upon everything on this list for the opinions you
9 gave to the jury today when I was asking you questions?

10 A I relied on what's on this list as well as my experience over
11 the last 30 years.

12 Q Okay. And let me ask you one last question. If you turn to
13 the second page, we'll go to the back, go about halfway through the
14 second page. Could you read the full website that begins
15 <https://www.brookings?>

16 A Yes. Do you want me to read that?

17 Q Yes. Just read the full document so the jury knows the full
18 name of the document that Mr. Ahmad was referring to on cross-
19 examination.

20 A It's

21 [https://www.brookings.edu/research/adozenfactsabouttheeconomicsofthe](https://www.brookings.edu/research/adozenfactsabouttheeconomicsoftheushealthcaresystem)
22 [eushealthcaresystem.](https://www.brookings.edu/research/adozenfactsabouttheeconomicsoftheushealthcaresystem)

23 Q Okay. So that's not a Yale study, right?

24 A It doesn't sound like one, no.

25 Q Did you rely upon this website for any of the opinions that

1 you gave to the jury today?

2 A I can't recall to be honest.

3 MR. ROBERTS: Okay. Thanks very much, Ms. King. I
4 appreciate it.

5 THE COURT: Is there any recross?

6 MR. AHMAD: No, Your Honor. Thank you.

7 THE COURT: All right. Does the jury have any questions of
8 Karen King? If so, this would be your time. I see no takers. May we
9 excuse the witness?

10 MR. ROBERTS: Yes, Your Honor.

11 MR. AHMAD: Yes, Your Honor.

12 THE COURT: All right. Ms. King, you may step down and
13 you're excused.

14 Defendant, please call your next witness.

15 MR. BLALACK: Your Honor, can we approach real quick on
16 that question?

17 THE COURT: You may.

18 [Sidebar at 9:40 a.m., ending at 9:42 a.m., not transcribed]

19 THE COURT: Thanks everybody. We have a technical issue.
20 We don't want to have another recess because we don't want to waste
21 your time, so thank you for understanding.

22 MR. BLALACK: We can start the first one.

23 THE COURT: As soon as Mr. Leyendecker gets back.
24 Defendant, please call your next witness.

25 MR. BLALACK: The Defendants call Mr. Kent Bristow by

1 video.

2 MR. ZAVITSANOS: And Mr. Bristow just entered the
3 courtroom, Your Honor.

4 THE COURT: Thank you and welcome.

5 KENT BRISTOW, DEFENDANTS' WITNESS, BY VIDEOTAPE
6 BY MR. BLALACK:

7 Q Good morning, Mr. Bristow. My name is Lee Blalack. I'm
8 counsel for the Defendants in this case, and I'm going to be questioning
9 you today. And, obviously, your counsel will have an opportunity to ask
10 you some questions at the end of my examination if he desires. But let
11 me start by asking you just to state your name and place of employment
12 for the record.

13 A Yes. My name is Kent Bristow, and I'm employed by
14 TeamHealth.

15 Q And could you give the -- for the record, your job title,
16 please?

17 A Yes. My job title is Senior Vice President for Revenue
18 Management.

19 Q And next question is, have you heard the term -- the acronym
20 TIN before?

21 A Say it one more time please.

22 Q TIN, T-I-N.

23 A Yes.

24 Q What is a TIN?

25 A That is a tax ID number.

1 Q And is that a term that you use, your team uses in your work
2 for TeamHealth?

3 A Yes. We do use it sometimes.

4 Q And what is the relevance of a TIN for your business?

5 A It can be an identifier for a group that we bill services out
6 under.

7 Q When TeamHealth reports and bills healthcare services for its
8 physician groups, it will usually do so by an identifier that identifies the
9 physician as affiliating with a specific TIN or tax identification number?

10 A That's correct.

11 Q All right. You have to consult the actual language of the plan
12 to know what the in-network benefits were for the facility and what the
13 out-of-network benefits were, if any, for the professional service, correct?

14 A True.

15 Q Let me ask it this way. For the period starting let's say in
16 2106 up to present, has TeamHealth participated in both of those
17 MultiPlan graph or rental networks?

18 A Yes, I believe so.

19 Q Okay. Does TeamHealth participate in both of those
20 networks today?

21 A Yes.

22 Q All right. So, Mr. Bristow, if you would, take a look at the
23 document marked for identification as Exhibit 7 to your deposition. It's a
24 one-page document. And if you would just read that document quickly
25 to yourself and when you're done let me know and I'll ask you a few

1 questions about it.

2 [Mr. Bristow reviews document]

3 A Okay.

4 Q So sir, first of all, do you recognize the document marked for
5 identification as Exhibit 7 to your deposition?

6 A I have not seen it in quite some time. But yes, I do recall it.

7 Q In fact, if you look at the bottom of the page, you'll see
8 signatures. Am I correct, sir, on the right-hand side there's a signature
9 there that is your signature?

10 A Yes.

11 Q To the left of the signed as well, it appears to be in July of
12 2016. Is that how you read it, sir?

13 A Yes.

14 Q And there's a gentleman's name who sent the notice
15 regarding the material change or amendments to contract by the name
16 of Bruce Singleton. Do you see that?

17 A Yes.

18 Q Do you know Mr. Singleton?

19 A I do.

20 Q Who is Mr. Singleton?

21 A As it states here, he's the senior VP with MultiPlan.

22 Q That's a good point, sir. And if you go to the top of the page
23 as you note, the addressee for this letter is to a Ms. Jennifer JJ. Shrader .
24 Do you see that?

25 A Yes.

1 Q VP of Managed Care. And I think you said earlier that Ms.
2 Shrader is on your team and reports directly to you?

3 A Yes.

4 Q Did she report directly to you in June of 2016 when this
5 material change -- notice of material change and amendment to the
6 contract was submitted and signed?

7 A Yes.

8 Q Was Ms. Shrader the person at TeamHealth who was
9 responsible for the MultiPlan relationship?

10 A Yes, I would say she was primary contact.

11 Q So she was the primary point of contact, but then when it
12 came time to sign a material change or amendment to the contract,
13 ultimately, that was you who signed the document; is that right?

14 A Yes.

15 Q Do you understand, having reviewed this document anew,
16 that this was an amendment being made to the master agreements that
17 you had with MultiPlan at the time?

18 A I see it as being a notice of change, yes.

19 Q Okay. And in the very first paragraph, Mr. Singleton writes,
20 we are writing to inform you of trends happening in the health insurance
21 market. Health insurers and other payers, including our clients, are
22 taking a more active role in managing their access to provider networks
23 and establishing maximum reimbursement policies when members
24 access MultiPlan's complementary network as they with their own
25 network or other leased networks. Do you see that, sir?

1 A Yes.

2 Q What did you understand the reference to maximum
3 reimbursement policies to mean?

4 A That they were somehow going to try and initiate some caps
5 on what levels of payment they might be willing to pay.

6 Q Okay. And in this context, what Mr. Singleton was notifying
7 Ms. Shrader, and then ultimately, you as signatory to the notice, was that
8 these clients were taking a more active role in applying maximum
9 reimbursement policies when members of the health plan access
10 MultiPlan's complementary network. Do you understand what Mr.
11 Singleton was referring to when he referred to MultiPlan's
12 complementary network?

13 A Not within the network that we participate in as a provider.

14 Q So like the wrap rental networks you referred to earlier?

15 A Yes.

16 Q Okay. So then if you go down to the first bullet, he says,
17 your agreement with MultiPlan is governed by each client's specific
18 benefit plan. Do you see that?

19 A I do.

20 Q And you agree with that statement, correct?

21 A I don't know if I agree with that statement. It's in here, I do
22 acknowledge that. But I don't know that I necessarily agree with it.

23 Q Well, whether you agree or not, you signed an amendment, a
24 notice of material change amendment to the base master agreement that
25 contained that statement, correct?

1 A Yes.

2 Q Okay. And then it says, in addition, clients that are
3 contracting with MultiPlan to utilize the complementary network are not
4 required to access the terms of your agreement, including the
5 complementary network contract rates for a specific client if the contract
6 rate for that client exceeds the maximum amount of reimbursement
7 eligible under the terms of the benefit plan or the client's or MultiPlan's
8 reimbursement policies. Then it's got an open paren and in quotation
9 marks, ("maximum reimbursement policy") close quotes, close paren.

10 Do you see that, sir?

11 A Yes.

12 Q What was your understanding of that statement?

13 A I -- I just think it's saying that they can't mandate that the
14 health insurance companies access their network.

15 Q So do you agree that that second sentence, MultiPlan was
16 advising TeamHealth that MultiPlan's clients that were contracted with
17 MultiPlan to use that wrap or rental network, were not required to access
18 the rates that were in the agreements between providers like
19 TeamHealth and MultiPlan?

20 A Yeah, if that what it says. But again, we -- we have no
21 control over their arrangement with -- with health plans.

22 Q So you see it says, MultiPlan clients and their customers? Do
23 you see that?

24 A Yes.

25 Q Do you understand that the reference to the customers of the

1 MultiPlan clients is referring to the ASO customers of health insurers and
2 their members?

3 A Yes.

4 Q Okay. So it says, MultiPlan clients and their customers are
5 not required to access every network offered or to access every provider
6 participating in the network they do access. I think that's a statement
7 just restating what you said a moment ago, correct?

8 A Correct.

9 Q Okay. And then he goes on to say, In the event that they
10 elect not to access your agreement meaning MultiPlan clients and their
11 customers, the terms of your agreement will not apply. Do you see that?

12 A I do, but let me-- let me clarify my last answer to the
13 question. Again, we don't know what MultiPlan's clients' requirements
14 were. So I can't stipulate that they weren't obligated to access the
15 network or not. We have no visibility, had not seen any of those
16 agreements, were not aware of those agreements, whether they required
17 it or not.

18 Q Well, before you signed this document, sir, did you contact
19 Mr. Singleton and ask him to explain any of the language in this letter?

20 A I can't recall if I would have talked to him or if J.J. would
21 have talked to him. I would have guessed one of us would have. I don't
22 recall any specific discussions.

23 Q Do you remember having any information from Mr.
24 Singleton about anything in -- in Exhibit 7 that caused you any concern
25 before you signed this document?

1 A I -- I can't recall. I think there were some other events going
2 on at that time with MultiPlan and our contract that were related to this.
3 And so -- but again, I cannot remember the specifics of the dynamics that
4 were going on at that time. Because I think we were also trying to
5 accomplish something else with MultiPlan and our contract at that time.
6 And so I just cannot remember all the specific discussions that may or
7 may not have taken place.

8 Q But whatever those discussions were, as you sit here today,
9 you don't have any memory of any concerns about any of the specific
10 language in Exhibit 7. Am I right about that?

11 A I -- I wouldn't say that I didn't have any concerns. But again, I
12 felt like -- I think our thinking at the time was that we weren't sure this
13 really changed anything. Either the plans had obligations to access the
14 rental networks according to their agreements or they didn't, but this
15 really wouldn't have changed the game.

16 Q But whatever your views were, you signed this document in
17 June -- June of 2016, comfortable with this content, correct?

18 A I did sign the agreement.

19 Q Okay. And just to put this in context, TeamHealth was
20 essentially, a customer of United during this period, correct?

21 A I guess it depends on who you determine as the customer,
22 but we had a -- a business relationship with them, yes.

23 Q Well, a customer in the sense that they contracted with you
24 as a vendor to administer your -- your health -- your TeamHealth health
25 plan, correct?

1 A Yes.

2 Q And you paid them a fee for that service, correct?

3 A Correct.

4 Q And prior to January 2020, for the period at issue in this
5 lawsuit in the state of Nevada, UnitedHealthcare was the administrator of
6 the TeamHealth employee health plans, correct?

7 A Prior to 2020?

8 Q Yes.

9 A Yes.

10 MR. BLALACK: Okay. Your Honor, can we approach with
11 counsel with a question before we play the next video?

12 THE COURT: Yes, of course.

13 [Sidebar at 9:58 a.m., ending at 9:59 a.m., not transcribed]

14 [Pause]

15 [Video Deposition of Kent Bristow continues]

16 BY MR. BLALACK:

17 Q So today, we are going to be receiving testimony from Team
18 Physicians, a Plaintiff in this case, the corporate testimony of Team
19 Physicians.

20 It's my understand that you have been designated by the
21 Plaintiff, Team Physicians, to be its corporate representative and testify
22 today; is that right? Is that your understanding?

23 A Yes. That's my -- that's correct, yes.

24 Q Do you agree with me that there are commercial insurers
25 other than UnitedHealthcare that TeamHealth contends are unilaterally

1 reducing out-of-network payments for emergency physician services that
2 result in reimbursement rates below contracted in-network rates?

3 A Yes.

4 Q Okay. So the phenomenon that TeamHealth contends is
5 improper in this lawsuit is a scenario that TeamHealth is experiencing
6 with other commercial health insurers as well, correct?

7 A And with some particular payers in certain markets, yes. But
8 again, we're also moving to hold them accountable to a different
9 standard as well.

10 Q Okay. Sir, the document marked for identification as Exhibit
11 -- Team Physicians Exhibit 18, is a printout from the Nevada Secretary of
12 State's website providing entity information on an entity named Team
13 Physicians of Nevada - Scherr P.C. Do you see that, sir?

14 A Yes.

15 Q So my first question is, Team Physicians of Nevada - Scherr
16 P.C., is there any relationship between that entity and Team Physicians -
17 Mandavia that is a Plaintiff in this lawsuit?

18 A Yes. It's one and the same. Again, I think I was referring to
19 the name earlier of the group, but it's just recently changed.

20 Q Okay. Now, you'll see underneath Dr. Scherr's name, there is
21 a person named Jennifer Behm, B-E-H-M, do you see that?

22 A Yes.

23 Q I think you mentioned Ms. Behm last week when we talked.
24 Who is she?

25 A She is the executive vice president over the west region

1 operations.

2 Q The west region operations of TeamHealth?

3 A Yes.

4 Q And then underneath that, there is an individual named John
5 R. Stair, do you see that?

6 A Yes.

7 Q Who is Mr. Stair?

8 A John Stair is in-house counsel with TeamHealth.

9 Q Okay. And then there is an officer listed as John Berry. Who
10 is Mr. Berry?

11 A John is over our taxation services area of TeamHealth.

12 Q And then sir, if you look over to the next page, you'll see
13 there is a director listed and a treasurer listed. Do you see that?

14 A Yes.

15 Q And

16 Q You'll see again as the director, Dr. Scherr is listed and then
17 there's a treasurer listed as Kristopher Smith. Do you know Mr. Smith?

18 A Yes.

19 Q Who is Mr. Smith?

20 A So Chris is the CFO over the chief financial officer over the
21 west region operations.

22 Q And when you say west region operation, do you mean the
23 TeamHealth west region operations?

24 A Yes.

25 Q Okay. So am I correct, sir, that all of the officers and the

1 directors listed in the filings of Exhibit 18 are employees of TeamHealth,
2 sir?

3 A Yes.

4 Q So sir, the document marked for identification to your
5 deposition is Team Physicians Exhibit 25. It's entitled "Notes for
6 Healthcare Providers' Corporate Representative Deposition"; is that
7 right?

8 A Yes.

9 Q And then am I summarizing it accurately to say that it
10 appears to have an identification of subject matters and then notes
11 written in bullet points underneath those subject matters?

12 A Yes.

13 Q And are the notes reflected in this Exhibit 25 solely related to
14 Team Physicians or to all three Plaintiffs?

15 A There are a couple of references that would include
16 addressing points related to Ruby Crest. So I think there's a couple of
17 them that are specific to Ruby Crest. But otherwise, they would be
18 applicable to Team Physicians.

19 Q Okay. And are any of the -- to your knowledge, is -- are any
20 of the notes intended to address topics involving Fremont?

21 A Some of the topics would also address Fremont, certain
22 topics would not.

23 Q If you would look at the document marked for identification
24 as Exhibit 29, which was produced to the defense by the Plaintiffs in this
25 case, it is Bates stamped FESM001390. Have you seen that document

1 before, sir?

2 A Yes, I have.

3 Q Okay. What does that document describe?

4 A It -- it's a document that's kind of just a general description of
5 the process and consideration for how we set our charges.

6 Q Is the setting of the chargemaster, the process you're
7 describing here, is that an entirely internal TeamHealth function, and I'll
8 include within that, you know, vendors or consultants you might rely on,
9 but entirely done by TeamHealth?

10 A People with TeamHealth, again, looking at these non-
11 TeamHealth data sources, yes.

12 Q There's not a regulator of TeamHealth coming along and
13 saying that's too high or that's too low, correct?

14 A Again, a regulator would be in the form of FAIR Health
15 independently established database.

16 Q No, like a government regulator. There's no government
17 regulator who comes along and says your chargemaster is too high or
18 too low, correct?

19 A Not that I am aware of as a government regulator, no.

20 Q Okay. In the last sentence under the heading of Emergency
21 Medicine, it says, once the chargemaster is set, it is subject to annual
22 review and/or increases as each billing area contract permits. Do you
23 see that?

24 A Yes.

25 Q What does that mean?

1 A It means typically, we will do an annual review of the
2 chargemaster and implement price increases if appropriate, and if
3 permitted for the billing area.

4 Q And how are the -- how is the amount of that increase
5 determined?

6 A Again, as a general rule, I would say we were increasing, on
7 -- on average, our fees five percent each year.

8 Q Okay. So we're back today to take the testimony of corporate
9 representative of -- and I'm using the shorthand name Ruby Crest. Do
10 you understand Ruby Crest is the trade name of one of the Plaintiffs in
11 this case?

12 A Yes.

13 Q And are you here as the designated Ruby Crest, to give
14 testimony on its behalf?

15 A Yes.

16 Q Now, sir, is Ruby Crest an emergency medical services group
17 practice that TeamHealth helped create or that TeamHealth acquired?

18 A It was a group that really kind of merged with and/or --
19 and/or acquired back in few years ago.

20 Q Okay. Sir, the document marked for identification as Ruby
21 Crest Exhibit 4 is entitled, TeamHealth acquires Ruby Crest emergency
22 medicine. It's dated February 12th, 2015. And the date line, from
23 Knoxville, Tennessee. Have you seen this before?

24 A Not that I recall. I may have in the past, but not that I recall
25 specifically.

1 Q Okay. And I take it you -- do you have knowledge of when
2 TeamHealth acquired Ruby Crest?

3 A Yes.

4 Q Okay. And will you tell me when that happened?

5 A February of 2015.

6 Q Okay. Got it. All right. So for the period -- where it says pre-
7 dispute period, you'll see some dates that read, 1/1/15 to dash 6/30/17.
8 Do you see that?

9 A Yes.

10 Q How -- now, looking at the -- that period, that pre-dispute
11 period, you have a number -- you have analysis of claims paid at certain
12 various levels of billed charges. Do you see that?

13 A Yes.

14 Q So if my math is right, of the 1,160 UHC claims, about --
15 United paid -- the United Defendants paid about seven percent of those
16 claims in full billed charges. Does that sound right to you?

17 A Yes.

18 Q Do you agree with me, sir, that there is no fee schedule set
19 by Nevada state law or Nevada state government that requires the
20 payment of a specific amount, specific rate for emergency services
21 [indiscernible] basis?

22 A I am not aware of a specific fee schedule, no.

23 Q All right. And you're not aware of any statute that specifies
24 the particular methodology, statute or regulation, as specified in the
25 particular methodology that must be used to reimburse emergency

1 services on an out-of-network basis for a commercial health plan?

2 A A methodology?

3 Q Yes. Usual and customary, for example. That's not written
4 in any statute or regulation in Nevada, correct?

5 A I'm not certain.

6 Q Sitting here today, in your experience as senior officer for
7 TeamHealth and all you've done to prepare to give testimony in this
8 case, you're not aware of any statute or regulation issued by the Nevada
9 state government that says that commercial out-of-network emergency
10 services must be reimbursed as usual ask customary or usual and
11 customary and reasonable charges, correct?

12 A I'm not aware of an explicit methodology, but I'm certainly
13 aware that there is an implied fact provision for the services to be
14 covered and paid at the usual and customary rates.

15 Q That's what you're referring to in this complaint, correct?

16 A Yes.

17 Q Okay. But that's not -- you couldn't go pick up a statute book
18 or regulation and find of language, correct?

19 A Find what language?

20 Q That -- that commercial reimbursement for an out-of-network
21 emergency claim must be made at usual and customary rates or usual
22 and customary charges?

23 A Not that I'm aware of.

24 Q Okay. Now, if you go down to paragraph 237, you'll see a
25 statement that then alleges, the Defendants failed to failed to reimburse

1 the healthcare providers at the usual and customary rate within 30 days
2 of the submission of the claim. Do you see that?

3 A Yes.

4 Q I want to make sure I understand the allegation and precisely
5 what it means. Is the allegation in that sentence that the claims that are
6 disputed in this case were not adjudicated and paid at all within 30 days
7 or is the allegation that they were adjudicated and paid within 30 days
8 but not at the usual and customary rate?

9 A The latter. That they were not paid at the usual and
10 customary rate within 30 days.

11 Q So there's no allegation, at least with respect to the disputed
12 claims, that the claims were not adjudicated and paid what you contend
13 was a -- a particularly low rate but paid within the 30-day period?

14 A That's correct.

15 Q All right. Sir, under the statement, the healthcare providers
16 have an implied agreement with the tenants. Do you see that?

17 A Yes.

18 Q Did Plaintiffs have an implied agreement with all commercial
19 health insurers and health plans whose members receive emergency
20 services from the plans on an out-of-network basis?

21 A On an out-of-network basis, yes, to the extent that they're not
22 otherwise accessing one of our negotiating discount arrangements.

23 Q So if they haven't -- if they're not of network and they haven't
24 accessed a wrap or rental network agreement and they receive an out-of-
25 network emergency claim from that one of the Plaintiffs, that is pursuant

1 in Plaintiffs view to an implied agreement under Nevada law?

2 A Again, with the exception of to the extent that there are
3 otherwise out-of-network agreements or negotiated discount
4 agreements that might be separate and apart and distinct from rental
5 network and wrap agreements.

6 Q Okay. Kind of the one off kind of negotiations you were
7 describing earlier?

8 A Yes.

9 Q Okay. All right. How long has United had this implied
10 agreement with the Plaintiffs?

11 A With Plaintiff Ruby Crest as far back as we have been
12 providing services there.

13 Q Is that because Ruby Crest has always been out-of-network
14 with the United Defendants?

15 A Yes. That's my understanding.

16 Q And -- and you'd agree, sir, that during that period, the
17 amount that Plaintiffs -- Plaintiff Ruby Crest has charged for the same
18 service, same CPT code has increased each of those years, correct?

19 A Yes, at least for the period in the dispute period. Yes.
20 Correct.

21 Q Did this implied agreement between the United Defendants
22 and Ruby Crest include an agreement by the Defendants to pay for those
23 increase -- annual increases of billed charges each year?

24 A Again, there is an implied agreement that they would pay the
25 usual and customary rates as long as they were within the acceptable

1 standard of how United would define and others would define what's
2 usual and customary.

3 Q So if the rates went up 5 percent, 10 percent, 15 percent a
4 year, the United Defendants would still be obligated under this implied
5 agreement with Ruby Crest to pay those increased rates each year so
6 long as it didn't exceed some definition of reasonableness that you are
7 describing here?

8 A Well, one, I said we only increased our prices five percent
9 each year. Again, the measurement, as long as they -- by United's own
10 admission, the standard is that they're usual and customary within the
11 80th percentile of the FAIR Health database or other like providers of like
12 services in the same geographic market.

13 Q Now, first of all, who is the administrator of the TeamHealth
14 plan effective January 1, 2020?

15 A So, again, primarily it is Aetna. And then a caveat, there's --
16 there's carve-outs for like a market or two. But Aetna is the primary
17 provider of our --

18 Q Okay.

19 A -- administrative services.

20 Q Okay. Is there a market somewhere where the United
21 Defendants are still the administrator?

22 A No, not United.

23 Q Okay. And after United ceased being the administrator and
24 Aetna became the administrator, the provider wouldn't get full bill
25 charges in that instance if it was above the 80th percentile rate up?

1 A They would get the lesser of the 80th percentile of billed
2 charge.

3 Q Okay. Mr. Bristow, do you recall that for the file that we
4 called the disputed claim file that Plaintiffs had produced four versions of
5 that file?

6 A That's correct.

7 Q Okay. And, according to my records -- tell me if this sounds
8 right based on your preparation to testify today -- the third version of the
9 claims file -- disputed claims file had 22,915 disputed claims on it and the
10 fourth version of the disputed claims, the operative version, has 19,065
11 disputed claims on it?

12 A Yes, that sounds right.

13 Q Okay. Okay. Which means that, according to my math,
14 roughly 3,798 claims were removed by Plaintiffs from the third to the
15 final version of the list?

16 A That sounds correct.

17 Q I think this is obvious, but what -- what is the purpose of this
18 file, sir?

19 A The purpose of this file is to identify all of the disputed
20 claims at issue in this lawsuit.

21 Q Okay. And do you know how this file was created?

22 A So, yes. It was created by pulling information out of our
23 billing operation system.

24 Q And what is that system?

25 A It -- it goes by different names, but I generally refer to as IDX.

1 And I think some also -- people also refer to it as GE Centricity.

2 Q If we see both of those names, is it referring to the same
3 system or are those different systems over time?

4 A They're typically a synonymous term.

5 Q Okay. So is it fair to say that the IDX and/or GE Centricity
6 system contains data regarding the claims for reimbursement that
7 TeamHealth has submitted to health insurers, including the United
8 Defendants in this case?

9 A Yes.

10 Q And that Mr. Ocasio and/or with the help of Ms. Vinci
11 [phonetic] extracted the data that was reflected in FESM 020911 to
12 populate the spreadsheet?

13 A Yes.

14 Q And do you know what the -- you told me where the data is
15 housed. Do you know what the source of the data itself or the source
16 that it is for this information?

17 A It's based on inputs into that system based on the
18 submission and the processing of payment and posting of -- of the
19 claims back in -- from the health plan.

20 Q Is the data that is housed in the IDX dash GE Centricity
21 system, is that data housed there based on manual entry of the data or
22 based on some electronic transmission into the system?

23 A Most of which is the electronic these days, but, again, there --
24 there can be certain elements when claims are reprocessed or
25 readjudicated or certain claims, you know, occasionally can drop on a

1 paper claim or pay on -- on a paper basis. But, by and large, most of it is
2 electronic --

3 Q Okay.

4 A -- but I can't represent that every claim represents here is
5 input electronically.

6 Q Are there particular fields of data that are routinely made that
7 are -- that are reflected in the spreadsheet we're looking at, FESM
8 020911?

9 A I'm sorry. I just want to make sure. The input into the
10 spreadsheet or input into the system?

11 Q Into the system from which the spreadsheet drops?

12 A So obviously you have to key in information related to what
13 codes you're billing as those are assigned by our coders. But otherwise
14 -- again, most of the payments I believe are posted electronically, but
15 there can be some that -- that get posted manually.

16 Q Okay. So --

17 A And that would be the one element that would have probably
18 less -- well, more instances of a manual touch than all the other elements
19 being mostly electronic.

20 [Video deposition of Kent Bristow ended at 10:23 a.m.]

21 UNIDENTIFIED SPEAKER: Your Honor, may we approach?

22 THE COURT: You may.

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

24 THE COURT: Okay. You guys, we're -- rather than having
25 you sit and watch them through the technical things, we'll take a short

1 break.

2 During this recess don't talk with each other or anyone else
3 on any subject connected with the trial; don't read, watch, or listen to
4 any report of or commentary on the trial; don't discuss this case with
5 anyone connected to it by any medium of information, including, without
6 limitation, newspapers, television, radio, Internet, cell phones, or texting.
7 You may not talk, Tweet, Google, post social media, or conduct any
8 other type of book or computer research with regard to any issue, party,
9 witness, or attorney; don't form or express any opinion on any subject
10 connected with the trial until the matter is submitted to you. It's 10:24.
11 We will be ready sharp at 10:35.

12 THE MARSHAL: All rise for the jury.

13 [Jury in at 10:24 a.m.]

14 [Outside the presence of the jury]

15 THE COURT: Okay. The room the clear.

16 Plaintiff, anything for the record?

17 MR. LEYENDECKER: No, Your Honor.

18 THE COURT: Defendant, anything for the record?

19 MR. BLALACK: One thing, Your Honor. So we've got one --
20 one video left, which we're working on right now with Plaintiffs as soon
21 as we get done. At that point, I believe the intention is for Plaintiffs to
22 ask Mr. Bristow to testify live on cross and then obviously we will have
23 any redirect.

24 We filed a trial brief earlier today on the scope of cross issue,
25 and I want to make sure we bring it up because, depending on how the

1 examination is handled, I'll bringing up [indiscernible]. As laid out in
2 that brief, obviously anything we covered in our direct is fair game for
3 Plaintiffs to cover with Mr. Bristow. But this is not an opportunity for
4 them to put on the examination with Mr. Bristow they would have put on
5 if they had called him in their case-in-chief. Okay?

6 Originally that name is one of their expected call witnesses.
7 He's the corporate rep. And, in fact, we will all planning to hear
8 Mr. Bristow in their case. For whatever reason, they decided not to do
9 that. And that's fine. But having made that choice in not bringing in
10 Mr. Bristow live to testify in response to the questions and testimony we
11 designated and not to counter-designate this, they need to be held to the
12 scope of the direct as the rule contemplates.

13 And so I'm just wanting to make sure we have a alignment
14 on that because I'm going to be objecting to anything that goes beyond
15 the scope --

16 THE COURT: Very good.

17 MR. BLALACK: -- of direct.

18 THE COURT: I will review the trial brief during the recess. I
19 signed an order shortening time on the Plaintiffs' motion to modify pre-
20 trial. I've set it for tomorrow at 10:15 or 10:20 because you're entitled to
21 24 hours' notice.

22 MR. BLALACK: Thank you, Your Honor.

23 THE COURT: So I have indicated we'd take it up at 5, but I
24 didn't know at that point there would be an OST later in the in-box. Did
25 you have a response with regard to the scope of the cross?

1 MR. LEYENDECKER: I understand their point of view. I don't
2 anticipate going beyond the subjects that -- that are covered in the three
3 or four days.

4 THE COURT: Okay.

5 MR. LEYENDECKER: And if he feels like I do, then he, you
6 know, can raise an issue with it. But I --

7 THE COURT: Okay.

8 MR. BLALACK: There won't be an issue.

9 THE COURT: Have a good break, everybody.

10 MR. BLALACK: Thank you.

11 MR. LEYENDECKER: Thank you, Your Honor.

12 [Recess taken from 10:26 a.m. to 10:35 a.m.]

13 [Outside the presence of the jury]

14 THE COURT: All right. Do you have an update for me on the
15 court reporter?

16 MR. ZAVITSANOS: Yes, Your Honor. So Mr. Lyle [phonetic],
17 who literally can find a needle in a haystack, has determined that Weil
18 Gotshal, which is a 1,500-person firm, represents MultiPlan in a case
19 where they have been sued for fraud for failing to disclose certain things
20 by these investors. And here's the concern. MultiPlan is going to testify
21 in this case. MultiPlan is involved in other litigation.

22 And I'm deeply concerned that the Weil Gotshal lawyer
23 listening to me right now is advising the MultiPlan witnesses. I'm not
24 including these lawyers here in the courtroom. I'm deeply concerned
25 that they are advising the MultiPlan witness on what's going on here,

1 and what he needs to say in connection with this other lawsuit where
2 this is a -- there's going to be a little bit of overlap in terms of what they
3 have been doing here and what they have been doing in this other case,
4 as the Court will see when the MultiPlan witness takes the stand.

5 And Your Honor, I mean, they've gone so far as to hire a
6 court reporter to transcribe. Which I believe the only purpose of that
7 would be to show the witness on what was said so that they could
8 literally fall in the sidewalk crack because, as the Court will see, they're
9 caught between a rock a hard place here. So this is real -- I've never
10 seen this before. I've never encountered this before. I know they're
11 listening to me right now as I'm talking. So I -- and I don't know what to
12 do about it. I'm at a loss.

13 MR. BLALACK: Can I be heard, Your Honor?

14 THE COURT: Of course.

15 MR. BLALACK: I know nothing about anything he just said,
16 so I don't really have any response to that. I will say that according to
17 our search, Weil Gotshal also represents Blackstone, which is the owner
18 of TeamHealth. So it's entirely plausible that everything that Mr.
19 Zavitsanos said is right. It's also entirely plausible that Weil Gotshal is
20 doing it on behalf of Blackstone without his knowledge. Or it's entirely
21 possible it's something else entirely. I don't know.

22 THE COURT: We can voir dire the witness outside the
23 presence of the jury before the testimony takes place.

24 MR. BLALACK: That's how he -- I'm confident he won't know
25 anything.

1 THE COURT: Thank you. Let's bring in the jury.

2 MR. LEYENDECKER: I believe the tapes are still being edited,
3 Your Honor.

4 UNIDENTIFIED SPEAKER: How much time --

5 MR. GODFREY: Probably need about five more minutes.

6 THE COURT: About five more minutes?

7 Oh, the marshal. Just let her know we need five more
8 minutes. Go ahead and be at ease, and I'll be back at 10:45.

9 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

10 [Recess taken from 10:37 a.m. to 10:49 a.m.]

11 [Outside the presence of the jury]

12 THE COURT: Please remain seated.

13 MR. BLALACK: Your Honor?

14 THE COURT: Yes.

15 MR. BLALACK: We've got the video ready, but there's one
16 ruling we're not -- that may not --

17 THE COURT: Come on up.

18 MR. BLALACK: Mr. Leyendecker can't really decide how to
19 handle it, so.

20 THE COURT: Can I see what I wrote?

21 THE CLERK: Do you want a bench conference on it?

22 THE COURT: No.

23 MR. LEYENDECKER: Do you have the transcript too, Your
24 Honor? If not, I'll share with you on my screen.

25 MR. BLALACK: Here is your ruling, Your Honor. It's this one

1 here. And Shane tells -- there's the transcript. Shane tells me that this
2 section --

3 THE COURT: Did I write on the -- I think I may have -- I wrote
4 on the transcript. You guys are under a lot of pressure.

5 [Pause - Court and counsel confer]

6 THE MARSHAL: All rise for the jury.

7 [Jury in at 10:53 a.m.]

8 THE COURT: Thank you. Please be seated. And thank you
9 to the members of the jury again for your patience with our technical
10 issue. All right.

11 MR. BLALACK: We can now play the final video, Your Honor.

12 THE COURT: Yeah.

13 [Video deposition of Kent Bristow continues]

14 Q So we're back together again to take additional testimony.
15 At this time, as I understand it, you've been designated to be a corporate
16 representative on behalf of Plaintiff, Fremont Emergency Services
17 (Mandavia), Ltd.; is that right?

18 A Yes.

19 Q Plaintiff's theory that they were entitled to flow bill charges
20 for the services that they billed for United, that was on an out-of-network
21 basis, was limited by a determination of whether those charges were or
22 were not reasonable. Is that a fair summary of your statement of the
23 Plaintiff's position?

24 A Yes.

25 Q Okay. And when we discussed how to define what was and

1 wasn't reasonable, I understand -- I understood you to say that the FAIR
2 Health database at the 80th percentile represented what Plaintiffs
3 believed was a standard by which to measure the reasonableness of
4 charges; is that right?

5 A That's correct. And again, if you look at our charges, again,
6 on a weighted average basis across all the codes, you will find that we
7 are well under the 80th percentile of FAIR Health in the geo zip for the
8 Clark County area. In fact, I believe we're below the 60th percentile
9 when you look at a weighted average of all of our codes that we bill.

10 Q And I appreciate that, but my question is slightly different.
11 I'm trying -- you just [indiscernible] on an aggregate basis. I'm asking on
12 a code by code basis if your charges exceed -- Plaintiff's charges exceed
13 the standard you identified in the FAIR Health database. Are Plaintiffs
14 still pursuing full recovery of those charges and damages in this case?

15 A I would say we'll -- again, we still believe those charges to be
16 reasonable. But yes, we would concede that if it's a bottom 80th
17 percentile, we would limit it to the 80th percentile.

18 Q I'm sorry --

19 A Because that is the standard that we referenced as being
20 reasonable.

21 Q Yes. So are you taking the position that the measurement up
22 against FAIR Health has to be done on a collective aggregate basis to
23 decide how to judge whether the charge is reasonable? Or are you
24 saying that you're entitled -- are you taking the position that that's an
25 assessment that's made on a code by code, facility by facility basis?

1 A I believe it should be viewed on a weighted average basis
2 and also on the codes.

3 Q Okay. Right, but I'm -- right now, I'm asking about a single
4 line to understand your position of what you're going to tell the jury
5 when we get to trial. And I want to know whether you're telling them
6 that you're going to be seeking for row 2, 700 -- I had to go back to \$779
7 for Fremont at Sunrise ED, Nevada even though it exceeds the 95th
8 percentile of the FAIR Health database because on an aggregate basis,
9 TeamHealth's charges are below, according to you, the 60th percentile of
10 FAIR Health?

11 A Yes.

12 Q Okay. So let's now, sir, turn to Fremont -- the Plaintiff,
13 Fremont. And you mentioned that TeamHealth acquired Fremont -- I
14 think you said sometime in 2015; am I right about that?

15 A Yes, I believe it was the later part of '15.

16 Q And am I correct, sir, that unlike Plaintiffs Team Physician
17 and Plaintiff Ruby Crest, that Fremont physicians staffed more than one
18 emergency department; is that right?

19 A Yes.

20 Q How many did they staff?

21 A Today?

22 Q We'll start with today, and then we'll go backwards.

23 A I believe today; we staff five emergency rooms.

24 Q At the time of the acquisition in October of 2015, how many
25 emergency rooms did Fremont staff?

1 A My recollection is six, but I'm not absolutely certain.

2 Q Okay. So sir, the document marked as Fremont Exhibit 6, I'll
3 represent to you is a printout of the Fremont chargemaster that I showed
4 you in electronic form earlier. And then to the extent the amount on the
5 chargemaster for each of those codes was changed during the period at
6 issue -- strike that.

7 During the period for which the data was collected. This is April 1,
8 2016 through December 31st, 2017. Those different charges over time
9 are reflected.

10 A Yes.

11 Q How often does Fremont change the charge for an individual
12 CPT code on this chargemaster?

13 A As we've talked about, typically, we do that once a year.
14 Again, we did encounter a special project back in -- I think it was June of
15 2017 in which we did a recalibration midyear of some of the nonfrequent
16 procedure codes.

17 Q Okay. When I look at Exhibit 6, I see dates like April 1st,
18 2016. And then I see May 1st is another date where changes appear to
19 have been made. November 1st, 2016; June 1, 2017; June 15, 2017;
20 12/14/2017. So literally, in the span of a year and a half -- little over a
21 year and a half, there appear to be five different changes being made to
22 certain codes; do you see that?

23 A Yeah, I agree. It is not -- it does not reflect five changes
24 being made. As we've talked about, there was a certain projected done
25 in June '17 to recalibrate certain procedure codes across the landscape.

1 But if you look outside of that, there's only one otherwise change being
2 made to the fees during the course of the calendar year.

3 Q And what date are you referring to?

4 A So if you look at ER at the Lakes, the first increase it shows is
5 in November of 2016. In June of '17, it does show the recalibration
6 project that I referenced. Kind of a one-time project. And again, it was
7 increased the next year. So once in 2016 and once in 2016.

8 Q W? the addition of the special project you referred to?

9 A Correct.

10 Q So for ER at the Lakes, the chargemaster prices for the codes
11 listed increased three times during that span of time?

12 A Again, outside of the special recalibration project, they
13 were -- they were increased once for the year for [indiscernible].

14 Q Let's just use an example. Let's look at 10060, the very first
15 code for ER at the Lakes. Do you see that, sir?

16 A Yes.

17 Q So if I read this correct, on November 1st, 2016, the charge
18 for that code was increased to be \$716 for that code, correct?

19 A Actually, I would not say it was increased. That may have
20 been the first time we uploaded fees. I can't remember when that site
21 started, but that may have been the start of that site when fees were just
22 initially loaded.

23 Q But you don't know that sitting here today, correct?

24 A I believe it to be the case.

25 Q Based off what?

1 A Because we were matching the fee schedule for what we had
2 in place in some of the other sites. So if you look at MountainView back
3 in April of '16, that was \$716 for 10060.

4 Q Right.

5 A So I believe when we started up ER at the Lakes and
6 provided the first date of service, we set a matching fee schedule upon
7 the startup of that site. And so thereafter, it was adjusted in June for the
8 recalibration project. And then otherwise, really, the first increase for
9 most of the codes didn't happen until December of '17.

10 Q So the 10060 code was increased from 716 to 734 on June 1,
11 2017; is that right?

12 A Yes.

13 Q And then it was increased again to 771 the end of that year
14 on 12/15/2017; is that right?

15 A Again, in keeping with our methodology of really just
16 adjusting it once a year outside of the special recalibration project.

17 Q Is the answer to my question yes?

18 A Yes. Again, both of the reasons I stated why.

19 Q And then for MountainView, if you look at the same code on
20 4/1/2016, that was \$716 for that charge, correct?

21 A Correct.

22 Q And then it was increased to 752 the following summer in
23 June of 2017; is that right?

24 A Yes.

25 Q June 1 of 2017, correct?

1 A Yes.

2 Q And then it was reduced to 707 in June 15, 2017?

3 A Yes, for the recalibration project.

4 Q And then it was increased back up to 742 at the end of that
5 year on 12/15/2017; is that right?

6 A Yes.

7 Q And then if you look at MountainView ED, go down, you'll
8 see a code 31500; do you see that?

9 A Yes.

10 Q You'll see that in April 1st of 2016, that code was -- the
11 charge for that service was \$795; is that right?

12 A Yes.

13 Q And then in June 1st of 2017, it was increased to 835; is that
14 right?

15 A Yes.

16 Q And then two weeks later, it was increased to \$1,023 for that
17 service; is that right?

18 A Yes.

19 Q And then later that fall -- that December, end of the year, it
20 was increased to \$1,074; is that right?

21 A Yes.

22 Q Okay. So at least for 31500, between April 1st of 2016 and
23 12/15/2017, that charge increased four times; is that right?

24 A Again, yes, because of the special considerations on the
25 recalibration project that otherwise -- it didn't -- it only increased three

1 times.

2 Q Okay. Do you remember concluding that one solution for
3 that reimbursement problem was to transfer the billing for the Fremont
4 physicians that would be reimbursed at that point through tax
5 identification number with Fremont to the tax identification number
6 associated with Ruby Crest?

7 A I do recall because of the impending threat that they were
8 going to be implementing the benchmark pricing effective, you know,
9 January of 2019. We did consider an alternative, trying to access what
10 we thought was a contract in place between United and Ruby -- to United
11 through the Ruby Crest entity.

12 Q Okay. And these agreements that you're describing; tell me
13 about those. What agreements are you talking about?

14 A Again, I'm not an attorney and I can't give you all the
15 structural details. But that there was a leasing agreement set up
16 between Fremont Emergency and Ruby Crest that would allow Ruby
17 Crest to utilize the FES providers or Fremont providers to see and treat
18 and bill for the United members.

19 Q Okay. And when did Fremont and TeamHealth explore this
20 arrangement to move the billing for these Fremont providers through
21 Ruby Crest?

22 A My recollection of considering that arrangement was at the
23 end of 2018. Again, before the expected implementation of United's
24 benchmark pricing program for out-of-network services.

25 Q And were those -- those agreements you described, were

1 they actually prepared?

2 A To my understanding, yes.

3 Q Did you see them?

4 A I don't recall personally seeing them.

5 Q Okay. And are there any business personnel for TeamHealth
6 that were involved in the process of creating these agreements and
7 putting them in place?

8 A Just interacting about evaluating the option of doing this
9 with myself and David Greenberg with counsel.

10 Q Were any of the physicians for Fremont whose services were
11 rendered in Clark County, but they were billed out of the Ruby Crest tax
12 identification number informed that TeamHealth was going to be billing
13 their services through a Ruby Crest tax identification number?

14 A Not to my recollection.

15 Q Okay. Do you know whether any of those physicians would
16 have objected to having their services billed out through a tax
17 identification number that is not associated with Fremont?

18 A I don't know.

19 Q And that's because you never inquired?

20 A That's correct. It's not a practice we normally pursue.

21 Q Okay. In your preparation to get test -- I mean, as courtroom
22 representative of Fremont, Ruby Crest and the other plaintiff, did you see
23 any of the documentation that you just described a little while ago that
24 authorized the arrangement that you described for billing Fremont
25 services for Fremont physicians through Ruby Crest?

1 A I did not specifically review those documents in preparation
2 for my deposition, no.

3 Q Okay. Exhibit 21 is an email produced by Plaintiffs to
4 Defendants in this case, that was Bate stamped, FESM07062.

5 A Okay.

6 Q Okay. Now in this document marked for identification,
7 Fremont Exhibit 21, it starts with an email from Jason Heuberger to you
8 and Ms. Shrader, Jennifer Shrader. Do you see that, sir?

9 A [No verbal response].

10 Q And then you forward that to Mr. Greenberg on December
11 11th, 2018, right?

12 A Yes.

13 Q And then in response Mr. Greenberg writes, In Nevada -- in
14 Nevada, rather, I think you had thought to subtune Fremont to another
15 non-par entity (team physicians of Nevada Mandavia, it was about 560
16 percent the first six months of '18). Makes sense, but we would need to
17 watch it to see if the non-par rates change. We don't have sub-TINs in
18 Nevada, so we should check if we can sub-TIN in Nevada too
19 (underlined). Then he writes, who can track down the sub-TIN questions.
20 Do you see that?

21 A Yes.

22 Q Now my first question, sir, the term sub-TIN, do you know
23 what that means?

24 A Yes.

25 Q What does that refer to?

1 A Again, it's when we can take two forms, but when we have a
2 contract in place with a group and a health plan, and we to want also
3 have access to that health plan contract with a group that's not
4 contracted, sometimes we'll do an arrangement, as I described before,
5 we had the intention with Fremont with Ruby Crest, to gain access to
6 that participating contract.

7 Other times we can use a sub-TIN in order to -- if a hospital or a
8 plan is only willing to have a contract, let's say if there's a group, with
9 many sites, but they really only want to extend that offer, you know, to
10 one site, and so sometimes they'll ask it, and we'll establish a sub-TIN to
11 isolate a particular site for a group.

12 Q Okay. Is -- I've seen this phrase "sub-TIN" in other
13 documents, is that a shorthand way that you and your colleagues and
14 TeamHealth refer to the process you just described?

15 A Yes.

16 Q Okay. Now the concept that was being discussed in this
17 email from Mr. Greenberg to you, is about sub-TINing Fremont to
18 another non-participating entity, and at this point the target that was
19 contemplated was Team Physicians in north, I guess, west Nevada,
20 correct?

21 A Yes.

22 Q Okay. And as Mr. Greenberg notes in his email, the concept
23 of engaging in this sub-TIN process was your original idea, correct?

24 A That's what he states.

25 Q Okay. And you agreed with that, right?

1 A I don't recall that, but I don't have a reason to disagree with
2 it.

3 Q Okay. Sitting here today, you wouldn't dispute
4 Mr. Greenberg's assertion that the idea to do a sub-TIN of Fremont to
5 another non-party entity was right here?

6 A No, I would not.

7 Q Okay. And in his -- in the parenthesis he writes: [Team
8 Physicians of Nevada Mandavia was about 560 percent the first six
9 months of '18]. Do you see that?

10 A Yes.

11 Q Do you know what he meant by that reference?

12 A I believe he'd be referencing the rate of reimbursement for
13 that group.

14 Q So he's saying that this non-par physician group, and
15 Plaintiff in this case Team Physicians, was being reimbursed at about 560
16 percent of Medicare in the first six months of 2018; is that how you read
17 it?

18 A Yes.

19 Q And is that percentage he's referencing relating to
20 reimbursement by United Health Plans at that rate, or generally?

21 A I believe he's referencing United differently.

22 Q Okay. So he's saying, United is reimbursing Team
23 Physicians in the first six months of 2018 at about 560 percent of
24 Medicare?

25 A Yes.

1 Q So the -- what was then contemplated here, at least at this
2 point, December of 2018, was to, if possible, sub-TIN Fremont to Team
3 Physicians, so that those Team Physicians, providers who were being
4 reimbursed at much lower out-of-network reimbursement rates, would
5 now, after being sub-TIN to Team Physicians, be reimbursed at
6 something closer to the rates that you received with Team Physicians, in
7 the other part of the State?

8 A So again, it's just something we were kind of bandying
9 about, but ultimately did not ever follow through anything about this
10 particular suggestion.

11 Q But that was the concept at this point in time, correct?

12 A Yes.

13 Q Okay. And then he says, we should check if you can sub-TIN
14 in Nevada. Do you see what he says; do you see that?

15 A Yes.

16 Q Do you know what he -- was that -- strike that. Do you know
17 why he was saying we need to check if we can sub-TIN in Nevada?

18 A I don't recall specifically what that's in reference to.

19 Q Did you give him direction on who to talk to, to track down
20 the sub-TIN questions?

21 A I don't recall.

22 Q Okay. Did you direct it to counsel?

23 A Again, ultimately we had some discussions with counsel,
24 about we're getting Ruby Crest, I don't know about this particular
25 suggestion that we didn't pursue.

1 Q All right. Sir, if you would take a look at the document
2 marked for identification as exhibit -- Fremont Exhibit 21, and I will
3 identify --

4 A 22.

5 Q I'm sorry, 22. And for the record the Bate stamp for that
6 document is FESM012976 to 012977. Now in the first email, which is
7 from you, dated December 21st, 2018 to Mr. Carman and Paula Dearolf?

8 A Yes.

9 Q A copy to others, including, Mr. Greenberg, you write, below
10 is a comprehensive list of entities that are out-of-network with United,
11 but we need to consider holding claims for effective one 119 days of
12 service while we contemplate considerations for potentially redirecting
13 the billing. Do you see that?

14 A Yes.

15 Q Okay. And if you look at the listing of 10s at the chart, you'll
16 notice which is blacked out, you will notice that there were two of the
17 three Plaintiffs listed, the Fremont Plaintiff and Team Physicians of
18 Nevada, correct?

19 A Yes.

20 Q What does that mean -- what does it mean to redirect the
21 billing?

22 A It really means assessing whether we can attach to another
23 existing provider agreement in place.

24 Q Is that a shorthand for sub-TIN, the sub-TIN process you
25 described earlier?

1 A That could be a form of it.

2 Q Is there another way to do it, beside that?

3 A Or to see if we could -- and, you know, work with Plaintiff to
4 get the [indiscernible] added to the contract.

5 Q Okay. But one aspect of redirecting the billing would be the
6 sub-TIN process that you described earlier?

7 A Yes.

8 Q Okay. Now after you wrote that email you and
9 Mr. Greenberg had an exchange on the 27th, and then the 28th of
10 December; do you see that?

11 A Yes.

12 Q And Ruby Crest is the third Nevada Plaintiff in this case,
13 correct?

14 A Correct.

15 Q Who was not listed on the chart, that was in your email to
16 Mr. Carman and Ms. Dearolf, correct?

17 A Correct.

18 Q Now you wrote back to Mr. Greenberg, yes, wrestling with
19 whether to do that, or just sub-TIN all of the Fremont sites under the
20 other Nevada entity that is not contracted, but is getting better
21 reimbursement at Team Physicians of Mandavia." Do you see that?

22 A Yes.

23 Q And you then write, and we should also check if that entity is
24 doing better out-of-network, with Sierra Health Plan of Nevada, that
25 Fremont, and as well, those are United affiliated health plans, even

1 though I think they operate independently. Then you say, what I want to
2 do for sure is to sub-TIN all -- there's something blacked out -- that out-
3 of-network to something else, effective 1/1, so let's get that change in the
4 works. Do you see that?

5 A Yes.

6 Q Now why did you want to check to see if that entity is doing
7 better out-of-network with Sierra Health and Health Plan of Nevada?

8 A I don't think this is what we covered before, we just didn't
9 understand how they were paying claims that were billed, all
10 reimbursement levels we were seeing with Fremont Emergency,
11 compared to, again, our experience elsewhere in Nevada, and in
12 Colorado markets as well.

13 Q So in essence where it says, and we should also check if that
14 entity is also doing better with out-of-network with Sierra Health and
15 Health Plan of Nevada, that Fremont, as well. So which entity are you
16 referring to, give me your best sense?

17 A I think, again that sentence is referring back to Team
18 Physicians of Mandavia.

19 Q Okay. Which at that point was unanticipated?

20 A Correct.

21 Q So the document marked for identification as Fremont
22 Exhibit 23. Okay. So first of all, sir, you'll see in the initial email from
23 you to a number of individuals on your team, there's a reference to
24 UHCOON action plan; do you see that?

25 A I do.

1 Q And what was the UHCOON action plan?

2 A Just as it says here, it was some action items to evaluate and
3 consider.

4 Q About what?

5 A I don't recall.

6 Q So you understood that as of January 9, 2019, Mr. Greenberg
7 was inquiring of you to confirm which other Plaintiff was going to be the
8 recipient of the sub-TINs from Fremont, correct?

9 A Yes.

10 Q So you had concerns that United might find the sub-TINing
11 process described here, that was under consideration objectionable?

12 A That was a possibility.

13 Q Okay. And is there a reason you didn't tell them that,
14 because you knew they would object?

15 A I don't know what -- how they would react, we didn't know.

16 Q And so my question is, is the reason that they were not told,
17 United was not told of his, sub-TINing process is because TeamHealth
18 was concerned that United would in fact object to it?

19 A Again, we didn't give advance notice, specifically in Nevada,
20 but each and every claim we submitted clearly identified what we were
21 doing, the providers of all the sites and service involved, so it was very
22 transparent. Again, we didn't give them advance notice, but we gave
23 them notice on every claim that we submitted.

24 Q Okay. Exactly what information are you referring to on the
25 claim form, sir?

1 A The claim form identifies the provider of record, as well as
2 their MPI number. It also identifies the site of service, where that service
3 was rendered, as well as the address for that site where the care was
4 rendered, in addition to all the other information about the CPT codes, as
5 well as the charges, as well as the information about the insured, and the
6 patient that was treated.

7 Q Okay. So in other words, United could pick up an individual
8 claim form and see that a provider that is based in Clark County is
9 rendering their service to a member in Clark County, but they billed on
10 the TIN, associated with Ruby Crest, or Team Physicians in another part
11 of the city?

12 A Yes.

13 Q Okay. Now in response Mr. Greenberg wrote, RCEM is 95
14 percent charges with low chargemaster, do you see that?

15 A Yes.

16 Q Who is RCEM?

17 A That's referring to Ruby Crest Emergency Medicine.

18 Q So Mr. Greenberg was noting that reimbursement for United,
19 as he understood it, was 95 percent of charges, but with a low
20 chargemaster?

21 A Yes.

22 Q So Mr. Greenberg then wrote back, I think we said leave as is
23 the one non-par that had a site, and see if any changes, and move the
24 other under Ruby Crest, right? And in response your write, yes.
25 Ultimately, you may also move the other site too. " Do you see that?

1 A Yes.

2 Q What are you telling Mr. Greenberg in that response?

3 A That we were just planning to implement the change for
4 Fremont sites under Ruby Crest.

5 Q And then would revisit the question of whether to move the
6 other site, as well, at a later date?

7 A Yes.

8 Q Okay. All right. Mr. Bristow, the document we marked for
9 identification as Fremont Exhibit 24 is an email, from Mr. Greenberg, and
10 it says, Kent cell. Do you see that?

11 A Yes.

12 Q Okay. Now my first question is, Kent cell, is that referring to
13 you, your cell phone?

14 A That's -- I'm not sure that says Kent cell, I just recognized it's
15 to my email address, though, my company email address.

16 Q Okay. And I guess my question is, first of all, have you ever
17 seen this Exhibit 24 before?

18 A Yes.

19 Q Okay. And just for the record, the Bates number of Exhibit 24
20 is FESM07402. Now the subject of this email is UAC, correct?

21 A Yes.

22 Q Dated January 9, 2019, which is the same date as the other
23 email we were just looking at, which is Exhibit 23, correct?

24 A Yes.

25 Q Okay. Now looking back at this email it says, for action plan

1 please consider. Do you see that?

2 A Yes.

3 Q Is Mr. Greenberg referring to the United out-of-network
4 action plan that's referenced in Exhibit 23, to your knowledge?

5 A Yeah. I don't know the correlation to that document. I think
6 it's just steps we were planning to take it up to sub-TIN.

7 Q Well, he wrote you on the same day as your email, where
8 you labeled something as United -- UnitedHealthcare out-of-network
9 action plan. Is that what you understood them to mean, at the time you
10 got the email?

11 A Well, again, it's the action plan associated with this particular
12 situation?

13 Q Meaning the UnitedHealthcare work reimbursement?

14 A That one means the consideration of using sub-TIN in
15 Nevada.

16 Q Okay. So was Mr. Greenberg highlighting that if we do this,
17 if TeamHealth does this sub-TINing of Fremont physicians to Ruby Crest,
18 it might be necessary for some of those physicians who are the subject
19 of that sub-TIN, to have a chargemaster, more than one chargemaster
20 rate, depending on the health plan involved?

21 A It looks like that's the question he's raising or asking.

22 Q Okay. And do you know if in fact as part of the sub-TIN
23 process that was being implemented, dual chargemasters were ever
24 created?

25 A No, not to my knowledge.

1 Q Okay. Sir, the document marked for identification is Fremont
2 Exhibit, I believe 25, is an email string from -- involving Mr. Heuberger,
3 yourself and others, including Mr. Greenberg, running from February
4 22nd, 2019, through March 5th, 2019; do you see that? We'll just orient
5 here, we want the date range here, it starts with an email from
6 Mr. Heuberger to you, of February 22nd, 2019; do you see that?

7 A Yes.

8 Q And the subject is UACED for Ruby Crest?

9 A Yes.

10 Q And in it, it says, Kent, attached is the Ruby Crest data you
11 asked for [January date of service] including the Fremont entity, since
12 they are using Ruby Crest as the sub-TIN for UAC [indiscernible] do you
13 see that?

14 A Yes.

15 Q And after reviewing the information provided by Mr.
16 Heuberger your wrote back -- strike that. You wrote to Mr. Greenberg.
17 Hmm. You wrote H-M-M. Not saying they'd pay 80 percent for Fremont
18 sites, or we sure sub-TIN in the set up and operating properly for these
19 claims; do you see that?

20 A Yes.

21 Q So my question, after you looked at the information provided
22 by Mr. Heuberger, and you examined the reimbursement rates for the
23 Fremont physicians that had been sub-TINed to Ruby Crest, you noticed
24 that reimbursement rates for those physicians were not at the
25 percentages that you were expecting?

1 A Correct.

2 Q Okay. And that caused you to wonder whether the sub-TIN
3 process that you had authorized had in fact been implemented as
4 planned?

5 A Correct.

6 Q And so you made an inquiry to Mr. Greenberg to check into
7 it, and see if that had actually occurred, correct?

8 A Effectively, yes.

9 Q Okay. And when Mr. Greenberg forwarded the request to
10 Ms. Harris, and Ms. Harris then forwarded the request to others, and Ms.
11 Harris noted in her email of February 22nd, can you take a look at the
12 attached, to get a handful of patients, and tell me when we drop the
13 claim, and to confirm that we're using Ruby Crest as the sub-TIN for
14 Fremont;" do you see that?

15 A Yes.

16 Q Okay. And after some back and forth that occurred over a
17 number of days, an email was written in the middle of the page, on
18 February 27th, 2019, to Ms. Kaitlin Jonas from -- I'm not sure how to
19 pronounce the person's name; is it Serise [phonetic]?

20 A I'm not sure either.

21 Q Okay. Serise Miller, and she said, Kathleen, and she
22 proceeds to describe -- review invoices. And then she says in number 2,
23 these claims paid non-par, meaning, non-participating. I've attached the
24 email we discussed showing that that non-par issue with Ruby Crest was
25 known back in 2017; do you see that?

1 So when that information as then passed along to Ms. Harris,
2 correct, by Ms. Jonas?

3 A Yes.

4 Q Who then contacted Mr. Greenberg on February 28th, and
5 informed him of what she had learned?

6 A Correct.

7 Q And Mr. Greenberg then contacted you on March 4th, 2019,
8 to say that well, we're seeing claims for Fremont going out under Ruby
9 Crest in Nevada, correct?

10 A Yes.

11 Q So what he's confirming to you is that the sub-TIN process
12 that had been requested was in fact in place?

13 A Yes. I reversed it.

14 Q Okay. and in fact, at the top of the email you said, but, quote:
15 "Agree, if we continue to see no benefit of doing sub-TIN of Fremont
16 through Ruby Crest, then let's turn off the sub-TIN," correct?

17 A Correct.

18 Q And your testimony is that those Fremont physicians who
19 had been sub-TIN to Ruby Crest in the first part of 2019, that was -- that
20 practice ceased, and they stopped being billed through Ruby Crest after
21 that?

22 A Correct.

23 Q When did that practice cease, as to Fremont?

24 A So I think it would have been -- I don't know definitively, but I
25 imagine soon after, you know, this exchange of emails.

1 Q And after you made the switch to turn the sub-10 off, did you
2 notify any of the providers that their claims were now going to be billed
3 back through Fremont as they had been before?

4 A No, we did not.

5 Q Okay. Did you ever notify United that the claims that had
6 been submitted for these providers after this process was turned off
7 were going back to go be submitted through Fremont?

8 A By way of the new claims being submitted going forward
9 under Fremont, showing the provider name and number as well as the
10 site of service and the site address, that's the way they would have been
11 informed because each and every claim that was submitted would
12 identify that.

13 Q Okay. Apart from the individual -- the information on the
14 individual claim form, any other communications that TeamHealth had
15 with United over that fact?

16 A Not that I recall.

17 Q Okay. And do you recall that TeamHealth investigated doing
18 a sub-10 of Fremont to Ruby Crest for the members who would be
19 treated by Fremont physicians by -- who were Sierra members and
20 Health Plan of Nevada members, just like had been done for the United
21 Healthcare members?

22 A I don't recall that there was any investigation. I recall there
23 was a mention of that but not an investigation that I'm aware of.

24 Q Okay. So the document marked for identification as Fremont
25 Exhibit 37 is an email exchange between Ms. Harris and Mr. Greenberg,

1 copied to a number of other TeamHealth officials. Now, in response to
2 receiving Ms. Harris' letter, Mr. Greenberg writes, thanks, Rena. You
3 haven't heard back from Alcoa about the Fremont sub-TIN to Ruby Crest
4 over (UHC claims) inquiry yet, have you? Do you see that?

5 A Yes.

6 Q Do you remember that the reference that Mr. Greenberg is
7 making there to checking to see whether the Fremont sub-TIN to Ruby
8 Crest (UHC claims), the UHC inquiry yet, have you is referring to the
9 investigation that occurred at your request to see if the sub-10ing of
10 Fremont for United claims to Ruby Crest had in fact been put in place?

11 A It could be. But again, I can't make that direct correlation
12 based on that reference.

13 Q But it goes on to say, let's discuss subbing them to RC, too.
14 Do you see that?

15 A Yes.

16 Q And the RC that's referenced there is Ruby Crest?

17 A Yes, obviously so.

18 Q So you understand that Mr. Greenberg, in his message to
19 Ms. Harris, was saying that he wanted to discuss with her sub-TINing the
20 Fremont physicians for that health plan, to have them -- their services
21 billed out of Ruby Crest like the United physicians?

22 A I think he's just saying let's discuss that situation, as well.

23 Q That it was the same? Let's explore the same kind of
24 arrangement with respect to the Health Plan of Nevada members as we
25 are putting in place for the United members.

1 A I -- I think he's just saying let's discuss Ruby Crest being
2 subbed for Health Plan of Nevada, as well.

3 Q And then, Ms. Harris writes back, and she says, I sent your
4 information to Alcoa last Friday. Let's give them until the middle of this
5 week to respond. And then she says, they know this inquiry is coming
6 from Kent. Do you see that?

7 A Yes.

8 Q That's you, correct?

9 A Yes.

10 Q Okay.

11 MR. BLALACK: I think that's it, Your Honor.

12 THE COURT: Okay. Very good. So cross-examination?

13 MR. LEYENDECKER: The Plaintiffs would call Mr. Kent
14 Bristow live, Your Honor.

15 KENT BRISTOW, DEFENDANTS' WITNESS, SWORN

16 THE CLERK: All right. Please have a seat and spell your
17 name for the record.

18 THE WITNESS: My name is Kent, K-E-N-T, Bristow,
19 B-R-I-S-T-O-W.

20 THE COURT: All right. Everyone see Mr. Bristow okay?
21 Thank you. Go ahead, please.

22 CROSS-EXAMINATION

23 BY MR. LEYENDECKER:

24 Q Good morning, Kent. Would you introduce yourself to the
25 jury and give them a little bit about your background?

1 A Sure. So you've heard my name. I live in Knoxville,
2 Tennessee, and I'm married 25 years and we have three children. Two
3 boys that are in college and then I have a daughter who's a freshman in
4 high school. And I work for TeamHealth, and I've been there for about
5 24 years.

6 Q Now, were you sitting over here behind me during the whole
7 time that your video was playing?

8 A Yes.

9 Q And what were you thinking?

10 A A little odd. I don't particularly enjoy watching myself on the
11 video.

12 Q Okay. Any idea or sense of why the Defendants didn't call
13 you to the stand like some of the other witnesses?

14 A I don't know the answer to that.

15 Q Okay. You said you -- you're at TeamHealth. Tell us how
16 long you've been at TeamHealth.

17 A As I said, about 24 years.

18 Q Okay. And how long were you an accountant before that?

19 A So I worked for a couple different firms, probably a
20 combination of about seven years before I joined TeamHealth.

21 Q Before we get into the discussion of the sub-10, I just want to
22 ask for a clarification because there was a point -- I don't remember
23 which tape it was -- but there's a reference to our charges and the 60th
24 percentile of FAIR Health. Do you think that may have been a mistake as
25 opposed to the 80th percentile? Do you remember that part of the tape

1 or not?

2 MR. BLALACK: Object to form. Leading.

3 THE COURT: Overruled.

4 THE WITNESS: I do remember that in reference to the
5 Fremont Emergency Services charges.

6 BY MR. LEYENDECKER:

7 Q And were you -- was the 60th -- was the reference to the 60th
8 right or was it a mistake and you were thinking 80? That's what I was
9 trying to figure out.

10 A No. It's correct. It was actually below the 60th percentile on
11 a weighted basis.

12 Q Okay. Okay. So the question there was something along the
13 lines of led to our charges being below the 60 percentile of FAIR Health.

14 A Correct.

15 Q And you were affirming yes, that was correct.

16 A Yes.

17 Q For whatever the particular charges were that you all were
18 discussing.

19 A Correct.

20 Q Okay. Let me -- I want to put the thing in context, and the
21 thing being the sub-10 issue. And so what I'd like to have Michelle do is
22 put up on the screen something Mr. Blalack told the jury in his opening
23 statements at pages 90, lines 25 through 91 and line 7.

24 And so during opening statements, Kent, Mr. Blalack told the jury,
25 "So, ladies and gentlemen, later in the trial, you will hear that my clients

1 are asking you to find that we've established a proof of unclean hands by
2 the TeamHealth Plaintiffs. And if you agree that we've met that burden
3 of proof," I'm not going to take you back to the burden of proof, but, "if
4 we've met that burden of proof by a preponderance of evidence, you can
5 deny their claims for recovery even if you think we've underpaid them
6 under Nevada law."

7 And so here's my question: although Mr. Blalack didn't say it, he
8 seemed to be suggesting that if they could establish unclean hands in
9 the jury's eyes, they could zip us out on the whole case. Do you see that,
10 sir?

11 A Yes, I see that.

12 Q So just to put the sub-TIN issue in question, how many of the
13 11,563 claims involved this sub-TIN issue?

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

15 THE COURT: Overruled.

16 THE WITNESS: I think the number is 254.

17 BY MR. LEYENDECKER:

18 Q So 254. Let's see if I have an empty page here. If not -- 254
19 of 11,563 for our sub-10 claims. Is that right, sir?

20 A Yes.

21 Q And ballpark, what was the total charges on those 254
22 claims?

23 A I believe it's about \$300,000.

24 Q Okay. And ballpark, about how much was allowed?

25 A I believe it was right about \$100,000.

1 Q Okay. And do you understand that the Plaintiffs in this case
2 are seeking, first of all, they contend that their billed charges are
3 reasonable.

4 A Yes.

5 Q And that the billed charges represent the reasonable value of
6 services.

7 A Yes.

8 Q And in total, the Plaintiffs are seeking about \$10.4 million in
9 damages.

10 A Right. Yes.

11 Q Okay. And so if we're putting the sub-10 in context, about
12 200,000 -- if the charges were 300 and the allowed was 100, is it fair to
13 say, then, about 200,000 of the \$10.4 million is implicated by this sub-10
14 situation?

15 A That's correct, yes.

16 Q Okay. Now, one thing I don't think the jury has heard or seen
17 yet is an actual claim form, and so I'd like to spend a few minutes just
18 looking at a claim form and orienting the jury about the information,
19 some of which you discussed in your transcript there, but give them a
20 little bit of background on that.

21 MR. LEYENDECKER: So could I get any objection, Counsel,
22 to Plaintiff's Exhibit 307?

23 MR. BLALACK: Just foundation.

24 MR. LEYENDECKER: Okay.

25 BY MR. LEYENDECKER:

1 Q Kent, are you familiar with what's known as a Form 1500?

2 A Yes, I am.

3 Q And tell the jury what's the Form 1500.

4 A Also known as a HCFA Form, 1500. But basically, it's a
5 standard form in the industry that's required for providers to complete
6 information. There's different boxes of fields you have to fill in and
7 submit this as a part of your claim to health insurance companies in
8 order for them to accept and adjudicate your claim.

9 Q Now, as a practical matter, when we're -- when TeamHealth
10 is doing the billing for the Plaintiff's claims in this case, do they submit
11 an individual claim Form 1500 for every single claim?

12 A No, not necessarily. Because in this day and age, just about
13 all -- virtually all of the claims are submitted electronically and are done
14 so in batches of claims. So you're not submitting, like, one by one. But
15 you'll accumulate a batch of claims and then you'll submit that
16 electronically to a data clearinghouse so that it's in, like, a secure,
17 protected environment to protect patient information. And then
18 ultimately, that clearinghouse will receive that information and, you
19 know, translate it or forward it on to the health insurance companies.

20 Q So is it fair to say on occasion, an actual form is submitted
21 and other times, it's put together as a bigger collection.

22 A On occasion, they'll be -- necessary to submit a paper claim,
23 in which you'll, you know, translate the information out of the system
24 onto a paper claim form, the 1500 Form, and submit that to health
25 insurance companies.

1 Q And are you aware one way or another whether the
2 Defendants have produced some of the claim form, 1500s, that were part
3 of the claims at issue in this case?

4 A Yes, I believe they have.

5 Q You're -- you've seen some of that in getting ready for
6 the -- here and your deposition or for getting ready for court?

7 A Yes, I've seen a couple of them.

8 MR. LEYENDECKER: Your Honor, at this time, we would
9 move to admit 307.

10 MR. BLALACK: No objection.

11 THE COURT: Exhibit 307 will be admitted.

12 [Plaintiffs' Exhibit 307 admitted into evidence]

13 BY MR. LEYENDECKER:

14 Q Okay. I want to go through a little bit of this. It's kind of hard
15 to read. But let's start at the top. And tell us -- looks like we've redacted
16 out the patient's information. But tell us the kind of information that
17 we're seeing here, for example, in boxes 1, 2, 4, 5, 6, and 7.

18 A Well, box one is meant to indicate what type of insurance
19 they might have if they have insurance. So in this case, it's -- I think it's
20 selecting "other". And then the box next to it is asking for the insured's
21 ID number.

22 So in that case, to the extent a patient has insurance, you would,
23 you know, like off their insurance card. You would, you know, identify
24 what their membership number is or their subscriber number and put
25 that in that field. And any additional elements are just identifying who

1 the patient is, as far as their name, their date of birth, and maybe what
2 their address is, and also any kind of relationship they may have with the
3 actual subscriber to the insurance. If it's -- if it's different, say, if it's a
4 child to the person who holds the policy.

5 Q Let me ask you, Kent, where in this -- the top part of this
6 Form 1500 that has the patient name and those kind of demographics,
7 where is that information? Where do we get that information?

8 A That information is really received by us from our hospital
9 clients. So they capture all of the demographic information about a
10 patient and all of their information when they register at the hospital,
11 and they register in the ED. And then after the visit is over, they will
12 subsequently collect all that data and, you know, kind forward that to us
13 electronically.

14 Q Okay. And does it come along with -- at what point in time
15 does any particular claim get assigned a unique style claim number?
16 We've seen claim numbers on some of these lists. When does that
17 happen?

18 A Ultimately, when we've married up all the information about
19 the, you know, the patient's information as well as information from the
20 medical record, because you have to take the medical record, and we
21 have coders who will, you know, code the chart and decide what the
22 appropriate codes to bill are. They'll marry all this information up, and
23 again, run edits against it to make sure t's good information. And then
24 ultimately, as we've talked about, submit that information electronically
25 to that data clearinghouse as a part of a batch of submitted claims.

1 Q Let me ask you, at different points throughout the case, did
2 the lawyers -- let me back up. The jury has heard information about the
3 claim totals being 22,000 and then 15,000 and then this -- whatever the
4 number was. Were there times when the lawyers reduced the number of
5 claims in the case?

6 A Yes.

7 Q And ultimately, it got down to this 11,563?

8 A Correct.

9 Q Did anything about the quality or reliability of the data on
10 these 11,563, was that changed or compromised or got lost in the shuffle
11 over the course of the reductions?

12 MR. BLALACK: Object to form. Compound.

13 THE COURT: It is compound. Break it down.

14 BY MR. LEYENDECKER:

15 Q Sure. Step one. Were there times when the lawyers asked
16 you to eliminate certain claims from the case?

17 A Yes. We were asked to adjust the file to remove certain
18 claims. Yes.

19 Q Did that process -- and ultimately, that got down to the
20 11,563 at issue.

21 A Right. Yes.

22 Q And did anything about the reduction of the overall number
23 of claims somehow change or cause the data, the claim CPTs, the
24 charges, et cetera, did that somehow compromise the data that's related
25 to the 11,563?

1 A No, it would not have changed that data in any way.

2 Q Okay. Now, back on this Form 1500, do you have a sense of
3 about how many of the 11,000 and change in this case were actual Form
4 1500s versus submitted electronically in groups?

5 A Yes. I believe we identified a column to note whether they
6 were electronic or whether they were paper, and I believe it was less
7 than 400 of the claims were submitted on paper.

8 Q Okay. Any idea why? You know, I assume in the modern
9 world, most of this stuff gets submitted electronically.

10 A Correct.

11 Q Sitting here today, do you have any idea why there was 350
12 or 400 of these actual individual claim forms submitted as opposed to an
13 electronic data transfer?

14 A It can be for various reasons. But I don't know specifically
15 about these set of claims what would have driven that request or need to
16 submit them on paper.

17 Q As between -- I think I heard this already. But as between
18 sending individual claim forms or sending batches of the same
19 information, what's the predominant way of claim submission in modern
20 healthcare?

21 A So again, the vast majority, I think 98 percent of our claims
22 on average are submitted electronically in a batch format.

23 Q Okay. Let's go back to this Form 1500.

24 MR. LEYENDECKER: And Michelle, can we come down to
25 the middle? I want to explore if you can.

1 BY MR. LEYENDECKER:

2 Q There's been a suggestion that somehow, our claims data is
3 not reliable. And what I want you to do is -- and you touched on this.
4 But walk through how do we get from the first step where the hospital
5 sends us some demographics to where we get to the point we're going
6 to submit a bill or batches of bills to a particular payer. How does that
7 happen?

8 MR. BLALACK: Object to form, Your Honor. Beyond the
9 scope of direct.

10 THE COURT: Overruled.

11 THE WITNESS: So again, you know, the patient information
12 is captured by the hospital and sent to us electronically. We also receive
13 the actual medical record of the patient, the service delivered. And
14 coders take that medical record, and they evaluate based on the
15 documentation provided, what codes -- or what services were provided
16 and therefore, what codes, you know, need to be billed.

17 And so that's input into the system. And then, you know, it'll
18 go retrieve, all right, this was at, you know, this ED site, and for this
19 code, here's charge. And so it matches that up. And so ultimately,
20 again, all the appropriate fields required on the HCFA 1500, you know,
21 are pulled together into one, you know, kind of electronic template and
22 submitted in the batch form.

23 BY MR. LEYENDECKER:

24 Q And then, once the batch claims are submitted to a -- did you
25 say not the insurance company, but to a clearing -- what did you say?

1 Clearing room?

2 A Effectively a vendor data clearinghouse.

3 Q Okay. What happens after the claims get sent to the
4 clearinghouse?

5 A I don't know all the behind the scenes of what happens from
6 that point forward. I know, you know, they run maybe their information
7 through different protocols, and then they forward that information or
8 make it available on to the health insurance companies.

9 Q At some point, do we get some information back from the
10 payor?

11 A Yes. So once they've reviewed the information on the claim,
12 ultimately, they will issue us a provider remittance advice
13 that -- regarding, you know, their determination on the claim.

14 Q And what kind of information is in the provider remittance
15 advice that we get back from the payors?

16 A It'll contain a lot of the information that's also reflected on
17 the HCFA 1500 form fields that we're submitting. But in addition,
18 obviously, they will be indicating how much they are allowing on the
19 claim. And then, to the extent there's also any kind of patient
20 responsibility determinations, whether it's a deductible or coinsurance or
21 a copayment, that information will come back, as well.

22 Q So when we submit the claim in these batches you're
23 describing, it has the date of service?

24 A Yes.

25 Q The doctor name?

1 A Yes.

2 Q Hospital name?

3 A Yes.

4 Q The CPT determined?

5 A Yes.

6 Q Okay. Part of the bill, the charges?

7 A Correct.

8 Q Does it have the allowed amount?

9 A When we submit our bill, no.

10 Q Okay. How about any indication of what the coinsurance or
11 the deductible are?

12 A No. We don't have that information about each member.

13 Q And do those, the allowed and the coinsurance, are
14 they -- did you say those come back as part of the provider remittance
15 advice?

16 A Correct. Yes.

17 Q And then, do you all do anything to try and provide those or
18 combine those two things together in your system?

19 A Yes, because we have a unique claim identifier number that
20 gets submitted with each claim in a batch. And when that comes back in
21 the form of a provider remittance advice on that claim, it also references
22 that same claim number identifier that we submitted, so that we can
23 match up those claims and then properly put it back into our system, as
24 well as the outcome.

25 Q So when I hear that, I think big picture. The claim I.D. allows

1 us to match our original information with the information coming from
2 the insurance company, so that we can have it all contained within the
3 same record. Am I thinking of that right?

4 A Yes.

5 Q All right. Now last week, did I ask you to check for the
6 provider remittance advices on a -- and give you a list of 290 claims?

7 A Yes, you did.

8 Q Okay. Tell us what you found on those 290 claims I asked
9 you to check on.

10 A Yeah, so I contacted one of my analysts, Tylona Minci
11 [phonetic], and she researched those claims.

12 MR. BLALACK: Objection, Your Honor, hearsay.

13 THE COURT: You don't have to talk about what you did.

14 THE WITNESS: I'm sorry. So I --

15 THE COURT: The objection is sustained.

16 THE WITNESS: I instructed her to look up the provider
17 remittance advices on those claims. And then she sent me a file back of
18 those that she located.

19 BY MR. LEYENDECKER:

20 Q So what did you learn when you learned when you looked
21 for the provider remittance advices on the 290 claims, the list that I gave
22 you? What did you learn?

23 A We found that we had over 270 of those available in our
24 system.

25 Q Okay. So the jury has heard a variety of suggestions about

1 the reliability of our claim records. Given the example that I just gave
2 you, what does that tell you about whether our claim system and our
3 data records are reliable, in light of your little mini project on those 290
4 claims?

5 A Again, for me it just reaffirmed that our data in the claims
6 files is extremely accurate.

7 Q Now if I were to now tell you that those 290 claims are claims
8 that the Defendant's expert said he couldn't find in United's -- proof of
9 those claims in United's records, what, if anything, does that tell you
10 about United's claims system?

11 A I can't comment about that. I don't -- I don't know. I just
12 know it reaffirms, you know, the confidence we have in our data.

13 Q You know, while I'm on that, let me -- sitting here today, do
14 you have a sense of whether -- if I took all 11,563 claims and totaled up
15 our charges in our file, and the allowance in our file, do you have any
16 sense of what you would expect to find if the Defendant said well, here's
17 our version of those claim files, and you totaled those two things up.
18 What would your sense be?

19 A I would expect them to be extremely comparable. You know,
20 there could be minor differences, but on a very small scale. But I would
21 by and large say because it's largely electronic exchange of information
22 back and forth that it would, you know, marry up to, you know, nearly
23 100 percent.

24 Q Now do you -- are you here to tell the jury we're absolutely
25 perfect record keepers all the time, 100 percent of the time?

1 A No, certainly not.

2 Q You think United is an absolute perfect record keeper all the
3 time, 100 percent of the time?

4 A I wouldn't think so, no.

5 Q Okay. Any part of you thinks that something about our claim
6 file, as it relates to the 11,563 claims, that we are way off the mark in
7 terms of the total charges, or the total allowed amounts?

8 A Not at all. I think the vast majority would be spot on. Again,
9 there may be a couple of instances here or there that claims involving,
10 you know, reprocessing of claims or the manual submission can lead to
11 a slight difference on a few claims, but otherwise -- it really should be
12 very much the same.

13 Q You just used a new term, I don't think I've heard it before.
14 You said reprocessing claims. What do you mean?

15 A So on occasion we will submit a claim and to the -- through
16 the electronic process, and for whatever reason, you know, health
17 insurance plan may adjudicate the claim and issue a remittance advice
18 and then later come back and realize there's something they need to
19 change or do differently, and they'll effectively reprocess the claim and
20 send another provider remittance advice. So on those occasions, you
21 know, it doesn't happen very often, but that could potentially result in
22 some very, very minor differences.

23 Q Okay. Okay. Let's go back here to the middle of our Form
24 1500 And just walk through a few more pieces of it. I think you said here
25 in Box 14. Tell the jury what's in Box 14.

1 A That is the date of the service that was provided. The patient
2 received the treatment.

3 Q And we've got Box 21 is highlighted, too. Tell us something
4 about the diagnosis. What's that, sir?

5 A Those are just the final determination of what the patient's
6 diagnosis was. And there's it looks like in this case three different codes
7 that were identified.

8 Q Any idea what those diagnosis codes are for this patient?

9 A Actually yes, I did look up just one in particular. And I think it
10 has to do with -- I think the first one has to do with some kind of oral
11 cavity bite.

12 Q Okay.

13 A And I think the second one has to do with presenting for
14 unspecified convulsions.

15 Q Convulsions?

16 A Convulsions.

17 Q Okay. Let me get a little bit lower, if I can. Now we see date
18 of service. The Box 24. I want to look at these. The Box 24, I think it's
19 right here and down. Okay. Box 24(a). Tell the jury what Box 24(a) is
20 again.

21 A Again, I think that's the same thing. It's just the date of
22 service that the patient was treated for.

23 Q And 24(d), what's that?

24 A That is the CPT code that was determined and submitted on
25 the claim.

1 Q So in this case we have a date of service of January 31st of
2 2019 involving a 99285 claim?

3 A Yes.

4 Q And boxes (f), what's that?

5 A That's just the charges associated with that particular code.

6 Q Okay. \$1360.

7 A Yes.

8 Q And what is (j) rendering provider I.D. number. Tell us what
9 that is.

10 A So that's a unique identification number associated with
11 each provider. It's also referred to as an NPI. I think it's a National
12 Provider Identifier.

13 Q So if I look at the NPI down here in Box 31, Heber Phillips.
14 Was there a correlation between that and the rendering provider?

15 A Yes. It's -- well, it's kind of hard to see. You can note that it's
16 the same provider ID number in box up above, to the one that's down
17 below.

18 Q The 120563286?

19 A Yeah, 1205063286, yes.

20 Q Okay. And is that the doctor that -- or perhaps the nurse
21 practitioner that performed the service on this date?

22 A Yes. That's the healthcare professional identifier number.

23 Q And then box 32 is what, sir?

24 A 32 is the site of service. Where the service took place. So in
25 this case it was performed at Sunrise Hospital Medical Center here in Las

1 Vegas.

2 Q And then tell us what Box 33 is.

3 A So Box 33 is the provider under which this claim was
4 submitted. In this case, this was Ruby Crest Emergency Medicine.

5 Q Okay. Do you understand this is one of the 254 sub-TIN
6 claims, sir?

7 A Yes.

8 Q So we have identified today the CPT, the doctor, the facility
9 base, Sunrise here in Clark County, but then we submit it under the Ruby
10 Crest TIN.

11 A Correct. Yes.

12 Q And tell us again, what does TIN stand for?

13 A Tax identification number.

14 Q Okay. Now you have any sense of how similar or dissimilar
15 the information on the actual claim 1500 matches up within our system?
16 What's your -- what's your testimony there?

17 A It would be exact because our system is essentially the
18 source of all of the data that's reflected on this claim.

19 Q I'd like to look at some examples of these TIN claims and
20 claims in that same period of time. And so I'd like to use at this point, a
21 demonstrative, Exhibit 473-H, with the witness?

22 MR. BLALACK: Your Honor, I have no problem with counsel
23 showing the demonstrative. I will object to the exhibit, because it's my
24 belief it does not accurately reflect some of the data in the underlying
25 data fields. But he can walk through it, and we can argue about

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1 admissibility later.

2 MR. LEYENDECKER: Something other than the cents on the
3 dollars?

4 MR. BLALACK: Correct.

5 MR. LEYENDECKER: Okay. Okay, Michelle, you have the
6 first example? Let's zoom in. There, stop. Can you go -- oh, you know
7 what, I'll tell you what, I don't think we can, because --Brynn, may I have
8 the Elmo, please?

9 BY MR. LEYENDECKER:

10 Q Okay. Kent, tell us -- this is -- do you understand 473 is the
11 Plaintiffs' claim file?

12 A Yes.

13 Q All right. And on this summary example, you see we have
14 the date, it's Fremont and the two Ruby Crests?

15 A Yes.

16 Q All right. And then tell us, big picture, what does this
17 example say to you? You see on the far right hand column, there's a no
18 and then two subjects. Tell the jury what that means to you.

19 A So it's just three examples of claims for the same healthcare
20 professional, all billing the same code all at the same charge. But two of
21 the claims were billed under the sub-TIN structure that we've been
22 talking about where one of them was not. But that illustrates just the
23 three different allowed levels for each of these claims.

24 Q So on January 15, Dr. Phillips billed a 285, with charges of
25 1360, and allowed how much?

1 A 315.25.

2 Q Okay. And then seven days later, also at Sunrise, similar
3 claim, similar charge?

4 A Yes, the same.

5 Q And then in sub-TIN the allowed amount is higher. You see
6 the 609?

7 A Yes.

8 Q And do you understand the basic suggestion by the
9 Defendants in the case is that by doing the sub-TIN, we were trying to, I
10 don't know force them to pay more than they were paying. Something
11 along those lines?

12 MR. BLALACK: Object to form. Leading.

13 THE COURT: You can rephrase.

14 BY MR. LEYENDECKER:

15 Q Kent, what's your understanding of the complaint about the
16 sub-TIN?

17 A I'm not sure. Maybe other than they felt like they would have
18 paid less if we hadn't done this.

19 Q Okay. So in this first example, though, we have -- we have
20 one situation -- fair to say we have one situation with Dr. Phillips, where
21 they paid more on January 22nd than they paid on the 15th. Do you see
22 that?

23 A Yes.

24 Q But then what happens, you know, nine days later on the
25 31st, with Dr. Phillips, on the same claim?

1 A It's much lower. It's actually a lower payment than the other
2 two examples.

3 Q Okay. If you go to the next one -- next example here, it
4 involves Dr. Walker?

5 A Yes.

6 Q Date of service, oh, maybe six weeks or so apart?

7 A Correct.

8 Q Sunrise Hospital?

9 A Right.

10 Q The first one is a sub-TIN and the second one is not; do you
11 see that?

12 A Yes.

13 Q Same CPT as before?

14 A Correct.

15 Q Right. In this situation, did they allow more or less for the
16 sub-TIN than the non-sub-TIN claim with this doctor?

17 A They allowed more on the sub-TIN claim.

18 Q Okay. Are there other examples, like this third one, Kent,
19 where there was a different result with the sub-TIN billing situation?

20 A So again, if you look at this one, again it's the same provider,
21 both at Sunrise Medical Center. Within, what a week of each other.
22 Same charges, same codes billed, and effectively it was the same
23 allowable determination, whether it as a sub-TIN or whether it was not.

24 Q Okay. Let's look at another. What about Dr. Chan? What do
25 we see with Dr. Chan?

1 A Dr. Chan, again at Sunrise Medical Center. One was billed
2 out as a sub-TIN, and one was not. But again, using the same code and
3 the same charges, they allowed the same amount.

4 Q Okay. And were the sub-TIN always resulting in either a little
5 bit more with the sub-TIN than the non-sub-TIN, or were there times
6 when it worked in the other direction?

7 A It worked in different directions, yes. In this case you'll see
8 that one with Dr. Farr, again, within a few days period here charges
9 being the same, codes being the same, the allowable amount for the
10 sub-TIN actually was lower than when we did not use the sub-TIN.

11 Q Okay. And I've got one more here from -- this one also
12 involves Dr. Farr as well. But it's a little different day of service. Do you
13 see that?

14 A Yes.

15 Q And what does this last temp illustrate?

16 A Again, within one day of each other, at the same site, for the
17 same code, for the same charges, the claim that was through the sub-TIN
18 was allowed a lower amount than when it was not.

19 Q Okay. So big picture, is it fair to say that of the 254 claims
20 that involve this sub-TIN, sometimes the Defendants allowed a little bit
21 more, sometimes they allowed the same, and sometimes they allowed
22 less?

23 A Yes. I think that's an appropriate characterization.

24 Q Okay. We saw a reference in the videotape about shutting it
25 off or turning it off. Do you remember that reference?

1 A Yes.

2 Q Okay. And about how long are we processing these claims
3 from Clark County through the Ruby Crest TIN?

4 A Again, not exactly, but I think we did it over the course of a
5 60 day period. And then when we determined it wouldn't really result in
6 any noticeable difference in the outcome, that was when we elected to
7 turn it back off.

8 Q Let me ask you about a couple more topics, and I'm almost
9 done. I wanted to ask are you familiar in your role with the out-of-
10 network allowed amounts by the Defendants in Nevada versus how
11 those compare to what they allow in other states?

12 MR. BLALACK: Object to form, Your Honor.

13 THE COURT: Rephrase.

14 MR. LEYENDECKER: Your Honor, may we approach?

15 THE COURT: You may.

16 [Sidebar at 12: 12 p.m., ending at 12;12 p.m., not transcribed]

17 THE COURT: Gentlemen, come on back.

18 [Sidebar at 12:12 p.m., ending at 12:13 p.m., not transcribed]

19 THE COURT: So it turns out this is a good time for our lunch
20 break today.

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

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

7 It's 12:13, let's go to 12:45.

8 THE MARSHAL: All rise for the jury.

9 [Jury out at 12:13 p.m.]

10 [Outside the presence of the jury]

11 THE COURT: 12:45. Is there anything you want to put on the
12 record then?

13 MR. BLALACK: Not -- the only issue we've got, Your Honor,
14 is -- Mr. Balkenbush is going to want to argue one issue related one of the
15 depositions we have left to resolve. I think we could just probably take 5
16 or 10 minutes.

17 THE COURT: So let's be back at 12:40.

18 [Recess taken from 12:14 p.m. to 12:45 p.m.]

19 [Outside the presence of the jury]

20 THE COURT: Please remain seated. The Court will come to
21 order. All right. So Mr. Blalack, I thought you were going to be here at
22 12:40? I was here and nobody was here.

23 MR. BLALACK: Oh, I'm sorry, Your Honor. I thought
24 Mr. Balkenbush, was here.

25 MR. BALKENBUSH: I apologize, Your Honor. The walk took

1 me a longer getting over here.

2 THE COURT: All right. Talk fast.

3 MR. BALKENBUSH: This should be very -- it's not an
4 argument really, Your Honor, it's a point of clarification. So yesterday
5 evening you provided your rulings on the Rena Harris and Dr. Jones
6 deposition designations.

7 THE COURT: Right.

8 MR. BALKENBUSH: Rena Harris designations didn't make
9 sense to us. The Dr. Jones' designations, there's an internal
10 inconsistency, that I think we need you to clarify.

11 THE COURT: Go ahead.

12 MR. BALKENBUSH: So what we provided to you is a chart,
13 of our designations and the other side's objections. Now, if I may, Your
14 Honor, I'll approach and show you. And on the chart you ruled that you
15 sustained all of plaintiffs' objections, which would essentially take Dr.
16 Jones out of the case, but on the actual transcript, where we highlighted
17 the objection to portions of the testimony that corresponded to the chart,
18 you wrote that you overruled on their objection.

19 THE COURT: Oh, so --

20 MR. BALKENBUSH: So either -- he is -- we're not going to be
21 able to call him as a witness, other than to state who he is, or we're
22 going to be able to [indiscernible].

23 THE COURT: Bring it up, and I'll resolve it at the next break.
24 Thanks.

25 MR. BALKENBUSH: So this is the chart where you wrote

1 sustained, Your Honor.

2 THE COURT: Yeah. And --

3 MR. BALKENBUSH: And then at the very beginning I tabbed
4 the pages where --

5 THE COURT: I'll look at it.

6 MR. BALKENBUSH: Okay.

7 THE COURT: Yeah. Okay. Thanks.

8 MR. BALKENBUSH: Thank you, Your Honor.

9 THE COURT: And are we now ready to bring in the jury?

10 MR. BLALACK: Yes, Your Honor.

11 THE COURT: Thank you.

12 [Pause]

13 MR. ZAVITSANOS: And, Your Honor, I think we're close. I
14 think we may finish today.

15 THE COURT: You may finish today? You have to finish
16 today.

17 MR. ZAVITSANOS: Yeah. I think we will finish today.

18 THE COURT: I do have 3A for tomorrow -- I mean, 3D.

19 [Pause]

20 THE MARSHAL: All rise for the jury.

21 [Jury in at 12:48 p.m.]

22 THE COURT: Thank you. Please be seated. Mr.
23 Leyendecker, please continue. We all hope you had a nice lunch.

24 MR. LEYENDECKER: Thank you, Your Honor.

25 CROSS-EXAMINATION CONTINUED

1 BY MR. LEYENDECKER:

2 Q Kent, just a few more questions here. Earlier today the jury
3 saw Plaintiffs' Exhibit number 513, and I'd like to put them up and ask
4 you a couple of questions about it.

5 MR. BLALACK: This is admitted, correct?

6 MR. LEYENDECKER: Yes. Yes, sir. I'm sorry, Brynn,
7 [indiscernible] from the Elmo to the -- back to the regular [indiscernible].

8 BY MR. LEYENDECKER:

9 Q Okay. This was a chart about where the healthcare data
10 goes, and I think there was a discussion about the 3.2 cents for
11 emergency room costs; do you see that Ken?

12 A Yes, I do.

13 MR. LEYENDECKER: Let's go over to page 2, Michelle, I want
14 to just orient him. There's a little detail on page 2, and let me just have
15 emergency room costs right up right there, please.

16 BY MR. LEYENDECKER:

17 Q Okay. Kent, what does it say here is included under the
18 emergency room cost, that first box?

19 A There we go. "Physician and facility non-drug related
20 payments for emergency room visits, and ambulance transportation."

21 Q Okay. Let's go back to that first page. So, physician cost,
22 facility cost, ambulance cost?

23 A Yes.

24 Q Now do you, in light of what you do, and how long you've
25 been doing it do you have a sense of where the doctors -- the typical

1 doctor charge relates to a typical facility charge, in connection with an
2 emergency room visit?

3 MR. BLALACK: Objection. Foundation.

4 THE COURT: Overruled.

5 THE WITNESS: Yes. In my experience it's very common for
6 the facility charge to be greater than the professional for this charge.

7 BY MR. LEYENDECKER:

8 Q So is the three -- by the way, do you have some sense of
9 whether that 3.2 cents is kind of consistent with what you understood to
10 be how much of a healthcare dollar, and where it's going?

11 A Yes. I think that's been pretty consistent over time, or what
12 I've seen in other documents.

13 Q And so if the 3.2 cents includes the facility and things like
14 ambulances, what's your sense of how much of the actual ER clinician
15 doctor/nurse practitioner is making up of that 3.2 cents; more than half,
16 less than half, about half? What's your sense of that, sir?

17 A It would be less than half, you know, just given that the
18 facility charge is generally greater than the professional charge, and then
19 you got to take into account, also backing out the ambulance services as
20 well.

21 Q Okay. And how about the air ambulance, is that, in your
22 experience, is the air ambulance included, for example, under
23 ambulance charges?

24 MR. BLALACK: Objection to the foundation of this witness
25 testifying about this document.

1 THE COURT: Lay a foundation.

2 BY MR. LEYENDECKER:

3 Q Kent, do you have a background of what generally the
4 industry considers ambulance charges?

5 A What the --

6 Q With -- let me back up here.

7 A Yeah.

8 Q I'm thinking of where the healthcare dollar goes. Does your
9 20 plus years of experience give you some background as to whether the
10 industry treats the ambulances that are driven, that you see on the road,
11 versus ambulances that are by helicopter or plane, do you know whether
12 those all bundled together under the quote/unquote "ambulance
13 charge"?

14 A Yes. I think they would be all included together.

15 Q Okay. Let me ask you one last question, and that is on the
16 sub-TIN issue, did any of the Defendants ever call, or write and say,
17 would send of the money back on those 254 sub-TIN claims?

18 A No. I never was aware that they contested those claims
19 submitted.

20 Q So to your knowledge did they ever say we want you to send
21 us back 6,000 or 8,000, or some number of dollars that they allowed as
22 part of those 254 claims?

23 A No, not to my knowledge.

24 Q Thank you, Kent. Those are all my questions.

25 THE COURT: And redirect, please.

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1 MR. BLALACK: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BLALACK:

4 Q Good afternoon, Mr. Bristow?

5 A Good afternoon.

6 Q Good to see you again. We visited several times back in
7 May.

8 A Yes.

9 Q I took your deposition, do you recall?

10 A Yes, we did. Yes.

11 Q So I just have a few questions to follow-up on some of the
12 points that Mr. Leyendecker asked you about. All right?

13 A Okay.

14 Q All right. So let's start with that document we just looked at,
15 probably the simplest thing to do, which is Plaintiffs' Exhibit 513.

16 MR. BLALACK: Can you bring that up?

17 BY MR. BLALACK:

18 Q Sir, this chart has an acronym in the lower right-hand
19 column, it says AHIP, do you see that?

20 A Yes.

21 Q Do you know who AHIP is?

22 A I believe it stands for the America Health Insurance Plans, or
23 Association of Health Insurance Plans.

24 Q Okay. When's the first time you saw this document?

25 A I have seen it before. I don't recall when the first time I saw it

1 was.

2 Q Okay. What data is this analysis based on?

3 A I've had to refresh myself with the document.

4 Q Sitting here today do you know what information was relied
5 upon to prepare the estimates of cost, across the healthcare dialogue
6 that is reflected here?

7 A Again. I'd have to refresh myself with the entirety of the
8 document.

9 Q And sitting here today you don't know what that is?

10 A I do not.

11 Q Okay. The data that was relied upon by AHIP, but it didn't
12 come from TeamHealth, correct?

13 A That's correct.

14 Q And you're just not sure, sitting here today, where it did
15 come from, correct?

16 A Without reviewing the document, that's right.

17 Q So when you're asked questions about what makes up this
18 3.2 cents you're not sure what information that the people who prepared
19 this analysis relied on to come up with that number, correct?

20 A I don't know the exact source of the data, no.

21 Q Okay. Thank you. That's all I have on that.

22 Now let's talk about the disputed claims list. Sir, did you have a
23 role in developing the disputed claims list the plaintiffs have been relying
24 on in this litigation?

25 A Yes, I did.

1 Q Would you tell the jury what your role was?

2 A My role would have been interacting with our team of
3 analysts, and giving, you know, guidance and direction about the
4 analysis and the claim set, that we wanted to run and pull out of our
5 system, related to this case.

6 Q Okay. And when you say, your people, who are you referring
7 to?

8 A Primarily, that would have been involved Eddie Ocasio, who
9 works on our team, and depending on the course of time we've had two
10 different analysts, in the role underneath Eddie, Ted Lonomincie
11 [phonetic] being one of them.

12 Q Okay. Now when I deposed you in, I believe May, do you
13 recall at that time there had been four versions of the plaintiffs' disputed
14 claims list, at that time?

15 A I don't recall, specifically.

16 Q Okay. I'll also represent to you, sir, that in your deposition
17 we talked about --

18 MR. BLALACK: Your Honor, may we approach, briefly?

19 THE COURT: You may.

20 [Sidebar at 12:56 p.m. ending at 12:57 p.m., not transcribed]

21 THE COURT: Okay. The objection is overruled.

22 [Counsel confer]

23 BY MR. BLALACK:

24 Q Mr. Bristow, my memory -- and I'll represent to you is that in
25 May when we discussed the preparation of plaintiffs [indiscernible], at

1 that time plaintiffs had served four versions of that list, as of May. Does
2 that ring a bell?

3 A Like I said, I don't remember the specific number at that time.

4 Q Do you remember that one of the earlier versions, version 3,
5 had 23,000 plus disputed claims on it?

6 A I don't remember that specific version, but I do, you know,
7 remember a number in that ballpark.

8 Q Okay. So in one of those early versions there was initially an
9 allegation of 23,000 disputed claims. How did you and your team go
10 about deciding which claims were going to be put in dispute on this
11 disputed claims list, that had that many [indiscernible]?

12 A Well, again, I can't remember specifically that version, and
13 what -- like what time period that represented, so I'm a little bit
14 handicapped in answering that question right now, not knowing
15 specifically what that version was.

16 Q Okay. Well, let's do it this way. Whether it was version 1, 2,
17 or 3, do you recall at some point there was a version that had 23,000
18 claims on it, give or take, right?

19 A Ballpark, yes.

20 Q Okay. Using whatever version that was how did you all go
21 about deciding which claims you were going to include on that list, and
22 which ones you were going to take off?

23 A Well, we would have started with possibly identifying who
24 the health insurance company defendants are.

25 MR. LEYENDECKER: Your Honor, this is relevance, and to

1 the extent it calls for discussions with attorneys.

2 MR. BLALACK: I'm not asking for any communications with
3 counsel, I'm just asking what criteria they used to develop their list that
4 they put --

5 MR. LEYENDECKER: And the limine as it relates to claims at
6 issue, Your Honor.

7 THE COURT: Overruled.

8 BY MR. BLALACK:

9 Q Please proceed.

10 A Okay. Other criteria outside of just determining who the
11 Defendant health insurance companies were, obviously matching it up to
12 the Plaintiff provider -- healthcare provider groups, that the claims were
13 billed for. It would involve criteria around the dates of service, the time
14 period for the claims that we were looking at. It would have involved
15 only looking at claims that had been adjudicated and paid on.

16 And I think we also took some other steps to make sure we
17 were excluding, you know, governmental claims, related to, you know, a
18 person's age, to make sure they weren't like Medicare age-eligible, and
19 also looked at the various allowed levels to make sure again, from a
20 governmental allowable standpoint. If it was below a certain threshold
21 we would not have included it, to make sure we weren't picking up
22 governmental claims.

23 Q Okay. So if I understand your testimony, you were trying to
24 find obviously claims that were adjudicated by one of the Defendants in
25 the case; is that right?

1 A Yes.

2 Q That had been adjudicated as covered service and payable,
3 not denied?

4 A Correct.

5 Q But for a commercial member, not somebody being --
6 participating in the government program?

7 A Correct.

8 Q And that were being reimbursed on an out-of-network basis,
9 and an out-of-network relationship, correct?

10 A Correct.

11 Q Okay. So based on that criteria you all went out, went into
12 your claims data and did your very level best to identify the claims that
13 met that criteria, so to provide them for purposes of discovery in the
14 case, right?

15 A Yes.

16 Q Okay. Now by the time we met for your deposition in late
17 May, that last version, version 4, we're down to about 19,500 disputed
18 claims. That's the one I was questioning you about on the video that
19 you watched earlier today. Do you recall that?

20 A Yes.

21 Q So sometime during this interview process, even though you
22 all felt like you had done a good job of capturing all of the claims you
23 wanted to contest in the case, somewhere between the third and fourth,
24 you all decided that there were some claims on that list shouldn't be,
25 correct?

1 A Again, I don't remember what the drivers were for the
2 differences.

3 Q Whatever the drivers were, you dropped almost 3500 claims,
4 correct?

5 A Yes.

6 Q Okay. Now subsequent to your deposition are you aware
7 that a new list was created in the period of July, that reduced this
8 number of 19,500 to 12,500?

9 A Again, I don't remember the specific number, but I do recall
10 it, yes, there were some additional claims that were removed.

11 Q Did you participate in the process of deciding which claims
12 that were originally on the 19,500 would be taken off, down to the
13 12,500?

14 A Again, at some point there were some guidance and
15 decisions by the attorneys about which claims to remove.

16 Q Okay. Did you feel when this list was provided to us, and we
17 were given testimony on this list, you were giving testimony on this in
18 May, that this was an accurate and fulsome list of the claims you wanted
19 to contest it again?

20 A Based on the information that was available to us at that
21 time, yes.

22 Q But subsequently in version 5, you ended up at the 12,500,
23 right?

24 A Yes.

25 Q Okay. Now are you aware that after that list in July a new list

1 was created in August, that reduced this 12,500 to just a little over
2 12,000?

3 A I don't recall that version, no.

4 Q Did you participate in this process of reducing claims from
5 the version 5 to version 6?

6 A I don't recall specifically.

7 Q Is the first time you're hearing about that?

8 A I'm just saying I don't recall.

9 Q And then, we got to the final list, the one that is Plaintiffs'
10 Exhibit 473, about which the jury has heard a lot of testimony, which
11 ended up at 11,00, I forget the exact number, 500 and some odd claims.
12 Were you involved in the decision to take another 500 claims off the list
13 from version 6 to version 7?

14 A I don't believe I was involved with that.

15 Q Is this the first time you heard about that?

16 A No. It's not the first time I've heard about it, I still know that I
17 was involved in that process.

18 Q Whether you were involved or not involved, you're aware
19 that from the earlier versions where you had 23,000 disputed claims in
20 the case, you were able to cut that at about half, in the subsequent 5 or 6
21 ones, correct?

22 A Yes.

23 Q Okay. And are you confident now -- you seem more
24 confident now that this 11,500 claims actually represents the claims that
25 you all are really disputing in this case?

1 A Yes.

2 Q So there's not any of these that need to come up, like the
3 other list?

4 A Not that I'm aware of, no.

5 Q Now you told Mr. Leyendecker that the process of removing
6 these claims, you didn't say anything about -- I believe the phrase was,
7 didn't change or compromise the quality of the data supporting this list
8 of claims. Do you remember that testimony?

9 A Yes.

10 Q Did you have the same level of confidence in the quality of
11 the data on version 3, as you do on version 7?

12 A At that time, based upon the knowledge and information we
13 had, yes.

14 Q What about version 4, as compared to version 7?

15 A Again, I don't remember the details of each version.

16 Q But you were equally confident in versions 3, 4, 5, 6 and 7, as
17 you are in the version you have today, correct?

18 A Based on the information we had at hand, at that time, yes.

19 Q Now it sounds like Mr. Leyendecker asked you to do some
20 homework, to prepare for your testimony today, by doing an analysis
21 that's been claims from the disputed claim's list, and looking at provider
22 remittance advices, am I right about that?

23 A Yes.

24 Q Let me be clear, I just want to make sure the jury
25 understands what it is you did, and how you did it. You mentioned there

1 were 254 claims -- excuse me, he mentioned there were 290 claims that
2 you were asked to review; do you remember that?

3 A Yes.

4 Q Did you physically review, to provide remittance advices for
5 every one of those claims?

6 A I did, yes.

7 Q Okay.

8 A Not every detail, but I saw the list of the entire 270 claims
9 that were remittance advices that were produced.

10 Q And that's a little different question than the one I'm asking,
11 sir. So I'm not asking you if you looked at a list that had claims
12 information on 290 claims. I'm asking whether you personally,
13 physically pulled out a PRA, provide remittance advice for each one of
14 those claims in review?

15 A I have seen each of those remittance advices. To what extent
16 have I reviewed every single element of that, no, I have seen them all,
17 laid my eyes on them all, yes.

18 Q Okay. And these were collected by someone at your
19 direction?

20 A Yes.

21 Q And who was the person?

22 A Tylona Minci.

23 Q Okay. You mentioned Ms. Minci a moment ago, right?

24 A Yes.

25 Q Did she bring those to you and say, these are the ones you

1 asked for?

2 A Yes.

3 Q And then you physically went through each one?

4 A Electronically, yes.

5 Q Okay. Now -- and how many others would you say you had
6 a copy of in your possession?

7 A I believe 271.

8 Q Out of 290?

9 A Yes.

10 Q All right. Sir, I can -- I will tell you that the Defendants in this
11 case asked for copies of all records in the possession of TeamHealth
12 about the disputed claims, and we received no -- provided --

13 MR. LEYENDECKER: Your Honor --

14 BY MR. BLALACK:

15 Q -- remittance advices on those claims.

16 THE COURT: Hang on. There is an objection.

17 MR. LEYENDECKER: May we approach, Your Honor?

18 THE COURT: You may.

19 [Sidebar at 1:08 p.m., ending at 1:10 p.m., not transcribed]

20 THE COURT: The objection was sustained.

21 BY MR. BLALACK:

22 Q All right. I want to talk a little bit about this sub-TIN issue, sir.
23 And I want to make sure the jury has clarity on what it involve and who
24 was involved. I think you've testified that the sub-TIN -- the idea to do a
25 sub-TIN relationship between providers associated with Fremont and the

1 Ruby Crest entity; that was your idea?

2 A Certainly --

3 MR. LEYENDECKER: Cumulative, Your Honor.

4 THE COURT: It is. Is it foundational?

5 MR. BLALACK: Yes, it is.

6 THE COURT: Then overruled.

7 BY MR. BLALACK:

8 Q Now, who did you direct to execute this plan?

9 A So my recollection would have been that David Greenberg
10 and I would have, you know, gave -- I gave -- ultimately, I gave David
11 Greenberg that direction to make that happen.

12 Q Do you recall that you and Mr. Greenberg then had
13 communications with an employee named Rena Harris of TeamHealth,
14 instructing her to implement the plan?

15 A I can't recall if I gave direction to Rena or if I was involved in
16 that, but certainly David would have. Yes.

17 Q And Rena Harris was someone who was twice removed from
18 you. There was -- Mr. Greenberg was the vice president under you, and
19 then Ms. Harris reported up to Mr. Greenberg and others at his level?

20 A Correct.

21 Q Now, just so the jury is clear. What this involved, this was a
22 plan that was implemented beginning in 2019, January of 2019 until
23 April of 2019, correct?

24 A Again, I can't remember the specific date. I almost want to
25 say it ran through early March, but I can't remember the specific date.

1 Q Okay. And as I think you mentioned, the objective of
2 the -- what was the goal of the sub TIN plan?

3 MR. LEYENDECKER: Cumulative, Your Honor. Beyond the
4 scope.

5 MR. BLALACK: We covered this in his --

6 THE COURT: Overruled.

7 THE WITNESS: It was to protect against the benchmark
8 pricing program that was going to be put in place.

9 BY MR. BLALACK:

10 Q And the way that you all were attempting to do that was
11 obtain reimbursement while services rendered by physicians in Clark
12 County associated with Fremont by billing those services out through
13 Ruby Crest's tax identification number in Elko, correct?

14 A Just through their group number, yes.

15 Q Correct. And you were doing that because at the time, you
16 all mistakenly believed there was a basis for reimbursement at 95
17 percent of charges at Ruby Crest?

18 A That's correct.

19 Q And so the goal was if we take these services that were
20 actually performed in Clark County, bill them out through Ruby Crest,
21 we'll be getting reimbursed at a higher percent of charge, correct?

22 A Yes.

23 Q At some point though in March, you learned to your surprise
24 that that assumption about the 95 percent of charges was incorrect,
25 right?

1 A That's correct.

2 MR. LEYENDECKER: Your Honor, this is cumulative and
3 beyond the scope.

4 MR. BLALACK: I'm following up exactly on what he covered.

5 THE COURT: Overruled.

6 BY MR. BLALACK:

7 Q And when you learned that you had made a mistake, that
8 you weren't going to be able to be reimbursed at 95 percent of charges,
9 it was then that you terminated the sub TIN relationship, right?

10 A When we didn't see a noticeable difference on how they
11 were paying out-of-network for those claims, we made the decision to
12 turn it off.

13 Q Okay. So the only reason you stopped it and the only reason
14 it involved 254 claims is because you learned in March that you were
15 mistaken when you believed there was a basis for being reimbursed at
16 95 percent of charges, right?

17 A Again, my recollection is just that we didn't see a difference
18 in the processing of the out-of-network whether we used the sub-TIN or
19 did not, and that was the reason we turned it off.

20 Q Because you weren't getting the payments at the levels you
21 were hoping for, correct?

22 A The levels that we thought we were due, yes.

23 Q The 95 percent of charges?

24 A Again, yes.

25 MR. BLALACK: Now, let's look at the Plaintiffs' Exhibit 307,

1 please. I don't believe this is 307. Isn't 307 the claim form?

2 MR. LEYENDECKER: I thought 307 was the claim form, yes.

3 MR. BLALACK: Do you have that? Plaintiffs' Exhibit 7?

4 MR. LEYENDECKER: 307.

5 MR. BLALACK: 307.

6 MR. GODFREY: I don't believe I do.

7 BY MR. BLALACK:

8 Q Sir, while we're waiting for this exhibit to come through from
9 Plaintiffs, can you tell me -- I think you said there was no advanced
10 communication with the Defendants in the case about this arrangement,
11 but that you had disclosed the location of where the services were
12 provided on the claim form; am I right about that?

13 A Yes.

14 Q Okay. And what you're referring to is the portion of the claim
15 form where it literally says, "site of service"?

16 A Yes.

17 Q But there was no emails, no letters, no phone calls, nothing
18 like that to say, hey, we've got this arrangement we set up between
19 Fremont and Ruby Crest, and we're going to be billing out services
20 rendered in Clark County through a provider TIN in Elko. Nothing like
21 that?

22 A Again, we felt like it was adequate what we were, you know,
23 submitting on each and every claim as far as the identification of what
24 we were doing.

25 Q Answer my question. It's like not like that -- like I described?

1 A No.

2 Q Now, on this claim form --

3 MR. BLALACK: This is 307. Thank you very much.

4 BY MR. BLALACK:

5 Q If you come down to the bottom, you'll see here it's got the
6 physician's name here, Doctor -- I don't know if it's Heber or Phillips.
7 And then it's got billing provider info on the right-hand side; do you see
8 that?

9 A Yes.

10 Q And it says, "Ruby Crest Medicine." Does Dr. Heber -- is he
11 an employee of Ruby Crest Emergency Medicine or an independent
12 contractor of Ruby Crest Emergency Medicine?

13 A He would be contracted directly with Fremont Emergency;
14 and then through a leasing arrangement, be contracted over to Ruby
15 Crest.

16 Q So the only way Doctor Phillips has any relationship at all
17 with Ruby Crest is through this leasing arrangement you described that
18 TeamHealth set up between Fremont and Ruby Crest?

19 A I believe that's the primary driver of the connection, yes.

20 Q And did Doctor Phillips know he had been leased to Ruby
21 Crest?

22 A No, it's not typical practice that we would discuss with our
23 doctors the details of the billing arrangements.

24 Q That's not something you all share with them?

25 A No, that's not something they generally are concerned with.

1 They trust us. And, you know, proved in experienced to submit the
2 claims on their behalf for their services so they can focus on providing
3 the care they provide. They rely upon us to, you know, perform that
4 service for them.

5 Q Sir, do you know what fields on a claim form like this are
6 relied upon by a health plan or a health insurer to reimburse claims?

7 A I can't tell you what health insurance policies are or our
8 views about that are now.

9 Q Okay. Now, you indicated that -- let me ask this. I assume
10 you think it was entirely appropriate and proper for TeamHealth to set up
11 the sub-TIN scheme between Fremont and Ruby Crest; is that right?
12 That's your testimony to the jury, correct?

13 A Well, I'm certainly not agreeing with you that it's a scheme. I
14 do -- I think it's appropriate the way we set up the structure to do it, yes.

15 Q Did Rena Harris, your employee, your subordinate, object to
16 you and Mr. Greenberg about doing this?

17 A No, not to my knowledge.

18 Q She never told you that she thought it was inappropriate to
19 do that?

20 A Not that I was aware of, no.

21 MR. BLALACK: All right. Thank you.

22 THE COURT: Any recross?

23 MR. LEYENDECKER: One question, Your Honor.

24 RECROSS-EXAMINATION

25 BY MR. LEYENDECKER:

1 Q Kent, were you aware that prior to the time the trial got
2 started that there was considerable effort between the lawyers on both
3 sides of the fence here to get down to a final [indiscernible] where we
4 wouldn't be squabbling over whether it was 11563 or some other
5 number. Were you aware of that?

6 A Yes, I was understanding that there was agreement about
7 what the final claims listing would be.

8 Q And the content of that 473?

9 A Yes.

10 Q Not that they were -- not that the Defendants were
11 acknowledging that they owed, but that the content, the amounts, the
12 CPTs, dah, dah, dah, dah, dah. Was it your understanding that both
13 sides got together and got to an agreed set that would be presented to
14 the jury?

15 A Yes, that was my understanding that they had agreed upon
16 what the disputed claim list universe was.

17 MR. LEYENDECKER: Thank you, Kent. That's all I have.

18 THE COURT: Any redirect?

19 MR. BLALACK: Nothing from me, Your Honor. Thank you.

20 THE COURT: Does the jury have any questions for Mr.

21 Bristow? Thank you in advance. And counsel, come on up.

22 [Sidebar at 1:20 p.m., ending at 1:22 p.m., not transcribed]

23 THE COURT: The lawyers asked me to thank you for the
24 question. There are two questions I get to ask them.

25 The first is did you consider not signing the notice of material

1 change/amendment to contract with MultiPlan?

2 THE WITNESS: Again, I believe at that point in time, we had
3 no control over whether the underlying benefit plans were required
4 based upon their language at the benefit plan where we're required to
5 access the rental network. Some do require them to access it and can
6 stipulate that. And so we didn't feel like it was a change at all because
7 the underlying benefit plan document and its arrangement is going to
8 govern whether they access the agreement or not. So whether the
9 amendment with MultiPlan states that or not, it wouldn't change
10 anything. So to us, it was really kind of a nonfactor of consideration.

11 THE COURT: Second question. If TeamHealth had not
12 signed it, what would be the resulting effect on the Plaintiffs' ability to
13 provide and receive reimbursement for out-of-network emergency
14 services?

15 THE WITNESS: Again, I think really it's kind of along the
16 lines of the same answer. We don't feel like it had any impact about
17 accessing the agreement or what rates they would pay because the
18 underlying benefit plan, my understanding is they dictate, you know,
19 how they will pay for out-of-network services. Obviously, we as the
20 providers, believe what they should pay is the usual and customary
21 charge.

22 But as far as accessing the rental network agreement that's
23 available to them, you know, we can't mandate that the underlying
24 benefit plan state that that's what they will do in their arrangement. We
25 have no control over that. That's between the benefit plan and the

1 health insurance company. But it doesn't change our position about
2 the -- we think we are due the usual and customary charge in an out-of-
3 network situation.

4 THE COURT: Any follow-up questions based upon the jury?

5 MR. BLALACK: No follow-up, Your Honor.

6 MR. LEYENDECKER: No, Your Honor.

7 THE COURT: Okay. May we excuse the witness?

8 MR. BLALACK: We do. Thank you, Mr. Bristow.

9 MR. LEYENDECKER: Yes, Your Honor.

10 THE COURT: Mr. Bristow, you may step down, and you're
11 excused.

12 Defendant, please call your next witness.

13 MR. ROBERTS: Your Honor, the Defendants would call Mr.
14 Sean Crandell.

15 MR. LEYENDECKER: Your Honor, I neglected to offer 473-H.

16 THE COURT: Is there any objection to 470- -- let's get on the
17 record for that.

18 THE MARSHAL: This way, sir.

19 MR. CRANDELL: All right.

20 THE MARSHAL: Sir, watch your step, please. Step up into
21 the stand, face the clerk over there.

22 THE CLERK: Please raise your right hand.

23 SEAN CRANDELL, DEFENDANTS' WITNESS, SWORN

24 THE CLERK: Please have a seat, and state and spell your
25 name for the record.

1 THE WITNESS: Sean Crandell. Sean, S-E-A-N, Crandell,
2 C-R-A-N-D-E-L-L.

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

4 MR. ROBERTS: Thank you, Your Honor. Your Honor, before
5 I proceed, I would move for the admission of Exhibit 4627. There was no
6 objection in the 267. I don't believe there's any objection.

7 MR. ZAVITSANOS: That's correct, Your Honor.

8 THE COURT: Exhibit 4627 will be admitted.

9 [Defendants' Exhibit 4627 admitted into evidence]

10 THE COURT: And then Mr. Leyendecker, just as we were
11 bringing the jury in, you moved to admit another exhibit?

12 MR. LEYENDECKER: It looks like it's 473-H, Your Honor.

13 MR. ZAVITSANOS: Like Harry?

14 MR. LEYENDECKER: Yes.

15 MR. BLALACK: We want to -- that's the summary?

16 MR. LEYENDECKER: Yes, sir.

17 MR. BLALACK: Yeah, no objection on that exhibit.

18 THE COURT: Thank you. 473-H will be admitted.

19 [Plaintiffs' Exhibit 473-H admitted into evidence]

20 MR. ROBERTS: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. ROBERTS:

23 Q Good afternoon, Mr. Crandell.

24 A Good afternoon.

25 Q My name is Lee Roberts, and I am an attorney for the

1 Defendants in this action. Have we ever met?

2 A No.

3 Q Have we ever talked on the phone?

4 A No.

5 Q Thank you for coming to testify to the jury today. I'd like to
6 cover few facts about your background first.

7 A Okay.

8 Q Could you tell the jury where you live?

9 A Oswego, Illinois.

10 Q Where in Illinois is that?

11 A It's about 50 minutes southwest of Chicago.

12 Q Are you married?

13 A Yes, I am.

14 Q Do you have any children?

15 A I have two daughters.

16 Q Did you receive a college degree?

17 A Yes, I did.

18 Q Okay. Where from?

19 A I received a undergraduate degree in business management
20 and technology from the University of Wisconsin-La Crosse, and I
21 received an MBA from Baylor University in Waco, Texas.

22 Q And was that at the School of Business there?

23 A Yes, sir.

24 Q And where did you start working after you graduated from
25 Baylor with your MBA?

1 A After I started -- after I graduated with my MBA, I -- first, I
2 started with a company called Texas True Choice after undergraduate
3 school. That was in Texas, which enabled me to go to Baylor. Once I
4 graduated from Baylor, I -- Texas True Choice was a PPO network in the
5 State of Texas, and we developed provider networks for, you know,
6 health plans and insurers.

7 As well as we also created the first children's health insurance
8 program network as well as a foster care Medicaid network for the State
9 of Texas as well. But I worked for -- Texas True Choice got acquired by a
10 company called Viant Health Payment Solutions. And Viant Health
11 Payment Solutions -- that's when I attended by MBA. And after I
12 graduated, Viant Health Payment Solutions was merged with MultiPlan
13 in 2010.

14 Q Okay. So when was that merger?

15 A 2010.

16 Q So you began working for MultiPlan at the time of the
17 merger in 2010?

18 A Correct.

19 Q And are you still an employee of MultiPlan?

20 A Yes, I am.

21 Q Before I go on and talk about your work history at MultiPlan.
22 You mentioned that Texas True Choice was a PPO?

23 A Yes.

24 Q Could you explain to the jury what that stands for and what it
25 is?

1 A Yeah, a PPO network is -- you know, if you have health
2 insurance benefits, there's really two sides. A PPO network is an
3 agreement with a provider, or a hospital, et cetera. And it's a collection
4 of providers that companies can offer to health insurance providers, to
5 say listen, we have an agreement with this physician, or this hospital.
6 And you can access it as an in-network benefit.

7 Okay, so usually in-network benefits are the preferred way to
8 go, just from a benefit plan design, et cetera. There are also other
9 networks in there. We had a Medicaid network, which was built on
10 behalf of the kids, the chip kids in the State of Texas. So they could go to
11 preferred providers, and the State could get discounts on those, as well.

12 Q When you first joined MultiPlan, what was your position?

13 A I was the Director of Network Analysis.

14 Q And what were your responsibilities in that first role?

15 A My responsibilities in the first role was I had a team that
16 supported the network development team. And that network
17 development team was responsible for maintaining that PPO network at
18 MultiPlan. And our team processed close to 7,000 requests on behalf of
19 the network development negotiators, to look at everything from
20 enhancing the network for the members, to contract renegotiations. As
21 well as dealing with terms like Medicare percentages and fixed rates that
22 the health insurers would pay.

23 Q And what was your role following Director of Network and
24 Analysis?

25 A I was promoted in 2013 to Assistant Vice President in

1 Healthcare Economics. And that role kind of expanded and gave me
2 additional responsibilities from what I already did. And it expanded into
3 a lot more of what I'll call data solutions wherein I kind of customized
4 advanced analytics on behalf of our clients.

5 Q And were you ultimately promoted from the Assistant Vice
6 President role?

7 A Yes. I currently serve as the V.P. of Healthcare Economics,
8 and I've served in that role since July of 2020.

9 Q And in your current role as Vice President of Healthcare
10 Economics, what are your current job responsibilities?

11 A In addition to what I kind of previously said of really
12 advanced analytics, data science, and data solutions, I also oversee our
13 information planning area, which is a host of analysts, developers, et
14 cetera, that communicate with all areas of our business. In business
15 intelligence and reporting of Multi-Plan operations.

16 Q Do you consider yourself a data guy?

17 A Yes, I do.

18 Q How many employees are on the MultiPlan Healthcare
19 Economics team under your supervision?

20 A Currently there are 74.

21 Q And how many of these employees report directly to you?

22 A Five do.

23 Q Who do you report to?

24 A I report to the CFO.

25 Q Where is MultiPlan headquarters?

1 A Manhattan, New York.

2 Q And how many employees does MultiPlan have all together
3 in all its departments?

4 A Approximately 2,200.

5 Q How long has MultiPlan been in business?

6 A MultiPlan has been in business as a cost containment
7 provider for over 40 years.

8 Q Is MultiPlan a publicly traded company?

9 A Yes, we are.

10 Q Explain what MultiPlan is. What does it do?

11 A MultiPlan is a -- again a cost containment company that
12 provides services to national health plans, local regional provider owned
13 health plans. Localized, what I'll call third-party administrators, which do
14 the same thing as the large national health plans. But they offer a lot
15 more customized type services. And utilize PPO networks, et cetera.

16 Q How many clients use MultiPlan services?

17 A There are over 700 clients that utilize our services. However,
18 those clients are then further broken down to smaller, what I'll call sub-
19 clients. But if you -- if you'll look at our whole spectrum of employers
20 and whatnot that we serve, we have over 100,000 different views of
21 employers that we serve with our services.

22 Q How do you use that term, sub-clients? Could you explain to
23 the jury what a sub-client is?

24 A Yeah. So for example a client may be set up as let's say a
25 large national health plan, okay. And underneath that large national

1 health plan, they might have 3, or 4, or 5 different regional plans that
2 they roll up to that -- that parent level. And then so each of those
3 regional health plan levels interact with an employer. And in the model
4 of a consultant is usually in charge of an employer. And they really put
5 the benefit plan with the actual carrier. And so every employer rolls up
6 to one of those health plans. So think of it as a large grid of just health
7 plans and sub-clients and then all of the employers throughout the U.S.
8 That 120 or over 100,000 different views of it within our system.

9 Q Is MultiPlan widely used by the largest insurers in the United
10 States?

11 A Yes, we are.

12 Q How widely used?

13 A If you look at the top 10 insurers in the U.S., we have all ten
14 of them use our -- some form of our services within their day to day cost
15 containment needs.

16 Q So does MultiPlan also have any direct relationships with the
17 self-funded sponsors of employee benefit plans?

18 A Yes, we do, but there's not that many.

19 Q Okay. The jury's already heard during this trial that
20 UnitedHealthcare and several other United affiliated entities, including
21 several of these Defendants, have contracts with MultiPlan. Are you
22 familiar with that?

23 A Yes.

24 Q What types of services does MultiPlan provide to the
25 Defendants, that use your services?

1 A We provide again -- in the out-of-network space we provide a
2 variety of services to the Defendant, including the network services that I
3 talked about earlier, which is the collection of, you know, over a million
4 providers within our network. You know, over 100,000 different facilities
5 as well. So their membership accesses those provider networks. In
6 addition to that, we do also offer analytic services, as well.

7 And within those analytic services, we have a whole host of
8 options available to clients. Some like negotiation services, which can
9 be done, both from a financial negotiation standpoint, as well as we have
10 like clinical negotiations that our negotiators really talk to the provider
11 about clinical issues that we see on the claims.

12 And then finally, we do have analytic based solutions as well, like
13 Data iSight. Data iSight is a analytic based solution that formulates a fair
14 and reasonable payment recommendation to our clients, to use to pay a
15 claim.

16 Q From 2017 to 2020, did MultiPlan offer those same services
17 to any of the UnitedHealthcare's competitors?

18 A Yes.

19 Q From that same period, 2017 to 2020, were any of the
20 services that you described that MultiPlan offered to UnitedHealthcare
21 not available to other health insurers and health plans in the market?

22 A No.

23 Q What benefits do you offer to potential clients?

24 A Depending on -- the thing that MultiPlan can offer from a
25 really containing costs for our clients, is a wide variety of options of

1 whatever each employer in the U.S. and each consultant that they utilize
2 to consult on their benefit behavior, have a strategy on how to manage
3 healthcare costs. And we have the ability to basically tailor our solutions
4 to whatever our client's needs are. Whether that's more network
5 focused or more analytic focused.

6 Q So let's go back and talk about Data iSight in more detail.
7 What is Data iSight? Just in general, a broad overview.

8 A Data iSight, in general, is under our analytic based solutions.
9 And what Data iSight is, is there was a need in the marketplace back in
10 early 2010, 2011, to really address what was a feasible allowable in the
11 marketplace on a professional side, to recommend as a payment. Okay.

12 So traditionally the market looked at things from a charge
13 standpoint. We were able to offer this product when we acquired NCN in
14 early 2000's as something that turned the game a little bit and looked at
15 things of what are people actually paying within the marketplace and
16 how can we configure an external data source to basically provide a
17 reimbursement amount for an employer to pay on behalf of their clients.

18 Q From the period, again of 2017 to 2020, did UnitedHealthcare
19 contract with MultiPlan to utilize the Data iSight pricing tool?

20 A Yes.

21 Q And during that same period, did MultiPlan contract with
22 other health insurers in the market?

23 A Yes.

24 Q And were any of those clients' competitors of United Health?

25 A Yes.

1 Q And did some of United's competitors also adopt Data iSight
2 during certain periods as a tool to manage other network costs?

3 A Yes.

4 Q Did some of them do it before United?

5 A Yes, they did.

6 Q Is Data iSight widely used in the industry during this period
7 of time?

8 A Yes, it is.

9 Q Why is Data iSight so widely used?

10 A I think Data iSight has been adopted by so many, whether it's
11 a national health plan or a local, regional TPA because it has kind of two
12 things. It has very defensible measures of how to value services. And
13 then in addition to that, it uses external data sources in, that's available
14 to everybody, of what people are actually paying for these services
15 within the market. Those two combined, I think are really two things that
16 you're giving a fair and reasonable rate to the market, and a
17 recommendation.

18 Q So if the Data iSight tool is used among various different
19 companies in the industry, do the recommended payments rate
20 generated by Data iSight tool vary depending on which client you're
21 running that calculation for?

22 A No.

23 Q Is the tool -- can the tool even factor in who the client is?

24 A No, it can't. The system that generates the methodology
25 cannot even factor in the client. It takes instruction.

1 Q Does the methodology factor in who the provider is, that
2 provided the service?

3 A No. It does not.

4 Q Does the tool factor in who the patient is and what health
5 plan they're a member of?

6 A No. It does not.

7 Q Would you say the tool is neutral or non-neutral?

8 A I would say it's a neutral -- the methodology itself is -- this is
9 what it is. It's a pure methodology. And the only time you would have
10 any type of variation is the one thing it does do is if services were
11 rendered in Fargo, North Dakota, versus San Francisco, California, it
12 does adjust for locality of where those services are rendered. That's the
13 only, what I'll call pure variation that you would see, because it adjusts
14 for basically what are -- what's being paid and what's the actual local
15 economics of that market, for that reimbursement amount.

16 Q Did UnitedHealthcare ever instruct MultiPlan to reduce out-
17 of-network rates generated by Data iSight?

18 A No.

19 Q During this same time period, 2017 to 2020, was the out-of-
20 network pricing recommended by Data iSight to United the same or
21 different as that recommended to UnitedHealthcare's competitors?

22 A It was the same.

23 Q Does UnitedHealthcare have access to MultiPlan's pricing
24 logic in an algorithm that is used to generate the Data iSight
25 recommended reimbursement for out-of-network services?

1 A No, they do not.

2 Q Why don't they?

3 A Because we don't give any access to any of our clients.

4 We've explained the methodology to them, but that's a proprietary asset
5 that we have as an organization. We talk to everyone about them. And
6 that's partially, you know, some of what I do and why I'm probably
7 talking to you here today.

8 Q So is that the same for all of your clients? Do any of your
9 clients have access to that pricing logic?

10 A None of them have access to the pricing logic.

11 MR. ROBERTS: Okay, Shane, right at the beginning we
12 admitted 4627. Can you put that up for the witness?

13 BY MR. ROBERTS:

14 Q This is a MultiPlan document entitled Data ISight
15 Professional Methodology. Do you see that?

16 A Yeah.

17 Q And could you explain to the jury what this is?

18 A This is a document that we send out to clients that first off,
19 looks at professional claims. And what I mean by professional is non-
20 facility. So it's like non-hospitals, no surgery centers. So this is really
21 focusing on surgical providers and those types of things that are billing.
22 But this addresses that segment of the market for them and explains our
23 methodology, summarized form.

24 Q Is this the methodology that would apply to the pricing of
25 emergency department physician claims?

1 A Yes.

2 Q Look at the first page, and the first sentence of the first
3 paragraph. It reads Data iSight determines a fair price for professional
4 claims using amounts generally accepted by providers as payment in full
5 for service. Do you see that?

6 A Yes.

7 Q What does that mean?

8 A That means that we're providing a solution that (a) is
9 accepted by providers within the marketplace; and it's basically -- it's
10 kind of -- how should I say this. It's almost like confirmation for us that,
11 you know, when we deal with all of these claims, we understand what
12 claims are being inquired upon, and we also understand what claims
13 have no issues at all.

14 Okay. So, you know, the first kind of leading statement looks at,
15 listen, for the services that we provide, this is a reimbursement amount
16 that is a fair and reasonable payment for services within a market.

17 Q You mentioned acceptance rates. Why are those important
18 to you?

19 A Well acceptance rates are a view of, are providers accepting
20 your payments? If they're not, and if they're inquiring about a payment,
21 we look at that as, you know, if there's a low portion of providers that are
22 accepting our rates, then that to me is not what a generally accepted
23 amount would be in the marketplace. And the way that we designed the
24 product, it looks at what's actually being paid in the marketplace. And
25 then it adjusts it according to wherever the rendering provider is.

1 Q So I'd like you to go toward the bottom of the first page. In
2 the section that begins bold face about the conversion factors. Do you
3 see that?

4 A Yes.

5 Q And could you read the first couple sentences in that section
6 to the jury?

7 A Okay. "CMS uses a conversion factor to convert the
8 geographically adjusted RBU for each service into a dollar amount. Or,
9 sorry into a dollar payment amount for Medicare reimbursement. Data
10 iSight is not Medicare based and does not use the CMS conversion
11 factor." Okay. Should I keep going?

12 Q Go ahead and read one more sentence.

13 A Okay. "Instead Data iSight calculates conversion factors
14 based on the allowed amounts from the co-group from the national
15 database of paid claims, that I talked about earlier." So that's how we
16 kind of differentiate ourselves from Medicare.

17 Q Conversion factors are mentioned several times there.
18 Could you explain to the jury what a conversion factor is, and how they
19 work?

20 A Yeah. So Medicare has one conversion factor. I think it's like
21 34.76. What we've done is we've taken those actual paid claims of what
22 are actually getting rendered within the database that we acquire, and
23 then we look at it and we group different conversion factors together
24 similar to how, really, how primary networks operate. Okay? So we
25 group surgical together. Okay? We group an evaluation and

1 management together. So that means that when -- whenever you go to
2 a doctor's office and get 99213, which is a typical office visit, that's in
3 that E&M category.

4 So we have seven different conversion factors, okay? And instead
5 of using one conversion factor for Medicare, we basically take all of that
6 payable data, what's been happening in a market, and then group each
7 one of the conversion factors, okay? ER is one of them. PT/OT is one of
8 them. Surgery is one of them. And then we combine all that data and
9 really look and grab the medians for each one of those categories and
10 roll it up into a conversion factor. So then we have a view of, hey, here's
11 what's being paid in a market.

12 And then we really take the fundamentals of what drives a lot of
13 even primary networks, okay, that people access on a primary basis and
14 not out-of-network. We take those values that insurers use, CMS uses,
15 the government uses, to value how much we mark-up that procedure by.
16 That's really the view. And then the last component of this is we
17 basically adjust it for wherever locality it is.

18 Q And that's the geo-based demo.

19 A That's correct.

20 Q So this mentions the RVU.

21 A Yes.

22 Q Can you explain what that acronym stands for and what it is?

23 A Yeah. So RVU is a relative value unit. And it's -- what it is is
24 a -- I'll call it a national standard that's set forth by the AMA of what does
25 it really mean, okay, for me to do this surgical procedure? Okay. How

1 intense is it? Do I need to have more educational background? Is it a
2 very complex thing? So there's a value established for that. Okay?

3 The second part of an RVU is just an adjustment that people make
4 of, listen, what does it take to run a practice? Okay? What is the
5 overhead expenses and et cetera, et cetera. And then the last
6 component of an RVU is really malpractice. Okay? So there's a smaller
7 factor that adjusts for, you know, there's a higher malpractice, you know,
8 expense with OBs versus, you know, a -- maybe a primary care, because
9 they have more risk. So the system basically adjusts for all that and
10 allows to stratify payments that way.

11 Q The database that you use to run your analytics, is it robust?

12 A Yes, it is.

13 Q And does the last paragraph on this page describe how large
14 that system is --

15 A Yes.

16 Q -- that database is?

17 A Yes.

18 Q Could you explain that to the jury?

19 A So we purchase data -- it's publicly available; anybody can
20 go purchase it -- from at the time, a company called IQVIA. It's -- it was
21 provided by PharMetrics. And what we do is we gather all that data.
22 And you know, a couple things we have to look at is is this data a
23 representation of what's actually in the market, okay? You know, the
24 things that we look at is we don't take out any outliers. We don't scrub
25 the data because that creates bias within a dataset. Okay?

1 So what we actually do is we go through it, put it in the
2 format that we can basically run our algorithms on, et cetera. But you
3 got to test it a little bit, too, because you know, our -- you want a sample
4 that represents the population of the U.S. So we look at things like,
5 listen, regionally, okay, here's the membership that comprises this data.
6 We then correlate that to the U.S. population, the commercial population
7 of people receiving benefits. And if there wasn't a strong correlation or if
8 there was nuances within the data, we basically wouldn't use it. We'd
9 address it. We'd try to basically look for something else.

10 And so there's a whole host of things that we do to make
11 sure that, again, we're representing a data source that's going to
12 produce a fair and reasonable payment, an acceptable payment in the
13 marketplace.

14 Q How do you know that these methodologies actually produce
15 a reasonable reimbursement?

16 A Kind of -- we -- well, we kind of touched on it before. It's two
17 things, is I like to know the process that we're using is -- I am -- I am not
18 a statistician. Okay? I'm very good at stats but I am not a statistician.
19 So we actually go out and have an outside statistical expert review our
20 processes to make sure that we're basically putting the right things in
21 place for our clients.

22 And then the second thing is really acceptance. If the provider
23 didn't accept these rates and they called and inquired, maybe they
24 understood it with an inquiry. And after they -- after -- maybe they
25 didn't. And -- but a higher acceptance rate -- you know, I think our book

1 is over 90 percent acceptance rate -- of the Data iSight payment across
2 the whole -- the whole scope of our clients that utilize our product.

3 Q Okay. From your -- excuse me. Before United Healthcare
4 decided to contract with MultiPlan, did you share how the Data iSight
5 tool worked to them?

6 A Yes.

7 Q Did you give them a high-level overview like this, more
8 detail, or --

9 A Yes.

10 Q -- something less detailed?

11 A This would be something along the lines what we would give
12 our clients, client-facing, would be something along the lines of this
13 document.

14 MR. ROBERTS: Okay. Shane, let's go to page two. And if
15 you could highlight the second paragraph under exceptions and blow
16 that up for us, beginning, "At the client's discretion."

17 BY MR. ROBERTS:

18 Q Now, this paragraph has an exception. "At the client's
19 discretion, overrides can be applied to the calculated Data iSight
20 reimbursement." Can you explain to the jury what an override is and
21 how they work?

22 A Okay. So how this is is think of it this way: as a client, I may
23 have to manage different expectations internally with my clients, et
24 cetera, about what price points I have within our product. Okay? So we
25 allow flexibility to say, listen, we're still within our Data iSight system

1 going to calculate what would the methodology produce. Okay? And
2 we allow clients to say, listen, really, to fit my benefit strategy and I want
3 to do this. Okay?

4 So we often do things with them to say, listen, you can apply this
5 type of cap and whatnot separate from our -- the methodology itself, but
6 it all -- it happens within the Data iSight system. We allow for that
7 flexibility in our operations.

8 Q And for emergency department physician services, are you
9 aware whether UnitedHealthcare gave MultiPlan an override?

10 A Yes, they did.

11 Q And do you know what the amount of that initial override
12 was?

13 A Yes. It was 350 percent of Medicare.

14 Q And do you know how long that override remained in place?

15 A I don't know the time, the overall tenure that it was in place.

16 Q Are you aware of whether it changed after a certain point?

17 A Yes. It changed to 250.

18 Q Okay. So explain to the jury how this worked. You're
19 generating a price using your pricing tool that you testified would be the
20 same regardless of the client, the provider, the member. But United is
21 giving you an override. So explain how that would work with an
22 override in place.

23 A Okay. So within Data iSight, the Data iSight system, again,
24 we're receiving a claim that's coming in. Okay? When that claim comes
25 in, it prices against the methodology, okay, and then it returns a price,

1 okay, for Data iSight. What would the methodology produce? Then,
2 once that's complete, the next step is to say, listen, does the client have
3 any other instructions or overrides for us to manage their out-of-network
4 costs? And so if, in this situation, United has an override, it also looks at
5 what is 250 percent of Medicare in the process. Okay?

6 And then, what it does is it compares the two. Let's say, okay, the
7 methodology produced this, and 250 percent of Medicare produced this.
8 Compare the two and then pay the higher of the two. Okay? Whatever
9 is the higher value for it.

10 Q So if the jury saw a bunch of claims that are priced at 350
11 percent of Medicare by Data iSight, what would that tell you about what
12 pricing your tool generated for that claim?

13 A It would tell me that the -- what we talked about before, the
14 methodology of all that data that we took for ER, and then threw it into
15 our methodology, adjusted, et cetera, if that's producing a lower amount
16 than what 350 percent of Medicare is. That's what that's telling me. So
17 your override was a higher payment than what our methodology would
18 have produced, our recommended payment to you.

19 Q What about if the jury saw a bunch of claims that were priced
20 at 250 percent of Medicare after the override changed to 250 percent
21 from United? What would that tell you?

22 A So that's pretty much the same type of setup to where,
23 again, the methodology produced this value. And then, 250 percent of
24 Medicare, if the vast majority of those claims were at 250, that tells you
25 the greater of the two payments was the override that was put in place.

1 Q Is United Healthcare the only one of your clients that's
2 implemented an override for ED services, for emergency department
3 services?

4 A No.

5 Q Is it common in the industry or unusual?

6 A It's common.

7 Q Does MultiPlan have a company definition of the reasonable
8 and customary rate to be paid for healthcare services?

9 A No, we don't.

10 Q All right. Based on your understanding, is there a single
11 definition of reasonable and customary that's common throughout the
12 industry?

13 MR. ZAVITSANOS: I'm sorry, Your Honor. Objection. Calls
14 for an expert narrative from somebody who's not been designated as an
15 expert.

16 THE COURT: Why don't you guys approach on that?

17 [Sidebar at 2:00 p.m., ending at 2:01 p.m., not transcribed]

18 THE COURT: So we think it'll be about another 20, 25
19 minutes before the direct. Is everybody good going that long without a
20 break? Yes? Thank you all. Thank you all very much. Go ahead please.
21 Objection sustained.

22 BY MR. ROBERTS:

23 Q So sir, I'd like to take you back to the acceptance rates that
24 you mentioned earlier to the jury. For in the period of 2017 to 2019 did
25 MultiPlan track how often out-of-network providers inquired of Data

1 iSight about the initial recommendation?

2 A Yes.

3 Q Submitted an inquiry? And what I'd like to do is --

4 MR. ROBERTS: Can we show just the witness, Shane, Exhibit
5 5103? Do you have the ability to do that?

6 [Counsel confer]

7 MR. ROBERTS: May I approach, Your Honor?

8 THE COURT: Please.

9 MR. ZAVITSANOS: Your Honor, so that we don't have to do
10 another bench conference, my objection to this exhibit is that it includes
11 areas and specialties outside of what's at issue in this case, okay. And
12 not relevant, Your Honor.

13 THE COURT: Good enough.

14 MR. ZAVITSANOS: And also, Your Honor, it's a summary.
15 And I do not have the underlying information to be able to test the
16 adequacy --

17 MR. ROBERTS: Your Honor, can we approach rather than a
18 speaking objection?

19 THE COURT: You may.

20 [Sidebar at 2:03 p.m., ending at 2:04 p.m., not transcribed]

21 BY MR. ROBERTS:

22 Q Do you have your notebook up there, sir?

23 A Yes, sir.

24 Q And before you look at that, can you tell the jury what the
25 acceptance rate was for emergency room providers in Nevada from 2016

1 to 2019? And you -- if you need to refresh your recollection just tell me
2 that and I'll let you look at the document.

3 A I'd like to refresh my recollection.

4 Q Okay.

5 A I carry a lot of numbers, but I -- sorry.

6 Q And those numbers are really small and maybe Mr.
7 Zavitsanos will let you borrow his magnifying glass.

8 MR. ZAVITSANOS: You've got to let me drive your fancy car.

9 THE WITNESS: I don't have one of those.

10 BY MR. ROBERTS:

11 Q All right. Here you go.

12 MR. ZAVITSANOS: And Mr. Roberts, will you just tell me
13 what line you're on please?

14 MR. ROBERTS: So I'm just asking the witness if he can look
15 at the document and whether it refreshes his recollection --

16 THE WITNESS: Which --

17 MR. ROBERTS: -- about --

18 THE WITNESS: Which document? I'm sorry.

19 BY MR. ROBERTS:

20 Q Oh if you open the binder in front of you.

21 A Yes.

22 Q Document marked 5103.

23 A Oh boy.

24 Q Now you understand why you need --

25 A Yes.

1 Q -- the magnifying glass.

2 A Yes.

3 MR. ZAVITSANOS: There's a light if you push the little
4 button.

5 THE WITNESS: Thank you.

6 MR. ZAVITSANOS: I'm very proud of that.

7 BY MR. ROBERTS:

8 Q Have you been able to find that, sir?

9 A Yeah. I read through it.

10 Q Okay.

11 A I'm sorry.

12 Q Did that refresh your recollection --

13 A Yes.

14 Q -- about what the emergency department acceptance rate of
15 the Data iSight recommended pricing tool was in Nevada during those
16 three years?

17 A Yeah. Hold -- let me get the context. I refreshed myself with
18 the actual fields, but let me -- can I have a pencil?

19 Q Can I give you a highlighter?

20 A That's even better.

21 Q Okay.

22 A So you want -- I'm sorry. ER you said?

23 Q Yes. I think it's spelled out as emergency room in the chart.

24 A For Nevada only?

25 Q For Nevada only, yes, sir.

1 A Team Health?

2 Q Yes.

3 [Pause]

4 MR. ROBERTS: Your Honor, I know we have a break coming
5 up soon. Maybe --

6 THE COURT: Is this a good time?

7 MR. ROBERTS: -- it'd be a good time to take a break while
8 the witness reviews the data?

9 THE COURT: Anybody object?

10 MR. ZAVITSANOS: Your Honor, I'm not going to speak for
11 the jury, but I would like an answer to this question before --

12 THE COURT: Let's get an answer to the question.

13 MR. ZAVITSANOS: -- before he goes outside on this.

14 THE COURT: And we need to do that, you're right.

15 THE WITNESS: So you want Nevada only, correct?

16 BY MR. ROBERTS:

17 Q Yes.

18 A Okay. Surgery. I'm sorry this is taking a long time. I just
19 can't -- okay.

20 Q All right. Whenever you're ready, but take as long as you
21 need.

22 A All right. So the -- I'm looking for, in this column it says,
23 Team Health TIN Nevada. In 2018 there was 291 claims successfully
24 processed through the Data iSight platform. And zero of those claims
25 were appealed in 2018 for those TINs.

1 Q So in 2018 that was 100 percent?

2 A Yes.

3 Q Now what about for 2019?

4 A 2019, there was 1700 claims successfully priced in 2019 and
5 359 of them were appealed or inquired on.

6 Q All right. And is that about 79.5 percent?

7 A Yeah. It's roughly 80.

8 Q Roughly 80?

9 A Yeah.

10 Q Okay. And again, that's Team Health Nevada only, correct?
11 No other providers, no other states?

12 A Correct. A Y and a Y in 2019.

13 Q What about 2017? Can you find that data for Team Health
14 Nevada only?

15 A No, I cannot. Wait, hold on. No. Well, yes, sorry. 2017 there
16 was 154 successful claims processed by Data iSight's system. One of
17 them was appealed.

18 Q So over 99 percent acceptance rate for 2017?

19 A Yes.

20 Q And finally can you find Team Health Nevada only for 2016?

21 MR. ZAVITSANOS: Your Honor --

22 THE WITNESS: Yes.

23 MR. ZAVITSANOS: -- I believe that's outside the claim
24 period. So I'm going to object on relevance, Your Honor.

25 THE COURT: And Mr. Roberts, I'm inclined to grant. Is there

1 some reason you need that data in?

2 MR. ROBERTS: Yes. One of the things that's being disputed
3 is whether this is a reasonable pricing tool. The witness has testified the
4 acceptance rate is relevant to reasonableness and therefore what was
5 accepted in 2016 would be relevant data.

6 THE COURT: I'm going to sustain the objection. Just it's
7 simply not relevant to the analysis in this case.

8 MR. ROBERTS: Okay. The witness --

9 THE WITNESS: All right.

10 MR. ROBERTS: -- has given all the relevant --

11 THE COURT: All right.

12 MR. ROBERTS: -- years, Your Honor. So I believe we can
13 take our quick, quick, break.

14 THE COURT: All right, you guys. Another short break and
15 thank you for understanding.

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

21 Don't conduct any research on your own. Don't consult
22 dictionaries, use the internet, or use reference materials. Don't post on
23 social media about the trial. Don't talk, text, tweet, Google issue or
24 conduct any other type of research with regard to any issue, party,
25 witness, or attorney involved in the case. Most importantly do not form

1 or express any opinion on any subject connected with the trial until the
2 matter is submitted to the jury.

3 It's 2:13. Let's be back sharp at 2:25.

4 THE MARSHAL: All rise for the jury.

5 [Jury out at 2:14 p.m.]

6 [Outside the presence of the jury]

7 THE COURT: Okay. The room is clear. Mr. -- why can't I
8 think of your name.

9 MR. BALKENBUSH: Whoa.

10 THE COURT: Whoa. Did you have something, Mr.
11 Balkenbush to put on the record?

12 MR. ZAVITSANOS: Your Honor, may I be excused for a
13 minute?

14 THE COURT: You may?

15 MR. ZAVITSANOS: Thank you.

16 MR. BALKENBUSH: Just briefly, Your Honor. I want to make
17 sure I understood the Court's clarification of Dr. Jones' designation, but I
18 looked through it but I --

19 THE COURT: Why don't you approach with it --

20 MR. BALKENBUSH: -- [indiscernible] make your markings on
21 it.

22 THE COURT: Approach with it and I'll explain.

23 MR. BALKENBUSH: Yes.

24 [Sidebar at 2:15 p.m., ending at 2:17 p.m., not transcribed]

25 [Recess taken from 2:17 p.m. to 2:26 p.m.]

1 THE COURT: Please remain seated. Are we ready to bring in
2 the jury?

3 [Counsel confer]

4 THE COURT: And your guy's bringing Mr. Crandell?

5 [Pause]

6 THE MARSHAL: All rise for the jury.

7 [Jury in at 2:27 p.m.]

8 THE COURT: Thank you. Please be seated.

9 Go ahead please.

10 MR. ROBERTS: Thank you, Your Honor.

11 BY MR. ROBERTS:

12 Q Sir, have you seen this data before that's been marked as
13 Exhibit 5103?

14 A I've seen this document, yes. It's from --

15 Q Okay. Do you know how we got a copy of this document?

16 A No, I don't.

17 Q Do you know whether any party to this lawsuit filed a
18 subpoena, served a subpoena on MultiPlan to get their document?

19 MR. ZAVITSANOS: Objection; Your Honor, he said he didn't
20 know and leading.

21 THE COURT: Objection sustained.

22 BY MR. ROBERTS:

23 Q If I could get you to get the notebook out in front of you sir
24 and turn to the next half, which has been marked for identification as
25 proposed Exhibit 5464. Do you see that?

1 A Yes.

2 Q Now if you could look under 2017, 2018 and 2019. Just the
3 lines Team Health Nevada only, could you review those for me and tell
4 me if the data in these columns matches the data that you just provided
5 to the jury based on the detailed spreadsheet?

6 A For which years? All of them?

7 Q '17, '18 and '19.

8 A Yeah, okay. Yes. That matches and then 2019 at, I said 80
9 percent so.

10 Q So you said 80 percent, and this has it at 79.5, but --

11 A It's close.

12 Q -- are you okay with that?

13 A Yes, I am.

14 Q Okay.

15 MR. ROBERTS: Your Honor, I'd move to admit Exhibit 5464
16 redacting the heading at the top year 2016 and the other information
17 except for Team Health Nevada only lines for those three years.

18 MR. ZAVITSANOS: Your Honor, we don't have an objection
19 to the numbers. The characterization we have an objection to. We will
20 work with counsel to make sure that it's a win-win. He gets what he
21 needs and --

22 THE COURT: Sure.

23 MR. ZAVITSANOS: -- hopefully we'll work --

24 THE COURT: So --

25 MR. ZAVITSANOS: -- on the language.

1 THE COURT: -- it'll be admitted with redaction to be done --

2 MR. ZAVITSANOS: Yeah.

3 THE COURT: -- in accordance with both sides being
4 agreeable.

5 [Defendants' Exhibit 5464 admitted into evidence]

6 MR. ROBERTS: Thank you, Your Honor. We'd be happy to
7 work with Mr. Zavitsanos --

8 THE COURT: 54 --

9 MR. ROBERTS: -- on that.

10 THE COURT: 5464?

11 MR. ROBERTS: Yes, Your Honor.

12 BY MR. ROBERTS:

13 Q All right. Mr. Crandell, one more topic before I turn you over
14 to Mr. Zavitsanos.

15 A Yeah.

16 Q What is the shared savings programs?

17 A That's a designation set forth by United. It's the program
18 that they offer for out-of-network services that we offer some of our
19 products and -- for various arrays for that program.

20 Q What are the components of the shared savings program
21 between UnitedHealthcare and MultiPlan?

22 A Well, the employer has the option to elect different packages
23 with their consultants on benefit renewal time, but we've configured
24 different products for our shared savings but primarily they focus on
25 network access, negotiations as well as extender type networks as well.

1 Q Does the program include wrap networks?

2 A Yes.

3 Q Does the program include fee negotiation services?

4 A Yes.

5 Q How long has MultiPlan participated in the shared savings
6 program with UnitedHealthcare?

7 A We've been doing it since we join -- I joined MultiPlan in
8 2010.

9 Q What about shared savings program enhanced, have you
10 ever heard of that?

11 A Yes.

12 Q Could you tell the jury what that is?

13 A Shared savings enhanced is the same shared savings setup,
14 but it adds in that Data iSight product that I talked about as well into the
15 portfolio that a client may access.

16 Q Does MultiPlan receive fees for these programs?

17 A Yes, we do.

18 Q And how are those fees typically based?

19 A Typically percent of savings.

20 Q What's the purpose of having a program where MultiPlan
21 participates in a percentage of savings?

22 A It's -- the purpose of that is it basically allows us to, if we
23 collect a percent of saved fees, it allows us to fund our operations as well
24 as, you know, across IT and then pay for the additional platforms that we
25 have to put together for all these very complex packages.

1 Q What is the purpose of the out-of-network programs that you
2 participate in like shared savings enhanced?

3 A The purpose of those programs again, an employer elects
4 whatever out-of-network program they'd like to receive. And it's based
5 upon what type of employer they are and whatnot that they really select
6 a package with United Healthcare or another client, tailored to their
7 needs, whether it's financial or something less aggressive. It's really --
8 that's the purpose of an out-of-network cost containment program.

9 Q Why not just charge a flat fee? Why would you have a
10 pricing structure that pays MultiPlan more money the more it cuts costs?

11 A We have a pricing structure that's stratified. If we had a per
12 claim fee, some of the operational setups and IT needs that we have, I
13 keep going back to, we have over 135,000 different client setups of
14 where we route claims to. It's a very complex process and whatnot and
15 flat -- a flat fee doesn't -- it -- A, it hasn't been the industry standard
16 since, you know, the inception of managed care, but it further aligns
17 funding these types of programs on behalf of the employers.

18 Q The jury has heard people in this courtroom compare
19 MultiPlan to an umpire who's supposed to be calling balls and strikes,
20 but it's being paid by one of the teams.

21 A Uh-huh.

22 Q Do you think that's a fair comparison?

23 A No, I don't. I mean, I look at -- we approach our operations
24 as unbiased partner, okay. And when I say that is if -- go back to what I
25 said about employers. You have, you know, over 100,000 employers

1 that we interact with, okay. You cannot force a decision upon these
2 employers that does not conform with what they want as a cost
3 containment solution, or even a benefit plan, you can't do that. Because
4 what happens, she'll get fired. Okay. We're not the only player in this
5 game. There are other -- we have competitors just like everybody else.
6 They will go find somebody else that will do the same thing that we do,
7 just in a different way.

8 Q Does it benefit MultiPlan to generate array, using Data iSight,
9 that's so low providers won't accept it?

10 A No, it does not.

11 Q Why not?

12 A Because we would have -- when you talk about acceptance
13 rates, you know, we have to staff for every single phone call that comes
14 in. If we have a product that is not defensible, and it does not reflect
15 what's currently in the marketplace, our staffing costs would be through
16 the roof, okay; that's why it's, you know --

17 MR. ROBERTS: All right. Thank you for your time, sir. Your
18 Honor, I'll pass the witness.

19 THE COURT: Okay. Cross-examination, please.

20 MR. ZAVITSANOS: Yes, Your Honor.

21 [Pause]

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

23 THE COURT: Please.

24 MR. ZAVITSANOS: Okay.

25 CROSS-EXAMINATION

1 BY MR. ZAVITSANOS:

2 Q Mr. Crandell, I'm going to outline the five areas that I'm
3 going to cover with you, okay?

4 A Okay.

5 Q Before I do that, I understood you to say that you have not
6 spoken with Mr. Roberts, right --

7 A That's correct.

8 Q -- before today? You live in Chicago, or outside of Chicago?

9 A Yes.

10 Q How did you know, and you came here voluntarily without a
11 subpoena, right?

12 A Correct.

13 Q How did you know to be here today, and that today was the
14 day that you were testifying --

15 A I was --

16 Q -- who told you that?

17 A I was told by my outside, counsel, Errol King, who's
18 MultiPlan's outside counsel.

19 Q Is he that guy in the back, with the silver hair, in the back
20 row; is that your lawyer?

21 A Errol King and Craig Caesar are MultiPlan external counsel.

22 Q So you have two lawyers here?

23 A Yes.

24 Q Do you know whether Mr. Roberts gave your lawyers the
25 script of what he was going to ask you, before you took the stand?

1 A No, I do not.

2 Q You certainly prepared for what you were going to say,
3 today, with your lawyers, right?

4 A Yes.

5 Q All right. Okay. So now here's what I want to do, here's the
6 areas I want to cover with you. Number, one, I want to talk about
7 Medicare. Number two, I want to talk about this proprietary formula
8 and whether there's anything to it or not. Number three, I want to talk
9 about whether you or your company actively mislead the public and
10 practitioners; and then number four and most importantly, the real
11 reason you're here. Okay?

12 A Okay.

13 Q All right. Let's start, let's start with Medicare.

14 MR. ZAVITSANOS: Now before I get to Medicare, let's pull
15 up Exhibit 3, page 7, Michelle. Actually, let's go to page 1, so that we see
16 what this is.

17 BY MR. ZAVITSANOS:

18 Q And the only reason I'm doing this, is because we got a
19 question from the jury earlier, and I just want to button this up. Okay.
20 This is the agreement regarding the wrap network between MultiPlan
21 and United Healthcare, right?

22 MR. ROBERTS: Objection. Beyond the scope.

23 THE COURT: Overruled.

24 BY MR. ZAVITSANOS:

25 Q Right, sir?

1 A Yes, sir.

2 Q Okay. So this essentially says United can use the wrap
3 agreement or not, and its option, right?

4 A Correct.

5 Q Okay. And so if TeamHealth signs something six years later
6 or seven years later, that said the same thing, that would not be a
7 change, right? By definition, right?

8 MR. ROBERTS: Objection. Form. Vague.

9 THE COURT: Overruled.

10 BY MR. ZAVITSANOS:

11 Q Right.

12 MR. ROBERTS: Intimidation.

13 THE WITNESS: I'm having a hard time following the
14 connection here.

15 BY MR. ZAVITSANOS:

16 Q If TeamHealth signs something that said that United, that it
17 acknowledges that United is not obligated to use the wrap agreement
18 six years later, that would be consistent with what we're looking at up on
19 the screen, right?

20 MR. ROBERTS: Improper hypothetical to a lay witness.

21 THE COURT: Overruled.

22 BY MR. ZAVITSANOS:

23 Q Right?

24 A Yeah. I -- United has the ability, and again, like I said before,
25 with the wide variety of clients that they have --

1 Q Mr. Crandell --

2 A -- United adjudicate --

3 Q -- I've got get through this.

4 A Okay.

5 Q I'm sorry to cut you off.

6 A Sounds good.

7 Q I've got about an hour and a half, and I'm going to get in big
8 trouble if I go over now, okay?

9 A Okay. All right.

10 Q All right. So here's what I need to do. I'm just asking you,
11 sir, it's a real simple question, if TeamHealth signed an agreement --

12 A Uh-huh.

13 Q -- seven years later that said United has the discretion to use
14 the wrap agreement or not, if they sign such an agreement that would be
15 consistent with this one, right?

16 A Yeah. I'm not -- I'm not familiar with the terms of the actual -
17 -

18 Q You can't answer that question?

19 A No, I can't.

20 Q All right. Okay. So your office is out of New York?

21 A We have offices all over the U.S.

22 Q Your headquarters are New York --

23 A Correct.

24 Q -- on 5th Avenue?

25 A Yes.

011470

011470

1 Q Priciest real estate in Manhattan, right?

2 A I'm not familiar with real estate prices in Manhattan.

3 Q And MultiPlan, let's just be clear here, MultiPlan's business is
4 limited to the out-of-network world, right?

5 A No.

6 Q Well, the services it provided to United, during the relevant
7 time period was in connection with out-of-network claims, right?

8 A We provided out-of-network claims as well as other services,
9 like Tricare, which is a governmental military base program.

10 Q Those are not at issue here. I'm talking --

11 A Okay.

12 Q -- about commercial insurance.

13 A Okay.

14 Q That's what we're dealing with here.

15 A Okay.

16 Q The services you all provided were from out-of-network
17 services, right?

18 A I believe in that time period -- can you repeat the time period
19 again.

20 Q Yes, sir. It's '17 to January '20.

21 A Okay. We also do provide payment integrity services, for
22 United's in-network claims as well.

23 Q Okay. Fair enough. Now, let me ask you this, is it correct
24 that one of the ways that you have been able to secure, your clients, are
25 insurance companies, right, and TPAs?

1 A And local regional health plans, yes.

2 Q All right. One of the ways that you all secure clients, is by
3 being critical of Medicare, correct?

4 A I disagree.

5 MR. ZAVITSANOS: Let's put up Exhibit 299.

6 BY MR. ZAVITSANOS:

7 Q And this exhibit, 299 --

8 MR. ZAVITSANOS: 299, Michelle. Let's go to page 3.

9 BY MR. ZAVITSANOS:

10 Q And this is a MultiPlan document, right? You see down here
11 at the bottom, it says "MultiPlan"?

12 A Yes.

13 Q Okay. And this is --

14 MR. ZAVITSANOS: First page, Michelle.

15 BY MR. ZAVITSANOS:

16 Q This is a pitch to potential clients, like United, right?

17 A Uh-huh.

18 Q Yes?

19 A I don't know if this document has been shared with United.

20 Q Okay. Well, let's take a look. Let's go to -- and this is for non-
21 contracted claims, that would be out-of-network, right?

22 A Yes.

23 MR. ZAVITSANOS: Page 3. And let's pull up the clarity here.

24 Michelle, is that your highlighting, is that already highlighted? It's
25 already highlighted, okay.

1 BY MR. ZAVITSANOS:

2 Q So it looks like MultiPlan making a pitch to the insurance
3 clients, tells them that a Medicare-based reference point is inherently
4 misleading; do you see that? Sir?

5 A Yes.

6 Q Is that true?

7 A No.

8 Q Okay. Next sentence. "The average consumer" --

9 MR. ZAVITSANOS: All right, Michelle. Now let's do our
10 highlighting.

11 BY MR. ZAVITSANOS:

12 Q "The average consumer does not understand just how low
13 Medicare rates are. On its surface a policy to reimburse at a level well
14 above what Medicare pays, sounds fair, maybe even generous, when
15 compared to the traditional methodology which reimburses a percentage
16 below UNC," right? Do you see that?

17 A Yes, I see it.

18 Q Is that correct, or incorrect, sir?

19 A It's correct and incorrect, it all depends on the employer plan,
20 and what they select for their auto network reference.

21 Q So it's correct and incorrect. All right. Let's keep going.
22 Now, however, when a provider, not that's us, over here, we're the
23 provider, right? Right, we're the provider?

24 A Yes.

25 Q When a provider, anticipating low reimbursement from

1 payers, that's United, right?

2 A Yes.

3 Q Increases the charges to compensate the gap between an
4 elevated charge -- and how does MultiPlan describe Medicare
5 reimbursements, sir? What's the words that you use?

6 A The words are "Medicare reimbursement can be
7 significant" --

8 Q No, no, you skipped the ones that I want to talk about. Now
9 come on, you know what I'm talking about here.

10 A Okay. So it --

11 Q What are the words that you use to describe Medicare, sir?

12 A It says, "The gap between an elevated charge and the
13 barebones Medicare reimbursement can be significant, as show in
14 Table 1.

15 Q All right. Now, let's close out and let's take a look at what
16 Table 1 says. And this is the pitch that you're making to insurance
17 companies on the front end; right, sir? To get them to be clients?
18 "Don't come up with a Medicare base methodology, use MultiPlan
19 instead." Right?

20 A Actually, we do market to Medicare base methodologies
21 with --

22 Q Sir, I'm talking about commercial insurance, let's stay on
23 track here. This --

24 MR. ROBERTS: Your Honor, could counsel let the witness at
25 least finish his question. We can move to strike later, but the constant

1 interruption --

2 MR. ZAVITSANOS: Your Honor --

3 THE COURT: No more interruptions, please. If you think it's
4 non-responsive then so indicate. Overruled.

5 MR. ZAVITSANOS: Yes, Your Honor. My apologies.

6 BY MR. ZAVITSANOS:

7 Q Sir, I don't want to talk about other programs. Please listen
8 to my question, okay.

9 A Right.

10 Q I'm going to let you finish, okay? All right. Here we go. Now
11 so "Medicare versus usual and customary member impact;" do you see
12 that?

13 A Yes.

14 Q And you see where it says "80th percentile of usual and
15 customary"?

16 A Yes.

17 Q Okay. That's FAIR Health?

18 A I don't know. I don't know the source. There's no definition
19 of UCR or UNC.

20 Q So MultiPlan use UNC, but you just have no idea what that
21 means?

22 A Well, UNC could be based on FAIR Health, UNC could be
23 based on a Viant [phonetic] OPR product that we have. It's there's no
24 definition for me to counter what you're saying.

25 Q Okay. So MultiPlan used the term that you, as a -- what are

1 you, a vice-president?

2 A Yes.

3 Q That you don't know what that means?

4 A Oh, I know what it means.

5 Q Okay. So here we go. So 120 percent of Medicare, that's the
6 description that you're using for what is bad, right? In this document?

7 A In the document, yes.

8 Q Okay. So we got a \$5,000 bill, it's reduced to the 80th
9 percentile, 2582. If we cut it down to the 120 percent of Medicare, 748.
10 Okay? So of these two which one is better for the member? Sir?

11 A The 120 percent.

12 Q Okay. Then, the plan pays 60 percent. And by the way, have
13 you seen any of the SPVs that have been discussed during the last four
14 years we've been in this trial?

15 A No.

16 Q Okay. So, all right. So let's just say it's 60 percent, which
17 one is better for the member, the 80th percentile, or the 120 percent of
18 Medicare?

19 A If the provider doesn't balance bill the 120 --

20 Q Yeah.

21 A -- that the provider balances -- balance bills the 80th.

22 Q Member pays 40 percent. Which one is better for the
23 member?

24 A The 120 of Medicare.

25 Q Now let's say you got a doctor that is going to balance bill,

1 even though they've gotten the 80th percentile of usual and customary;
2 do you see that?

3 A Yes.

4 Q And by the way, do you know how many doctors in Nevada
5 that practice emergency medicine, that are out-of-network, actually
6 balance bill the member when they get the 80th percentile of usual and
7 customary?

8 A No, I do not.

9 Q Would it surprise you if it was less than one percent?

10 A It's a fact that I don't know.

11 Q Okay. All right. So if there's a balance bill, which one is
12 worse for the member?

13 A The 120 percent of Medicare.

14 MR. ZAVITSANOS: Okay. And, Michelle, highlight the last
15 one.

16 BY MR. ZAVITSANOS:

17 Q So at least according to TeamHealth, when it's making its
18 pitch, which one is better for the member?

19 A I would say 120 percent of Medicare with patient advocacy,
20 so there would be no balance bill.

21 Q My question, sir, is according to the people that put this stuff
22 out --

23 A Yes.

24 Q -- for the pitch to your insurance clients, according to this
25 chart, which one I the member better off with?

1 A The member is better off with the UNC, according to this
2 chart.

3 Q All right. Now, and if the doctor --

4 MR. ZAVITSANOS: Michael, calculator, please.

5 BY MR. ZAVITSANOS:

6 Q If the doctor does not balance bill under the 80th percentile,
7 so that we subtract 2417.10 from 3450.26 --

8 MR. ZAVITSANOS: What is that Michael?

9 [Counsel confer]

10 MR. ZAVITSANOS: 3450.26 minus 2417.10. I think I said,
11 TeamHealth, this is a MultiPlan document, right?

12 MR. ROBERTS: Your Honor, the witness has already said he
13 doesn't know, he's never seen it.

14 THE WITNESS: I've never seen this document.

15 BY MR. ZAVITSANOS:

16 Q Do you see the MultiPlan logo there?

17 A Yes, I do.

18 Q Do you doubt that it's a MultiPlan document?

19 A I don't know how our sales and marketing team operates in
20 client communications.

21 Q Do you know whether you all produce documents in this
22 case, do you think we made up that logo there?

23 A I mean, our logo is available. I don't -- I don't know how our
24 clients' private label things --

25 Q I mean, it's --

1 A It's a MultiPlan logo, though.

2 Q Yeah. It's possible that maybe somebody sinister over at
3 TeamHealth just made this up, and got it admitted into evidence, right? I
4 mean, that's possible.

5 A No, I don't think so.

6 Q Okay. So if the doctor accepts the 80th percentile and you
7 understand that's what we're asking for, right. So --

8 A Feel free to ask for what you want --

9 Q Yeah.

10 A -- it's on me to decide.

11 [Counsel confer]

12 BY MR. ZAVITSANOS:

13 Q Okay. So 1,033 and 16. According to this MultiPlan
14 document, sir, is the member four times worse off using Medicare plus a
15 little bit above it? Sir?

16 A Can you repeat the question, I'm not following the logic
17 here?

18 Q No, sir. I think it's -- I'm not going to get -- let's go to the next
19 page. Now what you're doing here, is --

20 MR. ZAVITSANOS: Let's go to page 5, please, Michelle.

21 BY MR. ZAVITSANOS:

22 Q Okay. Page 5. It's more effective methodology.

23 MR. ZAVITSANOS: Let's pull it down. Keep going. Keep
24 going. Keep going. Perfect.

25

1 BY MR. ZAVITSANOS:

2 Q So, this is when you all are out there promoting Data iSight,
3 this magical, proprietary super-secret formula that comes up with a fair
4 price, right?

5 A Yes.

6 Q And Data iSight actually breaks it down into two big
7 categories, facilities, which doesn't apply here, right?

8 A Okay.

9 Q Facilities are like hospitals, right?

10 A Correct.

11 Q And the next on is professional pricing, that would be
12 people, right?

13 A Those would be professionals, or doctors, or -- yes, people.

14 Q So for a facility, and I don't want to belabor this, you use
15 publicly available cost data, right?

16 A Yes.

17 Q But that's not available for professionals, so you use
18 something else, right?

19 A Yes.

20 Q All right, sir.

21 MR. ZAVITSANOS: Close it up, Michelle.

22 BY MR. ZAVITSANOS:

23 Q All right. Now emergency room doctors, a totally different
24 breed of doctors, right? Right?

25 A I'm not familiar with the differences between an orthopedic

1 surgeon and an ER doctor, regarding characterizations.

2 Q We just saw, okay, a criticism of Medicare and how it is bare
3 bones, according to this MultiPlan document, right? We just went over
4 it?

5 A Yes.

6 Q How will we know Medicaid, not Medicare, Medicaid is --
7 Medicare is bare bones, Medicaid is the bone marrow, it's even lower,
8 right?

9 A Correct.

10 MR. ROBERTS: Your Honor? I'm assuming we've now
11 opened the door?

12 MR. ZAVITSANOS: No, Your Honor. I'm going -- I'm --

13 THE COURT: Can you approach?

14 [Sidebar at 2:58 p.m., ending at 2:58 p.m., not transcribed]

15 BY MR. ZAVITSANOS:

16 Q Now you are familiar with something called, and the jury's
17 heard about it, called EMTALA, E-M-T-A-L-A, right?

18 A Can you say it again?

19 Q EMTALA, E-M-T-A-L-A. Do you see that?

20 A Yes.

21 Q Okay. Now there's -- do you know that there's a whole
22 bunch of doctors in this country who do not accept Medicaid?

23 A I don't know the composition of providers that do not accept
24 Medicaid.

25 Q Do you have a family doctor?

1 A Yes.

2 Q Does your family doctor accept Medicaid --

3 A I do not know what my --

4 MR. ROBERTS: Objection. Relevance.

5 THE COURT: Overruled.

6 THE WITNESS: I do not know if my family doctor accepts --

7 BY MR. ZAVITSANOS:

8 Q Okay. Do so --

9 A -- Medicaid.

10 Q -- let me get this straight now. EMTALA means, you have to
11 treat, okay?

12 A Uh-huh.

13 Q Are you with me?

14 A Yes. I'm not familiar with the term, but --

15 Q You're not familiar with EMTALA, and you're the vice-
16 president involved in out-of-network programs, that includes emergency
17 room doctors, and you've never heard of EMTALA?

18 A I understand that emergency room physicians have to treat
19 doctors, but I haven't heard of the term Impala [sic] or EMTALA.

20 Q Okay. Then how does it end. Why? Here we go. So first
21 they have to treat people that are Medicare, right?

22 A Yes.

23 Q Okay. Then they have to treat people that are on Medicaid,
24 right?

25 A Yes, sir.

1 Q Then they have to treat people that are uninsured, right?

2 A Correct.

3 Q And finally, one out of every four times they treat people
4 with commercial insurance, right?

5 A Correct. I don't --

6 Q And this guy over here, Dr. Scherr, he doesn't have a choice
7 like the family doctor, right? He's got to treat all four of these, right?

8 A Yes.

9 Q Okay. Now, Exhibit 513, please. All right. So pull out that
10 3.2 sentence. This is --

11 MR. ZAVITSANOS: Hold on. Close it off, Michelle. Let's pull
12 up -- all right. Let's pull up, Michelle, right here, this bottom part, all the
13 way across. All the way across. Keep going.

14 BY MR. ZAVITSANOS:

15 Q Okay. It says, "This data represents how commercial health
16 plans spend your premiums. This data includes employer-provided
17 coverage as well as coverage you purchase on your own. Data reflects
18 averages for the 2016 to '18 benefit years. Percentages do not add up to
19 100 percent due to rounding." And it's something called the AHIP,
20 copyrighted 2021. Do you see that?

21 A Yes, I do.

22 Q All right. Now, here's what I want to know, and I'm going to
23 ask this very precisely. Do you have a dataset within MultiPlan that
24 evaluates out-of-network payments from commercial insurers for
25 doctors that are subject to EMTALA? Does that category exist anywhere

1 within MultiPlan?

2 A What do you -- please define category.

3 Q Do you have a, like with Data iSight -- and Data iSight
4 includes all out-of-network, right? Right?

5 A Yes. It's for out-of-network. Correct.

6 Q Yep. Do you have a tool that looks -- listen to the variables
7 here -- out-of-network commercial insurance for doctors that are subject
8 to EMTALA? Does that product exist within MultiPlan? Show me what
9 the median or average reimbursement is.

10 A Yes. We use -- we have a separate conversion factor for Data
11 iSight for place of service 23, which are ER line items, 99282, 99283,
12 99284.

13 Q All right. Data iSight includes Medicaid, right?

14 A No.

15 Q Does it include Medicare payments?

16 A No.

17 Q Does it include in-network payments?

18 A Yes.

19 Q Okay. So I'm going to ask it again. Do you have a tool that is
20 available to evaluate, to assist this journey --

21 A Yep.

22 Q -- in evaluating out-of-network only, where the data put in is
23 from out-of-network payments only --

24 A We have a tool --

25 Q Let me finish, sir.

1 A All right. Sorry.

2 Q Out-of-network payments only, where the data is out-of-
3 network only --

4 A We have a tool --

5 Q Can I finish my question?

6 A Sorry.

7 Q The data that you have includes outliers and includes in-
8 network, right?

9 A Yes.

10 Q Okay. Is there a way to back out the in-network payments so
11 that we can look at out-of-network payments for emergency room
12 doctors subject to EMTALA and what is typically paid?

13 A Under our current methodology and data source, yes.

14 Q What about during the relevant time period?

15 A No.

16 Q Okay.

17 A It's a collection of both in-network and out-of-network
18 services.

19 Q Okay. So during the relevant time period, is it correct to say
20 that the only collection of data that MultiPlan has that shows out-of-
21 network payments to emergency room doctors from commercial
22 insurance is your wrap network, sir?

23 A No, sir.

24 Q During the relevant time period?

25 A Yes.

1 Q What other tool during the relevant time period where the
2 inputs are just out-of-network payments? What else is there during the
3 relevant time period where we could run this magical formula to see
4 what the average amount is?

5 A So again, MultiPlan is a provider of services. We do not pay
6 claims. We do not determine whether it's an in or out-of-network -- or in
7 out-of-network payments, okay. That, the payor does. The payor
8 adjudicates the claims. We have data in our network products that are
9 out-of-network. We also have the data source that we use for our Data
10 iSight product has both in and out-of-network claims in there so we can
11 establish what a full view of the market is, not a biased, partial view.

12 Q Did you bring with you, sir, when you were talking to your
13 lawyers -- and by the way, do you know if you have other lawyers
14 listening in from New York right now?

15 A I have no clue.

16 MR. ROBERTS: Objection to form. Compound.

17 THE COURT: Overruled.

18 BY MR. ZAVITSANOS:

19 Q Do you know if you have other lawyers listening from New
20 York right now, right? Do you know?

21 A I have no clue.

22 Q Did you bring with you, so that the jury can see, what the
23 average out-of-network payment was in Nevada in -- between -- for the
24 relevant time period from commercial insurers for physicians subject to
25 EMTALA? Did you bring that with you?

1 A No. I do not have that in my head.

2 Q Okay. Thank you, sir. Now, let's look at -- oh, by the way,
3 you do know this case right here is the first trial ever, anywhere in the
4 United States, to evaluate Data iSight being used as a tool for
5 emergency room out-of-network charges by commercial payors, right?

6 A I have no knowledge of any legal proceedings or anything
7 with our organization.

8 Q You're not aware -- you've not testified before in any case
9 involving this, right?

10 A No, I haven't.

11 Q Yeah. I mean, do you know why that's why we have all these
12 people watching on this BlueJeans link?

13 MR. ROBERTS: Objection to form. Argumentative and
14 irrelevant.

15 THE COURT: Objection sustained. Move on.

16 MR. ZAVITSANOS: Let me move on.

17 BY MR. ZAVITSANOS:

18 Q All right. Let's go to Exhibit 239. Okay, 239. Now, this is
19 United's document, okay? It's in evidence. Now, let's go to page 26.
20 And I'll represent to you that this is a document United put together as
21 talking points for its clients, okay?

22 A Okay.

23 Q All right. Let's see what they're telling their clients. Now, it
24 says here Data iSight uses a patented methodology and publicly
25 available data to evaluate and recommend reductions from a cost up

1 rather than charge down approach. Right?

2 A Correct. That's what it says.

3 Q Yeah. That cost up is just for facilities, not for professional
4 claims, right?

5 A Correct.

6 Q Okay. So that -- if that's what they're using to sell this
7 program to these ASO clients, that is a little bit incorrect, right, sir?

8 A I disagree because it doesn't really say facilities to the end
9 user. And again, I'm not within the marketing department, either.

10 Q Sir, there are only two --

11 A At United.

12 Q I'm sorry. I didn't mean to cut you off.

13 THE COURT: Don't interrupt.

14 BY MR. ZAVITSANOS:

15 Q My apologies. It goes to their clients, United, and it's telling
16 them we have this tool that looks at actual costs, and we're going to
17 come up with a fair number using that as the baseline. But you don't do
18 that on professional claims, right?

19 A On professional claims, we look at allowable data of what is
20 being paid in the marketplace.

21 Q Let's go to Exhibit 22. And --

22 MR. ZAVITSANOS: Is this in, Michael? Hold on, Michelle.
23 Pull it down.

24 THE COURT: It is.

25 MR. ZAVITSANOS: Okay.

1 THE COURT: I have it as in.

2 MR. ZAVITSANOS: Pull up the bottom email, Michelle. And
3 pull up the -- right here. This paragraph right here.

4 BY MR. ZAVITSANOS:

5 Q Now, this is before United started using Data iSight, right?

6 A Yes.

7 Q And you see where it says internally, it looks like Emma
8 Johnson at MultiPlan is trying to pitch this to United, and you all are
9 saying, "We felt it important to reiterate that Data iSight is not CMS."
10 That's Medicare, right? CMS is Medicare?

11 A Correct.

12 Q "Is not CMS based and is rather cost-based," right? See that?

13 A Yes, I do.

14 Q That's not true for professional claims, right?

15 A Yeah, but I don't think they're talking about professional
16 claims there. It's a cost- or an allowable-based.

17 Q Well, okay. Let's look at --

18 A I can't -- I can't --

19 Q Let's look at -- I'm going to move on because the jury can
20 read this on their time.

21 A Okay.

22 Q Let's go to Exhibit 413. And now, this is one of the
23 documents that's put out by Data iSight.

24 MR. ZAVITSANOS: And Michelle, can you please go to page
25 two? Pull this out.

1 BY MR. ZAVITSANOS:

2 Q And it looks like something else sent to us. I need the Data
3 iSight logo. Okay. And you see here, it says Ruby Crest Emergency
4 Medicine? See that, sir?

5 A Yes, sir.

6 Q All right. So the healthcare -- to determine the Data iSight --
7 MR. ZAVITSANOS: Hold on, Michelle.

8 BY MR. ZAVITSANOS:

9 Q "To determine the Data iSight reimbursement amount, the
10 first step is to gather some information about your client." All right. I'm
11 going to skip ahead. "That is, Data iSight's recommended
12 reimbursement takes into account characteristics about the services
13 performed by the provider, the costs of doing business in their area, and
14 other information about their business." Do you see that?

15 A Yes.

16 Q What information did you have about Ruby Crest's business
17 before you sent this to us, cutting this reimbursement to exactly 350
18 percent of Medicare, sir?

19 A The -- if this is a professional claim, which it looks like it is,
20 this is the explanation for it. We know what the AMA sets forth from a
21 relative value.

22 Q No, sir. My question --

23 MR. ROBERTS: Objection, Your Honor. Could the witness be
24 allowed to finish his answer?

25 MR. ZAVITSANOS: Oh, I'm sorry. I'll move on. Go ahead.

1 THE COURT: Yeah. Go ahead and finish.

2 THE WITNESS: So AMA sets forth a relative value. Again,
3 those three components I talked about earlier, which are work expense,
4 what does it actually take, as an equation to operate or do a specific
5 service. The second would be practice expense for that line item that
6 was billed. What is the allocated RVU for that component. And then the
7 last is the malpractice portion. Those are the costs of doing business.
8 Those are the three components that the AMA or the American Medical
9 Association sets forth.

10 BY MR. ZAVITSANOS:

11 Q Sir --

12 A Yes.

13 Q -- RVUs are a variable that's not mentioned here. This says
14 that you looked at the cost of doing business in their area. Do you see
15 that? Do you have -- do you know where Ruby Crest is, sir?

16 A No, I do not.

17 Q And by the way, the way you use your geozips, when you
18 look at what the relevant area is, there's one for the State of Nevada,
19 right? Just one.

20 A Locality? Yes.

21 Q Okay. So that means that if you have a clinic right next to the
22 Bellagio hotel and you've got another clinic 20 miles outside of Elko, you
23 assume the costs are the same, right?

24 A I don't know where Elko is, so.

25 Q Right. In any event, sir, you told us you looked at the costs.

1 You don't mention anything about RVUs here, right?

2 A Correct. You can --

3 Q Okay. And --

4 MR. ROBERTS: The witness was cut off again, Your Honor.

5 MR. ZAVITSANOS: I did not cut him off. He was -- he
6 answered yes.

7 THE COURT: Did you finish your answer?

8 THE WITNESS: I -- that's fine.

9 MR. ZAVITSANOS: Your Honor, the answer to my question
10 is yes, also.

11 THE COURT: I think you cut him off.

12 THE WITNESS: Yeah.

13 MR. ZAVITSANOS: If I cut you off, sir, please let me know,
14 and I'll let you finish.

15 THE WITNESS: Okay. That sounds good.

16 MR. ZAVITSANOS: Thank you, sir. Okay. Now, let's go on.
17 Let's go to the next page. Next page after that, Michelle. Page three. All
18 right. Let's pull this up.

19 BY MR. ZAVITSANOS:

20 Q So this is something you all sent to us, and it looks like you
21 ran the tool and it determined that our plan was -- right here,
22 Michelle -- \$609.28, running the tool. Right?

23 A Yes.

24 Q And once again, what you're telling in your little form here is
25 that you took the provider's costs of doing business into account. Do

1 you see that? Right, sir? The provider's costs? Right here, "provider's
2 costs of doing business into account." Do you see that?

3 A Yes, I do.

4 Q Okay. And that's not true, because professional claims are
5 not cost-based, right?

6 A The methodology took into account the costs or the RVUs
7 associated with this claim.

8 Q Well, once again, you don't say anything about RVUs. This
9 looks like the actual costs, the provider's costs. You know what
10 possessive is?

11 A Yes.

12 Q Like for example, Michael's iPhone. That refers to his
13 iPhone, right? Provider's costs means the costs of this provider, right?
14 Right?

15 A No, they're talking about the costs of rendering services.

16 Q Sir, what you did here, you all came up with this form
17 language and you stuck it on every claim whether it was facility or not
18 because you know most people don't go through the fine print, right?
19 And you got a little sloppy by not clarifying it, right? Right?

20 A No, I disagree here.

21 Q Okay. And do you have an explanation when it says here
22 that the Data iSight reimbursement amount determined for your claim
23 was \$609.28? Does that seem to you to suggest that this mythical,
24 magical, proprietary, behind the curtain formula came up with that
25 amount?

1 MR. ROBERTS: Objection to form. Argumentative.

2 THE COURT: Objection sustained.

3 BY MR. ZAVITSANOS:

4 Q Does this suggest that this proprietary tool came up with this
5 amount, sir, based on what's written there?

6 A The tool provides services on behalf of whatever -- how
7 a -- how the client sets up an override, the methodology produces an
8 amount. And then any other client or operational overrides are applied.

9 Q No, sir. No, no, no, no. That's not my question. Let me try it
10 again. We just got done looking at all this fancy-schmancy language
11 about what they look at. The cost of doing business, what Data iSight is.
12 And here comes the punchline. It says the Data iSight reimbursement
13 amount determined for your claim was 609.28, right?

14 A Yes.

15 Q The override is separate from the Data iSight tool, right?
16 That's a client-driven thing, right?

17 A Correct.

18 Q Can you explain to the jury, sir -- strike that. You know that
19 every single -- and I mean every single one in this case -- has this
20 language and every single time, it comes out to 350 or 250. And the
21 language is we got there by using the tool, right, sir?

22 A Well, I think they're referring to the Data iSight as a system.
23 It all happens within the same system.

24 Q The system. The system, of course. Where does it say here
25 that this number was not Data iSight, was not the tool, but was rather

1 the override, so that it comes out to exactly 350 percent of Medicare?
2 Where does it say that, sir?

3 A I do not see it here, but it is something that a provider can
4 always call in and ask about the reimbursement.

5 Q Yeah. And -- okay. We're going to get to -- and by the way,
6 during the entire time that you've been there, one provider called you,
7 and that was TeamHealth, right? During the relevant time period. Right,
8 sir? One. Right?

9 A I don't -- I don't know what document you're referring to or --

10 Q One time, you've gotten a call from a provider, sir, asking
11 about how this tool works, right? One time.

12 A Yeah. Inquiring, yes.

13 Q One time.

14 A That's what -- that's what the data says.

15 Q And you kept it high-level. You didn't tell them how it works,
16 right, sir?

17 A I did not answer the phone call.

18 Q Okay. Let's -- now let's move on. Let's go to the formula to
19 this. You used a lot of kind of fancy mathematical terms, right?

20 A In what question?

21 Q Well, talking about the formula, right? The proprietary
22 pricing logic, the patented term, the -- right? Yeah, the methodology. Do
23 you see here, it's got a bunch of really fancy-sounding things here, right?

24 A Those are industry standard terms.

25 Q Well, let's take a look. Let's go behind the curtain a little bit

1 and take a look, okay, and see what you're doing. And let me start by
2 asking you this: first of all, you didn't bring the tool with you so that I
3 could look at it and question you about it, right?

4 A No.

5 Q All right. Because you're not going to do that, right?

6 A That's not on me to decide.

7 Q Yes, sir. Okay.

8 MR. ZAVITSANOS: So UnitedHealthcare 267, is that in,
9 Michael?

10 THE COURT: I show it is. I show that it is.

11 MR. ZAVITSANOS: Okay.

12 MR. KILLINGSWORTH: It's -- John, it's conditionally moved.

13 MR. ZAVITSANOS: Yeah. Okay.

14 MR. ROBERTS: Your Honor, for the record, I show this as
15 initially designated AEO.

16 THE COURT: Okay.

17 MR. ZAVITSANOS: All right. Let's go to page two, please.

18 THE COURT: Mr. Zavitsanos, you heard Mr. Roberts' last
19 comment?

20 MR. ZAVITSANOS: Yes.

21 THE COURT: Thank you.

22 MR. ZAVITSANOS: Yes. Thank you, Your Honor. Page two.
23 All right. Now, let's pull up --

24 BY MR. ZAVITSANOS:

25 Q This is what UnitedHealthcare is telling its customers what

1 Data iSight is. Okay. And reference-based methodology, publicly
2 available data, cost up, CPT, HCPCS, multiplied by conversion factor. Do
3 you see all that?

4 A Yes, I do.

5 Q That sounds very, very, very complicated, right?

6 A Yes.

7 Q Sir, this is a total front. Would you agree with me, sir?

8 A No, I do not.

9 Q Well, what insurance want to do?

10 A Say -- I didn't hear your question.

11 Q Yeah. This is a total front. You buy some data that includes
12 everything, take the average, and that's it.

13 A No. We end up --

14 Q Okay? Go ahead.

15 A We end up taking the median, not the average of --

16 Q Let's take a look. Let's take a look. So here's Exhibit 380,
17 page 10. And we've asked some other witnesses whether they know
18 what that is. And I asked about this thing called a conversion factor. Do
19 you see that? The conversion factor?

20 A Yes.

21 Q Okay. So let's hold that. Oh, by the way, before you started
22 pitching Data iSight to UnitedHealthcare, 90 percent of your top 20
23 clients had wrap agreements, right?

24 A I don't know the exact client dynamics --

25 Q Okay.

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1 A -- or percentages.

2 Q Let's look at Exhibit 82.

3 MR. ZAVITSANOS: Is 82 in?

4 MR. KILLINGSWORTH: I do not show it as in.

5 MR. ZAVITSANOS: Okay. Sir, will you grab the binder

6 behind you and grab Exhibit 82? May I ask counsel if he has an objection
7 to it?

8 THE WITNESS: Which one?

9 MR. ZAVITSANOS: 82.

10 MR. ROBERTS: Incomplete document, foundation, hearsay,
11 relevance.

12 THE COURT: Okay.

13 MR. ROBERTS: 4835.

14 MR. ZAVITSANOS: Please get it, please.

15 THE WITNESS: Grab it? Okay. So Exhibit 82?

16 MR. ZAVITSANOS: Yes, sir, to clarify.

17 THE WITNESS: Okay.

18 BY MR. ZAVITSANOS:

19 Q Okay. Well, let's not read what's in it. Does that have the
20 MultiPlan logo on it?

21 A Yes, it does.

22 Q Does it indicate that it was presented to United Healthcare in
23 March of 2017?

24 A I don't know if it was presented to them.

25 Q Does it indicate that it was presented to United Healthcare in

1 March of 2017?

2 A Yes. It says, "presented to UnitedHealthcare." But I don't
3 know if it was actually presented to them.

4 Q Okay. And if you go through it, does this appear to be data
5 from MultiPlan, including the data on page 7?

6 A Page 7?

7 Q Sir?

8 A Page 7, you said?

9 Q Yes, sir.

10 A Yes.

11 MR. ZAVITSANOS: Your Honor, we move for the admission
12 of Plaintiff's 82.

13 MR. ROBERTS: Objection, Your Honor. He's never seen the
14 document before.

15 THE COURT: You've laid an insufficient foundation at this
16 point. And I need to know what the relevance will be.

17 MR. ZAVITSANOS: The relevance is the percentage --

18 THE COURT: Well, no. You will --

19 MR. ZAVITSANOS: Okay.

20 THE COURT: -- elicit that.

21 BY MR. ZAVITSANOS:

22 Q Does this indicate the percentage of -- Mr. Crandell --

23 A Yes?

24 Q -- on page 7, does this indicate the percentage of your clients
25 that operated under wrap agreements, the top 20 clients as of 2017?

1 A Yes. It says -- it's allocated by top 5, top 10, and top 20. I
2 don't know how that's ranked. But it's giving a percentage of 80, 80, and
3 90 on the bottom line.

4 Q Okay. Does it also mention Data iSight on that page?

5 A Yes, it does.

6 Q Which is the -- what you've been talking about, right?

7 A Yes.

8 MR. ZAVITSANOS: Your Honor, I move for the admission of
9 Plaintiff's 82.

10 MR. ROBERTS: He still hasn't laid foundation for the
11 numbers, Your Honor. This witness is not the right person.

12 THE COURT: There's still an insufficient foundation.

13 BY MR. ZAVITSANOS:

14 Q Any reason to doubt the percentages that are laid out in
15 Exhibit 82, page 7, Mr. Crandell?

16 A I do not know the exact percentages as of this time for the
17 top five.

18 Q Was it generally high, sir?

19 A I --

20 THE COURT: Don't interrupt him, please.

21 MR. ZAVITSANOS: I'm sorry, Your Honor.

22 THE WITNESS: I'm sorry, I can't give you a basis. We have
23 over 700 clients. And of those 700 clients, there's thousands of different
24 configurations. I can't quote those off the top of my head.

25 BY MR. ZAVITSANOS: