

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 48
PAGES 11,751-12,000**

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CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Filed Under Seal

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

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

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

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

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

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

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

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

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

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

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

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

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

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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1 are not to single out any certain sentence or any individual point or
2 instruction and ignore the others. But you are to consider all the
3 instructions as a whole and with -- regard each in the light of all the
4 others. The order in which the instructions are given has no significance
5 as to their relative importance.

6 Number 3. The parties in this case are corporations. A
7 corporation is entitled to the same, fair and unprejudiced treatment as an
8 individual would be under like circumstances and you should decide the
9 case with the same impartiality you would use in deciding a case
10 between individuals.

11 4. Although you are to consider only the evidence in the
12 case in reaching a verdict, you must bring to the consideration of the
13 evidence, your everyday common sense and judgment as reasonable
14 men and women. Thus, you are not limited solely to what you see and
15 hear as the witnesses testified. You may draw reasonable inferences
16 from the evidence which you feel are justified in the light of common
17 experience, keeping in mind that such inferences should not be based on
18 speculation or guess. A verdict may never be influenced by sympathy,
19 prejudice or public decision. Your decision should be the product of
20 sincere judgement and sound discretion in accordance with these rules.

21 Number 5. If, during trial, I have said or done anything which
22 has suggested to you that I am inclined to favor the claims or positions
23 of any party, you will not be influenced by such suggestion. I have not
24 expressed nor intended to express, nor have I intended to intimate any
25 opinion as to which witnesses are or are not worthy of belief, what facts

1 are or are not established or what inference should be drawn from the
2 evidence. If any expression of mine has seemed to indicate an opinion
3 relating to any of these matters, I instruct you to disregard it.

4 Number 6. In determining whether any proposition has been
5 proved, you should consider all evidence bearing on the question
6 without regard to which party produced it.

7 Looks like this might be out of order. It's a little bit out of
8 order. I just read 9 but we're going back to 6 now.

9 6. You must decide all questions of fact in this case from the
10 evidence received in this trial and not from any other source. You must
11 not make any independent investigation of the facts or the law or
12 consider or discuss facts as to which there is no evidence. This means,
13 for example, that you must not on your own visit the scene, conduct
14 experiments, or consult reference works for additional information.

15 7. The credibility or believability of a witness should be
16 determined by his or her manner upon the stand, his or her relationship
17 to the parties, his or her fears, motives, interests or feelings, his or her
18 opportunity to have observed the matter to which he or she testified, the
19 reasonableness of his or her statements and the strength or weakness of
20 his or her recollections. If you believe that a witness has lied about any
21 material fact in this case, you may disregard the entire testimony of that
22 witness or any portion of his or her testimony which is not proved by
23 other evidence.

24 10. You should decide this case for or against each plaintiff
25 separately as if it were a separate lawsuit. Each plaintiff is entitled to

1 separate consideration of its own claims and defenses. Unless I tell you
2 otherwise, all instructions apply to each plaintiff.

3 You should decide the case for or against each defendant
4 separately as if it were a separate lawsuit. Each defendant is entitled to
5 separate consideration of its own claims and defenses. Unless I tell you
6 otherwise all instructions apply to each defendant.

7 11. In these instructions and your verdict form, these terms
8 have the following meanings:

9 Fremont Emergency Services means Plaintiff Fremont
10 Emergency Services Mandavia LTD.

11 Team Physicians means Plaintiff Team Physicians of Nevada,
12 Mandavia P.C.

13 Ruby Crest Emergency Medicine means Crum, Stefanko and
14 Jones LTD dba Ruby Crest Emergency Medicine.

15 United Healthcare Insurance Company or UHIC means
16 United Healthcare Insurance Company. United Healthcare or UHC
17 means United Healthcare Services Inc. dba United Healthcare.

18 UMR means UMR Inc. dba United Medical Resources.

19 Sierra or SHL means Sierra Health and Life Insurance
20 Company Inc.

21 Health Plan of Nevada or HPN means Health Plan of Nevada
22 Inc.

23 12. A preponderance of the evidence means such evidence
24 as when considered and weighed against that opposed to has more
25 convincing force and produces in your mind a belief that what is sought

1 to be proved is probably true -- more -- sorry. Is more probably true than
2 not true.

3 In determining whether a party has met this burden, you will
4 consider all the evidence without regard to which party introduced the
5 evidence. In this case, the standard of proof is the preponderance of
6 evidence unless I instruct you otherwise.

7 13. Clear and convincing evidence is that measure or degree
8 of proof which will produce, in your mind, a firm belief or conviction as
9 to the allegations sought to be established. It is an intermediate degree
10 of proof, being more than a mere preponderance, but not to the extent of
11 such certainty as is required to prove an issue beyond a reasonable
12 doubt. Proof by clear and convincing evidence is proof which persuades
13 you that the truth of the contentions is highly likely.

14 In determining whether a party has met this burden, you will
15 consider all the evidence without regard to which party introduced the
16 evidence.

17 14. The evidence which you are to consider in this case
18 consists of the testimony of the witnesses, the exhibits and any facts
19 admitted to or agreed by counsel. There are two types of evidence:
20 direct and circumstantial. Direct evidence is direct proof of a fact such as
21 testimony by a witness about what the witness personally saw or heard
22 or did.

23 Circumstantial evidence is the proof of one or more facts
24 from which you could find another fact. The law makes no distinction
25 between the weight to be given, either direct or circumstantial evidence.

1 Therefore all of the evidence in the case including the circumstantial
2 evidence should be considered by you in arriving at your verdict.

3 Statements, arguments, and opinions of counsel are not
4 evidence in the case. However, if the attorneys stipulate, meaning to
5 agree, to the existence of a fact, you must accept the stipulation of
6 evidence and regard that fact as proved.

7 Questions are not evidence. Only the answer is evidence.
8 You should consider a question only if it helps you understand the
9 witness's answer. Do not assume that something is true just because a
10 question suggests that it is.

11 You must also disregard any evidence to which an objection
12 was sustained by the Court and any evidence ordered stricken by the
13 Court. Anything you may have seen or heard outside the courtroom is
14 not evidence and must also be disregarded.

15 If the Court has instructed you that you must accept a fact as
16 proven, or draw a particular inference, you must do so. If the Court has
17 instructed you regarding a presumption regarding evidence, then you
18 must consider that presumption as well.

19 15. By an order of this Court entered August 3, 2021, certain
20 findings were made by the Court at the request of the plaintiff. One was
21 that the defendants had failed to comply with certain orders requiring
22 responses to discovery. And the court concluded that the defendants'
23 conduct was willful.

24 When evidence is willfully suppressed, there is a rebuttable
25 presumption which reads as follows: when evidence is willfully

1 suppressed, the law creates a rebuttable presumption that the evidence
2 would be adverse to the party suppressing it. Willful suppression means
3 the willful or intention -- intentional spoliation of evidence and requires
4 the intent to harm another party or their case through its destruction, not
5 simply the intent to destroy evidence.

6 When a party seeking the presumption's benefit has
7 demonstrated that the evidence was destroyed with intent to harm
8 another party or their case, the presumption that the evidence was
9 adverse applies and the burden of proof shifts to the party who
10 destroyed the evidence.

11 To rebut the presumption, the destroying party must prove
12 by a preponderance of the evidence that the destroyed evidence was not
13 -- I'm sorry, was not unfavorable. If not rebutted, the jury is required to
14 presume that the evidence was adverse to the destroying party. The
15 order also gave Defendants a deadline of April 15, 2021 p.m. -- 2020 at 5
16 p.m. to supplement outstanding discovery requests.

17 If you believe that the defendants have not rebutted evidence
18 introduced by the plaintiff, that relevant evidence was suppressed, you
19 are required to presume that the evidence was adverse to the
20 defendants.

21 16. During the trial, you have received deposition testimony
22 that was shown by video. A deposition is the testimony of a person taken
23 before trial at a deposition. The person took the same oath to tell the
24 truth that would be taken in court and questioned by the attorneys. You
25 must consider the deposition testimony that was presented to you in the

1 same way as you consider testimony given in court.

2 17. The lawyers and witnesses have shown you some charts
3 and summaries to help explain the facts. Charts and summaries that
4 have not been admitted as evidence are not evidence or proof of any
5 facts.

6 Certain charts and summaries have been admitted into
7 evidence. These charts and summaries are only as good as the
8 underlying evidence that supports them. You should give them only
9 such weight as you think the underlying evidence deserves.

10 18. A person who has special knowledge, skill, experience,
11 training or education, in a particular science, profession or occupation,
12 may give his or her testimony as an expert as to any matter in which he
13 or she is skilled. In determining the weight to be given such opinion, you
14 should consider the qualifications and credibility of the expert in reasons
15 given for his or her testimony. You are not bound by the expert's
16 opinions. Give it the weight, if any, to which you deem it, entitled.

17 19. Expert witnesses have testified about their reliance upon
18 information that has not been admitted into evidence. Reference by the
19 expert witness to this material is allowed so that the expert witness may
20 tell you what he or she relied upon to form his or her opinion. You may
21 not consider the material as evidence in this case. Rather you may only
22 consider the material to determine the weight, if any, you will give to the
23 expert's opinions.

24 20. Hypothetical questions have been asked of the expert
25 witnesses. In a hypothetical question, the expert witness is told to

1 assume the truth of certain facts, and the expert witness is asked to give
2 an opinion based upon those assumed facts. You must decide if all of
3 the facts assumed in the hypothetical question have been established by
4 the evidence. You can determine the effect of that assumption upon the
5 value of the opinions.

6 21. In answering questions about damages, answer each
7 question separately. Do not increase or reduce the amount in one
8 answer because of your answer to any other question about damages.
9 Do not speculate about what any parties' ultimate recovery may or may
10 not be. Any recovery will be determined by the Court when it applies the
11 law to your answers at the time of judgment.

12 22. Plaintiffs may recover the reasonable value of a direct or
13 indirect benefit conferred on defendants if the defendants knew of the
14 benefit conferred and accepted the benefit and retention of the benefit is
15 unjust without paying its reasonable value.

16 23. Defendants assert that plaintiffs' equitable claims for
17 unjust enrichment are barred by inequitable conduct toward defendants
18 under the unclean hands doctrine. In order to prevail on the equitable
19 defense of unclean hands, defendants must prove by a preponderance of
20 the evidence that:

21 (1) Plaintiffs' conduct was inequitable or in bad faith;

22 (2) Plaintiffs' conduct was egregious and not -- and non-
23 trivial;

24 (3) Plaintiffs' conduct is directly related to the subject matter
25 of Plaintiffs' equitable claims for unjust enrichment;

1 (4) Defendants have clean hands or in other words,
2 Defendants' conduct was in good faith and

3 (5) Defendants were injured as a result of Plaintiffs' conduct.

4 The only conduct on which you may make a finding of
5 unclean hands is that conduct directly related to the subject matter or
6 relationship at issue in this litigation. Unclean hands does not mean that
7 someone is a bad person in general, or in some other respect. You may
8 find unclean hands only if you find a direct connection between the
9 alleged unclean hands conduct, and the facts of this case and only as to
10 the equitable claims for unjust enrichment.

11 24. In determining the amount -- I'm sorry. In determining
12 the measure of damages in a claim for unjust enrichment, the focus is on
13 the reasonable value of the services by which the defendant would be
14 unjustly enriched.

15 25. Plaintiffs claim that they entered into an implied contract
16 with defendants. The plaintiffs contend that they agreed to provide
17 emergency care to patients covered by health care plans that defendants
18 issued or administered, submit claims in the manner required by the
19 defendants and not balance bill the patients. Plaintiffs contend that in
20 exchange, defendants agreed to reimburse plaintiffs for the reasonable
21 value of plaintiffs' services. Plaintiffs claim that defendants breached
22 that contract by failing to allow reimbursements to the plaintiff at the
23 reasonable value of plaintiffs' services.

24 Plaintiffs claim that defendants' breach of the contract
25 caused harm to Plaintiffs for which Defendants should pay damages.

1 Defendants deny these -- Defendants each deny these claims. They deny
2 that implied contract was formed between any of the Plaintiffs and any
3 of the Defendants, deny that an implied contract was breached, and deny
4 that Plaintiffs have been harmed.

5 The Defendants also assert that 62 benefit claims pertain to
6 the Medicare and/or Medicaid programs for which Plaintiffs cannot seek
7 damage. The Defendants also assert that 445 benefit claims do not
8 pertain to a patient that was covered by any health plan, insured or
9 administered by any Defendant, and that no Plaintiff submitted any of
10 these claims for reimbursement to any Defendant.

11 26. To succeed on a breach of contract claim, Plaintiffs must
12 show four elements. One, the existence of a valid contract between the
13 parties; two, Plaintiffs' performance; three, Defendants material failure to
14 perform; and four, damages resulting from the failure to perform.

15 27. An offer is a promise to do or not do something on
16 specified terms that is communicated to another party under
17 circumstances justifying the other party and including that acceptance of
18 the offer will result in an enforceable contract.

19 28. And acceptance is an unqualified and unconditional
20 assent to an offer without any change in the terms of the offer that is
21 communicated to the party making the offer in accordance with any
22 conditions for acceptance of the offer that have been specified by the
23 party making the offer, or if no such conditions have been specified in
24 any reasonable and usual manner of acceptance.

25 29. A contract requires a meeting of the minds that is the

1 parties must assent to the same terms and conditions in the same sense;
2 however, contextual intent is determined by the objective meaning of the
3 conduct of the parties under the circumstances, not any secret or
4 unexpressed intention or understanding of one or more parties to the
5 contract.

6 30. Consideration is necessary to make a promise
7 enforceable. Consideration can be performance or a promise to perform.
8 Consideration must be sought by the promisor in exchange for its
9 promise. And consideration must be given by the promisee in exchange
10 for that promise.

11 Consideration may include one, money; two, an act or a
12 promise not to act; or three, a return promise. Consideration may be
13 found anywhere in the transactions whether or not it is spelled out in
14 writing as consideration. In determining whether there was a bargain or
15 exchange, you must consider only the conduct of the parties.

16 31. A contract may be implied as well as expressed. For an
17 implied contract, the existence and terms of the contract are inferred
18 from the conduct of the parties, but both an expressed and implied
19 contract require a manifestation by the parties of an intent to contract
20 and an ascertainable agreement.

21 32. A contract cannot be enforced against a party who
22 proves that party did not receive the consideration agreed upon by the
23 parties in exchange for their promise or performance.

24 33. The measure of damages for a breach of contract is the
25 amount that will reasonably compensate an injured party for all the

1 detriment, harm, or loss flowing from the breach, and which was
2 reasonably foreseeable, that is which might have been reasonably
3 contemplated by the parties as the probable result of the breach when
4 the contract was made.

5 34. A party seeking damages has the burden of proving both
6 that it did in fact suffer injury, and the amount of damages that resulted
7 from that injury. The amount of damages need not be proved with
8 mathematical exactitude, but the party seeking damages must provide
9 an evidentiary basis for determining a reasonably accurate amount of
10 damages.

11 There is no requirement that absolute certainty be achieved
12 once evidence establishes that the party seeking damages did in fact
13 suffer injury. Some uncertainty as to the amount of damages is
14 permissible. However, even as provided by an expert, testimony that
15 constitutes speculation not supported by the evidence is not sufficient to
16 provide the required evidentiary basis for determining a reasonably
17 accurate award of damages.

18 35. Nevada Unfair Claims Practices Act prohibits any party in
19 the insurance business from engaging in the following activity which
20 constitutes and unfair or deceptive act or practice. In order to establish a
21 claim for breach of the Nevada Unfair Claims Practices Act, Plaintiff must
22 prove one, that Defendant violated a provision of the Nevada Unfair
23 Claims Practices Act; and two, the violation was a substantial factor in
24 causing Plaintiffs' damages.

25 36. Engaging in the following activity is considered to be an

1 unfair insurance practice: failing to effectuate prompt, fair, and equitable
2 settlements of claims in which liability of the insurer has become
3 reasonably clear.

4 37. A defendant is liable for the failure to effect prompt, fair,
5 and equitable settlements where one, the defendants' liability has
6 become reasonably clear on any individual claim; and two, an officer,
7 director, or department head for each defendant knowingly permitted or
8 had prior knowledge of the failure to effective a prompt, fair, and
9 equitable settlement of the claim.

10 38. To succeed in a claim under prompt pay statutes,
11 Plaintiff must show that the Defendant failed to willfully pay within 30
12 days of submission of the claim, a claim that was approved and fully
13 payable.

14 39. If you find that Plaintiffs suffered damages as a
15 proximate result of the Defendants' conduct, and that Defendants are
16 liable based on that conduct, you may then consider whether you should
17 award punitive or exemplary damages against those defendants.
18 Punitive or exemplary damages are to make an example of or punish
19 wrongful conduct. You have discretion to award such damages only if
20 you find by clear and convincing evidence that the defendant was guilty
21 of oppression, fraud, or malice in the conduct providing your basis for
22 liability.

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

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

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

7 Conscious disregard means knowledge of the probable
8 harmful consequences of a wrongful act and a willful and deliberate
9 failure to avoid these consequences. If you find that punitive damages
10 are appropriate and find that you will assess punitive damages, you will
11 hear additional evidence and I will further instruct you.

12 40. When you retire to consider your verdict, you must select
13 one of your number to act as a foreperson who will preside over your
14 deliberations and will be your spokesperson here in court. During your
15 deliberations you will have all of the exhibits which were admitted into
16 evidence, these written instructions, and forms of verdict which have
17 been prepared for your convenience. In civil actions, three-fourths of the
18 total number of jurors may find and return a verdict. This is a civil
19 action. As soon as six or more of you have agreed upon a verdict, you'll
20 have it signed and dated by your foreperson, and then return it to this
21 room.

22 If during your deliberations, you should desire to be further
23 informed on any point of law or hear again portions of the testimony,
24 you must reduce your request to writing, signed by the foreperson. The
25 officer will then return you to the court where the information sought will

1 be given to you in the presence of the parties or their attorneys.
2 Remember, the Court is not at liberty to supplement the evidence.

3 And we're going to take our lunch before the closing
4 arguments, but this is the final jury instruction.

5 Number 42. After lunch, you will listen to the arguments of
6 counsel who will endeavor to aid you to reach a proper verdict by
7 refreshing in your minds the evidence and by showing the application
8 thereof to the law. But whatever counsel may say, you will bear in mind
9 that it is your duty to be governed in your deliberations by the evidence
10 as you understand it and remember it. And by the law as given you in
11 these instructions. And return a verdict which according to your reason
12 and candid judgment is just and proper.

13 Dated this 23rd day of November, 2021.

14 Okay. So we're going to take our lunch recess now. Thank
15 you for the attention you gave me. Please give the attorneys the same
16 attention when they do their closings.

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

22 Don't conduct any research on your own relating to the case.
23 Don't consult dictionaries, use the internet, or use reference materials.
24 Don't put anything on social media about the trial. Don't talk, text, tweet,
25 Google, or conduct any other type of research with regard to any issue,

1 party, witness, or attorney involved in the case.

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

4 It's 11:49. Let's be back at 12:20. Thank you.

5 THE MARSHAL: All rise for the jury.

6 [Jury out at 11:49 a.m.]

7 [Outside the presence of the jury]

8 THE COURT: Okay. Anything for the record before you take
9 your lunch?

10 MR. ZAVITSANOS: No, Your Honor. Not from the plaintiffs.

11 THE COURT: Do we still have the one issue on the one
12 exhibit?

13 MR. LEVINE: I think a small housekeeping. We have
14 swapped out the exhibits we said we were going to swap out. So that
15 relates to exhibits 4455, 4166, 4457, and 4168, all of which have
16 previously been conditionally admitted and I think they'll now be
17 admitted?

18 THE COURT: That's correct.

19 MR. KILLINGSWORTH: That's correct, Your Honor.

20 THE COURT: They can all be then admitted.

21 [Defendants' Exhibits 4455, 4166, 4457, and 4168 admitted into
22 evidence]

23 THE COURT: And what about 4971?

24 MR. LEVINE: And 4971 we have agreement on -- there's one
25 highlight but yes I think we have --

1 MS. KILLINGSWORTH: No, we have an agreement. There's
2 just some green highlight left but it's good.

3 THE COURT: Good. Will you please approach the clerk to
4 give her those numbers, so she'll have clarity?

5 MR. LEVINE: We will, yeah. And just for the record, Your
6 Honor, 4971 is admitted then?

7 THE COURT: Yeah.

8 [Defendants' Exhibit 4971 admitted into evidence]

9 MR. LEVINE: Thank you. Appreciate it.

10 THE COURT: Okay.

11 MR. KILLINGSWORTH: Thank you, Your Honor.

12 THE COURT: But please, she's got a really hard job.

13 MR. LEVINE: We will definitely -- you have the hardest job in
14 the courtroom right now.

15 [Recess from 11:51 a.m. to 12:32 p.m.]

16 THE COURT: No need to take appearances; we did that this
17 morning. Are we ready to bring in the jury?

18 MR. ZAVITSANOS: Yes, Your Honor, for the Plaintiff.

19 MR. BLALACK: Defendants are, Your Honor.

20 THE COURT: We have 198 people on BlueJeans. The
21 capacity is 200, just to let you know.

22 [Pause]

23 THE MARSHAL: All rise for the jury.

24 [Jury in at 12:24 p.m.]

25 THE COURT: Thank you. Please be seated. Is the Plaintiff

1 ready to argue?

2 MR. ZAVITSANOS: Yes, Your Honor.

3 THE COURT: Please proceed.

4 PLAINTIFFS' CLOSING ARGUMENT

5 MR. ZAVITSANOS: May it please the Court, counsel. So
6 about a week into this case the realization hit me that Joe Ahmad, my
7 law partner here, the last time we tried a case together was in 2008.
8 2008. Some 13 years ago, and I've known him since I was 22. Okay?

9 And we started our firm in 1993. At the time it was just him
10 and I, and our office was literally in a dilapidated shack that had a hole in
11 the roof, and when it rained we literally had to put a bucket out. Okay?
12 And between 1993 and 2008, the last time we tried a case together, we
13 kind of arrived.

14 We were -- people started taking notice of us, our firm grew,
15 and by 2008, man, I was the king of the world. I had assumed leadership
16 positions in the community. Everybody in the Houston legal market
17 knew us. We had started hiring stellar talent. I had four beautiful
18 children, all under the age of 12, a loyal wife, I had just bought a new
19 house, I had moved my parents to Houston, and everything was great.
20 Everything was firing on all cylinders. Right? And I felt invincible,
21 absolutely invincible. That was 2008, which was by that point one of the
22 best years of my life.

23 And then on a dime, in 2009, after ignoring this big lump that
24 had grown to the size of a baseball, I get diagnosed with Stage IV cancer.
25 So I dealt with it the way I dealt with most other things because I felt

1 invincible. Okay. I was going to do the chemo, and I was just going to
2 ignore it, was just going to keep going on.

3 A month after that, my father starts dying. By the way, he
4 made this suit, he was a tailor, okay? I wear this in every trial. Three
5 months after that, my wife gets diagnosed with Stage III cancer. Four
6 small children, okay? Now she was a basket case, but the way that I
7 dealt with it, I didn't slow down, I went harder. Harder. Okay? I dolled it
8 up.

9 I was working more, travelling more, I mean, they wanted me
10 to do chemo in the hospital, I made them put a portable pump on me
11 because I couldn't stay there. Right? And while I'm doing this and I'm
12 going harder, my white blood count is dropping and dropping and
13 dropping and dropping, and I feel weaker and weaker, but I'm blocking it
14 out of my mind.

15 So one afternoon while I'm home, I collapse in the middle of
16 our living room, unconscious. My wife is hysterical. Okay? Calls the
17 ambulance. It's massive traffic in Houston. They can't revive me, and
18 the cancer center where I was getting treated was all the way across
19 town, so the ambulance takes me to a level two trauma center near our
20 house. Okay? And the ER doctor at that hospital literally save my life
21 that night, that day. Okay?

22 And it wasn't -- you know, if he hadn't done that, the
23 trajectory of the lives of my children, of my schizophrenic sister that I'm
24 responsible for, of my parents that I had moved down to Houston, their
25 lives would have been completely altered. The trajectory would have

1 been different.

2 Now here's the thing, I'm just one guy, and I -- that memory
3 is seared in my brain. This guy over here, and the doctors that we have
4 here, they do this every single day. Every single day. Every single day
5 there's a story like that, and you know, when we go to the doctor, when
6 we go to the doctor, it's because we're not feeling well, we need to get
7 checked up.

8 When you go see him, right, you know what he encounters
9 every day? People urinating on him, defecating on him, throwing up on
10 him, bleeding on him, maybe sometimes attacking him that have mental
11 problems, screaming at him. I mean, it's an emergency. It's an
12 emergency. Okay? It's an emergency.

13 Now listen, you all here, you have no idea how important
14 you all are in this case. This is the first case to go to trial where the value
15 of emergency room services against a major commercial carrier is going
16 to be decided.

17 MR. BLALACK: Objection, Your Honor. Not in evidence.

18 THE COURT: Objection sustained.

19 MR. ZAVITSANOS: You are going to have the ability to
20 speak about what that value is, and let me tell you something, the world
21 is watching. I think we've got like 200 people watching this trial right
22 now. Insurers, other healthcare professionals, they're all watching. You
23 have more power right now than Congress does, because this is so
24 much more, it's about so much more than just this 10 and a half million
25 dollars that we're owed. It really is.

1 Now I want to go through some of the evidence with you.
2 Okay. Now we talked about [indiscernible]. And listen, when you go
3 back there, our exhibits, the Plaintiff's Exhibits are in mostly
4 chronological order. Here's what you're going to find. The way they talk
5 about these doctors, it's like the difference -- they talk about them like
6 you're shopping for tires between Costco and Walmart. They talk about
7 them like they're grains of sand. Like it's just expected that they're going
8 to work for peanuts, and the ultimately, it's the insurance company alone
9 that gets to make the decisions.

10 There is this level of arrogance in these emails that frankly, I
11 think you're going to find a little disturbing, and I've only covered some
12 of them, and we took a lot of your time, and we're going to wait on you,
13 but read those emails.

14 Now here's what makes us different, right? And I know we
15 talked about this, it's this law, right? Because unlike every other doctor,
16 including these urgent care doctors that are nothing more than family
17 practice doctors, and I don't want to minimize them, but they are not
18 emergency doctors. Every other doctor, what's the first thing you do
19 when you show up with that little glass door, what's the first thing they
20 ask for? Let me see your insurance card. Right? We've all been there.
21 He doesn't do that. He doesn't do that. Right?

22 So our healthcare system for emergency room doctors, and
23 by the way, whatever you all decide, this is only about emergency room
24 doctors. It's not about out-of-network for rheumatologists, or
25 cardiologists, it's about emergency room doctors because we really are

1 different, because we're the only doctors where this sustains this. Okay?

2 And we know the MultiPlan folks, when they were pitching it,
3 and this is -- this is the one time where MultiPlan was actually honest.

4 Okay? I'm going to get to them in a little bit. They call it a barebones
5 medical reimbursement. That's what Medicare is according to MultiPlan,
6 right? And remember, in this document, and I'm going to give you -- I'm
7 going to give you the exhibit numbers as we go, all right, so please, if
8 you can, write these down. So this is in Plaintiff's Exhibit 299, and what
9 they said was the average person does not realize how low the Medicare
10 rates are.

11 Now what is Medicare? Medicare is not for the general
12 population. It is limited to people over the age of 65, right? If you're 35
13 or 40 years old, you can't get Medicare. It is limited, and it is a safety net
14 from the government, and the government sets the rate. There's no
15 negotiation, there's no bargaining, they set the rate. They set the rate.
16 Okay? And any time the government is involved in something, and it
17 comes out of Washington, it is subject to all kinds of political influences,
18 and so Medicare ends up being a political compromise. But it is a
19 barebones medical reimbursement, I mean, they got that right.

20 Now United, before they -- before the greed kind of overtook
21 them, this is what they did. Before 2016 they used FAIR Health for
22 reasonable and customary. You'll notice, by the way, they did not admit
23 one document, not one, not one, showing what the reimbursements
24 were before 2016. Instead, it came from testimony like, jokers like this
25 guy, John Haben. Take my word for it, take my word for it, right? I

1 mean, that's what they did.

2 Now -- and then, they try and explain this away. I mean, this
3 was kind of clever. Well, they said, well, the reasonable and customary
4 program doesn't apply to emergency room doctors. Well, except one of
5 the exhibits before 2015 said that it did, right? It didn't limit it to people
6 with the in-network benefit level. But more importantly, that's their
7 program. That's this program.

8 Whether they were going to use this reasonable and
9 customary standard to evaluate out-of-network charges was not
10 dependent on a program, it was defined by what's in the certificate of
11 coverage for the self-insured plans, or the plan benefit booklets for the
12 ASO clients. Totally independent of this program.

13 So -- and, of course, on their website they tell the world that
14 the affiliates of UnitedHealth Group use the 80th percentile, and they
15 come in here and they tell you, why not use the 50th? Why not use the
16 60th? Well, I'll answer it, because you say that's what we should do.
17 Okay? That's what United says they should do. All right.

18 And we know before this scheme started in 2016, this is
19 exhibit -- by the way, the exhibit number is down here, if I forget to
20 mention it, okay? So this is Plaintiff's 14. Now United, their messaging
21 was refined as it went along. This is a document from 2014, and this is
22 when they were still paying bill charges and reasonable and using FAIR
23 Health to come up with the out-of-network and look at what they say.
24 Why is United applying the FAIR Health to claims by certain out-of-
25 network providers instead of paying billed charges? And industry

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1 standard for determining reasonable and customary rates is through the
2 use of the FAIR Health database. This is what United says. The
3 compensation is fair, and within the range of payments typically
4 accepted, accepted, accepted. Okay?

5 All right. Now this is Exhibit 25. This is one of the most
6 important documents in the case, because it is Exhibit 25 that tells us in
7 the box right above this one, that 95 percent of all members were under
8 the protection of these wrap agreements. The wrap agreement was a
9 discount off of the billed charge, right? And the wrap agreement
10 prohibits the provider from balance billing. And whatever that discount
11 was, United would take a fee on that, even though they were doing
12 nothing for it. So it was a win, win, win. And members not getting
13 balance billed, the doctor is taking a discount, United's making money
14 everything's good, right?

15 Now this is the case right here. Reasonable and customary.
16 And just -- the question you're going to get on the form is what is
17 reasonable value? Reasonable is the very word that United used; usual,
18 customary and reasonable, reasonable and customary, which they
19 equate with the 80th percentile of FAIR Health, which is our billed
20 charges, which is below the 80th percentile on average.

21 So then they start getting greedy. Here's day 6, Mr. Haben,
22 page 148. Before you began migrating -- and look, I know I had him up
23 there a long time, and I gather a little bit of it at times was repetitive, I
24 understand that, but man, the guy gave up a lot of issues like this one.
25 Before you begin migrating, physicians were paid reasonable and

1 customary charges, right? What did he say? Okay? That's what they
2 were being paid.

3 Now where are the documents that confirm that? Well, we
4 don't have them. They have them, and they didn't turn them over. We
5 don't have them, and that's why in these jury instructions you got the
6 instruction that what they did was willful, withholding evidence from us.
7 The Court made a finding that was willful. I'm going to get to that in just
8 a little bit.

9 Next, 97 percent of the claims for United paid at 90 to 100
10 percent of billed charges. Okay? That's Defendant's, that's the
11 Defendant's Exhibit 5177. I mean, you sit in this trial and they hirer
12 exceptional lawyers. I mean, Mr. Blalack is very, very good. I really
13 admire watching him in this trial. He's patient -- not like me, okay? He's
14 very deliberate, he's smart, and he's very convincing. Okay?

15 But the reality is this right here, right here. Okay? Haben
16 says it, this document says it, and the materials, the press materials
17 initially say it. I mean, it's a given. And they don't produce the
18 documents contradicting it. So they were paying billed charges. Okay.
19 So that's our starting point, right?

20 Oops, what am I doing Michelle? There we go. Okay.

21 All right. Now here's the problem. So if there was a wrap
22 agreement, right, United was taking a fee on that, but if there was not a
23 wrap agreement, and they were just paying usual, customary, and
24 reasonable, United did not get a fee on that. Okay? You know, and look,
25 I don't fault them for it because it's a common human trait. The reality is

1 for a lot of folks, the more money you make, the more money you want
2 to make. I mean, it's a common thing, like, you know, you see these --
3 you see these folks in the news that are worth billions of dollars, and
4 they're charging harder. Okay?

5 And United was not getting a fee on this, and they were
6 paying under UCR, so they had to change that. And so the problem was,
7 you see, when they started this nonsense with this educating the public,
8 right? And remember during jury selection when we asked that multiple
9 choice question? Okay? A, B, or C, is it the doctors' fault, the insurance
10 company's fault, or both? And a lot of people answered both?

11 Well, let me tell you something, they got to you all. Whether
12 you like it or not, subconsciously, they got to you all through their little
13 Facebook posts and the marketing and burying things in newspapers,
14 and getting people on TV. Okay? They changed the narrative. And
15 here, and what was the narrative? The narrative was we had this huge
16 problem with balance billing. 95 percent, no balance billing. 95 percent.
17 And that's right in the wrap agreement that United understood, right?

18 And so -- and then they said, well, we had to be competitive.
19 Now this is the '17 business plan, and remember, they're forward-
20 looking, right? So in '16, they were the industry leaders, and they were
21 exceeding the margins by more than -- by five dollars per member, per
22 member. That's what they charged, and that's the -- that's the amount in
23 excess, that's not how much they were making, they were making more
24 than that, that's the amount that they were exceeding the competitors by
25 in the ASO market. Right? And they were numero uno in the industry.

1 They are the biggest insurance company.

2 So what did they do? So they decide they're going to
3 educate the public. Educate the public on impacts. I mean, this is now
4 my favorite word. I barely knew what it meant when I got in this case, I
5 use it all the time now as a joke, because the use of this word with what
6 we were doing is a joke. And so they start saying that there's egregious
7 billing of certain non-par providers. So -- but people know that if it's an
8 insurance company on the front lines that's trying to change the
9 narrative, that's not going to work, and so what do they do?

10 They go out and they pick up this guy, okay, and they get
11 world class university. World class university to begin seeding. What
12 are seeds? Seeds are plants that are not plants yet, and you put them in
13 the ground, and you water and you wait, and the longer you wait, with
14 sunshine, air, oxygen, and water, the higher that that plant grows, and
15 they were seeding the ground with local market stories that frame the
16 issue.

17 Everything we are doing to support the Zack Cooper work,
18 our support of Zack, Dr. Cooper is Zack to United. Okay? Is expected to
19 remain behind the scenes, and the company will just be a large carrier.
20 Start on the offensive in the public debate. I mean, this sounds like some
21 kind of political campaign. Right? You go negative early. Aggressive
22 focus. Focus on emergency room practices and high rates. Here's a few
23 examples of how we will tell our story, and who's their spokesman? Mr.
24 Yale.

25 Now there's a problem, right? TeamHealth is there, no doubt

1 about it, right? And I know you all are going to get back there and say,
2 well, this is just two big -- two big companies fighting against each other.
3 Well, we are. And if you want to change the narrative, what do you do?
4 You go after the biggest kid in the school yard, right? If you take us out,
5 right, all these small emergency practices, because this case is going to
6 affect what happens to --

7 MR. BLALACK: Objection, Your Honor. This is talking about
8 evidence related to other parties not in the case.

9 THE COURT: Objection sustained.

10 MR. ZAVITSANOS: They go after the biggest kid in the
11 schoolyard, and they know if they can take us out, that will help change
12 the narrative, so they target us, right? We have taken steps to make sure
13 UnitedHealth Group is not named, and we're going to name TeamHealth
14 by name.

15 Here's more. Evolved member advocacy and educate the
16 public on the impacts of egregious billing of certain non-par providers.
17 Now this is -- this is at a time while they're changing the narrative
18 because it's really amazing the foresight these people have. They are
19 looking down the road, they were looking down the road six years, step-
20 by-step, they're planting the seed, and the efforts begin to pay off. They
21 get a bite. I mean, look, this is -- this is like the most respected names in
22 the news world, The New York Times, The Wall Street Journal, The
23 Washington Post, National Public Radio, ABC World News Tonight, and
24 others, and there is glee within United, that we are being targeted, and
25 we are being made the scapegoats. Look it. Dan Rosenthal, one of the

1 division presidents, piling on, nice splash.

2 And the customers, we've heard a lot about the customers,
3 where were they? Where were they? Did we hear even one name, one
4 company, one sector of anybody who was complaining about the way
5 health plans were being run in 2016? UnitedHealthcare, one of the
6 biggest companies in the world doesn't have a single scrap of paper to
7 support not even an internal memo, saying I spoke with so-and-so, and
8 they're complaining about high rates. There is not one shred of evidence
9 in evidence to back this up.

10 And how do we know that it was United doing the pushing
11 rather than the clients doing the pulling? Just look at the exhibits. This
12 appears over and over. You will find it in the exhibits multiple times that
13 the goal was to get the clients off of reasonable and customary. Why?
14 Because they're not getting a fee on reasonable and customary. Right?

15 And here is Mr. Haber. Now this is the architect of these
16 programs. This is the head guy. Right? In his deposition he said that --
17 he wants to tell the jury that companies are going bankrupt because of,
18 what? What? Companies like TeamHealth are doing in the emergency
19 room. Okay? Then we asked him, where is it? I don't know, I can't tell
20 you. Okay? Can you point me to one document anywhere where that
21 statement is true? I couldn't answer that. Here's the thing where, you
22 know, following up on the deposition about bankruptcy. Okay.

23 And then a funny thing happened. Okay? Like the Blob?
24 You know, the Blob started getting real big because the -- you know, the
25 more the Blob feeds, the more it needs to feed, right? And what

1 happened was the shared savings, the revenue that they were making
2 actually started dropping a little bit because billed charges started
3 coming down.

4 And so Dan, the CEO, told me today he needs an answer on
5 this ASAP, and he is anxious, very. Why? Because he's reporting
6 financial numbers, I don't know, to some analyst or higher-ups, and
7 there's deep concern. So to the outside world, okay, escalating billed
8 charges are the problem, but within United, the real problem is declining
9 billed charges. That's the real problem, and that's what this is, SSP,
10 Shared Savings Program, is not coming in as forecasted. That's the one
11 they take the fee off of. Right? Okay. So we decide, here's Ms. Paradise,
12 and Mr. Haben, UMR. We're going to generate additional savings, now
13 listen to this, by not running claims through usual and customary.

14 Now you know, sometimes with this corporate speak, you've
15 got to unpack it a little bit. Here's what we know. What we know is 95
16 percent of the customers were on wrap agreements by '16. More the
17 majority of the ASO clients had reasonable and customary in their plan
18 benefits. So what does this mean?

19 This means we're going to drive all out-of-network claims to
20 a more aggressive pricing. Translation? We are not going to follow the
21 plan documents. She doesn't say for the ones that allow it. She doesn't
22 say for the ones that have the language that enable to do it. We're just
23 going to do it. Right. And who do they get to help? This house of cards
24 called MultiPlan. Right.

25 With their little formula that they copies from Social Security.

1 And by the way go back there and look at the formula. It's identical. It's
2 identical. I'm going to get to that in a minute. It uses a proprietary
3 computer program to generate pricing recommendations. They had a
4 data base of out-of-network payments limited to out-of-network
5 payments. And that's called the wrap -- the wrap network. That's what
6 the company was founded on.

7 But what happened was MultiPlan needs to continue making
8 more like United, so they get more aggressive. And they come up with
9 this scheme to essentially figure out a way to pay less and they're going
10 to split the savings. And so this tool, this mythical tool, behind the
11 curtain, the Wizard of Oz, well, Toto actually pulled the curtain back
12 during this trial and this is what we saw.

13 They going to configure it to fall below a client's usual and
14 customary amount. A client's usual and customary amount. Not the
15 client's usual and customary amount. The clients. What's in the SBD.
16 And so they cut it to 350. Then they cut it to 250. And they do it at
17 different times, depending on whether it's ASO or fully insured. Right.
18 Okay.

19 So and here it is. I mean this is what -- this is what MultiPlan
20 says in its documents, and they have to say that. Because if you just
21 take a percentage of Medicare, you don't need MultiPlan, right. You
22 need a front that's going to sound real scientific and real official and real
23 fancy sounding, so that you can tell a provider, well, we ran it through
24 the secret data engine, and this is what it came up with.

25 So look at this. How is it possible -- by the way, look at these

1 dates. They're right around the time they transition from 350 to 250.
2 Okay. This one is exactly 350 percent of Medicare. And you'll find the
3 Medicare rate in the exhibits. This one is exactly 250 percent of
4 Medicare.

5 Now listen, the Defendants spent a lot of time coming up
6 with all kinds of numerical explanations and talking about stadiums and
7 if you sit in the lower bowl versus the upper bowl, you pay different
8 rates. Huh? We're not selling stadium seating here. We're saving lives.
9 People are showing up at the emergency rooms. We have a standard
10 charge. Our charge does not change. And yet with them, look at this.
11 Look how close in time this is and look at the difference. This is the tool
12 that's supposed to be objective. Right?

13 Here's another one, Walmart. Again, 350-250. And by the
14 way, I mean this is Team Physicians. I mean we've got three different
15 amounts. Now they're going to come up here and try to explain that
16 somehow but sometimes the simplest answer, the simplest answer is
17 the one right in front of you. Okay.

18 And the answer is they literally pay what they want. United
19 pays what it wants. So as they're making more and more money, and
20 now it's getting up to a billion dollars. The blobs now gotten bigger. It
21 needs to feed more. And so MultiPlan says, look at this. This is
22 following Ms. Paradise, that all out-of-network payments are going to be
23 processed right through OCM.

24 And MultiPlan is telling we're not going to follow the plan
25 documents. Right? We're not going to follow the plan documents, and if

1 they complain, then we'll adjust on appeal. And before they complain,
2 we're going to explain to them how this data engine is very scientific,
3 very objective and fair.

4 Now if you're a doctor in a practice of three or four people
5 and the difference that you just got screwed on is about \$400, are you
6 really going to hire a lawyer or do something about that? I mean they
7 know that they have all the power and all the leverage here. Okay. I
8 mean this is unbelievable. This follows what Ms. Paradise said internally
9 at United. And this guy that showed up from MultiPlan, what's his
10 name?

11 UNIDENTIFIED SPEAKER: Crandall.

12 MR. ZAVITSANOS: Yeah, Crandall. He disavowed this. This
13 is the vice president, the data guy. And this is a MultiPlan document. He
14 disavowed it. He said I don't condone that. Okay.

15 Now remember back in the '90's, the Wendy's commercial,
16 where's the beef. Where's the SBD? Where's the SBD? Well, we got a
17 few of them. And we know AT&T Mobility Medical Program. Now this --
18 now listen, Exhibit 120, please write that down. Exhibit 120. Okay.
19 There's another one that they said, ah-hah, the reimbursement
20 document didn't show this. Doesn't match up with that other one. Well,
21 it matches up with this one. This is the AT&T Mobility Program. And
22 look at what it says.

23 How are they going to reimburse non-network emergency
24 services? What are they going to use? Reasonable and customary.
25 That's what they're going to use. That's what United is charged with

1 doing. There's a problem, though. The problem is even though they're
2 making millions of dollars a year, probably tens of millions of dollars a
3 year over this PNPM fee, they want more. And they can't make any
4 money off of this. The reasonable and customary. So what do they do?
5 To heck with it. We're just going to run it through OCM.

6 Right. We're going to run it through OCM and we're going to
7 cut the rate. We're going to charge the client and we're going to put that
8 money in our pocket. They literally ignored the plan language. And the
9 irony is witness after witness gets up on the stand and they say we're
10 limited to what the plan allows us to pay. Oh, really? How about the
11 opposite of that. Are you required to administer it the way the plan
12 says? You know, they didn't ask that question.

13 Okay. And yet they do this again, and again, and again, and
14 again. Every AT&T document you're going to find. Every EOB for AT&T
15 Mobility they ran it through this program. And by the way, this program
16 isn't a program. What it is, is getting some computer science person to
17 set up their computers, because they're getting millions of claims a day.
18 And it just runs through the system. And it's automatically applying it.
19 There's no program here. They just cut the rate. But they call it a
20 program.

21 And they refer to Data iSight as a legally sound process.
22 Well, I think we shattered that yesterday when Mr. Crandall took the
23 stand. But how do they refer to what they were doing before they got
24 Data iSight, random, calculated amounts. Random. For the unfair claim
25 settlement practices claim, you're going to answer. Random is a dagger

1 through the heart. That means you're doing whatever you want
2 randomly. As opposed to following some process. Okay.

3 Okay. So look at what's happening here. So my dear friend,
4 Mr. Roberts, who I've gotten to be very good friends with during this
5 trial, I like him, I guarantee you the boots he's wearing today cost more
6 than that. Cost more than what we're getting for him doing to people
7 what Dr. Gupta did for me. Okay.

8 You can stop this. Because this is going to go lower and
9 lower and lower. You can stop it. You can stop it. We've waited a long
10 time getting here. This is the single most important case that we have.

11 Now they came up with all kinds of explanation about this.
12 Means people going in network, you know. Read the document. All the
13 add-on language that they keep putting on isn't in the document. Bill
14 charges were going up. Maybe because -- I don't know, maybe because
15 a bunch of doctors felt well, gosh if we cut our bill charges, maybe they'll
16 treat us better. That's like dropping chum in front of a shark.

17 Okay. So what did they do? They drop the ceiling -- as our
18 charges are coming down, they drop the ceiling from 500 to 400. And of
19 course, every charge is always going to over the ceiling, every time.
20 Because of the column, because you treat four groups. Right. It's
21 always going to be above 400. And United wants to make sure that they
22 can do this to us, so they want to make sure that in order to fall into the
23 waterfall, right, and qualify for these programs, that the bill charge is
24 above that.

25 Okay, so all right. So what's the impact on the patients? And

1 listen, we're talking about lives here. We're talking about lives. And I
2 know we tend to think in terms of premiums, right. Like when we buy
3 car insurance, well, how much is that going to cost me. We don't think
4 about the claims until we're in that situation. And let me tell you, when I
5 was in the ambulance unconscious, and my wife was next to me
6 hysterical, we passed this little community hospital. And she screamed,
7 my wife does not swear, but she screamed at this ambulance driver and
8 said, don't you dare stop here. You keep going. We're going to go to
9 Memorial Herman.

10 Okay. Because you're not thinking about the premium at that
11 time. You're thinking about one thing and that's saving someone's life.
12 Okay. But regardless, this is the impact. They're trying to save money.
13 That's the impact. Go through our claims chart. You're going to have a
14 computer; you all have phones. You've got calculators on it. That's the
15 impact. So they're screwing us, they're screwing the patients. I'm going
16 to get to the employers in just a little bit.

17 Okay. So here's UMR. That's Mr. Ziemer. By the way, I
18 just -- I've got to give a shot out to my man Jason there, Michael and
19 Louis. That kid back there, Louis, is the one that figured out that the two
20 formulas are identical. He's a genius. Okay. They stayed up all night,
21 last night putting this together.

22 Anyway, so here's UMR. Okay. It's so easy, it's so clear
23 what's going on here. Okay. \$1.3 billion for doing nothing? We make
24 fees off of our programs. Well, what do you doing? Well, we have to
25 answer the phone. We have security requirements. Really? You have

1 the security requirements to begin with. Insurance companies are
2 required for the PNPM, you got to sign all kind of agreements and you
3 have to comply with it. We have to send claims over. I mean what are
4 they, they're putting it in a golden chariot and driving it over there.

5 They've set up their programs, and they hit send, and that
6 entitles them to over a billion dollars? There's a lot of work to it. And
7 you see it's not going to stop. Right here. Sworn testimony by Mr.
8 Haben. Right. We're in the middle of it. We're in the middle of the plan
9 right now. We're in 2021. 2023, we're going to be under \$100. I mean
10 this is where this is headed.

11 And look at this. These programs, 85 percent reduction. I
12 think you would be hard pressed if you go to a garage sale on a
13 Saturday morning to find something that's less than 85 percent off of
14 what it cost originally, from junk. And who's leading the charge? How
15 are they getting there? Well, right here in Nevada. Now look, I don't live
16 here. Okay. I don't live here. In fact, with the exception of Ms.
17 Lundvall, none of us live here. But the two companies based in Nevada,
18 retain \$185. It's the lowest of all the United companies. That's an
19 embarrassment. That is absolutely an embarrassment.

20 And how do we know that this is working towards United's
21 favor? Right there. The best financial performance. The most margin.
22 California and Nevada. Right there. The west region. And they're
23 bragging about it. Right. And look at this. Remember that \$5 record
24 setting margin excess? Look at this. It's 2019, that seed had turned into,
25 you know, those big trees outside of San Francisco, those enormous

1 trees. What do they call those?

2 UNIDENTIFIED SPEAKER: Sequoias.

3 MR. ZAVITSANOS: Sequoias. Okay. These profits have
4 turned into sequoias. Look at this, 2393 up per member, per member.
5 Congratulations, Nevada. Here's your pat on the back. You're saving the
6 healthcare industry. We're getting the healthcare crisis under control.
7 Thank you, Nevada.

8 And then you know the old adage, you sleep with the dogs,
9 you wake up with the fleas. Okay. Well, okay, here's their little partner,
10 MultiPlan, United then turns on them. And I've got to say, I kind of like
11 this. It's kind of like okay, listen you made that bed, now you sleep in it,
12 buddy. Okay. So here it is. We're going to -- look at this, the fee is \$7.3
13 so they form Naviguard. The wrap networks perpetuate the problem.
14 Now listen, I don't have it up there. I swear it's in evidence. There is a
15 document, and I think it's in 2015-2016, and again these documents are
16 in chronological order, okay. United actually says the problem , as part
17 of their public narrative, the problem is that these doctors are not
18 participating in wrap agreements. And they're going to balance bill
19 patients.

20 And they got such a tail wind by 2019 that they flipped it.
21 And now the problem is the wrap agreements. The wrap agreements
22 are a problem. Right. And so Naviguard, we don't want people knowing
23 it's associated with United Healthcare, we're going to position it as a
24 third-party. Right. Position it as a third-party. Right. And look at this.
25 And there's another document where they're talking about extracting

1 fees because ENRP is free. So how are we going to extract the fee out of
2 the employer? We're just going to call it something else. Man, we're
3 just going to take that Etch-A-Sketch and we're going to shake it up and
4 down and we're going to draw something new. And we're going to call
5 it, total cost of care.

6 And we're going to extract the same fees, but we're going to
7 package it there. And that's one of the exhibits that's in evidence that
8 you're going to find. But here, they just copied because they know that
9 this Data iSight is a bunch of nonsense. The figure it out. At least they
10 got a Louis on their team as well. And they figure it out that it's a bunch
11 of nonsense. So they just copied it. And yet four years earlier, what did
12 they say they were doing. It was random. That their way of coming up
13 with things was random.

14 But now all of a sudden, four years later, it's proprietary,
15 right. Okay. So we're going to transition clients off of MultiPlan and
16 eliminate the vendor fees. MultiPlan vendor contract terminated. That's
17 the goal by 2023. So that evidence came out first time ever in any trial.
18 And what happens to the MultiPlan stock? Literally during the trial. So I
19 don't know, you can draw inferences as to what kind of a deal they've
20 got. About why that guy showed up here voluntarily at United's request.
21 This umpire. This neutral party.

22 But I'll tell you what, he showed up here after they issues
23 that press release. And look at the press release. What does it say?
24 United is their number one customer. Numero uno. Okay. I don't know
25 what kind of deal they worked out. You can draw that inference yourself.

1 So this is their press release. I mean this is unbelievable.
2 And the thing is when you go back there and look at this, you're going to
3 say to this, was this dude watching the same trial that I as a juror in?
4 Because I literally saw and heard the opposite. Okay. We're not
5 competitive. We're going to lose ground. This is the average
6 competitor, right. United is more than twice. More than twice.

7 I guess when they say they're not competitive, that means,
8 what we should be three times better, not two times better. Okay. \$30
9 more than the average of our competitors and over \$15 more than the
10 nearest competitor. Okay. I mean this is like that Lord of the Rings with
11 the smog, you know, he's living in the gold. And he just keeps getting
12 more and more gold and he doesn't know what to do with it.

13 Now this is Mr. Leyendecker's favorite slide, okay. And then
14 I'll have an explanation for this. Mr. Deal said it's not relevant. Oh, by
15 the way, you know, he went to Harvard. So Mr. Deal says this is not
16 relevant. It's not relevant. I mean come on. We're here to determine
17 reasonable value. And what? It's willing buyer/willing seller. But if a
18 willing buyer/willing seller over here is getting twice as much as it is
19 over here, it's not relevant.

20 So what's the answer? Well, United, more, more, more, they
21 start acquiring medical practices. And they pick up of Sound Physicians.
22 And Sound Physicians is now one of the largest ER practice groups in --

23 MR. BLALACK: Objection, Your Honor. This is not in
24 evidence.

25 MR. ZAVITSANOS: Well, it's absolutely --

1 THE COURT: Objection sustained. It's -- it was not personal
2 knowledge.

3 MR. ZAVITSANOS: Your Honor, okay.

4 Okay. Sound Physicians. Remember these histograms and I
5 gave Mr. McManis an extra sheet of paper, because it wouldn't fit on the
6 other one. This is us. Okay. That's the 80th percentile right here. And
7 look where the United Company is. Look where the United Company is.
8 Off the graph.

9 So when it comes to United, I mean they've got double
10 standards everywhere here, man. Everywhere. When it comes to
11 United, they get to charge what they want. You know, there's this
12 concept called projection where you project on to someone else the way
13 you really are. Okay. That's what they're doing here. They're charging
14 way more than us. And they say bill charges are egregious, except when
15 it comes to figuring out how much they're going to make. So when it
16 comes to us, they're going to use a percent of Medicare because it
17 sounds like a lot, but when it comes it's going to be bill charge.

18 And the plan documents, at least the ones that got produced
19 say it's the amount that would have been payable. And Mr. Haben said
20 would have been payable does not mean would have been payable.
21 That's just a term. Okay. And UMR, same thing. Savings is the
22 difference.

23 Now look at this. This is amazing. It's absolutely amazing.
24 Sound Physicians owned by United. United says the problem is all of
25 these out-of-network providers that don't go in network. They keep

1 Sound Physicians out-of-network. United is complaining about people
2 being out-of-network, but they're keeping their own physician practice
3 group out-of-network.

4 MR. BLALACK: Objection. That's not in evidence, Your
5 Honor.

6 MR. ZAVITSANOS: I'm about to show you, it absolutely is in
7 evidence, Your Honor.

8 THE COURT: Let me defer until I see the slide.

9 MR. ZAVITSANOS: You see the average amount charged --

10 THE COURT: Objection is overruled.

11 MR. ZAVITSANOS: Look at the amount allowed. And if you
12 look at this Exhibit 297-S, look at all the way across, it will show you they
13 ran Data iSight on it, too. Data iSight. Okay. Data iSight. They're
14 sticking it to one of their clients when they control the charge, they
15 control the reimbursement, right. And they control whether they're in
16 network or not. That's called a Triple Crown in the insurance industry.
17 Okay.

18 Now on this one they pay the bill charge. But on this one
19 they ran Data iSight. And on this one, I mean I have no idea what they're
20 doing there. It's random. Okay. And these are -- look at the dates.
21 Look at the date. Look at the dates. I mean -- okay.

22 Now let's talk about the charges. So the first one I want to
23 talk you about is unjust enrichment. And there's the definition that Your
24 Honor read to you. And I think you're going to get the charge when you
25 go back there, obviously. Okay. And this is -- look I can't go through the

1 whole charge because it will take a long time. You all are going to read it
2 again.

3 I'm just going to focus on a few provisions. So this is the
4 definition of unjust enrichment. Plaintiffs, that's us, may recover the
5 reasonable value of a direct or indirect benefit. Well, we did get an
6 indirect benefit. We treated their member. We saved their lives. If
7 Defendants knew of the benefit conferred and accepted the benefit, and
8 retention of the benefit is unjust, without paying it's reasonable value.
9 And how do we know that they violated this? Because they were paying
10 others more. How do we know they violated this? Because on some of
11 the Sound Physician charges they paid bill charges. Okay. I mean this is
12 hanging fruit. This is an easy, easy question, answer.

13 Next. They said, and this is the opening statement, at the
14 core of this lawsuit. Okay. That's what counsel promised you in
15 opening. That the problem here in Clark County and across Nevada, that
16 problem, balance billing, staffing company, is at the core. Okay. Except
17 we don't balance bill. And they knew that, before they made that
18 statement. Okay. So -- and there's Rena Harris. That's the lady that we
19 saw today. And by the way, Ms. Harris, she's a very nice lady. She
20 doesn't do coding. She doesn't do billing.

21 Okay. You know, I mean, if you present someone, look, if
22 you submit something using somebody else's TIN, does that sound bad
23 to you? Yeah, that does sound bad. Okay. Well, how about we get a full
24 detail of what happened -- a full detail of what happened, which is what
25 Mr. Bristow explained. And by the way, what Sound Physicians also

1 does. They bill for services using a TIN here in other parts of Nevada
2 and across the country. Okay.

3 In any event, the point here is we got asked by United, will
4 you please confirm it's TeamHealth's intent not to balance bill our
5 members. Members. Members. Plural. Is that your policy? They knew
6 this before we got to this case. And yet they show up here and tell you
7 that this is the problem in Nevada. Okay.

8 So there's United benefit from no balance billing. I mean,
9 look, frankly, I think what TeamHealth did was utterly stupid. I think it's a
10 stupid thing that they did because it's the only leverage they had against
11 them. But they decided -- they're run by people who don't think like me.
12 And they decided we're not going to balance bill; we're not going to go
13 after all these people. We're going to go after United instead. Okay.
14 And that was the benefit to them. It was a benefit to them.

15 Okay. Now, listen. You're going to get back there, and your
16 head is going to swing, right, because you're going to see -- it looks like
17 a -- it looks like a tic-tac-toe with all the -- all the questions. And the
18 question is going to be were any of the Defendants unjustly enriched as
19 a result of services provided by any of the Plaintiffs. So we've got a lot
20 of individual parties. And as Her Honor said, each one is entitled to a
21 separate evaluation. And the answer for all of these is yes. Okay.

22 Now, implied contract. Okay. All right. So this one is a little
23 bit -- a little bit counterintuitive. And you've got to read the instruction
24 very carefully because this is not an explicit contract, it's not a
25 [indiscernible] contract. It's an implied contract. For an implied contract,

1 the existence and terms of the contract are inferred from the conduct of
2 the parties. Okay. That's like the taxi example. The conduct is you get
3 into the cab, the cab driver drives away, and when you get to the
4 destination, you pay him what's on the meter. All right.

5 And how do we know that they breached the implied
6 contract? Because their expert, Mr. Deal, he kind of slipped up and Mr.
7 Leyendecker got him to say is United legally obligated to pay the
8 reasonable value of those services. That's my understanding. Now, he's
9 their expert. Okay. So that legal obligation is there even though there's
10 no expressed written signed contract. Mr. Deal, "That's my
11 understanding." That's from day 16.

12 Follow the plan. If the plan said you paid a nickel, could you
13 pay more than a nickel? That's to Mr. Haben. And he wouldn't answer
14 the question. But I'm guessing by that he's saying, well, that's all we can
15 pay. The problem is this. Okay. Now, this is I think the single most
16 important thing in this chart because look, in a civil case, it's a matter of
17 basic fairness that we are entitled to see what documents they have, just
18 like they're entitled to see what documents we have. And time and time
19 again, they would not comply.

20 And so what do we have here? We have the Court entering
21 an order. Certain findings were made. And one of the findings was that
22 the Defendants had failed to comply with certain orders requiring
23 responses to discovery. And the Court concluded that the Defendants'
24 conduct was willful. The Court made a determination that their conduct
25 was willful. And how do we know it was willful? How do we know the

1 Court got it right? Because we've heard over and over about these
2 SPDs. Where are they? Where are they? Where are the complaints
3 from the customers? Where's the other things that they were saying
4 where they were handcuffed from being able to pay more than what was
5 in the plan document? You're going to find just a handful of plan
6 documents in evidence. There are hundreds of different employers on
7 that claim chart. We don't have those. We don't have those. And so
8 you are permitted to draw the inference because it was willful conduct,
9 the relevant evidence was suppressed.

10 Now, they're going to talk about this part here. Let's go
11 through that. When evidence is willfully suppressed, the law creates a
12 rebuttable presumption. Okay. Let me tell you what a rebuttable
13 presumption is. Okay. A rebuttable presumption is when you come
14 home and you're 16 years old and you reek of alcohol and your mom
15 says, man, I smell beer on your breath, you better start talking fast.
16 Okay. That's a rebuttable presumption that you've been drinking. Right.

17 Okay. So when a party seeking a presumption's benefit has
18 demonstrated that the evidence was destroyed with the intent to harm
19 another party or their case, the presumption that the evidence was
20 adverse applies. And the burden of proof shifts to the party who
21 destroyed the evidence. To rebut the presumption, the destroying party,
22 United, must then prove by preponderance of the evidence that the
23 destroyed evidence was not unfavorable. If not rebutted, the jury is
24 required to presume that the evidence was adverse to the destroying
25 party.

1 Now, they played that nonsense this morning on that
2 videotape. Did you hear one thing about the SPDs? You know, I've been
3 here -- I think I've been here eight weeks. And we had a lot of hearings
4 with Her Honor before the trial started. And from the very beginning of
5 this trial when you all got here until today, we've been saying the same
6 thing over and over. Where are the plan documents? Now, we know
7 that they can find documents that help them because they showed up
8 plenty of times with new documents that they offered into evidence. We
9 know they can do that. And yet, when it comes to the core issue in the
10 case that backs up their defense that we can't pay more, those
11 documents are missing. Really? You're an insurance company. You're
12 a fiduciary. You are a third-party administrator. But you don't have it.

13 They did not rebut this presumption. And therefore, you are
14 required to presume that the evidence was adverse to the Defendants,
15 meaning these missing SPDs are just like the AT&T SPD that says that
16 claims have to be processed using reasonable and customary, right?
17 And we know -- and that's not a leap because we know prior to 2016,
18 that's what most plans said. That's what their own documents said.
19 Okay. Let's keep going.

20 Okay. Now, here's something new. We didn't cover this
21 with any witness. I had to save something fresh. Okay. This company,
22 Optum, that's a United company. There's -- United is the third-party
23 administrator for one of their subsidiaries. And check this out. Look at
24 the way they treat their own. When it comes to United, they're going to
25 pay the usual, reasonable, and customary amount. And that's 2018.

1 That's 2018. Okay. I mean, really, the clients demanded the change?
2 Why didn't this client, United, tell the third-party administrator, United,
3 that they wanted to contain healthcare costs and they wanted to benefit
4 their employees? Why didn't they do that? You know why? Because
5 they take care of their own.

6 Okay. Now, this is Mr. Mizenko. And he was listening. This
7 kid was totally honest. Honest as the day is long. No doubt about it.
8 Okay. And that was -- look, the reasonable value is the reasonable value.
9 That doesn't change. If we're evaluating things under usual, customary,
10 and reasonable, it shouldn't change. Okay.

11 Now, this is the part that frankly, anybody living in this state
12 ought to be embarrassed about. These are the two companies that are
13 based exclusively here in Nevada. Of all the United companies, these
14 are uniquely Nevada. Uniquely Nevada. I mean, look at this. Okay.
15 99285, the most serious thing, \$185. I mean, come on. I mean, they're
16 going to get up here and tell you that these are reasonable? \$185. And
17 they charge the same thing for everyone. I mean, the Chevy Cavalier
18 costs as much as the Lincoln Escalade. They're all the same price. I
19 mean, this is unbelievable. And this is us. That's him. Look at this. It's
20 going down. It's going down. I mean, pretty soon, we're going to owe
21 them money.

22 Now, follow me here. There's a little bit of testimony about
23 this thing called the greatest of three. That's a misnomer. The greatest
24 of three, despite its name, is a floor, not a ceiling. It's the equivalent of
25 minimum wage. In order to comply, you have to pay at least the

1 greatest of three. Let me give you an example. If I hired a neurosurgeon
2 and I have a hospital, I cannot pay him less than minimum wage, \$9 an
3 hour, \$10 an hour, whatever it is now. Okay. That's the floor. That
4 doesn't mean that's his market value. That just means that's the floor.

5 Now, this document here, Plaintiffs' 295, internally, the
6 lawyers, and United, and the businesspeople at United, this is what the
7 greatest of three is. It's the Medicare rate, the median par rates, or the
8 usual and customary rate. And we know what that means. This is a
9 problem because that would mean they would have to pay the 80th
10 percentile of FAIR Health.

11 So what did they do? They literally on their own changed the
12 law internally to comply. They changed usual and customary to
13 something called eligible medical expense. I mean, that's like saying the
14 speed limit is 50, but I'm going to decide that the speed limit is 90. I
15 mean, this is -- this is absolutely brazened what they've done. And they
16 stuck it in a couple of the client SPDs, as you will see, subjecting their
17 clients to exposure.

18 Okay. So this is the implied contract question. It's the same
19 thing. Did we form an implied contract, the taxicab example? The
20 answer to all of these is yes. Okay. Did they fail to comply with the
21 implied contract? The answer to all of these is yes. That's number 6.

22 Next, random or reasonable. Now, they took shots at Mr.
23 Leathers. But Mr. Leathers actually looked at everything. He looked at
24 what they were paying others. He looked at what trends and -- I mean,
25 look at this. I mean, this is an obvious point. Okay. Do these look

1 reasonable or random? I mean, this is painfully obvious. And yet, what
2 you're about to hear in just a moment here when they get up to talk,
3 they're going to come up with some very convoluted, very well-
4 presented explanation for this. It's very simple. Reasonable value is
5 reasonable value. Okay.

6 You are here -- by the way, you're not given a choice on
7 the -- on the jury questions to say -- this isn't like seventh-grade little
8 league baseball, you're all winners, right? You're going to pick one.
9 You're going to pick one. You're going to pick one number. You're not
10 going to have the choice like United did to pick five different numbers
11 and put them next to each other. Right. Why? Because that defies logic.
12 Reasonable value is one number. One number. Have them explain to
13 you why you have to put one number, but they can pick whatever
14 number they want multiple times randomly.

15 Okay. So here we go again. I mean, this is Walmart. I mean,
16 we can just keep going on this. Look at these. Okay. These are all
17 United companies. Now, they're going to say, oh, did we operate
18 autonomously, independent of another, we don't have programs, blah,
19 blah, blah, blah, blah, blah. Okay. Reasonable value is reasonable value.
20 And what's the impact? Right there. Okay. That's where we're at now.

21 So next, unfair claims practice. Engaging in the following
22 activity is considered to be an unfair insurance practice. Failing to effect
23 prompt, fair, and equitable settlement of claims in which the liability of
24 the insurers become reasonably clear. Okay. Very simple. The before
25 period -- I'm going to apologize for Mr. Leyendecker's handwriting.

1 Before, there's no doubt about it they were paying billed charges, UCR,
2 FAIR Health, 80th percent. During the claims period, they have
3 programs. Okay. And before, almost 99 percent of the claims are paid at
4 between 90 to 100 percent of billed charges. After, they were paying us
5 246, paying everybody else 528. Okay. Just the bullseye on our back a
6 little bit.

7 All right. Now, this is how the trial began with the first
8 witness. And I've got to admit, we kind of caught him off guard a little
9 bit. Okay. We caught him off guard. And Mr. Haben in a moment of
10 clarity from the witness stand answered like a human being. Right. I
11 mean, I guess United's position is, you know, human life is worth less
12 than 1,421. Okay.

13 So then we get to the secret internal document written by the
14 lawyers. And this is in 2019. Okay. ASL plans -- you know, the ones we
15 don't have that you can draw the reasonable inference on that they
16 destroyed evidence where the Court made a willful finding with
17 reasonable and customary language will generally be tied to 80 percent
18 of FAIR Health for the payment of out-of-network ER services. Okay.

19 Now, most of the claims here are in these two categories
20 here. Right. That's the really -- that's the serious one, and that's the one
21 that requires more time. Okay. 36 percent is the A file. And you can --
22 and listen, you can verify this. You're going to have the claims data. It's
23 -- I think it's in an Excel. So you can -- if you all know how to work Excel
24 -- I don't. But I'm sure you all can figure it out. You can organize stuff in
25 a way where you can test everything I'm telling you. Okay. And if I'm

1 lying to you about this, okay, it was zero.

2 All right. Next, here we go. 99284. All right. That's us, the
3 green line. Now, you notice that they're talking about how much our
4 prices increased. Was it five percent? Was it four percent? Is it \$60? Is
5 it \$70? The one thing that is for sure, okay, there is FAIR Health, there is
6 us, there are the others. And maybe the blue one might be down here,
7 except for some physicians. Okay.

8 Now let's go to this one, 99285, the other serious claim.
9 There is FAIR Health, 1,888. There is us, 1,423. And there are the other
10 providers. Look. I mean, maybe we should have jacked it up more,
11 okay, because you know what they were counting on? They were
12 counting on you all getting back there and saying like a parent does,
13 well, you know, they're both fighting, two big companies, let's split the
14 baby. Please don't do that. Please don't do that. Okay. We've already
15 done that. We have -- we have charged under on average, below the
16 80th percentile of FAIR Health for the most serious claims.

17 All right. So all the Plaintiffs' core CPTs, I mean, there's
18 another example. Again, we're below. And that's Mr. Murphy. That's
19 the CEO of TeamHealth who says, look, we don't really chase it, but it's a
20 very important guideline for us, the 80th percentile.

21 Now, the other thing that they're counting on is you're going
22 to get back there and they're counting on you saying, well, you know,
23 yeah, these three Plaintiffs, they got screwed all right, but I'm just
24 concerned about premiums, are premiums going to go up? Well, let me
25 tell you something. They're going to go up regardless. And how do we

1 know that? Right here. Look at this. That's Plaintiffs' 273. Now, look at
2 this one. Okay. This is -- Jason, what exhibit is that?

3 Okay. So I mean, check this out. This is the financial review I
4 think that's in 2019. I'll get the exhibit in just a minute. The individual
5 market declined slightly. Now, this is fully insured insurance. Okay. The
6 individual market declined slightly more than the employer market grew.
7 The individual market -- check this out -- has become very profitable,
8 despite a 1.1-million-member decline as a result of two years of high-rate
9 increases.

10 They lost 1.1 million even though they were -- they were
11 screwing out-of-network providers and cutting reimbursement rates
12 down to the bone. Reimbursements are falling. And what do they do?
13 They jack up the rates. I mean, literally nothing that they told you in
14 opening about why this is happening, what the -- what the perils are,
15 none of it is true. Two years of high rate increases during the evolution
16 of these programs. What is it? 471. That's Exhibit 471. Okay.

17 Okay. So unfair claim settlement practices, this is question
18 number 10. That's the answer. Okay. Prompt pay. That is very easy.
19 To succeed, we have to show that they failed to -- now, look at this. It
20 says the charge was fully paid. Fully paid within 30 days. A claim which
21 was approved and fully paid. And here's what we know. Every one of
22 these claims -- and they're going to tell you, you know, the number of
23 claims changed, and we kept changing the number. No. We kept
24 reducing the number. You know why? Because as the lawyers are going
25 through this and they're finding maybe claims on the spreadsheet that

1 was designed for the litigation that doesn't belong.

2 These aren't -- I mean, the files are all accurate. These are
3 the lawyer files. And we're trying to be as careful as possible because
4 you know, if we had not done that, you know what they'd be saying?
5 Oh, look at all these claims that are on there that don't belong. It's
6 heads, I win, tails, you lose. So we cut it down to what is actually in the
7 case. And if we had to do it again, we'd do it again. Right. Because we
8 don't want to advance claims that don't have merit.

9 But anyway, we know that they paid all of these. They paid
10 all of them. But they didn't fully pay them. So right there is a -- it's just
11 a -- kind of a per se violation of this -- this instruction. And here's
12 question 14. This is the prompt pay statute. It's yes to all. Okay. Okay.

13 Damages. And there it is, reasonable value. The focus is on
14 reasonable value. Reasonably compensate the injured party. That's us.
15 Okay. And now, I want to thank my dear friend Mr. Leyendecker for
16 putting this together. This is in evidence. It's Exhibit -- please write this
17 down -- 530.16. Okay. And what he's done here -- and again, if we're off,
18 okay, you hold it against us. But this is accurate. You compare it against
19 the claims chart that we're going to give you that's in evidence. And
20 you're going to get a list of questions with boxes for the damages. And
21 what we've done here is we've created a grid.

22 So you can literally take it off of this. Now, verify it. Go
23 ahead and verify it. But these are the numbers. Okay. And that's the
24 total. It's a little under \$10.5 million, which is what we told you at the
25 beginning of the case. And that's our billed charges. That's our billed

1 charges. Okay.

2 All right. So there it is. I mean, that's the -- kind of the same
3 thing of what I just showed you. Team Physicians, Ruby Crest. Okay.
4 Now, I will tell you, ladies and gentlemen, this, from my standpoint, this
5 is why we're really here. Now, listen. Here's what you're not going to
6 find in the chart. What you're not going to find in the chart is what
7 happens to this money, what happens to your determination after you
8 make a decision on this, what the consequences are. You are to answer
9 the question that is put to you and not speculate about what happens
10 after that. And the issue is this. Okay. Look, I'm going to use the word --
11 and I know it's kind of strong, but what this company has done,
12 particularly over the last two years of this claim period is nothing short
13 of evil.

14 MR. BLALACK: Objection, Your Honor. That's
15 argumentative.

16 THE COURT: It is. Objection sustained.

17 MR. ZAVITSANOS: It is oppression. It is fraud. And it is
18 conscious disregard. And you just look at the definitions. It means
19 despicable conduct that subjects a person to cruel and unjust hardship
20 with conscious disregard. Intentional misrepresentations. We have a
21 sophisticated data engine. Those EOBs say they were processed using
22 Data iSight when they were not. They just picked a number. Conscious
23 disregard. Knowledge of the probable powerful consequences of a
24 wrongful act and a willful and deliberate failure to avoid these
25 consequences. Piling on. Nice splash. I mean, and again, the way they

1 talk about us in these emails, like we're farm animals.

2 Okay. Now, the punitive question has a higher standard.

3 And I'm going to tell you something. If the instruction was not this but
4 was even higher, beyond a reasonable doubt, I'd tell you we meet that,
5 too. This is the only part of the charge where this applies is on the
6 question of whether we are entitled to punitive damages. The rest of the
7 charge -- the rest of the charge -- and remember, we talked a lot about
8 this during jury selection -- is preponderance of the evidence. Okay.
9 Which means more likely so than not. And the -- and the Court's going
10 to give you a very precise -- or actually, did give you a very precise
11 definition. We meet that, and we meet this. Okay.

12 Okay. So for punitive damages, especially for these two --
13 especially for those two, the \$185 and what is it, \$177. Okay. But it's yes
14 for all of them.

15 Okay. This is Dr. Frantz. And look, we had a hard enough
16 time -- I mean, there was a burnout. Listen. After this case is over, take
17 a moment. I mean, you all have become kind of healthcare experts now.
18 Take a moment and go down to Sunrise Hospital and just sit in that
19 emergency room for 15 minutes, and just watch what happens. Listen to
20 the screaming, and hysteria, and the medical illness, and the people
21 bleeding, the people complaining. And that's why we have burnout.
22 Okay. And on top of that, this guy over here, he needs to be an expert in
23 all areas of medicine because you never know what's going to come in.
24 Okay. It is -- and unlike your doctor visit, it really is a situation where the
25 person thinks that there is an emergency going on.

1 All right. Now, Mr. Blalack is going to address you now. And
2 then when he's done, my partner Joe Ahmad, he's going to finish up
3 with rebuttal. But this case is very, very important to us. Okay. You
4 know, every case I try is important. But this one -- this one really is in my
5 heart. And I believe down in my bones. And I ask you on behalf of these
6 three Plaintiffs, to please award the full billed charges. It's too late to cut
7 that. We've gone through an obstacle course of unspeakable
8 proportions to get here. Please award their charges.

9 THE COURT: Thank you.

10 Everybody good, or would you like a break now? Break?
11 Okay. Let's take -- it's 1:54. Please be ready at 2:05.

12 During the recess, don't talk with each other or anyone else
13 on any issue connected with the trial. Don't read, watch, or listen to any
14 report of or commentary on the trial. Don't discuss this case with
15 anyone connected to it by any medium of information, including without
16 limitation newspapers, television, radio, internet, cell phones, or texting.

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

22 Most importantly, do not form or express any opinion on any
23 subject connected with the trial until the matter is submitted to you.
24 Have a good break and see you at 2:05.

25 THE MARSHAL: All rise for the jury.

1 [Jury out at 1:55 p.m.]

2 [Outside the presence of the jury]

3 THE COURT: Okay. The room is clear. Defendant, do you
4 have anything for the record?

5 MR. BLALACK: I do not, Your Honor.

6 THE COURT: Thank you. Have a good break, guys.

7 [Recess taken from 1:56 p.m. to 2:05 p.m.]

8 THE MARSHAL: Court is back in session.

9 THE COURT: Thanks, everyone. Okay.

10 MR. POLSENBERG: Do you need a copy of the verdict?

11 THE COURT: Yeah.

12 MR. POLSENBERG: I have two copies of each here.

13 THE COURT: I just want one to see it.

14 MR. POLSENBERG: Okay.

15 THE COURT: And the original goes back through Nicole.

16 MR. POLSENBERG: So you want a copy of the call?

17 THE CLERK: I want the original so I can [indiscernible].

18 MR. POLSENBERG: Whatever we give the jury will be the
19 original.

20 THE CLERK: Yeah.

21 MR. POLSENBERG: There is one, there is the other. Do you
22 have to put blue backs on these?

23 THE CLERK: Yeah.

24 THE COURT: Yeah.

25 MR. POLSENBERG: All right. So here are those.

1 [Indiscernible] the blue backs.

2 THE CLERK: Are these the ones that get the blue backs that
3 go to the jury?

4 THE COURT: All right. Court will come to order. Are we
5 ready to bring in the jury?

6 MR. BLALACK: Yes, Your Honor. I thought we'd just sketch
7 out maybe a plan, make sure it is satisfactory for the Court and the
8 parties. Our plan is for the Defense closing to be two hours. My home
9 was I would go about 90 minutes, and then Mr. Roberts will conclude for
10 the last 30 minutes.

11 And so I was going to propose, subject to opposing counsel
12 and the Court's view, that I go for an hour and a half, we take a modest
13 break for the jury's comfort, come back. Mr. Roberts can finish our
14 closing, and then Mr. Ahmad can do the rebuttal.

15 THE COURT: And without holding you to it, how long do you
16 think you'll need?

17 MR. AHMAD: Your Honor, probably 30 minutes. How long
18 did the first part go? An hour and a half? Yes, 30 minutes then.

19 THE COURT: It was -- well.

20 MR. BLALACK: I had about an hour

21 THE COURT: 12:25 to 1:53.

22 MR. AHMAD: Okay. Sure, 30 minutes.

23 THE COURT: Great.

24 MR. BLALACK: If that works, Your Honor, I'll just try to hit
25 that [indiscernible].

1 THE COURT: Sure. Yeah. And what I will do is send them
2 back. Today, we'll have to dismiss the alternate. I'll send them back to
3 select a foreperson and tell us how long they want to work tonight, and
4 when they want to come back tomorrow if they don't finish.

5 MR. BLALACK: Got it.

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

7 MR. BLALACK: Thank you.

8 MR. AHMAD: Thank you, Your Honor.

9 THE MARSHAL: All rise for the jury.

10 [Jury in at 2:09 p.m.]

11 THE COURT: Thank you. Please be seated. Is the Defendant
12 ready to argue?

13 MR. BLALACK: We are, Your Honor.

14 THE COURT: Whoever is on the phone is not muted, mute
15 yourself or we will remove you. Thank you.

16 Sorry you had to start that way.

17 DEFENDANTS' CLOSING ARGUMENT

18 MR. BLALACK: Oh, it's okay. So may it please the Court,
19 Counsel.

20 Ladies and gentlemen of the jury, I want to start by thanking
21 you for enduring a long trip. I know it has been a challenge. It's been a
22 challenge for us. I can only imagine what it's been like for you. And I
23 want to thank you first on my own behalf, but on behalf of my colleague,
24 Mr. Roberts, who you're going to hear from in a little bit; and my
25 colleague, Mr. Gordon. As well as our client representative, Doctor Wu.

1 He's been here for the whole trial representing our clients in this case.

2 I'm going to spend about 90 minutes walking through the
3 evidence in the case to try to help you all think about deliberations and
4 applying the evidence to the law that the judge has instructed you on.
5 And then Mr. Roberts -- I think the plan is to take a short break so you
6 don't have to go a whole two hours. And then Mr. Roberts will come up
7 and talk with you more specifically about the jury charge that the judge
8 just gave you and how it applies to the evidence that I will describe. So
9 that's our game.

10 Now, let me say I appreciated the compliment from my
11 college, Mr. Zavitsanos, who is very kind. And I will say nothing
12 personal. I'm going to have some things to say about the presentation
13 of their case, but they've done a fine job. And I thought this was a
14 particularly effective closing argument. Given the case they have and
15 the evidence in the case, that would be the way to do it. But I want to
16 say to you that what that closing argument really was a plea to your
17 passion. It was a plea to your emotions. It was not a plea to the
18 evidence.

19 And I want to direct you when you go back into the jury room
20 to begin deliberating, just before you even get started on the evidence,
21 to think about two instructions that the judge gave you at the beginning
22 of the charge. That's instruction number 4 and instruction number 14.
23 And I urge you to pull these instructions out and read them before you
24 begin deliberating. Instruction number 4 says a verdict may never -- not
25 sometimes, not maybe. Never. May never be influenced by sympathy,

1 prejudice or public opinion. I'm going to tell you right now, this is a fight
2 between heroic emergency room doctors struggling on the frontlines of
3 our emergency rooms, maintaining the healthcare of our community and
4 big insurance companies. Well, this should be an easy day for you. All
5 right.

6 But that's not what your obligations are as jurors and as
7 citizens. You swore and were asked to when you were qualified that you
8 could render a verdict in this case based on the evidence. Not based on
9 bias against health insurance companies or insurance companies
10 generally. Not based on some feeling of gratitude for the good work that
11 ER doctors and healthcare professionals provide in our community
12 because that's not in dispute in this case. Nobody has come into this
13 case on our side that says they don't do a good job at what they do.
14 That's not what the case is about.

15 So I want to urge you to remember what your instruction is
16 on the law. And when somebody in that jury room says, you know, I
17 know what the evidence is, but I just can't tolerate these insurance
18 companies. They're a pain. Or that doctor seemed really nice. He was
19 such a genuine guy. I want you to think about it and pull this out,
20 instruction number 4, and remind them what you all swore to do as
21 jurors and as citizens.

22 Now, the second instruction -- and this one is particularly
23 important -- is number 14. And you may remember in opening
24 statement, I mentioned this one that you'd be charged on this. And it
25 reads, "Statements, arguments, and opinions of counsel are not

1 evidence in this case". What I say is not evidence. I can characterize
2 documents and testimony all day, but what matters is what you heard
3 from the witnesses in the trial, what you saw in the documents. That's
4 what matters. Not what I say and not what they say.

5 There was a lot of testimony from lawyers in this case. A lot
6 of testimony from lawyers. And sometimes, more testimony from
7 lawyers than witnesses. That's not evidence. That's just lawyers talking.
8 Okay. And I'm not asking you to credit my version of events and
9 disregard theirs. You shouldn't credit either of our versions. You should
10 hear our arguments, and then go back and discuss what evidence and
11 testimony you saw during the trial and be guided by that.

12 And that'll -- so I want to start there because I'm about to
13 take you through evidence; not characterization, not qualification.
14 Evidence. I'm going to show you transcript testimony that you heard in
15 this case and documents. And I urge you as you deliberate to be guided
16 by that, and not what you heard from lawyers.

17 Now, beginning of opening statement, I told you that this
18 case was about an effort by the TeamHealth plaintiffs and really,
19 TeamHealth, the big staffing company, to jack up the costs of emergency
20 room medicine services in this state, and most importantly, hide who is
21 getting the bill. And I want to focus on that second piece. Hide who is
22 getting the bill.

23 You may remember Mr. Murphy, CEO of TeamHealth. He
24 testified -- he confirmed after looking at documents that it was his view
25 that the amount payable, the amount owed to the TeamHealth Plaintiffs

1 was the bill charge. That was the allowed amount, he told you, that
2 should have been paid on the disputed claim. There we go. And just to
3 remind you, the average bill charge for disputed claims in this case is
4 \$1,145. The average allowed amount was 246. Some allowed amounts
5 were a lot more, some that were less.

6 THE COURT: Hang on a second. Getting some feedback
7 from your mic. If anyone --

8 THE CLERK: No, I'd say that was BlueJeans.

9 THE COURT: It was BlueJeans. I apologize for the
10 interruption. Go ahead.

11 MR. BLALACK: No worries.

12 So what does that mean? How do we put that in dispute -- or
13 in context? What that means is they are seeking to increase the average
14 allowed amount on these claims by almost five times. That's what Mr.
15 Murphy was suggesting in his testimony. But here's the key -- so that's
16 the jacking up part of what I told you the case was about.

17 Mr. Murphy was questioned by Mr. Roberts. And if United
18 had not cut the charge and reduced the amount of pay, then the other
19 money -- the other money from the bill charge would have come from
20 the employers and the other ASO clients, right? Answer -- he was very
21 candid about it. "That's right. They would have paid a reasonable rate
22 for the service that was provided". So Mr. Rogers asked the obvious.

23 Question: "Are you suing MGM? Are you trying to get that
24 difference from them that would have originally come from there fund if
25 United paid the full bill charge?"

1 Answer: "We're not in contract with MGM. We have -- we
2 are suing United, where we treated United's members who paid
3 premiums to pay for their healthcare".

4 Question: "You're not doing -- suing the Metropolitan Police
5 Department, right?"

6 Answer: "No, we're suing United".

7 Question: "That's right. I guess so clients save the money,
8 and we're the ones getting sued, right? Don't you think that's providing
9 a service to our areas clients?"

10 Answer: "I think that United has a reference. I looked at that
11 document, and it actually says the amount otherwise payable was the
12 bill charge. You remitted the bill charge on behalf of the client."

13 Question: "And look at this answer. So our clients should
14 have paid their portion, 10.5 million, and they should be out the money;
15 not us."

16 Answer: "It should have been all along."

17 But it's knowing that's the point. All right. They wanted to
18 hide who's getting the bills, so they sue us, the intermediary. But these
19 are allowed amounts under health plans sponsored by employers.
20 Employers both here in Las Vegas and across the state and nationwide.
21 Now, is it just the employers who are getting stuck with the tab for this
22 jacked up cost? No. It's undisputed that the patients have a stake in this.

23 This is the patient responsibility calculation we worked
24 through in the trial. You heard testimony about it. If the bill charge was
25 \$1,000, the allowed amount was 200, coinsurance is 30. Under the

1 normal health plan, the patient carries \$60. But if Mr. Murphy's right and
2 the allowed amount actually was 1,000; is it just UnitedHealthcare or
3 Sierra or Health Plan of Nevada who's got a stake in this? No. Patients
4 now pay \$300 for that encounter; not 60. It's an increase of 400 percent.
5 So the point is, ladies and gentlemen, this dispute is about jacking up the
6 cost of emergency medicine services. They're not being candid with you
7 about who should be ultimately paying the tab.

8 Now, the evidence in this case in the disputed claims file
9 which we're going to talk a lot about. In their file shows who the
10 employers were that we represented; who are clients were. And we
11 showed you some of them. These are our clients. Their employees are
12 the ones who went and received care at these emergency rooms. And
13 those are the claims that are in dispute.

14 UNLV, City of Las Vegas, Clark County School District,
15 Metropolitan Police Department, MGM Grand, Caesars, University
16 Medical Center. Those are just the clients -- the local ones. National
17 clients, national employers; Southwest, Tesla, Walmart, Google, Apple.
18 Their employees are the ones that went and got those services that
19 showed up on that disputed claims form. Their plans, their allowed
20 amounts. That's who's behind that.

21 Now, question I'm going to ask you is as you listen to the
22 proof in this case, were the TeamHealth plaintiffs' candid with you from
23 day one about what the evidence would show? I want you to think back
24 to the opening, some of the things you were told the proof would show,
25 and ask yourself, did you see it? Did it ever come -- did you ever actually

1 see a witness say that? Did you ever actually see a document that
2 proved that? I want to highlight a few of the statements that were given
3 to you in opening, and in our statements by counsel questioning
4 witnesses. That I submit to you you can search in those exhibits and the
5 testimony and record all day long, and you will never find any evidence
6 supporting these allegations.

7 Before I do that, I want to have a little cultural test. Now, I
8 got to confess I have enjoyed the walk down the Hollywood walk of fame
9 that we have here in this trial. Pinocchio, The Blob, What About Bob?
10 Actually, I think The Blob is my favorite because it's come back into
11 cycle. And we got a few new ones even today. And, you know, I was
12 going to try to be cute and come up with some analog that I can give
13 you. And my team was back there. They said how about Ocean's 11 or
14 whatever? I'm not going to do that. I want to do a quote.

15 Now, you all may remember Mr. Zavitsanos in the very first
16 day of trial quoted from Benjamin Disraeli, the prime minister of Great
17 Britain. And I started thinking I had a couple quotes to share with you,
18 one from Homer Simpson, but I decided against it. And instead, I'm
19 going to quote you a famous quote from Carl Sandburg, which I think
20 applies nicely to this case. "If the facts are against you, argue the law. If
21 the law is against you, argue the facts. If the law and the facts are
22 against you, pound the table and yell like hell". And that's what we had
23 in this case for days. In fact, the first two weeks, we were pounding the
24 table and yelling like hell.

25 Now, who's behind this fight? Is it the mighty heroic ER

1 doctor struggling in the emergency rooms or is it somebody else? I
2 submit to you, ladies and gentlemen, it's somebody else. TeamHealth is
3 the largest physician -- the evidence from their own records and their
4 own testimony is that TeamHealth is the largest physician staffing
5 company in the United States. And it's backed, as Mr. Murphy
6 explained, by one of the largest private equity Wall Street giants in the
7 world. And they are the ones who run this.

8 So when I told you in opening statement this wasn't a fight
9 between heroic ER physicians and big insurance companies; this was a
10 fight between two big companies, big insurance companies and big
11 staffing companies as private equity. The proof you heard showed that.
12 Mr. Murphy testified, he mentioned that TeamHealth is owned by
13 Blackstone Group. That's correct. Blackstone has people on your board.
14 Blackstone is the largest -- or at least one of the largest private equity
15 groups in the country, right? I didn't make that up. CEO told you that.

16 This is a list from their disputed claims file of every ER
17 physician who rendered the disputed claims in this case. 191 different
18 physicians rendered claims in this case. Only one, Doctor Scherr,
19 testified in this trial, and he is an officer of one of the staff.

20 Mr. Murphy was asked, questioned, "Under the physicians'
21 various employment contracts and independent contractor agreements,
22 is there a provision entitling them, the physician, to apportion the
23 amount the jury awards in this case?" Mr. Murphy's answer --

24 MR. ZAVITSANOS: Your Honor, this violates limine.

25 MR. BLALACK: This is in evidence, Your Honor.

1 MR. ZAVITSANOS: It violates limine, Your Honor.

2 THE COURT: Overruled.

3 MR. BLALACK: "In this particular contracts, I don't believe
4 so". That was all you need to know where the fight is, who's got a stake
5 in it.

6 Now, in opening, you were told the evidence will show that
7 the Defendants pay ER physicians in Nevada less than ER physicians in
8 other states. Did you see any evidence of that? When you're back there
9 looking through those exhibits, [indiscernible], look at your notes. You
10 will not find any evidence that the Defendants pay ER physicians in
11 Nevada less than other states. Ms. Lundvall showed you a slide in her
12 opening with some numbers. You will not find that in your facts.

13 Defendants' reimbursements -- you can get rid of that first
14 one. Defendants' reimbursements is called Plaintiffs' compensation of
15 physicians [indiscernible]. You see any evidence of that? All the charts,
16 data and documents. Do you see a single documents where somebody
17 at TeamHealth showed that because UnitedHealthcare reimbursed or
18 Sierra reimbursed ER services in an amount less than the Plaintiffs
19 contend was appropriate, physicians associated with TeamHealth
20 received less compensation? Anything? You should be looking at that
21 back in your deliberations.

22 The other allegation was Defendants' reimbursements
23 caused physicians -- Plaintiffs' physicians to leave Nevada. Any
24 evidence of that? Any doctors came in here and said, you know, I really
25 wanted to stick it out, but I just wasn't paid enough by UnitedHealthcare,

1 and I had to go to Oklahoma. Or documents describing an analysis of
2 why the compensation levels were insufficient to retain physicians here
3 in Nevada. Any of that?

4 Closest they got was Doctor Frantz coming in describing how
5 compensation, if it was insufficient -- if it was insufficient -- might affect
6 retention. Doctor Frantz lives in another state and runs a TeamHealth
7 region. He had every opportunity to present documents and data and
8 evidence to back that up -- the allegation that my clients'
9 reimbursements caused physicians to leave Nevada. You will not find
10 that evidence in your deliberation.

11 Here is maybe my favorite though. That the Defendants
12 reduce Plaintiffs to Plaintiffs to make it easier to acquire the TeamHealth
13 plaintiffs, the Plaintiffs in this case in Nevada, and groups like Sound
14 Physicians, which allegedly is owed by one of my clients or affiliated.
15 Ladies and gentlemen, the first time you heard the name Sound
16 Physicians was like two days ago. I mean, they didn't mention that name
17 in opening. Not one time did that name come up in openings.

18 Why do you think that is? Is it because maybe this was an
19 effort at the last minute to distract you? To answer evidence they
20 couldn't answer? Like why the charges in Nevada were up like this, and
21 they needed to grab onto anything they could. That's what this is.

22 Now, TeamHealth plaintiffs also made allegations not just
23 they weren't supported by the evidence, but they made allegations that
24 were just flat out contradicted by the evidence. Let's start with the
25 easiest one. The disputed claims list. Let's focus on the disputed claims

1 list. That's an allegation. Right? Every one of those claims is an
2 assertion by the company and their lawyers that claim was wrongfully
3 underpaid, and they were entitled the damages on it. Every single one of
4 them.

5 And in this case, in February of this year, they asserted
6 22,950 claims that they claim in good faith we had underpaid and
7 improperly reimbursed. We go to the spring, it dropped to 19,065. We
8 got to July, they got almost 7,000 claims out of the list. Down to 12,558.
9 We finally ended up, just before trial, with a final list of 11,563 claims.
10 The list. They cut half of their disputed claims in eight months. That
11 means half of the allegations that they were making in this case went
12 poof in just over a year.

13 And you'll remember when I asked Mr. Bristow in his
14 testimony yesterday, did he have the same degree of confidence in the
15 accuracy of the information in this list that he did in this list? Do you
16 remember what he testified to? He said he did, based on what he knew
17 at the time. I submit the answer is he applies it equally there. Yeah, they
18 have confidence of it the best they can. That's not proof.

19 And this disputed claims list is particularly important, ladies
20 and gentlemen, because they rely on the information in it. Every time
21 they show you one of those summaries of claims that's got allowed
22 amounts and billed charges, it's coming from this. That's where they're
23 getting it from. They're not getting it from the underlying data from my
24 clients. They're getting it from their claim systems. And they're
25 contending that the allowed amounts, employers, all that information on

1 that file is accurate. Ladies and gentlemen, I submit to you that this plus
2 the evidence we offered you in the trial shows that that list is trash.
3 Trash. It is unreliable.

4 How do we know that? Well, let me first talk about Mr.
5 Bristow. This was his testimony earlier this week, talking about how it
6 was cut in five or six different cuts. Now, we're going to talk about in a
7 second that first time they showed actual claims from the disputed
8 claims. Do you remember when it was? With Mr. Ziemer. And he was
9 shown claims and he was asked about allowed amounts that didn't
10 match up for the same plan, same employer? And allowed amounts that
11 for the same person had different amounts that didn't align? And then
12 we went through and showed you the underlying data from the UMR
13 claims data that showed that the information in the summary was just
14 wrong. They had the wrong employers, the wrong numbers. That all
15 came from this disputed claims list. So when they say how could this
16 be? Because it doesn't necessarily have to be. Those summaries are
17 about as reliable as this thing was.

18 Now, what other allegations did they make that just turned
19 out to be complete bunk? Well, the first one is the Yale study. So you
20 remember, with great fanfare, Mr. Zavitsanos walked you through and
21 explained how United Healthcare had somehow paid off a Yale
22 researcher to draft a study for United Healthcare, and that United
23 Healthcare had edited the study. That was the allegations.

24 But what did the evidence show? The evidence showed
25 there was no record evidence anywhere offered for witness testimony

1 that anybody ever paid any money from the Defendants to that group.
2 None. Not one cent. Go through all the record. You've got every exhibit
3 back there. You won't find one. No testimony, no documents. And the
4 editing of the document. Do you remember when we pulled it up and
5 showed you what it was? It wasn't the Yale study.

6 This was Mr. Haben's testimony. And I showed him the
7 redline version that Mr. Zavitsanos had showed him, and then I showed
8 him the Yale study. He walked you through and explained there were
9 two different documents. One was a three-page proposal a year before
10 the study where there had been comments from United on a proposal.
11 The other was the Yale study that was an 80-page document published a
12 year later. There were two different documents.

13 Now, why did they do that? Why did they make that
14 allegation? Because they want you to ignore this. These are the findings
15 of the three Yale researchers that were published. And this is in
16 evidence. And what the Yale researchers found is that out-of-network
17 billing allows physicians to significantly increase their payment rates.
18 Because patients cannot avoid out-of-network physicians during
19 emergency visits, this increase in price does not lead to a decrease in
20 demand. And the Yale study found that hospitals that outsource their ED
21 care to TeamHealth, specifically TeamHealth, also have higher physician
22 charges and physician payments.

23 The study's analysis found that when TeamHealth enters a
24 hospital, when they go into a hospital, charges go up. There is an
25 increase in out-of-network billing of 32.6 percentage points, consistent

1 with what we observed for EmCare, which is another big staffing
2 company. We also observed that when TeamHealth enters a hospital,
3 there's a large increase in physician charges and physician payment
4 rates. These out of network bills reflect physician's charges, which
5 unlike payments for most medical services, are not set through a
6 competitive process.

7 Ladies and gentlemen, they didn't want you to focus on this
8 in an objective way, so they made up this whole story about how
9 somehow, this study was bought and paid for by United Healthcare.
10 And there's zero evidence of it in this record. Zero.

11 Now, these are the UMR claims. With Mr. Ziemer, they
12 showed you six claims from this summary. When I say summary, this is
13 a summary of their disputed claims list. This is not a summary of the
14 actual claims data that was produced by UMR. And you'll remember, I
15 went through and showed you that out of the six claims, four of them
16 had errors in them. Four of them. One of these is not Las Vegas Sands.
17 It's something called Stitch, Limited, which explained why the allowed
18 amount was different. It was a different plan. And on this one, it was, I
19 believe, the same patient, same company, but they had the allowed
20 amount wrong. But when I tell you there's an allegation that was
21 presented to suggest that this was an arbitrary reimbursement system,
22 only if you believe this. There's nothing arbitrary about it once you
23 actually look at the right data.

24 Now, Mr. Deal went through with you methodically, you
25 remember that very kind of painful exercise I had to do to show you

1 where and how we can combine the summary to show what's on the
2 disputed claims list and then show what's on the underlying UMR data?
3 Mr. Deal walked you through all of that. Look at your notes on his
4 testimony on that. And what it showed is they were in fact quite
5 consistent. When it's the same employer, the same code, and the same
6 year, all the alloweds are the same. When it's a different employer,
7 same code, different amount, not surprising at all.

8 Now, this came up in Mr. Zavitsanos' opening. In Mr.
9 Haben's examination, there was great fanfare because -- ah-ha -- we've
10 got an EOB which supposedly indicated that the reimbursement should
11 have been paid under one methodology that was inconsistent.
12 Somehow, this was a got you moment. Well, except, as Mr. Haben
13 pointed out, they were using the wrong group number. They were
14 comparing a group number to a different EOB. And this is what his
15 testimony, "Would you agree with me the group number from the EOBs
16 that you were shown is different from the group number from the
17 certificate of coverage that you were shown?" "It is." "What does that
18 tell you?" "The EOB is associated with -- is not associated with that
19 certificate of coverage."

20 So they grabbed that certificate of coverage and that EOB,
21 and they presented them to you as if they were part, they were together,
22 they went together. Here's the certificate of coverage, here's the date.
23 They didn't bother to look at the group number to show that it was a
24 group number that didn't go with that EOB.

25 Now, I want to point out that I think the lawyers we were

1 dealing with are incredibly talented, and they're smart, and they know
2 how to appeal to a jury. They also know how to try to avoid having
3 unhelpful evidence put before the jury. And it occurred to me, why
4 would a lawyer not want to have a witness answer a question?

5 MR. ZAVITSANOS: Your Honor, I'm going to object.
6 Cross-examination permits me to ask yes or no questions. That's an
7 improper argument.

8 THE COURT: Objection sustained.

9 MR. BLALACK: I'll leave it to this, ladies and gentlemen. Ask
10 yourself -- ask yourself, was Mr. Haben given an opportunity to answer
11 questions?

12 MR. ZAVITSANOS: Same objection, Your Honor.

13 THE COURT: Objection sustained.

14 MR. BLALACK: Now, what is the record evidence on
15 Plaintiffs' key allegations here? We've got four claims in the case.
16 Breach of implied in fact contract. TeamHealth Plaintiffs assert that the
17 parties' conduct implied an agreement for Defendants to pay them full
18 charge. Well, we all know there's no written contract. They say that in
19 their complaint. So the question really is where is the evidence of an
20 agreement? Where is the evidence of an offer and an acceptance and of
21 the terms that the parties agreed to in this contract? That's what you're
22 going to have to sort through as you read the instructions and go
23 through the evidence.

24 Well, on these, it's simple because there was no TeamHealth
25 Plaintiff witness, not one, who testified to any discussions with any

1 Defendant about an intent to contract. Not one. TeamHealth Plaintiffs
2 offered no evidence of when the parties supposedly intended to enter
3 the contract. Have you ever seen a contract that you don't know when it
4 starts? But here's the best part. TeamHealth Plaintiffs offered no
5 evidence to when the contract supposedly ends. It runs on to now until
6 the end of time. We don't know exactly when it starts. We don't know
7 who reached this agreement. But we know it goes on forever. It can't be
8 terminated, apparently, because they have offered you no evidence of
9 what the period of time is that the parties agreed to. Not one thread.
10 Not a document. Not any testimony.

11 And the TeamHealth Plaintiffs have offered no evidence that
12 even if Defendants agreed to pay for these services, they mutually
13 agreed to pay full bill charges. The price, ladies and gentlemen, is a key
14 term in any agreement. The price. You've got to ask yourself; did you
15 hear or see any evidence that any of the Defendants and the Plaintiffs
16 reached any meeting of the minds on what the price was for these
17 services? Any? And you may remember Mr. Haben said point blank in
18 his testimony an out-of-network provider is by definition a provider who
19 doesn't have a contract. By definition, that is what an out-of-network
20 provider is.

21 Now, I asked Mr. Haben about United Healthcare's -- and I'm
22 just talking about United Healthcare -- United Healthcare's policies for
23 entering into the network agreements. I said, "Mr. Haben, can you
24 explain to the jury what the policies of United Healthcare were with
25 respect to a contract? That's all I'm asking." He answered, "Yes.

1 Contracting needed to be in writing on contractual paper that was
2 drafted by our attorneys and approved and used and available
3 [indiscernible]." Use your common sense on this one. What is the
4 probability that there was an intention at the part of Defendants to enter
5 into a contract with a big staffing company and never reduce it to
6 writing? Is that reasonable? Does that sound consistent with what your
7 own common experience would tell you happens?

8 I mean, you don't have to rely on just Defense witnesses who
9 worked for the Defendant. Ms. Harris, who worked for Mr. Bristow and
10 was a contract negotiator for TeamHealth for this market, testified, and
11 you heard her today.

12 "Q Based on your experience at TeamHealth, would you agree
13 that it would be unusual for a TeamHealth emergency provider that is
14 out-of-network with a particular payor to be paid his full billed charges
15 by that particular payor?

16 "A It's not the expectations, no.

17 "Q And that is it would not have been TeamHealth's
18 expectations that the out-of-network emergency provider would be paid
19 its full billed charges?

20 "A No."

21 What are we talking about? That's TeamHealth's former
22 contract negotiator telling you point blank under oath that they don't
23 have an expectation that they're going to be paid their full billed charges
24 when they're out-of-network. And ladies and gentlemen, you don't even
25 have to rely on Ms. Harris. You can rely on Mr. Bristow's testimony and

1 their own data.

2 Mr. Bristow was asked about the period in time before the
3 period in dispute and how frequently did the Defendants reimburse their
4 full network claims at full bill charges. Because remember, TeamHealth
5 Plaintiffs are telling you that the conduct of the parties is what forms the
6 contract. So you have to -- you might reasonable say, well, what do the
7 parties normally do? How did they normally interact with each other?
8 Did they have a course of dealing where the Defendants would pay full
9 charges? And if they did, maybe that might indicate some intent to
10 contract and pay full charges during the period in dispute.

11 Mr. Bristow was asked, "So if my math is right, of the 1,160
12 UHC claims that United paid, United Defendants paid about 7 percent of
13 those claims in full billed charges. Does that sound right to you?" "Yes."
14 So ladies and gentlemen, 93 percent of the time, in the period before this
15 dispute started, these Plaintiffs were out-of-network. The Defendants
16 paid something less than full billed charges. How can that possibly
17 establish a course of dealing that sets an expectation to pay charges
18 when they're out-of-network.

19 Now, you saw this slide in opening. That's just confirming
20 what Mr. Bristow told you. This cannot be evidence of an intent to
21 contract. Now, Mr. Bristow was asked, "Did Plaintiffs have an implied
22 agreement with all commercial health insurance and health plans whose
23 members receive emergency services from the Plaintiffs on an out-of-
24 network basis?" This was the key piece of testimony, ladies and
25 gentlemen. This gives it away. This gives this contract away. "On an

1 out-of-network basis, yes, to the extent that they're not otherwise
2 accessing one of our negotiated discounts."

3 What is he saying? He's saying any time we are out-of-
4 network, and we render ER services, we have a contract with any health
5 insurer. Not because of some agreement, a handshake, a conversation,
6 some dealing and a relationship we've had. Just because we're out-of-
7 network ER providers, and as Mr. Zavitsanos stated, because under this
8 federal law, we have to render services. That creates the agreement, and
9 it applies not just to the Defendants in this case, but all, all commercial
10 health plans. Think about what that means. Why would TeamHealth
11 ever want to be in network if they get a contract to pay full charges
12 automatically? That's what he's saying. And I submit to you that can't
13 be the law given the evidence in this case.

14 Now, the next claim, unjust enrichment. Let's make sure we
15 understand what the dispute is about. The TeamHealth Plaintiffs and the
16 Defendants admit that the standard is reasonable value. That's what's in
17 your instructions. The dispute is over what is reasonable value. So
18 nobody is arguing that they're not entitled to reasonable value. The
19 question, though, is not whether TeamHealth Plaintiffs' billed charges
20 are similar to other ER providers. Their evidence of reasonable value is
21 just we bill as much as the next guy. That doesn't prove that the charge
22 is a reasonable value. That proves they charge like everybody else.
23 Okay?

24 The question is whether the amount the Defendants allowed
25 in payment is reasonable compared to an appropriate benchmark, a

1 reasonable value benchmark. We contend that's a market break. They
2 contend it's full charges. That's the dispute.

3 Now, the evidence proves that reasonable value is not their
4 charges. Let's start with where we're working from. You heard the
5 testimony from Mr. Deal and also from Mr. Leathers about the amounts
6 that were allowed on the billed charge, and that that on an equivalent
7 basis to Medicare was 164 percent of Medicare for the allowed amount
8 already compared to 763 percent of Medicare for the full billed charge.
9 So as Mr. Deal explained, the Plaintiffs are seeking in this case nearly
10 800 percent of the Medicare rate.

11 And I want to stop on what Mr. Zavitsanos said earlier about
12 value. He contends this is some kind of a poverty rate. I'll submit to you
13 there is no evidence in this case that shows that Medicare is a poverty
14 rate for emergency room services. But nobody on the Defense side is
15 asking or suggesting that reasonable value in this case is the Medicare
16 rate. We're not arguing that. No witness on our side has said the
17 Medicare rate is [indiscernible]. Everyone agrees that the TeamHealth
18 Plaintiffs should be reimbursed at a premium to Medicare, more than
19 Medicare. The dispute is over how much. They say nearly eight times.
20 We say not quite double. That's the dispute. But the dispute is not
21 whether they should be paid the Medicare rate. Nobody has argued that
22 or suggested that or offered it up.

23 Now, you might ask yourself, isn't there a simpler way to do
24 this? Can't we just go to some fee schedule like Medicare and answer
25 the question? The answer is no. I asked Mr. Bristow, "You agree with

1 me, sir, there is no fee schedule set by Nevada State law or Nevada State
2 government that requires the payment of a specific amount, specific rate
3 for emergency services?" "I'm not aware of any specific fee schedule."
4 Then he went on to talk about this notion of usual and customary rates
5 and said that -- I asked him, "You couldn't go pick up a statute book or
6 regulation and find this language, usual and customary?" He said, "Not
7 that I'm aware of."

8 So ladies and gentlemen, the reason we're having this
9 conversation is because there's not an agreement on an amount.
10 There's no schedule, no fee schedule, no set methodology that everyone
11 has agreed to and acknowledged it sets the industry standard that we all
12 know that we go to when there's a dispute. That doesn't exist. Which is
13 why you're going to have to come up with a benchmark that you think is
14 reasonable based on the evidence that you've been presented in this
15 trial.

16 Now, how do we know billed charges are not that
17 benchmark? Because they never get them. Almost never get them.
18 How do we know? Well first of all, Mr. Leyendecker told us right in his
19 statement. This is a slide from his opening statement. "So 99 percent of
20 the time, they are not paid billed charges when they're out-of-network."
21 Ninety-nine percent. I'm not exactly sure how it got to that number
22 because the experts, our expert and their expert said it was 94.

23 I asked Mr. Deal, did you do an analysis of the TeamHealth
24 claims data and other claims data? They were reimbursed at full billed
25 charges by both insurers, other than my client, 6.4 percent. That's

1 correct. So the underlying data produced by the TeamHealth clinics in
2 this case for the period in dispute shows that when they're out-of-
3 network, they get paid full charges 6.4 percent of the time -- 6.4 percent
4 of the time. I asked Mr. Leathers that same question and I showed him
5 that slide from Mr. Leyendecker's opening. You may remember that.
6 And he said -- I asked him, "Mr. Leyendecker was representing and I
7 agree with him, according to him, 99 percent of the time, it's not paid at
8 charges. It's paid at something less. I think that's what you understood
9 him to be saying, correct, based on your own analysis of the data?" Mr.
10 Leathers said, well, I did not recall it to be 99 percent of the time, but I
11 thought it was closer to, like, 94, 95.

12 So there's no dispute here, ladies and gentlemen. There is
13 not a scintilla of evidence you're going to be deliberating over, showing
14 that the TeamHealth claim regularly, frequently, even often, are paid full
15 charges out-of-network. There is no basis for anyone to say there was
16 an expectation to pay charges.

17 Now, why can't charges be the reasonable value? Well,
18 there's a number of reasons. One of the most common is only one party
19 has any say in what it is. The Provider, TeamHealth sets the charge
20 unilaterally. I asked Mr. Bristow,

21 "Q There's not a regulator of TeamHealth coming along and
22 saying that's too high, that's too low? Again -- answer -- again, a
23 regulator would be in the form of FAIR Health, independently established
24 database. We're going to talk about FAIR Health. No, lack of
25 government regulator. There's no government regulator who comes

1 along and says your chargemaster is too high or too low?

2 "A Answer, not that I'm aware of as a government regulator,
3 no."

4 Now, it's not just that they're unilateral. The evidence is
5 indisputable that they are inflated and go up, up, up. And you heard
6 some really fast legal work where the Plaintiffs tried to take a random
7 email talking about pooled, collective, aggregate charges going down
8 because providers are coming in network and therefore coming out of
9 the pool. They did that because they have to acknowledge that their own
10 data, the FAIR Health data on which they rely, which they relied on,
11 shows us that the charges in this area have gone like this during the
12 period of dispute.

13 Mr. Deal testified about the TeamHealth Plaintiffs charges
14 specifically. And he was asked, basically, on his analysis how frequently
15 they went up. And he testified that they went up at least once a year and
16 sometimes multiple times within a year. And that's because there's only
17 one party who has any role in setting charges.

18 Then Mr. Bristow was asked about the reviews. And he's
19 testified,

20 "Q How is the amount of the increase determined.

21 "A Again, as a general rule, I would say we were increasing on
22 average, our fees five percent a year. So the difference between 2015
23 and 2020 is a 20 percent increase."

24 Does that get determined just by TeamHealth, not by any
25 negotiation or any dealings with a third party. Mr. Deal confirmed the

1 level of increase in his own guided analysis that you heard.

2 Now, this health benchmark data, was produced to us by the
3 Plaintiffs. That's their Bates number. They're the ones that gave us this
4 data they relied on and to support their position that their charges were
5 unreasonable. And what -- you remember going through these with Mr.
6 Deal. What this showed is the 80th percentile. And I'm just showing one
7 code, 89099281, went up 413 percent in 5 years to 3,308 percent of
8 Medicare. So what Mr. Leathers was saying is, you know, as long you're
9 under this, you're reasonable. The reasonable charge, reasonable value.
10 And there were others looking up, down, up, down, up, gradually
11 increase up to around 34 percent of the 809 percent of Medicare. Here's
12 one for Ruby Crest and Team. Same thing. Increased spikes in 2016. It
13 gradually goes up to 71 percent increase in 2020, 892 percent of
14 Medicare.

15 What's the importance of this data? The importance of this
16 data is not to show that the chart went up a specified amount. The
17 importance of this data is to show this data confirms that charges have
18 gone up generally, one, and that this is not a good benchmark for
19 measuring reasonable value. FAIR Health is not -- it does many good
20 things and provides a lot of value in the marketplace, including for
21 United's clients. But not -- it's not -- the purpose is not to measure
22 reasonable value.

23 Now, you also saw an analysis of the TeamHealth plaintiffs'
24 charges that showed that the phenomenon just described for
25 all -- claimed all ER providers in Nevada was not unique to them. Look at

1 this. Look at the charge for Ruby Crest for 99285 here compared to
2 Fremont. A \$400 difference. Same year, same service. You remember
3 Mr. Deal explained geographic variation might provide some
4 explanation, but not that much. This is just further evidence of the
5 randomness of charges. And Ruby Crest charges increased 17.6 percent
6 over that time period.

7 Now, Mr. Mizenko came before you from FAIR Health, and
8 walked you through a number of these histograms. And these were
9 useful for understanding how the TeamHealth plaintiffs were setting
10 their own standard for what is reasonable. Remember what their
11 position is. Their position is this sets the standard of reasonability.
12 Now, Mr. Mizenko explained to you that even using their own standard,
13 their charges, their individual charges on their price list for claims that
14 are in the period in -- the disputed period, the disputed timeframe are
15 over the standard a third of the time, and over the median nearly 70
16 percent of the time. So even on their own standard, they are not
17 satisfied.

18 But that's not the biggest problem with this evidence.
19 Because the biggest problem with this evidence is this data just shows
20 why bill charges can't be a reasonable measure for reasonable value.
21 Look at this. You got this spikes, these clusters over here. Look at this
22 one. 5,000 observations on one charge, everything else is scattered all
23 around. Here's one -- here's where TeamHealth charged all the way out
24 here at the very end of the spectrum with the bulk of the charges down
25 here. Here's another one. TeamHealth's off as an outlier. But with the

1 vast majority of the occurrences in the middle, they're half that rate.

2 The point of this evidence, ladies and gentlemen, is not to
3 say that TeamHealth charges are excessive relative to other providers.

4 The point of this evidence, ladies and gentlemen, is this just is not a
5 good barometer of what is reasonable value. You may remember this
6 chart from opening, and I walked through this with Mr. Leathers this
7 histogram. This is one of Mr. Mizenko's histograms. And I asked him is
8 \$400 reasonable? Right? And then I asked him, is \$800 reasonable
9 value? What about 1,200? What about 1,800? Which of those numbers
10 is the reasonable value for that service if this is the metric, if this is the
11 standard?

12 And Mr. Leathers gave some interesting testimony. He told
13 you, I can't say that 400 is the reasonable value. I can't say that 800 is
14 the reasonable value. He said, I can't even tell you that 1,200 is the
15 reasonable value. He was only willing to admit the 800 -- 1,800 was the
16 reasonable value. So somehow, the highest price on the mark was
17 reasonable value, and the lower values were not.

18 Now, the evidence I submit, ladies and gentlemen, does not
19 support TeamHealth Plaintiffs' arguments of full charges represent
20 reasonable value. So I'm going to ask you what are the things they
21 focused you on? First, they focus you on website. This is Plaintiffs'
22 Exhibit 363. And I'm going to ask you when you get into deliberations to
23 get that exhibit and read it closely because this is really their -- the thing
24 they're having [indiscernible].

25 Ladies and gentlemen, when you read this website, you

1 won't find a single statement anywhere in it that says that
2 UnitedHealthcare's position is that reasonable value is a function of the
3 phrase usual, customary and reasonable amount or reasonable and
4 customary. It will be nowhere in this site. And nowhere in does it even
5 say that any time you've got a plan with that language, you're always
6 going to pay the 80th percentile. It doesn't even say that. So what it
7 describes is it describes that when you have a plan document with this
8 language, it simply notes that these are the standards they may use to
9 pay out-of-network benefits. Such plans determine the amounts payable
10 under these standards by reference to various available resources, one
11 of which they described is FAIR Health.

12 Now, look what it says, and this is why you've got to read the
13 document and not just listen to the lawyers. These standards do not
14 apply to plans where reimbursement is determined using Medicare
15 rates. On the face of the website, it says point blank, this does not apply
16 any time we don't have plain language that's something other than this.
17 And then later, it says that also, a member's healthcare benefit plan may
18 define these standards differently or contain additional standards. And it
19 is the language of the member's healthcare benefit plan or the plaintiff's
20 interpretation of such language that is controlled. So please, I urge you
21 to pick up this document. Because if that wasn't clear enough, in big
22 blue letters on the website, it says,

23 "Important Exclusions: UnitedHealth Group affiliates will not
24 use the FAIR Health Benchmarking Database to determine out-of-
25 network benefits for a professional service if a member's healthcare

1 benefit plan does not require payment under these standards; usual and
2 customary; usual, customary and reasonable; prevailing rate. For
3 example, if a member's plan provides for payment for payment based
4 upon Medicare rates, UnitedHealth Group will not use the FAIR Health
5 Benchmarking Database as a resource".

6 It's on the face of the very same document they're relying on.
7 It says point blank this whole FAIR Health thing doesn't even apply if we
8 don't have this exact language in the plan document. That's all it says.
9 It's got nothing to do with setting some general standard of what is a
10 reasonable basis for reimbursement. But even for the plans that have
11 the language, even for the plans that say usual and customary or
12 reasonable and customary, the website says point blank,

13 "Affiliates of UnitedHealth Group frequently" -- not always --
14 "frequently use the 80th percentile of the FAIR Health Benchmark"
15 Database to calculate how much to pay for out-of-network services of
16 health care professionals" -- here's the but -- "but plan designers and
17 administrators of particular health care benefit plans may choose
18 different percentiles for use with applicable health care benefit plans".

19 And you heard Mr. Mizenko describe how their plans do use
20 other percentiles other than the 80th. Some use the 50th, some use the
21 60th, some use the 70th, some use the median. None of that constitutes
22 a standard general application that applies to all services, like this trial.

23 Now, Mr. Haben testified and confirmed that very point when
24 he came back, and I had a chance to actually give him a chance to
25 answer a question. Now, he made the point. People asked him about

1 that language about plan designers, and the made the point that the
2 design of the benefit plan could be another employer group or self-
3 funded or the administrator or tied to the agent. It can pick a percentile
4 as they desire.

5 Now, what did Mr. Mizenko tell you about this FAIR Health
6 and whether it's a general standard? Ladies and gentlemen, I urge you
7 to look at your notes. He testified on November 19th. Okay. He was
8 asked, "Does FAIR Health define for the healthcare marketplace the
9 usual, customary or reasonable rates for healthcare services?" Point
10 blank. "Absolutely not". And that's part of our mission to maintain the
11 trial -- the independence. And so we publish these amounts, but we
12 don't tell people how to use them, how to interpret them, what they
13 mean.

14 "Q So I take it FAIR Health does not determine the so called UCR
15 for any given service?

16 "A They do not.

17 "Q Does FAIR Health act as an industry setting standard for what
18 is the reasonable value for out-of-network ER service?"

19 Could he be clearer?

20 "A No, we do not. People may choose to use it for health data.
21 They may choose to use other forms of data. They may choose to use
22 combinations of different types of data".

23 Ladies and gentlemen, FAIR Health directly came and testified to
24 you that their whole theory is based on the policy.

25 Now, the Walmart plan and administrative services

1 agreement. Plaintiffs have shown this document to a number of people
2 and suggested that somehow, this agreement between Walmart and, I
3 believe this was UnitedHealthcare, somehow indicates that the
4 Defendants knew that the amount that was due and payable was
5 [indiscernible] charges. Now, again, there's no plaintiff relationship for
6 this. This is a contract between a TPA and a client, and it's about how to
7 calculate the savings. And the language they point to is that the savings
8 obtained to these amount that would have been payable to the
9 healthcare provider, including amounts payable by both the member and
10 the plan if no discount were available minus the amount that is payable
11 to the healthcare provider.

12 The argument goes -- you heard it from Mr. Zavitsanos. The
13 argument goes, well, because you're calculating the savings off of the
14 bill charge, and that's the amount that was payable, you know that's the
15 amount due. That makes no sense. If that were the way to read this
16 document, what it would mean is that UnitedHealthcare was telling
17 Walmart, if a provider puts an amount on a claim form for your member,
18 I don't care what it is, you are legally obligated to pay it. That's what
19 they're saying.

20 And that you'll remember -- I think I asked Mr. Haben about
21 that language. "Does this indicate that the member is obligated to pay
22 it? No, it does not". "What is your basis for saying that's the proper way
23 to read the language? Well, I've been in the industry 30 years. Never
24 understood that that's what's owed to provider". "And in your view, is
25 there anything in the language which indicates either was an obligation

1 to pay the provider's bill charge no matter the bill charge was? No".
2 And question, "Why do you say that?" "It's implausible". This is the key
3 phrase. "If that was the case, it would mean that the provider and the
4 staffing could do whatever they wanted, let's say \$10,000 for a strep test,
5 and the employer group would have to pay it".

6 Ladies and gentlemen, what that language says is if you
7 don't have this program, this is the amount on the claim form that your
8 member can be pursued for. If that doesn't prevent the plan or the
9 employee from saying, I disagree, provider. I think that's excessive. I
10 think that's unreasonable. I don't have an obligation to pay something
11 that's unreasonable. And nothing about that statement indicates that
12 UnitedHealthcare thinks that it's obligated to pay a charge no matter
13 what provider was on the claim.

14 Now, Mr. Leathers testified that in his view, reasonable value
15 was the Plaintiffs' bill charge. But ladies and gentlemen, when I submit
16 his testimony, he's not even qualified to render an opinion on it. He has
17 no training or experience as an accountant. He admitted that to you. He
18 had no prior experience giving reasonable value opinions of medical
19 services, much less reasonable value of out-of-network ER services. He's
20 not even part of the healthcare practice at his firm. He focuses on
21 energy and intellectual property.

22 He was brought into this case by the AZA Firm in July, with
23 whom he previously worked. That's what he testified. And he testified
24 that he was brought in at the last minute for what he characterized, you
25 may remember, as a fire drill -- or actually what counsel characterized as

1 a fire drill. And he was brought in to replace a prior damages expert
2 who you heard about, Mr. Phillips, who had been working on the case
3 but who you never heard from.

4 And Mr. Leathers' opinion was also inconsistent. He relied
5 on the FAIR Health data as the benchmark, but then admitted that FAIR
6 Health data does not set the UCR industry standard, relying on Mr.
7 Mizenko's testimony. He testified that FAIR Health data had anomalies.
8 You may remember him saying the data had anomalies. So when I
9 asked him about the 80th percentile and the spikes that were in that FAIR
10 Health data, he testified that that reasonable value is not based on the
11 FAIR Health data alone. So we started with FAIR Health as the
12 benchmark, and then it was not the benchmark, and it contains
13 anomalies that makes it unsuitable to use as a benchmark.

14 Now, let's talk about these damages calculation on what he
15 calculated as the basis for an underpayment for reasonable value. He
16 said that the measure of every one of that calculation, that chart that Mr.
17 Zavitsanos showed you that comes up with an amount for every Plaintiff,
18 is tied to the measure of damages being bill charges. So I asked him,
19 what if the jury concludes that the proper benchmark is not the charges?
20 What if it's something less? Let's say that you don't agree with my
21 claim, but they don't think it's bill charges. Can you use Mr. Leathers'
22 numbers if the jury concludes that bill charges are not the reasonable
23 benchmark? And his testimony was, "No".

24 So that's the starting point. If they don't agree -- meaning
25 you don't agree with that premise, they can't use these memories for --

1 and its memory. It should say money, for money damage, correct?

2 Correct.

3 So ladies and gentlemen, what I want you to think about is
4 when you're in deliberations, I'm going to urge you when we're done to
5 find that the amounts allowed by the Defendants were reasonable, and
6 no amount is due. And let's say you disagree with me, and you conclude
7 that some amount more is due. Whatever you do, this number is
8 irrelevant, unless you conclude they're absolutely 100-percent right on
9 that bill charge benchmark, because these numbers only work if bill
10 charges are the measure of reasonable value. They don't work any other
11 way.

12 Now, Mr. Zavitsanos reminded you today of one of the first
13 things we addressed in the case, which is he asked Mr. Haben about a
14 hypothetical emergency room visit involving a gunshot wound, and
15 showed him a number of a bill charge of \$1,428 for saving someone's
16 life with an average allowed, I think, around an allowed amount of, what,
17 \$246 and asked, is that reasonable value? And asked whether it would
18 be egregious to reimburse \$240 for that? That was a pretty powerful
19 moment.

20 They never once showed you -- not once showed you an
21 actual claim from the disputed claims list for a gunshot wound, much
22 less a claim for a gunshot wound that had a single service on it of 99285
23 that was paid 246. What they showed you was a hypothetical.
24 Hypothetical gunshot wound claim.

25 Now, am I suggesting that there are no gunshots that

1 occurred that have been treated at these ERs? Of course not. I'm sure
2 there have been many. And I'm sure these ER professionals have done a
3 phenomenal job treating those patients. If that's happened, that's not
4 what they showed you. They talked about a hypothetical and then never
5 showed you the actual claim that supposedly represented this gunshot
6 wound at \$246.

7 Now, Mr. -- Mr. Deal showed you two claims from the
8 disputed claims list. And Dr. Scherr referenced these, and I asked him
9 about them. This is a claim involving a severe event based on the
10 descriptions and the codes. We have no medical records, so we don't
11 know exactly what all the services were. But from the claims information
12 on the disputed claims list this is what's described. Three services,
13 charges of \$2,100, an allowed amount of \$1,649, which I think is about 60
14 percent of the charge.

15 This is the claim about which I asked Dr. Scherr, which is
16 \$1,148 for an visit, modern day visit 3, excision. I don't -- I'm not -- I'm
17 sure this was -- I'm not minimizing. I'm sure it's a significant encounter.
18 But it was the charge was \$1,148, and the allowed amount is 173. Sure,
19 both were very important services for the patient. But the notion that we
20 had a 12 -- whatever it was, \$1,400 charge for a gunshot wound with an
21 allowed of 246, that -- there's no evidence of that. Maybe there's one of
22 them on the claim form. But they didn't show you that. They didn't give
23 you evidence of that. What they did was they had lawyers talk about it.
24 And for the reasons the instructions said, that's not evidence.

25 Now, Dr. Frantz testified. Again, he's not in this area. He

1 lives elsewhere. And he's an executive -- he's the president of the
2 western region. He testified about the volume of patients that can be
3 seen in one of these ER rooms in a day, in an hour. Now, Dr. Scherr
4 talked about sometimes where you have very high volume. Maybe
5 higher even than this. But just look at the numbers here that Dr. Frantz
6 talked about, using the two patients per hour example. And then it can
7 be as much as ten patients per hour. And use your own commonsense
8 whenever being in the emergency room.

9 Ladies and gentlemen, using the average bill for 99285 of
10 1,404 on the disputed claims list and the average allowed for that same
11 claim of 241, using off the disputed claims list, two patients per hour,
12 that would be a six-page list. It'd give you one in the middle, and one
13 that's not as Dr. Frantz identified. That's what you're talking about on an
14 hourly rate. If it was two paid at 241, you're talking about a little less
15 than \$500 in the allowed. If it was six, the allowed would be almost
16 \$1,500. If they saw ten patients in one of these high-peak times that Dr.
17 Frantz was referring to, you're talking about almost \$2,500 at that -- at
18 that allowed. That's not to even say what it would be if you paid full
19 charges at the allowed.

20 So it's not frankly very fair to characterize the hypothetical
21 that you were -- that was presented to Mr. Haben as representative of
22 what we're dealing with on this dispute.

23 Now, the evidence we submitted we believe shows that the
24 164 percent of the Medicare rate is a reasonable amount for the disputed
25 ER services. And you heard testimony from representatives of the

1 Defendants, Mr. Haben, Ms. Hare who said that's their view of -- the
2 company's view about how to measure reasonable value. We looked at
3 Medicare, and we'll pay above that with a reasonable premium. Ms.
4 Hare talked about paying what's called the greater of three methodology
5 that Mr. Zavitsanos is going to grip on.

6 Now, but mostly, I want to direct you to the testimony of Mr.
7 Deal who unlike Mr. Leathers, is a credentialed economist who has done
8 this exact analysis on reasonable value of healthcare services and has
9 been qualified as an expert witness in cases -- on dozens of cases
10 involving the reasonable value of healthcare services, including out-of-
11 network ER services. He testified that it was his professional opinion that
12 that value was at or above the reasonable value using a market rate
13 benchmark.

14 Now, I want to talk about Mr. Leathers' analysis. You would
15 have had to be paying close attention to really recognize that Mr.
16 Leathers gave an alternative analysis as a benchmark. He told you that
17 the reasonable value should be measured by full charges. But he also
18 did an analysis in his expert report that we asked him about, about using
19 an alternative benchmark, which was the benchmark measured by out-
20 of-network rates paid to other ER providers in Nevada. And what he
21 found, in his view, based on his analysis, was that the allowed using that
22 alternative benchmark would have been 355 percent of that.

23 So instead of the 164 percent that was allowed for these
24 claims, he found it would have been -- the alternative would've been 3.5,
25 which equals 6.16 million. When you subtract the amount out already

1 allowed, that means 3.3 million would be the underpay using his
2 alternative analysis. And you may remember I showed him the number
3 of the average amount that he found from his analysis and asked him to
4 multiply it by the number of disputed claims. That's how he got to this
5 number.

6 Now, when I asked Mr. Deal, is that -- is that a fair and
7 reasonable way to measure reasonable value for an out-of-network
8 service, and Mr. Deal explained that he did not agree that it was because
9 the out-of-network setting is -- the out-of-network setting is not a willing
10 buyer, willing seller transaction, not the way it needs to be for
11 reasonable value. Neither party can walk away. The provider has to
12 provide the service. The payer has to reimburse for the service.

13 And he did say -- he did say -- I'll acknowledge this. Mr. Deal
14 did say that if he had to choose between two and only two, between
15 billed charges as a reasonable benchmark and out-of-network services,
16 he would agree the out-of-network would be a better, more reliable,
17 closer to the reasonable value. But as he said, I don't love either of
18 those. But certainly, the out-of-network would be closer.

19 Now, this little scribbling that I did with Mr. Deal is what
20 came up in my questioning with Dr. Frantz. I want to make sure you all
21 understand this because I think it gets to the essence of the problem.
22 What I was explaining is that for most ER patients, there's no choice.
23 Okay. Maybe Dr. Scherr is aware of circumstances where you've got
24 emergency room patients that are on the way to the hospital and they
25 can yell up to the front, ambulance driver, turn right, don't go left.

1 Maybe that does happen. I submit to you, ladies and gentlemen,
2 commonsense says that it doesn't happen much. And we certainly don't
3 really want our patients in an emergency situation to be wondering
4 about, you know, which of these facilities presents the best value
5 because these are emergency services by that very nature.

6 So the question is in this case and in many cases, the patient
7 is ending up in the hospital in a way that has nothing to do with whether
8 the physician group that is staffing the hospital is or is not in their
9 network. That's not part of the calculation. So how does that have any
10 bearing on the value of the service? I submit to you, ladies and
11 gentleman, and Mr. Deal confirmed, the value of the service that is being
12 rendered in both hospitals is exactly the same.

13 Now, you could imagine a scenario where there could be
14 evidence that the provider in one hospital is really better than the
15 providers in the other hospital, and that might make a difference. But
16 you didn't get that evidence here. There was no data, no metrics, no
17 studies, no economic analysis showing that the TeamHealth ER
18 physicians are qualitatively substantially better than all the other ER
19 physicians in Clark County. You didn't see that. You didn't even hear
20 testimony to that effect. You just heard testimony that they do their best
21 and try to do a good job to make the patient's experience as good as
22 possible, which is great. I'm sure they do. But you did not get evidence
23 that would allow you to say that the TeamHealth ER services are
24 qualitatively different from the ER services rendered by EmCare ER
25 Physicians, or some other smaller group of ER physicians here in Clark

1 County.

2 So the question is both groups of physicians are rendering in
3 this hypothetical, the same service. Is the value of the service different
4 between the out-of-network example and the network example because
5 of the decision of the ambulance driver regarding which way to turn to
6 take them to which hospital? That makes no sense. And I would submit
7 to you, ladies and gentlemen, that the out-of-network ER rates are not a
8 reliable benchmark for measuring reasonable value.

9 Now, if you disagree and you conclude that Mr. Leathers was
10 on to something and that in fact, other out-of-network rates may form a
11 useful benchmark for measuring reasonable value, you still have to find
12 that he got it wrong because he didn't measure it right. What he did was
13 he lumped them all together, came up with a benchmark -- and Mr. Deal
14 explained this to you. He lumped them all together as a group, and then
15 he benchmarked them together as a group. He didn't benchmark United
16 Healthcare against United Healthcare, Sierra against Sierra, UMR against
17 UMR, Health Plan of Nevada, Health Plan of Nevada. He bundled them
18 together to come up with an average. And by doing that, he inflated the
19 comparison.

20 And if he had done it properly by measuring the benchmark
21 by each Defendant against the out-of-network rates for that Defendant, it
22 would have reduced the delta to 2.1. So when you're looking at the
23 testimony of Mr. Leathers about this alternative benchmark, know that as
24 Mr. Deal explained, what he should have done was find that had he
25 compared each Defendants' allowed amounts for the disputed claims to

1 the average out-of-network rates for that Defendant, the delta here is
2 only 2.1, which is 284 percent.

3 So when you're thinking about all options, full bill charge,
4 what we say is the reasonable value, premiums of Medicare, 164 percent
5 of Medicare, the alternatives that Mr. Leathers identified, 355, or Mr. Deal
6 identified, 284, this is the most accurate measure of what Mr. Leathers
7 calculated.

8 Now, let's talk quickly about the Nevada Unfair Insurance
9 Practices. So the instruction you gave says, here's the key -- Mr. Roberts
10 is going to take you through this in more detail. But the key phrase is the
11 Defendants -- the Defendants failed to effectuate prompt, fair, and
12 equitable settlement -- here's the key language -- where Defendants'
13 liability has become reasonably clear. So to find a violation of the
14 statute what you've got to find is two things. You've got to find that the
15 Defendants knew that the allowed amount had to be billed charges. Not
16 something less. Had to be billed charges. And despite knowing that that
17 allowed amount was billed charges, senior people at each of the
18 Defendants knowingly permitted or had prior knowledge of the failure to
19 pay and settle that claim at that amount.

20 So as you're going through the evidence, if you conclude
21 that the Defendant -- the Plaintiffs are wrong and that billed charges are
22 not the proper benchmark and are not the proper allowed amount, this
23 whole analysis goes away because you don't even get to the question
24 because you have to find that the Defendants have knowledge that the
25 liability for the disputed claims was reasonably clear already.

1 Now, the Plaintiffs spent all -- they spent weeks with Mr.
2 Haben, endlessly going over out-of-network programs. Talking about
3 this five-year plan and all this sort of stuff. And I want to just skip
4 through a few quick points. First of all, I just want to make the point that
5 everything that we talk about related to those out-of-network charges,
6 not one bit of it has anything to do with Sierra or Health Plan of Nevada.
7 They don't even have out-of-network programs. They don't have a
8 shared savings program. They don't use Data iSight. They don't use
9 FAIR Health. None of that has any bearing on those two Defendants at
10 all.

11 Next, Data iSight. Has more time and energy been spent on
12 something so trivial in a dispute. There are 11,500 claims in this case.
13 Fewer than six percent of them were reimbursed using Data iSight.
14 Something like 690. And that comes from Mr. Leathers' own testimony.
15 So the suggestion that somehow Data iSight was driving this great
16 scheme, it's not the scheme in dispute because the claims that are in
17 dispute, almost all of them never get near Data iSight. And that's
18 Plaintiffs' expert.

19 Moreover, it's an odd scheme when the fraudulent engine
20 reimburses at amounts higher than the other claims. Mr. Leathers
21 testified and admitted that the Data iSight claims that he analyzed, which
22 are all the ones on the disputed claims list, had higher allowed amounts
23 than the non-Data iSight claims by nearly double. So Data iSight is
24 paying more than non-Data iSight. So as you're thinking about how this
25 theory holds together, ask yourself how that makes sense.

1 Physician reasonable and customary program, which you
2 heard a lot about, the evidence was clear that it doesn't even apply to
3 out-of-network ER claims. You heard a lot about the so-called out-of-
4 network and in-network benefit levels. Circumstances where the patient
5 has a choice and where the patient doesn't have a choice. And the
6 physician reasonable and customary program is on the out-of-network
7 benefit level. It's not even programmed to reimburse out-of-network
8 emergency claims because those are non-choice emergent claims.
9 Document after document, witness after witness testified to that. This is
10 in fact an excerpt from Ms. Paradise's trial testimony where she
11 explained that exactly. She said, "We do rely on FAIR Health billed
12 charge benchmarks as part of physician reasonable and customary
13 program, which does not apply to ER services, but applies to the out-of-
14 network benefit level for physician services, which is not ER."

15 Shared savings fees. Again, this is so we don't lose time
16 with this. It's not about the plan Sierra and Health Plan of Nevada
17 because they don't have shared savings plans because they don't have
18 shared savings. They don't even do it. So they don't -- there aren't any
19 fees. Ms. Hare testified they don't have any shared savings fees.

20 Now, you remember another one of my little fancy drawings
21 here, this was -- I did this with Mr. Haben. And the goal of this was to
22 help remind you all of how you earn the shared savings fees. How could
23 United earn those dollars? Well, what this illustrated is that the only way
24 United earned any money is if the charge went up, up, up, up. All right.
25 If the charge was \$300 and the allowed amount was \$300,

1 UnitedHealthcare did not earn any shared savings fees. It was only
2 when it went up to 500 above the allowed amount, and then 1,000, and
3 eventually 1,500, that you start earning shared savings fees. And you
4 don't break a point where the shared savings fee eclipses the allowed
5 amount until the charge gets sufficiently high that the fee gets
6 sufficiently high.

7 Mr. Haben testified about how you calculate that fee. And he
8 made clear that that billion dollars in revenue and fees that he was asked
9 about and was in some of the documents, translates to about \$3 billion
10 in savings for those clients and their employees. That's value, ladies and
11 gentlemen. That's worth paying for. And clients, sophisticated
12 companies pay for it for a reason, because that would be cost that they --
13 those employers that I showed you, including the ones here in Las Vegas
14 would be paying in higher medical costs and higher patient
15 responsibility if those programs were not there, or they'd be in court, just
16 like we are, litigating with those providers, over the amounts in dispute.

17 Now you also heard that it's not like this is some alien
18 program that is not known to everyone. Mr. Murphy noted that
19 UnitedHealthcare had been TeamHealth's third-party administrators.
20 TeamHealth was one of our clients. One of our clients. Well, we were
21 until they got rid of us.

22 And when we were their client, we were kind of theirs,
23 because they were part of Equity Healthcare. Which was this group of
24 companies, part of the same group purchasing organization. You'll see
25 TeamHealth right down here. You remember Mr. Haben describing this

1 chart to you. And what this showed was out of 20 whatever companies
2 that were affiliated for this group purchasing agreement, by the way this
3 is Exhibit 5504, if you want to look at it. That all but two opted in to LR
4 cost management and Data iSight. All but two. And TeamHealth was
5 one of them.

6 You remember when Mr. Zavitsanos tried to laugh that off as
7 the crazy cousin. Example. Well 23 or whatever, 25 cousins seemed to
8 think this was a good deal. And opted in to using LR Cost Management.
9 And also take administrator's fees. And as you can see here, Mr. Haben
10 described what that represents. Mr. Haben explained how many of these
11 Equity Healthcare clients, including TeamHealth had selected to share
12 saving programs. All but two of them. TeamHealth was one of those
13 two.

14 And then explained in that column that I just showed you
15 that \$2 million and the individual amounts was the amount those
16 employers would have spent in additional healthcare costs if they had
17 not had that program. That's the value and that's why they pay the fee.

18 Now MultiPlan's Data iSight tool, Mr. Leathers, quickly, I'll
19 just run through this. He made clear, it's widely and broadly used in the
20 healthcare community and that he understands it is a well-known and
21 well used product. He also testified that MultiPlan provides the same
22 service to my client's competitors as they do to my client. Yes.

23 Now this whole question of like this move to move
24 everybody from one program to another for which we spent so much
25 time. There's a lot of debate about whether there was competitor

1 pressure on my clients, United Healthcare, to have a better set of out-of-
2 network solutions. And ladies and gentlemen, there's a lot of talk about
3 not having documents. Ladies and gentlemen, you saw document after
4 document after document that discussed that competitive pressure and
5 that UnitedHealthcare perceived it was behind in the market. I'm just
6 going to show you a handful.

7 Here's one right here, Defense Exhibit 4570. This is in your
8 list of exhibits. This was Mr. Haben in 2016 saying that currently these
9 competitors, MultiPlan said 700 top 10 competitors use the tool today.
10 That's when United Healthcare was trying to decide whether to adopt it.
11 By the time United came along, 7 of the 10 top competitors was already
12 using it.

13 So then in 2017, a customer impact advisory group, they
14 were trying to recommend expanding use of the product. And there was
15 a section on competitiveness. Is UAC the leader or are we behind others
16 in our approach. Please include all competitive information. UAC is
17 utilizing Data iSight owned by MultiPlan to administer the [indiscernible]
18 program being fully insured. Ninety other payors nationwide use this
19 methodology in a similar manner.

20 And then 2017, a report on the medium adopting a new
21 program called benchmark pricing. And in the recommendation the
22 document said our competition. Today our major competitors have
23 some sort of outlier cost management, they use Data iSight. It says
24 United is going to be implementing it in the future. Look what it says.
25 About implementing outlier cost management is currently planned.

1 United catches up to the pack, but not leading.

2 And then in 2018, UAC has a variety of programs to -- this is
3 Exhibit -- Plaintiffs' Exhibit 175, by the way for your reference the prior
4 exhibit I showed you was Plaintiff's Exhibit 96.

5 And then Plaintiffs' Exhibit 175, 2018 UAC has a variety of
6 programs to work to manage no-par spend, however there is still
7 opportunity to do more, particular with respect to VCR type claims.
8 Here's the key for evidence. Market intel indicates that our competitors
9 have tighter cost controls to help manage this.

10 Please remember the notion that the occupants from the
11 time, long before this lawsuit confirming that there was competitive
12 pressure on my client, UnitedHealthcare, one of my clients, to catch up
13 and offer competitive solutions in the market.

14 Now Ms. Paradise described to you the vetting that
15 UnitedHealthcare did before adopting Data iSight and talked about two
16 things that really made them comfortable. The fact that it was widely
17 used by competitors. And the fact that it was widely accepted by
18 providers.

19 Mr. Crandell testified, I thought ably, under difficult
20 circumstances with my colleague, Mr. Zavitsanos, and explained how the
21 program worked. And I hope dispelled the notion of the Wizard of Oz
22 example once and for all. The tool is [indiscernible] to the payor,
23 provider and patient. It recommends the same price regardless of payor,
24 provider or patient. And he explained how overrides, which Mr. Haben
25 had also talked about worked, in the context of E.R. services.

1 Now summary plan documents. A lot of talk about that
2 today. I showed you several examples that had -- some of which had
3 been shown to Mr. Haben of summary plan documents that described
4 the reimbursement methodologies -- different reimbursement
5 methodologies in those plan documents. This is one of the examples.
6 125 percent of Medicare's maximum, or the shared savings program.
7 This was Wal-Mart.

8 We showed you the certificate of coverage for Rosemont.
9 These are all exhibits that you'll have in deliberations. Which described
10 the finer of the median amount negotiated with network providers or 125
11 percent of published rate at Medicare.

12 And we also showed you one for the Love's Travel Shops.
13 Which talked about the outlier cost management program. Okay. The
14 purpose of this, you'll remember was to illustrate that ultimately the plan
15 document indicated the method by which reimbursement would occur.

16 Mr. Haben explained that you can have the same -- this was
17 his testimony on November 10th, so check your notes. He explained
18 using the Rosemont University example and Wal-Mart example of two
19 patients, two employers, plus two institutions, or two companies, could
20 end up going to the same provider, receiving the same service on the
21 same day and being reimbursed at a different rate, based on the claim
22 benefit. They're both reasonable rates. One might be a premium
23 compared to the other. But they are a function. They are not arbitrary,
24 because they are a function of the plans having different benefits. Just
25 like different car insurance benefits and other benefits that we all have in

1 our life with insurance claims.

2 Now Mr. Haben confirmed what you saw in some of the
3 documents that these out-of-network programs that United Healthcare
4 offers are opt-in programs. They're not opt-outs. So there are some
5 companies that have opt-out programs. Where clients can remove
6 themselves from a program. For United Healthcare, these are all opt-in
7 programs, chosen by clients.

8 Ms. King testified to you yesterday about the importance of
9 out-of-network programs control. The costs are self-funded employers
10 and their employees. And she talked about how the market had shifted
11 over the last 10 years away from charge based out-of-network
12 reimbursement program.

13 UnitedHealthcare is not leading this. UnitedHealthcare is just
14 simply responding to an environment where charges go up, up, and up.
15 And employers who have to offer those benefit packages, expect some
16 restraint. She testified UnitedHealthcare, UMR had been uncompetitive
17 in the market if they had not offered more aggressive options to their
18 clients.

19 Now the Nevada [indiscernible. This is the last one. This
20 one is very simple, ladies and gentlemen. First of all, there's no data or
21 testimony that Defendants failed to pay this claim within the time period
22 of a statute. So you're not going to hear any evidence that United
23 Healthcare, you know, paid the claims two years late, or a year late,
24 because as Mr. Bristow explained, the allegation is solely not about the
25 timing of the payments, but whether there was full payment. That's the

1 question.

2 So I tell you that, because as Mr. Roberts will explain, when
3 you get to the jury instructions and the verdict form, this is just like the
4 unfair insurance practices claim. The only way this makes sense for you
5 to find for the Plaintiffs, is if you conclude that the allowed amount and
6 the benchmark amount, the reasonable amount was full charge. If it was
7 full charge, then the Defendants did not make full payment and you're
8 under the statute.

9 But if, however, you conclude the reasonable value was an
10 amount something less that's in dispute. Either the amount we say is
11 the reasonable amount then obviously you won't get to it. But let's say
12 you chose Mr. Leather's alternative benchmark as the reasonable value.
13 This is not fully paid. Because what they're saying is they were owed full
14 charges. Not they were owed something between. So if you conclude
15 that full charges were not the proper measure of reasonable value, that
16 it's something less, then you have to find for the Defendants on this
17 claim. And Mr. Roberts will explain that more.

18 All right. Real quick on unclean hands and then we're going
19 to take a break. Real quick just on the sub-TIN scheme, run through
20 these documents. These are some that you just saw from Mr. Greenberg
21 to Mr. Bristow describing the scheme set up in the early part of 2019.
22 Mr. Bristow explaining that he did not see the expected realization of
23 payment of 80 percent from the Freemont sites, and he was asking are
24 you sure we set up that sub-TIN. I thought we had it in place. Because
25 the reason they did that, you remember is Mr. Bristow thought they had

1 a contract at Ruby Crest that would pay 95 percent of charges. And so
2 there was an expectation that they would get paid higher rates. And no
3 longer than they realize that they were mistaken and that they weren't
4 realizing these higher payments did they say, hey, something's up.

5 They didn't take it down out of the monitor indignity, they
6 took it down because it didn't work. Because they had something
7 wrong.

8 And Mr. Greenberg explained to Ms. Harris in 2019 that they
9 needed to set up a sub-TIN for Ruby Crest for UAC claims unless maybe
10 add them to -- and then Mr. Bristow told Mr. Greenberg, if you aren't -- if
11 you see no benefit from doing the sub-TIN for Freemont or Ruby Crest,
12 let's turn off the sub-TIN. This was Mr. Bristow explaining it.

13 "Q When you learned you had made a mistake and you weren't
14 going to be able to be reimbursed at 95 percent of charges, it was then
15 that you terminate the sub-TIN relationship, right?

16 "A We didn't see a noticeable difference on how they were
17 paying out-of-network for these claims and made the decision to turn it
18 off."

19 I asked him,

20 "Q Were any of the physicians at Freemont who rendered the
21 services that were billed through Ruby Crest, were they advised of this?
22 Did they know?

23 "A Not to my recollection."

24 And, of course, Ms. Harris --

25 [Whereupon, a video recording, was played in open court at 3:45

1 and transcribed as follows:]

2 "Q Do you agree that it would be wrong for Freemont
3 Emergency Services to bill the services, if provided under the Tax
4 Identification Number of Ruby Crest?"

5 "A It's the number [indiscernible]

6 "Q And please go ahead and tell the jury why that would be
7 inappropriate."

8 "A Ruby Crest was not the regular physician.

9 "Q And therefore the services provided by Freemont Emergency
10 Services should only be billed under Freemont Emergency Services Tx
11 Identification Number; is that correct?

12 "A That's correct."

13 "Q If Freemont Emergency Services submitted claims for
14 reimbursement to United under the Tax I.D. number for Ruby Crest,
15 would you consider that to be fraudulent practice?"

16 "A To answer your question, Ms. Yates --

17 "Q How would you define the term fraud?

18 "A Lying for the purpose of obtaining money."

19 MR. BLALACK: Ladies and gentlemen, lying for the purpose
20 of obtaining money, I submit to you is the definition, the definition of
21 unclean hands. So when you get back in that deliberation room and
22 you're reading instructions, or you're trying to decide how to do equity
23 and fairness remember that testimony from Dr. Joe who provides
24 services as an ER physician in [indiscernible]. All right.

25 I'm going to now pass the time to Mr. Roberts to go through

1 the instructions. I think we're going to take a break, Your Honor.

2 THE COURT: We are. All right. So we'll take a recess until
3 only 3:55.

4 During the recess, don't talk to each other or anyone else on
5 any subject connected with the trial. Don't read, watch, or listen to any
6 report of or commentary on the trial. Don't discuss this case with
7 anyone connected to it by any medium of information including without
8 limitation newspapers, television, radio, internet, cell phones, or texting.

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

16 Thank you again. And please be ready at 3:55.

17 THE MARSHAL: All rise for the jury.

18 [Jury out at 3:48 p.m.]

19 [Outside the presence of the jury]

20 THE COURT: Plaintiff, anything for the record?

21 MR. ZAVITASANOS: No, Your Honor.

22 THE COURT: Okay. Defendant?

23 MR. BLALACK: No, Your Honor.

24 THE COURT: Have a good break. I have arranged for dinner
25 to be brought into them; in case they decide to work late. If they don't

1 work late, they can take it home. But I am going to send them out today,
2 to elect a foreperson, decide how late to work today, and when to come
3 back tomorrow.

4 MR. BLALACK: Yes, ma'am.

5 MR. ZAVITASANOS: Do they have an exception from the
6 6:00 out of the building rule, Your Honor?

7 THE COURT: Yes.

8 MR. ZAVITASANOS: Excellent, thank you.

9 THE COURT: And we've got -- we've got everything lined up
10 if they want to work late.

11 MR. ZAVITASANOS: Perfect.

12 THE COURT: Yeah.

13 MR. ZAVITASANOS: Thank you, Your Honor.

14 THE COURT: Uh-huh.

15 [Recess taken from 3:49 p.m. to 3:56 p.m.]

16 [Outside the presence of the jury]

17 THE COURT: Thanks, everyone. Please remain seated.

18 MR. BLALACK: Your Honor, before we bring the jury back in
19 I want to -- I've learned long ago that it's better to eat crow warm than
20 cold.

21 THE COURT: You have to repeat that.

22 MR. BLALACK: I said I learned a long time it's better to eat
23 crow warm than cold, and my team has advised me that I was mistaken
24 about the statement I made regarding Mr. Murphy's testimony to which
25 Mr. Zavitsanos objected, I think was not in the -- in evidence, but was

1 instead an offer of proof.

2 THE COURT: Right.

3 MR. BLALACK: So I'm going to, with your permission, I'm
4 going to acknowledge the error, and then obviously ask the Court to
5 instruct the jury in the jury instruction.

6 THE COURT: Come on up, Mr. Z.

7 MR. ZAVITSANOS: Your Honor, we object to that. That
8 highlights it, and it actually does the opposite of what he's intending,
9 so --

10 MR. BLALACK: Well, I'm fine to do that if that's what you
11 prefer, I just was --

12 THE COURT: Do you intend to address that in the reply?

13 MR. ZAVITSANOS: Mr. Ahmad has been taking notes like
14 crazy, so he's doing the rebuttal, I'll let him address that.

15 MR. AHMAD: I was not intending to, Your Honor.

16 MR. BLALACK: I'm trying to make the record clear and
17 proper, Your Honor, so --

18 MR. AHMAD: And I appreciate --

19 MR. BLALACK: -- if they don't want me to, I won't.

20 MR. AHMAD: I appreciate the effort to make the record clear,
21 and I think that's an honorable thing to do. I don't think we're intending
22 to raise that issue, Your Honor.

23 MR. BLALACK: Then I'll walk -- if that's the case, I'll do it.

24 MR. AHMAD: It was in the trial transcript, but he just didn't
25 see the lead-in.

1 THE COURT: Let me hear from Ms. Lundvall.

2 MS. LUNDVALL: But under as far as our case law dealing
3 with instructions or dealing with argument that, in fact, is -- an objection
4 was sustained, if there's a need for a curative instruction --

5 THE COURT: There is a need for a curative instruction.

6 MS. LUNDVALL: Then --

7 MR. POLSENBERG: Well, then we should let Mr. Blalack --

8 MS. LUNDVALL: Well, Mr. -- do not interrupt me, please. I'm
9 going to ask for that courtesy. We would ask the Court to give that
10 curative instruction, not from Mr. Blalack to request that curative
11 instruction.

12 THE COURT: I understand.

13 MS. LUNDVALL: In other words, it's not up to him to cure,
14 but it's up to the Court to cure that.

15 MR. POLSENBERG: Well, Judge, I would disagree with that.
16 I mean, we're bringing it up voluntarily, until Ms. Lundvall started
17 talking --

18 THE COURT: It's actually -- hang on. It's my error. I
19 sustained an objection when I shouldn't have. I need to fall on my
20 sword, so I'll be the one to explain that to the jury.

21 MR. BLALACK: Not -- my humblest apologies, Your Honor,
22 this was --

23 THE COURT: I know that it was not intentional, so let's bring
24 the jury in.

25 MR. BLALACK: Thank you.

1 THE COURT: We're getting close to that witching hour of
2 5:00, and I just want to make sure they listen to everybody.

3 [Pause]

4 THE MARSHAL: All rise for the jury.

5 [Jury in at 3:59 p.m.]

6 THE COURT: Thank you. Please be seated. Before I ask Mr.
7 Roberts to continue with the closing, I need to correct an error that I
8 made. When there was a comment with regard to Mr. Murphy's
9 testimony, there was an objection, I overruled the objection, I was
10 incorrect. That part of the testimony put to you was not, in fact, a part of
11 the record for you to consider at the time of trial, so disregard any
12 argument with regard to that portion referenced by the Defendant
13 regarding Mr. Murphy's testimony.

14 And with that said, Mr. Roberts, please continue.

15 MR. ROBERTS: Thank you very much, Your Honor. Good
16 afternoon.

17 THE JURORS: Good afternoon.

18 MR. ROBERTS: Good to talk to you all again. It's hard to
19 believe it's been almost a month since we started voir dire in this case,
20 and I've got a couple just -- little introduction, housekeeping measures to
21 do for you. One, you may have noticed a different voice asking the
22 questions in Dr. Daniel Jones' deposition, one that you may not have
23 recognized the young woman. It's my partner, Brittany Llewellyn, who's
24 here today but hasn't been in the courtroom yet, and I also need to take
25 care of another thing.

1 I've got six girls, and I always call them by the wrong name, I
2 don't know if a lot of parents do that, but that's my only defense,
3 because I think when I was introducing Shane Godfrey from Las Vegas
4 Legal Video a couple days ago, I may have referred to him as Shawn, at
5 least that's what my team says, but it was - -we worked together almost
6 20 years, so I know who he is.

7 It's four in the afternoon, which is a tough time of the day,
8 especially when you start work at eight, and on top of that, I get to talk to
9 you about the law, jury instructions. Now I actually love the law, and I
10 love talking about jury instructions, and I'm going to do my best to make
11 them a little bit interesting, but they're a fascinating thing because we
12 just had our state's birthday, October 31st. We've been around over 150
13 years, and when we started it in 1864, we had no law, and the jury
14 instructions come from decisions that judges make, and decisions that
15 supreme court justices make, and we did adopt the common law of
16 England to the extent it didn't conflict with our constitution and laws to
17 give us a little basis for things.

18 But this is an evolving body of law, and these instructions
19 change over the time I've practiced here over the last 20 years. Some of
20 them are a lot different than they were 20 years ago, and they're
21 evolving, and they're getting better, but this is the foundation of our
22 system of justice. Plaintiffs get to file a lawsuit. They get to decide what
23 claims they're going to bring. The judge instructs the jury on the law.
24 You're bound by the law. You took an oath to follow that law, and you
25 render a decision based on the law and the facts you heard in court, and

1 it's a great system of justice.

2 Now the judge read these to you in a specific order, but I'm
3 going to kind of reorder them here to hopefully help things make sense
4 against the verdict form, to help you follow along what's relevant to
5 what claims. And the first one I'd like to talk to you about is something
6 we spent a lot of time talking about this in voir dire, and that is that they
7 have to meet a preponderance of the evidence standard.

8 I think Shane's going to make that get better and better.

9 And we talked about this a lot, and the lawyers told you what
10 they thought the instruction might be, but what it boils down to is you
11 hear all the evidence, and you throw it into the big pot of your mind, and
12 are you convinced, has it produced in your mind a belief that what they
13 seek to prove is true? Now it doesn't have to be by much, only more
14 true than not true, but it has to produce in your mind, you have to be
15 convinced that there is a belief that it's true.

16 THE COURT: Is there someone on BlueJeans? We're getting
17 some feedback. Somebody in this room has a phone on. It's interfering
18 with the audio. Please turn off all telephones right now.

19 Go ahead, Mr. Roberts.

20 MR. ROBERTS: Thank you, Your Honor. That is better. If
21 you go back to the jury room and you sit down, and none of you are
22 convinced in your mind that the Plaintiffs have proven their case, that
23 what they seek to prove is more likely true than not true, then you may
24 fill out one of these verdict forms that the Court has given you. It's called
25 a general verdict form, and it just says that we find for the Defendants.

1 You elect a foreperson, the foreperson signs it, dates it, and you are
2 done if you believe they have not proved their case. If you sign this
3 form, your jury service is over.

4 If you're not that sure, then you got a little bit more work to
5 do, and there is going to be another form provided to you by the Court,
6 and that is a special verdict form, and this verdict form will take you
7 through all of the different findings that you have to make to rule on the
8 specific individual claims that the Plaintiffs have chosen to bring in this
9 lawsuit.

10 And I think Plaintiffs showed you a little bit of this form,
11 where there are boxes to fill out, which they put yes's in, and we would
12 want you to put no's in, but I will tell you that I was counting them while
13 they were talking, and you've got 156 blanks for you to fill out, so I would
14 request that you be careful, you go through the form, you answer
15 closely, and you fill out every blank, and base your decision on the
16 evidence in the case.

17 So if we're looking at this form, what I'd like to do first, just
18 go through the different causes of action they have alleged, and where
19 they are, and then what law applies to them. So on question 1 of the
20 form, Were any of the Defendants unjustly enriched as a result of the
21 services provided by any of the Plaintiffs? Unjust enrichment. So the
22 instructions dealing with that claim begin with jury instruction number
23 22. And Mr. Zavitsanos showed you up there direct or indirect benefit
24 conferred on the Defendants, if the Defendants knew of the benefit
25 conferred and accepted the benefit.

1 So here's what you need to think about, now that you heard
2 the evidence. He says there we had an indirect benefit, even if there's no
3 direct benefit. Conferred on Defendants. The benefit they allege is the
4 treatment of our insured members who showed up at the emergency
5 room. That's who the benefit was conferred on, the people who pulled
6 our policies, or whose policies that we administer. That's the benefit, not
7 on us, on our policyholders.

8 Second, if it is an administrative services plan, and you know
9 most of the claims in this case are under administrative services plan,
10 where it's not our money, we're just paid to get the claims in, process
11 them, and pay someone else's money. So if the Defendants are owed
12 treatment, it's under the medical plan sponsored by their employer, and
13 their employer is the one who owes the money. The benefit is conferred
14 on the employer, not on us, where it's an ASO agreement.

15 So I would suggest to you that under the law and the
16 instructions, a benefit was not conferred on us. Whether we may have a
17 legal obligation to pay under our plans is a completely different
18 question. This is not about that. This is about whether or not they
19 conferred a benefit upon us, and we accepted the benefit.

20 Let me ask you this, what evidence have you heard of us
21 accepting the benefit? Our insured members went to an ER room, we
22 would rather have them go to an in-network one, but they chose to go to
23 an ER room operated by these plans, and then we got sent a bill. We
24 never had the chance to accept the benefit of them treating our insured
25 member. No one asked us if it was okay. You haven't heard any

1 evidence of that. No one accepted the benefit. So under the law, they
2 cannot have proven the elements of their unjust enrichment claim.

3 And they got a lot of claims, and they all seek the same
4 money. They're throwing it all up on the wall to see if you find that any
5 of the elements of the legal causes of action that exist in Nevada are
6 actually satisfied here. But even if you found that they were satisfied,
7 you need to turn to instruction number 23, and this is the Unclean Hands
8 Doctrine.

9 Now the Unclean Hands Doctrine goes back to the origins of
10 an unjust enrichment claim where it's equitable in nature. So even if
11 there's no contract, even if there's no legal obligation to pay, the courts
12 of equity would try to do justice if it was unjust for you to ask for a
13 benefit or receive a benefit, accept it and then not pay for it, but because
14 it was a court of equity trying to do what was right, if you came to the
15 court with unclean hands they said we're not going to help you, we're
16 not going to help you because you were bad, too, and that element has
17 remained in Nevada law.

18 Now we have the burden of proof of convincing you through
19 the evidence about Ruby Crest and the sub-ten scheme that we have
20 established their hands are unclean in this case, that they, in the words
21 of Dr. Jones, lied to get money. So was it in bad faith for them to
22 misrepresent who performed the services? We proved that. Then it was
23 nontrivial. We proved that through the testimony of Ms. Harris and Dr.
24 Jones, that it's related to the subject matter, it's related to the very
25 claims that are at issue here, and whether or not we were paying a fair

1 amount under Nevada law, that our conduct was in good faith with
2 regard to those transactions, and finally, that we were injured.

3 Now we expect them to argue, wait a minute, there's no
4 injury here because we didn't make more money. We thought you were
5 going to pay 95 percent of billed charges if we billed them through Ruby
6 Crest, but you ended up paying the same thing we're getting at
7 Freemont, so you, you know, you weren't injured, we didn't make any
8 money, no harm, no foul, right? But it's not that easy because the Court
9 instructed you that we have different Plaintiffs and we've got different
10 Defendants, and you're to consider each one separately.

11 Now when someone at Freemont did some work in Las
12 Vegas, and Ruby Crest up in Elko submitted a bill to one of the
13 Defendants, that Defendant may not have paid as much as TeamHealth
14 wanted, but we paid on a claim through Ruby Crest, even though Ruby
15 Crest had performed no services and we owed them no money, and that
16 is an injury. So we would ask you to find that in this case, at least as far
17 as unjust enrichment, they haven't established we got a benefit, but even
18 if you think they did, this is on their side, too. This is just about money
19 and doing anything to try to get more money.

20 That is question number 1, and then I'm going to skip over
21 the damages with regard to number 1, and put up -- let me increase that
22 just a tad up here, then I'm going to go to the next cause of action
23 beginning with question 5 on the verdict form: Did any of the Defendants
24 form an implied contract with any of the Plaintiffs? All right.

25 Implied contract. You're going to want to go to a bunch of

1 instructions, but let's begin with number 25. Plaintiffs claim they entered
2 into an implied contract. That starts here, and then it gives a bunch of
3 the formal elements of the cause of action which you could read when
4 you go back into the room, but there are a couple of things that follow
5 that I want to highlight to you because there are a number of
6 instructions. Instruction 26 also deals with implied contract.

7 Instruction 27. An offer is a promise to do or not do
8 something on specified terms that is communicated to another party
9 under circumstances justifying the other party and concluding that
10 acceptance of the offer will result in an enforceable contract. So think
11 back about the evidence again. Where did they make an offer to us to
12 contract on specified terms? How much we were going to pay? How
13 long we had to pay? As Mr. Blalack pointed out, the length of the
14 contract, how long was it going to last? There aren't, there is no
15 evidence of specified terms that could form an implied contract, that if
16 we knew we accepted those terms informing the enforceable agreement,
17 even though there is no writing. Did not happen, no evidence of it.

18 Jury instruction number 28. An acceptance is an unqualified
19 and unconditional ascent to an offer without any change in the terms of
20 the offer. They're saying their offer was we'll provide emergency
21 services to your members, and you have to pay us the full bill charges.
22 Where is the evidence that we made an unqualified and unconditional
23 ascent to that offer? There is no evidence.

24 Jury instruction number 29, also on implied contract. A
25 contract requires a meeting of the minds, that is, they both have to know

1 that they're contracting, and both of them agree to the same terms. A
2 meeting of the minds means I understand what you want, you
3 understand what I want, and we're in agreement. Again, no evidence of
4 a meeting of the minds under the evidence of this case.

5 Number 31. And I'll just skip down to the last clause. Both
6 an express contract and implied contract require a manifestation by the
7 parties of an intent to contract and an ascertainable agreement.
8 Manifestation means something you can observe, something you can
9 see, something you can read, something you can hear about. A
10 manifestation, right? It wouldn't be fair to say someone entered into an
11 implied contract if they never said anything which agreed to the implied
12 contract.

13 And we talked about this during voir dire, whether you could
14 follow that instruction, whether you could require a manifestation by the
15 parties, and whether you could say there's no implied contract if I can't
16 figure out what the terms of the agreement are from the evidence, an
17 ascertainable contract, meaning you can figure it out based on the
18 evidence, you don't have to guess, you don't have to speculate.

19 I would submit to you ladies and gentlemen, gentleman --

20 UNIDENTIFIED JUROR: Thank you.

21 MR. ROBERTS: -- that you actually heard an opposite story
22 in the evidence, and you heard about this quite a bit from the Plaintiffs
23 witnesses, it seems like everyone is in agreement on this, and you heard
24 a whole lot about EMTALA. Third-party witnesses got chastised for not
25 knowing what EMTALA was, but you may have heard many, many

1 times, from many of the witnesses, that what EMTALA means is they
2 have to treat everyone. It doesn't matter if it's someone Medicare,
3 Medicaid, financially unable to pay and no insurance or whether it's a
4 commercial insurance member. They have to treat everyone under the
5 law.

6 So the idea here is they did not treat our members because
7 they thought they had an implied contract with us to pay a certain
8 amount; they treated our members because they had to under federal
9 and state law. There is no contract. There's just an obligation the
10 government imposes on them to treat our members. Now you could
11 read these instructions back in the room. You're not going to find one
12 instructing on an EMTALA claim. Whether -- what -- you can't
13 speculate. We may have an obligation to pay them under state and
14 federal law under -- if they treat one of our members under EMTALA.
15 But they chose not to bring that cause of action. In the Court has
16 instructed on EMTALA.

17 So you can't give them money because they had to treat our
18 members, because they haven't made that claim. They made some
19 decisions, some strategy decisions to bring these claims the way they
20 did. And now they're stuck with their choices. And they didn't prove
21 their claims under Nevada law.

22 Okay. Flipping through the verdict form, we get to question
23 number 10. Did any of the Defendants engage in unfair claims practices
24 in connection with the payment of any of the Plaintiffs' claims. So you
25 want to go first to instruction 35 to answer that question, which

1 describes Nevada's Unfair Claims Practice Act. Now I'm not going to
2 spend a long time on this, because Mr. Blalack previewed it to you. But
3 then if we go to jury instruction 36, we see what he already told you was
4 coming, that you don't get a Prompt Payment Act claim unless the
5 liability of the insurer has become reasonably clear. And that doesn't
6 just mean that you owe them some money because we paid them some
7 money. And they're not saying we didn't pay them some money within
8 some amount of time. They're saying that we should have paid billed
9 charges.

10 So to find a Prompt Payment Act claim, you have to say that
11 it should have been clear to us that it was reasonably clear that we had
12 to pay full billed charges, even though they only get them six percent of
13 the time. And there's no evidence of this. There is no evidence that it
14 was reasonably clear to us that we didn't need a four-week trial and
15 they're just owed their full billed charges.

16 And then this is similar to the instruction which Mr. Blalack
17 showed you? The Defendants' liability has become reasonably clear on
18 any individual claim. So you got to get out that list, 11,352 claims, and
19 decide was it reasonably clear that we owed any of those. Then you can
20 make a finding. But again, unless you find that payment is owed in the
21 full billed charges, no other number other than full billed charges, and
22 that we should have known it, you cannot find an Unfair Claims Practices
23 Act violation.

24 Okay. Number 14 doesn't have a title. Question 14, did any
25 of the Defendants fail to fully pay any of the Plaintiffs within 30 days of

1 submission of the claim, claims that were approved and fully claimable?
2 So the key to the puzzle here is instruction number 38 for question 14.
3 To succeed in a claim under the prompt pay statutes, Plaintiff must show
4 that Defendant failed to fully pay within 30 days of submission of the
5 claim, a claim that was approved and fully payable. So the only thing,
6 again, this applies to is if the claim was fully payable.

7 You heard evidence well, you know, we thought there was a
8 pattern of paying us 95 percent of billed charges. Well, guess what? If
9 it only -- we only owed 95 percent of billed charges, it wasn't fully
10 payable, and you can find a Prompt Pay Act violation. Again, it's our
11 belief there is no evidence of that.

12 So now let's talk about punitive damages. And that begins at
13 question 15 and also question 16. The first thing that you're going to
14 need to remember, which, again, we talked about in voir dire, is that in
15 order to find punitive damages, you have to find by clear and convincing
16 evidence the elements of the claim. And beyond a reasonable doubt is
17 what's necessary to take someone's personal freedom in a criminal case.
18 Preponderance is just money, compensatory damages.

19 But this is an intermediate standard, because this is sort of in
20 between just paying money for compensation and going to jail. This is
21 you have to pay this money as punishment. Not because you're
22 repaying any losses the Plaintiffs may have suffered, but the jury has to
23 find that based on the evidence of the case, they have a firm belief or
24 conviction that what's trying to be proven is highly likely. And you not
25 only have to find that it's true and it's highly likely, you have to decide if

1 you want to punish my clients, because a jury is never obligated to
2 award punitive damages even when the proof might otherwise support
3 it.

4 And what kind of proof do they need to show? Instruction
5 39. It's a long instruction, but I'd like to draw your attention to a few key
6 points. They are claiming oppression, meaning despicable conduct that
7 subjects a person here, the Plaintiffs, to cruel and unjust hardship with
8 conscious disregard of their rights. Cruel and unjust hardship. It's pretty
9 severe stuff. Not just a business dispute about money.

10 And then there's definition of conscious disregard right here.
11 Knowledge of a probably harmful consequences of a wrong act and
12 willful and deliberate failure to avoid those consequences. Now what we
13 heard from the lawyers, because they want you to believe that harmful
14 consequences are that -- is that Nevada is not going to get adequate
15 medical care once you give them a lot of money today. That's lawyer
16 talk. We're talking about this right before I close, but there is no
17 evidence in the record that there are probable harmful consequences
18 from this payment dispute that we got with this staffing company. There
19 are no probable harmful consequences. They have not proven it. They
20 want you to think it. They've been talking about a lot, but there is no
21 proof in the record.

22 And what does the record show? And when you look at the
23 record, there are couple very key instructions that I want you to focus on.
24 And it's a theme throughout this, because it's an important concept.
25 Instruction number 4. Telling you what you can do when you consider

1 the evidence, keeping in mind that inferences that you can draw, like one
2 they talked about, should not be based on speculation or guess. You
3 can't guess about things that are not in the record and they haven't
4 proven.

5 Instruction number 34. Testimony that constitutes
6 speculation not supported by evidence is not sufficient to provide the
7 required evidentiary basis for determining a reasonably accurate award
8 of damages. So you can't speculate about how much money they're
9 owed. They have to prove to you how much money they're owed. You
10 can't speculate about any damage or probable harm to the community if
11 you don't give them millions of dollars.

12 Number 6. You must decide all questions of fact in this case
13 from the evidence received in this trial of not any source. And what are
14 one of the sources you can't use? Arguments of counsel. And Mr.
15 Blalack told you about that. There is an instruction telling you that
16 questions asked by counsel are not evidence. They only give context to
17 the answer, which is the evidence. Lawyers ask a question, and they
18 don't get the answer, that's not evidence. It's just argument of counsel,
19 which is not evidence.

20 And we have heard about a lot of things that don't have
21 anything to do with how you determine reasonable value of their
22 services under the contract. We heard lots about United's profits.
23 United makes a lot of money. Where's the instruction telling you how
24 much profit United makes is relevant to how much they're owed for the
25 reasonable value of insurances? Not that instruction.

1 And we certainly haven't heard anything about their profits,
2 because that's not relevant. All of this is a sideshow. We heard about
3 plumbers. We heard about hotel rooms. We heard about airline flights.
4 We heard about the Bellagio. And this morning we heard about my
5 boots. I got them at Boot Barn out on Las Vegas Boulevard South. They
6 were on clearance right across from the outlet mall. And I do like my
7 boots. But the fact of it is how much I paid for my boots has no
8 relevance to how much their claims are worth. And you can't inject a
9 motion into it by saying well, don't look over here at the numbers.

10 Look over here at the good doctors, because we all like
11 doctors. We're all glad we're there. No one would dispute that saving
12 lives is great. Mr. Haben, he didn't get tricked. He just acknowledged,
13 yeah, fourteen and a buck to save a life is fine. My wife is back here in
14 the courtroom watching me today. And if she -- her life needed saved,
15 I'd give my boots, I'd give my car, I'd give Mr. Zavitsanos' car. I'd
16 probably give -- I'd give them my house and everything I own to save her
17 life. But the fact that saving a life is priceless does not mean that that's
18 how you value the market value of emergency room services.

19 And there's lots of ways you could go about proving what's
20 the reasonable value of insurance. I'd suggest that showing how much
21 you decide to charge and showing it's similar to what other people
22 decide to charge instead of what other people can pay is not a very good
23 way to do it.

24 There are lots of ways they could have proven to -- that
25 they'd actually lose board certified emergency room physicians if they

1 didn't get paid more, because they couldn't afford to keep them on. But
2 other than having a lawyer talk about that, they didn't show you proof of
3 that. There's no evidence of whether they're making money or losing
4 money or reimbursements. They did not give that to you, because they
5 don't want you to think about it. They just want you to think about
6 saving lives is big. It's important, so you -- we should get paid whatever
7 we say. And if it was important, don't you think you would have seen
8 some evidence of what each one of those 11,352 claims actually was, a
9 description of whether it's a gunshot, cardiac, something more minor,
10 some important? And wouldn't you think they would have asked for
11 more money? Oh, the claims were they saved someone's life. But they
12 didn't do that, because they know that's not the standard. It is just a
13 distraction.

14 I've got two more folders to get through, Judge, and I'm also
15 done. Thank you, Your Honor.

16 I want to talk to you briefly about the instruction which Mr.
17 Zavitsanos shared his personal opinion that it was the most important
18 instruction to him in the case. Of course, that's irrelevant. But I want to
19 give you a little context for it. And this instruction is why you heard
20 some videotape testimony from someone from United this morning
21 about all of the procedures that they went through in order to look for
22 documents that were ordered to be produced in Court. And what you
23 heard him say is that United Defendants collected 9.33 million
24 documents from servers, email, and custodial files, that they then ran
25 searches through those productions and generated 187,000 objects. 79

1 thousand of these documents were reviewed by lawyers to see if they
2 were responsive to discovery requests. That is a lot of documents.

3 And ultimately, in order to get through it and attempt to meet
4 the deadlines imposed by the Court, we had 110 lawyers try to review
5 documents at one time. And we produced 54,000 documents, a half a
6 million pages of documents. But guess what? We didn't get there. We
7 did not get there. And the Court found that we could have gotten there
8 had we tried harder. So this instruction is here, and you have to follow
9 it. But this instruction is not quite as bad as Mr. Zavitsanos makes it
10 sound for us. All it does is take that presumption, that preponderance of
11 the evidence, and flip it.

12 If you find that there was a specific document that we should
13 have given to them and did not, and they had to show that to you -- and
14 if there was a specific document and we did not rebut the presumption,
15 then you can find that it shifts the burden.

16 MR. ZAVITSANOS: Your Honor, that's a misstatement of the
17 instruction.

18 THE COURT: Mr. Roberts, will you read that instruction?

19 MR. ROBERTS: I will restate. To rebut the presumption, the
20 destroying party -- that's us -- and here, this is the legal meaning of
21 destroy. We just failed to get it to them. No evidence we shredded
22 anything or made a bonfire.

23 MR. ZAVITSANOS: Your Honor, that's also -- that
24 commentary by counsel --

25 MR. ROBERTS: To --

1 THE COURT: Objection sustained. Disregard the last
2 comment.

3 MR. ROBERTS: To rebut the presumption, the destroying
4 party must then prove by a preponderance of the evidence that the
5 destroyed evidence was not unfavorable. If not rebutted, the jury is
6 required to presume the evidence was adverse. So this is very narrow.
7 If you find that there's a document they established that was not
8 produced, they have to prove that it was not unfavorable. And if we
9 don't, then you presume that it was -- that that document was
10 unfavorable.

11 He talked about the plans, missing plans, that we didn't
12 produce all the plans. That's absolutely true. But the plans would only
13 support our argument that we paid in accordance with the plan. That
14 there's no instruction and no evidence and no argument that the amount
15 in our plans is the amount we owe in these proceedings if you find they
16 meet their burden of proof. What they claim is owed is a reasonable
17 value. And they're trying to --

18 MR. ZAVITSANOS: Your Honor, I'm going to object.
19 Counsel is attempting to argue what is in documents that they destroyed
20 and did not produce.

21 THE COURT: That's correct. I sustain the objection.

22 MR. ROBERTS: In order for you to find and unfavorable
23 presumption. They've got to establish what it is we didn't give to you,
24 and they have to tell you what that unfavorable presumption is and what
25 effect it has on your decision.

1 MR. ZAVITSANOS: Again, Your Honor, he's misstating the
2 instruction, Your Honor.

3 THE COURT: Mr. Roberts, you have to dial that back. You
4 have to -- and the truth is we don't know if they were destroyed or not.
5 That was the key. They just weren't produced.

6 MR. ROBERTS: Read this instruction carefully word by word.
7 I'm not going to read anymore to you. I'm not going to argue what it
8 means. You can read it yourself by the Court. But I would suggest to
9 you that you read this instruction. It's not going to change your decision,
10 because they haven't met the burden of proof on any elements of
11 Nevada law that they're seeking to prove. And an adverse inference on
12 some limited issue regarding the plan is not going to change that and
13 help them meet their burden of proof.

14 So one last thing I would like to do before I close here is talk
15 to you about damages. Should you disagree with everything I just said,
16 you're going to have to get to work and fill out a lot of damages. As the
17 instructions tell you, instruction number 10 and instruction number 21,
18 you've got to consider each Plaintiff and each Defendant separately.

19 This is from their expert, how they get to -- I don't know if --

20 MR. ZAVITSANOS: Excuse me, Your Honor. I'm not
21 objecting to Mr. Roberts going over. I assume we're going to get the
22 same amount of time.

23 THE COURT: I didn't cut him off.

24 MR. ROBERTS: Thank you, Your Honor. Just a few more
25 minutes.

1 You'll see -- and this was put in front of you. This is a chart
2 which adds up to \$10,000,399. And Mr. Zavitsanos some other chart
3 from his analyst, Mr. Leathers. And Mr. Blalack showed you Exhibit
4 5518, which is where our expert looked at the data from Mr. Leathers
5 and drew some conclusions. So 13,000,324, that's the amount you had
6 to find should have been paid in order to give them their full damages of
7 10,000,399. But Mr. Leathers gave you an alternate calculation, saying
8 6.16 million should have been paid, which means 3.3 million is owed by
9 all Defendants on all claims. So I suggest to you if you think 13.2 million
10 is owed, why does your own expert showed you a calculation saying
11 only 6.1 million? Maybe this is not reasonably clear what should have
12 been paid.

13 But regardless, Mr. Deal took this number and said look, his
14 methodology was defective because he had the same benchmark for all
15 the claims and all the clients. And you had to separate that out and
16 apply different benchmarks. And Mr. Deal said if you do that, assuming
17 Mr. Leathers' alternate calculation is correct, you come out with 2.1
18 million instead of Mr. Leathers' calculation of 3.3 million.

19 So based on their own numbers, I would argue the cap ought
20 to be Mr. Leathers' 3.3 million as corrected by Mr. Deal down to 2.1. So
21 they haven't shown you how that alternative calculation would be
22 divided among all of the different Defendants. So using the exact same
23 proportions as his chart showing 10,000,399, we've taken the 2.1 and
24 spread it out -- just simple math proportion -- what you would fill it in for
25 each one of the various Defendants as owed to each one of the Plaintiffs,

1 using Mr. Leathers' alternate calculation as corrected by Mr. Deal and
2 then using Mr. Leather's proportions. And that ought to be the cap of
3 what you give them.

4 And I wasn't going to talk about this, but it occurred to me
5 that when Mr. Zavitsanos was telling a story, that I had a similar story to
6 share. When I was 11 years old, I was run over by a big yellow school
7 bus. Front tires over my legs. Two rear tires over my chest and arms.
8 And the first person that showed up were the firefighter paramedics.
9 They did an emergency tracheotomy in the field. Stuck a knife through
10 my throat. Took me to the emergency room, where the good doctors
11 there continued the efforts to save my life. Did a pretty good job. And
12 just like Mr. Zavitsanos, I've got a debt that I'm going to never be able to
13 repay. And my wife and six kids are all grateful for what they did. And
14 no one is coming in here saying that they aren't valuable. But that's
15 really not the issue.

16 How you decide this commercial dispute about what's a fair
17 market value given the market for their services, and there is a market
18 for their services, but it's -- in my case, those paramedics saved my life
19 just as much as the ER doctors did. And there's a market for paramedics,
20 and it's certainly not what paid the ER doctors. And the fact that
21 someone saves a life, that they risk their own life, it's -- there's no way to
22 compensate for that.

23 But that's not the issue you're asked to decide, whether or
24 not these are great people for our community and whether they do great
25 things for us, because this is business now. Doctors are a business. And

1 they didn't give you any proof of what the doctors cost or whether or
2 not, based on what they pay, that they can't continue to do what they do.
3 That's not an issue. They haven't given you that evidence. They haven't
4 given you the tools to decide that.

5 So I'd ask you to put aside those emotions and those strong
6 feelings about how good it is to have good doctors in this town. And I
7 appreciate everything Dr. Scherr does for us and everyone in this group.
8 But that doesn't mean I agree they ought to be able to charge whatever
9 they want to, and it doesn't mean you can put aside the law and the
10 instructions of the Court when it comes to deciding what the reasonable
11 market value for services is and whether they have proven that their
12 reasonable market value is equivalent to the charge they have decided to
13 make.

14 Thank you for the courtesy, letting me have a few minutes of
15 time. I appreciate it.

16 THE COURT: Thank you. And is the Defense [sic] ready with
17 a reply.

18 MR. AHMAD: We are, Your Honor.

19 THE COURT: Plaintiffs, sorry. And everybody good without
20 a break? I can tell you, just so you won't worry about it, dinner is in the
21 jury deliberation room for you. You will have the option. I'm going to
22 ask that when you get back, that you elect a foreperson and decide how
23 long you want to deliberate. And you can go up to 7:00 tonight, and if
24 you want to come back tomorrow, just tell us when. So I'm going to take
25 that out of the -- out of your worry zone for now.

1 Now, Mr. Ahmad, please go forward. Ahmad, sorry.

2 MR. AHMAD: Thank you, Your Honor. I say Ahmad, but it's
3 not correct, either, so.

4 PLAINTIFFS' REBUTTAL CLOSING ARGUMENT

5 MR. AHMAD: Well, good evening, I guess would be the
6 appropriate saying. And Michelle is waving at me. Oh, great. Thank
7 you, Michelle.

8 I'm at the end. I'm last. Some of you, maybe most of you,
9 that may be good news. I want to set one thing straight. We're not here
10 for sympathy. On behalf of all of my healthcare clients, all the doctors
11 here today, you've seen Dr. Scherr, Dr. Rosenthal in the back, I think Dr.
12 Santini in the back. And there's several other doctors here, many others
13 on BlueJeans.

14 I want to tell you that this isn't about sympathy. This is
15 about what's just. This is about justice. They don't want sympathy. But
16 if you think that they're not interested in hearing back about what the
17 reasonable value of their services is, well, you would be dead wrong.
18 Every single one of them is waiting to hear back. This is something they
19 never think about when they treat people day and day out as they have
20 during this time period at issue. They don't think about what that patient
21 is going to pay. They don't think about the reasonable value. And this
22 whole trial, you can imagine what the effect it's had on Dr. Scherr and
23 the other doctors. Well, you don't have to imagine too much. Dr. Scherr
24 told you a little bit about what his reaction was.

25 And the number one reaction was the way they are treated

1 as fungible components. I think you just heard United's lawyer say this
2 is just about money and getting the most money you can. I think that
3 was a quote from him. And that now, doctors are business. He said this
4 is about the reasonable market value. Now, listen very carefully,
5 because again, this is what United wants you to believe, that doctors are
6 just fungible. They're just market people. There is nothing in the
7 instructions which you have been given that talks about reasonable
8 market. It talks about the reasonable value for what they do. And
9 frankly, the words that this is about money for them when they never
10 think about something like that is pretty offensive.

11 I can assure you, people that just think about money go to
12 another line of business, go to another line of healthcare, go into another
13 specialty. But if you think about what the ER is like every day, it's not
14 what you want to do if all you care about is the money, and that's not
15 what they're about. But yes, they would like to hear what do you all
16 think the reasonable value of their services is.

17 Now, you've heard a lot. I want to talk about, again, what's
18 just, and I want to talk about the facts. And I also want to talk about facts
19 we don't have. Now, you heard an explanation about some of the
20 missing evidence in this case, some of the evidence that they have, and
21 they try to suggest, well, we had to produce a lot of documents. You
22 know what? These were critical documents in the case. They came to
23 court wanting to argue that these plans somehow controlled everything.
24 Now, these plans, of course, we're not at the table for. On the one hand,
25 you've got United, who has a vested interest in paying us less, right?

1 They're the ones coming up with this plan language. And you have an
2 employer which they say is interested in paying less.

3 No one comes to us and asks us to be part of that
4 negotiation. That has nothing to do with reasonable value. They could
5 negotiate whatever they wanted to. That doesn't have anything to do
6 with the value. And even then, even then, some employers, many
7 employers, most employers ask that physicians be compensated at fair
8 and reasonable. And that is what we have asked for this case. That is
9 our whole model for what we are asking you for. It is based on fair and
10 reasonable.

11 But United didn't provide but a very few, select plans. And
12 you can infer -- in fact, under these Court instructions, you are to infer
13 that the evidence was adverse to them. Here's the instruction. And I'm
14 not going to characterize the instruction. I will just read it. One of
15 the -- one order was that Defendants had failed to comply with certain
16 orders, required responses to discovery, and the Court concluded that
17 Defendants' conduct was willful. When evidence is willfully suppressed,
18 there is a rebuttal or presumption which reads as follows: "The law
19 creates a rebuttal presumption that the evidence would be adverse to the
20 party suppressing it." And then at that part, you go to the bottom. "To
21 rebut the presumption, the destroying party must prove by a
22 preponderance of the evidence that the destroyed evidence was not
23 unfavorable." And they have not done that.

24 The fact of the matter is two critical pieces of evidence, the
25 plans at issue and some of the employer feedback, because remember,

1 they say the employers were driving all this? Well, if they were driving
2 all this, why did R&C, reasonable and customary, or usual, customary,
3 and reasonable, end up in the plans? And why were United people,
4 salespeople, being instructed how to deal with resistant employers?
5 Why did we not get the feedback from the employers on this? Because
6 it's not good for them.

7 If you believe the Defendants have not rebutted the evidence
8 introduced by the Plaintiff that relevant evidence was suppressed, you
9 are required to presume that the evidence was adverse to the
10 Defendants. And why do we think it was adverse? Because in those
11 select plans that they did produce, and I think they only produced about
12 four of hundreds, well, we discovered that even when the plan says
13 reasonable and customary -- I'll get to that in a second -- they didn't use
14 that. They just ran it through their system. They OCM'ed it. They didn't
15 use reasonable and customary.

16 Now, Mr. Deal, and the thing that the doctors and Dr. Scherr
17 find pretty offensive and frankly wrong is the model that he bases his
18 determination of reasonable value. He says market price is willing
19 buyer/willing seller, and that is just dead wrong. There is no willing
20 seller, and even United argues most of the time, there's not a willing
21 buyer. That's actually not true a lot of times. But on the willing seller
22 side, absolutely not. This is not a transaction where two parties
23 voluntarily engage and come to a price, but that's what Deal did.

24 Deal says, all right, that in an out-of-network setting, is it a
25 willing buyer/willing seller transaction. He even says not in the way that

1 it needs to be for purposes of reasonable value. Well, if it's not the
2 reasonable value, what purpose is it? I mean, if there is no willing buyer
3 and willing seller, then other than the willing buyer and willing seller
4 part, it's a good model? Even he acknowledges this doesn't make any
5 sense. He never gives an explanation of why this model makes any
6 sense in this case. You can look and look and look. Well, he's wrong
7 about patient choice. He has no idea what the emergency room is like.
8 He actually said we don't want you to make a choice. Well, believe me,
9 there are plenty of patients who are conscious and able to think for
10 themselves that want to have a choice. And our view is that choice
11 should be respected.

12 He has no explanation for why, from a 99281 to a 99285 with
13 the highest severity, it will get evaluated by one of the Defendants as the
14 same amount, \$185. He just says it's my opinion it's at or above
15 reasonable value. He hasn't been asked to evaluate any particular
16 methodology that arrives at a particular number for a particular claim.
17 You would have to search and search and search. He was on the stand
18 for over a day. He never says why this model makes sense. We asked
19 him. Well, here's one idea. How about comparing the average allowed
20 out-of-network for everyone else paid by the Defendant? Nope. Not
21 going to look at that. No, instead, he just says what I did was right. It's
22 closer, but I did exactly the right thing to do. He just comes in and says
23 he's right. We have no idea why.

24 Here's what we know -- and you want to know the
25 harm -- they claim that there hasn't been any harm to us for purposes of

1 the punitive instruction. What they have been doing in the lead up, I
2 mean, they talk a lot about the facts and how certain evidence
3 was -- after 2016, you have to understand the context. Prior to 2017, we
4 were getting paid at or close to billed charges. And then they decided,
5 well, you know, we don't care what the Plaintiffs say. We want to pay
6 less. When we're fully insured, we make more, whereas an ASO third
7 party administrator, we'll take a cut, we'll make more. And so then they
8 decided, well, 350 percent of Medicare sounds good. We'll pay less.
9 And then they decide, well, if 350 is good, how about 250? Why not
10 that? We make even more money.

11 And the reality is while they were doing these changes, and
12 you saw the chart, our reimbursements went down and down and down.
13 They have talking points about how prices are going up. Not our
14 charges. Four to five percent a year. Not our reimbursements. They're
15 going down. Their premiums, up. Profits, up. Our reimbursement is
16 going down. All while selling this story to build public position in their
17 favor. They want to talk about don't consider sympathy? That's what
18 these people have been doing, building public opinion that supported
19 this logic.

20 They do this, and they come here, and they say all things for
21 one reason: let us pay less. That's it. Yes, Dr. Bateman -- Mr. Bateman, I
22 think anybody's reaction to a 99285 claim, if you look at what they do
23 and you look at the reasonable value, that that's reasonable. And you
24 know what? It used to be that that or pretty darn close to it was
25 reasonable. If you look at reasonable and customary, that's right there.

1 What is his explanation? Again, Deal, I compared it -- the allowed
2 amount -- to the right metric. He says it's right. No explanation for why
3 his model doesn't work in this case.

4 We used FAIR Health. Let me say one thing about FAIR
5 Health. They say, well, FAIR Health doesn't say that it's reasonable and
6 customary or it's reasonable. No. That is not FAIR Health's job. FAIR
7 Health has a database. FAIR Health then lets people license that
8 information. It is for them to decide how to use the information. And
9 the point being is that both providers, if you look at prior to 2017, and for
10 those that have reasonable and customary, even today, providers,
11 insurers, everybody regard 80th percentile of FAIR Health to be what's
12 reasonable. The point isn't that FAIR Health says that it's reasonable.
13 The point is FAIR Health says it's reliable and others say it's reasonable.
14 And it was considered reasonable until United started driving the rates
15 down. ASO plans or R&C, will generally be tied to 80 percent of FAIR
16 Health. This is United's own document. It's not FAIR Health just saying
17 it's reasonable. United said it was reasonable until they had this five-
18 year plan.

19 I want to talk about sub-TIN. We've heard some unusual
20 things about it. First of all, the whole notion of using one sub-TIN is
21 common. Even Alexander Mizenko from FAIR Health acknowledged that.
22 But here's what's really odd. When we talked about there's no harm,
23 well, this wasn't being done to make more money. This is being done
24 because we thought we had an agreement to do it. If you look at the
25 actual charges, they're 1,360 along the way. United knows not only did

1 we not make any money from doing it, which is why they had never
2 raised the issue, which they had never said to us that we owed in any
3 money. It never affected the actual charges.

4 And the people they brought had one thing in common that
5 talked about that. They had no idea what was going on with this
6 sub-TIN. They had no personal knowledge of the facts and why it was
7 done. They had no personal knowledge it was done because we thought
8 we had a deal, and they had no personal knowledge that the rates
9 charged were any different.

10 Now, if you want to talk about Sound Physicians, because
11 this is the ultimate plan. The problem with --

12 MR. ROBERTS: Objection to this exhibit, Your Honor. *Lioce*
13 violation.

14 MR. AHMAD: This is testimony --

15 THE COURT: No, no. Let me -- I'm going to overrule that.

16 MR. AHMAD: Yes. This is testimony from Bruce Deal.

17 THE COURT: There was no objection at the time of trial
18 according to this transcript.

19 MR. AHMAD: That's correct, Your Honor.

20 MR. ROBERTS: We would contend it's plain error, Your
21 Honor.

22 MR. AHMAD: Here's what we know. Sound Physicians, the
23 United entity, charges a lot more than we do. Our charges, way over
24 unreasonable for us. Not for United. So they want to have a provider
25 group where they can charge a lot more, and on the one hand either get

1 those high charges and profit that way or by charging more, there's a
2 bigger difference between the allowed amount and the charges, so they
3 make more on the insurance side, too. They charge more. Where they
4 talk about charges going up --

5 MR. ROBERTS: Objection to the word "they", Your Honor.
6 There's no evidence any of these Defendants ever charged for ER
7 services.

8 MR. AHMAD: It's a United entity.

9 THE COURT: Be more specific.

10 MR. AHMAD: It's a United entity. And the fact of the matter
11 is an entity that United has an interest in charges more. I don't see them
12 saying, hey, you guys are charging too much. Not when it comes to
13 them.

14 We talked about something else. You know, the ER,
15 emergency room costs, when they talked about costs going up and up,
16 are actually a drop in the bucket. 3.2 percent. That's including facility
17 charges. That includes ambulance transportation. We're actually a
18 small fraction of that. The charges that we are talking about in this case,
19 and I would want you to focus on our charges, because what United has
20 done is they've talked about other charges, other charges going out,
21 presumably to motivate people to reduce our charges, which have not
22 gone up with everybody else's. But the reality is emergency room costs,
23 the kind of work that we do, are a drop in the bucket.

24 The real motivation? Well again, 2017 United says they have
25 two strategies, growing their member base and expanding our margins,

1 and for years we made trade-offs benefitting one at the expense of the
2 other. 2017 will be different, and it has. We've seen what's happened to
3 their profit margins ever since then. Meanwhile, here's what happens to
4 us. Down, down, down and down.

5 You were asked a question about the damages. This is in
6 Exhibit 530. This is important because it has all of the numbers broken
7 down, and yes, it is a little bit like a tic-tac-toe chart, but the numbers are
8 all written down here in Exhibit 530. I think that's page 16. Oh, they
9 talked about there was no evidence where 99285 was paid at \$254. Well,
10 the problem is Mr. Zavitsanos is a little bit bad at math. The number was
11 253.33, and he rounded up, which I have to tell you is a glaring
12 mathematical error. Because if you remember math class, I was taught
13 that you could round up starting at .50. Well, this is lower than that. But
14 that's where it comes from. So yes, I guess we're guilty of rounding up
15 for the amount of money that they paid us.

16 Now, unjust enrichment. I think I've heard, and I really am
17 not sure, I believe this. They tried to said -- tried to say we didn't convert
18 a direct or indirect benefit on Defendants. I'm just trying to figure this
19 out. Now on the one hand, we provide services to their members. Now
20 there's fully insured, which they absolutely want us to provide those
21 services, and/or when they're a TPA, and they're responsible for paying
22 us. So they absolutely want us to provide those services.

23 But there's another part too, right? Because here's
24 something else they don't want. They don't want us balance billing their
25 members, right? They want us to provide the service and not balance

1 bill their members. What did they get? They got a commitment from us
2 not to balance bill. Now that may have been not very smart, but that's
3 what they did. They got that benefit, and they said to us well, if you're
4 not going to balance bill, then we'll drive the rates even lower.

5 And if I heard right, United doesn't have to pay anything they
6 claim, which makes me wonder why did they pay anything at all?
7 Because it sure wasn't because they're nice people, and they just wanted
8 us to have a little bit of money. No. The little bit they paid us was
9 precisely because we gave a benefit, two benefits, provided the service,
10 did not balance bill. Let me make something else clear. This is the
11 model, right? We provide a service; they pay what they pay. We -- they
12 pay us what they want, and if we don't like it, ultimately we'd have to
13 sue. And yes, this is the only avenue. By the way, there is no claim
14 under any EMTALA statute, and it's not a strategic choice. You didn't
15 hear any evidence about that, primarily because it doesn't exist, and you
16 certainly won't see that in the Court's charge.

17 But believe me, if there was another way around it, if there
18 was another statute, I can assure you of all the lawyers here, we would
19 have brought it. It doesn't exist. What they don't want you to know, or I
20 guess they don't like to acknowledge, they don't like the fact that people
21 will know that the only thing you can do if you're an emergency room
22 physician, and you're required to treat, and you have to wait and see
23 what United says, and they just decide to pay you what they want, that
24 the only thing you can do is either say it's not worth a lawsuit, it's not
25 worth all this, or sue.

1 And if you haven't figured out already why a lot of providers
2 just give up and take the rate, it's because of all this. It's because of all
3 this right here. This isn't easy, and most providers frankly won't do it.
4 And this is why -- by the way, you've heard some arguments about well
5 maybe you can split the difference in terms of what we're asking, what
6 they're asking.

7 Let's be very clear about that. That's a win for them. That's
8 a win because they know they have leverage. If the only thing you can
9 do is either accept the rate or go through all this, they have leverage, and
10 if the only consequence is well, we'll just split the difference, and that's
11 the worse that can happen, they do well. This is why when they say
12 well, you know, 90 percent of the time, whatever the percentage of time
13 we would take less than bill charges. Well yes. If we would get
14 something close to what we thought was reasonable value, would this
15 be our first option? Absolutely not. It's only when the numbers get as
16 low as they have in this case that we had to do this.

17 Damages. Reasonable value. Reasonably compensated. It
18 isn't a business. It's about the reasonable value of the services. You're
19 going to see repeatedly reasonable, fair, equitable. Unfair claims
20 practices, fair and equitable, failing the fair and equitable. Implied
21 contract. They know and they understand that we're going to provide
22 these benefits. If we had a written contract, it wouldn't be called
23 "implied contract." There was no written contract. It's an implied
24 contract when we treat your members, and we agree not to balance bill,
25 you will pay us reasonable value. Top pay. When liability has become

1 reasonably clear, again we're reasonable, and an officer, director or
2 department head knowingly permits it.

3 I'll go through these quickly. These numbers are all on the
4 numbers in that Exhibit 530, page 16, which I showed you earlier, and
5 again the tic-tac-toe. Have you seen fraud or malice in this case? I think
6 what you've seen is an attempt to conceal facts, to come up with talking
7 points to try to convince you and others to pay less, all in an effort to talk
8 about something other than reasonable, all in an effort to increase profit
9 margins above that of any other insurance company.

10 I'm going to submit to you that if this isn't fraud or a
11 question of malice, when you have somebody in a situation where you
12 have to treat, and then they just have to take what it is, and then to go
13 through what you saw in this case, the answer is yes. So I'm done.
14 Healthcare providers and frankly everybody on the team, it's been a long
15 process. We're going to turn it over to you.

16 You know we knew when we, you know, everybody knew
17 when we filed this case, ultimately we turn it over to you. So you can
18 imagine everybody on the team of healthcare providers, we're going to
19 turn it over to you now. We're done. We've done everything we can.
20 We'll await your decision. I hope and I would urge you to find in favor of
21 the healthcare provider Plaintiffs, to find that that 80 percent of FAIR
22 health that we try to meet is fair and reasonable, and what they did was
23 wrong. Thank you all.

24 THE COURT: Thank you to everyone for closing arguments.
25 Now this is the chance where I have to be a bad guy again.

1 Ladies and gentlemen of the jury, I have to tell you that we
2 have one alternate juror, and it is Ms. Herzog. And so you'll be excused
3 from deliberations. My temp assistant will be in here in a few minutes.
4 She'll be sworn to make sure that you get some dinner to take with you,
5 and that she gets your information, contact information.

6 In the event not everyone can do all of the deliberations, then
7 you will be asked to come back. So can somebody call? Brynn, I had
8 asked her to come at 5:20, but I don't think she's here. So I'm -- now. Let
9 me just kind of go through the rest of the information, so that you know
10 when you complete your deliberations, checks will be mailed to you.
11 Because of COVID, we're not handing them out through Jury Services
12 anymore.

13 [Sidebar at 5:25 p.m., ending at 5:25 p.m., not transcribed]

14 THE COURT: Sorry for the delay. So when you go back to
15 the jury room to deliberate, you will elect one of your number as your
16 foreperson. That foreperson would govern your deliberation. You will
17 let us know how late you would like to work today. You don't have to
18 work, but if you -- if you want to, you can work until 7:00. They would
19 like the building to be clear by 7:00. We have extra security lined up so
20 that the building is secure, even though it's after hours. And so now --
21 there we go. Oh thanks, Fran. Come on in, and will you please put your
22 mask on? Can you please put your mask on? Thank you. That's okay.

23 [The Clerk swore in the officers to take charge of the jurors]

24 THE COURT: Okay. So let me give you the admonition. You
25 can talk with each other now at this time with regard to your

1 deliberation. You still cannot talk with other people with regard to
2 anything to do with the trial, until a verdict is entered. If you will please
3 now go with Fran and Marshal Allen. Ms. Herzog, we're so very sorry.
4 Take down Fran's number so -- the Marshal keeps those.

5 [Jury retires to deliberate at 5:26 p.m.]

6 THE COURT: Okay. The room's clear. There were some
7 objections during your closings. I'll give the Plaintiff the opportunity to
8 address anything they wish to address, and then the Defendant.

9 MR. ZAVITSANOS: Nothing, Your Honor.

10 MR. AHMAD: We don't have anything.

11 THE COURT: Mr. Roberts?

12 MR. ROBERTS: Yes, Your Honor. I believe that the record is
13 clear on my objection, even though there was a question that was
14 unobjected to when it came in. What we feel had led up to that point
15 was we had had similar objections denied. We were put in the position
16 of having to object constantly before the jury.

17 That did come in, but just because evidence comes in doesn't
18 mean you can make an improper argument based on that evidence, and
19 that's why we thought it was going too far in asking the jury to make a
20 decision on something other than the facts and the evidence before them
21 on these disputed claims.

22 THE COURT: And I took quick look at *Lioce v. Cohen*. It
23 doesn't look as though my duty to step in would be unless the conduct
24 was so extreme that admonishment couldn't do it.

25 MR. ROBERTS: Okay.

1 THE COURT: So is there anything more for the record?

2 MR. AHMAD: Yes, Your Honor. The only comment I would
3 make is that I don't -- not only do I not think that I made any improper
4 argument, but I'm not even sure honestly that I made any argument at all
5 about it. So just for the record, I mean it was up there. I don't think
6 there was anything improper about that testimony that I said, and I
7 haven't heard anything, anything that I said about that testimony is
8 improper.

9 MR. ROBERTS: And Your Honor, if he really didn't, I think,
10 make any improper argument other than displaying it to the jury,
11 because the question itself was argumentative and suggestive a basis for
12 a decision other than the reasonable value of services.

13 THE COURT: Yeah. Is there anything else to put on the
14 record? I'm going to ask that you guys, the lawyers at least, or anyone
15 else who wants to stay of course is welcome to, where to stay. I usually
16 will have an idea in ten minutes, but the court person will be in here
17 longer like to deliberate.

18 I'll be back -- whoa, whoa, whoa, before you go, Nicole has
19 an issue. Gentlemen, I'd like to recall the case. Nicole needs some
20 attention, and the fact that you were willing to shake hands after this
21 contentious trial continues to impress me about both sides. Now.

22 THE CLERK: Starting on November 8, while I was gone,
23 additional exhibits started being sent to my supervisor, which then gets
24 transferred to a file and given to me, and they were to replace the stuff
25 that I already had on these drives. Today I couldn't find an exhibit. I

1 asked Shane to send it to me again. He said he sent it yesterday. I didn't
2 have it in my file. I went to my supervisor, and there's a whole list that
3 hadn't been sent, sent to me.

4 At this time, I don't know what has been given to me, what
5 you guys have submitted that may not have been provided to me, and
6 I'm [indiscernible] to replace. I have no way to tell at this point.

7 THE COURT: Now you're going to have to stay and work that
8 out, because evidence has to go back for the deliberation.

9 MR. ZAVITSANOS: Okay. We'll have somebody on our side,
10 and you -- they can send somebody on their side and try to figure it out.

11 THE COURT: What I'm going to suggest is that you work it
12 out really quickly, and when I come back we'll put it on the record.

13 MR. BLALACK: Okay. Mr. Killingsworth is going to proxy for
14 us.

15 [Recess taken from 5:30 p.m. to 5:37 p.m.]

16 THE COURT: Okay. Court is back in session. Is the issue
17 with regard to the exhibits worked out? No?

18 THE CLERK: We're still working on it. I was just getting to
19 Defendants.

20 THE COURT: All right. So that you know, Juror No. 2, Cindy
21 Springberg is the foreperson. They want to leave for the night, and
22 they'll be back tomorrow at 8:30.

23 UNIDENTIFIED SPEAKER: Yes, Your Honor.

24 THE COURT: Now you guys know that I've got a calendar at
25 9:00?

1 UNIDENTIFIED SPEAKER: Yes, Your Honor.

2 THE COURT: I can try to speak through it or take a break if I
3 need to, and we'll be back in 3A tomorrow.

4 UNIDENTIFIED SPEAKER: In 3A, yes.

5 THE COURT: 3A.

6 UNIDENTIFIED SPEAKER: And Your Honor, from the
7 perspective of do you want contact information for your staff, so they
8 know who to contact?

9 UNIDENTIFIED SPEAKER: We'll be here, Your Honor.

10 THE COURT: Yes. Terence has been kind of getting the word
11 out, but I would suggest that you be here by 10:00 is my suggestion.
12 But you have to work out the evidence tonight.

13 UNIDENTIFIED SPEAKER: Yes.

14 UNIDENTIFIED SPEAKER: How long will they deliberate
15 tonight?

16 THE COURT: None. They're on the way out the door right
17 now.

18 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

19 THE COURT: So who is the spokesperson? Is it -- are you the
20 take your time and let me know when to come back. All we have to do
21 is get the exhibits worked out tonight. Thanks again --

22 THE CLERK: I don't think you have to come back. I just have
23 to go through it with them and then I can do --

24 /////

25 /////

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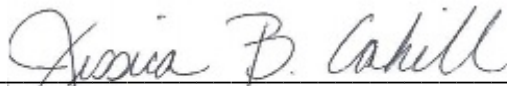
THE COURT: If you need me, I'll be here.

THE CLERK: Okay.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.


[Proceedings adjourned at 5:39 p.m.]

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



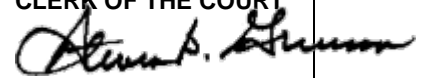
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

Defendants.

CASE#: A-19-792978-B

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
WEDNESDAY, NOVEMBER 24, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 19

APPEARANCES:

For the Plaintiffs:

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

For the Defendants:

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

RECORDED BY: BRYNN WHITE; JUDY CHAPPELL, COURT
RECORDER

1 Las Vegas, Nevada, Wednesday, November 24, 2021

2
3 [Case called at 9:32 a.m.]

4 THE COURT: Let's meet now on Fremont v. United. We have
5 another jury question. Please approach.

6 MR. BLALACK: Fine with me, Your Honor.

7 MR. ZAVITSANOS: It's okay. Yeah.

8 MR. BLALACK: The more the better.

9 THE COURT: Great. You can let Andrew know that they
10 approve. Oh, it's all approved.

11 THE MARSHAL: Okay.

12 THE COURT: Thank you.

13 [Recess taken from 9:33 a.m. to 9:52 a.m.]

14 THE COURT: United. Are the lawyers on their way?

15 THE MARSHAL: Yeah. For Fremont.

16 THE MARSHAL: Attorneys for Fremont again, please.

17 THE COURT: Good morning, everybody. On my motion
18 calendar, I'm good till 10. So the timing worked out.

19 [Pause]

20 THE COURT: I think you guys are going to need Jane for this
21 one.

22 UNIDENTIFIED SPEAKER: Excuse me?

23 THE COURT: I think you'll need Jane for this question.

24 UNIDENTIFIED SPEAKER: Okay.

25 THE CLERK: Mr. Killingsworth, do you know if Defense

1 counsel left again, do they need to be called?

2 MR. KILLINGSWORTH: I'll text Mr. Blalack.

3 THE CLERK: Thank you.

4 [Pause]

5 THE COURT: I'll just take a minute. Just stay on the record.
6 I'll be right back.

7 [Pause]

8 [Recess taken from 9:57 a.m. to 10:00 a.m.]

9 THE COURT: Remain seated. I'm just -- is there an update
10 on the Defendants?

11 THE CLERK: We're still waiting for Defendants. I don't know
12 where they are.

13 THE COURT: Okay.

14 [Recess taken from 10:00 a.m. to 10:08 a.m.]

15 THE COURT: -- v. United. Let's take an appearance. One
16 person on each side.

17 MR. BLALACK: Your Honor, Lee Blalack on behalf of the
18 Defendants.

19 MR. ZAVITSANOS: John Zavitsanos on behalf of the
20 Plaintiffs.

21 THE COURT: We have two questions from the jury. If you'll
22 please approach?

23 MR. BLALACK: This one, we have no problem with.

24 MS. ROBINSON: Yes. So the answer -- and I think both sides
25 have concluded that it was a simply misnumbered instruction.

1 MR. BLALACK: That's right.

2 MS. ROBINSON: And there's no missing instruction.

3 THE COURT: Well, I'm going to write an answer, and you
4 guys can approve that.

5 MR. ZAVITSANOS: [Indiscernible] how to do that.

6 THE COURT: What I'm going to write is --

7 MR. ZAVITSANOS: They don't have -- yeah, they don't
8 [indiscernible] this one.

9 THE COURT: Let's -- why don't you guys talk about this one?
10 I want to get this squared away first. Is there a jury instruction number
11 8?

12 MS. ROBINSON: There is no jury instruction number 8.

13 MR. BLALACK: I think it [indiscernible].

14 MR. ROBERTS: Oh. No, we [indiscernible].

15 MR. BLALACK: [Indiscernible]. Yeah, that's my point.

16 THE COURT: Okay. You guys need to approve the response
17 before it goes back.

18 MS. ROBINSON: I've emailed Lee and Dimitri that based on
19 both my and Dimitri's review, there is no -- it was just a misnumbering.
20 Thank you.

21 THE COURT: Do you want to talk to your team before that?

22 UNIDENTIFIED SPEAKER: Sure that will be fine.

23 THE COURT: Okay.

24 UNIDENTIFIED SPEAKER: Now, I'm just trying to figure out
25 where my --

1 MR. ROBERTS: I just checked the official set that was sent to
2 me after you announced agreement on weight, and it goes from 7 to 9.
3 And I did not notice that.

4 MS. ROBINSON: So I had prepared my own set, and Dimitri
5 had as well. We had our own notes with where we thought the jury
6 instructions would fall. And so when I compared it to my notes, it looked
7 like the instruction at 7 was immediately supposed to precede instruction
8 9, so.

9 THE COURT: And when I read them, I noted that they were
10 out of order.

11 UNIDENTIFIED SPEAKER: Okay. What was 9?

12 MS. ROBINSON: I think that was the one you had to consider
13 evidence no matter which party --

14 MR. POLSENBERG: Here's what happened though. That one
15 was added late, and we'd already numbered everything. And then
16 Audra had to go through and renumber.

17 MS. ROBINSON: That's number 9?

18 MR. POLSENBERG: That's number 9. It's a two parter.

19 THE COURT: That has to stay with those -- with the record.
20 So I just -- yeah.

21 MR. POLSENBERG: Okay. Here's what happened.

22 MS. ROBINSON: (Indiscernible).

23 MR. POLSENBERG: What is 7, we added after we numbered
24 them and then renumbered them. So that's why the numbers are off.

25 THE COURT: Okay. So that can go back. And just come

1 back for this one. We're still figuring it out.

2 UNIDENTIFIED SPEAKER: Well, [indiscernible] locked in
3 Excel so that they can be edited. But Lee is checking to make sure that
4 they have office subscription so they can at least open it because it says,
5 they need Office subscription. So we're trying to make sure they had at
6 least Office. But I think that they're thinking that they can't edit it
7 because of some [indiscernible].

8 THE COURT: Well, I can instruct them not to edit it. If
9 you -- you know, if you can unlock it.

10 MS. ROBINSON: Well, they might do it by accident, so.

11 UNIDENTIFIED SPEAKER: Yeah. I think that's why both
12 parties agreed to lock it. I think that --

13 UNIDENTIFIED SPEAKER: It says -- it says unable to sort.

14 MS. ROBINSON: Unable to sort.

15 UNIDENTIFIED SPEAKER: Yeah. So when it's locked, you
16 can't filter.

17 THE COURT: If it's going to take more than a few minutes, I
18 have another case to call.

19 UNIDENTIFIED SPEAKER: Okay. Thank you, Your Honor.

20 THE COURT: So we'll leave that there for now.

21 [Recess taken from 10:11 a.m. to 10:21 a.m.]

22 THE COURT: And Mr. Roberts, if you want your team in here
23 so we can respond to the jury question?

24 MR. ROBERTS: Yes, Your Honor. Thank you. I'll go retrieve
25 them from the hall.

1 THE COURT: Okay. I've recalled the case of Fremont v.
2 United. We have a jury question. Are you -- you have to get Mr. Roberts
3 in here.

4 UNIDENTIFIED SPEAKER: Is this another jury question or the
5 same one?

6 THE COURT: This is the one about the Excel spreadsheet.
7 Are we ready to go forward on that?

8 MR. BLALACK: Yeah. we're trying to figure it out, Your
9 Honor. I think here's the issue. Both parties agree that the file was
10 locked, which means it's not a function of the computer; it's a function of
11 the file. And both sides wanted it locked so no data could be altered on
12 the file; we both agreed on that. To the extent that question is asking
13 about the capacity to sort, unable to sort, which is in the question. There
14 may or may not be disagreement on that. We would have no objection
15 to the jury being able to sort data by Plaintiff, by Defendant, by date, by
16 year, whatever so long as it can't be altered, which we believe -- I think
17 I've said we can't.

18 So I think the only question is whether there is a functionality
19 that we could provide them and explain to them that may exist on the
20 file that would them to do that without altering the capacity to store data.
21 So that's the question.

22 THE COURT: Thank you.

23 MR. LEYENDECKER: And Your Honor, there's not. You
24 either open it up or they can do whatever they want including
25 accidentally deleting, or changing things, or whatever. Or they could just

1 view it, scroll through it, view to see the data. Right. So you either get
2 to operate the software or you cannot operate it. But you can scroll
3 through it like you would a five-page email to see what's in there.

4 THE COURT: All right. So --

5 MR. LEYENDECKER: So my understanding is all the
6 spreadsheets on both sides were submitted so that they could be viewed
7 but not manipulated with the program for that reason.

8 MR. GORDON: It's sorted.

9 THE COURT: So you don't agree then. Because my
10 argument was to open the file, not to give them the capacity to sort or
11 alter, and just to review everything.

12 MR. BLALACK: I think they have that already.

13 MR. ZAVITSANOS: [Indiscernible].

14 MR. LEYENDECKER: They have the ability to view.

15 THE COURT: I'm just not great at Excel.

16 MR. ZAVITSANOS: Yeah, let me -- well, I'm even worse,
17 Your Honor, and so I'm probably going to butcher this. But my
18 understand is here's the difference. What they want to be able to do, for
19 example, is say, I want to pull up all the Fremont 99285s.

20 THE COURT: Right. I got it.

21 MR. ZAVITSANOS: There's a sort feature for that. The way
22 they have it now, they have to scroll through and jot down each one as
23 opposed to the program --

24 THE COURT: So are you willing to let them sort?

25 MR. LEYENDECKER: What I'm saying is it's black or white.

1 You either get to do all you want with the program formulas, et cetera.
2 Or it's just a matter of being able to view it. There's no give this
3 permission and that permission. That's not the way it works.

4 MR. ZAVITSANOS: Because the problem is, Your
5 Honor -- and I don't -- obviously, neither side believes any juror is going
6 to delete data. But if somebody hits a button and all of a sudden, a
7 chunk of data comes out, and it's such a big file --

8 MS. ROBINSON: They might not even notice it.

9 MR. ZAVITSANOS: -- and it goes up on appeal. Now, we've
10 got an issue, so.

11 MR. LEYENDECKER: So I think the better thing to do is to say
12 that the -- for the Court to give instruction that they're permitted to view
13 it, but the Court doesn't allow them to manipulate or --

14 MS. ROBINSON: Manipulate or sort.

15 MR. LEYENDECKER: I don't know how you quite say it.

16 MR. BLALACK: I think the term they're asking is "sort".

17 THE COURT: And you would say, okay, sure, you can sort?

18 MR. BLALACK: If it -- if -- and it's a technical question we're
19 trying to answer. If it's possible for them to sort the data without being
20 able to alter any field in the data, which I believe it may be. We have no
21 problem with that because it would just help them understand the
22 evidence better. And frankly, the parties stored in front of them 70 times
23 and the Court [indiscernible].

24 THE COURT: Yeah. I didn't really have access to that screen,
25 and I couldn't pick I up on this one, so.

1 MR. BLALACK: That's what the parties were doing when
2 they were bringing in claims and showing them these claims. It was a
3 sorting function on the spreadsheet. So --

4 THE COURT: And what happens though if by error, they alter
5 or delete something?

6 MR. BLALACK: Well. Yeah, if we can't confirm with
7 confidence that they can sort but not alter, the we would absolutely be
8 aligned because we think the priority is nothing should touch the data.
9 I'm just trying to get a technician to confirm.

10 THE COURT: Yeah. And when will you know?

11 MR. BLALACK: I should know in five minutes.

12 THE COURT: Great.

13 MR. LEYENDECKER: I can confirm it because we submit it to
14 you in a locked fashion that prevents anything other than reviewing it --

15 THE COURT: Got it.

16 MR. LEYENDECKER: -- and scrolling down and seeing what's
17 in there. That's the manner in which it's been submitted to the Court.

18 THE COURT: Okay. So let me know when you have a
19 solution. I'll call another case.

20 MR. BLALACK: All right. I'll have a definitive answer on
21 there in five minutes here.

22 THE CLERK: What about the search option, control F, control
23 find?

24 MR. KILLINGSWORTH: I think --

25 THE CLERK: That should work.

1 UNIDENTIFIED SPEAKER: Well, what about the search
2 option?

3 UNIDENTIFIED SPEAKER: They can still search it. And so
4 there's --

5 THE CLERK: Yeah. So if they have something they're
6 looking for, they could just go ahead and search.

7 MR. KILLINGSWORTH: Correct. So there's an edit --
8 basically, the files are either an edit file or a view file. In a view file, you
9 can search, and you can scroll, and you can do all that. In an edit file,
10 you have all capabilities. You can do formulas, you can sort, you can
11 delete, you can alter. And so there's only those two options. And so
12 it's -- currently, it's in the view format.

13 THE CLERK: Right.

14 MR. KILLINGSWORTH: Which means you can go up to the
15 search bar, and you can search throughout it. But that's -- you can't sort.

16 MS. ROBINSON: Right.

17 MR. BLALACK: Okay. And we'll verify our position on that in
18 a few minutes.

19 THE COURT: Thank you.

20 MR. BLALACK: [Indiscernible]

21 [Recess taken from 10:27 a.m. to 10:41 a.m.]

22 THE COURT: Call the case first of Fremont v. United. And
23 note the appears of counsel for the Plaintiff and Defendant.

24 Do we have an answer yet on that Excel?

25 MR. BLALACK: I think we do, Your Honor.

1 MR. LEYENDECKER: We do, Your Honor.

2 THE COURT: There's so much noise. All right.

3 MR. LEYENDECKER: There's a -- here's a big picture
4 question. Number one, we figured out there's a way that we could save
5 it so that the only thing that could happen is the searching and the
6 sorting. The problem is there might be 10 or 15 different Excel files,
7 maybe more, between the two parties in the case. And that's going to
8 require -- if they're only thinking about doing this with 473, the claim files
9 at issue, that's one thing. If the issue is broader than that, then we got a
10 much different issue.

11 THE COURT: Well, one option is to give them an answer and
12 let them do it here.

13 MR. BLALACK: Well, what we were going to propose, Your
14 Honor. We did confirm that what we would need to do is take the file
15 back on the computer. We would unlock it and enable sort, then it would
16 be locked again. As a result, it went back to them. They could not alter
17 the data, but they could move it. There's a way to physically do that. So
18 I think what we would propose is a response that explains we're going to
19 do that, and that it will allow them to do that for the Plaintiffs' disputed
20 claims file. And then if they ask to be able to do that with any other
21 exhibits, we can address those as they come.

22 MR. ZAVITSANOS: And Mr. [Indiscernible] will address the
23 Court.

24 THE COURT: Yes, thank you.

25 UNIDENTIFIED SPEAKER: I think -- it sounds like there's two

1 different things going on.

2 THE COURT: Absolutely.

3 MR. LEYENDECKER: What I'm understanding is it seems
4 like -- although they didn't say it, Your Honor, that they want to do this
5 with 473, the claim file. Right. Because there are lots and lots of Excel
6 files in there, we could be getting down a path here. Right now, they can
7 view it and they can search it. If the approach is we're okay on 473 doing
8 this, but we need to be recognizing they're going to say, well, what about
9 3412? What about 1518? What about --

10 MR. BLALACK: And if --

11 THE COURT: Why don't we ask them what file they want to
12 search?

13 MR. BLALACK: Right. I'm fine with that. And/or doing it for
14 the disputed claims file and then saying, you know, if you have other
15 Excel files, identify the exhibit number and we will --

16 MR. ZAVITSANOS: Well, I don't want to -- I don't know about
17 that.

18 MR. LEYENDECKER: We certainly can give them this
19 functionality on relatively quick notice, like right now, as it relates to 473,
20 the claim file at issue.

21 MR. BLALACK: Can we put exhibit number on there?
22 Because that might help make sure we're talking about -- that would be
23 fine with us. That works for the Defendants, Your Honor.

24 THE COURT: Okay. Great. Thank you.

25 UNIDENTIFIED SPEAKER: Put it right back.

1 THE COURT: Thank you.

2 [Recess from 10:44 a.m. to 11:09 a.m.]

3 THE COURT: Let's bring the teams in.

4 [Pause]

5 THE COURT: Okay. So let's make sure everybody's in the
6 room with their mask on.

7 MR. BLALACK: All right. Your Honor. We have both side's
8 IT teams and lawyers have been trying their best to figure out how to do
9 this, give this function [indiscernible], and I can send it back in a locked
10 fashion with [indiscernible]. And so far I don't think either -- nobody on
11 our side, we have not been able to achieve that, so I think our position --
12 because you know, I'd like to be able to give them this functionality, but
13 only if we can have it locked, so I think our view is we would propose to
14 respond and say we can't address these needs, because the file needs to
15 be locked for the reasons on the record.

16 MR. LEYENDECKER: But make sure that it -- the Court is the
17 one that is --

18 MR. BLALACK: Correct.

19 MR. LEYENDECKER: -- making clear that the Court's got that
20 point of view, as opposed to the parties saying this and the parties
21 saying that.

22 MR. BLALACK: Correct. We would endorse that position,
23 Your Honor.

24 UNIDENTIFIED SPEAKER: One of those features, right?

25 MR. BLALACK: We have not.

1 UNIDENTIFIED SPEAKER: No. One of the features is like a
2 filter feature. We can enable the filter.

3 UNIDENTIFIED SPEAKER: I know. But I thought that if you
4 tried unlock it, and then they try to --

5 MR. BLALACK: Yeah. We tried it in all four, and we were
6 locked out.

7 MR. LEYENDECKER: I guess my point is, Your Honor, I'd to
8 get on with deliberations, and I don't have confidence we can figure this
9 out in a timely manner.

10 THE COURT: I'm trying to write out an answer. I am still
11 listening to you.

12 MR. LEYENDECKER: I had one issue, but I want to check and
13 make sure that the file that -- the actual file that ultimately made its way
14 to the submission is the 473 the reflects the -- what -- with the right totals
15 in it, okay? Remember [indiscernible].

16 UNIDENTIFIED SPEAKER: [Indiscernible] about that.

17 MR. LEYENDECKER: Lewis just said --

18 THE COURT: As soon as you approve that, let me know,
19 because I'll staple that.

20 UNIDENTIFIED SPEAKER: Yeah, I -- we're fine with that
21 submission, Your Honor.

22 THE COURT: No. Well, you need to check something.

23 MR. LEYENDECKER: So what I'm saying is it could be that
24 the -- that a wrong version of 473 went back there.

25 THE COURT: Go verify.

1 MR. LEYENDECKER: The version that didn't have the --

2 THE COURT: Don't talk about it. Go verify it.

3 MR. LEYENDECKER: Okay.

4 MR. ROBERTS: Your Honor, is your calendar concluded?

5 THE COURT: It is.

6 MR. ROBERTS: As long as everyone's here, I did want to ask
7 for some guidance from the Court. When we had brought up the motion
8 to --

9 THE COURT: Can you staple that?

10 MR. ROBERTS: -- seal and the specific relief --

11 THE COURT: Uh-huh.

12 MR. ROBERTS: -- we were going to try to -- I think everyone
13 agreed to kick that [indiscernible] can to the end of the road.

14 THE COURT: Right.

15 MR. ROBERTS: But I didn't want it to delay past today,
16 where we're trying to figure it all out and get that motion filed without
17 some guidance from the Court. I know you're leaving to go on vacation.
18 Would it be okay with the Court if we just got it filed early next week to
19 give them time to respond and then have it set sometime December 6th
20 or after or did you want us to try to get that done today?

21 THE COURT: I prefer not to do it today. What's your
22 response?

23 MR. ZAVITSANOS: Yeah. I agree, Your Honor. I think that's
24 fine. The only thing I'll say, Your Honor, this is not -- maybe premature.
25 I don't know, but so I know we had, I think a couple hundred people

1 yesterday on Blue Jeans.

2 THE COURT: Well, it maxes out at 200. There was 194 and
3 196 when I checked with Brynn.

4 MR. ZAVITSANOS: Yeah, I --

5 UNIDENTIFIED SPEAKER: There were a lot of people still
6 trying to get on --

7 MR. ZAVITSANOS: Yeah. I mean, I was getting emails from
8 other clients saying they could not get on. And we got -- I mean, I'm just
9 speculating. There was probably another hundred that tried to get on, so
10 it is a case that does have -- I mean, this is the -- this is -- this is a case of
11 public concern, so -- but December 6th is fine, Your Honor. I don't know
12 -- I don't represent any of them, you know.

13 THE COURT: All right. The 6th is the week I come back. I
14 need to be prepared for your arguments. My regular motion calendars
15 are Wednesday and Thursday. I can give you a special setting. Work
16 with my office.

17 MR. ZAVITSANOS: Yes.

18 MR. ROBERTS: But the temporary --

19 THE COURT: I don't want to do it --

20 MR. ROBERTS: -- protections.

21 THE COURT: Yeah. I don't want to do it on a stacked
22 calendar.

23 MR. ROBERTS: Okay.

24 THE COURT: I want you to have the time you need.

25 MR. ROBERTS: And the temporary protections are still in

1 place pending that.

2 THE COURT: That's correct.

3 MR. ROBERTS: Thank you.

4 THE COURT: And you should reduce that to writing.

5 MR. ROBERTS: Thank you, Your Honor.

6 MR. POSENBERG: Judge, I have a Supreme Court argument
7 on the 7th.

8 THE COURT: Work with them. We're going to accommodate
9 you.

10 MR. POSENBERG: Thank you, Your Honor.

11 THE COURT: So we're waiting to hear back from Mr.
12 Leyendecker --

13 MR. BLALACK: Yes. He's trying to --

14 THE COURT: -- on the tech issue?

15 MR. BLALACK: The Defendants are good to go, Your Honor,
16 so whenever [indiscernible].

17 THE COURT: Great.

18 [Pause]

19 THE COURT: Oh, wait. They haven't approved that yet. Did
20 that go back?

21 THE CLERK: Hey, did this go back?

22 UNIDENTIFIED SPEAKER: Uh-huh.

23 THE COURT: It wasn't supposed to Andrew, it was not
24 supposed to.

25 UNIDENTIFIED SPEAKER: Oh.

1 THE COURT: Yeah, you guys. I've got a problem. I need
2 everybody up here. By error, Andrew took this back. It's my fault. It's
3 my fault, not his.

4 THE CLERK: I handed it to the Bailiff.

5 THE COURT: No. I asked you to staple it. We haven't
6 finished it.

7 THE CLERK: Oh. Sorry.

8 MR. BLALACK: Well, it may not be an issue, Your Honor.

9 THE COURT: Well, it may not, but I need to let you know
10 immediately. And it's not your fault. Any way --

11 UNIDENTIFIED SPEAKER: I'm sorry, Your Honor.

12 THE COURT: Leyendecker had to -- he still is figuring it --

13 UNIDENTIFIED SPEAKER: Okay.

14 THE COURT: -- all I wanted it was stapled. It's my fault.

15 THE CLERK: That's okay.

16 MR. BLALACK: Kevin, are you good, because this went back
17 already?

18 UNIDENTIFIED SPEAKER: This went back already. The
19 response that was drafted went back already.

20 MR. LEYENDECKER: Well, I had what I can filter, okay? And I
21 don't -- is there some reason we think it might not be right?

22 UNIDENTIFIED SPEAKER: Yeah. Lewis told me that he's not
23 sure, so I was waiting to get from Myrna, the paralegal, the one that
24 actually got uploaded to the site, whether it was the precise version. I
25 think that they were the totals, and the charges were both cleared by

1 both sides, okay?

2 UNIDENTIFIED SPEAKER: Correct.

3 MR. BLALACK: He just said that may not be the version that
4 actually got uploaded and I wanted to make sure that that -- the correct
5 version, I know is right here, okay, with the filtering capability. It may be
6 they have it, the correct version, but when you whispered that in my ear,
7 I said wait a minute, I need to alert all -- I don't think we should be
8 sending anything else back, so unless there's some reason to think
9 definitively that they have the wrong exhibit --

10 UNIDENTIFIED SPEAKER: Right.

11 MR. BLALACK: -- my view is we send the note back and let
12 them [indiscernible].

13 MR. LEYENDECKER: I think I can know in two minutes --

14 THE COURT: All right.

15 MR. LEYENDECKER: -- once I bring up the file that got
16 submitted to the Court, okay?

17 THE COURT: Well, we'll just be in recess until you're ready.
18 Thank you.

19 [Recess taken from 11:17 a.m. to 11:22 a.m.]

20 THE MARSHAL: Back in session.

21 THE COURT: Okay. What's going on, guys?

22 MR. LEYENDECKER: Okay, Your Honor. We determined that
23 there was a mistake in the version that got uploaded, you know, for --

24 THE COURT: Oh.

25 MR. LEYENDECKER: -- submission and so you may recall

1 there were a handful of claims where there was a partial of a non-core
2 CPT and they were adjustments made to the charges and the allows
3 accordingly --

4 THE COURT: Uh-huh.

5 MR. LEYENDECKER: -- that Mr. Blalack and our sides both
6 got up and said yep, this is it. This is it. We mistakenly submitted the
7 one that that didn't have those reconciliations, so I think we want to
8 advise the jury that following their question, right, we realized that they
9 may not have the version of 473, and we're running at the ground and
10 are going to get that, the correct version very soon. Something along
11 those lines.

12 MR. BLALACK: Yeah. Here's where I am, Your Honor.
13 That's -- everything Mr. Leyendecker may [sic] absolutely be accurate. I
14 don't know that yet, and so now I've got to take that -- the spreadsheet
15 he just gave us and go back and have my consultant look at it and
16 double-check that it is, in fact, the one that should be back there --

17 THE COURT: Okay.

18 MR. BLALACK: -- as opposed to what we got. I think the
19 thought process is, it is -- because they might render a verdict in the
20 meantime --

21 THE COURT: All right.

22 MR. BLALACK: -- on the wrong exhibit, it is advisable to
23 inform of the possibility that that exhibit is not the correct exhibit and
24 that we may need to substitute it with a different exhibit and that the
25 parties will -- and the Court will advise them shortly or something. And

1 that will give us the time to verify what he's indicating. And then if that's
2 correct, we'll agree to substitute.

3 THE COURT: Well, you'll have to approve this.

4 MR. BLALACK: Okay.

5 [Pause]

6 UNIDENTIFIED SPEAKER: That's fine.

7 MR. LEYENDECKER: That's fine with us, Your Honor. I'll
8 report back to you.

9 THE COURT: Okay.

10 [Recess taken from 11:26 a.m. to 12:07 p.m.]

11 THE COURT: Ready to go?

12 MR. BLALACK: We are.

13 THE COURT: Okay.

14 MR. BLALACK: So here's where we are. Mr. Leyendecker
15 shared with me this version of this spreadsheet. We have confirmed this
16 is the right version, so that much is done. What is unknown --

17 THE COURT: I'm listening.

18 MR. BLALACK: -- is which version is on the computer the
19 jury has.

20 THE COURT: Okay.

21 MR. BLALACK: So -- because our team doesn't -- can't verify
22 that, so what we've proposed -- Defendants propose -- and I think there's
23 a line on this -- is we retrieve -- well, one -- well, we retrieve the
24 computer that has the spreadsheet on it, confirm that it's not this list. If
25 it is not this list, then we would remove that one from the computer, put

1 this one, the correct list on, make sure it's password protected, locked
2 like the other one, send it back to them with a note that explains simply
3 that there was an incorrect list and we've substituted the correct list and
4 that's it.

5 THE COURT: And yes?

6 MR. LEYENDECKER: Yes, Your Honor.

7 THE COURT: All right. Do you guys want to give me the
8 language for it or agree on language?

9 MR. BLALACK: I -- do -- I guess my first question for the first
10 step is because we haven't verified that the list --

11 UNIDENTIFIED SPEAKER: Right.

12 MR. BLALACK: -- on their computer is --

13 THE COURT: Oh.

14 MR. BLALACK: -- is the wrong list.

15 MR. LEYENDECKER: We need to make sure that the totals
16 that were correct and that they do have a --

17 THE COURT: We need --

18 MR. LEYENDECKER: -- one slightly off --

19 THE COURT: We need --

20 MR. BLALACK: So I don't know if we need to communicate
21 or we --

22 THE COURT: Yeah.

23 MR. BLALACK: -- need to retrieve the --

24 THE COURT: No.

25 MR. BLALACK: -- laptop.

1 THE COURT: Everything has to be in the record.

2 MR. BLALACK: Okay. So I think we can just say we need to
3 verify that the list you have is the correct list and we'll retrieve the
4 computer, review it and the parties -- or the Court will advise you further.
5 Something like that.

6 THE COURT: Is it a laptop?

7 UNIDENTIFIED SPEAKER: It is, Your Honor.

8 UNIDENTIFIED SPEAKER: Yes, Your Honor.

9 THE COURT: I don't think there are any left-handed lawyers
10 in this trial. That's unusual.

11 UNIDENTIFIED SPEAKER: Retrieve the laptop, verify what is
12 on that. Please give. Yeah. That's fine for us, Your Honor.

13 THE COURT: Thank you. So Marshal, can you please deliver
14 this to the jury?

15 THE MARSHAL: Yes, Judge.

16 THE COURT: Thank you. And you will -- it's asking them to
17 give you the laptop with the evidence.

18 THE MARSHAL: Okay.

19 THE COURT: And if you'll please bring that back.

20 THE MARSHAL: Yes, Your Honor.

21 THE COURT: Thanks.

22 UNIDENTIFIED SPEAKER: They're going to give you the
23 exhibit, too, right? Because it's not on the laptop. It's on that drive.

24 THE COURT: They're going to verify what's on the laptop
25 first before they decide what to do next.

1 UNIDENTIFIED SPEAKER: Right.

2 THE COURT: Yeah.

3 UNIDENTIFIED SPEAKER: So there shouldn't be anything on
4 the laptop. It's on a drive. It's on a flash drive.

5 THE COURT: Right. I got it. They're going to verify that
6 what they have is wrong and then --

7 UNIDENTIFIED SPEAKER: So she's bringing out the flash
8 drive, too.

9 THE COURT: Yeah.

10 UNIDENTIFIED SPEAKER: Okay.

11 THE COURT: Oh. Flash drive also?

12 UNIDENTIFIED SPEAKER: Yeah. That's where the exhibit is.
13 It's on a flash drive.

14 UNIDENTIFIED SPEAKER: Your Honor, my apologies.

15 THE COURT: It's needs to be -- they need the flash drive.
16 She needs the flash drive also?

17 UNIDENTIFIED SPEAKER: Apparently there's a USB. I didn't
18 appreciate that.

19 UNIDENTIFIED SPEAKER: They have it on a USB. We can
20 just get the USB.

21 UNIDENTIFIED SPEAKER: Yeah. We don't need the
22 computer. We can just get the USB. My apologies.

23 THE COURT: Let me just say we also need the USB, because
24 if I start communicating five messages to the Marshal, it'll get lost in
25 translation. Is this okay? We also need the USB?

1 UNIDENTIFIED SPEAKER: Yes, Your Honor.

2 THE COURT: Thanks.

3 [Recess taken from 12:10 p.m. to 12:23 p.m.]

4 THE COURT: Sorry to interrupt you, but because the other
5 disk went back or the USB went back, that's still an exhibit. If we're
6 going to send back a new disk or a new USB, we'll need to mark that,
7 and I'll need your consent --

8 MR. LEYENDECKER: Okay.

9 THE COURT: -- on the record.

10 MR. BLALACK: We will consent.

11 THE COURT: To --

12 THE CLERK: So this will go back to the jury again?

13 THE COURT: That has to go back.

14 THE CLERK: Yeah.

15 THE COURT: But the new one -- and I'll --

16 UNIDENTIFIED SPEAKER: There's other exhibits on there.

17 UNIDENTIFIED SPEAKER: Should we [indiscernible] --

18 THE COURT: Yeah. I'll clarify --

19 MR. LEYENDECKER: -- 473.

20 UNIDENTIFIED SPEAKER: We're going to have to come up
21 with a new number, because you got 473 A, B, C --

22 THE COURT: Let's just --

23 MR. LEYENDECKER: Well, I don't want to change 473. We
24 can call it --

25 THE COURT: Four --

1 MR. LEYENDECKER: We can call it 473 --

2 UNIDENTIFIED SPEAKER: Well, look on your list, because
3 you got a lot of 473 somethings. We can't just pick a new letter --

4 UNIDENTIFIED SPEAKER: You have X, Y, Z. You have --

5 MR. LEYENDECKER: Well, could --

6 UNIDENTIFIED SPEAKER: -- A through H.

7 MR. LEYENDECKER: -- we call it 473 live? Or do you -- is that

8 a --

9 UNIDENTIFIED SPEAKER: How about 473-dash-1? We have

10 a --

11 MR. LEYENDECKER: 473-dash-1 is okay. I think the rest of
12 them, I had A through G on it. 473 dash --

13 UNIDENTIFIED SPEAKER: I lost track of 473s.

14 MR. LEYENDECKER: It's A through G.

15 THE CLERK: I have A through H.

16 MR. LEYENDECKER: A through H. Thank you. So 473 either
17 dash-one or dot-one is fine by me.

18 THE CLERK: Dash-one is good.

19 UNIDENTIFIED SPEAKER: That's fine with us.

20 UNIDENTIFIED SPEAKER: So -- and hopefully I'll have
21 confirmation in just a second.

22 UNIDENTIFIED SPEAKER: Do they have [indiscernible]?

23 UNIDENTIFIED SPEAKER: Yeah, they may.

24 THE CLERK: A through H and X, Y, Z.

25 UNIDENTIFIED SPEAKER: I have the jury ones --

1 UNIDENTIFIED SPEAKER: Are you going to --

2 [Recess taken from 12:24 p.m. to 4:22 p.m.]

3 THE COURT: Remain seated. Oh, we can't start without the
4 Defendant. So did they leave or are they --

5 UNIDENTIFIED SPEAKER: No.

6 UNIDENTIFIED SPEAKER: I think they're out here, Your
7 Honor.

8 THE COURT: There is a request from the jury also, and I
9 don't want to get into anything before the other side's here.

10 UNIDENTIFIED SPEAKER: Can we look at the note, Your
11 Honor, or?

12 THE COURT: Yeah.

13 UNIDENTIFIED SPEAKER: Was that a yeah?

14 UNIDENTIFIED SPEAKER: That was a yeah.

15 [Pause]

16 THE COURT: Please be seated or remain seated. All right.
17 Let me recall the case, then of Freemont v. United. I note the presence of
18 counsel and I have learned that they would like to work today between
19 5:30 and 6:00. And then we have a note that you've both seen. Let's
20 start with the Plaintiff with feedback.

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

22 THE COURT: Let's start with feedback from the Plaintiff, first.

23 MR. ZAVITSANOS: Regarding the note, Your Honor?

24 THE COURT: No. Regarding the -- how -- when and --

25 MR. ZAVITSANOS: Oh, I see.

1 THE COURT: -- how the jury will deliberate.

2 MR. ZAVITSANOS: Your Honor, our preference would be to
3 allow the jury to continue to deliberate next Monday. I don't know if
4 Your Honor can arrange or ask for one of Your Honor's colleagues to be
5 available to accept the verdict, if and when that is reached, but our
6 preference, strong preference, would be that, Your Honor.

7 THE COURT: And the Defendant?

8 MR. BLALACK: Your Honor, we agree with the notion of
9 having the jury continue to deliberate next week with a substitute for
10 Your Honor, subject to the parties having the right to consent to the
11 proposed substitute.

12 THE COURT: Good enough. So who do you want? Do you
13 want to whisper it in my ear, so I can have somebody available?

14 MR. BLALACK: Well, I think our bias is just, you know,
15 anybody from the pool of the senior judges.

16 THE COURT: Business Court?

17 UNIDENTIFIED SPEAKER: The -- not necessarily limited to
18 Business Court, Your Honor. We just wanted experienced trial judges.
19 You know, I know we have some brand new judges and we're a little
20 apprehensive about maybe drawing one of those without the right to
21 preempt.

22 THE COURT: We can talk about that off the record, if both of
23 you agree. Do you agree to the condition?

24 MR. ZAVITSANOS: Your Honor, I'm going to defer to my
25 colleague, Ms. Lundvall.

1 MS. LUNDVALL: We would agree to the condition, Your
2 Honor.

3 THE COURT: Good enough. All right. So they can deliberate
4 Monday. Another Judge could take the verdict. And what about the Fair
5 Pay Statute or prompt pay?

6 MR. ZAVITSANOS: Your Honor, can I have Ms. -- can I dial in
7 Ms. Robinson?

8 THE COURT: Of course.

9 MR. ZAVITSANOS: Thank you, Your Honor. Sorry, Your
10 Honor. I'm sorry to do it like this.

11 MR. BLALACK: While the Plaintiff's organizing, Your Honor.
12 I don't think the first option is going to be satisfactory, because I don't
13 think we're going to agree on how to provide a clarifying explanation to
14 the jurors, but I don't think we would have a problem providing the
15 language of the statute.

16 THE COURT: And let's give them a chance to confer. Thank
17 you. Do you --

18 UNIDENTIFIED SPEAKER: Yes. I got Ms. Robinson here.

19 UNIDENTIFIED SPEAKER: [Indiscernible]

20 MS. ROBINSON: Hello?

21 UNIDENTIFIED SPEAKER: Hey, Jane, I've got you on
22 speaker. We're in court, and I sent you a copy of the note.

23 MS. ROBINSON: I read the note, and I sent a response.

24 UNIDENTIFIED SPEAKER: Okay.

25 MS. ROBINSON: I'm walking to the elevator.

1 UNIDENTIFIED SPEAKER: Okay. Can you -- before you get
2 on the elevator, I've got you on speaker with Her Honor here and with
3 opposing counsel. And I -- oh, yeah. And there's -- Your Honor, I think
4 there's five different statutes. Hey Pat, you want to come up here?

5 MS. ROBINSON: Yeah. And my phone is about to die.

6 UNIDENTIFIED SPEAKER: Okay. All right. So Jane, what are
7 your thoughts on this?

8 MS. ROBINSON: So I think we can provide them with the
9 language in the statute, the relevant portions, including the part that says
10 that, you know, the administrator is not partially -- the payor cannot
11 partially pay, cannot pay only part. I don't know the language in front of
12 me, but I can --

13 MR. ZAVITSANOS: Okay. What --

14 MS. ROBINSON: -- [indiscernible] get it.

15 MR. ZAVITSANOS: Pat, what are your thoughts here?

16 MS. LUNDVALL: My thought is is that we could provide
17 clarification with definitions from the Court using language from the
18 statute, but not --

19 THE COURT: What --

20 MS. LUNDVALL: -- give them the actual language of the
21 statute.

22 THE COURT: Why wouldn't you give them language of the
23 statute? Why would you not?

24 MS. LUNDVALL: I don't know that it provides as much
25 clarification --

1 THE COURT: I was trying to pull it up.

2 MS. LUNDVALL: -- as what it is that they may be looking for.

3 UNIDENTIFIED SPEAKER: Your Honor, one thing you'll
4 notice when you look at the [indiscernible] section is I think that the
5 Plaintiffs are perceiving under four different sections --

6 THE COURT: Right.

7 UNIDENTIFIED SPEAKER: -- which do have some material,
8 some key material differences, so the verdict form may have to be
9 revised, if that were to be the case, because then the jury's going to be
10 presented with four different statutes and not know. Some of them
11 apply to TPAs. Some apply to fully insured. I think there's a difference
12 between individual insurance and small and large insurance.

13 UNIDENTIFIED SPEAKER: There is.

14 UNIDENTIFIED SPEAKER: And we don't have -- it's a messy
15 statute. And what I will say is for the question the jury is asking, what is
16 definition of full pay and fully paid, there's nothing. All we can do is
17 brief you based on case law. The statutes [indiscernible]

18 THE COURT: I'm just trying to pull up the jury instruction.

19 MR. ZAVITSANOS: Can I see the note again, please?

20 THE COURT: Oh, here it is. Which number is it again? 28 or
21 38?

22 UNIDENTIFIED SPEAKER: 38, Your Honor.

23 MR. ZAVITSANOS: Yeah. Your -- I mean -- well, I'm going
24 to -- again, I'm going to defer to Ms. Lundvall here, but I would say just --
25 the instruction ought to be follow the charge. I don't -- I mean, the pro --

1 I do think that these statutes are quite comprehensive and there's parts
2 of it that do not apply, and I'm just concerned about veering off into
3 some discussion that's not really relevant in -- so Jan, can you hear me
4 okay?

5 MS. ROBINSON: Yeah. I can hear you, but you're the only
6 one I can really hear.

7 MR. ZAVITSANOS: Okay. So I don't know. What do you
8 think?

9 UNIDENTIFIED SPEAKER: I agree, with you, John.

10 MR. ZAVITSANOS: Yeah. I -- Your Honor, can we have two
11 minutes?

12 THE COURT: You may.

13 MR. ZAVITSANOS: Thank you.

14 THE COURT: Both sides should take two minutes.

15 MR. ZAVITSANOS: Yeah. Thank you, Your Honor.

16 THE COURT: And I'll be back.

17 [Recess taken from 4:30 p.m. to 4:36 p.m.]

18 THE COURT: Did you need more time?

19 MR. ZAVITSANOS: How much more time do you need, Lee?

20 MR. BLALACK: Three minutes, Your Honor.

21 THE COURT: Okay. So --

22 MR. ZAVITSANOS: Oh. I'm sorry, Your Honor.

23 THE COURT: -- I sent an email this afternoon as an urgent
24 matter to Linda Bell, Mark Denton, Kim Williams, Susan Johnson and
25 Joanna Kishner about taking a verdict Monday. I would be available

1 Monday for jury questions, if necessary.

2 UNIDENTIFIED SPEAKER: Okay.

3 UNIDENTIFIED SPEAKER: Do you mean by phone, Your
4 Honor?

5 THE COURT: By phone.

6 [Counsel confer]

7 THE COURT: And should I step out or --

8 UNIDENTIFIED SPEAKER: Could -- no, Your Honor. Could
9 we just also add the Business Court Judges?

10 THE COURT: I did. That's --

11 UNIDENTIFIED SPEAKER: No. No. Those were the --

12 THE COURT: -- who I sent it to.

13 UNIDENTIFIED SPEAKER: Oh, no. I'm sorry. The senior
14 judges to the list. I don't know if that --

15 THE COURT: Those are the senior judges.

16 UNIDENTIFIED SPEAKER: -- be appropriate, but you know,
17 someone like Nancy [indiscernible] would be great.

18 MR. ZAVITSANOS: So Your Honor, I don't know any of these
19 folks, obviously. I just know you. And to the extent any question comes
20 in, we would want Your Honor to answer that and not --

21 THE COURT: I can answer questions Monday, but that's the
22 last day, so --

23 UNIDENTIFIED SPEAKER: Right. So if they come back with
24 punitives, and we have to go to a punitive stage --

25 MS. LUNDVALL: But that is on -- we've already agreed that

1 that's on December 6th when the Court's back.

2 UNIDENTIFIED SPEAKER: Oh, wait a minute. I don't believe
3 we've agreed to that.

4 MR. BLALACK: What we were suggesting was either this
5 we're going to do this next week or we're not going to do it next week,
6 so if the plan is going to be to proceed next week with a substitute
7 Judge, we all consent to the judge, we get a verdict and if there was
8 punitives, we proceed with the punitive phase.

9 MR. ZAVITSANOS: We don't agree with that, Your Honor. I
10 thought -- I don't know where this is coming from. I thought that the
11 binary choice was that if we received a verdict today by 1:00, we would
12 proceed, because Ms. Paradise was unavailable, we could proceed by
13 video. And if it wasn't, then we would take it up the week of the 6th
14 when Your Honor was back, so she can be there live.

15 THE COURT: I think that was your position. I don't -- did you
16 agree to that?

17 MR. BLALACK: Yeah. My position was we consented to
18 proceeding this afternoon, if we had a verdict by 1:00 [indiscernible].

19 THE COURT: Right.

20 MR. BLALACK: And the alternative that was presented -- it
21 was never suggested until the last 15 minutes that there might be some
22 deliberation or any activity that the Court would have next week,
23 because Your Honor's going to be gone. So if the choice is to get a
24 verdict early next week, scatter and come back if there's punitives on the
25 6th, we're not interested in that. So if those are the options, we really

1 just wait until the 6th.

2 UNIDENTIFIED SPEAKER: My concern on everybody
3 scattering is if we lose two jurors, that's a mistrial.

4 MS. LUNDVALL: No it's not. There's still an opportunity to
5 agree to a jury of less than eight.

6 THE COURT: That's true.

7 UNIDENTIFIED SPEAKER: Well, there's certainly that
8 opportunity.

9 MS. LUNDVALL: Yes, there is.

10 UNIDENTIFIED SPEAKER: I don't have enough --

11 MS. LUNDVALL: I'm not saying you do.

12 UNIDENTIFIED SPEAKER: I don't have enough malpractice
13 insurance to [indiscernible].

14 MR. ZAVITSANOS: Well, hold on. Your Honor, I believe
15 Your Honor, the Court does have the discretion on scheduling. I mean,
16 it's kind of bulletproof. I -- we are not comfortable, Your Honor. It just
17 injects a new variable in the case. There's a -- you know, there's a
18 bonding thing that happens during trials with --

19 THE COURT: Yeah. I --

20 MR. ZAVITSANOS: -- with jurors and --

21 THE COURT: -- I can't turn it over to another judge. I just
22 can't.

23 UNIDENTIFIED SPEAKER: Then I think we go to --

24 MR. ZAVITSANOS: Yeah. Your Honor, that --

25 THE COURT: I'm just going to deny your request to --

1 another judge could take a verdict, if I can answer the questions, but if
2 there's a second phase, I have to do it and I have to we'll have to come
3 back on the 6th.

4 MR. BLALACK: And I understand that, Your Honor.
5 Completely understand. But I guess my point, Your Honor. If
6 it -- that's the choice that's being presented, we'd rather just do it with
7 you.

8 MR. ZAVITSANOS: Well --

9 MR. BLALACK: Just bring -- in other words, if that's the
10 options, then we'd rather just have you take the verdict on the 6th or
11 whatever day and then if there's a punitive verdict, we go forward.

12 MR. ZAVITSANOS: Well, Your Honor, here's the problem
13 with that. So with all due respect to the other judges in this building, all
14 we're talking about is somebody sitting in Your Honor's chair to accept
15 the verdict. We're not talking about any use of judicial judgment or --

16 THE COURT: I can tell you guys, there's a script. We all use
17 the same script. Somebody else could take verdict.

18 UNIDENTIFIED SPEAKER: Well, Your Honor, when we
19 discussed it --

20 THE COURT: I mean, I would hate that, because I would love
21 to talk to them after.

22 UNIDENTIFIED SPEAKER: Well --

23 THE COURT: Sorry for directing you.

24 UNIDENTIFIED SPEAKER: Yeah. I'm sorry.

25 UNIDENTIFIED SPEAKER: No. I thought you were done;

1 Your Honor and I apologize for that. No, when we were discussing this,
2 the concern wasn't taking the verdict. The concern was the jury's been
3 very active with questions and the judge sitting in your place may have
4 to exercise discretion where there's a disagreement between parties in
5 whether or not a question can be answered. Something like I want the
6 prompt pay statute given to me.

7 MS. LUNDVALL: Well, and the Court's indicated that you're
8 available on Monday.

9 THE COURT: I am.

10 UNIDENTIFIED SPEAKER: Right.

11 MS. LUNDVALL: To field those questions.

12 MR. BLALACK: And we understand that and that's great. But
13 everybody thought we'd have a verdict in two hours and we're almost
14 half -- we're into the first day and who knows where we are. And we
15 may not get a verdict on Monday.

16 UNIDENTIFIED SPEAKER: Well --

17 MR. BLALACK: So I guess in our position, they -- we've been
18 here -- we've had what, four questions in -- five questions --

19 THE COURT: Yeah. So the ruling will be that they can
20 deliberate Monday. Another judge can take the verdict. I've already
21 asked the most senior judges, our chief judge and the other business
22 court judges, because it is a business court case, to be available Monday
23 to take a verdict. If there is a second phase, it will start on Monday the
24 6th at 8:30. And I want to bring the jury in to talk to them about what
25 might happen on Monday.

1 UNIDENTIFIED SPEAKER: Yes, Your Honor.

2 THE COURT: And would you guys just approach, so I can tell
3 you why I'm available Monday. This is -- you know, if I had to, I could
4 cancel the darn trip. Will you take -- this will be --

5 [Sidebar at 4:43 p.m., ending at 4:45 p.m., not recorded]

6 THE COURT: No. They need a couple minutes. I'll be right
7 back.

8 UNIDENTIFIED SPEAKER: Okay.

9 [Recess taken from 4:46 p.m. to 4:48 p.m.]

10 UNIDENTIFIED SPEAKER: Defendants just had one
11 suggestion, which is that if we're going to bring the jury back on Monday
12 and potentially on December 6th, that we hardship query this group
13 about December 6th, because the real -- a big risk we have here is we're
14 able to deliberate on Monday with these eight folks, but then one of
15 them --

16 THE COURT: Right.

17 UNIDENTIFIED SPEAKER: -- is just not around on December
18 6th.

19 THE COURT: That's why I was intending to bring them in --

20 UNIDENTIFIED SPEAKER: Okay. You --

21 THE COURT: -- to tell them they could work today until 5:30
22 or 6:00. You know, the -- they have to be out of the building by 7:00, but
23 we can arrange that. If they don't finish Monday, they have to come
24 back on the 6th. And --

25 UNIDENTIFIED SPEAKER: And there's the potential for

1 another phase on the 6th.

2 THE COURT: Right.

3 UNIDENTIFIED SPEAKER: No. [Indiscernible]

4 THE COURT: I'm not going to talk to them about a potential
5 second phase.

6 UNIDENTIFIED SPEAKER: Well, I suppose the issue is just to
7 make sure that they feel invited to state if they have a hardship on the
8 6th, because we just don't want to get to the 6th and then --

9 THE COURT: All right.

10 UNIDENTIFIED SPEAKER: -- have to call in our alternate.

11 THE COURT: I understand.

12 UNIDENTIFIED SPEAKER: That -- we can call in the alternate
13 Monday, if we're in a place where the jury can't deliberate past Monday,
14 so --

15 MR. ZAVITSANOS: Your Honor, I certainly understand the
16 sentiment, but -- and that is an issue that should be dealt with. I'm just --
17 I don't believe it's appropriate to tell them there may be another phase
18 right now.

19 THE COURT: I'm not going to.

20 MR. ZAVITSANOS: Yeah. The whole purpose of bifurcation
21 is --

22 THE COURT: Right.

23 UNIDENTIFIED SPEAKER: Judge, I don't think that was the
24 main part of our suggestion. It was just --

25 THE COURT: To make sure they could all come back on the

1 6th --

2 UNIDENTIFIED SPEAKER: Right.

3 THE COURT: -- if they needed to. That --

4 UNIDENTIFIED SPEAKER: Because if the alternate has to
5 come in --

6 THE COURT: -- I intend to address that.

7 UNIDENTIFIED SPEAKER: -- they have to start the
8 deliberations over.

9 THE COURT: I understand.

10 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

11 THE COURT: All right. So I -- the Marshal has not given
12 them the letters. I was waiting to talk to you guys one more time. Are
13 we ready to bring them in?

14 UNIDENTIFIED SPEAKER: Yes, Your Honor.

15 UNIDENTIFIED SPEAKER: Yes, Your Honor.

16 THE COURT: Good. Thank you.

17 [Pause]

18 THE COURT: All right. So everybody, I've just conferred
19 with the law clerk about Monday, about running the interference, if you
20 get to a verdict Monday. I've given him the order of the judges and if
21 you want to come up here, I'll -- I don't want it on the record. Come on
22 up.

23 [Sidebar at 4:51 p.m., ending at 5:01 p.m., not recorded]

24 THE MARSHAL: All rise for the jury.

25 [Jury in at 5:01 p.m.]

1 THE COURT: Thank you, everyone. Please be seated. So we
2 know you've had a long day and you've been working. We wanted to
3 talk to you in person. You can work tonight as late as you want, as long
4 as you all exit the building by 7:00. And we'll be available if you have
5 any other questions tonight. So you can make that decision and let us
6 know. With regard to Monday, it's fine for you to continue your
7 deliberations on Monday. You should let us know when you intend to
8 start, so that the lawyers will be available.

9 Now, I will be available Monday, if you have any questions,
10 but unfortunately, I'll be out of town, so it may be possible that another
11 judge will accept the verdict, if you reach a decision on Monday. And
12 because of that, I wanted to personally thank you, because I wouldn't get
13 that chance, if you come to a decision on Monday to do that. Now, if the
14 trial is not completed by Monday, then we want you to come back the
15 week of December 6th and we're -- wanted to know if anyone has a
16 hardship with any day that week.

17 We want to send you back to talk about that and tell us if you
18 have to come back. If we don't complete on Monday, if you have to
19 come back, if there's a day you all agree on the week of December 6th.
20 Any questions? Well, you will have questions and you'll discuss it and
21 send a note out to us. And then my personal thanks again and happy
22 Thanksgiving to all of you for being willing to serve your community. So
23 why don't you guys go back with the Marshal and send us out a note
24 when you can. Thank you.

25 THE MARSHAL: All rise for the jury.

1 [Jury out at 5:01 p.m.]

2 THE COURT: And Andrew, you can give -- we have letters for
3 your employers for Monday. Andrew will give those to you tonight. And
4 Mr. Portnoi, I deviated a little bit from your request on the hardship,
5 because I didn't want to put anyone on the spot. They'll let us know and
6 they'll -- if they have to come back -- and I was vague about if you don't
7 complete. They'll tell us when to come back, okay? So have a seat and
8 thank you.

9 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

10 THE COURT: I'll be back as soon as you need me.

11 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

12 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

13 [Recess taken from 5:01 p.m. to 5:14 p.m.]

14 THE MARSHAL: Court is back in session.

15 THE COURT: Okay everyone, please remain seated. Okay.
16 So response from the Plaintiff first, please.

17 MR. ZAVITSANOS: Your Honor, we read the note. Not really
18 sure. I don't know what there is to say. I don't have a response, Your
19 Honor.

20 THE COURT: My suggestion would be that on Monday, if
21 you're not finished by the end of the day, tell us the day that is least
22 inconvenient for everyone the week of the 6th and whatever that date is,
23 it is possible that you may be ordered back.

24 MR. ZAVITSANOS: Yes.

25 UNIDENTIFIED SPEAKER: At the end of the day. By

1 sometime on Monday that would be communicated.

2 THE COURT: Uh-huh. Do you want a chance to talk to your
3 team?

4 UNIDENTIFIED SPEAKER: Yes.

5 MR. BLALACK: Yeah. I mean, we're -- we understand their
6 position and obviously it's their position and I have nothing to add to it,
7 so as for what we do on Monday, are you proposing we make some
8 decision on that today or [indiscernible].

9 THE COURT: That we tell them they have to give us a day
10 during the week of the 6th. In case the case isn't completed Monday,
11 they have to give us a date that is the best day for the most people the
12 week of the 6th.

13 MR. BLALACK: Yeah. And would be communicated today or
14 on Monday?

15 THE COURT: And everyone would -- they can do that
16 Monday.

17 MR. BLALACK: Okay.

18 THE COURT: Yeah. Give them a chance to consult their
19 employers and their calendars. I don't want to put them on the spot
20 right now.

21 UNIDENTIFIED SPEAKER: Okay.

22 MR. ZAVITSANOS: Yeah. I think that's [indiscernible]

23 UNIDENTIFIED SPEAKER: Well, can I have two seconds,
24 Your Honor?

25 THE COURT: Of course.

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[Pause]

MR. BLALACK: All right. Your Honor. I'm ready when you are and Plaintiffs' counsel. Okay, Your Honor. So two things. I think we're going to want to renew our request that if they don't complete deliberations on Monday, if they deliberate on Tuesdays, because we think that's going to run the risk of a mistrial, so I want to -- and I think I know your position on that, but I wanted to make that request for the record, so that there's no lack of clarity on what Defendant's position is.

On the question of advising them about the possibility that they might be needed on the 6th -- and I think we're comfortable with the approach you're suggesting, Your Honor. We would ask that that be communicated to them today, for this reason.

THE COURT: Yeah. I'm ready to --

MR. BLALACK: Okay.

THE COURT: -- as soon as we --

MR. BLALACK: I think it should happen today, because if that's -- if they've got to pick a day that that's the lease convenient and if they've got employer, childcare --

THE COURT: Right.

MR. BLALACK: -- all sorts of things they need to think about, and I don't think dropping that that on them on Monday, when they're in the midst of deliberations, is fair. If they're going to need to have -- if they're going to be forced to pick a day of the week of the 6th, they need to come prepared on Monday to --

THE COURT: Right.

1 MR. BLALACK: -- know what that day is.

2 MR. ZAVITSANOS: We agree with that, Your Honor. We
3 agree with the second part.

4 UNIDENTIFIED SPEAKER: And we understood that that's
5 what the Court's doing anyway.

6 UNIDENTIFIED SPEAKER: Yeah.

7 UNIDENTIFIED SPEAKER: I thought we were talking about
8 communicating that on Monday and I just want to make sure --

9 UNIDENTIFIED SPEAKER: No. I --

10 UNIDENTIFIED SPEAKER: -- we'd like to have that --

11 THE COURT: So this is the language I've proposed for the
12 response. Why don't you see if it is acceptable or needs to be changed.

13 UNIDENTIFIED SPEAKER: Yeah, that's good, Your Honor.

14 UNIDENTIFIED SPEAKER: We're good with that, Your Honor.

15 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

16 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

17 MR. BLALACK: So Your Honor, just -- make sure I
18 understand. This is --

19 THE COURT: Yeah.

20 MR. BLALACK: Will -- you will be required to choose a date?

21 THE COURT: Okay. So come back up because he wanted to
22 add one word and I'm -- I just want input from both sides.

23 MR. BLALACK: I just -- I want -- the way it reads now is, "You
24 are being required," so I was going to --

25 THE COURT: Oh, you are --

1 MR. BLALACK: So I was suggesting it -- you will be required
2 to choose a date on Monday. That was the only point. So if Plaintiffs
3 are --

4 THE COURT: Oh, wait. Do you want to see this?

5 UNIDENTIFIED SPEAKER: It's good, Your Honor.

6 UNIDENTIFIED SPEAKER: Yeah, that's fine.

7 THE COURT: So I want to just show you guys something I
8 keep up here. I've had this on the bench for ten and a half years and
9 during the trial, it fell off, this sticky note fell off. What does that mean?

10 UNIDENTIFIED SPEAKER: Well, can you just [indiscernible]?

11 UNIDENTIFIED SPEAKER: Well, it didn't present a problem,
12 Your Honor, so whatever [indiscernible].

13 MR. ZAVITSANOS: It means that during the judicial grab
14 bag, you could grab the [indiscernible].

15 THE COURT: Okay. So let me just get this copied and then
16 I'll give you a chance to see.

17 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

18 [Pause]

19 THE COURT: All right. It's going back now. So at this point,
20 I'm ready to conclude the day. Thank you all. The -- best trial I've ever
21 had and as a lawyer, I had some pretty good ones, so best wishes to
22 everyone and enjoy your holiday.

23 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

24 UNIDENTIFIED SPEAKER: Happy Thanksgiving.

25 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

1 THE COURT: 8:30 Monday is good with everybody?

2 UNIDENTIFIED SPEAKER: That's fine with me, Your Honor.

3 UNIDENTIFIED SPEAKER: Yes, Your Honor.

4 UNIDENTIFIED SPEAKER: Yes, Your Honor.

5 THE COURT: Okay. All right. Travel safely everyone.

6 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

7 UNIDENTIFIED SPEAKER: Should we be available at 8:30?

8 Your Honor, did you want us available at 8:30 or in the courtroom at
9 8:30?

10 THE COURT: No. Just available.

11 UNIDENTIFIED SPEAKER: Okay. Very good. Thank you,
12 Your Honor.

13 THE COURT: Yeah. Available Monday at 8:30.

14 MR. ZAVITSANOS: And this courtroom, right, Your Honor?

15 THE COURT: I'll make sure that -- I would be by Blue Jeans.
16 It would be this courtroom.

17 MR. ROBERTS: Yes, Your Honor.

18 THE CLERK: Is it the same contact numbers you gave
19 yesterday to Brynn?

20 MR. BLALACK: Well, for me, for the Defense side, it'll just be
21 myself and Mr. --

22 THE COURT: Okay.

23 UNIDENTIFIED SPEAKER: Thank you, Your Honor. Oh, and a
24 good trip.

25 THE COURT: All right. Finally got to ask where he was from.

1 Memphis.

2 UNIDENTIFIED SPEAKER: That's right.

3 THE COURT: And Georgia and then --

4 [Proceedings adjourned at 5:22 p.m.]

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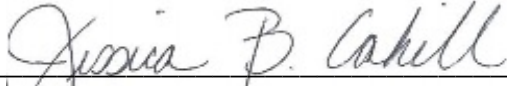
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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the
23 audio-visual recording of the proceeding in the above entitled case to the
24 best of my ability.

25 

Maukele Transcribers, LLC

Jessica B. Cahill, Transcriber, CER/CET-708

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FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

NOV 29 2021

1 INST

2
3 DISTRICT COURT BY,
4 CLARK COUNTY, NEVADA

ALICE JACOBSON, DEPUTY

5 FREMONT EMERGENCY SERVICES
6 (MANDAVIA), LTD., a Nevada
7 professional corporation; TEAM
8 PHYSICIANS OF NEVADA-
9 MANDAVIA, P.C., a Nevada professional
10 corporation; CRUM, STEFANKO AND
11 JONES, LTD. dba RUBY CREST
12 EMERGENCY MEDICINE, a Nevada
13 professional corporation,

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

JURY INSTRUCTIONS

14 Plaintiffs,

15 vs.

16 UNITED HEALTHCARE INSURANCE
17 COMPANY, a Connecticut corporation;
18 UNITED HEALTH CARE SERVICES
19 INC., dba UNITEDHEALTHCARE, a
20 Minnesota corporation; UMR, INC., dba
21 UNITED MEDICAL RESOURCES, a
22 Delaware corporation; SIERRA HEALTH
23 AND LIFE INSURANCE COMPANY,
24 INC., a Nevada corporation; HEALTH
25 PLAN OF NEVADA, INC., a Nevada
26 corporation,

27 Defendants.
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A-19-792978-B
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JURY INSTRUCTION NO. 1

Members of the Jury:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in these instructions.

JURY INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

JURY INSTRUCTION NO. 3

The parties in this case are corporations. A corporation is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and you should decide the case with the same impartiality you would use in deciding a case between individuals.

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JURY INSTRUCTION NO. 4

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public decision. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

JURY INSTRUCTION No. 5

1
2 If, during this trial, I have said or done anything which has suggested to you
3 that I am inclined to favor the claims or position of any party, you will not be
4 influenced by any such suggestion.

5 I have not expressed, nor intended to express, nor have I intended to intimate,
6 any opinion as to which witnesses are or are not worthy of belief, what facts are or
7 are not established, or what inference should be drawn from the evidence. If any
8 expression of mine has seemed to indicate an opinion relating to any of these matters,
9 I instruct you to disregard it.

JURY INSTRUCTION No. 9

In determining whether any proposition has been proved, you should consider all evidence bearing on the question without regard to which party produced it.

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JURY INSTRUCTION NO. 6

1
2 , You must decide all questions of fact in this case from the evidence received
3 in this trial and not from any other source. You must not make any independent
4 investigation of the facts or the law or consider or discuss facts as to which there is
5 no evidence. This means, for example, that you must not on your own visit the scene,
6 conduct experiments or consult reference works for additional information.

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JURY INSTRUCTION No. 7

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2 The credibility or believability of a witness should be determined by his or
3 her manner upon the stand, his or her relationship to the parties, his or her fears,
4 motives, interests or feelings, his or her opportunity to have observed the matter to
5 which he or she testified, the reasonableness of his or her statements, and the strength
6 or weakness of his or her recollections.

7 If you believe that a witness has lied about any material fact in the case, you
8 may disregard the entire testimony of that witness, or any portion of his or her
9 testimony which is not proved by other evidence.

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JURY INSTRUCTION NO. 10

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2 You should decide the case for or against each plaintiff separately as if it were
3 a separate lawsuit. Each plaintiff is entitled to separate consideration of its own
4 claims and defenses. Unless I tell you otherwise, all instructions apply to each
5 plaintiff.

6 You should decide the case for or against each defendant separately as if it
7 were a separate lawsuit. Each defendant is entitled to separate consideration of its
8 own claims and defenses. Unless I tell you otherwise, all instructions apply to each
9 defendant.

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JURY INSTRUCTION NO. 11

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2 In these instructions and your verdict form, these terms have the following
3 meanings:

4 "Fremont Emergency Services" means plaintiff Fremont Emergency
5 Services (Mandavia), Ltd.

6 "Team Physicians" means plaintiff Team Physicians of Nevada-Mandavia,
7 P.C.

8 "Ruby Crest Emergency Medicine" means plaintiff Crum, Stefanko and
9 Jones, Ltd. dba Ruby Crest Emergency Medicine.

10 "United Healthcare Insurance Company" or "UHIC" means United Health
11 Care Insurance Company.

12 "United Health Care" or "UHC" means United Health Care Services Inc.
13 dba United Health Care.

14 "UMR" means UMR, Inc. dba United Medical Resources

15 "Sierra" or "SHL" means Sierra Health and Life Insurance Company Inc.

16 "Health Plan of Nevada" or "HPN" means Health Plan of Nevada Inc.
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JURY INSTRUCTION NO. 12

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2 A "preponderance of the evidence" means such evidence as, when considered
3 and weighed against that opposed to it, has more convincing force and produces in
4 your mind a belief that what is sought to be proved is more probably true than not
5 true.

6 In determining whether a party has met this burden, you will consider all the
7 evidence, without regard to which party introduced the evidence.

8 In this case, the standard of proof is the preponderance of evidence, unless I
9 instruct you otherwise.

JURY INSTRUCTION NO. 13

1
2 "Clear and convincing evidence" is that measure or degree of proof which will
3 produce in your mind a firm belief or conviction as to the allegations sought to be
4 established. It is an intermediate degree of proof, being more than a mere
5 preponderance but not to the extent of such certainty as is required to prove an issue
6 beyond a reasonable doubt. Proof by clear and convincing evidence is proof which
7 persuades you that the truth of the contentions is highly likely.

8 In determining whether a party has met this burden, you will consider all the
9 evidence, without regard to which party introduced the evidence.

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JURY INSTRUCTION NO. 14

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted to or agreed by counsel.

There are two types of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. Circumstantial evidence is the proof of one or more facts from which you could find another fact. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate (meaning to agree) to the existence of a fact, you must accept the stipulation of evidence and regard that fact as proved.

Questions are not evidence. Only the answer is evidence. You should consider a question only if it helps you understand the witness's answer. Do not assume that something is true just because a question suggests that it is.

You must also disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court. Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

If the court has instructed you that you must accept a fact as proven or draw a particular inference, you must do so.

If the court has instructed you regarding a presumption regarding evidence, then you must consider that presumption as well.

JURY INSTRUCTION No.15

1
2 By an Order of this court entered on August 3, 2021, certain findings were
3 made by the court at the request of the Plaintiff. One was that the Defendants had
4 failed to comply with certain orders requiring responses to discovery and the Court
5 concluded that the Defendants' conduct was willful. When evidence is willfully
6 suppressed, there is a rebuttable presumption which reads as follows:

7 When evidence is willfully suppressed, the law creates a rebuttable
8 presumption that the evidence would be adverse to the party suppressing it. Willful
9 suppression means the willful or intentional spoliation of evidence and requires the
10 intent to harm another party or their case through its destruction and not simply the
11 intent to destroy evidence. When a party seeking the presumption's benefit has
12 demonstrated that the evidence was destroyed with intent to harm another party or
13 their case, the presumption that the evidence was adverse applies, and the burden of
14 proof shifts to the party who destroyed the evidence. To rebut the presumption, the
15 destroying party must then prove, by a preponderance of the evidence, that the
16 destroyed evidence was not unfavorable. If not rebutted, the jury is required to
17 presume that the evidence was adverse to the destroying party

18 The Order also gave Defendants a deadline of April 15, 2021 at 5:00 pm to
19 supplement outstanding discovery requests. If you believe that the Defendants have
20 not rebutted evidence introduced by Plaintiff that relevant evidence was suppressed,
21 you are required to presume that the evidence was adverse to the Defendants.
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JURY INSTRUCTION NO. 16

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During the trial, you received deposition testimony that was shown by video. A deposition is the testimony of a person taken before trial. At a deposition, the person took the same oath to tell the truth that would be taken in court and is questioned by the attorneys. You must consider the deposition testimony that was presented to you in the same way as you consider testimony given in court.

JURY INSTRUCTION No.17

The lawyers and witnesses have shown you some charts and summaries to help explain the facts. Charts and summaries that have not been admitted as evidence are not evidence or proof of any facts.

Certain charts and summaries have been admitted into evidence. These charts and summaries are only as good as the underlying evidence that supports them. You should therefore give them only such weight as you think the underlying evidence deserves.

JURY INSTRUCTION NO. 18

A person who has special knowledge, skill, experience, training or education in particular science, profession or occupation may give his or her opinion as an expert as to any matter in which he or she is skilled. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the expert and the reasons given for his or her opinion. You are not bound by the expert's opinion. Give it the weight, if any, to which you deem it entitled.

JURY INSTRUCTION No.19

Expert witnesses have testified about their reliance upon information that has not been admitted into evidence. Reference by the expert witness to this material is allowed so that the expert witness may tell you what he or she relied upon to form his or her opinions. You may not consider the material as evidence in this case. Rather, you may only consider the material to determine what weight, if any, you will give to the expert's opinions.

JURY INSTRUCTION NO. 20

Hypothetical questions have been asked of expert witnesses. In a hypothetical question, the expert witness is told to assume the truth of certain facts, and the expert witness is asked to give an opinion based upon those assumed facts. You must decide if all of the facts assumed in the hypothetical question have been established by the evidence. You can determine the effect of that assumption upon the value of the opinion.

JURY INSTRUCTION NO. 21

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

JURY INSTRUCTION NO. 22

Plaintiffs may recover the reasonable value of a direct or indirect benefit conferred on defendants if defendants knew of the benefit conferred and accepted the benefit, and retention of the benefit is unjust without paying its reasonable value.

JURY INSTRUCTION NO. 23

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

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

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

JURY INSTRUCTION NO. 24

In determining the measure of damages in a claim of unjust enrichment, the focus is on the reasonable value of the services by which the defendant would be unjustly enriched.

JURY INSTRUCTION NO. 25

1
2 Plaintiffs claim that they entered into an implied contract with Defendants.
3 The Plaintiffs contend that they agreed to provide emergency care to patients
4 covered by health care plans that Defendants issued or administered, submit claims
5 in the manner required by the Defendants, and not balance bill the patients. Plaintiffs
6 contend that in exchange, Defendants agreed to reimburse Plaintiffs for the
7 reasonable value of Plaintiffs' services.

8 Plaintiffs claim that Defendants breached that contract by failing to allow
9 reimbursements to the Plaintiffs at the reasonable value of Plaintiffs' services.

10 Plaintiffs claim that Defendants' breach of this contract caused harm to
11 Plaintiffs for which Defendants should pay damages.

12 Defendants each deny these claims. They deny that any implied contract was
13 formed between any of the Plaintiffs and any of the Defendants, deny that an implied
14 contract was breached, and deny that Plaintiffs have been harmed.

15 The Defendants also assert that 62 benefit claims pertained to the Medicare
16 and/or Medicaid programs for which Plaintiffs cannot seek damages.

17 The Defendants also assert that 445 benefit claims do not pertain to a patient
18 that was covered by any health plan insured or administered by any Defendant and
19 that no Plaintiff submitted any of these claims for reimbursement to any Defendant.
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JURY INSTRUCTION NO. 26

To succeed on a breach of contract claim, plaintiffs must show four elements:

1. The existence of a valid contract between the parties;
2. Plaintiffs' performance;
3. Defendants' material failure to perform; and
4. Damages resulting from the failure to perform.

JURY INSTRUCTION NO. 27

An offer is a promise to do or not to do something on specified terms that is communicated to another party under circumstances justifying the other party in concluding that acceptance of the offer will result in an enforceable contract.

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JURY INSTRUCTION NO. 28

An acceptance is an unqualified and unconditional assent to an offer without any change in the terms of the offer, that is communicated to the party making the offer in accordance with any conditions for acceptance of the offer that have been specified by the party making the offer, or if no such conditions have been specified, in any reasonable and usual manner of acceptance.

JURY INSTRUCTION NO. 29

A contract requires a "meeting of the minds;" that is, the parties must assent to the same terms and conditions in the same sense. However, contractual intent is determined by the objective meaning of the conduct of the parties under the circumstances, not any secret or unexpressed intention or understanding of one or more parties to the contract.

JURY INSTRUCTION NO. 30

1
2 Consideration is necessary to make a promise enforceable. Consideration can
3 be performance or a promise to perform.

4 Consideration must be sought by the promisor in exchange for its promise and
5 consideration must be given by the promisee in exchange for that promise.

6 Consideration may include:

- 7 1. money,
8 2. an act, or a promise not to act, or
9 3. a return promise.

10 Consideration may be found anywhere in the transaction, whether or not it is
11 spelled out in writing as "consideration."

12 In determining whether there was a bargained-for exchange, you must
13 consider only the conduct of the parties.

JURY INSTRUCTION NO. 31

A contract may be implied as well as expressed. For an implied contract, the existence and terms of the contract are inferred from the conduct of the parties, but both an express and implied contract require a manifestation by the parties of an intent to contract and an ascertainable agreement.

JURY INSTRUCTION NO. 32

A contract cannot be enforced against a party who proves that party did not receive the consideration agreed upon by the parties in exchange for their promise or performance.

JURY INSTRUCTION NO. 33

The measure of damages for a breach of contract is the amount that will reasonably compensate an injured party for all the detriment, harm or loss flowing from the breach and which was reasonably foreseeable (that is, which might have been reasonably contemplated by the parties) as the probable result of the breach when the contract was made.

JURY INSTRUCTION NO. 34

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2 A party seeking damages has the burden of proving both that it did, in fact,
3 suffer injury and the amount of damages that resulted from that injury. The amount
4 of damages need not be proved with mathematical exactitude, but the party seeking
5 damages must provide an evidentiary basis for determining a reasonably accurate
6 amount of damages. There is no requirement that absolute certainty be achieved;
7 once evidence establishes that the party seeking damages did, in fact, suffer injury,
8 some uncertainty as to the amount of damages is permissible. However, even if it is
9 provided by an expert, testimony that constitutes speculation not supported by
10 evidence is not sufficient to provide the required evidentiary basis for determining a
11 reasonably accurate award of damage.

JURY INSTRUCTION NO. 35

Nevada's Unfair Claims Practices Act prohibits any person in the insurance business from engaging in the following activity which constitutes an unfair or deceptive act or practice. In order to establish a claim for breach of the Nevada Unfair Claims Practices Act, plaintiff must prove:

1. That Defendant violated a provision of the Nevada Unfair Claims Practices Act; and
2. The violation was a substantial factor in causing plaintiff's damages.

JURY INSTRUCTION NO. 36

Engaging in the following activity is considered to be an unfair insurance practice:

Failing to effectuate prompt, fair, and equitable settlements of claims in which liability of the insurer has become reasonably clear.

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JURY INSTRUCTION NO. 37

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.

JURY INSTRUCTION NO. 38

To succeed in a claim under the Prompt Pay statutes, plaintiff must show that defendant failed to fully pay, within 30 days of submission of the claim, a claim that was approved and fully payable.

JURY INSTRUCTION NO. 39

1
2 If you find that plaintiffs suffered damages as a proximate result of the
3 defendants' conduct, and that defendants are liable based on that conduct, you may
4 then consider whether you should award punitive or exemplary damages against
5 those defendants. Punitive or exemplary damages are to make an example of or
6 punish wrongful conduct. You have discretion to award such damages, only if you
7 find by clear and convincing evidence that the defendant was guilty of oppression,
8 fraud, or malice in the conduct providing your basis for liability.

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

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

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

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

20 If you find that punitive damages are appropriate and find that you will assess
21 punitive damages, you will hear additional evidence and I will further instruct you.
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JURY INSTRUCTION NO. 40

When you retire to consider your verdict, you must select one of your number to act as foreperson, who will preside over your deliberations and will be your spokesperson here in court.

During your deliberations, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict, which have been prepared for your convenience.

In civil actions, three-fourths of the total number of jurors may find and return a verdict. This is a civil action. As soon as six or more of you have agreed upon a verdict, you shall have it signed and dated by your foreperson, and then return with it to this room.

JURY INSTRUCTION NO. 41

If, during your deliberations, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of the parties or their attorneys. Remember, the court is not at liberty to supplement the evidence.


JURY INSTRUCTION NO. 42

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberations by the evidence as you understand it and remember it to be and by the law as given you in these instructions, and return a verdict which, according to your reason and candid judgment, is just and proper.

Dated 23rd, November, 2021

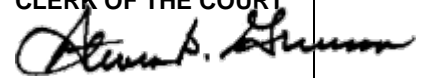
GIVEN: _____

Nancy L. Allen
DISTRICT COURT JUDGE



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RTRAN

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

AND

BEFORE THE HONORABLE LINDA BELL
DISTRICT COURT CHIEF JUDGE
MONDAY, NOVEMBER 29, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 20

APPEARANCES:

For the Plaintiffs:

PATRICIA K. LUNDVALL, ESQ.
JOHN ZAVITSANOS, ESQ.
JASON S. MCMANIS, ESQ.
KEVIN LEYENDECKER, ESQ.
MICHAEL KILLINGSWORTH, ESQ.
JANE ROBINSON, ESQ.

For the Defendants:

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

RECORDED BY: BRYNN WHITE, COURT RECORDER