

Case Nos. 85525 & 85656

**In the Supreme Court of Nevada**

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

Appellants,

*vs.*

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

Respondents.

Electronically Filed  
Apr 18 2023 09:20 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 85525

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

Petitioners,

*vs.*

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

Respondents,

*vs.*

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

Real Parties in Interest.

Case No. 85656

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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
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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
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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
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326	Health Care Providers’ Reply in Support of Motion for Attorneys’ Fees	05/04/22	69	17,151–17,164
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168	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 29	6998–7000 7001–7003
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434	Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	12/13/21	111	27,401–27,495
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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
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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
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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
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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
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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
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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
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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



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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
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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
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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

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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

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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

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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

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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

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

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



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

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

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

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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
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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
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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

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

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

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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



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

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

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

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

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

**CERTIFICATE OF SERVICE**

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

Electronic notification will be sent to the following:

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

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DISTRICT COURT JUDGE – DEPT. 27  
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An Employee of Lewis Roca Rothgerber Christie LLP

1 Las Vegas, Nevada, Monday, November 29, 2021

2  
3 [Case called at 9:37 a.m.]

4 THE COURT: Okay. Let's take appearances first from the  
5 Plaintiff. Calling the case of Fremont Emergency v. UnitedHealthcare.

6 MS. LUNDVALL: Good morning, Your Honor. Pat Lundvall  
7 with McDonald Carano here on behalf of the healthcare providers.

8 MR. ZAVITSANOS: Good morning, Your Honor. John  
9 Zavitsanos on behalf of the Plaintiffs.

10 MR. LEYENDECKER: Good morning, Your Honor. Kevin  
11 Leyendecker on behalf of the Plaintiffs.

12 MR. MCMANIS: Good morning, Your Honor. Jason  
13 McManis for the Plaintiffs.

14 MR. KILLINGSWORTH: Good morning, Your Honor.  
15 Michael --

16 MS. ROBINSON: Good morning, Your Honor. Jane -- oh I'm  
17 sorry. This is Jane Robinson via BlueJeans for the Plaintiffs. I'm sorry if  
18 I cut anybody off.

19 MR. KILLINGSWORTH: And Michael Killingsworth for the  
20 Plaintiffs.

21 MR. BLALACK: And for the Defendants --

22 THE COURT: Thank you. For the Defense, please.

23 MR. BLALACK: Yes, Your Honor. This is Lee Blalack on  
24 behalf of the Defendants.

25 MR. ROBERTS: Good morning, Your Honor. Lee Roberts



1 also on behalf of Defendants.

2 MR. POLSENBERG: And Dan Polsenberg. Good morning,  
3 Your Honor.

4 MR. BLALACK: That's it, Your Honor.

5 THE COURT: Thank you, all. So I think there are two issues.  
6 One is the jury form and second is a question from the jury; is that  
7 correct?

8 MR. ZAVITSANOS: Your Honor, this is John Zavitsanos. I  
9 believe they are one in the same.

10 THE COURT: Okay. Very good. All right. Let me hear from  
11 the Plaintiff first, please.

12 MR. ZAVITSANOS: So Your Honor, I'm not exactly sure how  
13 this happened given how many eyes looked at this on our side and the  
14 Defense side, but apparently, one of the parties that was a party a while  
15 ago that was dismissed, it was Oxford, is on the jury form. Ms. Robinson  
16 caught that this morning. We conferred with the other side. Both sides  
17 are in agreement that that is a mistake. And I believe both sides are in  
18 agreement that the special verdict form should be replaced to omit  
19 Oxford as a party with a line on it.

20 And our proposal, Your Honor, would be to send a note back  
21 that -- you know, something along the lines of that that is a -- that the  
22 jury is not to consider that, and to replace the special verdict form with  
23 the new special verdict form, which is otherwise identical in all respects  
24 with the exception of that party. And I don't know if Jane Robinson --

25 THE COURT: Thank you --

1 MR. ZAVITSANOS: And Jane Robinson is on the -- I'm sorry,  
2 Your Honor. I did not mean to cut you off. My apologies. Anyway, I  
3 don't know if Jane had anything else.

4 MS. ROBINSON: No, I'm here. The Defendants also  
5 mentioned that there are Doe defendants in the caption form that should  
6 also be removed. I'm not sure the caption is a major issue, but if the  
7 Defendants wish to have those removed, that's fine.

8 THE COURT: Thank you. And Defendant, do you need a  
9 moment to caucus or are you ready to respond?

10 MR. POLSENBERG: Ready to respond, Your Honor. We are  
11 absolutely fine with both of those changes.

12 THE COURT: All right. So what I'm going to direct you to do  
13 then is to agree on the language to go back to the jury and both initial it  
14 and date it. And they will take a picture or text me because for some  
15 reason I can't -- my laptop isn't connecting. Doesn't like the security  
16 here, so. But I'm on my phone. They can text that to me. And I will then  
17 review and approve the language.

18 MR. POLSENBERG: Judge, Dan again. Mr. Roberts wanted  
19 me to make the record clear that we are reserving all our prior objections  
20 to the verdict form.

21 THE COURT: [Indiscernible] the record.

22 MR. POLSENBERG: I think it's a belt and suspenders kind of  
23 thing, Judge. He just wants to make the record clear.

24 THE COURT: Certainly. Absolutely. So noted. Now, I'll stay  
25 here. And you guys have -- Karen can text it to me, and I'll review and

1 approve the form of it.

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

3 [Recess taken from 9:41 a.m. to 9:47 a.m.]

4 MR. ZAVITSANOS: Your Honor --

5 THE COURT: [Indiscernible].

6 MR. ZAVITSANOS: I'm sorry, Your Honor. Were you asking  
7 the clerk to do that, or would you like one of the counsel to do that?

8 THE COURT: I want one of the Plaintiffs' counsel to read it  
9 into the record.

10 MR. ZAVITSANOS: Okay.

11 THE COURT: And then I need assent from the Defendant on  
12 the record.

13 MR. ZAVITSANOS: Yes, Your Honor. Let me -- hold on. Let  
14 me date this, please. Give me one second. Okay. Your Honor, can you  
15 hear me okay?

16 THE COURT: Yes.

17 MR. ZAVITSANOS: Okay. Here's what it reads.

18 There is a typo on the verdict form. The reference to "Oxford  
19 Health Plan" should be deleted from questions numbers 3, 4, 8, 9, 12 and  
20 13. Attached is a corrected clean form for your use. Signed by myself  
21 and Mr. Blalack, dated November 29, 2021.

22 MR. BLALACK: That is correct, Your Honor.

23 THE COURT: Thank you. Defendant, that is correct?

24 MR. BLALACK: Yes, Your Honor.

25 THE COURT: All right. Can someone please approach to get

1 that to the clerk so that you may take it back to the jury?

2 MR. ZAVITSANOS: Yes, Your Honor. I'm handing it to the  
3 clerk now.

4 THE CLERK: This is the answer -- are we getting a new form?

5 MR. ZAVITSANOS: Yes. Jane, are you on the phone? If so,  
6 you're muted.

7 MS. ROBINSON: Yes, I'm here. I was having trouble finding  
8 the mute. I am here.

9 MR. ZAVITSANOS: Okay. Did you -- were you able to email  
10 that to the Clerk and to opposing counsel?

11 MS. ROBINSON: So I emailed it to opposing counsel about  
12 20 -- well, I had a response from Mr. Stanton [phonetic] saying that they  
13 have it, and that they were removing the Doe defendants from the  
14 caption, and it will be ready to go. So that's -- it should be ready.

15 MR. ZAVITSANOS: Okay. And then once that's done, I  
16 guess, will they email that to the clerk?

17 UNIDENTIFIED SPEAKER: Email it to the JEA.

18 MR. ZAVITSANOS: Oh, the JEA.

19 UNIDENTIFIED SPEAKER: It looks like JEA may have  
20 received it. I don't --

21 MR. ZAVITSANOS: Okay.

22 MS. LUNDVALL: And can we take a quick peek at it before  
23 the JEA sends it back just to confirm that both sides are happy with  
24 what's going back?

25 MR. POLSENBERG: Happy is a strong word.

1 MS. LUNDVALL: Good question.

2 UNIDENTIFIED SPEAKER: Yeah. I don't have access to the  
3 computer, so I have to have it printed out, and I'll bring it in.

4 THE COURT: Well, where is my law clerk? [Indiscernible].

5 THE CLERK: Yes.

6 THE COURT: Is Terrance in the courtroom?

7 THE CLERK: Not in the courtroom.

8 THE COURT: All right. So he should be assisting with this.

9 THE CLERK: Yes. He forwarded it to us, so I'll have them  
10 print it out. Oh. We're sending you the verdict form to print out.

11 THE LAW CLERK: Yeah. I wasn't on BlueJeans.

12 THE CLERK: Oh, okay. Judge Alf? Judge, this is the Clerk. I  
13 have a question.

14 THE COURT: Of course.

15 THE CLERK: Do you want me to have the marshal take out  
16 the old verdict form? And we're not going to take that back there?

17 THE COURT: Let me hear the Plaintiff and the Defendant. I  
18 would suggest they keep it and that they give it to him at the end of the  
19 deliberation. But let's hear from the Plaintiff and then the Defendant.

20 MR. ZAVITSANOS: From the Plaintiffs' standpoint, Your  
21 Honor, we are, I guess, indifferent on that. Obviously, we want the  
22 correct one filled out, but I'm indifferent about that.

23 MR. POLSENBERG: Judge, Dan for the Defense. Michael  
24 pointed out that they may have made notes on the old ones or partially  
25 filled it out, so it probably makes a lot of sense for them to keep the old

1 one.

2 MR. BLALACK: But only one signature.

3 MR. POLSENBERG: Yeah. And we could probably  
4 take -- we'd probably have the marshal take the blue back off it so it's  
5 clear which one is the real one.

6 THE COURT: All right. So I want it in the jury room so that  
7 their deliberations are private. And they should be instructed then to  
8 take the blue off -- blue back off the first one and to return to the Court --  
9 mark it as not the correct verdict form. And make sure when they give it  
10 to the marshal when they have a verdict that we have both for the  
11 record.

12 Responses?

13 MS. LUNDVALL: I also think that once they -- that they  
14 should X through or provide some kind of a mark on page 1 so that  
15 there's no question about what is the proper verdict form.

16 THE COURT: Thank you. Defendant, your response, please.

17 MR. POLSENBERG: Sounds good, Your Honor.

18 THE COURT: All right. Good. If you want to put together  
19 that language, please?

20 [Pause]

21 THE CLERK: Is that one good?

22 UNIDENTIFIED SPEAKER: Yes.

23 THE CLERK: Marco, the jury form that's in there now --

24 THE MARSHAL: Yes.

25 THE CLERK: -- I need you to remove the blue from the back

1 of it.

2 THE MARSHAL: Okay.

3 THE CLERK: But they can keep the form back there. Just  
4 take the blue off.

5 THE MARSHAL: Just take the blue off?

6 THE CLERK: Yeah. Because I -- the blue is going to mark the  
7 leading controlling one.

8 UNIDENTIFIED SPEAKER: Okay.

9 THE CLERK: Let me staple this. Counsel, everybody saw the  
10 verdict form before it goes back?

11 MR. POLSENBERG: I didn't.

12 MR. ZAVITSANOS: Yes.

13 MR. POLSENBERG: We did? Okay.

14 MR. ZAVITSANOS: Yes. Yes, Plaintiff did.

15 THE CLERK: Okay.

16 THE COURT: And is the new form going back correct,  
17 Plaintiff?

18 MR. ZAVITSANOS: Yes, Your Honor.

19 MR. BLALACK: This is Defense.

20 THE COURT: And Defendant?

21 MR. BLALACK: Yes, Your Honor.

22 THE COURT: All right. Thank you.

23 Now, have you agreed on language to send back with regard  
24 to the first verdict form --

25 MR. POLSENBERG: Judge --

1 THE COURT: -- or do you need more time?

2 MR. POLSENBERG: Please forgive me for interrupting you.

3 But the new verdict form still has the Does on it.

4 MR. BLALACK: Yeah, and, Dan, if we want to that, it's fine.

5 But at this point, it's your call.

6 MR. POLSENBERG: Well, if we -- okay. I can live with it  
7 because if they've got both versions, they're going to compare them, and  
8 they're going to see the change, so it's probably better to --

9 MR. ZAVITSANOS: Well, there's no question about the Does,  
10 so.

11 MR. BLALACK: I will do it if you want to. It's just -- that's  
12 going to --

13 MR. ZAVITSANOS: From the Plaintiffs, Your Honor, we're  
14 indifferent on that because there are no blanks that contain the Doe  
15 defendants.

16 MR. POLSENBERG: I can [indiscernible].

17 THE COURT: And Defendant, your position for the record,  
18 please?

19 MR. POLSENBERG: I can live with it. The next question is  
20 probably going to be [indiscernible] 10(a).

21 THE COURT: My law clerk is now in the room, so he can take  
22 that back. But you need to get the language to them agreed about what  
23 to do with the first verdict form.

24 THE CLERK: I have it, Judge.

25 THE COURT: Did you work on that yet?



1 MR. POLSENBERG: No. What the judge is talking about is  
2 language saying take the blue back off the first verdict form and put an X  
3 through the first page.

4 MR. BLALACK: We'll need to come up with something new.  
5 That's new.

6 MR. ZAVITSANOS: [Indiscernible].

7 MR. BLALACK: No, that's not addressed on that.

8 MS. LUNDVALL: [Indiscernible].

9 MR. ZAVITSANOS: [Indiscernible].

10 MR. MCMANIS: Well, let's do it the second way.

11 MR. ZAVITSANOS: Yeah, let's do -- Pat? Hey, Pat, do you  
12 want to do it so it's in the same handwriting?

13 MR. BLALACK: Good idea.

14 MR. POLSENBERG: All right. So you want this verdict to go  
15 back?

16 MR. ZAVITSANOS: So the issue is --

17 MR. LEYENDECKER: Blue back off of --

18 MR. ZAVITSANOS: Please remove the blue back off of the  
19 original verdict form.

20 THE CLERK: Do you want to write it on this one?

21 MS. LUNDVALL: Yeah, give me those. Because I thought  
22 somebody was going to type this up, but I don't like the sparse little  
23 interlineations they have.

24 UNIDENTIFIED SPEAKER: Yeah. I don't think there's room  
25 on the other way.

1 MR. ZAVITSANOS: We can write on the back of these.

2 MR. POLSENBERG: I can make room.

3 THE CLERK: I've already blue backed the new one.

4 [Pause]

5 MS. LUNDVALL: All right. Make sure this is [indiscernible].

6 MR. BLALACK: I am comfortable with that.

7 MS. LUNDVALL: All right. Can you guys sign so we can  
8 send this back?

9 [Pause]

10 MS. LUNDVALL: Okay. Your Honor?

11 THE COURT: Okay. Court will come to order, please. Court  
12 will come to order, please.

13 MS. LUNDVALL: There's agreement as far as on the  
14 language for the instruction, it will go back in with the corrected verdict  
15 form. That language reads, "There is a typo on the original verdict form.  
16 The reference to "Oxford Health Plan" should be deleted from questions  
17 number 3, 4, 8, 9, 12 and 13. Attached is a corrected clean form for your  
18 use. Please remove the blue back from the original verdict form, and  
19 mark a big X across page 1. Please use the corrected verdict form as  
20 your own". And it's been signed by both counsel.

21 THE COURT: Thank you. For the Defense, is that correct?

22 MR. BLALACK: That's correct, Your Honor.

23 THE COURT: All right. Thank you. So, Terrance, will you  
24 please hand that to Marshal Allen?

25 THE CLERK: Do you want the verdict to go back too, Judge?

1 THE COURT: I do. Thank you, Terrance. So now, do we still  
2 have a question to resolve?

3 MR. ZAVITSANOS: Yes, Your Honor. There is another  
4 question.

5 THE COURT: It has not been provided to me. I had asked  
6 Karen to send it. Apparently, she didn't get that message. So will the  
7 clerk please read the question?

8 THE CLERK: Yes, Judge. The question says, "If money is  
9 awarded to a particular plaintiff for more than one claim, can we assume  
10 that the awards are cumulative and the total award to that plaintiff will  
11 be a sum of the amounts?"

12 THE COURT: All right. So have you both had a chance to  
13 caucus with your sides in response or do you need a moment?

14 MR. ZAVITSANOS: We have, Your Honor. This is -- on the  
15 Plaintiffs' side, we have visited with one another on our side and are  
16 prepared to respond.

17 THE COURT: Defendant, have you had a chance to caucus,  
18 or do you need a moment?

19 MR. BLALACK: No, Your Honor. We're prepared to proceed.

20 THE COURT: Very good. Let me hear from the Plaintiff first.

21 MR. ZAVITSANOS: Mr. McManis will respond, Your Honor.

22 MR. MCMANIS: Good morning, Your Honor. We would  
23 suggest responding by pointing the jury to jury instruction number 21  
24 that instructs, "Each question about damages should be answered  
25 independently, and you should not treat any damages amount for any

1 claim as cumulative".

2 THE COURT: Thank you. And for the Defense?

3 MR. BLALACK: Your Honor, I think our position --the  
4 Plaintiffs, as Your Honor knows, they've already stated on the record that  
5 they must make an election of damages before an entry judgment. So in  
6 our view, this is a simple answer, which is the damages are not  
7 cumulative. John, I think there's a question formulating that common  
8 response.

9 THE COURT: And so can they be instructed to look at 27?

10 MR. BLALACK: Your Honor, from the Defense side, I think  
11 that's fine. But I think the question is a direct one, and it warrants a  
12 direct response, which is that the damages are not cumulative, and both  
13 parties agree on it.

14 MR. ZAVITSANOS: So Your Honor, this is John Zavitsanos.  
15 This is the instruction. Your Honor may remember that -- I think Ms.  
16 Robinson had suggested about each claim is a standalone silo, if you  
17 will. And so I think the appropriate thing to do would be to direct them  
18 to the instruction, and then to say -- and what Mr. Blalack suggested is  
19 fine. That the damages -- after we direct them to that instruction, that  
20 the damages are not cumulative. And I believe --

21 THE COURT: All right.

22 MR. ZAVITSANOS: Given that, I believe that we can come up  
23 with some language very quickly here, and we can do it right now, that I  
24 think will be acceptable to both sides.

25 THE COURT: Mr. Blalack, are you willing to do that with

1 them?

2 MR. BLALACK: We are, Your Honor.

3 THE COURT: Because I'm -- good enough. Because I'm  
4 inclined to agree that we should direct them to the jury instruction and  
5 instruct them with regard to the fact that it's not cumulative. So one of  
6 the two of you work on -- or your teams work on the language to  
7 respond. Then [indiscernible] will take it.

8 MR. ZAVITSANOS: Your Honor, you broke up there for a  
9 moment. And I think I understood what you said, but you did break up.

10 THE COURT: Good enough. So you will work on  
11 [indiscernible] together a response to the question directing them to the  
12 jury instruction, and then indicate to them that the award is not  
13 cumulative.

14 MR. ZAVITSANOS: Yes, Your Honor. We can do that.

15 [Pause]

16 MR. POLSENBERG: Judge, is there a way that we can send  
17 this answer back with -- coming from you rather than from the lawyers?  
18 Maybe have -- here's how old I am. Do you still have a signature stamp  
19 in your JEA's desk?

20 THE COURT: I do -- we do have a stamp, and the JEA has it.  
21 And if you both consent to that, I would direct that be stamped in open  
22 court on the record.

23 MR. POLSENBERG: Sorry, Judge. I was looking at the  
24 proposed jury instruction. I'm fine with putting your stamp on there. I  
25 think it sends the right message to the jury.

1 MR. BLALACK: Judge, Your Honor, this is Lee Blalack. I  
2 think --

3 THE COURT: We didn't stamp the first set.

4 MR. BLALACK: Well, I think it was -- I was comfortable  
5 having the corrected verdict form go back under a joint signature from  
6 counsel, but when we start giving instructions on what the law is, I think  
7 it needs to by necessity come from you as opposed to the parties.

8 MR. ZAVITSANOS: Yes. Your Honor, what I would --

9 THE COURT: Very good.

10 MR. ZAVITSANOS: What I -- this is John Zavitsanos. What I  
11 would suggest is we go through the same exercise we just did where we  
12 write out the language and it'll be two things. Direct them to the  
13 instruction, and then a sentence that says, "The damages are not  
14 cumulative". Both counsel would sign that. The clerk would then take  
15 that, create a new instruction. And then if Your Honor is so inclined to  
16 affix Your Honor's signature to that and have that go back?

17 THE COURT: All right. So the -- when you have the  
18 language ready, Terrance, the law clerk, will go get the stamp from the  
19 JEA. It will be stamped on the record so that there's -- with audio as  
20 well. And you guys just let -- I'm here. I'll go ahead and mute myself.  
21 Let me know when you're ready to go back on the record.

22 MR. ZAVITSANOS: Yes, Your Honor.

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

24 MR. ZAVITSANOS: Okay. I'm going to sign this.

25 MR. POLSENBERG: Don't sign that.

1 MR. ZAVITSANOS: Huh?

2 MR. POLSENBERG: Don't sign that.

3 MR. ZAVITSANOS: No, but what I thought what we were  
4 going to do is we were going to sign, and then the clerk was going to  
5 create a new one. In other words, just to show assent of the parties.

6 MR. BLALACK: Yeah, that's fine. As long as one goes back  
7 to the jury. It's not in our [indiscernible].

8 MR. ZAVITSANOS: Right.

9 UNIDENTIFIED SPEAKER: Yes.

10 MR. ZAVITSANOS: Is that okay?

11 MR. BLALACK: In other words, this is for us to  
12 [indiscernible] --

13 MR. ZAVITSANOS: Correct.

14 MR. BLALACK: -- to this language. She's then going to have  
15 to put it with the stamp. [Indiscernible] we can stipulate on the record.

16 MR. ZAVITSANOS: Okay. Okay, that's fine. Okay. Your  
17 Honor, we're ready to proceed then.

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

19 MR. ZAVITSANOS: Okay. So Your Honor, the  
20 instruction -- or excuse me. The response to the question reads as  
21 follows. "Jury instruction number 21 instructs that each damage  
22 question is independent. The damages are not cumulative". And from  
23 the Plaintiffs' perspective, Your Honor, that is acceptable.

24 THE COURT: Okay. Mr. Blalack?

25 MR. BLALACK: That's correct, Your Honor. Acceptable to

1 Defendants.

2 THE COURT: All right. So you are both going to sign it, and  
3 then Terrance is going to stamp it on the record; is that correct?

4 MR. POLSENBERG: I prefer if we not sign it and just have  
5 your signature on it. Okay.

6 MR. ZAVITSANOS: I think we have the --

7 THE COURT: Hold on.

8 MR. ZAVITSANOS: I'm sorry, Your Honor. Yeah. We have a  
9 record, so I think --

10 THE COURT: Now, it sounds like -- yeah. All right. So  
11 Terrance will then stamp it on the record and then take it back to  
12 Marshal Allen. Terrance, do you have the stamp?

13 THE LAW CLERK: Getting it now, Your Honor.

14 [Pause]

15 THE LAW CLERK: Stamping it now, Your Honor.

16 MR. BLALACK: Is that all you all need from us, or?

17 THE COURT: So is there anything else we need to take up  
18 right now?

19 MR. ZAVITSANOS: From the Plaintiffs' standpoint, Your  
20 Honor, no.

21 MR. BLALACK: Nothing from the Defendants, Your Honor.

22 THE COURT: Then thank you both for your professional  
23 courtesy, and I'll be back as soon as [indiscernible].

24 MR. BLALACK: Thank you, Your Honor.

25 MR. POLSENBERG: Thank you, Your Honor.



1 MR. ZAVITSANOS: Thank you, Your Honor.

2 [Recess from 10:14 a.m. to 11:25 a.m.]

3 [Outside the presence of the jury]

4 THE MARSHAL: All rise. Department 27 is now in session.

5 The Honorable Chief Judge Linda Bell presiding. You may be seated.

6 [Court and Marshal confer]

7 THE COURT: All right. How's everyone doing?

8 MR. ZAVITSANOS: Good morning, Your Honor.

9 UNIDENTIFIED SPEAKER: Good morning, Your Honor.

10 UNIDENTIFIED SPEAKER: Good morning, Your Honor.

11 THE COURT: You're going to have to help me out here since  
12 I'm walking into this a little blind. So I understand if there's -- just before  
13 they come in.

14 [Court and Clerk confer]

15 THE COURT: No. Judge Allf said that there's a punitive  
16 phase next Tuesday and settle instructions Monday afternoon. You all  
17 know that?

18 MS. LUNDVALL: Yes, Your Honor.

19 MR. ZAVITSANOS: Yes, Your Honor.

20 THE COURT: Okay. Great. Thank you.

21 THE COURT: Anything else we need to take care of outside  
22 the presence of the jury?

23 MS. LUNDVALL: I think maybe possibly calling the case just  
24 for record purposes.

25 THE COURT: I will do that.

1 MS. LUNDVALL: Thank you.

2 THE COURT: All right. So Fremont Emergency Services v.  
3 United Health Care, case number A-792978.

4 MS. LUNDVALL: Thank you, Your Honor.

5 [Pause]

6 THE MARSHAL: All rise for the jury.

7 [Jury in at 11:29 a.m.]

8 THE COURT: Good morning, ladies and gentlemen. My  
9 name is Linda Bell, and I am filling in for Judge Allf this morning. I know  
10 she regrets that she could not be here today, especially after such a long  
11 trial.

12 So has the jury selected a foreperson? Yes. And who's the  
13 foreperson? All right. So -- and, ma'am, has the jury reached a verdict?

14 THE FOREPERSON: Yes, the jury has reached a verdict.

15 THE COURT: Will you please hand the verdict form to the  
16 marshal?

17 [Pause]

18 THE COURT: All right. The clerk will now read the verdict  
19 out loud.

20 THE CLERK: District Court, Clark County, Nevada, Fremont  
21 Emergency Services, Plaintiffs, versus United Healthcare Insurance  
22 Company, case number A-792978, Department 27. Special verdict form.  
23 We the jury, in the above entitled action, answer the question submitted  
24 us as follows:

25 Question one. Were any of the Defendants shown in the left

1 column unjustly enriched as a result of services provided by any of the  
2 Plaintiffs shown in the top row? Answer yes or no.

3 United Healthcare Insurance Company with Fremont  
4 Emergency Services, yes.

5 United Healthcare Insurance Company with Team Physicians,  
6 yes.

7 United Health Insurance Company with Ruby Crest  
8 Emergency Medicine, yes.

9 As to United Healthcare Services Inc., as to Fremont  
10 Services, yes. Team Physicians, yes. Ruby Crest Emergency Medicine,  
11 yes.

12 As to UMR Inc. related to Fremont Emergency Services, yes.  
13 Team Physicians, yes. Ruby Crest Emergency Medicine, yes.

14 As to Sierra Health and Life Insurance Company regarding  
15 Fremont Emergency Services, yes. Team Physicians, yes. Ruby Crest  
16 Emergency Medicine, yes.

17 As to Health Plan of Nevada Inc. with Fremont Emergency  
18 Services, yes. Team Physicians, yes. Ruby Crest Emergency Medicine,  
19 yes.

20 Question two. If you have answered yes to any part of the  
21 question one with respect to Fremont Emergency Services, what amount  
22 of money do you find from a preponderance of the evidence should be  
23 awarded to Fremont Emergency Services and against the following:

24 As to United Healthcare Insurance Company, the answer is  
25 478,686.26.

1 As to United Healthcare Services Inc., answer 771,406.35.

2 UMR Inc., answer \$168,949.51.

3 As to Sierra Health and Life Insurance Company, answer,

4 \$1,007,374.49.

5 Health Plan of Nevada, answer \$23,765.68.

6 Question three. If you have answered yes to any part of  
7 question one with respect to Team Physicians, what amount of money  
8 do you find from the preponderance of the evidence should be awarded  
9 to the Team Physicians and against the following?

10 United Healthcare Insurance Company, answer \$42,803.36.

11 United Healthcare Services Inc., answer \$40,607.19.

12 UMR Inc., answer \$485.37.

13 Is this correct, jury? I just want to make sure I'm not --  
14 because it's like a scribble. Make sure that's the right -- is that a five or a  
15 six?

16 Sierra Health and Life Insurance Company, answer \$1,783.85.

17 Health Plan of Nevada Inc., answer \$598.83.

18 If you have answered yes to any part of question one with  
19 respect to Ruby Crest Emergency Medicine, what amount of money do  
20 you find at a preponderance of evidence should be awarded to Ruby  
21 Crest Emergency Medicine and against the following.

22 United Healthcare Insurance Company, answer \$32,972.03.

23 United Healthcare Services Inc., answer \$69,447.39.

24 UMR Inc., answer \$7,911.57.

25 Sierra Health and Life Insurance Company, answer 43,438.63.

1 Health Plan of Nevada, answer \$281.49.

2 Question five. Did any of the Defendants shown in the left  
3 column form an implied contract with any of the Plaintiffs shown in the  
4 top row? Answer yes or no.

5 As to United Healthcare Insurance Company, Fremont  
6 Emergency Services, yes. Team Physicians, yes. Ruby Crest Emergency  
7 Medicine, yes.

8 As to United Healthcare Services, with Fremont Emergency  
9 Services, yes. Team Physicians, yes. Ruby Crest Emergency Medicine,  
10 yes.

11 UMR Inc. as to Fremont Emergency Services, yes. Team  
12 Physicians, yes. Ruby Crest Emergency Medicine, yes.

13 As to Sierra Health and Life Insurance Company regarding  
14 Fremont Emergency Services, yes. Team Physicians, yes. Ruby Crest  
15 Emergency Medicine, yes.

16 As to Health Plan of Nevada regarding Fremont Emergency  
17 Services, yes. Team Physicians, yes. Ruby Crest Emergency Medicine,  
18 yes.

19 Question six. Did any of the Defendants shown in the left  
20 column fail to comply with an implied contract with any of the Plaintiffs  
21 shown in the top row? Answer yes or no.

22 As to United Healthcare Insurance Company regarding  
23 Fremont Emergency Services, yes. Team Physicians, yes. Ruby Crest  
24 Emergency Medicine, yes.

25 As to United Healthcare Services with Fremont Emergency

1 Services, yes. Team Physicians, yes. Ruby Crest Emergency Medicine,  
2 yes.

3 As to UMR Inc. regarding Fremont Emergency Services, yes.  
4 Team Physicians, yes. Ruby Crest Emergency Medicine, yes.

5 Sierra Health and Life Insurance Company regarding  
6 Fremont Emergency Services, yes. Team Physicians, yes. Ruby Crest  
7 Emergency Medicine, yes.

8 Health Plan of Nevada Inc. regarding Fremont Emergency  
9 Services, yes. Team Physicians, yes. Ruby Crest Emergency Medicine,  
10 yes.

11 Question seven. If you answered yes to any part of question  
12 six with respect to Fremont Emergency Services, what amount of money  
13 do you find from a preponderance of the evidence to be awarded to  
14 Fremont Emergency Services and against the following?

15 United Healthcare Insurance Company, answer \$478,686.26.

16 United Healthcare Services Inc., answer \$771,406.35.

17 UMR Inc., answer \$168,949.51.

18 Sierra Health and Life Insurance Company, \$1,007,374.49.

19 Health Plan of Nevada, answer \$23,765.68.

20 If you answered yes to any part of question six with respect  
21 to Team Physicians, what amount of money do you find from a  
22 preponderance of the evidence should be awarded to Team Physicians  
23 and against the following?

24 United Healthcare Insurance Company, \$42,803.36.

25 United Healthcare Services Inc., \$40,607.19.

1 UMR, \$485.37.

2 Sierra Health and Life Insurance Company, \$1,783.85.

3 Health Plan of Nevada, answer 4598.83.

4 Question nine. If you answered yes to any part of question  
5 six with respect to Ruby Crest Emergency Medicine, what amount of  
6 money do you find from a preponderance of evidence should be  
7 awarded to Ruby Crest Emergency Medicine and against the following?

8 United Healthcare Insurance Company, answer, \$32,972.03.

9 United Healthcare Services Inc., answer \$69,447.39.

10 UMR Inc., answer \$7,911.57.

11 Sierra Health and Life Insurance Company, answer \$3,438.63.

12 Health Plan of Nevada Inc., answer \$281.49.

13 Number 10. Did any of the Defendants shown in the left  
14 column engage in unfair claims practices in connection with the payment  
15 of any of the Plaintiffs shown in the top row? Answer yes or no.

16 United Healthcare Company regarding Fremont Emergency  
17 Services, yes. Team Physicians, yes. Ruby Crest Emergency Medicine,  
18 yes.

19 United Healthcare Services regarding Fremont Emergency  
20 Services, yes. Team Physicians, yes. Ruby Crest Emergency Medicine,  
21 yes.

22 UMR Inc. as to Fremont Emergency Services, yes. Team  
23 Physicians, yes. Ruby Crest Emergency Medicine, yes.

24 As to Sierra Health and Life Insurance Company regarding  
25 Fremont Emergency Services, yes. Team Physicians, yes. Ruby Crest

1 Emergency Medicine, yes.

2 Health Plan of Nevada Inc. regarding Fremont Emergency  
3 Services, yes. Team Physicians, yes. Ruby Crest Emergency Medicine,  
4 yes.

5 Number 11. If you answered yes to any part of question 10  
6 with respect to Fremont Emergency Services, what amount of money do  
7 you find from a preponderance of the evidence should be awarded to  
8 Fremont Emergency Services and against the following?

9 United Healthcare Insurance Company, \$478,686.26.

10 United Healthcare Services, \$771,406.35.

11 UMR Inc., \$168,949.51.

12 Sierra Health and Life Insurance Company, \$1,007,374.49.

13 Health Plan of Nevada, \$23,765.68.

14 Number 12. If you answered yes to any part of question 10  
15 with respect to Team Physicians, what amount of money do you find  
16 from a preponderance of the evidence should be awarded to Team  
17 Physicians and against the following?

18 United Healthcare Insurance Company, \$42,000 -- \$42,803.36.

19 United Healthcare Services, \$40,607.19.

20 UMR, answer \$485.37.

21 Sierra Health and Life Insurance Company, \$1,783.85.

22 Health Plan of Nevada, \$598.83.

23 Number 13. If you answered yes to any part of question 10  
24 with respect to Ruby Crest Emergency Medicine, what amount of money  
25 do you find from a preponderance of the evidence should be awarded to

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1 Ruby Crest Emergency Medicine and against the following?

2 United Healthcare Insurance Company, \$32,972.03.

3 United Healthcare Services, \$69,447.39.

4 UMR, \$7,911.57.

5 Sierra Health and Life Insurance Company, \$3,438.63.

6 Health Plan of Nevada, \$281.49.

7 Number 14. Did any of the Defendants shown in the left  
8 column fail to fully pay to any of the Plaintiffs shown on the top row,  
9 within 30 days of submission of the claim, claims that were approved  
10 and fully payable? Answer yes or no.

11 United Healthcare Insurance Company regarding Fremont  
12 Emergency Services, yes. Team Physicians, yes. Ruby Crest Emergency  
13 Medicine, yes.

14 As to UnitedHealthcare Services, regarding Fremont  
15 Emergency Services, yes. Team Physicians, yes. Ruby Crest Emergency  
16 Medicine, yes.

17 Regarding UMR as to Fremont Emergency Services, yes.  
18 Team Physicians, yes. Ruby Crest Emergency Medicine, yes.

19 As to Sierra Health and Life Insurance Company, regarding  
20 Fremont Emergency Services, yes. Team Physicians, yes. Ruby Crest  
21 Emergency Medicine, yes.

22 As to Health Plan of Nevada, regarding Fremont Emergency  
23 Services, yes. Team Physicians, yes. Ruby Crest Emergency Medicine,  
24 yes.

25 Number 15. If you answered yes to any part of Question 1,

1 answer the following questions. Do you find by clear and convincing  
2 evidence that any of the Defendants shown in the left column are guilty  
3 of oppression, fraud, or malice in any conduct that you find to constitute  
4 unjust enrichment and that caused damage to any Plaintiffs shown in the  
5 top row? And do you find that you will assess punitive damages against  
6 the Defendants, answer yes or no.

7 As to UnitedHealthcare Insurance Company, regarding  
8 Fremont Emergency Services, yes. Team Physicians, yes. Ruby Crest  
9 Emergency Medicine, yes.

10 As to UnitedHealthcare Services, regarding Fremont  
11 Emergency Services, yes. Team Physicians, yes. Ruby Crest Emergency  
12 Medicine, yes.

13 As to UMR, Inc., regarding Fremont Emergency Services,  
14 yes. Team Physicians, yes. Ruby Crest Emergency Medicine, yes.

15 As to Sierra Health and Life Insurance Company, regarding  
16 Fremont Emergency Services, yes. Team Physicians, yes. Ruby Crest  
17 Emergency Medicine, yes.

18 As to Health Plan of Nevada, regarding Fremont Emergency  
19 Services, yes. Team Physicians, yes. Ruby Crest Emergency Medicine,  
20 yes.

21 Number 16. If you answered yes to any part of Question 10,  
22 answer the following questions. Do you find by clear and convincing  
23 evidence that any of the Defendants shown in the left column are guilty  
24 of oppression, fraud, or malice in any conduct that you will find to  
25 constitute unfair claims, practices, and that caused damage to any

1 Plaintiffs shown in the top row? And do you find that you will assess  
2 punitive damages against the Defendants, yes or no.

3           Regarding UnitedHealthcare Insurance Company, as to  
4 Fremont Emergency Services, yes. Team Physicians, yes. Ruby Crest  
5 Emergency Medicine, yes.

6           Regarding UnitedHealthcare Services, as to Fremont  
7 Emergency Services, yes. Team Physicians, yes. Ruby Crest Emergency  
8 Medicine, yes.

9           As to UMR, Inc., regarding Fremont Emergency Services,  
10 yes. Team Physicians, yes. Ruby Crest Emergency Medicine, yes.

11           As to Sierra Health and Life Insurance Company, regarding  
12 Fremont Emergency Services, yes. Team Physicians, yes. Ruby Crest  
13 Emergency Medicine, yes.

14           As to Health Plan of Nevada, Inc., regarding Fremont  
15 Emergency Services, yes. Team Physicians, yes. Ruby Crest Emergency  
16 Medicine, yes.

17           Signed on November 29th, 2021, signed by the foreperson,  
18 Cindy Springberg.

19           Ladies and gentlemen of the jury, is this your verdict, as  
20 read?

21           THE COURT: Okay. Does any party wish to have the jury  
22 polled?

23           MR. BLALACK: The Defendants do, Your Honor.

24           THE COURT: All right. So the Clerk will please poll the jury.

25           THE CLERK: Juror Number 1, is this your verdict, as read?

1 JUROR 1: Yes.

2 THE CLERK: Juror Number 2, is this your verdict, as read?

3 JUROR 2: Yes.

4 THE CLERK: Juror Number 3, is this your verdict, as read?

5 JUROR 3: Yes.

6 THE CLERK: Juror Number 4, is this your verdict, as read?

7 JUROR 6: Juror Number 6, yes.

8 THE CLERK: Juror Number 6, Elizabeth Trambulo?

9 THE COURT: Huh-uh, Ms. Ross.

10 THE CLERK: Okay. Sorry, this is off. Excuse me.

11 THE COURT: You're Ms. Ross?

12 JUROR 6: Yes.

13 THE COURT: Okay.

14 THE CLERK: Juror Number 7, is this your verdict, as read?

15 JUROR 7: Yes.

16 THE CLERK: Juror Number 8, is this your verdict, as read?

17 JUROR 8: Yes.

18 THE CLERK: Juror Number 9, is this your verdict, as read?

19 JUROR 9: Yes.

20 THE CLERK: Juror Number 11, is this your verdict, as read?

21 JUROR 11: Yes.

22 THE COURT: All right. The Clerk will now record the verdict  
23 in the minutes.

24 And ladies and gentlemen, as the result of your verdict  
25 decisions on Questions 15 and 16, there will be a punitive damages

1 phase of the trial that will start Tuesday. What time?

2 THE CLERK: I do not have a time. It just says December 7th.

3 [Court staff confer]

4 THE CLERK: At 8 a.m.

5 THE COURT: 8 a.m. on Tuesday, December --

6 THE CLERK: 27th.

7 THE COURT: No.

8 THE CLERK: No, 7th.

9 THE COURT: December 7th. Tuesday, December 7th. So --

10 MR. POLSENBERG: Your Honor, can we approach?

11 THE COURT: Yes.

12 [Sidebar at 11:51 a.m., ending at 11:54 a.m., not transcribed]

13 THE COURT: All right. So you'll be back Tuesday the 7th, 8  
14 a.m.

15 During this break, you must not discuss or communicate with  
16 anyone, including fellow jurors, in any way regarding the case or its  
17 merits either by phone, voice, email, text, internet, or other means of  
18 communication or social media, read, watch, or listen to any news or  
19 media accounts or commentary about the case, do any research such as  
20 consulting dictionaries, using internet, or using reference materials,  
21 make any investigation to test the theory of the case, recreate any aspect  
22 of the case, or in any other way investigate or learn about the case on  
23 your own or form or express any opinion regarding the case until it is  
24 submitted to you.

25 So everyone have a great rest of your week, and you'll be

1 back next Tuesday.

2 THE MARSHAL: All rise for the jury. Your Honor?

3 THE COURT: Yes.

4 THE MARSHAL: I just want to make sure; they're dismissed  
5 until when?

6 THE COURT: They're dismissed until Tuesday.

7 [Jury out at 11:55 a.m.]

8 THE COURT: All right. So Mr. Polsenberg, hold on.  
9 Everybody just go ahead and have a seat, and we'll wait for the reporter  
10 to come back.

11 [Pause]

12 [Outside the presence of the jury]

13 THE COURT: Mr. Polsenberg, are you ready? Is everybody  
14 ready? Got it. Just let me know.

15 MR. ZAVITSANOS: And Your Honor, we have something as  
16 well --

17 THE COURT: Okay.

18 MR. ZAVITSANOS: -- after Mr. Polsenberg goes.

19 MR. POLSENBERG: Judge, I think we're fine. It's not the  
20 issue that I thought it was.

21 THE COURT: Okay. So you're good?

22 MR. ZAVITSANOS: Your Honor, on behalf of the Plaintiffs, I  
23 am bookmarking this for potential for new discussion this week. The  
24 jury sent out a note during deliberations, in fact, this morning, asking  
25 about whether damages ought to be divided so that the cumulative

1 would come out to the total that they have in mind or whether they  
2 should be considering independently. The parties did reach an  
3 agreement consistent with the instructions that they should be  
4 considered independently. The only odd thing is if you add the damages  
5 together from the various claims, it comes very close to our billed  
6 charges. And I don't know if they understood the issue that we sent back  
7 or not. And I don't -- I don't necessary know we're going to lodge any  
8 kind of an objection. I'm bookmarking it right now.

9 THE COURT: Okay.

10 MR. ZAVITSANOS: I do want to discuss it with our team. We  
11 will confer with the opposing side and deal with it with Her Honor, Judge  
12 Allf, when she is back in next week.

13 THE COURT: Okay.

14 MR. POLSENBERG: Well, I think Judge Allf is on the  
15 BlueJeans, so I think -- actually, it's interesting that they're saying the  
16 jury asked about dividing. They didn't ask about dividing. What they  
17 asked was, was it cumulative. We wanted to answer just no, it is not  
18 cumulative. They wanted to add a reference to jury instruction 21, which  
19 uses the concept of independent causes of action. So I think the -- it's  
20 pretty clear to me the jury meant \$3.3 million here. Thank you, Your  
21 Honor.

22 THE COURT: Okay.

23 MS. LUNDVALL: Well, from this perspective, Your Honor,  
24 there is the opportunity to be able to canvass them because of the  
25 second phase of this. And so as Mr. Zavitsanos had indicated, we, on

1       behalf of the Plaintiffs then, would like to bookmark it.

2                   THE COURT: All right. So what time is this supposed to start  
3       in the morning?

4                   THE CLERK: 8 a.m.

5                   THE COURT: So you'll be here Monday at 8 a.m. to deal with  
6       the instructions with Judge Allf. And then you all can take up any  
7       additional issues that you -- or concerns that you have with her at that  
8       time. Actually, that works out quite nicely, because then you have a day  
9       to sort through all of those things before the jury returns on Tuesday.  
10      And if there needs to be additional polling or --

11                  MR. POLSENBERG: It doesn't work out that great for me  
12      because I have a Supreme Court argument on Tuesday at 7, but.

13                  THE COURT: I'm sorry, Mr. Polsenberg.

14                  MR. POLSENBERG: Thank you, Your Honor.

15                  MR. ZAVITSANOS: Yes, we understand, Your Honor. So  
16      we'll deal with it.

17                  THE COURT: Okay. Great.

18                  MR. ZAVITSANOS: Thank you.

19                  THE COURT: Anything else that you need to make a record  
20      of right now?

21                  MR. ZAVITSANOS: Not from the Plaintiffs, Your Honor.

22                  MR. POLSENBERG: No thank you, Your Honor.

23      /////

24      /////

25                  THE COURT: Great. Thank you. Thanks everybody. Have a



1 good afternoon.

2 MR. ZAVITSANOS: Are we excused, Your Honor?

3 THE COURT: You are.

4 [Proceedings adjourned at 12:07 p.m.]

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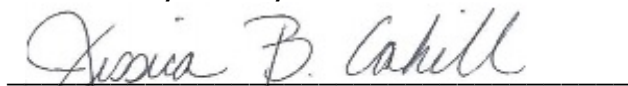
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-visual recording of the proceeding in the above entitled case to the  
best of my ability.

23



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Maukele Transcribers, LLC

25

Jessica B. Cahill, Transcriber, CER/CET-708

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

**FILED IN OPEN COURT**  
**STEVEN D. GRIERSON**  
**CLERK OF THE COURT**

NOV 29 2021

BY,

ALICE JACOBSON, DEPUTY

A-19-792978-B  
VER  
Verdict  
4975938



Case No.: A-19-792978-B

Dept. No.: XXVII

**Special Verdict Form**

We, the jury in the above-entitled action, answer the questions submitted to us as follows:

FILED IN OPEN COURT  
STEVEN D. GREENSON  
CLERK OF THE COURT

NOV 1 2011

RECEIVED DISTRICT COURT

1. Were any of the defendants (shown in the left column) unjustly enriched as a result of services provided by any of the plaintiffs (shown in the top row)?

Answer "Yes" or "No" in each box.

	Fremont Emergency Services	Team Physicians	Ruby Crest Emergency Medicine
United Healthcare Insurance Company	Yes	Yes	Yes
United Health Care Services, Inc.	Yes	Yes	Yes
UMR, Inc.	Yes	Yes	Yes
Sierra Health and Life Insurance Company, Inc.	Yes	Yes	Yes
Health Plan of Nevada, Inc.	Yes	Yes	Yes

2. If you answered "Yes" to any part of Question 1 with respect to Fremont Emergency Services, what amount of money do you find from a preponderance of the evidence should be awarded to Fremont Emergency Services and against the following?

United Healthcare Insurance Company	Answer: \$ <u>478,686.26</u>
United Health Care Services, Inc.	Answer: \$ <u>771,406.35</u>
UMR, Inc.	Answer: \$ <u>168,949.51</u>
Sierra Health and Life Insurance Company, Inc.	Answer: \$ <u>1,007,374.49</u>
Health Plan of Nevada, Inc.	Answer: \$ <u>23,765.68</u>

3. If you answered "Yes" to any part of Question 1 with respect to Team Physicians, what amount of money do you find from a preponderance of the evidence should be awarded to Team Physicians and against the following?

United Healthcare Insurance Company      Answer: \$ 42,803.36

United Health Care Services, Inc.      Answer: \$ 40,607.19

UMR, Inc.      Answer: \$ 485.37

Sierra Health and Life Insurance Company, Inc.      Answer: \$ 1,783.85

Health Plan of Nevada, Inc.      Answer: \$ 598.83

4. If you answered "Yes" to any part of Question 1 with respect to Ruby Crest Emergency Medicine, what amount of money do you find from a preponderance of the evidence should be awarded to Ruby Crest Emergency Medicine and against the following?

United Healthcare Insurance Company      Answer: \$ 32,972.03

United Health Care Services, Inc.      Answer: \$ 69,447.39

UMR, Inc.      Answer: \$ 7,911.57

Sierra Health and Life Insurance Company, Inc.      Answer: \$ ~~3,438.63~~ 3,438.63

Health Plan of Nevada, Inc.      Answer: \$ 281.49

5. Did any of the defendants (shown in the left column) form an implied contract with any of the plaintiffs (shown in the top row)?

Answer "Yes" or "No" in each box.

	Fremont Emergency Services	Team Physicians	Ruby Crest Emergency Medicine
United Healthcare Insurance Company	Yes	Yes	Yes
United Health Care Services, Inc.	Yes	Yes	Yes
UMR, Inc.	Yes	Yes	Yes
Sierra Health and Life Insurance Company, Inc.	Yes	Yes	Yes
Health Plan of Nevada, Inc.	Yes	Yes	Yes

6. Did any of the defendants (shown in the left column) fail to comply with an implied contract with any of the plaintiffs (shown in the top row)?

Answer "Yes" or "No" in each box.

	Fremont Emergency Services	Team Physicians	Ruby Crest Emergency Medicine
United Healthcare Insurance Company	Yes	Yes	Yes
United Health Care Services, Inc.	Yes	Yes	Yes
UMR, Inc.	Yes	Yes	Yes
Sierra Health and Life Insurance Company, Inc.	Yes	Yes	Yes
Health Plan of Nevada, Inc.	Yes	Yes	Yes

7. If you answered "Yes" to any part of Question 6 with respect to Fremont Emergency Services, what amount of money do you find from a preponderance of the evidence should be awarded to Fremont Emergency Services and against the following?

United Healthcare Insurance Company      Answer: \$ 478,686.26

United Health Care Services, Inc.      Answer: \$ 771,406.35

UMR, Inc.      Answer: \$ 1168,949.51

Sierra Health and Life Insurance Company, Inc.      Answer: \$ 1,007,374.49

Health Plan of Nevada, Inc.      Answer: \$ 23,765.68

8. If you answered "Yes" to any part of Question 6 with respect to Team Physicians, what amount of money do you find from a preponderance of the evidence should be awarded to Team Physicians and against the following?

United Healthcare Insurance Company      Answer: \$ 42,803.36

United Health Care Services, Inc.      Answer: \$ 40,667.19

UMR, Inc.      Answer: \$ 485.37

Sierra Health and Life Insurance Company, Inc.      Answer: \$ 1,783.85

Health Plan of Nevada, Inc.      Answer: \$ 598.83

9. If you answered "Yes" to any part of Question 6 with respect to Ruby Crest Emergency Medicine, what amount of money do you find from a preponderance of the evidence should be awarded to Ruby Crest Emergency Medicine and against the following?

United Healthcare Insurance Company      Answer: \$ 32,972.03

United Health Care Services, Inc.      Answer: \$ 69,447.39

UMR, Inc.      Answer: \$ 7,911.57

Sierra Health and Life Insurance Company, Inc.      Answer: \$ 3,438.63

Health Plan of Nevada, Inc.      Answer: \$ 291.49





10. Did any of the defendants (shown in the left column) engage in unfair claims practices in connection with the payment of any of the plaintiffs' (shown in the top row) claims?

Answer "Yes" or "No" in each box.

	Fremont Emergency Services	Team Physicians	Ruby Crest Emergency Medicine
United Healthcare Insurance Company	Yes	Yes	Yes
United Health Care Services, Inc.	Yes	Yes	Yes
UMR, Inc.	Yes	Yes	Yes
Sierra Health and Life Insurance Company, Inc.	Yes	Yes	Yes
Health Plan of Nevada, Inc.	Yes	Yes	Yes

11. If you answered "Yes" to any part of Question 10 with respect to Fremont Emergency Services, what amount of money do you find from a preponderance of the evidence should be awarded to Fremont Emergency Services and against the following?

United Healthcare Insurance Company	Answer: \$ <u>478,686.26</u>
United Health Care Services, Inc.	Answer: \$ <u>771,406.35</u>
UMR, Inc.	Answer: \$ <u>168,949.51</u>
Sierra Health and Life Insurance Company, Inc.	Answer: \$ <u>1,007,374.49</u>
Health Plan of Nevada, Inc.	Answer: \$ <u>23,765.68</u>

12. If you answered "Yes" to any part of Question 10 with respect to Team Physicians, what amount of money do you find from a preponderance of the evidence should be awarded to Team Physicians and against the following?

United Healthcare Insurance Company      Answer: \$ 42,803.36

United Health Care Services, Inc.      Answer: \$ 40,607.19

UMR, Inc.      Answer: \$ 485.37

Sierra Health and Life Insurance  
Company, Inc.      Answer: \$ 1,783.85

Health Plan of Nevada, Inc.      Answer: \$ 598.83

13. If you answered "Yes" to any part of Question 10 with respect to Ruby Crest Emergency Medicine, what amount of money do you find from a preponderance of the evidence should be awarded to Ruby Crest Emergency Medicine and against the following?

United Healthcare Insurance Company      Answer: \$ 32,972.03

United Health Care Services, Inc.      Answer: \$ 69,447.39

UMR, Inc.      Answer: \$ 7,911.57

Sierra Health and Life Insurance  
Company, Inc.      Answer: \$ 3,438.63

Health Plan of Nevada, Inc.      Answer: \$ 281.49

14. Did any of the defendants (shown in the left column) fail to fully pay to any of the plaintiffs (shown in the top row), within 30 days of submission of the claim, claims that were approved and fully payable?

Answer "Yes" or "No" in each box.

	Fremont Emergency Services	Team Physicians	Ruby Crest Emergency Medicine
United Healthcare Insurance Company	Yes	Yes	Yes
United Health Care Services, Inc.	Yes	Yes	Yes
UMR, Inc.	Yes	Yes	Yes
Sierra Health and Life Insurance Company, Inc.	Yes	Yes	Yes
Health Plan of Nevada, Inc.	Yes	Yes	Yes

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15. If you answered "Yes" to any part of Question 1, answer the following question. Do you find by clear and convincing evidence that any of the defendants (shown in the left column) are guilty of oppression, fraud, or malice in any conduct that you found to constitute unjust enrichment and that caused damage to any plaintiff (shown in the top row), and do you find that you will assess punitive damages against the defendant?

Answer "Yes" or "No" in each box.

	Fremont Emergency Services	Team Physicians	Ruby Crest Emergency Medicine
United Healthcare Insurance Company	Yes	Yes	Yes
United Health Care Services, Inc.	Yes	Yes	Yes
UMR, Inc.	Yes	Yes	Yes
Sierra Health and Life Insurance Company, Inc.	Yes	Yes	Yes
Health Plan of Nevada, Inc.	Yes	Yes	Yes

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16. If you answered "Yes" to any part of Question 10, answer the following question. Do you find by clear and convincing evidence that any of the defendants (shown in the left column) are guilty of oppression, fraud, or malice in any conduct that you found to constitute unfair claims practices and that caused damage to any plaintiff (shown in the top row), and do you find that you will assess punitive damages against the defendant?

Answer "Yes" or "No" in each box.

	Fremont Emergency Services	Team Physicians	Ruby Crest Emergency Medicine
United Healthcare Insurance Company	yes	yes	yes
United Health Care Services, Inc.	yes	yes	yes
UMR, Inc.	yes	yes	yes
Sierra Health and Life Insurance Company, Inc.	yes	yes	yes
Health Plan of Nevada, Inc.	yes	yes	yes

Dated November 29 2021

Cindy Spangberg  
Jury Foreperson

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**FILED IN OPEN COURT**  
**STEVEN D. GRIERSON**  
**CLERK OF THE COURT**

NOV 29 2021

BY,   
ALICE JACOBSON, DEPUTY

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\* \* \* \*

**FREMONT EMERGENCY  
SERVICES (MANDAVIA)  
LTD, PLAINTIFF(S)  
VS.  
UNITED HEALTHCARE  
INSURANCE COMPANY,  
DEFENDANT(S)**

Case No.: A-19-792978-B

DEPARTMENT 27

A-19-792978-B  
VJRU  
Verdict Submitted to the Jury But Returne  
4975940



**VERDICT(S) SUBMITTED TO JURY BUT RETURNED UNSIGNED**

Attached hereto are the proposed verdict forms which were submitted to the jury in the  
above entitled action, but returned unsigned.

DATED: this 29th day of November, 2021.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By:   
Alice Jacobson, Deputy Clerk of the Court



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5 **DISTRICT COURT**

6 **CLARK COUNTY, NEVADA**

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

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

12 Plaintiffs,

**GENERAL DEFENSE VERDICT**

13 vs.

14 UNITED HEALTHCARE INSURANCE  
15 COMPANY, a Connecticut corporation; UNITED  
16 HEALTH CARE SERVICES INC., dba  
17 UNITEDHEALTHCARE, a Minnesota  
18 corporation; UMR, INC., dba UNITED  
MEDICAL RESOURCES, a Delaware  
corporation; SIERRA HEALTH AND LIFE  
INSURANCE COMPANY, INC., a Nevada  
corporation; HEALTH PLAN OF NEVADA,  
INC., a Nevada corporation,

19 Defendants.

20  
21 We, the jury in the above-entitled action, find for Defendants UnitedHealthcare Insurance  
22 Company, United HealthCare Services, Inc., UMR, Inc., Sierra Health and Life Insurance Co.,  
23 Inc., and Health Plan of Nevada, Inc.

24  
25 Dated this \_\_\_\_ day of \_\_\_\_\_, 2021.

26  
27 \_\_\_\_\_  
28 **FOREPERSON**

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*Steven D. Grierson*

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

**DEFENDANTS' PROPOSED SECOND  
PHASE JURY INSTRUCTIONS**



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

10 Defendants.

11 Defendants United Healthcare Insurance Company (“UHIC”), United Health Care  
 12 Services Inc. (“UHS”, which does business as UnitedHealthcare or “UHC” and through UHIC),  
 13 UMR, Inc. (“UMR”), Sierra Health and Life Insurance Company (“SHL”), and Health Plan of  
 14 Nevada, Inc. (“HPN”) (collectively, “Defendants”), by and through their attorneys of the law  
 15 firm of Weinberg Wheeler Hudgins Gunn & Dial, LLC and O’Melveny & Myers LLP, hereby  
 16 submit these Proposed Second Phase Jury Instructions. Defendants reserve the right to amend  
 17 their proposed jury instructions based on, among other things, the evidence admitted at the trial.

18 Dated this 5th day of December, 2021.

19 /s/ Colby L. Balkenbush

20 D. Lee Roberts, Jr., Esq.  
 21 Colby L. Balkenbush, Esq.  
 22 Brittany M. Llewellyn, Esq.  
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## INSTRUCTION NO. D1

There are no fixed standards for determining the amount of a punitive damage award; the amount, if any, is left to your sound discretion, to be exercised without passion or prejudice and in accordance with the following governing principles.

The amount of a punitive damage award is not to compensate the plaintiffs for harm suffered but what is reasonably necessary and fairly deserved (in light of the blameworthiness and harmfulness inherent in the defendant's conduct) to punish and deter the defendant and others from engaging in conduct such as that warranting punitive damages in this case. Your award cannot be more than otherwise warranted by the evidence in this case merely because of the wealth of the defendant. Your award cannot either punish the defendant for conduct injuring others who are not parties to this litigation.

In determining the amounts of your punitive damage awards, you should consider the following guideposts:

1. The degree of reprehensibility of the defendant's conduct, in light of (a) the culpability and blameworthiness of the defendant's fraudulent, oppressive and/or malicious misconduct under the circumstances of this case; (b) whether the conduct injuring plaintiffs that warrants punitive damages in this case was part of a pattern of similar conduct by the defendant; and (c) any mitigating conduct by the defendant, including any efforts to settle the dispute.

2. The ratio of your punitive damage award to the actual harm inflicted on the plaintiffs by the conduct warranting punitive damages in this case, since the measure of punishment must be both reasonable and proportionate to the amount of harm to the plaintiffs and to the compensatory damages recovered by the plaintiffs in this case.

3. How your punitive damages award compares to other civil or criminal penalties that could be imposed for comparable misconduct, since punitive damages are to provide a means by which the community can express its outrage or distaste



1 for the misconduct of a fraudulent, oppressive or malicious defendant and deter and  
2 warn others that such conduct will not be tolerated.

3  
4 **Source:** 12PD.2 – Punitive Damage: Amount (modified to remove affirmative  
5 defense of annihilation and financial condition, which Defendants are not asserting)  
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## INSTRUCTION NO. D2

There is no right to punitive damages. Accordingly, you need not award punitive damages even if you find that the standard for imposing punitive damages has been satisfied.

**Source:** *Smith v. Wade*, 461 U.S. 30, 52 (1983) (punitive damages “are never awarded as of right, no matter how egregious the defendant’s conduct. ‘If the plaintiff proves sufficiently serious misconduct on the defendant’s part, the question whether to award punitive damages is left to the jury, which may or may not make such an award.’”); *Smith Food & Drug Centers, Inc. v. Bellegarde*, 114 Nev. 602, 958 P.2d 1208 (1998).



## INSTRUCTION NO. D3

In determining the amount of punitive damages, if any, the most important factor to consider is the reprehensibility or blameworthiness of the defendant's conduct. In evaluating reprehensibility, you should consider whether

- The harm caused was purely economic in nature as opposed to physical injury,
- The harm did or did not affect the safety of a product or service,
- The tortious conduct did or did not evince a reckless disregard for the health or physical safety of others, and
- The target of the conduct was or was not financially vulnerable.

**Source:** *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003); *BMW of North America v. Gore*, 517 U.S. 599, 576, 577-80 (1996) ("In this case, none of the aggravating factors associated with particularly reprehensible conduct is present. The harm BMW inflicted on Dr. Gore was purely economic in nature. The presale refinishing of the car had no effect on its performance or safety features, or even its appearance for at least nine months after his purchase. BMW's conduct evinced no indifference to or reckless disregard for the health and safety of others. To be sure, infliction of economic injury, especially when done intentionally through affirmative acts of misconduct . . . or when the target is financially vulnerable, can warrant a substantial penalty. But this observation does not convert all acts that cause economic harm into torts that are sufficiently reprehensible to justify a significant sanction in addition to compensatory damages.").





## INSTRUCTION NO. D4

Any individuals other than the plaintiff who might claim to have been harmed by the defendant have the right to bring their own lawsuit seeking compensatory and punitive damages for the wrong, if any done to them. Therefore, in determining the amount of punitive damages, if any, that is necessary for punishment and deterrence, you may consider only the wrong done to the plaintiffs in this case. You may not award any punitive damages for the purpose of punishing or deterring defendant's conduct toward anyone else or any conduct outside the State of Nevada.

**Source:** *Philip Morris USA v. Williams*, 549 U.S. 346, 354 (2007) (“the Due Process Clause forbids a state to use a punitive damage award to punish a defendant for injury that it inflicts upon non parties or those whom they directly represent i.e. injury that it inflicts upon those who are essentially, strangers to the litigation”); *State Farm Ins. Co. v. Campbell*, 538 U.S. 408, 426 (2003) (“Due process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties’ hypothetical claims against a defendant under the guise of the reprehensibility analysis.... Punishment on these bases creates the possibility of multiple punitive damages awards for the same conduct; for in the usual case nonparties are not bound by the judgment some other plaintiff obtains.”); *id.* at 421-22 (2003) (“Nor, as a general rule, does a State have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State’s jurisdiction” \* \* \* out of state conduct “must have a nexus to the specific harm suffered by the plaintiff”).



## INSTRUCTION No. D5

A defendant's dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages. A defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business.

**Source:**     *State Farm Mut. Auto. Ins. Co. v. Campbell*, 123 S.Ct. 1513, 1523 (2003).



## JURY INSTRUCTION NO. D6

Your award of punitive damages must be based solely on the conduct that by clear and convincing evidence was shown to constitute fraud, oppression, or malice. You must not award any punitive damages on the basis of any claim for which a defendant had an arguable reason to reimburse the plaintiff's claim at less than the plaintiff's full billed charges.

**Source:** 14A STEVEN PLITT ET AL., COUCH ON INSURANCE § 207:73 (3d ed. June 2021 update) ("In most instances, unless the insured would be entitled to a directed verdict on the underlying insurance claim, an arguable reason to deny the claim exists, precluding the imposition of punitive damages."); *Pioneer Chlor Alkali Co. v. Nat'l Union Fire Ins. Co.*, 863 F. Supp. 1237, 1250–51 (D. Nev. 1994) (acknowledging "difficulty constructing a factual situation where an insurer who violated [NRS 686A.310] could have done so with an oppressive or malicious intent yet not denied, or refused to pay, the claim").



## JURY INSTRUCTION NO. D7

A defendant's conduct in litigation before trial may not be used to impose punitive damages.

During the first phase of trial, I stated that before this trial, defendants had willfully failed to comply with certain orders requiring responses to discovery, and I instructed you to apply a rebuttable presumption against defendants. This instruction applied only to the question of establishing defendants' liability for compensatory damages.

In this second phase of trial, as you consider the amount of punitive damages to award, I now instruct you to disregard the prior instruction regarding defendants' pretrial litigation conduct and *not* to apply any presumption against defendants.

**Source:** *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 259 n.1, 235 P.3d 592, 603 n.1 (2010) (Pickering, J., dissenting) (explaining that the district court's discovery sanction extended only to striking Goodyear's answer as to liability; Goodyear was allowed to defend on punitive damages without the presumption of liability: "Goodyear avoided punitive damages in this case by arguing that a road hazard, rather than design or manufacturing defect, caused the tire failure from which this accident resulted."); *see also* Nev. J.I. 2.5 (2018); NRS 47.250(3); *Bass-Davis v. Davis*, 122 Nev. 442, 448, 134 P.3d 103, 106-07 (2006); *Bosack v. Soward*, 586 F.3d 1096, 1105 (9th Cir. 2009) ("Absent an abuse of process or malicious prosecution, 'a defendants trial tactics and litigation conduct may not be used to impose punitive damages in a tort action.'" (quoting *De Anza Santa Cruz Mobile Estates Homeowners Assn. v. De Anza Santa Cruz Mobile Estates*, 114 Cal. Rptr. 2d 708, 730 (App. Ct. 2001))); *Palmer v. Ted Stevens Honda, Inc.*, 238 Cal. Rptr. 363, 369 (App. Ct. 1987) ("Not only was admission of this evidence of defendant's litigation conduct . . . error, we conclude it undermines the integrity of the punitive damage award" because it "inflamed the





jury so as to disregard the court's admonitions about its limited purpose"); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 422-23 (2003) (restricting punitive damages to punish the defendant for "the acts upon which liability was premised," not independent or subsequent misconduct); *Simmons v. Southern Pac. Transportation Co.*, 133 Cal. Rptr. 42, 58 (Cal. App. 1976) (citing *Noe v. Kaiser Foundation Hospitals*, 435 P.2d 306 (Cal. 1967)) (refusing to allow punitive damages based upon railroad's willful destruction of evidence because "[e]ven assuming that the railroad engaged in file-stripping, evidence suppression, and willful refusal to file accident reports, these matters occurred long after the accident and could not have had any bearing on the accident itself"; thus, "[i]nconsistencies, evasions and untruths made subsequent to the occasion have been considered by this court to be only evidence of an attempt to avoid responsibility for past actions rather than evidence of previous disregard for consequences"); *Brito v. Gomez Law Group, LLC*, 658 S.E. 2d 178, 184-85 (Ga. App. 2008) (no authority supports punitive damages "as a sanction for spoliation of evidence, and the record contains no evidence of intentional actions by [defendant] going beyond mere spoliation"); *Schenk v. HNA Holdings, Inc.*, 613 S.E.2d 503, 24 A.L.R.6th 919 (N.C. App. 2005) (that engineer directed asbestos specialist to destroy memorandum and provide only verbal reports of asbestos removal was insufficient to establish that corporate owner's officer, director, or manager participated in willful or wanton conduct that resulted in third-party maintenance workers' asbestos-related injuries; no evidence that destruction of memorandum resulted in workers' injuries); *cf. also Reeves v. Alyeska Pipeline Service Co.*, 56 P.3d 660 (Alaska 2002) (destruction of evidence was not presented to the jury as separate tort theory, "and it would be improper to speculate that the jury found that these torts were established, much less that they warranted an award of punitive damages").

## JURY INSTRUCTION No. D8

In determining whether any punitive damages are necessary to deter defendants against future misconduct in setting reimbursement rates for emergency medical services, you must consider that effective January 1, 2020, the Nevada Legislature has by law enacted a process for resolving those claims. So for claims after January 1, 2020, all claims for out-of-network emergency services are reimbursed pursuant to a statutory rate or arbitration process.

**Source:** NRS 439B.160; NRS 439B.751(2); NRS 439.754; *see also* H.R. 133, § 103 (effective January 1, 2022)



1 [NOTE: Defendants object to the introduction of its financial condition at trial.]

2 INSTRUCTION NO. D9

3 The wealth of a defendant does not diminish its entitlement to all the  
4 protections of the law on which you have been instructed. A defendant's financial  
5 resources do not justify a large punishment, or even any punishment. Moreover, you  
6 may not punish a defendant simply on the basis of its size.

7  
8 **Source:** Nev. Civ. J.I. 12 PD.2 (modified) ("Your award cannot be more  
9 than otherwise warranted by the evidence in this case merely because of the wealth  
10 of the defendant."); *State Farm Ins. Co. v. Campbell*, 123 S. Ct. 1513, 1525 (2003)  
11 (the wealth of the defendant cannot justify an otherwise unconstitutional punitive  
12 damages award); *BMW of N. Am. v. Gore*, 517 U.S. 559, 585 (1996) ("the fact that  
13 BMW is a large corporation rather than an impecunious individual does not diminish  
14 its entitlement to fair notice of the demands that the several states impose on the  
15 conduct of its business"); *see also Bongiovi v. Sullivan*, 122 Nev. 556, 582-83, 138  
16 P.3d 433, 452 (2006) (adopting federal guideposts set forth in *State Farm* and *BMW*  
17 *of N. Am.*).



**CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of December, 2021, a true and correct copy of the foregoing **DEFENDANTS' PROPOSED SECOND PHASE JURY INSTRUCTIONS** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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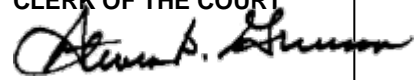
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/s/ Colby L. Balkenbush

An employee of WEINBERG, WHEELER, HUDGINS  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

**PLAINTIFFS' PROPOSED  
SECOND PHASE JURY  
INSTRUCTIONS AND VERDICT  
FORM**

012064

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PHONE 702.873.4100 • FAX 702.873.9966

1 Plaintiffs submit the attached proposed second phase jury instructions and  
 2 verdict form. Plaintiffs reserve the right to amend or supplement their proposed jury  
 3 instructions and verdict form based on, among other things, the evidence admitted at  
 4 the trial and the instructions proposed by Defendants.

5  
 6 DATED this 6th day of December, 2021.

7 /s/ Jane L. Robinson

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23 1221 McKinney Street, Suite 2500

24 Houston, Texas 77010

25 *Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6th day of December, 2021, I caused a true and correct copy of the foregoing **PLAINTIFFS' PROPOSED SECOND PHASE JURY INSTRUCTIONS AND VERDICT FORM** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

<p>D. Lee Roberts, Jr., Esq. Colby L. Balkenbush, Esq. Brittany M. Llewellyn, Esq. Phillip N. Smith, Jr., Esq. Marjan Hajimirzaee, Esq. WEINBERG, WHEELER, HUDGINS, GUNN &amp; DIAL, LLC 6385 South Rainbow Blvd., Suite 400 Las Vegas, Nevada 89118 lroberts@wwhgd.com cbalkenbush@wwhgd.com bllewellyn@wwhgd.com psmithjr@wwhgd.com mhajimirzaee@wwhgd.com</p> <p>Dimitri Portnoi, Esq. (admitted <i>pro hac vice</i>) Jason A. Orr, Esq. (admitted <i>pro hac vice</i>) Adam G. Levine, Esq. (admitted <i>pro hac vice</i>) Hannah Dunham, Esq. (admitted <i>pro hac vice</i>) Nadia L. Farjood, Esq. (admitted <i>pro hac vice</i>) O'MELVENY &amp; MYERS LLP 400 South Hope Street, 18<sup>th</sup> Floor Los Angeles, CA 90071-2899 dportnoi@omm.com jorr@omm.com alevine@omm.com hdunham@omm.com nfarjood@omm.com</p> <p>K. Lee Blalack, II, Esq. (admitted <i>pro hac vice</i>) Jeffrey E. Gordon, Esq. (admitted <i>pro hac vice</i>) Kevin D. Feder, Esq. (admitted <i>pro hac vice</i>) Jason Yan, Esq. (<i>pro hac vice</i> pending) O'Melveny &amp; Myers LLP 1625 I Street, N.W. Washington, D.C. 20006 Telephone: (202) 383-5374 lblalack@omm.com jgordon@omm.com kfeder@omm.com</p> <p><i>Attorneys for Defendants</i></p>	<p>Paul J. Wooten, Esq. (admitted <i>pro hac vice</i>) Amanda Genovese, Esq. (admitted <i>pro hac vice</i>) Philip E. Legendy, Esq. (admitted <i>pro hac vice</i>) O'Melveny &amp; Myers LLP Times Square Tower, Seven Times Square, New York, New York 10036 pwooten@omm.com agenovese@omm.com plegendy@omm.com</p> <p>Daniel F. Polsenberg, Esq. Joel D. Henriod, Esq. Abraham G. Smith, Esq. LEWIS ROCA ROTHGERBER CHRISTIE LLP 3993 Howard Hughes Parkway, Suite 600 Las Vegas, Nevada 89169 dpolsenberg@lewisroca.com jhenriod@lewisroca.com asmith@lewisroca.com</p> <p><i>Attorneys for Defendants</i></p> <p>Judge David Wall, Special Master Attention: Mara Satterthwaite &amp; Michelle Samaniego JAMS 3800 Howard Hughes Parkway, 11th Floor Las Vegas, NV 89123 msatterthwaite@jamsadr.com msamaniego@jamsadr.com</p>
--	--

/s/ Jane L. Robinson

1 **INST**

2  
3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

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

10 Plaintiffs,

11 vs.

12 UNITED HEALTHCARE INSURANCE  
13 COMPANY, a Connecticut corporation;  
14 UNITED HEALTH CARE SERVICES INC.,  
15 dba UNITEDHEALTHCARE, a Minnesota  
16 corporation; UMR, INC., dba UNITED  
MEDICAL RESOURCES, a Delaware  
corporation; SIERRA HEALTH AND LIFE  
INSURANCE COMPANY, INC., a Nevada  
corporation; HEALTH PLAN OF NEVADA,  
INC., a Nevada corporation,

17 Defendants.

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

**JURY INSTRUCTIONS**

012067

012067

## JURY INSTRUCTION NO. 43

The law provides no fixed standards as to the amount of punitive damages, but leaves the amount to the jury's sound discretion, exercised without passion or prejudice.

In arriving at any award of punitive damages, you are to consider the following:

1. The reprehensibility of the conduct of the defendant;
2. The amount of punitive damages which will serve the purposes of punishment and deterrence, taking into account the defendant's financial condition.

NEV. J.I. 12.1 (2018) (second part, edited to remove the word "such" before "punitive damages").

## JURY INSTRUCTION NO. 44

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.

NEV. J.I. 1.16 (2018).

Dated \_\_ December, 2021

GIVEN: \_\_\_\_\_

DISTRICT COURT JUDGE



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: XXVII

012070

012070

**Special Verdict Form**

We, the jury in the above-entitled action, answer the questions submitted to us as follows:

1. The amount of money that should be awarded to Fremont Emergency Services against the following defendants for punitive damages is:

United Healthcare Insurance Company Answer: \$\_\_\_\_\_

United Health Care Services, Inc. Answer: \$\_\_\_\_\_

UMR, Inc. Answer: \$\_\_\_\_\_

Sierra Health and Life Insurance Company, Inc. Answer: \$\_\_\_\_\_

Health Plan of Nevada, Inc. Answer: \$\_\_\_\_\_

2. The amount of money that should be awarded to Team Physicians against the following defendants for punitive damages is:

United Healthcare Insurance Company Answer: \$\_\_\_\_\_

United Health Care Services, Inc. Answer: \$\_\_\_\_\_

UMR, Inc. Answer: \$\_\_\_\_\_

Sierra Health and Life Insurance Company, Inc. Answer: \$\_\_\_\_\_

Health Plan of Nevada, Inc. Answer: \$\_\_\_\_\_

3. The amount of money that should be awarded to Ruby Crest Emergency Medicine against the following defendants for punitive damages is:

United Healthcare Insurance Company Answer: \$\_\_\_\_\_

United Health Care Services, Inc. Answer: \$\_\_\_\_\_

UMR, Inc. Answer: \$\_\_\_\_\_

Sierra Health and Life Insurance Company, Inc. Answer: \$\_\_\_\_\_

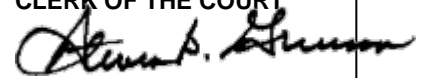
Health Plan of Nevada, Inc. Answer: \$\_\_\_\_\_

Dated: December \_\_\_\_, 2021

\_\_\_\_\_  
Jury Foreperson

261

261



**Jl**  
Pat Lundvall (NSBN 3761)  
Kristen T. Gallagher (NSBN 9561)  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

**PLAINTIFFS' SUPPLEMENT TO  
PROPOSED SECOND PHASE  
JURY INSTRUCTIONS**

012072

McDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102  
PHONE 702.873.4100 • FAX 702.873.9966

Pursuant to the Court's ruling at the Monday, December 6, 2021 hearing, Plaintiffs submit the attached supplemental proposed second phase jury instruction. Plaintiffs reserve the right to amend or supplement their proposed jury instructions based on, among other things, the evidence admitted at the trial and the instructions proposed by Defendants.

DATED this 6th day of December, 2021.

/s/ Jane L. Robinson

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Kristen T. Gallagher, Esq.

Amanda M. Perach, Esq.

McDonald Carano LLP

2300 West Sahara Avenue, Suite 1200

Las Vegas, Nevada 89102

Joseph Y. Ahmad (Admitted *pro hac vice*)

John Zavitsanos (Admitted *pro hac vice*)

Jason S. McManis (Admitted *pro hac vice*)

Michael Killingsworth (Admitted *pro hac vice*)

Louis Liao (Admitted *pro hac vice*)

Jane L. Robinson (Admitted *pro hac vice*)

Patrick K. Leyendecker (Admitted *pro hac vice*)

Ahmad, Zavitsanos, Anaipakos,

Alavi & Mensing, P.C.

1221 McKinney Street, Suite 2500

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*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6th day of December, 2021, I caused a true and correct copy of the foregoing **PLAINTIFFS' SUPPLEMENTAL PROPOSED SECOND PHASE JURY INSTRUCTION** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

<p>D. Lee Roberts, Jr., Esq. Colby L. Balkenbush, Esq. Brittany M. Llewellyn, Esq. Phillip N. Smith, Jr., Esq. Marjan Hajimirzaee, Esq. WEINBERG, WHEELER, HUDGINS, GUNN &amp; DIAL, LLC 6385 South Rainbow Blvd., Suite 400 Las Vegas, Nevada 89118 lroberts@wwhgd.com cbalkenbush@wwhgd.com bllewellyn@wwhgd.com psmithjr@wwhgd.com mhajimirzaee@wwhgd.com</p> <p>Dimitri Portnoi, Esq. (admitted <i>pro hac vice</i>) Jason A. Orr, Esq. (admitted <i>pro hac vice</i>) Adam G. Levine, Esq. (admitted <i>pro hac vice</i>) Hannah Dunham, Esq. (admitted <i>pro hac vice</i>) Nadia L. Farjood, Esq. (admitted <i>pro hac vice</i>) O'MELVENY &amp; MYERS LLP 400 South Hope Street, 18<sup>th</sup> Floor Los Angeles, CA 90071-2899 dportnoi@omm.com jorr@omm.com alevine@omm.com hdunham@omm.com nfarjood@omm.com</p> <p>K. Lee Blalack, II, Esq. (admitted <i>pro hac vice</i>) Jeffrey E. Gordon, Esq. (admitted <i>pro hac vice</i>) Kevin D. Feder, Esq. (admitted <i>pro hac vice</i>) Jason Yan, Esq. (<i>pro hac vice</i> pending) O'Melveny &amp; Myers LLP 1625 I Street, N.W. Washington, D.C. 20006 Telephone: (202) 383-5374 lblalack@omm.com jgordon@omm.com kfeder@omm.com</p> <p><i>Attorneys for Defendants</i></p>	<p>Paul J. Wooten, Esq. (admitted <i>pro hac vice</i>) Amanda Genovese, Esq. (admitted <i>pro hac vice</i>) Philip E. Legendy, Esq. (admitted <i>pro hac vice</i>) O'Melveny &amp; Myers LLP Times Square Tower, Seven Times Square, New York, New York 10036 pwooten@omm.com agenovese@omm.com plegendy@omm.com</p> <p>Daniel F. Polsenberg, Esq. Joel D. Henriod, Esq. Abraham G. Smith, Esq. LEWIS ROCA ROTHGERBER CHRISTIE LLP 3993 Howard Hughes Parkway, Suite 600 Las Vegas, Nevada 89169 dpolsenberg@lewisroca.com jhenriod@lewisroca.com asmith@lewisroca.com</p> <p><i>Attorneys for Defendants</i></p> <p>Judge David Wall, Special Master Attention: Mara Satterthwaite &amp; Michelle Samaniego JAMS 3800 Howard Hughes Parkway, 11th Floor Las Vegas, NV 89123 msatterthwaite@jamsadr.com msamaniego@jamsadr.com</p>
--	--

/s/ Jane L. Robinson

1 **INST**

2  
3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

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

10 Plaintiffs,

11 vs.

12 UNITED HEALTHCARE INSURANCE  
13 COMPANY, a Connecticut corporation;  
14 UNITED HEALTH CARE SERVICES INC.,  
15 dba UNITEDHEALTHCARE, a Minnesota  
16 corporation; UMR, INC., dba UNITED  
MEDICAL RESOURCES, a Delaware  
corporation; SIERRA HEALTH AND LIFE  
INSURANCE COMPANY, INC., a Nevada  
corporation; HEALTH PLAN OF NEVADA,  
INC., a Nevada corporation,

17 Defendants.

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

**SUPPLEMENTAL PHASE TWO  
JURY INSTRUCTION**

012075

012075

## JURY INSTRUCTION NO. 45

You may not award punitive damages to punish Defendants' conduct in litigation. However, you may continue to presume that relevant evidence that was not produced is adverse to the Defendants.



Dated \_\_ December, 2021

GIVEN: \_\_\_\_\_

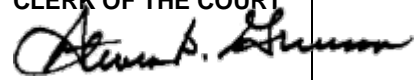
DISTRICT COURT JUDGE

012077

012077

262

262



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  
MONDAY, DECEMBER 6, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 21

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.  
JUSTIN C. FINEBERG, ESQ.  
LOUIS LIAO, ESQ.  
JANE ROBINSON, ESQ.

For the Defendants:

D. LEE ROBERTS, JR., ESQ.  
K. LEE BLALACK, ESQ.  
DANIEL F. POLSENBERG, ESQ.  
DIMITRI D. PORTNOI, ESQ.  
ABRAHAM G. SMITH, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

1 Las Vegas, Nevada, Monday, December 6, 2021

2  
3 [Case called at 1:29 p.m.]

4 THE COURT: Please be seated.

5 UNIDENTIFIED SPEAKER: Good afternoon, Your Honor.

6 THE COURT: Let's call the case of Fremont Emergency v.  
7 UnitedHealthcare. Appearances starting first with the Plaintiff.

8 MS. LUNDVALL: Good morning -- or good afternoon ,Your  
9 Honor. Pat Lundvall for McDonald Carano here on behalf of Plaintiff.

10 MR. ZAVITSANOS: John Zavitsanos on behalf of the  
11 Plaintiffs.

12 MR. AHMAD: Joe Ahmad also on behalf of the Plaintiffs,  
13 Your Honor.

14 MS. ROBINSON: Jane Robinson on behalf of the Plaintiffs,  
15 Your Honor.

16 MR. LEYENDECKER: Kevin Leyendecker on behalf of the  
17 Plaintiffs, Your Honor.

18 MR. MCMANIS: Jason McManis for the Plaintiffs, Your  
19 Honor.

20 MR. KILLINGSWORTH: Michael Killingsworth for the  
21 Plaintiffs, Your Honor.

22 MR. LIAO: Louis Liao for the Plaintiffs, Your Honor.

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

24 MR. BLALACK: Good afternoon ,Your Honor. Lee Blalack on  
25 behalf of the Defendants.

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

2 MR. BLALACK: Mr. Roberts should be here shortly, Your  
3 Honor.

4 THE COURT: Very good. Any other appearances to make for  
5 the record?

6 MR. BLALACK: No, Your Honor. I think we're ready to  
7 proceed.

8 THE COURT: Or any others on the phone?

9 MR. BLALACK: On the phone, there may be.

10 THE COURT: Do we have any Defense lawyers on the  
11 phone?

12 MR. POLSEBERG: Good afternoon, Your Honor. Dan  
13 Polsenberg.

14 THE COURT: All right. Thank you.

15 All right. So I have some competing jury instructions, and  
16 then a special verdict form. Let me start with Plaintiffs.

17 MS. ROBINSON: Yes, Your Honor. So our jury instructions  
18 were pretty brief. We submitted the second portion of the 2018  
19 instruction as we had previewed during settling instructions during the  
20 first phase. I think the only part that I took out was the word "such"  
21 before punitive damages because that refers to punitive damages above.  
22 It didn't really make sense.

23 And then the second instruction -- I don't know how Your  
24 Honor usually proceeds with this, but I just put in the standard  
25 instruction regarding argument since it would be followed by arguments

1 regarding phase two.

2 And then as far as the verdict form, as you see, we proposed  
3 a finding for every Plaintiff with respect to every Defendant that matches  
4 the findings that the jury has already filled out in phase one.

5 THE COURT: Okay. Thank you. So let me hear from the  
6 Defense in response.

7 MR. PORTNOI: So Your Honor, with respect to the verdict  
8 form, the Defendants are fine with Plaintiffs' verdict form as it stands;  
9 that's okay. We have a competing packet of instructions for punitive  
10 damages as well. I think our first instruction was really compete directly  
11 with the Plaintiffs' first instruction. It is actually the -- largely the 2011  
12 model.

13 THE COURT: Let me cut you off here.

14 MR. PORTNOI: Go ahead.

15 THE COURT: I see that there -- did I hear you correctly?  
16 There was no objection to the Plaintiffs' special verdict form as  
17 prepared?

18 MR. PORTNOI: That's correct.

19 THE COURT: All right. Then the Court will adopt that. Now,  
20 let's go over to any objection you have or alternate instructions that you  
21 wish to be -- to have given.

22 MR. PORTNOI: Yes. So we object to the Plaintiffs'  
23 instruction that has an alternative instruction, which was labeled D1,  
24 which is the 20 -- a modified version of the 2011 instruction. I think it's  
25 been quite a while now since the jury has been instructed. The 2011

1 instruction actually provides a lot of additional guidance to the jury to  
2 figure out how to engage in this task at a level set -- as to punitive  
3 damages and help them get there, help them understand, you know, a  
4 little bit of beyond just the word from reprehensibility. What are we  
5 talking about when you say reprehensibility in terms of the 2011 model?  
6 It actually gets into what is the -- you know, thinking about culpability  
7 and claim worthiness.

8           Also, thinking about, you know, how this all relates in when  
9 we're talking about punishment and deterrence. It's a far little bit more  
10 thorough instruction. Obviously, you know, the courts are all welcome  
11 to use any of the prior Pattern Instructions, and I don't think that in 2018  
12 there was any judgment that the law had changed. So we do -- we  
13 would submit the 2011 instruction -- or really our modified version of  
14 2011 instruction labeled D1 here.

15           THE COURT: So I'm going to slow you down just a little.

16           MR. PORTNOI: Sure, Your Honor.

17           THE COURT: Do you object to the Plaintiff's proposed 43,  
18 and are you adding this as an alternative or in addition?

19           MR. PORTNOI: We object to it, and we're adding it as an  
20 alternative.

21           THE COURT: Okay. And now, go ahead and present your  
22 argument, please.

23           MR. PORTNOI: Well, as noted, the 2011 model instruction  
24 provides the jury actual, you know, real guidance in terms of how to  
25 engage in the exercise for setting punitive damages. The 2018, which I

1 believe is what Plaintiffs had submitted, doesn't really -- it doesn't define  
2 the representability, which is really one of the large factors that we're  
3 dealing with here. And so our proposed instruction, which is mostly just  
4 the 2011 instruction talks about what is reprehensibility. It states that the  
5 jury should be considering the culpability and the blameworthiness of  
6 the conduct that was determined to be fraudulent, oppressive, or  
7 malicious. We talked about whether that conduct actually -- you know,  
8 what level of injury was put on as a result.

9           And in addition, it speaks to other -- you know, other issues  
10 when it comes to deterrence and when it comes to the punishment that  
11 the jury has to be thinking about when engaged in this exercise,  
12 especially given the gap of time we've had since the jury was instructed  
13 on punitive damages. We believe that a very short -- you know, an eight-  
14 line instruction that it be [indiscernible]. This doesn't give the jury  
15 enough instruction to make a meaningful exercise in setting punitive  
16 damages.

17           THE COURT: Thank you. And in response, please?

18           MR. KILLINGSWORTH: Yes, Your Honor. In response, I want  
19 to start off with the fact -- and I think Mr. Portnoi addressed this a little  
20 bit. But I want to start with the fact that the operative Pattern Jury  
21 Instructions from 2018 is what was provided in our instructions. And  
22 what the Defense is bringing forward is from the 2011 Pattern Jury  
23 Instructions.

24           And I just want to take one section from the introduction to  
25 the 2018 Pattern Jury Instructions from the State Bar of Nevada, which



1 specifically stated that the group that has put -- that was formed and put  
2 together the Pattern Jury Instructions that provided its first Pattern Jury  
3 Instructions 2011 is put together through a collaborative effort by  
4 lawyers, judges, and lawsuits, and laypeople to update the jury  
5 instructions. And so the 2018 is the up to date jury instructions. And so  
6 our viewpoint is that that's the operative jury instruction that the Court  
7 should use.

8           And I just want to talk about what the genesis of the 2011  
9 jury instructions was and why the 2018 is more proper for the jury. And  
10 the 2011 Pattern Jury Instruction originates from the Supreme Court  
11 case -- and I'm going to butcher how it's pronounced, but -- *Bongiovi v.*  
12 *Sullivan*. That's 122 Nev 556. And what the Supreme Court was doing  
13 there was adopting the standard that the Court is to review the punitive  
14 award by the jury.

15           And in that case, the Supreme Court adopted the 14th  
16 Amendment three factors, which are the three factors in the jury  
17 instruction, that the Court is to analyze of whether the award by the jury  
18 was abusive or basically unnecessary -- as unnecessarily large. And so  
19 those factors is a pure question of law for the Court to analyze after the  
20 jury has already brought forward a punitive number. And specifically  
21 because it was adopting the federal 14th Amendment guidance, the  
22 District Court of Nevada in *Andrews v. Raphaelson* which is 2013  
23 Westlaw 308958. Specifically -- and, Your Honor, may I approach with  
24 the case? I provided a copy to opposing counsel?

25           THE COURT: I think my law clerk's already picked it up. I've

1 already read it.

2 MR. KILLINGSWORTH: Okay. And specifically in that case,  
3 the District Court stated that in reviewing an award of punitive damages,  
4 the role of the district court is to determine whether the jury's verdict is  
5 within the confines set by state law and determined by reference of  
6 federal standards. And so that's referring to the same 14th Amendment  
7 standard, and that is the purview of the District Court to be using those  
8 factors to analyze the jury's punitive award.

9 And so from that standpoint, the State Bar found it necessary  
10 to change the Pattern Jury Instruction because those -- the factors put  
11 forth in the 2011 -- and which is the standard for the 14th Amendment  
12 are very -- are questions of law.

13 And the last point I'd like to make is just the factors that the  
14 Defense had put forward -- and this is one of the reasons it is for the  
15 Court to decide. One of the factors is how the punitive damages award  
16 compares to other civil and criminal penalties, and that's in the third  
17 prong. And in the first prong, 1(b), it's whether the conduct -- whether  
18 the pattern is a similar conduct by the defendant. So what those two  
19 factors actually would include would be introducing other civil or  
20 criminal penalties that have been lodged against United, including such  
21 things as Ingenix, and that that evidence would be necessary to put forth  
22 to the jury to consider under those factors.

23 And, I mean, we think that the 2018 is the proper instruction.  
24 But if the 2011 was to go before the jury, those are -- that's evidence or  
25 facts that we had before the jury to properly evaluate under that

1 standard. And that's one of the reasons it is more proper for the Court,  
2 is because the Court is to consider those criminal/civil penalties and do  
3 that analysis as, you know, *Andrews* and -- *Bongiovi* Court had  
4 considered. And so for those reasons, we put forward the 2018 Pattern  
5 Jury Instructions are the proper instructions to submit to the jury.

6 THE COURT: All right. So I'm going to overrule the  
7 Defendants' objection to 43 and sustain the Plaintiffs' objection to D1 for  
8 the reason that I find there were sufficient grounds to update in 2018. It's  
9 more appropriate than the 2011. And I open the floor to the Defendant,  
10 please, to make your record.

11 MR. SMITH: Thank you, Your Honor. And I apologize  
12 profusely for forgetting my jacket in the car.

13 THE COURT: There is just no reason for that.

14 MR. SMITH: All right. Thank you, Your Honor.

15 And I also apologize for putting Mr. Portnoi on the spot. But  
16 let me just make a quick record on 2018.

17 THE COURT: Of course. Please.

18 MR. SMITH: As you may know, my partner, Joel Henriod, he  
19 resigned from the 2018 committee after it became apparent that they  
20 were not taking any of the suggestions to make it a more people process  
21 between plaintiffs and defendants. The 2018 version sort of steered of  
22 course, so he resigned from that committee. The Plaintiff -- it's curious  
23 that our friends bring up the *Bongiovi v. Sullivan* case as the impetus  
24 supposedly for the 2018 amendments. Although that case was decided  
25 in 2006 before the 2011 amendments. I think that was actually the

1 impetus for the 2011 instruction.

2 Yet the 2018 -- the Pattern Instruction does not mention the  
3 factors in *Bongiovi v. Sullivan*. It just has the idea of reprehensibility and  
4 then the amount serving the purposes of punishment in the terms which  
5 are not the *BMW v. Gore* factors. They're not the factors that were  
6 adopted in *Bongiovi v. Sullivan*. So what we hear is an argument  
7 essentially to, I agree that those factors are a matter for the Court to  
8 evaluate the consistency of and award punitive damages with the due  
9 process clause of the 14th Amendment. And that is an inquiry that the  
10 Court needs to undertake once there is a jury -- an award.

11 But then the question is do we not tell the jury how to  
12 properly set the award in the first place? It's not like the jury should be  
13 left standardless when they make their award when we already have the  
14 guidance from *Bongiovi v. Sullivan* and *BMW v. Gore* to allow them to  
15 make that correct assessment in the first place.

16 So I think that the 2011 version is far more comprehensive  
17 and accurate in terms of how it encapsulates the test that's applicable in  
18 Nevada, which happens to be the federal case now. And, of course, we  
19 have, you know, the additional instruction that we believe should be  
20 given. I'll just rest on that in terms of the 2018 versus the 2011. Thank  
21 you, Your Honor.

22 THE COURT: Thank you.

23 All right. And then was there an objection to the last  
24 instruction 44?

25 MR. PORTNOI: Is it about charging the jury with respect to

1 oral argument?

2 MS. ROBINSON: Argument.

3 MR. PORTNOI: I'm sorry. Argument. No objection.

4 THE COURT: Okay. So let's go then to the next proposed  
5 Defendants.

6 MS. ROBINSON: Would you like to hear our objection first or  
7 from the Defendants' first?

8 THE COURT: No, let them frame the issue.

9 MS. ROBINSON: Understood.

10 THE COURT: I'll give you a chance to respond. The record's  
11 always more complete when you get all three sides.

12 MS. ROBINSON: Makes sense. Thank you, Your Honor.

13 MR. SMITH: Thank you, Your Honor. This is just a  
14 straightforward adoption from the United States Supreme Court case,  
15 which again proves *Bongiovi v. Sullivan* is applicable in Nevada. It's  
16 important that the jury distinguish between their finding that yes, the  
17 standard has been met for punitive damages, but that doesn't tie them to  
18 award any particular amount of punitive damages, and they're not  
19 required to award any amount, much less a significant amount simply  
20 because they may be applicable finding in the first place.

21 THE COURT: Thank you. Any objection, please?

22 MR. MCMANIS: Yes, Your Honor. So we object to this  
23 instruction for a couple of reasons. The first one being that giving this  
24 instruction would be somewhat inconsistent with the jury's verdict that's  
25 already been rendered.

1 THE COURT: And would that be paragraph 15?

2 MR. MCMANIS: Yes, it would, Your Honor. If you recall, at  
3 Defendants' insistence, there was a second part of that question, which  
4 is do you find that you will assess punitive damages. So I think that  
5 question has already been answered, and kind of instructing on that now  
6 would be confusing and then potentially contradictory to what's already  
7 been rendered. So that's the first reason. I also think it is unnecessary at  
8 this point because it presumes that the standard hasn't been satisfied.  
9 The standard has been satisfied. We already have a verdict on that, and  
10 there's no reason to ask that again.

11 And then as to the point on whether or not it's tied to a  
12 specific amount, I don't think this instruction is necessary for that.  
13 Instruction 43, that Your Honor ruled will be given from the Plaintiffs'  
14 proposed instructions, does state that there are no fixed standards as to  
15 the amount of punitive damages. So that leaves open argument from  
16 either side as to what that amount should or should not be. So I don't  
17 think the instruction is necessary. In addition to those reasons why I  
18 think it would be incorrect to give them that.

19 THE COURT: And then reply, please.

20 MR. SMITH: I hear counsel's point that, you know, the jury  
21 has already decided that the standards have been met, so I'd be happy to  
22 make that change. Even did you find, to say that even though you found  
23 that the standard has been satisfied. As far as the rest of the instruction,  
24 it's a correct statement of law. If we wanted to, we could say, you need  
25 not award any particular amount of punitive damages. So I think it's a

1 correct statement of law and should be given.

2 THE COURT: All right. So I'm going to sustain the Plaintiffs'  
3 motion because in the special verdict form, there's already been a  
4 finding that the jury will assess punitive damages against the Defendant  
5 in paragraph 15. And even though I respect very much the fact that you  
6 were willing to amend, you certainly have the right to argue that there  
7 should be zero punitive damages. But I don't think it's appropriate given  
8 the special verdict form to give D2.

9 Let's go to the next one, please.

10 MR. SMITH: Thank you, Your Honor.

11 So this gives the jury some guidance on what it means for  
12 the instruction 43 that will be given when it says the reprehensibility and  
13 the conduct of the Defendant. The United States Supreme Court has  
14 given guidance on what that means in the state originally in *BMW v.*  
15 *Gore* and then later in *State Bar v. Campbell*. And we've set forth some  
16 of the factors from those cases that you would specifically determining  
17 whether the harm was purely economic, or whether it caused physical  
18 injury, whether it impinged on public safety, and whether it endangered  
19 the health or safety of others, and then whether the target of the conduct  
20 to the Plaintiffs, whether it was not punishable or [indiscernible] be  
21 sustained.

22 THE COURT: Thank you. And opposition, please.

23 MS. ROBINSON: Thank you, Your Honor. This instruction,  
24 similarly, to what has been previously discussed, basically goes through  
25 a due process analysis that is appropriate for the Court to apply. It's not

1 appropriate to -- for the jury. The Nevada 2018 instruction provides the  
2 guidance that the State Bar has suggested should be provided. To the  
3 extent a due process analysis needs to take place by the Court; that can  
4 happen afterward in the entry of judgment. So I just think that this  
5 would be confusing and inappropriate to give to the jury.

6 THE COURT: Thank you. And your reply, please.

7 MR. SMITH: So Your Honor, first of all, I do take exception  
8 to the comment that this is somehow -- that the 2018 have somehow  
9 approved Pattern Instructions for the entire State Bar. But be that as it  
10 may, the instruction that you have decided to give includes the prong on  
11 reprehensibility. Having given that prong, we've already dived,  
12 although, you know, not completely, but we somewhat stuck our toes  
13 into the constitutional due process analysis.

14 So I think it would be inappropriate to leave this word in  
15 front of the jury, reprehensible, without given them any guidance as to  
16 the content of that concept even though the cases have provided us that  
17 context in these very specific [indiscernible] opinion.

18 THE COURT: Thank you.

19 All right. And consistent with my prior rulings, I will sustain  
20 the Plaintiffs' objection to D3 based upon the argument of the Plaintiff.

21 Let's go over to D4, please.

22 MR. SMITH: Thank you, Your Honor. This goes to the Philip  
23 Morris issue, which is harm to others besides the plaintiffs. The case law  
24 is clear that the purpose of punitive damages is to -- is certainly to  
25 punish and deter as it relates to the Defendants' conduct in regard to the



1 Plaintiff. But as we'll get to later, we're not talking about conduct  
2 directed to other potential plaintiffs. We're not talking about conduct  
3 that happened after the conduct that gave rise to the lawsuit. It's  
4 specifically the conduct for which the jury found compensatory liability  
5 in the first phase. So we think it's very important that the Court give this  
6 instruction limiting the conduct on which they can find reprehensible to  
7 that conduct which affects the Plaintiffs in this case.

8 THE COURT: Okay.

9 MS. ROBINSON: Thank you, Your Honor. So in rendering  
10 their verdict, the jury has already stated in accordance with the statute  
11 and in the findings directed by 42.005, that the Defendants engaged in  
12 oppression, fraud or malice, and conduct that they found to constitute  
13 unjust enrichment or unfair claims practices, and that caused damage to  
14 any Plaintiff. So they've already been directed to find -- to tie their  
15 finding of reprehensibility to the conduct that damaged the Plaintiffs.

16 If we instruct them on this again, I think that is going to cause  
17 a lot of confusion to the jury because it's really heavily putting a weight  
18 on this issue, especially in a case where we have been talking about the  
19 damage to us. This hasn't been a case where we've been -- you know,  
20 contrary to what was suggested, you know, at the very beginning at the  
21 outset during motions in limine, we haven't been trying this case about  
22 the entire country. We've been trying this case about the Nevada  
23 Plaintiffs.

24 THE COURT: It's come up a few times. I'm not -- was  
25 concerned about that at the time that it came up -- those words came up,

1 so.

2 MS. ROBINSON: Okay. Well, Your Honor, I would just  
3 reiterate that the jury has already been directed and found that they are  
4 to award punitive damages based on the conduct that caused the  
5 damage to any Plaintiff. And so that has already been done. And again,  
6 I would just be concerned about placing undue weight on suggesting  
7 that they should be now forgetting things that they already determined  
8 were damage that was caused to the individual Plaintiffs.

9 So, you know, again, I just think that this would -- that this  
10 suggests wrongfully that they should start ignoring things that they've  
11 already been -- they've already made -- when they've already made that  
12 decision.

13 THE COURT: And the reply, please.

14 MR. SMITH: Respectfully, Your Honor, this jury's heard a lot  
15 about issues that aren't necessarily restricted to the harm against the  
16 Plaintiffs in this case. We've heard a long discussion about -- you know,  
17 plans to terminate MultiPlan. We've heard about the Yale study. And  
18 supposed nefariousness in having a relationship with a researcher. I  
19 think it was important during the first phase that the jury be instructed  
20 on what it means to meet the standard of malice, oppression, or fraud,  
21 for purposes of punitive damages.

22 To now go into the second phase on the amount of punitive  
23 damages without an instruction would simply imply to the jury that now  
24 all -- you know, all bets are off and that they're entitled to base their  
25 punitive damages award on anything that was presented during the trial,

1 not restricted to the harm that was inflicted specifically on the Plaintiffs  
2 in this case. So I think it's extremely important that they be instructed on  
3 that issue.

4 THE COURT: So I'm going to overrule the Plaintiffs'  
5 objection and give D-4.

6 Plaintiff, do you have anything additional for the record?

7 MS. ROBINSON: Yes, Your Honor. I do not have the -- I do  
8 not have the instructions in front of me, but the Court has already  
9 instructed the Plaintiffs that -- excuse me, the jury that punitive damages  
10 should be based on conduct that is directed -- that harmed the Plaintiffs.  
11 And so to give them a second instruction is to assume that they will not  
12 follow the instructions the Court has already given them. And so I think  
13 that is unnecessary and potentially confusing.

14 THE COURT: Thank you. Let's go to D-5.

15 MR. SMITH: This is the logical corollary to the last one that  
16 the Court has decided to give, which is, you know, on the one hand, we  
17 were talking in Instruction 4 about which Plaintiffs are the recipients of  
18 harm in this case. Instruction 5 focuses on the Defendants and their  
19 conduct. And it's important that the jury not be basing their award on  
20 dissimilar acts or not or just the general notion that United and its  
21 affiliates are unsavory individual businesses.

22 THE COURT: Thank you. The opposition, please.

23 MS. ROBINSON: Yes, Your Honor. So again, I don't think  
24 that we have evidence of dissimilar acts. I think that this case has been  
25 about the acts toward the Plaintiffs that -- I don't know what evidence

1 they're referring to, but I think, again, we're asking the jury to ignore a  
2 previously given instruction or to -- or we're suggesting that the jury  
3 cannot follow previously given instructions that they won't follow, but  
4 they already committed to do in their verdict form, which is to assign  
5 punitive damages based on the harm that was done to these Plaintiffs.

6 And so I think that this is placing a finger on scales by  
7 repeating an issue that has already been instructed on, and now will be  
8 instructed on twice. I don't think we need to say it a third time.

9 THE COURT: Thank you. And in reply, please.

10 MR. SMITH: If it's a matter of simply combining the two  
11 instructions, I'd be happy to do that, but I think that the concept here is  
12 specifically from the *State Farm* case about not allowing liability for  
13 Defendants being an unsavory individual or business, and I think the jury  
14 has heard, as we just discussed, evidence of dissimilar acts in the Yale  
15 study -- the plans with regard to MultiPlan. Those are dissimilar acts that  
16 the Plaintiffs tried to use to paint Defendants as being unsavory. And it's  
17 very important that the jury not be misled into thinking that that could be  
18 a proper basis for an award of punitive damages. Thank you.

19 THE COURT: And I'm going to sustain Plaintiffs' objection to  
20 D5. I do think it could be confusing to them ,and they've already been  
21 instructed not to consider sympathy, public opinion, or emotion. So I  
22 just don't see it as being necessary.

23 Let's go over to D-6. D-6? No? Yes. D-6.

24 MR. SMITH: Thank you, Your Honor. This goes specifically  
25 to the issue on the unfair claims practice, I'm sorry, and the fact that the

1 Plaintiff was required in the compensatory phase to establish that the  
2 amount would become reasonably clear and then give Plaintiff -- and the  
3 Defendants have failed to settle that claim. In this -- in this instruction, I  
4 think it's important that the jury be told that you are -- that it's restricted  
5 in its -- in its determination of the amount of punitive damages to the  
6 acts that were considered to be that violation. In this case, the Unfair  
7 Claims Practices Act, so that the liability had become reasonably clear. If  
8 there were an arguable reason to deny the Plaintiffs' claims, that would  
9 not be a basis for an award of punitive damages.

10 THE COURT: Thank you.

11 MR. LIAO: Thank you, Your Honor. We don't think this  
12 instruction is appropriate. First off, the first sentence of this two-part  
13 instruction, really it's not in the 2011 or the 2018 Pattern Instructions, and  
14 it doesn't add clarity, and it's pretty unnecessary because we think it's  
15 captured by all these other guideposts on how it's tied to conduct and to  
16 have this clear and convincing evidence show up -- standard show up  
17 again, we don't think it -- we think that it adds potential confusion.

18 As to the second part, the authorities they cite just simply  
19 don't stand for just -- the need to add this instruction. This first  
20 authority, *Calchon Insurance* [phonetic] actually cites a Fifth Circuit case  
21 that applies to Mississippi law. And that case is *John v. State Farm Fire*  
22 *and Casualty Company*. And the Court says it applies Mississippi law,  
23 which has a requirement that punitive damages may be assessed  
24 against an insurer only when the insurance -- the insurer denies a claim  
25 without an arguable or a legitimate basis. So that's where we get this

1 arguable reason language from.

2           And that's Mississippi law. We don't see any authority from  
3 the Nevada -- the Nevada -- the Nevada courts on this arguable reason.  
4 So opposing counsel mentions this is for the Unfair Settlement Claims  
5 Practice Act, and there's no authority that we should be adding this extra  
6 instruction just because that's not even an issue.

7           As to the Nevada case they site, this was also answering the  
8 special question about whether to award punitive damages, and we're  
9 past that phase. That's why the cites that they include says the difficulty  
10 constructing the factual situation is looking at factual weight, and we're  
11 past that. In fact, the dicta -- this is dicta from the case because the Court  
12 expressly said that it didn't rely on this reasoning in granting summary  
13 judgment on punitive damages. So for those reasons, we don't think  
14 that this instruction is critical.

15           THE COURT: Thank you. And Mr. Polsenberg; did you wish  
16 to respond?

17           MR. POLSENBERG: No, thank you, Your Honor. I will -- I'll  
18 let Abe do it. I was just clearing my throat.

19           THE COURT: I thought you were hinting that -- I thought I  
20 was about to make a mistake here.

21           MR. POLSENBERG: No, I've never read Freud, so I'm not  
22 sure what I was doing.

23           THE COURT: Let me hear from you, Mr. Smith.

24           MR. SMITH: Thank you, Your Honor. So I'm not sure what  
25 the problem is with the first sentence, if they're really saying that that

1 would be a misstatement of law to essentially adopt 42.005 in the  
2 standard for punitive damages. But let's turn to the second -- the second  
3 sentence. We had asked in the first page on our verdict form, we wanted  
4 the jury to complete a narrative answer with regard to punitive damages  
5 so they -- that they could explain what was the conduct that constituted  
6 the fraud, oppression, or malice. We were denied that. The Plaintiffs got  
7 the yes or no question instead, but the reality is the Plaintiffs did not  
8 succeed in getting the jury to award the full charges on everything.

9           So it's unclear to what extent the jury agreed with them that  
10 there were particular claims that United, or its affiliates denied without  
11 an arguable basis. Whether there were others that are appropriately  
12 reimbursed at a lower level. We don't have that information because the  
13 jury didn't give us the narrative that we had asked for.

14           But it's important that the -- that the jury in its award of  
15 punitive damages, not turn to those instances where United had an  
16 arguable basis for reimbursing at less than the Plaintiffs full charges,  
17 which we know based on the jury had to have been some, if not all, of  
18 Plaintiffs' claims. They say that the first case -- that *Calchon Insurance*  
19 [phonetic] wasn't discussing Nevada law. Of course it wasn't discussing  
20 Nevada law. It's a general treatise that makes the general point that  
21 when there's an arguable basis for denying the claim that there shouldn't  
22 be an imposition of punitive damage, so I think that's a pretty basic  
23 point, that's why it's in the treatise.

24           But the second case is talking about Nevada law. It's talking  
25 specifically about the Unfair Claims Practices Act and NRS 686A.310.

1 And I think it is important that the jury understand that to make that  
2 distinction -- again, because we didn't have that information from the  
3 first verdict -- to make that distinction between the claims where  
4 Defendants did have an arguable basis for reimbursing at less than  
5 Plaintiffs' full charges, and those were at the time. So I think that's what  
6 the instruction says.

7 THE COURT: All right. So I am going to sustain the  
8 Plaintiffs' objection to proposed D6. It's just not appropriate. It is a most  
9 impressive effort, and it's fashioned from case law, but it strays too far  
10 from our pattern jury instructions and from applicable Nevada law.

11 So does that take us to D-7?

12 MR. SMITH: It does, Your Honor. Okay. So this has to do  
13 with the spoliation, willful destruction of evidence instruction that the  
14 Court gave in the first phase. We think it's important the jury understand  
15 that that was an issue that went to liability, but it's not an issue that goes  
16 to punitive damages. I hope that's not Dan.

17 In the *Bahena* case, Judge Loehrer did strike Goodyear's  
18 answer as to liability. So the jury during the compensatory damages  
19 phase was essentially told, yes, Goodyear caused this accident, all you  
20 need to do is award damages. So I think that in the punitive damages  
21 phase, that presumption from that sanction from striking the answer was  
22 no longer in place. And in fact, the jury found that, well, when you look  
23 at all the evidence that it turns out Goodyear did not cause the accident,  
24 so it awarded no punitive damages.

25 Here, similarly, it's important that this sanction for litigation



1 misconduct is not carried over into the punitive damages phase. Nevada  
2 does not recognize a cause of action for spoliation. There's no punitive  
3 damages for spoliation. It -- punitive damages are solely for the conduct  
4 that caused the Plaintiffs' compensatory damages, not for post -- not for  
5 -- not for acts that post-date that conduct.

6 So we cited a bunch of cases, including California cases. I  
7 think the *Seimon v. Southern Pacific Transportation Company* case is  
8 particularly applicable as it talks about how the jury cannot award  
9 punitive damages based on the fact that the Defendants spoliated  
10 evidence as it goes to compensatory liability.

11 MS. ROBINSON: Thank you, Your Honor. I think my  
12 colleague Justin Fineberg is on the phone. Justin?

13 THE COURT: Okay.

14 MR. FINEBERG: I am, Your Honor. Can you hear me okay?

15 THE COURT: I can. If you can do video, that helps.

16 MR. FINEBERG: The video should be on, I believe.

17 THE COURT: I do not have it. Let's give Brynn a second to  
18 see if she can -- oh, we had it for a second. Oh, I think it's on now. Go  
19 ahead, Mr. Fineberg.

20 MR. FINEBERG: Okay. Thank you, Your Honor. The  
21 Defendant's proposed jury instruction it misses the mark. It's not  
22 consistent with the liability evidence. And frankly, it is confusing.

23 First of all, the proposed instruction misses the mark. The  
24 issue of whether the jury concluded that there was an adverse inference  
25 to be drawn from documents that were not produced, is not the same as

1 instructing the jury not to apply a presumption about discovery  
2 misconduct. It's very different. And frankly, the proposed instruction is  
3 inconsistent with the liability evidence. It's incomplete and inaccurate as  
4 to the rebuttable presumption here. The instruction that the Court gave  
5 the jury was how to evaluate the evidence, or, in this case, frankly, the  
6 lack of evidence. And what were the presumptions to be drawn from the  
7 absence of that evidence here?

8           The jury already concluded what the predicate was for the  
9 imposition of punitive damages, and that's based on the special  
10 questions, numbers 15 and 16. It was based on the underlying merits of  
11 the claims, not based on discovery misconduct. The only thing they  
12 were to infer was what was the presumption to be made from  
13 documents that were not produced? There has been no argument, nor is  
14 there any finding that the basis for punitive damages was to be this  
15 discovery misconduct.

16           So therefore, the instruction that requests the jury disregard  
17 a rebuttable presumption, it undermines the verdict on the  
18 compensatory damages and the jury's predicate findings in Questions 15  
19 and 16, which were based on the merits. And we're not arguing -- we  
20 haven't argued, and we will not argue that punitive damages should be  
21 asserted based on discovery misconduct.

22           And I'll just say on a last point about the *Bahena* case that  
23 was cited. It's interesting because in that case the issue was the Court  
24 struck the answer, allowed the party to defend punitive damages based  
25 on evidence. The fact of this case is that we didn't have the evidence

1 and that was the issue. So it's a very different scenario that we're talking  
2 about here. So for these reasons, Your Honor, we'd ask that the Court  
3 deny the Defendants' request for jury instruction D77.

4 THE COURT: Thank you. Any reply, please?

5 MR. SMITH: Thank you, Your Honor. So I guess I'm a little  
6 bit confused because we've been told that this instruction is inaccurate  
7 and would undermine the jury's verdict, and yet we're hearing that  
8 Plaintiffs agree that there's no evidence that the -- that would support  
9 punitive damages based on the spoliation.

10 So I don't understand why it would be inappropriate to  
11 instruct the jury, simply as a clarifying matter, that although they have  
12 this instruction in the first phase, now that they're at the point of  
13 evaluating the amount of damages they shouldn't rely on that  
14 instruction. And frankly, the -- you know, the Court's [indiscernible] that  
15 suggested that Defendants have been, you know, evil actors in this  
16 process. We're at the stage where the jury is evaluating, according to  
17 Instruction Number 43, reprehensibility, and yet we have this instruction  
18 lingering out there that suggests that the Defendants, perhaps, were  
19 reprehensible because they destroyed evidence.

20 THE COURT: You know, I need a little bit of argument. The  
21 first two paragraphs I don't find offensive. The third one I think is  
22 problematic -- very problematic because it, basically, is me telling them  
23 what to do instead of them making the decision on what to do.

24 So let me hear from Mr. Fineberg, and then Mr. Smith again  
25 on the third paragraph.

1 MR. FINEBERG: I apologize, Your Honor. You want to hear  
2 argument on Paragraph 3?

3 THE COURT: Yes. I find that the language, as proposed,  
4 would be me telling the jury what to do and taking away that province  
5 from them. I don't have a problem with the first two paragraphs.

6 MR. FINEBERG: We agree completely with the third -- with  
7 the problem with the third paragraph as well, Your Honor. This is really  
8 an instruction of law and telling them what to do. We wholeheartedly  
9 embrace that. I mean, this is -- this is, essentially, again, telling what or  
10 how to rule and how to disregard what they've already considered and  
11 the conclusions that they made that underlie the punitive damage  
12 findings. So we would ask that this -- if you're going to allow paragraphs  
13 1 and 2, that paragraph 3 be stricken from the instructions.

14 THE COURT: And do the Defendants wish to have a moment  
15 to caucus?

16 MR. BLALACK: Can we have two seconds, Your Honor?

17 THE COURT: You can have five minutes.

18 MR. BLALACK: I won't need that much, Your Honor.

19 THE COURT: So --

20 [Pause]

21 MR. SMITH: We're ready, Your Honor.

22 THE COURT: Thank you.

23 MR. SMITH: All right. So Mr. Blalack was very generous and  
24 said if the Plaintiffs are not going to argue that the -- that the spoliation  
25 goes to the punitive damages, we would be okay with the first two

1 paragraphs and then a sentence, instead of the third paragraph, that just  
2 -- that just reads, "It does not apply to the amount of punitive damages."  
3 So --

4 MS. ROBINSON: Your Honor -- and I don't mean to cut you  
5 off at all, but I just wish to bookmark that, I would like to say one  
6 additional thing before you rule.

7 THE COURT: Well, I want to give you a chance to caucus  
8 with your team because I gave them that chance. So why don't you guys  
9 take a couple of minutes?

10 MS. ROBINSON: Sure. Thanks.

11 THE COURT: And step out in the hall, and I'll be back in a  
12 couple of minutes. And if the two of you have more to put on the record  
13 after we take this brief -- just let me know.

14 MR. SMITH: Thank you, Your Honor.

15 MR. BLALACK: Thank you, Your Honor.

16 [Recess taken from 2:09 p.m. to 2:14 p.m.]

17 THE MARSHAL: Court is back in session.

18 THE COURT: Okay. So Plaintiffs, have you had a chance to  
19 caucus?

20 MS. ROBINSON: Yes, Your Honor. Here's the fundamental  
21 issue that we're concerned about. The Defendants failed to turn over  
22 evidence to us that we could use -- we could have offered to the jury to  
23 show their reprehensible conduct. Because they failed to do that -- and  
24 that includes -- you know -- because they failed to do that, we don't have  
25 that evidence and that's why we have an adverse inference instruction.

1           The problem here is that we are fine instructing the jury that  
2 they should not punish the Defendants for litigation conduct, and we  
3 have a proposed alternative instruction. What we are concerned about is  
4 that if the Court instructs the jury that it can't consider the adverse  
5 inference, that pulls the rug out from underneath the jury and from us  
6 because now they're not considering that, you know, the evidence -- the  
7 adverse inference for the evidence that is missing that we didn't get,  
8 unfairly.

9           In addition, we expect to lay another predicate tomorrow  
10 with regard to financial information that was not provided to us. We  
11 have requested information to show the net worth that had not been  
12 provided to us. And so we expect the Defendants to argue that we don't  
13 have evidence of net worth. And again, we are left without any remedy  
14 if they just choose not to produce that evidence if no -- the adverse  
15 inference instruction; now the jury is being told to disregard it.

16           THE COURT: And --

17           MS. ROBINSON: So --

18           THE COURT: -- where is your proposed?

19           MS. ROBINSON: So --

20           THE COURT: Is it --

21           MS. ROBINSON: I will need to write it out for you, but I --

22           THE COURT: It's newly crafted --

23           MS. ROBINSON: -- can get it to you.

24           THE COURT: All right. So we -- let's do this and take the  
25 time that we need to get a good record.

1 MS. ROBINSON: Okay.

2 THE COURT: So did that complete your argument?

3 MS. ROBINSON: That's my argument. And so I was going to  
4 present to the Court our proposed --

5 THE COURT: Let's give them a chance to respond.

6 MS. ROBINSON: Okay.

7 THE COURT: And then I'll go off the record for you to reduce  
8 that to writing, give them a chance to talk about it, then we'll come back  
9 and settle that.

10 MS. ROBINSON: Okay. Thank you, Your Honor.

11 THE COURT: There's no reason to rush through this process.  
12 Mr. Smith?

13 MR. SMITH: And Your Honor, as I said, we're fine with those  
14 first two paragraphs with an assurance that the Plaintiffs aren't going to  
15 argue, you know, that the spoliation constitutes conduct to award the  
16 punitive damages. And then just that simple sentence. Rather than the  
17 instruction that they disregard the prior instruction, just [indiscernible]  
18 that it doesn't apply to the -- to their deliberation on the amount of  
19 punitive damages.

20 THE COURT: Good enough. So Plaintiff, reduce that to  
21 writing, caucus with your team, caucus with the opposing team, and  
22 then I'll hear argument on the proposed. Thank you.

23 MS. ROBINSON: Thank you.

24 THE COURT: And after that I think we only have a couple  
25 more -- couple few more. Okay. So have a good break.

1 MR. SMITH: Thank you, Your Honor.

2 [Recess taken from 2:16 p.m. to 2:33 p.m.]

3 THE COURT: Remain seated. All right. So you have  
4 conferred with regard to the possible alternate language to D7. Let's  
5 have an update, please, starting first with the Plaintiff.

6 MS. ROBINSON: So, I've sent it to them, I have not heard --  
7 excuse me, I'll step up to the podium. We sent it to the Defendants, we  
8 have not heard a response yet. Do you want me -- it's just two  
9 sentences.

10 THE COURT: Sure.

11 MS. ROBINSON: The proposed instruction is: "You may not  
12 award punitive damages to punish Defendants' conduct in litigation.  
13 However, you may continue to presume that relevant evidence that was  
14 not produced was adverse to the Defendants."

15 And just -- you know, we believe that that adequately --  
16 we've agreed that there should not be punitive damages awarded  
17 because of willful suppression of evidence, that's not -- that in itself is  
18 not a ground, but we should not be deprived of the benefit of that  
19 instruction, because of evidence that was not produced.

20 THE COURT: Have you had sufficient time to caucus with  
21 your team?

22 MR. SMITH: I think, Your Honor -- I don't think that -- I think  
23 we're talking about misleading. I think that this -- the instruction that  
24 Plaintiffs proposed is much more misleading, than the first two  
25 paragraphs that we proposed. I think it's confusing to the jury in this



1 case where they have already decided compensatory damages. They  
2 have already taken punitives into account, and they keep calling it an  
3 adverse inference, but it wasn't an inference that they were just  
4 permitted to draw, they were required to draw, unless it was rebutted.  
5 They have already taken all of that into account in establishing the  
6 compensatory damages to fully compensate the claim. The only  
7 question we have now is, what amount of punitive damages is necessary  
8 to punish and deter.

9           So the fact is, this idea that evidence wasn't produced that  
10 may have been relevant to one of their claims for compensatory  
11 damages is no longer an issue in the case, on the question that the jury  
12 is deliberating in the second phase.

13           So I think it's appropriate to tell them that they continue to  
14 essentially apply this adverse inference for a piece of the -- for a piece of  
15 the equation that no longer applies in the second phase. I think it's much  
16 more simple just to say, I think we now agree, right, that the litigation  
17 conduct is not a basis for punitive damages, and just as we said in this  
18 second paragraph in this instruction, it doesn't apply to the second  
19 phase.

20           THE COURT: Good enough. So Defendants proposed 7, I'll  
21 sustain the Plaintiffs' objection. The Plaintiff's proposed alternative will  
22 be given in lieu of D7.

23           Let's go over to D8.

24           MR. SMITH: And just to be clear, Your Honor --

25           THE COURT: Yes, certainly.

1 MR. SMITH: -- can we make sure we have an agreement  
2 from the Plaintiffs, on the record, that they aren't going to be arguing the  
3 question for spoliation of evidence as a basis for punitive damages.

4 THE COURT: Is that correct?

5 MS. ROBINSON: That is correct, Your Honor.

6 THE COURT: Very good.

7 MS. ROBINSON: We're not going to argue that there's  
8 spoliation on this basis

9 MR. ZAVITSANOS: Correct.

10 MS. ROBINSON: They can still --

11 MR. ZAVITSANOS: But they can still --

12 MS. ROBINSON: We can still have the --

13 MR. ZAVITSANOS: -- but they can still draw the inference --

14 MS. ROBINSON: Correct.

15 MR. ZAVITSANOS: Right.

16 MS. ROBINSON: We're all on the same page.

17 THE COURT: All right. Let's go to D8.

18 MR. SMITH: So, Your Honor, this has to do with the  
19 component of punitive damages that goes to deterrence. So are punitive  
20 damages necessary to punish and deter? It's important that jury be  
21 aware that with regard to future deterrents there is an act in place right  
22 now in Nevada, the government claims as of January 1, 2020, that  
23 establishes a process for resolving precisely these kinds of claims.

24 No longer will those claims be brought into court in the  
25 setting that we have here on -- you know, on a fight over what's just

1 reasonable. But those claims -- for most of those claims, they'll either go  
2 to arbitration, or there's some kind of statutory verdict. So we think the  
3 jury should be aware of that act, the no surprises act.

4 THE COURT: And the response, please.

5 MS. ROBINSON: Yes. This instruction is very confusing. It  
6 suggests to the jury that all of the conflict between Defendants and  
7 Plaintiffs will be resolved by the fact that we now go to arbitration  
8 instead of the Court. There's absolutely no reason to believe that  
9 Defendants, who we have already proven to the jury have engaged in a  
10 multi-year campaign to drive down payments to unfair levels will stop  
11 doing that because now we have a procedure for arbitration.

12 And so this reads like an instruction to the jury that there's  
13 nothing to worry about anymore and deterrence is unnecessary. And I  
14 think that would be very misleading. There's no support for it. There's  
15 no legal support for this suggestion. You know, as I understand it, the  
16 framework -- the source support is -- the source the Defendants have  
17 offered is just saying, yes, we have an arbitration process, but it doesn't  
18 suggest that juries should be instructed of changes in the law that may  
19 or may not affect the Defendants future conduct, and they should take  
20 that into consideration when determining whether or not they should  
21 deter future, harmful conduct.

22 In general, you know, the -- well, I think -- I think I'll just leave  
23 it at that. Thank you, Your Honor.

24 THE COURT: Thank you. And any reply, please?

25 MR. SMITH: Just to clarify, the No Surprises Act, doesn't

1 simply direct the parties to arbitration, and it's -- the process is also --the  
2 process by which a rate is determined, so it actually affects the rates that  
3 are going to be applied going forward. I think it would be far more  
4 misleading to let the jury believe that these sort of rate disputes are  
5 going to resolve in the manner that they saw, going forward, that to  
6 speculate that that would be the case, rather than that statute will be  
7 applied, as we know it will be applied for claims that have already  
8 started beginning in 2020, and for all claims regarding emergencies  
9 going forward.

10 THE COURT: Thank you. I'm going to sustain the Plaintiffs'  
11 objection to D8. I find it confusing. It's irrelevant to this case. It's  
12 prejudicial to the Plaintiff, and it would take away from the province of  
13 the jury, the right to make their own decisions.

14 Let's go over to D9.

15 MR. SMITH: Your Honor, if we could hold off on discussing  
16 D9 until after Mr. Blalack has had an opportunity to argue the motion in  
17 limine. I think that will -- depending on the outcome of that, that they  
18 obviate the need for --

19 THE COURT: Good enough. And during the recess we got a  
20 D10.

21 MR. SMITH: And we have a D-0.

22 THE COURT: And has that been provided --

23 MR. SMITH: I'll be very brief on that.

24 THE COURT: -- to your opposing counsel?

25 MS. ROBINSON: Just now, Your Honor. Yes, as we came

1 back in.

2 MR. SMITH: Yeah. I'll be very brief.

3 THE COURT: I hate to say this, you guys had a week.

4 MR. SMITH: I'm sorry, Your Honor. And I take responsibility  
5 for this. This is really just on the concept of unanimity. Last year the  
6 United Supreme Court confirmed that it's a matter of due process that all  
7 criminal cases be decided by a unanimous jury.

8 THE COURT: So let's just stay on track. I've got a soft track,  
9 and pardon me, I'd like to refocus us for the record. You asked to take up  
10 the motion in limine first, before we did 9, and I brought up 10. Let's go  
11 back to the motion in limine --

12 MR. SMITH: Great.

13 THE COURT: -- so that we have a good record.

14 MR. SMITH: Thank you, Your Honor.

15 MR. BLALACK: Thank you, Your Honor.

16 Your Honor, this is a motion that we filed, as you know, last  
17 night, and I know that --

18 THE COURT: Well, I have not signed an order shortening  
19 time. So anything --

20 MR. BLALACK: And that's what I'm saying.

21 THE COURT: -- I do --

22 MR. BLALACK: And I invite whether Court wants to entertain  
23 this now. I think the issue -- because it might be useful just to set the  
24 table, that it'll affect how the conduct of the proceedings tomorrow will  
25 play out.

1 THE COURT: I may decline to rule on it, until the other side  
2 has had a chance to fully review it, but I'd like to at least flush the issue  
3 out on the record.

4 MR. BLALACK: Perfect, Your Honor. And I'll do that, and  
5 obviously follow the Court's lead on how you'd like to have it resolved,  
6 and we certainly welcome any response the other side wants to file and  
7 address it in an appropriate procedural time.

8 So some background, Your Honor. As the Court may  
9 remember, when we contemplated having phase 2 occurring  
10 immediately after a verdict, opposing counsel advised me that they'd like  
11 to call Ms. Paradise back. At some point we were talking about her  
12 testifying remotely or coming back live. If in fact we went forward with  
13 phase 2 now, as we were doing, they indicated that, you know, she was  
14 still subject to a subpoena, and they would like to have her back, you  
15 know, live, and we can make those arrangements, she'll be here  
16 tomorrow ready to proceed.

17 Last week, as we were engaging in meet and confer  
18 discussions about the proceeding tomorrow, Plaintiffs' counsel informed  
19 me that they intended to call three witnesses in their case. Ms. Paradise,  
20 live. Dan Schumacher, who the Court heard from earlier via video, and  
21 then Mr. Bristow, live, who the Court also heard video and a lot of  
22 testimony from in our case.

23 This surprised me a bit, given the issues that I understand  
24 are before the Court and before the jury tomorrow, because I did not  
25 believe it was likely that those three witnesses would have much

1 material to say on the issues relevant to the amount of punitive  
2 damages. And so I inquired, and we had a meet and confer, by an  
3 email, over the last three or four days regarding, you know, the  
4 expectation about what proof the Plaintiffs in their case.

5 As the Court has just ruled on the instruction that will be  
6 given, based -- the instruction basically has two prongs. One is the  
7 reprehensibility of the Defendants' conduct, that's the first question.  
8 And then the second question is the amount of punitive damages  
9 necessary to serve the purposes of punishing deterrence, after taking  
10 into the account the Defendants' financial condition.

11 I explained to Plaintiffs, in response to this list, that it was my  
12 view that the evidence that's relevant to that first question of  
13 reprehensibility, was limited to the evidence that had been offered in the  
14 first phase of trial to establish an entitlement to punitive damages, that  
15 phase 2 on amount was not an opportunity or an invitation to relitigate  
16 the conduct of the Defendant that gave rise to punitive damages.  
17 And, therefore, I asked, you know, what is it that these witnesses will  
18 address that would be relevant in the scope, given that view.

19 Secondly, I advised them that it is not the Defendants  
20 intention to defend or mitigate a punitive damages award on the ability  
21 to pay, or on the financial condition of Defendants. We will not be  
22 making that argument. We will not be presenting evidence to mitigate  
23 an award on those circumstances. Therefore, in our view that mitigation  
24 defense is not relevant, and our financial condition is irrelevant. They  
25 will ask for whatever they'll ask for. We'll argue against the material

1 [indiscernible] or won't, but our financial condition won't be a material  
2 factor in that analysis.

3           So on that basis it was my view that scope of proof in their  
4 case tomorrow should be very narrow, and that if that was the scope of  
5 proof, and I do not plan to or would not call any witnesses after their  
6 case is closed. If that's the lens with which we're proceeding, then the  
7 proof would hopefully come in and out very quickly.

8           We'll get on to argument, arguing the reprehensibility of our  
9 conduct based on the evidence pursuant in the trial, and arguing what  
10 amount serves the purposes of punishment in return. So that's my  
11 conception of what we were intending to do, in phase 2 tomorrow.

12           Based on the meet and confer it seems clear to me that the  
13 Plaintiffs don't agree with us on either of those points, that they believe it  
14 is permissible to offer evidence, new evidence, not offered previously, of  
15 our clients' conduct to establish reprehensibility, that is somehow  
16 distinct from what was established to prove an entitlement to punitive  
17 damages, and that they are permitted to offer evidence of our financial  
18 condition, even in a setting where the Defendants are not arguing to  
19 mitigate punitive damages based on financial condition, or wherewithal,  
20 or capacity to pay an award.

21           I think we have a fundamental disagreement about that, Your  
22 Honor, and so the motion in limine, I filed after the meet and confer  
23 process during its course yesterday, preserving our view about what the  
24 proper lens of evidence should be to proceed. In that brief I make clear,  
25 and I made clear in my emails to Plaintiffs' counsel, okay, there's a lot of



1 evidence about what I'll call misconduct, that I would love to have -- we  
2 think is very probative for reprehensibility or lack of reprehensibility, as  
3 to our state of mind, the decisions we made that were presented to the  
4 jury, including questions before the jury, that we have not been able to  
5 offer to the jury in the first phase of the trial, based on various in limine  
6 rulings and various rulings during the course of trial that enforce those  
7 rulings. I made clear our position. Obviously, we disagree with those  
8 rulings, but that that was lay of the land that we received in court.

9           If we're going to get to this trial tomorrow, and they're going  
10 to be able to offer new evidence about my client's conduct that was not  
11 before the jury in the first trial, and particularly if that evidence is going  
12 to relate to anything that touches the interactions between the parties,  
13 like negotiations, communications and the like, then it's going to be my  
14 position that all that evidence that was excluded, we have a right to offer,  
15 and it should have been offered [indiscernible]. And we're going to be  
16 wanting to propose a substantial defense case in response, and by my  
17 count that would involve at least six witnesses.

18           Three from their -- four from their side, Mr. Bristow, Mr.  
19 Murphy by video, Ms. Harris by video, Mr. Greenberg by video, and then  
20 two witnesses -- local Nevada witnesses who we can call live, Jacy  
21 Jefferson and Shaun Schoener.

22           So our request to the Court is, obviously, in the absence of  
23 any ruling in limine, I'm going to be up and down a lot, depending on  
24 what they do in the evidentiary portion, and frankly trying to decide the  
25 scope and the length of this trial, because I believe the jury set the

1 impression that tomorrow is it. That they gave us a day when they'd all  
2 be available, that's the favorable day this week, and that it's one day and  
3 that we're going to get this proof in, and we're going to argue, and we're  
4 going to have a verdict sometime tomorrow.

5           It is my view that if the lens of evidence is not framed very  
6 narrowly on the question, and we're not -- and we're going to get  
7 beyond the prior evidence of historical conduct, if that's the way we're  
8 going to try the case, then I don't think we're going to finish tomorrow.  
9 And so I think the jury obviously will have to be qualified accordingly,  
10 and that's appropriate. So that's the purpose of the motion, Your Honor,  
11 and obviously by the Court's direction, if you want to receive briefing or  
12 any further argument on it.

13           THE COURT: Thank you.

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

15           THE COURT: Please.

16           MR. ZAVITSANOS: We don't need a briefing, Your Honor.  
17 Let me just address these. So let me take the things that are not in issue.  
18 Counsel identified three witnesses that we're going to call, Mr.  
19 Schumacher, we looked at the clip, we're not going to play that.

20           Second. Another thing that we are not going to do is touch  
21 on anything concerning the negotiations. So because we can, we're  
22 closing hospitals, we're not going to get into that. So it is a very unusual  
23 argument that I just heard, because when we were before Your Honor,  
24 before we began trial, and we took up the limine rules, their limine  
25 number 17, number 22 and number 36, specifically -- these were on

1 issues concerning net worth, concerning profits. They specifically said  
2 these need to be taken up during the second phase.

3 Now we asked a very specific request for production to get  
4 the net worth information of the five Defendants, they did not produce it.  
5 Again, we contacted counsel last week, asked him, reminded him of  
6 what the request for production was, and that we needed that  
7 information, and they declined to give it to us, again.

8 So our evidence is primarily going to be about net worth.  
9 Now we're going to be asking for another negative inference based on  
10 the request for production and the refusal to give that to us, but second if  
11 I look at the instruction that the Court is going to give concerning  
12 reprehensibility -- now let me get to the reprehensibility, I just addressed  
13 the financial condition.

14 We did ask for Ms. Paradise, because we'd like to know what  
15 United plans to do, if anything, concerning the findings here. The jury is  
16 permitted to evaluate that. That is very standard. With regards to Mr.  
17 Bristow I would commit to the Court that he will be no more than ten  
18 minutes, no more than ten minutes, and it is -- and it deals on the  
19 reprehensibility. It does not deal with anything having to do with  
20 negotiations, or anything like that. It deals with evidence that the Court  
21 deferred until we get to the second phase.

22 So that's it. We understand where the boundaries are, we're  
23 not trying to expand it, but we are still in trial. The trial -- I mean we are  
24 still in trial. The Court has not released the jury, and I believe Your  
25 Honor, rightfully so, that the Court is permitted to receive additional

1 evidence concerning the matters that are typically taken up during phase  
2 2, and that's what we intend to offer, and these are the issues that they  
3 themselves said that need to be deferred.

4 I don't want to do anymore briefing, I think you know, I -- to  
5 the extent that counsel would like this heard now, we have no objection  
6 to that, but we're ready to go. This is not a surprise to them, and frankly  
7 we asked for Ms. Paradise, I hope she's here. She's going to be  
8 relatively short. Mr. Bristow is going to be even shorter, and then we  
9 will proceed forward with closing.

10 THE COURT: Good enough. And in reply, please.

11 MR. BLALACK: Yes, Your Honor, a couple of points. That  
12 was very helpful information, none of which I had until right now, that I  
13 did not receive during the meet and confer process. I was told they  
14 would address representability and [indiscernible]. So knowing that  
15 there won't be any evidence on negotiations it's certainly useful.  
16 Knowing Mr. Schumacher will now not testify is useful. I don't know  
17 what it means when Mr. Zavitsanos says evidence from Mr. Bristow,  
18 we'll focus on the evidence on reprehensibility, that the Court deferred to  
19 the second phase. I have no idea what means. So I don't know what our  
20 position is going to be on that, if we're going to object, we're going to  
21 argue that there's four witnesses I need to offer in response.

22 Now real quickly on the certified financial statements, I want  
23 to make sure the Court is clear on our position. Last week, Thursday,  
24 Tuesday, Wednesday, something like that, Plaintiffs sent me an email  
25 asking me to produce the certified financial statements for the last three

1 or four years of every Defendant, as well as to produce this CFO of Sierra  
2 Health Plan of Nevada, who were not witnesses on their witness list, and  
3 these were not exhibits that had been on the list. There are 17 prior  
4 requests to us. So I said, what is the basis for a new discovery request,  
5 long after discovery is closed in the case, counsel sent me a prior RFP,  
6 which we need to, we can brief the Court, but it is our position that our  
7 fee does not call for a vast production of certified financial statements  
8 from [indiscernible].

9 But that said, so as a result, I don't think there's any basis to  
10 fit the position that we're obligated to produced certified financial  
11 statements now. But even if that is the case, there's been no motion to  
12 compel, it was just an email, will you produce them. With that said, I  
13 have none. And if the Court orders me to produce them, and concludes  
14 they are responsive to the request, I'll gladly produce them. They're  
15 certainly not going to be a basis for any kind of adverse inference,  
16 because the records aren't produced. I collected them. I just doing  
17 believe they've been requested or sought by prior discovery.

18 So just -- to me, that's a side show as an effort to try to  
19 further prejudice my clients in the eyes of the jury on litigation conduct  
20 as opposed to just arguing the instructions and the evidence.

21 So to come back to the issue that we have, Your Honor, is --  
22 well, it is certainly true that in the in limine process, we said financial  
23 information is not appropriate for the first phase of the trial and that's  
24 absolutely true, and the Court agreed, and we kept most of that  
25 information out. That doesn't mean that my client is obligated to present

1 a defense on mitigation based on its financial condition. As the Court  
2 knows, it is our position that the most the punitive damages awarded in  
3 this case could ever be is three times that actual damages. We have a  
4 statutory cap that in our view applies here.

5 So independent of the [indiscernible] submitted, independent  
6 of the evidence, in our view, the most that the punitive damages could  
7 ever be in this case is something like 7.8 million dollars, total, three times  
8 2.6 million. So it's not for us -- and frankly, even if it was larger, I'm not  
9 -- as a trial tactical matter, I'm not going to stand up here and argue our  
10 ability or inability to pay a punitive damages claim. The fact that we're  
11 making a tactical choice in that decision doesn't obligate us to put  
12 financial information into issue, because we all agreed four -- three  
13 months ago that that was not appropriate in phase one of the trial.

14 That is a defense available to us and the Defendants, if they  
15 wish to use it. It's not something we're obligated to assert. And if we're  
16 not going to assert that as a defense -- and I understand on the basis  
17 under which it's admissible. So Ms. Paradise is here. She will be here to  
18 answer relevant questions and certainly the kind of questions that Mr.  
19 Zavitsanos raised regarding United's view of the verdict and things of  
20 that nature will be fair game. They can ask those questions, and she'll  
21 give them her answers.

22 But that doesn't address the core question of are they going  
23 to introduce evidence of the historical conduct that wasn't presented to  
24 the jury that form the basis of the punitive damages award. If they do  
25 that, they're inviting the jury to award an amount of punitive damages

1 that was not before the jury, evidence that was not before the jury on the  
2 question. That will be improper, one.

3 And two, depending on what it is they are contemplating,  
4 because I still don't know what it is, I can promise you, Your Honor, I'm  
5 going to have a slew of witnesses, and I'm going to be back here asking  
6 to present witnesses about what my clients knew and were told by  
7 TeamHealth regarding their view of our payments, rates,  
8 reimbursements and their costs, and we'll back into the same  
9 conversation. So again, we've litigated that question many times. I  
10 thought we were behind this, at least in this proceeding. And you know,  
11 obviously I have a view on that, but if that's where we go, that will be our  
12 position.

13 THE COURT: Mr. Zavitsanos, you're standing?

14 MR. ZAVITSANOS: Yes, Your Honor. The only thing I will  
15 say is we're -- again, we're still in trial. If counsel thinks that we are  
16 asking a question that is not appropriate, he can object. I'm not going to  
17 engage in a dress rehearsal with counsel of what we're going to do.  
18 Now, certainly if the Court orders me to do that, I will, but I don't --

19 THE COURT: No, I'm not going to order --

20 MR. ZAVITSANOS: -- respectfully, I don't --

21 THE COURT: -- either of you to do that, so no.

22 MR. ZAVITSANOS: Yeah.

23 THE COURT: Ms. Lundvall --

24 MS. LUNDVALL: Your Honor --

25 THE COURT: -- something to add?

1 MS. LUNDVALL: And the one thing that I have to address,  
2 though, based upon the reply that was offered by Mr. Blalack is he  
3 claims that they're making a tactical decision based upon what they  
4 assume will be the ultimate judgment. That assumption, I think is a huge  
5 assumption that has no predicate and that is that there is a cap that  
6 applies. In fact, the statute does not permit a cap in the circumstances of  
7 this case. And so, if they're making a tactical decision based upon an  
8 assumption, then that assumption then is at their own risk, because that  
9 is not our position.

10 THE COURT: Good enough. Do you wish to respond?

11 MR. BLALACK: We absolutely agree that we're making those  
12 assumptions at our own risk.

13 THE COURT: Okay.

14 MR. BLALACK: And frankly, those assumptions would be  
15 present, and those judgments would be the same whether there was a  
16 cap or not a cap, Your Honor.

17 THE COURT: All right. So the Court declines to consider the  
18 motion in limine. It was not brought in an order shortening time.  
19 Although the parties have engaged in some argument, it's really  
20 speculation at this point as to how the Plaintiff will proceed. I'll address  
21 objections as they come up. We'll go off the record, if we need to. I will  
22 suggest that I don't think new evidence about conduct is appropriate,  
23 given the motions in limine, but the Plaintiff will proceed in a way that it  
24 deems appropriate.

25 MR. ZAVITSANOS: Thank you, Your Honor.



1 THE COURT: All right. Now, does that take us back to  
2 Number 9 --

3 MR. BLALACK: Yes.

4 MR. SMITH: Yes, Your Honor.

5 THE COURT: -- on the instructions? Oh, and while we're  
6 here -- I know I'm out of order. I've just violated my own rule.  
7 Wednesday morning, there's a motion for a leave to file under seal or  
8 some -- yeah. Is there going to be an objection to that?

9 UNIDENTIFIED SPEAKER: Which --

10 MR. ZAVITSANOS: I'm sorry, Your Honor. Which motion?

11 THE COURT: We have something on the calendar  
12 Wednesday morning.

13 MR. MCMANIS: I don't think -- I think there --

14 THE COURT: If there's not going to be an objection, let me  
15 know tomorrow, so we can vacate it, and you don't have to appear.

16 MR. BLALACK: Thank you, Your Honor.

17 MS. ROBINSON: Thank you, Your Honor.

18 THE COURT: All right. Now, let's go back to 9, please.

19 MR. SMITH: All right. So this follows up on the argument  
20 Mr. Blalack was just making. We, of course, object to any evidence of  
21 Defendants' financial condition coming into trial. So if the evidence,  
22 nonetheless, comes in, we would ask that the jury be instructed in  
23 accordance with the pattern instruction from 2011, also *State Farm* and  
24 *BMW v. Gore* that the wealth of the Defendant is not a basis for punitive  
25 damages.

1 THE COURT: Thank you. Response, please?

2 MR. LEYENDECKER: Yes, Your Honor. The first thing is just,  
3 again, context. They want to object to the introduction of financial  
4 condition during this phase, even though they said it precisely was for  
5 this phase. That's the context here. The objections are as follows.  
6 Number one, they're asking you to submit a modification of the 2011  
7 instructions. The modification they want is inconsistent with the *State*  
8 *Farm* and the *BMW* case cited in their authorities.

9 Number two, you've already granted Plaintiff's 43, which is  
10 based on the 2018 instruction. And so to the extent that that's in there  
11 and then you want to add things that are frankly confusing and contrary  
12 to that, there would just be no basis to do that, Your Honor.

13 THE COURT: Thank you. And then reply, please.

14 MR. SMITH: Your Honor, I haven't heard a word about how  
15 this instruction is inconsistent with *State Farm*, *BMW v. Gore*. I think it's  
16 perfectly consistent with that. There's an admission that it's consistent  
17 with the 2011 instruction, which as we heard earlier, distilled those  
18 decisions into the guidepost for the jury. I understand we're not giving  
19 that prior instruction, so this would be as simply one piece of the puzzle,  
20 just on the question of wealth not being the basis for award of punitive  
21 damages.

22 THE COURT: And because I don't know how the evidence is  
23 going to come in tomorrow, I'm going to defer this until tomorrow.

24 MR. SMITH: Very good. Thank you.

25 THE COURT: Now, let's go over to the newly provided 10

1 that came through in the recess.

2 MR. SMITH: Thank you, Your Honor.

3 THE COURT: Has the Defendant had a -- at least a chance to  
4 look at it? I mean, has the Plaintiff?

5 MS. LUNDVALL: We have, Your Honor.

6 THE COURT: Thank you. All right. So Mr. Smith?

7 MR. SMITH: Okay. I will be very brief on that. There was a  
8 decision in 2021 from the United States Supreme Court that said as a  
9 matter of due process that in all criminal trials, the verdict be unanimous.  
10 That's already, of course, a matter of statute in Nevada. There are cases  
11 that talk about punitive damages being quasi-criminal in nature, so we  
12 would ask that the jury's verdict on this question of the amount of  
13 punitive damages also be unanimous. Thank you.

14 MS. LUNDVALL: Your Honor, we would object to the giving  
15 of this instruction. I know that the Defendants are quite powerful, but I  
16 don't think that their power extends to contradicting our Nevada  
17 Constitution, let alone our Nevada statutes, because our Nevada  
18 Constitution sets forth what the requirements are dealing with a jury's  
19 verdict, and it does not require a unanimous decision.

20 Moreover, it violates Nevada case law. Nevada case law  
21 describes as recently in the *Countrywide Home Loans case v Thitchener*  
22 as punitive damages being a civil punishment. It's a civil remedy. That  
23 civil remedy falls within the scope then of what is requirement under  
24 whether it's compensatory damages or punitive damages. Third, Your  
25 Honor, is that if, in fact, that this instruction, which I think contradicts the

1 instruction that was given during phase one, is suggested somehow that  
2 the higher standard of proof of reasonable doubt then should apply,  
3 rather than clear and convincing.

4 And so if there was any consideration that was going to be  
5 given to this, it should have been given in phase one. Moreover, it  
6 would contradict, then, what the Court has already given to the jury and  
7 would contradict the finding that has been made by the jury. Thank you.

8 THE COURT: Thank you. Your reply, please.

9 MR. SMITH: Not much of a reply. I think I can just rest on  
10 my original argument. This is admittedly a novel issue. I think it's  
11 precipitated by the new U.S. Supreme Court case.

12 THE COURT: And you know, given the fact that there's been  
13 no declaration that our constitution is unconstitutional or statutes, I'll go  
14 ahead and sustain the objection.

15 MR. SMITH: Thank you, Your Honor.

16 THE COURT: Now, is that everything for today?

17 MR. SMITH: Your Honor, if you don't mind, I'd like you to  
18 indulge me for one minute. Mr. Polsenberg thinks it should 45 seconds,  
19 but I think one minute is more realistic. For a brief 50(a) motion, 50(a) as  
20 pertains to the second phase. Will you indulge me? Okay. Thank you.

21 THE COURT: I will. But you know, there's nothing in writing.  
22 There's nothing -- I may decline to hear the motion, after I allow both  
23 sides to talk.

24 MR. SMITH: Very good. And customarily, 50(a) motions are  
25 often oral. Sometimes we'll submit a trial brief on the issue that -- this is

1 really --

2 THE COURT: I'm not sure it's timely, but I will indulge you.

3 MR. SMITH: Very good. Thank you, Your Honor. So four  
4 points. First on the Prompt Pay Act. We understand the Plaintiff's  
5 position to be that the -- that they're -- they were entitled to liability  
6 under the Prompt Pay Act, because they're fully payable, but in rejecting  
7 the Plaintiff's full billed charges, we believe the jury necessarily found  
8 that their claims were not fully payable, so we think that claim is out as a  
9 matter of law.

10 And for Claims practices act, similarly, the jury's damages  
11 figures mean that the verdict -- before the verdict, the Defendant's  
12 liability for those damages was not reasonably clear within the meaning  
13 of that statute. Unjust enrichment. Again, once the jury found that there  
14 was an implied contract -- I realize the jury wasn't instructed on this -- on  
15 the interaction between the implied contract and the unjust enrichment  
16 period, but we know as a matter of law once the jury found un -- a  
17 contract, that eliminates the claim for unjust enrichment, so as such, the  
18 unjust enrichment cannot be the basis for punitive damages.

19 And then my last point, just on punitive damages. That  
20 really means the bulk of the basis that Plaintiffs pursued for punitive  
21 damages would be out of the case, both the UCPA and unjust  
22 enrichment, so we'd be entitled to [indiscernible] and punitive damages  
23 and would object to moving forward with the second phase on  
24 [indiscernible] damages. Thank you, Your Honor.

25 THE COURT: Okay. And in response, please.

1 MS. ROBINSON: Thank you, Your Honor. This is the first  
2 that I've heard of this motion, even though we closed the evidence and  
3 got a verdict a week ago, so I believe it's not timely. And I also object to  
4 the lack of notice. I feel like if these are all arguments that Defendants  
5 had in mind, they could have raised them some time ago. I'll just say  
6 that on the Prompt Pay Act, the jury was instructed fully payable and --  
7 well, sorry. It was a claim that was fully payable was not paid in full.  
8 And I'm not articulating this well. I do better when I have a moment to  
9 prepare but the jury obviously decided that there an amount that was  
10 due that was not paid.

11 They awarded us compensatory damages and every cause of  
12 action that involves compensatory damages. So they -- the jury clearly  
13 decided that United owed us money, did not fully pay it when they paid  
14 the amount that they did pay. And so we believe that the jury  
15 determined -- it's clear from the verdict that the jury determined that  
16 there was an amount due that wasn't paid and therefore, it was not fully  
17 paid and that the Prompt Pay Act is not inconsistent. It's completely  
18 consistent with everything that the jury found. On the unfair claims  
19 practices, you know, it's -- I have already forgotten what the argument  
20 was. I apologize. I tried to make notes as quickly as I could.

21 THE COURT: Well, it -- all of the arguments, I think go back  
22 to the verdict form and how it was constructed.

23 MS. ROBINSON: So --

24 MR. SMITH: On the reasonably clear based on the first  
25 verdict.

1 MS. ROBINSON: Ah, right. So that is --

2 MR. SMITH: That is something that --

3 MS. ROBINSON: -- an objection --

4 MR. SMITH: -- neither --

5 MS. ROBINSON: -- I think that was --

6 MR. SMITH: -- party argued.

7 MS. ROBINSON: -- made to the instruction -- the jury  
8 instructions about whether or not -- when -- excuse me. Are you talking  
9 about the more clarity about when it was reasonable clear? Maybe Mr.  
10 Polsenberg can give us some guidance --

11 MR. SMITH: So --

12 MS. ROBINSON: -- about zooming through these was maybe  
13 a little too fast because I didn't --

14 MR. POLSENBERG: Yeah. Friends, if you could -- if you  
15 would face the microphones, I might be able to hear you.

16 MR. SMITH: All right. So for Ms. Robinson's benefit. My  
17 argument.

18 MR. POLSENBERG: No. I know the argument.

19 MS. ROBINSON: I don't know the argument. It was a little  
20 too fast for me. I perhaps needed a little bit more development.

21 MR. SMITH: So all of these arguments are based on what  
22 the jury actually did in their verdict.

23 MS. ROBINSON: I see.

24 MR. SMITH: So the fact that they awarded a damages  
25 figures that neither what we said -- you know, that our reimbursements

1 were sufficient and was not what the Plaintiff said, which was that you  
2 needed full billed charges. The amount they actually awarded was not  
3 an amount of liability that would have been reasonably clear, until the  
4 jury actually came back with that new number.

5 MS. ROBINSON: So Your Honor, what I heard is an  
6 argument about a question of fact. I just don't believe this a question of  
7 law that should be determined at this -- through this type of motion. The  
8 jury did determine -- they -- we can presume that they followed the  
9 instructions. They were instructed about this. They determined that the  
10 Defendants failed to comply with the law. They awarded us damages  
11 and I don't believe that their argument correctly addresses -- it's an  
12 argument about facts that the jury has already determined. And then --  
13 so because we believe that in the implied contract, the unjust enrichment  
14 case, as we've already -- oh, okay.

15 So the unfair -- the implied contract and unjust enrichment,  
16 we've already cited the law to the Court that you can argue the  
17 alternative and we simply cannot get duplicate -- we -- excuse me. We  
18 have to elect our remedy and we will elect our remedy. And because we  
19 believe that both the unjust enrichment and the unfair claims practices  
20 are properly in a case, the punitive damages should proceed. We  
21 believe that the argument that we're really hearings and argument  
22 regarding entry of judgment.

23 I don't think there's any reason not to proceed with punitive  
24 damages phase. They will make their legal arguments regarding, you  
25 know, if they want to attack the judgment and they will make those



1 arguments on appeal. There's absolutely no reason to stop this trial  
2 now, based on this last minute hastily argued motion that we believe is  
3 inappropriate and inaccurate. Thank you.

4 THE COURT: Thank you. And the reply?

5 MR. PORTNOI: Can I say something just before Mr. Smith,  
6 please? It's just on the issue of notice. I just want to reiterate that these  
7 motions are usually often made orally. I just want to say I had no prior  
8 notice before the motions with regard to unclean hands. We're at trial.  
9 Motions are made orally. They're responded to. We're nimble trial  
10 lawyers. There shouldn't be an issue of notice. It's sort of -- the only  
11 motion that had ben -- you know, we'd be responding to a motion -- a  
12 Rule 50 motion with no notice. These are oral motions that are made  
13 frequently.

14 THE COURT: Thank you.

15 MR. POLSENBERG: Your Honor, if I may, because I think I  
16 can do it in 45 seconds.

17 THE COURT: Go ahead.

18 MR. POLSENBERG: Okay. On the unjust enrichment, the last  
19 point first. If you have a contract claim, you don't have an unjust  
20 enrichment claim. Is that an issue you can take up later? Perhaps so.  
21 On the Prompt Pay Act, the -- it says it has to be fully payable. In light of  
22 the jury's verdict, it is not fully payable, because they did not allow full  
23 paid charges. And on the Unfair Claims Practices Act, it -- there is a  
24 question about whether it's reasonable in light of the jury's verdict. So  
25 in light of the jury's verdict, we had 50(a) motions with [indiscernible].

1 THE COURT: Thank you.

2 MR. SMITH: Your Honor, could I just make one --

3 THE COURT: You may.

4 MR. SMITH: -- one more point, and I apologize for the triple  
5 teaming here. But you know, the argument that this is untimely, I think  
6 it's actually -- if anything, it's -- well, it's not premature. We could raise  
7 this argument anytime up until the submission of the question to the jury  
8 on the second phase. All of this is of course predicated on something  
9 that we did not know until we got the jury's verdict, based on the jury's  
10 verdict, so it's not something obviously we could have raised in our  
11 previous 50(a) motion. This is a 50(a) motion directed to the second  
12 phase of trial. It's a motion that make anytime up until the close of  
13 evidence in the second phase of trial. We just thought it would be more  
14 efficient to take care of it today, since we don't anticipate that anything  
15 will change, based on the [indiscernible] set for tomorrow.

16 THE COURT: Good enough. So I will consider the 50(a)  
17 motion and for all of the reasons stated in the oppositions to it, will be  
18 denied on the merits.

19 MR. SMITH: Thank you, Your Honor. And what else do we  
20 need?

21 MR. BLALACK: I think we only had one housekeeping issue  
22 just to advise the Court.

23 THE COURT: Yes. Mr. Roberts.

24 MR. ROBERTS: Thank you, Your Honor. Lee Roberts for  
25 Defendants. I just wanted to bring to the Court's attention that last night

1 we did file that supplemental motion to seal, which was a  
2 comprehensive list of all the exhibits and partial redactions that we're  
3 seeking. I mentioned that we would be filing that before you got back,  
4 but having filed it, it occurred to me that because we had previously filed  
5 that preliminary motion, perhaps we should have filed it as a  
6 supplement, but I didn't know if the Court wanted me to move to  
7 consolidate or take any other action to make sure they're heard together.

8 THE COURT: I can't tell either of you how to move your case  
9 forward. I can't do that to either of you. That's not fair.

10 MR. ROBERTS: Okay.

11 THE COURT: So -- all right. So I decline to entertain that.

12 MR. ROBERTS: Okay. Thank you, Your Honor, but --

13 THE COURT: Politely decline.

14 MR. ROBERTS: But everything else still remains the same as  
15 we discussed before the Court regarding the status --

16 THE COURT: Thank you.

17 MR. ROBERTS: -- of the temporary protection.

18 THE COURT: Got it.

19 MR. ROBERTS: Thank you, Your Honor.

20 THE COURT: Plaintiff, anything else to take up today?

21 MR. MCMANIS: Your Honor, I can just answer the question  
22 on the motion for leave to file response to surreply arguments under  
23 seal. That particular motion is not going to be opposed.

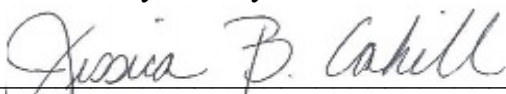
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1 THE COURT: Thank you. All right. So Brynn, let me know  
2 when we're off the record.

3 [Proceedings adjourned at 3:15 p.m.]  
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-visual recording of the proceeding in the above entitled case to the  
23 best of my ability.

24 

25 Maukele Transcribers, LLC

Jessica B. Cahill, Transcriber, CER/CET-708

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

**DEFENDANTS' PROPOSED SECOND  
PHASE JURY INSTRUCTIONS -  
SUPPLEMENT**



UNITED HEALTHCARE INSURANCE COMPANY, a Connecticut corporation; UNITED HEALTH CARE SERVICES INC., dba UNITEDHEALTHCARE, a Minnesota corporation; UMR, INC., dba UNITED MEDICAL RESOURCES, a Delaware corporation; SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC., a Nevada corporation; HEALTH PLAN OF NEVADA, INC., a Nevada corporation,

Defendants.

Defendants United Healthcare Insurance Company (“UHIC”), United Health Care Services Inc. (“UHS”), which does business as UnitedHealthcare or “UHC” and through UHIC), UMR, Inc. (“UMR”), Sierra Health and Life Insurance Company (“SHL”), and Health Plan of Nevada, Inc. (“HPN”) (collectively, “Defendants”), by and through their attorneys of the law firm of Weinberg Wheeler Hudgins Gunn & Dial, LLC and O’Melveny & Myers LLP, hereby submit these Proposed Second Phase Jury Instructions - Supplement. Defendants reserve the right to amend their proposed jury instructions based on, among other things, the evidence admitted at the trial.

Dated this 7th day of December, 2021.

/s/ Abraham G. Smith, Esq.

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## INSTRUCTION NO. D10

In contrast to compensatory damages, punitive damages rest on justifications similar to those for criminal punishment. Because exemplary damages resemble criminal punishment, they require appropriate substantive and procedural safeguards to minimize the risk of unjust punishment.

One of these safeguards is that, in contrast to your verdict on compensatory damages, your verdict as to the amount of punitive damages must be unanimous.

**Source:** *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417 (2003) (stating that punitive damages “serve the same purposes as criminal penalties”); *Austin v. Stokes-Craven Holding Corp.*, 691 S.E.2d 135, 150 (S.C. 2010) (“[P]unitive damages are quasi-criminal in nature.”); *George Grubbs Enters., Inc. v. Bien*, 900 S.W.2d 337, 339 (Tex. 1995) (“In contrast to compensatory damages, exemplary damages rest on justifications similar to those for criminal punishment.”); *Grisham v. Philip Morris, Inc.*, 670 F. Supp. 2d 1014, 1036 (C.D. Cal. 2009) (there are “heightened due process considerations surrounding punitive damages awards” under the Fourteenth Amendment); *see Campbell*, 538 U.S. at 417 (basing the Court’s decision on the fact that “defendants subjected to punitive damages in civil cases have not been accorded the protections applicable in a criminal proceeding[, which] increases our concerns over the imprecise manner in which punitive damages systems are administered”); *George Grubbs*, 900 S.W.2d at 339 (“Because exemplary damages resemble criminal punishment, they require appropriate substantive and procedural safeguards to minimize the risk of unjust punishment.”); *Austin*, 691 S.E.2d at 150 (“Because punitive damages are quasi-criminal in nature, the process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.”). *See generally, e.g., Philip Morris USA v. Williams*, 549 U.S. 346 (2007); *BMW of N. Am., Inc. v. Gore*, 517 U.





1 S. 559 (1996); *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443 (1993); *Pac.*  
2 *Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); KIRCHER, PUNITIVE DAMAGES:  
3 LAW AND PRACTICE 2D § 3.03 (2000); *Ramos v. Louisiana*, 140 S. Ct. 1390, 1397  
4 (2020) (requiring a unanimous verdict in state-court criminal trials); NRS 175.481  
5 (“The verdict shall be unanimous. It shall be returned by the jury to the judge in  
6 open court.”); NRS 175.191 (“A defendant in a criminal action is presumed to be  
7 innocent until the contrary is proved; and in case of a reasonable doubt whether the  
8 defendant’s guilt is satisfactorily shown, the defendant is entitled to be  
9 acquitted.”); NRS 175.211 (“1. A reasonable doubt is one based on reason. It is  
10 not mere possible doubt, but is such a doubt as would govern or control a person in  
11 the more weighty affairs of life. If the minds of the jurors, after the entire  
12 comparison and consideration of all the evidence, are in such a condition that they  
13 can say they feel an abiding conviction of the truth of the charge, there is not a  
14 reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or  
15 speculation. 2. No other definition of reasonable doubt may be given by the court  
16 to juries in criminal actions in this State.”).



## INSTRUCTION NO. D11

You have seen documents that describe the financial condition of parent corporation that is not one of the defendants in this case. That information is irrelevant, and I instruct you to disregard it.

**Source:** *Mathias v. Accor Econ. Lodging, Inc.*, 01 C 6329, 2002 WL 1611582, at \*1 (N.D. Ill. July 22, 2002) (“While evidence of *defendants’ net worth is admissible* to determine punitive damages, plaintiffs have not shown why the financial records of IBL (defendants’ parent company and *non-party to this suit*) are relevant.” (emphasis added)); *see also United Techs. Corp. v. Am. Home Assur. Co.*, 118 F. Supp. 2d 174, 180–81 (D. Conn. 2000) (“AIG is *not a party* to this lawsuit, and the Court therefore finds it improper to use AIG’s value as a measure of exemplary damages. . . . Most of the cases cited by plaintiff are distinguishable, in that either the parent company was a *named a defendant* . . . or there had been some showing that the subsidiary was *merely an alter ego* for the parent . . . .” (internal citations omitted and emphasis added)); *Brown v. Con-Way E. Express, Inc.*, CIV. A. 87-5506, 1991 WL 75228, at \*1 (E.D. Pa. May 1, 1991) (granting in relevant part similar motion in limine to exclude any reference to parent, as well as its net worth, and emphasizing that emphasizing that introducing evidence of the parent just because of that relationship would “essentially” pierce the corporate veil without an appropriate foundation); *Laura v. Fuji Component Parts USA, Inc.*, 1:14-CV-00890-SEB-MJD, 2016 WL 427510, at \*12 n.6 (S.D. Ind. Feb. 2, 2016) (refusing to consider comments from the parent company’s directors in part because the parent status as a nonparty made those comments irrelevant).



**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of December, 2021, a true and correct copy of the foregoing **DEFENDANTS' PROPOSED SECOND-PHASE JURY INSTRUCTIONS - SUPPLEMENTAL** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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10  
11 /s/ Audra R. Bonney  
12 An employee of WEINBERG, WHEELER, HUDGINS  
13 GUNN & DIAL, LLC  
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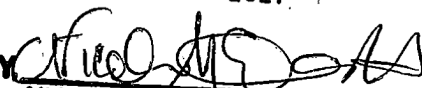
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012143

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

DEC -7 2021

BY   
NICOLE MCDEVITT, DEPUTY

3:24pm

1 INST

3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

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

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

JURY INSTRUCTIONS  
PHASE TWO

10 Plaintiffs,

11 vs.

12 UNITED HEALTHCARE INSURANCE  
13 COMPANY, a Connecticut corporation;  
14 UNITED HEALTH CARE SERVICES INC.,  
15 dba UNITEDHEALTHCARE, a Minnesota  
16 corporation; UMR, INC., dba UNITED  
MEDICAL RESOURCES, a Delaware  
corporation; SIERRA HEALTH AND LIFE  
INSURANCE COMPANY, INC., a Nevada  
corporation; HEALTH PLAN OF NEVADA,  
INC., a Nevada corporation,

17 Defendants.

A-19-792978-B  
INST  
Instructions to the Jury  
4975937



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U.S. AIR FORCE  
HONOLULU, HAWAII

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SUBJECT: [illegible]

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## JURY INSTRUCTION NO. 43

The law provides no fixed standards as to the amount of punitive damages, but leaves the amount to the jury's sound discretion, exercised without passion or prejudice.

In arriving at any award of punitive damages, you are to consider the following:

1. The reprehensibility of the conduct of the defendant;
2. The amount of punitive damages which will serve the purposes of punishment and deterrence, taking into account the defendant's financial condition.



## JURY INSTRUCTION NO. 44

Any individuals other than the plaintiff who might claim to have been harmed by the defendant have the right to bring their own lawsuit seeking compensatory and punitive damages for the wrong, if any done to them. Therefore, in determining the amount of punitive damages that is necessary for punishment and deterrence, you may consider only the wrong done to the plaintiffs in this case. You may not award any punitive damages for the purpose of punishing defendant's conduct toward anyone else or any conduct outside the State of Nevada.

## JURY INSTRUCTION NO. 45

The wealth of a defendant does not diminish its entitlement to all the protections of the law on which you have been instructed.

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## JURY INSTRUCTION NO. 46

You may not award punitive damages to punish Defendants' conduct in litigation. The previous instruction regarding presuming that relevant evidence that was not produced is adverse to the Defendants is still in effect.

## JURY INSTRUCTION NO. 47

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 7 December, 2021

GIVEN: \_\_\_\_\_

*Nancy L Alf*

DISTRICT COURT JUDGE

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FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

DEC -7<sup>th</sup> 2021 3:24p

BY, Nicole McDevitt  
NICOLE MCDEVITT, DEPUTY

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

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Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: XXVII

A-19-792978-B  
VER  
Verdict  
4975939



Special Verdict Form

We, the jury in the above-entitled action, answer the questions submitted to us as follows:



1. The amount of money that should be awarded to Fremont Emergency Services against the following defendants for punitive damages is:

United Healthcare Insurance Company Answer: \$ 4,500,000.00

United Health Care Services, Inc. Answer: \$ 4,500,000.00

UMR, Inc. Answer: \$ 2,000,000.00

Sierra Health and Life Insurance Company, Inc. Answer: \$ 5,000,000.00

Health Plan of Nevada, Inc. Answer: \$ 4,000,000.00

2. The amount of money that should be awarded to Team Physicians against the following defendants for punitive damages is:

United Healthcare Insurance Company Answer: \$ 4,500,000.00

United Health Care Services, Inc. Answer: \$ 4,500,000.00

UMR, Inc. Answer: \$ 2,000,000.00

Sierra Health and Life Insurance Company, Inc. Answer: \$ 5,000,000.00

Health Plan of Nevada, Inc. Answer: \$ 4,000,000.00

3. The amount of money that should be awarded to Ruby Crest Emergency Medicine against the following defendants for punitive damages is:

United Healthcare Insurance Company Answer: \$ 4,500,000.00

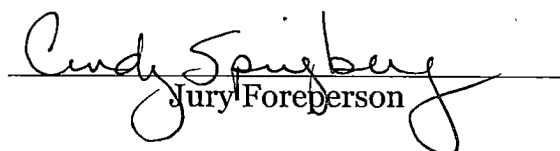
United Health Care Services, Inc. Answer: \$ 4,500,000.00

UMR, Inc. Answer: \$ 2,000,000.00

Sierra Health and Life Insurance Company, Inc. Answer: \$ 5,000,000.00

Health Plan of Nevada, Inc. Answer: \$ 4,000,000.00

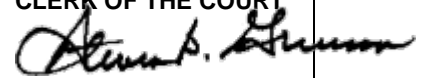
Dated: December 7, 2021

  
Jury Foreperson



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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  
TUESDAY, DECEMBER 7, 2021

**RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 22**

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.  
JANE ROBINSON, ESQ.

For the Defendants:

D. LEE ROBERTS, JR., ESQ.  
K. LEE BLALACK, ESQ.  
JEFFREY E. GORDON, ESQ.  
DIMITRI D. PORTNOI, ESQ.  
ADAM G. LEVINE, ESQ.  
ABRAHAM G. SMITH, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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FOR THE DEFENDANTSMARKEDRECEIVED

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3 Las Vegas, Nevada, Tuesday, December 7, 2021  
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5 [Case called at 8:07 a.m.]

6 [Outside the presence of the Jury]

7 THE MARSHAL: This Court is now in session. The  
8 Honorable Judge Alf presiding.

9 THE COURT: Thanks everyone. Please be seated.

10 MR. BLALACK: Good morning, Your Honor.

11 THE COURT: Calling the case of Fremont v. United. I'd like  
12 to dispense with the roll call, since you're all here and on the record.  
13 Can we bring in the jury?

14 MS. ROBINSON: Your Honor, we filed a brief overnight, and  
15 we're happy to talk about it now, or at a break, whatever Your Honor  
16 prefers. We had -- we wanted to take issue with four words in Defense  
17 instruction D4.

18 THE COURT: Give me a chance to look at it on the first break.  
19 I'll put the law clerk on it right away.

20 MS. ROBINSON: Perfect. Thank you, Your Honor.

21 THE COURT: We have a full house again today, I see.

22 MR. AHMAD: Yes, Your Honor.

23 MR. ZAVITSANOS: But other than that, Your Honor, the  
24 answer is, yes.

25 THE COURT: Okay. Defense, anything to add?

1 MR. BLALACK: No, Your Honor.

2 THE COURT: Thank you.

3 [Pause]

4 THE MARSHAL: All rise for the jury.

5 [Jury in at 8:09 a.m.]

6 THE COURT: Thank you. Please be seated. Good morning  
7 everyone and welcome back. Happy Tuesday to everyone.

8 Let me call the case of Fremont Emergency v. United  
9 Healthcare, I note the presence of counsel and their clients. The marshal  
10 is going back to get your notebooks.

11 Does the Plaintiff wish to give an opening?

12 MR. AHMAD: No, Your Honor, we're going to dispense with  
13 that.

14 THE COURT: Does Defense wish to give an opening?

15 MR. BLALACK: We agree to dispense with an opening,  
16 Judge.

17 THE COURT: Good enough. Then, Plaintiff, please call your  
18 first witness.

19 MR. AHMAD: Your Honor, at this time we would call  
20 Rebecca Paradise.

21 MR. BLALACK: Your Honor, I'm going with your permission  
22 and get Ms. Paradise.

23 THE COURT: Very good.

24 And can everyone see the screen, and still see Ms. Paradise?

25 UNIDENTIFIED JUROR: I don't see her.

1 THE COURT: Good enough, we'll make -- well, all right, you  
2 got me. When she sits down if there's any problem just let me know.  
3 Glad to see you haven't lost your sense of humor.

4 MR. BLALACK: Ms. Paradise is coming, Your Honor, she was  
5 in the restroom, my apologies.

6 THE COURT: No problem. Thank you.

7 Ms. Paradise, you're under the same oath you previously  
8 swore, there's no reason to re-swear you.

9 THE WITNESS: Okay. Thank you.

10 REBECCA PARADISE, PLAINTIFFS' WITNESS, PREVIOUSLY  
11 SWORN

12 THE COURT: Go ahead, please.

13 MR. AHMAD: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. AHMAD:

16 Q Good morning, Ms. Paradise. Good morning. I wanted to --  
17 first of all, can you remind the jury of your employer and your position  
18 with United?

19 A Sure. So my employer is United Healthcare Services, and  
20 my position is Vice President of out-of-network payment strategy.

21 Q Okay. And as a vice president I'm sure you have seen  
22 financial information from United Healthcare Services?

23 A Depending on what financial information you're talking  
24 about, I see some, as part of my business.

25 Q Okay. And I'm going to refer you to Plaintiffs' Exhibit 1001.

1 MR. AHMAD: Do we have that up, or a copy for -- before we  
2 put it up?

3 MR. BLALACK: And, Your Honor, this is an attorney's eyes  
4 only document, just for the record.

5 [Counsel confer]

6 THE COURT: Mr. Ahmad, it is attorney's eyes only, so --

7 MR. BLALACK: Your Honor, could we approach on this?

8 THE COURT: You may.

9 MR. AHMAD: Sure.

10 [Sidebar at 8:14 a.m., ending at 8:15 a.m., not transcribed]

11 THE COURT: All right. I've overruled an objection.

12 MR. AHMAD: Thank you, Your Honor. I don't know that I  
13 actually moved for the admission of -- I think it may be -- is it Defendants'  
14 1001?

15 MR. ZAVITSANOS: No, Plaintiffs.

16 MR. AHMAD: Plaintiffs 1001, which is the consolidated  
17 financial statements for United Healthcare Services.

18 THE COURT: Is there any objection?

19 MR. BLALACK: We'll make our record later, Your Honor.

20 THE COURT: All right. So subject to your objection to be put  
21 on the record later, 1001 will be admitted.

22 [Plaintiffs' Exhibit 1001 admitted into evidence]

23 MR. AHMAD: Okay.

24 BY MR. AHMAD:

25 Q And United Healthcare Services is, the company -- the entity



1 that you work for, correct?

2 A Correct.

3 MR. AHMAD: Okay. And if we go to I believe page 3 --  
4 actually 4, then.

5 MR. ZAVITSANOS: He means 5.

6 MR. AHMAD: Okay. There we go. All right. It's a little bit  
7 hard to see, maybe if we magnify the very top part and the very top part  
8 numbers.

9 BY MR. AHMAD:

10 Q What we see is, just looking at the top -- and you'll see this  
11 2019 and 2020, correct?

12 A I see those dates.

13 Q Okay. And those numbers are in millions, correct?

14 A That's what this document says.

15 Q And so if we look at, for example, under "assets cash and  
16 cash equivalents" it shows 2019, if my math is right, that's about  
17 8.8 billion; is that correct?

18 A That's what looks to be on the statement.

19 Q And in 2020, I guess they actually raised the cash level to  
20 13.7 billion; is that right?

21 A The statement says that's the cash as of 2020.

22 Q Okay. So it looks like it went up by about 5 billion?

23 A That's what the document says.

24 MR. AHMAD: All right. And we go down to about the  
25 midway, in the document. A little bit higher, just a couple of lines

1 higher. There we go. Oh, I'm sorry, including the bottom part that was  
2 already there. There we go.

3 BY MR. AHMAD:

4 Q So for example, if we looked at total assets we have  
5 171 billion, correct?

6 A That's the number on the document.

7 Q And that's 2020, correct?

8 A Correct.

9 Q As opposed to total liabilities at the very bottom for 2020,  
10 which is 85,366,000,000, correct?

11 A That's the number for the total entity.

12 Q So the amount of assets minus liabilities is almost  
13 85 billion; is that right? Actually it's more, slightly more than 85 billion;  
14 is that right?

15 A If that's what the document says.

16 Q Well, I'm just doing the math. I'm subtracting 171 minus 85,  
17 that's about 86, right?

18 A Sir, I agree with your calculation. This is a document -- I have  
19 not ever seen a balance statement in my time that I worked at United.  
20 So if that's what the calculation is, if we do that in our head, then that's  
21 what the number is.

22 Q Okay. I mean, but do you disagree with anything that I'm  
23 saying, that the amount of assets minus liabilities appears to be 85,  
24 86 billion, according to this document?

25 A The numbers are what the numbers are in this document --

1 Q Okay.

2 A -- I'm not disagreeing.

3 Q Let me go to some other entities we've heard about, and I'll  
4 refer to Exhibit 1002, I don't want to put it up yet. You're familiar with  
5 United Healthcare Insurance Company?

6 A Yes.

7 Q Okay.

8 MR. AHMAD: And Your Honor, the same document, the  
9 consolidated financial statement is 1002, for United Healthcare Insurance  
10 Company. I'd move that that be admitted.

11 THE COURT: It was moved to be admitted.

12 MR. BLALACK: Your Honor, objection on foundation.

13 THE COURT: The objection is overruled, 1002 will be  
14 admitted.

15 [Plaintiffs' Exhibit 1002 admitted into evidence]

16 MR. AHMAD: Okay. And on this document, if we can go and  
17 look similarly, it's, I think, page, the same as the last one, page 5. And if  
18 we go midway -- yeah, just midway. There we go. That's perfect.

19 BY MR. AHMAD:

20 Q Okay. So I'm doing the same calculation, it's 21 billion for  
21 assets minus 13 billion for liabilities, and I think the total is 7.6 billion; do  
22 you see that?

23 A I see the numbers and understand the calculation you're  
24 explaining.

25 Q Okay. And then I'll move to -- you're familiar with Sierra

1 Health and Life Insurance Company?

2 A Yes.

3 MR. AHMAD: And, Your Honor, the same document for  
4 Sierra is 1003, I would move that that be admitted.

5 MR. BLALACK: The same foundational objection.

6 THE COURT: All right. And subject to your objection, which  
7 will be overruled, 1003 will be admitted.

8 [Plaintiffs' Exhibit 1003 admitted into evidence]

9 MR. AHMAD: Again, if we go to page 5, and look kind of  
10 midway through.

11 BY MR. AHMAD:

12 Q I think the numbers are 6.1 billion minus liabilities of  
13 2.7 billion, the 6.1 billion being an asset; is that correct, as of 2020?

14 A Yes. Those numbers are what's on the document, yes.

15 Q And so the amount of assets over liabilities is about  
16 3.3 billion, according to this?

17 A Yeah. I agree with that.

18 Q Okay. And finally, we have another entity, UMR, you're  
19 obviously familiar with UMR, correct?

20 A I am.

21 Q I mean, you talked to them as part of your job with United,  
22 correct?

23 A I don't have oversight for their programs, but we definitely  
24 talk.

25 MR. AHMAD: Okay. And Your Honor, the consolidated

1 financial statement for UMR is Plaintiffs' Exhibit 1004. We move that that  
2 be admitted, as well.

3 MR. BLALACK: Same objection.

4 THE COURT: All right. The objection is overruled, and 1004  
5 will be admitted.

6 [Plaintiffs' Exhibit 1004 admitted into evidence]

7 BY MR. AHMAD:

8 Q Okay. UMR is a smaller entity; is that right?

9 MR. BLALACK: Just for the record, Your Honor, are we  
10 talking about UMR or Health Plan of Nevada?

11 THE COURT: Counsel, please clarify that.

12 MR. AHMAD: Oh, I'm sorry, I think it's Health Plan of  
13 Nevada. I put down UMR, but you're right, it's Health Plan -- Health Plan  
14 of Nevada.

15 MR. AHMAD: Has it been admitted, Your Honor, 1004?

16 THE COURT: I believe we did. Although I might have said  
17 UMR, which I'm now correcting to Health Plan of Nevada.

18 MR. AHMAD: That's correct. And if we go to the same page,  
19 page 5.

20 BY MR. AHMAD:

21 Q Okay. And I think here it looks like assets of 722 million as of  
22 2020. Liabilities are 300 and -- excuse me, 410 million, according to this  
23 document; is that correct?

24 A Those are the numbers on the document, yes.

25 Q Okay. And the amount of assets over liabilities is 312 million;

1 is that right?

2 A That looks to be the right number.

3 Q Okay. Are you a stockholder in United?

4 A I am.

5 Q You get annual reports, I assume?

6 A I know they publish them. I honestly don't ever look at them.

7 Q Okay. Do you know that they come with a document known  
8 as a 10K attached to it?

9 A I believe I've heard that before.

10 Q Okay. And you know what a 10K is.

11 A I really don't.

12 Q Okay. You know it states some of the financial information  
13 about the company, such as something known as free cash flow?

14 A I don't know the details of a 10K. I don't interact with it as a  
15 normal course of my job.

16 Q Okay. Are you familiar with the Stock Buybacks that United  
17 has [indiscernible]?

18 A I'm not.

19 Q Okay. Do you know what a Stock Buyback is?

20 A I understand the concept, but I'm not involved in that for  
21 United Health Group.

22 Q Okay. You're aware that United has taken a lot of its cash to  
23 buy its own stock.

24 MR. BLALACK: Object to the foundation of the question,  
25 given the witness' testimony.

1 THE COURT: Overruled.

2 THE WITNESS: I'm not involved in that process. I have no  
3 visibility to it, so I'm not aware about that program.

4 BY MR. AHMAD:

5 Q Okay. Are you saying as a stockholder, you're unaware that  
6 United has been buying back its stock, which would increase the price of  
7 its stock for people like you and the other stockholders?

8 A I'm unaware of that program.

9 Q You're unaware that they've done it at all.

10 MR. BLALACK: Objection. Relevance, Your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: I mean I understand what a Stock Buyback is.  
13 Again I just have nothing to do with that program at United, so I can't  
14 make any representations about it.

15 BY MR. AHMAD:

16 Q And my question is, are you saying you're completely  
17 unaware that United has bought back its stock?

18 A Yes. Because it doesn't impact my day-to-day business. I  
19 really don't pay attention to that -- those types of programs.

20 Q Even though you own stock yourself?

21 A Yes.

22 Q Have you noticed that the stock price, and I'll talk about just  
23 the last few years, has gone significantly up?

24 MR. BLALACK: Object to the relevance of the question.

25 THE COURT: Overruled.

1 THE WITNESS: I understand the stock price has gone up.

2 MR. AHMAD: And, Your Honor, at this time, I would move  
3 for the admission of Plaintiffs' Exhibit 519, which is the United 2020 10K.

4 MR. BLALACK: Same objection as before.

5 THE COURT: Exhibit 519 will be admitted.

6 [Plaintiffs' Exhibit 519 admitted into evidence]

7 MR. AHMAD: Okay. Let's go to page 37. And if I can see  
8 this. Maybe the next page. Can we blow that up?

9 UNIDENTIFIED SPEAKER: This page?

10 MR. AHMAD: The next page.

11 BY MR. AHMAD:

12 Q Okay. And it looks like United has consolidated earnings  
13 from 2020, not just earnings, of 22 billion; Is that correct?

14 MR. BLALACK: Objection. Foundation.

15 THE COURT: Overruled.

16 BY MR. AHMAD:

17 Q Is that correct, Ms. Paradise?

18 A That's the number on this document. I've never seen this  
19 document.

20 BY MR. AHMAD:

21 Q Okay. Now talking about Stock Buybacks, if we can go to  
22 page 76 of this document.

23 MR. AHMAD: And if we can just blow up the part about  
24 Share Repurchase Program.

25 BY MR. AHMAD:



1 Q The share repurchase is buying back United stock, correct?

2 MR. BLALACK: Objection. Foundation.

3 THE COURT: Overruled.

4 THE WITNESS: This is the first time I've seen this, so that  
5 looks what this explains.

6 BY MR. AHMAD:

7 Q Yes, that's what it explains, that United maintains a share of  
8 the repurchase program. Do you see that?

9 A I do.

10 Q And the objectives as it states here, of that repurchase  
11 program, is to optimize the capital structure, cost of capital, thereby  
12 improving returns to shareholders, right?

13 A That's what it says.

14 Q And that has the effect of increasing the price of the stock?

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

16 THE COURT: Overruled.

17 THE WITNESS: Sir, I've explained, I really don't interact with  
18 this program. I don't know what the net result of a Share Buyback  
19 Program is. I've never interacted with it. And I really don't pay attention  
20 to it. I'm not here as a corporate rep here today. I'm here to share my  
21 information of the companies.

22 BY MR. AHMAD:

23 Q Well, speaking of being a corporate rep, you were earlier in  
24 this case designed by United to talk about some of the financial issues or  
25 profits, et cetera, as it pertained at least to Shared Savings, right?

1           A     And I believe that was with respect to certain tactics. It was  
2 not broadly for all of our financial statements. I have no visibility to  
3 these 10Ks or those broader financial statements.

4           Q     Okay. But when the company takes its cash, right, and  
5 decides to use that cash, okay, to buyback the stock so as to increase --  
6 and here it says authorization to repurchase up to 100 million shares of  
7 its stock, with the cash that it has, and it increases the price of the stock.  
8 And we can see here, if we look down below, it looks like the price of the  
9 share -- the second line, the average price per share in 2019 and 2020  
10 went up from 245 to 300. Are you saying as a stockholder you don't  
11 notice the increase in the value of your stock?

12                   MR. BLALACK: Object to the form of the question. It's  
13 compound.

14                   THE COURT: You can break that down.

15 BY MR. AHMAD:

16           Q     Sure. Number one, you're aware that the price of the stock  
17 was going up, as a stockholder, correct?

18           A     Sir, I'm aware that the price of the stock has gone up. I don't  
19 know all of the details behind what might be driving that increase in the  
20 stock price.

21           Q     And it's fair to say that you get your stock as part of your  
22 compensation, correct? As do some of the other executives at United,  
23 correct?

24           A     So it is an option, it's not a guarantee. But you may receive  
25 stock as a part of your compensation package.

1 Q Okay. And are you saying you were not aware of these share  
2 repurchase programs and the effect that it has on the stock that you  
3 own?

4 MR. BLALACK: Objection to the form as compound. It's also  
5 been asked, and it's been answered.

6 THE COURT: Overruled.

7 THE WITNESS: Sir, as I said before, I really do not have all of  
8 the details about the Share Repurchase Program. When I'm at work, I'm  
9 focused on my job, not on the stock.

10 BY MR. AHMAD:

11 Q Okay. Are you aware that United -- the big group -- the  
12 umbrella group of United has the 13 highest market capitalization in the  
13 country?

14 MR. BLALACK: Objection to --

15 MR. AHMAD: Of all companies.

16 MR. BLALACK: I'm sorry. Object to the foundation of the  
17 question. Relevance. Also United Health Group is not a Defendant in  
18 this case.

19 THE COURT: Overruled.

20 THE WITNESS: I actually don't know that.

21 BY MR. AHMAD:

22 Q How about -- are you familiar with Fortune 500? The 500  
23 companies?

24 A I'm familiar with that, yes.

25 Q Did you know that United was number 5 in the Fortune 500?

1 A That I do understand.

2 Q Okay. Now I want to talk directly about the Plaintiffs. The  
3 relevant time period for the conduct between the Defendants and the  
4 Plaintiffs. And first of all, if you can look at Exhibit 50 -- excuse me, 89,  
5 page 58. Can you take a look at Exhibit 89?

6 A When it comes up, I'd be happy to.

7 Q Okay.

8 MR. AHMAD: Do we not have Exhibit 89? Your Honor, may I  
9 provide this document to Ms. Paradise?

10 THE COURT: Again identify it for the record, first, please.  
11 And make sure that your opposing counsel has seen it.

12 MR. AHMAD: It is Plaintiffs' Exhibit 89.

13 MR. BLALACK: Yeah, I have it identified. We do object, Your  
14 Honor. Foundation. The witness didn't write it or receive it.

15 THE COURT: Thank you.

16 BY MR. AHMAD:

17 Q And first of all, under the [indiscernible] of page 58, I direct  
18 your attention to that. And do you see where it talks about a percentage  
19 of market shares that United has in Clark County Nevada?

20 A I see that.

21 Q Okay. Are you -- are you aware of that level of market share  
22 in Clark County for United?

23 A No. This is the first time I've seen this document.

24 Q Are you involved -- do you have any responsibility over out-  
25 of-network payment strategy for Nevada, and specifically Clark County?

1           A     Well, not specifically in the County. I can speak to UHAC or  
2 UHS. I can't speak to UMR, or HPN, or Sierra.

3           Q     Were you aware that -- and I won't use the percentage in that  
4 document, but were you aware that United had a large market share in  
5 Nevada?

6           A     I am not or was not, am not.

7           Q     Not aware of that at all?

8           A     No, sir.

9           Q     All right. During the relevant time period, and limited to that  
10 time period, is it fair to say that when you look at the amounts that  
11 United -- the United Defendants paid the Plaintiff healthcare providers,  
12 that the amounts of that pay wasn't -- it wasn't an accident or mistake,  
13 United chose that level of reimbursement for the Plaintiffs; is that  
14 correct?

15                   MR. BLALACK: Object to form.

16                   THE COURT: Overruled.

17                   THE WITNESS: I'm sorry. So this document's from 2017.  
18 Are you talking specifically to 2017?

19 BY MR. AHMAD:

20           Q     Well, I'm talking about during the relevant time period, 2017  
21 to 2020, in this case, for the Plaintiffs at issue in this case.

22           A     So over that time period we had a variety of out-of-network  
23 programs we were offering, and the underlying methodology supports  
24 the reimbursement level.

25           Q     But none of that was a mistake or accident? These are --

1 these are choices that United made?

2 A I don't really know what you mean by mistake or actual. We  
3 develop programs. And they're, you know, educating our salespeople,  
4 and our clients are choosing which programs they want to offer on the  
5 benefit plan.

6 Q Well, let me put a chart, Plaintiffs' 1005. I think it was shown  
7 on the opening days of cross-examination.

8 MR. BLALACK: Is this a demonstrative or an exhibit?

9 MR. AHMAD: A demonstrative.

10 MR. BLALACK: Okay. No objection.

11 BY MR. AHMAD:

12 Q First of all, were you familiar -- were you familiar that United  
13 pays the Plaintiff E.R. providers less than it pays other Nevada E.R.  
14 doctors?

15 A Other non-par E.R. doctors, or other par?

16 Q Just other E.R. doctors, out-of-network.

17 A I don't -- so I've never seen this document before. I don't  
18 know the underlying data behind it. Am I aware of the specifics about  
19 Nevada ER docs? That's not -- I'm typically not looking at that level of  
20 detail in my role.

21 Q Okay. But for example, when we go back to Exhibit 89,  
22 which I was asking you about, that doc -- that document, if you look at it,  
23 is United Health Network's West Region review in April of 2017, correct?

24 A That's the title of the document. Yes.

25 Q Okay. So you would have had responsibility for the West

1 Region as it pertains to at least out-of-network, correct?

2 A I would have had -- so we manage our programs nationally. I  
3 don't recall this West Region review. I'm typically not involved in the  
4 network reviews. Yes, our programs apply nationally. And if they're  
5 used in the West Region, we would have oversight for what programs  
6 are used in the -- that region.

7 Q So you would have -- you personally would have oversight  
8 as of the date of this document for the West Region and other regions?

9 A Well, we would have oversight for the programs. They're  
10 built at a national level and may be used at a region. They're not  
11 managed region specific. The underlying methodology isn't managed at  
12 a region specific or local market specific approach.

13 Q But you have oversight over the West Region?

14 A I have oversight nationally. Not region by region. I guess we  
15 just don't function the way you're try -- you're trying to represent that.

16 MR. AHMAD: Well, Your Honor, at this time, I'd move for the  
17 admission of what is entitled the United Health Network's West Region  
18 review, which is Plaintiffs' Exhibit 89.

19 MR. BLALACK: Same objection, Your Honor. Lack of  
20 foundation. The witness hasn't seen it, written it, received it, or had any  
21 role in its development.

22 THE COURT: Objection's overruled. 89 will be admitted.

23 [Plaintiffs' Exhibit 89 admitted into evidence]

24 BY MR. AHMAD:

25 Q Okay. If we could go to page 58. I think this refers to the

1 market share that I was talking about earlier. And this indicates Sierra  
2 United has 80 percent of the Clark County, Nevada market share. Is that  
3 right?

4 A Sir, that's what the document says. I've never seen this  
5 document. And market share isn't a data point that we use at all in our  
6 oversight of our out-of-network program. So it's what the document  
7 says. I haven't seen that statistic so far.

8 Q Well, I mean, is there anybody that has paid attention, I  
9 guess, to -- at United, to your knowledge, as to what is going on in  
10 Nevada?

11 A Well, I would imagine the people who have oversight for  
12 managing the individual health plan or for that region of health plans  
13 would be paying attention to that information.

14 Q And do you know as a result of the jury's verdict, the one we  
15 already received, do you know if there's been any effort to do anything  
16 differently with respect to the out-of-network payments in Nevada?

17 A So that verdict is a week old. We haven't as yet been able to  
18 put a formal action plan in place. It's a new verdict. We're still digesting  
19 what it means for us.

20 Q Well, I guess -- I mean, the verdict was rendered before  
21 Thanksgiving, right?

22 A I thought it was last Monday.

23 Q Oh, I'm sorry. You're right. I apologize. And that was a  
24 week ago. You did know that you were going to be called back to testify  
25 at this stage, correct?



1 A I found out about that I believe last week.

2 Q Well, didn't you know even from before that you would be  
3 called back for this -- that you may -- you were subject to being called  
4 back about this today?

5 A I understood I may be called back.

6 Q Okay. And so you all knew that you would come back to  
7 testify, and the only issue would be punitive damages, correct?

8 A I understood that's what I'd --

9 MR. BLALACK: Objection. Foundation.

10 THE WITNESS: -- be called back for.

11 MR. BLALACK: The witness is not a lawyer.

12 BY MR. AHMAD:

13 Q Are you prepared --

14 THE COURT: Overruled.

15 BY MR. AHMAD:

16 Q -- to say anything as a result of the week that you had in  
17 terms of any changes that the company is considering as a result of the  
18 verdict?

19 A So it's been a week. There's a lot we need to review. I can  
20 certainly say this decision is serious. And we have a number of things  
21 that we have to take the time to evaluate and ensure we understand the  
22 verdict, what the jury has said, and ensure that we evaluate everything  
23 appropriately and take the appropriate steps to correct our actions.

24 Q What does that mean?

25 A Sir, it means we need some time to evaluate what programs

1 we're offering, how those underlying methodologies may need to  
2 change. We have to understand for the 11,000 claims at issue how those  
3 claims need to be adjusted. There's conversations we're going to need  
4 to have with our clients so they can understand how those claim  
5 payments are going to affect them, their members. There's a potential  
6 member cost share implication to paying higher amounts on claims. So  
7 there's hundreds of clients involved. We have to have all those  
8 conversations.

9 If we change the underlying methodologies, there's system logic,  
10 there's plan logic that has to be evaluated. And we're also going to have  
11 to reevaluate our contracts with our clients to understand if there's any  
12 implications in how we're charging for our programs or how we're  
13 talking about our programs in those contractual documents. And lastly,  
14 you know, there very well could be competitive impacts for us in the  
15 State of Nevada that will also have to be considered.

16 Q So -- and I didn't hear any recommendations to make any  
17 changes. Did I hear that wrong?

18 A I think you're mischaracterizing what I'm saying. It's been a  
19 week. We are committed to digesting this verdict and doing the  
20 evaluation I just described at length.

21 Q Are you prepared to make any recommendations to make  
22 any changes as a result of the jury's verdict?

23 A We take this verdict very seriously. And we do need to  
24 spend the time to understand what the impacts are to all of the things I  
25 described. And I am certainly committed to doing that evaluation and

1 ensuring that we understand that verdict and what it means for our  
2 programs, and any changes we may need to make.

3 Q Well, my question is -- I mean, I know you're committed to  
4 evaluating. But are you prepared to make the -- a recommendation of  
5 any change?

6 A Sir, it's been a week. I've explained, you know, I -- our  
7 company has not fully digested this verdict. I can't commit what specific  
8 change will be made. I can commit that we will understand after  
9 evaluation what those changes may be, and that they will be made at the  
10 appropriate time we understand what they are.

11 Q So if I hear that right, which I'm not sure commits to doing  
12 anything -- well, in fact, it's a possibility that United will evaluate this and  
13 decide to do nothing, right?

14 A I think that's an unfair characterization.

15 Q It's a possibility?

16 MR. BLALACK: Objection. Calls for speculation.

17 THE COURT: Overruled.

18 BY MR. AHMAD:

19 Q Correct?

20 A Sir, I believe part of the verdict was we underpaid claims.  
21 We're not going to do nothing on that. Obviously, we have to  
22 understand how we're going to adjust those claims and the impacts to  
23 our clients. And we have to have conversations with each and every one  
24 of those clients, so they understand those implications. I think it's unfair  
25 to say we're not going to do anything.

1 Q Well, how much are you willing to commit to right now as a  
2 minimum amount of change? What is the minimum that you can  
3 commit to right now in terms of actual change to the reimbursement  
4 rates?

5 MR. BLALACK: Objection. Asked and answered.

6 THE COURT: Overruled.

7 THE WITNESS: Sir, again, it's been a week. There's a  
8 number of people that have to get together to fully digest this verdict.  
9 We need some -- you know, we'll need to understand, as I've explained,  
10 the impacts to the claims at issue, the impacts to those clients. We have  
11 to talk to our clients and ask them, you know, for their input, ensure that  
12 we're approaching things the way they want to, as well. We have to  
13 understand what changes we may need to make to our underlying  
14 methodology.

15 I cannot make a specific commitment with one week under  
16 our belt. But what I can state is this verdict is very serious and it's  
17 significant to us. And we will be evaluating that, taking it seriously, and  
18 figuring out what changes we may need to make.

19 BY MR. AHMAD:

20 Q Are you -- can you even commit that you'll make a  
21 recommendation of a change, you personally?

22 A Well, when I participate in that evaluation, there are certainly  
23 going to be recommendations. And so I will be involved. I have  
24 oversight for the out-of-network programs. I will be involved in  
25 evaluation what changes we need to make to our underlying

1 methodologies in response to this verdict.

2 Q And I understand that. I'm really asking you -- I'm just trying  
3 to find out, can you commit to you making a recommendation sitting  
4 here today?

5 A I can commit we're absolutely going to evaluate this. And  
6 we will be determining what changes need to be made. It's been one  
7 week.

8 Q Now, you know I'm not asking about a commitment to  
9 evaluating. Okay. I've heard that. I'm talking about an actual change.  
10 Are you prepared to commit to the recommendation to make an actual  
11 change?

12 MR. BLALACK: Objection. The form of the question. It's  
13 been asked four times and answered four.

14 THE COURT: Overruled.

15 THE WITNESS: Sir, I think it's a little bit unfair to ask me to  
16 commit to changes that I haven't had the due time to understand what  
17 they are. And part of those changes are going to be involving  
18 conversations with our clients. We have not had one conversation yet  
19 with any of our clients to help them understand the impact of this  
20 verdict.

21 BY MR. AHMAD:

22 Q Do you have an opinion even, sitting here today? I mean,  
23 should the Defendant start paying more in reimbursements to the  
24 Plaintiffs?

25 A I'm not sure that my opinion matters. I think the verdict was

1 that we underpaid. And I accept that verdict. And we have to evaluate  
2 and understand what changes we need to make to the programs in  
3 response to that verdict.

4 Q Well, it matters at least to us. Do you -- can you share with  
5 us any opinion that you have about whether the Defendant should start  
6 paying more in reimbursements to the Plaintiffs?

7 MR. BLALACK: Objection. Relevance.

8 THE COURT: Overruled.

9 THE WITNESS: My opinion is this is a very serious verdict  
10 for us. And we have to closely evaluate how our programs are operating  
11 in Nevada and what programs we want to offer our clients. So I'm not  
12 sure my opinion matters. I mean, we have to respond to the verdict.

13 BY MR. AHMAD:

14 Q But you don't have to respond in any particular way, right?

15 A Well, I'm not really sure I understand that question. We -- the  
16 jury found that we underpaid claims. That's serious and significant for  
17 us. And we have to digest the verdict further, evaluate our program  
18 offerings in Nevada, and evaluate what changes need to be made, and  
19 the effort to make those changes.

20 Q Well, I guess my question is -- I mean, how much would it  
21 take before United or anybody at United is willing to make a  
22 commitment to an actual change?

23 MR. BLALACK: Objection. Foundation. She can't speak for  
24 all of United.

25 THE COURT: Overruled.

1 BY MR. AHMAD:

2 Q Anybody at United?

3 A Sir, I've said before, and I will say again, this verdict is  
4 significant. We take it very seriously. I take this very seriously. And we  
5 will be evaluating what needs to change. So that work will start.  
6 Unfortunately, it couldn't start in a week's time frame. But 100 percent, I  
7 take this seriously. It's part of my job. And we're going to do the work  
8 to evaluate what needs to change.

9 Q Has anybody talked about what potential effect any verdict,  
10 punitive damages might have on the network of the company, assets,  
11 liabilities, anything like that?

12 MR. BLALACK: Objection. Is he asking about her  
13 communications or anybody in the company?

14 THE COURT: Clarify.

15 BY MR. AHMAD:

16 Q Well, communications that you've been involved in.

17 MR. BLALACK: No objection.

18 THE WITNESS: I've not been involved in any of those  
19 conversations.

20 BY MR. AHMAD:

21 Q If we look -- go back to Plaintiff's Exhibit 1000 -- I think it's  
22 1001, page 5. There's a mention again of -- I'm sorry, go back one. Yes.  
23 If we can go back to that -- the -- yes, assets and liabilities portion. So  
24 just looking at the amount of assets over liabilities, I think we've covered  
25 about 85 or 86 million. And if we look at the liabilities, that's

1 85,366,000 -- oh, I'm sorry, 85,366,000,000, correct?

2 A Correct. That's on the document.

3 Q Okay. Now, do you know how much it will take -- I mean, if  
4 we just look at that number and we looked at the amount of the verdict  
5 so far to the left, I think that all it does is change the liabilities from -- that  
6 number will go from 85,366 to 85,364 or 363; is that right?

7 A If you add the compensatory damages to the number on the  
8 page?

9 Q Correct.

10 A That's the number.

11 Q That's kind of hard to notice, right, 85,366 to 85,364?

12 MR. BLALACK: Object to form.

13 THE COURT: Overruled.

14 THE WITNESS: Oh. The verdict itself, the fact that the jury  
15 found that we underpaid, that's what's significant.

16 BY MR. AHMAD:

17 Q Okay.

18 A And we hear the jury on that. So that's significant to us.

19 Q Well, I mean I say you've heard the jury, but I mean it's fair to  
20 say the company has stated in writing, right, that it's committed to  
21 growing membership and growing profit margin, right?

22 A Is that a document? I --

23 Q It is. We'll go to --

24 A Okay.

25 Q -- Exhibit 66, page 2.



1 [Counsel confer]

2 BY MR. AHMAD:

3 Q Okay. And the second paragraph it says the commercial  
4 group, right, is driven by two simple strategies, growing our member  
5 base and expanding our margins. Do you see that?

6 A I see that sentence.

7 Q What about paying reasonable value to the physicians that  
8 provide the services that you actually insure for?

9 A So, first of all, I've not seen this document. It's a page in a  
10 broader document that I'm not familiar with. And this looks to be talking  
11 specifically about growth. Certainly, at the heart of our out-of-network  
12 programs, which this is not discussing, we believe we are paying fair and  
13 reasonable rates. The jury found otherwise in this case, and we  
14 seriously will evaluate that.

15 Q Well, but if we look at -- you know, we go to the -- skip over a  
16 sentence that says we will grow membership in both group FI and ASO  
17 and expand our margins. And then, of course, it says not a modest  
18 expansion of margin, right?

19 A Sir, that's what it says, but this is broader than out-of-  
20 network. So just because it states there's a margin expansion, to what  
21 extent the out-of-network programs are a part of that, I would have no  
22 idea. I've never seen this document.

23 Q Well, it includes out-of-network, because it says ASO, right?

24 A It may, but I am uncertain, since I was not involved in the  
25 development of this document, what they're including in that margin

1 expansion.

2 Q Is there any document, any thought, to actually including as  
3 a strategy paying reasonable value to the physicians that provide the  
4 services?

5 A I'm not sure I'm following your question. Can you restate it?

6 Q Well, let me just ask you this. When I look at these, when I  
7 look at the margins and I was asking you, I believe, with respect to the 85  
8 million 306 --

9 UNIDENTIFIED SPEAKER: Billion.

10 BY MR. AHMAD:

11 Q Excuse me. 85,366,000,000 in liabilities, how much would it  
12 take for somebody to say well, look, if we don't pay reasonable value,  
13 this ultimately will affect our profitability and, therefore, we need to start  
14 considering the reasonable value of the services provided, at what  
15 number does somebody notice the difference between an 85-366 and 85  
16 whatever, 85-200, whatever it is? At what point does United start to  
17 notice that it is impacting their margins? Do you know?

18 MR. BLALACK: Object to the foundation of the question.  
19 Also, calls for speculation, and it's compound.

20 THE COURT: I'm going to ask to -- for you to rephrase that.

21 MR. AHMAD: Okay.

22 BY MR. AHMAD:

23 Q Do you know at what point United will say not paying  
24 reasonable value is affecting our margins?

25 A I don't really know how to answer that question. I mean

1 we're managing our programs irrespective of the margin. We're  
2 evaluating our programs to ensure they're meeting market demands and  
3 that we're paying fair and reasonable value.

4 Q Well, I didn't see paying fair and reasonable value. Is there  
5 any documents, by the way, that you've seen created since the verdict  
6 that starts talking about paying reasonable value?

7 A Sir, I mentioned before it's been a week. I haven't seen any  
8 documents or any communications with respect to this verdict that have  
9 talked -- I mean that have talked about the verdict at all or have talked  
10 anything about our margins related to our programs.

11 Q Okay. And you simply don't know how much it will take for  
12 somebody to take notice of the verdict and say this is affecting our  
13 margins?

14 A Sir, we've taken notice of the verdict irrespective of the  
15 impact to margin. We heard the jury. They found we underpaid. That  
16 has gotten all the attention. So I don't -- I'm not sure -- you're asking for  
17 a dollar amount. That's not the point here. The point is the jury found  
18 we underpaid claims. That is what's got everybody's attention.

19 Q Well, let me ask you at what point does the profit margin  
20 aspect get United's attention?

21 MR. BLALACK: Object to the foundation of the question.  
22 Calls for speculation given the witness' role.

23 BY MR. AHMAD:

24 Q If you know.

25 THE COURT: Overruled.

1 BY MR. AHMAD:

2 Q If you know.

3 A I do not manage our broad PNLs. My job is to manage our  
4 out-of-network programs and, again, ensure and evaluate we're  
5 providing solutions that pay fair and reasonable rates. As far as any  
6 speculation about our profit margins or any conversations that are  
7 happening about that, I wouldn't be involved in those conversations.

8 Q Okay. Now you said though -- I think I've heard repeatedly  
9 now that United takes the verdict seriously, right?

10 A Yes, absolutely.

11 Q Did -- was any of United's conduct that we talked about in  
12 this case reprehensible?

13 A I wouldn't characterize it that way. We believed we were  
14 paying fair and reasonable rates. The jury found otherwise. So we need  
15 to evaluate that.

16 Q Do you believe that it's reprehensible?

17 A I don't believe so we did anything reprehensible. Again, we  
18 believed we were paying a fair and reasonable rate, but the jury found  
19 otherwise. And they get the final say in this.

20 Q Was any of it fraud?

21 MR. BLALACK: Objection. She's not a lawyer, Your Honor.

22 THE COURT: Objection sustained.

23 BY MR. AHMAD:

24 Q Well, was any of it malice?

25 MR. BLALACK: Same objection.

1 MR. AHMAD: Your Honor, this was a factual finding by the  
2 jury.

3 THE COURT: You need to refine the question to her  
4 understanding.

5 MR. AHMAD: Okay. Thank you, Your Honor.

6 BY MR. AHMAD:

7 Q Well, do you believe that any of the conduct was malicious?  
8 Just under your understanding not a legal understanding.

9 A So my opinion, I don't believe we did anything with malice.  
10 But again, the jury has found we underpaid clients, and they believe we  
11 did something wrong. And they get the final say in this.

12 Q Was any of it oppression?

13 MR. BLALACK: Same objection, Your Honor.

14 THE COURT: Overruled.

15 THE WITNESS: Same answer. The jury found we did  
16 something wrong. I don't believe we did. I believe we were paying fair  
17 and reasonable rates, but the jury found otherwise.

18 BY MR. AHMAD:

19 Q Well, is somebody -- to your knowledge, is somebody going  
20 to reconsider United's position that it didn't engage in fraud, malice, or  
21 oppression?

22 MR. BLALACK: Object to form. Calls for speculation.

23 THE COURT: You need -- just clarify your question. I didn't  
24 understand it.

25 MR. AHMAD: Sure.

1 BY MR. AHMAD:

2 Q To your knowledge, is -- and I've heard you state that none of  
3 the conduct, in your opinion, was fraud, malice, or oppression. Is that  
4 something under consideration?

5 A Sir, those are legal terms. I'm unsure exactly what the jury  
6 found was wrong. I just know they found we underpaid claims. They  
7 felt we did something wrong. I don't know all the legal jargon and  
8 legalese in the verdict. I just know that we need to understand that take  
9 appropriate actions as needed.

10 Q Okay. Now you said that United takes the verdict seriously,  
11 right?

12 A Yes, sir.

13 Q Have you seen any communications, correspondence,  
14 emails, anything saying that United takes it seriously?

15 A I believe I state --

16 MR. BLALACK: Your Honor, just as long as there's an  
17 objection on communication with the lawyers.

18 THE COURT: Exclude -- rephrase to exclude attorneys.

19 BY MR. AHMAD:

20 Q Yes. I'm not including any communications with lawyers.  
21 Talking about internal United communications. Have you -- when you  
22 say that United takes it seriously, have you seen anything from United  
23 people where they say they take it seriously, other than the lawyers?

24 THE WITNESS: Sir, I believe my testimony earlier, I'd said I  
25 haven't seen any in the week. I've not seen any communications. I know

1 as, having oversight for the out-of-network programs, this is taken  
2 seriously. I can't speculate what other communications or conversations  
3 might be having [sic] that I'm not a part of.

4 BY MR. AHMAD:

5 Q Okay. So when you take -- when you say United takes it  
6 seriously, you've seen no communications from anyone else saying  
7 that?

8 A Sir, I understand the verdict. It is a serious implication for  
9 our company. No, I have not seen a specific email or document about  
10 that, but I do know this verdict is serious and the company and myself, in  
11 particular, take it very seriously.

12 Q By the way, is there any -- any of the jury findings that you  
13 or, to your knowledge, anybody else at United agreed with?

14 A So, first, I'm not going to speak on behalf of anyone else at  
15 United. I'm only here to speak for my opinion. Certainly, I was  
16 disappointed with the verdict. But again, the jury found we underpaid  
17 and did something wrong. It's -- they have the final say in this matter.

18 Q Okay. And that's a no, there's nothing with the verdict that  
19 you actually agree on?

20 A I'm not saying whether I agree --

21 MR. BLALACK: She's not a lawyer, Your Honor.

22 THE WITNESS: Yeah.

23 THE COURT: Overruled.

24 THE WITNESS: I'm not saying I agree or disagree. I was  
25 disappointed in the verdict, but the verdict is the verdict. And we need to

1 take that information and move forward from there.

2 BY MR. AHMAD:

3 Q Okay. So you can't say at this time where you agree or  
4 disagree?

5 A Sir, I believed we were doing the right thing. If you want to  
6 call that disagreeing, fine. But it doesn't matter what my opinion is. The  
7 jury has the final say.

8 Q Well, it kind of does matter, right, because if there's going to  
9 be change -- I mean doesn't your opinion matter in terms of making  
10 change?

11 A My opinion does not matter in making change. We need to  
12 make changes with respect to the business not my opinion.

13 Q Well, do you know whose opinion matters in terms of  
14 making changes?

15 A So we don't make changes based on opinions. We make  
16 changes based on information and facts. And the verdict here is a new  
17 piece of information that we have to internalize and digest and  
18 understand what it means. It's not an opinion. It's an outcome of this  
19 trial.

20 Q Well, who makes that decision? I guess I'm just trying to find  
21 that out, if it's not you.

22 A Sir, there will be multiple people likely involved in that. I  
23 think -- it's been a week.

24 UNIDENTIFIED SPEAKER: Who?

25 THE WITNESS: We will be evaluating the steps we need to



1 take and what changes we need to make. And based on the changes,  
2 that'll inform who has the final say. But it will be a change for the  
3 business. It's not going to be somebody's opinion.

4 BY MR. AHMAD:

5 Q Does the size of the verdict, does the size of the punitive  
6 damages play any role in what United will consider at all?

7 MR. BLALACK: Object to the form of the question. Calling  
8 her -- for her to speak for all of United.

9 BY MR. AHMAD:

10 Q Just your opinion.

11 THE COURT: Overruled.

12 THE WITNESS: Sir, we talked about this before. The verdict,  
13 in and of itself, is impactful. From my perspective, the work that I need  
14 to help drive is going -- a dollar signal -- a dollar amount isn't changing  
15 the work that has to happen and what changes need to make [sic].

16 BY MR. AHMAD:

17 Q So the dollar amount doesn't matter to United at all?

18 A Well, I'm not saying that it doesn't matter. But again, the  
19 verdict -- the fact that the jury found we underpaid, and we did  
20 something wrong, we need to understand what that means going  
21 forward.

22 Q Okay. So, and I just want to be clear. You can't give us a  
23 number which will have more impact than another number?

24 A I can't give you a number. I'm not -- to me, the number -- I  
25 mean the jury is going to determine the damages. It's their final say. My

1 opinion on what that number should be doesn't matter. It's the jury's  
2 decision not mine.

3 Q Thank you, Ms. Paradis.

4 MR. AHMAD: I'll pass the witness, Your Honor.

5 THE COURT: Thank you. Is there any cross?

6 MR. BLALACK: Yes. Thank you, Your Honor.

7 THE COURT: Everybody good going forward without a  
8 break?

9 MR. BLALACK: This will be quick --

10 THE COURT: Thank you.

11 MR. BLALACK: -- on my side, Your Honor.

12 THE COURT: Thank you.

13 CROSS-EXAMINATION

14 BY MR. BLALACK:

15 Q Ms. Paradise, you're back here today, your first appearance  
16 here today. Did you come at our request or at the request of Plaintiffs?

17 A I believe it was at the request of Plaintiffs.

18 Q So are you hear speaking on behalf of every single human  
19 being, employee, executive, and corporate executive of United Health, or  
20 United Healthcare, or United Health Services?

21 A No, I'm not.

22 Q Are you here as a representative of your one department at  
23 United Health Services?

24 A Correct.

25 Q And you're the senior leader of that group; is that right?

1 A Yes.

2 Q So when you talk about whether you've seen any specific  
3 documents/emails concerning the verdict and whether it was serious,  
4 within the organization responsible for out-of-network programs, would  
5 you be the person most responsible for evaluating the severity and  
6 importance of the verdict to the company?

7 A I believe I would be, yes.

8 Q And do you believe it represents a serious input that you  
9 have to evaluate for purposes of how you run the business?

10 A Absolutely.

11 Q Now you said something in response to my colleague's  
12 question. He was showing you the amount of the verdict, which I believe  
13 was something along the order of about \$2.65 million is the amount that  
14 the jury found was underpaid on these 11,500-and--some-odd claims.  
15 And the -- do you remember him asking you whether it was hard to  
16 notice that number in connection with other numbers in various financial  
17 documents?

18 A I do.

19 Q And you said something that struck me. You said -- in  
20 response to it, you said, "It's the fact that we underpaid is what's  
21 significant." Do you remember saying something like that?

22 A Yeah, I do.

23 Q What did you mean by that? Why did you make that  
24 statement?

25 A Well, we believe our programs pay fair and reasonable rates.

1 And it -- it's clear that the jury found otherwise. That's impactful because  
2 not only do we have to evaluate what that means for the claims at issue  
3 in this case, that also may impact how we pay claims in the future. Does  
4 that mean, you know, going forward, we're paying higher amounts on  
5 those claims? That's impactful. We have to make sure our clients  
6 understand what that implication means for their benefit plans, for the  
7 cost to their members, and also may impact, obviously, our competitive  
8 position if we're paying higher costs than other competitors in the  
9 market.

10 Q So what's -- in terms of the outcome of the verdict and what  
11 affected you in your role leading up to the program, was this -- the  
12 numerical amount of the underpayment or the fact that the jury's  
13 decision that your program used an unreasonable reimbursement?

14 A The latter.

15 Q Now, you were shown a number of financial documents.  
16 Have you ever seen those documents before, ma'am?

17 A I have not.

18 Q Now, I want to -- I'd like to show you one. This is Plaintiffs'  
19 Exhibit -- I think it's 1001.

20 MR. BLALACK: Did we have that, Shane? I don't know if  
21 we -- that has been a marked exhibit for --

22 MR. GODFREY: Which?

23 MR. BLALACK: 1001. Do you have that, Shane?

24 MR. GODFREY: What data are you referring to?

25 MR. BLALACK: This is United Health Services consolidated

1 financial statement. Bring that up and go to page 5.

2 BY MR. BLALACK:

3 Q And I believe you were shown this document, ma'am. Let  
4 me ask this, and you may have had that in another question. It's my  
5 understanding that the numbers reflected on this exhibit reflect the  
6 consolidated financial information for all of the entities, not just United  
7 Health Services. And thus, you know, some of the other documents you  
8 were shown that have numbers are kind of subsumed in this. Do you  
9 know if that's true?

10 MR. AHMAD: Your Honor, I would object to the leading.

11 BY MR. BLALACK:

12 Q Do you know if the numbers reflected in the other documents  
13 are captured in this 1001, ma'am?

14 A It's my understanding that the other documents we looked  
15 are a part of this consolidated financial statement.

16 Q But are you -- if the jury really wanted to know what these  
17 documents meant and how they're related to each other, would you be  
18 the person to talk to?

19 A I wouldn't be the person to talk to. I am not a deep expert in  
20 our financial statements or our legal entity consolidation.

21 MR. BLALACK: Thank you very much for your time, ma'am.

22 THE WITNESS: Thank you.

23 THE COURT: Any redirect?

24 MR. AHMAD: Yes, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. AHMAD:

2 Q Ms. Paradise, the bottom line, you said that the verdict may  
3 impact, right?

4 A Sir, I did because it's been a week and we haven't had time  
5 to fully digest that.

6 Q But you cannot commit to one single change?

7 A Sir, I believe I explained a few times, again, it's an impactful  
8 verdict and there's much work we have to do to understand what specific  
9 changes will be made.

10 Q Well, when you say -- by the way, when you say impact that  
11 raising the rates could have, and you talked about conversations with  
12 clients, right? Do you remember that discussion?

13 A I remember my testimony.

14 Q Now, we looked at the fully insured side, right? And in that  
15 sense, it's United paying directly, right? Not an employer group.

16 A Well, an employer group is paying premiums --

17 Q Correct.

18 A -- for that particular benefit plan. So if costs increase, that  
19 could impact premiums.

20 Q Well, but United could not raise premiums and absorb a  
21 higher reimbursement rate and still make billions, correct?

22 MR. BLALACK: Objection. Calls for speculation.

23 THE COURT: Overruled.

24 THE WITNESS: Sir, I am not in our underwriting department.  
25 I don't make those financial implications. My responsibility here is to

1 understand this verdict and understand the impacts for out-of-network  
2 program offerings. I'm not going to speculate what, if any, changes are  
3 made to premiums. They could be impacted. That decision is not going  
4 to be anything I will be involved in.

5 BY MR. AHMAD:

6 Q I understand. But for both the fully insured and ASO sides,  
7 United could pay a higher reimbursement rate to the amount that it pays  
8 other out-of-network providers, right, and still make billions?

9 MR. BLALACK: Objection. Foundation.

10 BY MR. AHMAD:

11 Q Correct?

12 THE COURT: Overruled.

13 THE WITNESS: Sir, United is a very large entity. This verdict  
14 impacts our out-of-network programs. Our out-of-network programs, if  
15 we're paying more for an ASO client, those higher medical expenses go  
16 directly to the client. They fund those bank accounts. We've already  
17 discussed the fully insured. It's not a decision I would be involved in  
18 other than if we have to make changes for our programs, we're going to  
19 have to understand what those are, explain them, and someone else is  
20 going to make the decision on whether or not premiums change. But  
21 our ASO clients' medical expense will have a direct impact.

22 BY MR. AHMAD:

23 Q Well, but United can cut the share that it takes from the  
24 savings, right? It could cut that percentage.

25 A I believe when I explained the evaluation that needs to be

1 undertaken, how we charge for our programs, how our clients are  
2 contracted for us to provide those programs, I stated that that is part of  
3 that conversation and that evaluation that has to be undertaken.

4 Q To be very clear, United could absorb it completely while  
5 taking a smaller percentage, and still make billions, correct?

6 A Sir, by paying more on a claim, we're already charging our  
7 clients less.

8 Q Sir -- I mean, ma'am, you can take a smaller percentage, offer  
9 that to your client, and still make billions, correct?

10 A Sir, that's an option, and I stated this verdict is a week old.  
11 We have to have conversations with our clients. How we contract for our  
12 programs, what programs we offer, what clients want to do, that is all  
13 part of the conversation that I stated needs to occur.

14 Q One last question. You talked about the effect it has on the  
15 competitive landscape; do you remember that?

16 A I recall saying that.

17 Q Would it be fair to say that competitors see this verdict, as  
18 well?

19 MR. BLALACK: Objection. Calls for speculation.

20 THE COURT: Overruled.

21 THE WITNESS: I'm not sure what you mean by that.

22 BY MR. AHMAD:

23 Q Well, in other words, it's not just United. When you talk  
24 about how it affects United in the competitive landscape, it affects  
25 competitors, too, right?



1           A     So I'm unsure how a competitor will internalize this  
2 information. That's not mine to speculate. This verdict was against  
3 United. I'm not going to speculate what impact it may have on our  
4 competitors.

5           Q     Well, your competitors will see, for example, that a jury  
6 found that this rate was too low, correct?

7           A     If a competitor wants to read the verdict, they can read the  
8 verdict. I can't speculate what they may or may not do with that  
9 information.

10          Q     And they could see this verdict and realize that if they, too,  
11 paid this low, they might end up with the same or similar results,  
12 correct?

13                   MR. BLALACK: Object to the foundation of the question.  
14 Calls for speculation.

15                   THE COURT: Overruled.

16                   THE WITNESS: I can't speak to what our clients may -- or,  
17 sorry. Our competitors may or may not do as a result of this verdict.

18                   MR. AHMAD: Thank you, ma'am. Pass the witness.

19                   THE COURT: Thank you. And any recross?

20                   MR. BLALACK: Nothing else, Your Honor.

21                   THE COURT: All right. Let's take our morning recess.

22                   During the recess, you're instructed don't talk to each other  
23 or anyone else about any subject connected with this trial. Don't read,  
24 watch, or listen to any report of or commentary on the trial. Don't  
25 discuss this case with anyone connected to it by any medium of

1 information, including without limitation newspapers, television, radio,  
2 internet, cell phones, or texting.

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

9 It's 9:25. Let's be back at 9:40, please.

10 THE MARSHAL: All rise for the jury.

11 [Jury out at 9:25 a.m.]

12 [Outside the presence of the jury]

13 THE COURT: Ms. Paradise, you may step down during the  
14 recess. The room is clear. Have a seat, guys. Mr. Blalack, you had  
15 something to put on the record?

16 MR. BLALACK: Yes, Your Honor. I'll just restate two things.  
17 One, our position is that because the Defendants are not asserting a  
18 mitigation defense, that the amount of punitive damages based on  
19 financial condition or ability to pay is noted in our submission. Again,  
20 we believe evidence of our financial condition irrelevant and unduly  
21 prejudicial and confusing to the jury given it's not an issue for them to  
22 resolve. So on that basis, Your Honor, we objected to the introduction of  
23 their recent exhibits that communicate consolidated financial statements.

24 Now that they're in, Your Honor, I just note that they are  
25 marked -- one of them is marked attorneys' eyes only and the others are

1 marked confidential. And we -- consistent with the comments we've  
2 made at the bench, we will be filing supplementation to our motion to  
3 seal for all of those exhibits and then the motion.

4 THE COURT: Thank you. Did you have something more to  
5 add?

6 MR. ROBERTS: Yes. If I could add just one thing, Your  
7 Honor. I just wanted to point out again that one of the documents that  
8 was shown to the jury was the 10K of UnitedHealth Group. UnitedHealth  
9 Group is the parent company of these Defendants, and those financial  
10 statements included not only their insurance business but their provider  
11 business. Optum was on the page shown by the company. That is a  
12 provider. It's not even an insurance company. And there is absolutely  
13 no justification under the case law for involving the net worth of a parent  
14 company in determining punitive damages. Even if we were claiming an  
15 inability to pay, that would be irrelevant.

16 THE COURT: Is there some reason you didn't explore that,  
17 then, on cross-examination?

18 MR. BLALACK: Your Honor, there's almost none of the  
19 information in that document that pertains to the State of Nevada, Your  
20 Honor. Our view is that all of it is irrelevant.

21 MR. ZAVITSANOS: Your Honor, I have a brief response.

22 THE COURT: Go ahead.

23 MR. ZAVITSANOS: First, a long time ago, many, many  
24 months ago, maybe even more than a year ago, we had requested  
25 financial information regarding all of the Defendants. The Defendants

1 objected and produced nothing. Last week, we sent a request again  
2 reminding Defense counsel that this request was out there and that we  
3 needed this information. The response that came back was you should  
4 have filed a motion to compel. It's too late.

5 We prepared with the assumption that since the 10K -- which  
6 is a public document, by the way. There's nothing confidential in it.  
7 Since the 10K was the only thing that we had, that's what we would  
8 proceed on. So last night, I think right before midnight, we ended up  
9 receiving these consolidated financial statements. Now, that's the first  
10 thing.

11 The second thing is during the course of this trial, the issue  
12 of Sound Physicians was introduced, which is very relevant to the State  
13 of Nevada, which is part of Optum, which is part of the overall effort to  
14 cut reimbursements and essentially control all aspects of the healthcare  
15 market, which was introduced during the trial, which includes the State  
16 of Nevada. And so with that, Your Honor, you know, I mean, we got a  
17 little sandbagged and we prepared with that 10-K in mind.

18 THE COURT: Is there a response?

19 MR. BLALACK: Yes, Your Honor. I just want to address the  
20 suggestion that somehow there were documents that were  
21 inappropriately withheld from Plaintiffs. That's false. The -- there have  
22 been no prior requests for documents related to financial statements or  
23 profit and loss statements to us.

24 This came up, you'll recall, yesterday in the hearing when we  
25 referenced this. Last Wednesday, Plaintiffs contacted me for the first

1 time and said that they wanted our financial statements, just the most  
2 recent financial statements for the Defendants. I responded and said I'm  
3 not aware of any prior request for that information. What is the basis for  
4 the request? They directed me to a single RFP, RFP number 34, which  
5 reads, "Produce any and all documents and communications regarding  
6 the impact, if any, that reimbursement rates paid by you to  
7 non-participating providers had on profits you earned and/or premiums  
8 you charged with respect to one or more of your commercial health  
9 plans offered in the State of Nevada from 2016 to the present."

10 Your Honor, this -- these documents are not responsive to  
11 those -- that RFP. You can look in those documents all day long and you  
12 will find nothing in them that's responsive to this request. That said,  
13 after the exchange we had in court yesterday and the suggestion there  
14 was going to be yet more litigation about the litigation, I advised my  
15 clients that even though we believe these documents were irrelevant, we  
16 should give them to the other side just to take that question off the table.

17 And so reserving our rights and stating our view that they're  
18 not responsive, I gave them to them because frankly, I'm tired of  
19 litigating about the litigation. So that's the history on that question, Your  
20 Honor, and I don't think it's accurate to say that anything was improperly  
21 withheld.

22 THE COURT: Good enough. So take a break until 9:40. With  
23 regard to the objection, Defendants' 4, we can take that up, but I'm  
24 inclined to say that it was resolved yesterday.

25 MR. BLALACK: Yes, Your Honor.

1 THE COURT: So thank you.

2 [Recess taken from 9:31 a.m. to 9:41 a.m.]

3 [Outside the presence of the jury]

4 THE COURT: Please remain seated. So Ms. Robison, all  
5 right, so you -- with regard to your brief.

6 MS. ROBINSON: Thank you, Your Honor. I hear what you're  
7 saying about having resolved it yesterday and we have some objections  
8 in here that we are really just making for the record. The four words that  
9 I want to focus on -- I just need to give you a little background by way of  
10 explanation, it's not an excuse. We received these. These -- the jury  
11 instructions that we filed were instructions that we provided at the outset  
12 of the case, and it came up during our previous -- during the settlement  
13 conference where, you know, the understanding was made between the  
14 parties and the Court that we would take these up during the punitive  
15 phase, as we did, but they hadn't been provided.

16 The nine instructions that the Defendants filed on Sunday  
17 evening after 11:00 p.m., we have not received. And I did not see them  
18 until waking up on Monday morning. It was an all hands on deck effort  
19 amongst us to respond to them. As you can see from the presentation  
20 yesterday, we called on many team members simply because of the  
21 breadth. Several of these instructions have multiple pages of citations  
22 we needed to address. And I am going to say that this instruction was  
23 one of the ones that I was to address. Coordinating this effort, I will  
24 admit right now that I had not appreciated the impact of these particular  
25 two phrases that we brought up in the brief until later yesterday evening.

1                   And so I understand that you've heard these objections that  
2 were stated generally, but I did want a chance to just point out these two  
3 two-word phrases. The first one is the if any with respect to the amount  
4 of punitive damages. We believe that it suggests to the jury that the  
5 Court has less confidence in the jury's already reached verdict. We've  
6 already discussed the issue about how the jury has already decided it  
7 will award punitive damages.

8                   In addition, the word for deterring the Defendant's conduct  
9 toward anyone else. There is no support -- as we mentioned in our brief,  
10 there's no legal support for the idea that deterrents is limited to actions  
11 toward the Plaintiff and that really stands to reason, Your Honor,  
12 because in the vast majority of punitive damages situations, you know,  
13 for example, the *Phillips Morris* case, you know, you're talking about acts  
14 toward many people. This is one Plaintiff who has already died. It's  
15 clear that deterrence is not about them directing conduct toward that  
16 man. And again, that's not the nature of what deterrence means.

17                   We understand the Defendants' position and the Court's  
18 ruling regarding that you can't punish them for conduct toward other  
19 people and that there's due process concerns of multiple punishments, if  
20 you punish them for conduct for non-Plaintiffs, but deterrence does not  
21 belong in that phrase. And so with respect to just those two short  
22 phrases, we would ask the Court consider eliminating them from the  
23 instructions.

24                   THE COURT: Thank you. And Marshall Allen, will you tell  
25 them we're going to need five more minutes?

1 THE MARSHAL: Yes, ma'am.

2 THE COURT: And is -- go ahead, Mr. Smith.

3 MR. SMITH: Good morning, Your Honor. If the Court is  
4 inclined not to amend the instruction, I can be very brief. But if you are  
5 going to --

6 THE COURT: I am considering revising this.

7 MR. SMITH: Okay. Then thank you, Your Honor. We just  
8 filed a --

9 THE COURT: The law clerk researched it this morning and  
10 has already given me a recommendation.

11 MR. SMITH: Okay. And Your Honor, we just filed brief in  
12 response to the brief we got last night.

13 THE COURT: And he's read that, too, and briefed me on it.

14 MR. SMITH: Oh, okay. Very good. That's very quick. Just a  
15 couple points. One -- you know, I would have been interested to hear a  
16 modification for the instruction that still accounted for the issues that  
17 arise in *State Farm BMW* and *Phillip Morris* cases. But just to eliminate  
18 the entire concept of deterrence from the idea that the Plaintiff cannot  
19 seek punitive damages or ask the jury to calculate punitive damages on  
20 the basis of deterring State Farm. I think we're now left with an  
21 instruction that was correct but is now incorrect.

22 As we put forward in our brief, it's clear that the cases make  
23 a distinction between the reprehensibility analysis and the calculation of  
24 damages analysis for purposes of punishment and deterrence. We were  
25 overruled yesterday on the idea of instructing the jury more specifically



1 and what to consider on the reprehensibility analysis. Be that as it may,  
2 when it comes to calculating punitive damages, as we put in our brief,  
3 it's very clear -- the cases are very clear they cannot consider out of state  
4 conduct, whether that's for punishment or deterrence. And that's -- is  
5 clear in the *White v. Ford Motor* case, the Ninth Circuit case that was  
6 cited that interprets *BMW* and *State Farm*.

7 Not only is it problematic, because we don't have evidence in  
8 this case that there was out of state conduct that was lawful or unlawful.  
9 Unfortunately, I think the jury's going to be -- if Plaintiffs are planning to  
10 argue to the jury that United should be deterred from its conduct in other  
11 states. We don't have any evidence of what the legal standards are in  
12 those other states, whether it was lawful or unlawful. It very well -- it  
13 may very well be lawful in other states.

14 We have the No Surprises Act in Nevada, so the federal No  
15 Surprises Act is coming into effect January 1. So I think it's very  
16 speculative to have the jury thinking about deterring United's conduct in  
17 other states. In addition to that, as *White v. Ford Motor Company* makes  
18 clear, it actually doesn't matter whether the conduct is unlawful in other  
19 states for purposes of the punishment and deterrence, the calculation in  
20 the damages, because in fact, even if the conduct is unlawful in other  
21 states, the jury's award of punitive damages that they actually calculate  
22 cannot be directed to any other conduct, whether unlawful, in another  
23 state or against other parties.

24 THE COURT: Thank you.

25 MR. SMITH: Thank you.

1 THE COURT: Your reply, please.

2 MS. ROBINSON: Thank you, Your Honor. I just -- I didn't  
3 realize there was a response brief. I have not seen it yet. I've just  
4 learned about that, so I can't respond to what's in the brief. I can say  
5 that our -- well, the effort we were doing was -- in recognition that the  
6 Court had ruled, respecting that we try to make the most minimum  
7 suggestion we possibly could come up with. We do not plan to argue,  
8 but what I heard in the response was a focus on deterring out of state  
9 conduct.

10 Our concern here is deterring Defendant's conduct toward  
11 anyone else and that's -- and so the way that the instruction's written, I --  
12 you know, I agree with Defendants -- I mean, we believe the instruction is  
13 a bit confusing. We just did not want to do a complete overhaul,  
14 because we thought that would not be, you know, amenable for the  
15 Court. You know, I think if you remove the or deterring, it's -- well, let  
16 me rephrase. The way it's phrased right now, you may not award any  
17 punitive damages for the purpose of punishing or deterring Defendants'  
18 conduct toward anyone else is not an accurate statement of the law. The  
19 law does not say that you cannot punish -- you cannot deter them --  
20 deter -- they can't -- let me rephrase.

21 I'm sorry. The law does not say that the jury may not award  
22 punitive damages for the purpose of punishing -- excuse me -- for the  
23 purpose of deterring Defendant's conduct toward anyone else. That  
24 statement is not an accurate statement of the law. And so removing that  
25 phrase is an effort to make that not -- you know, to address that

1 inaccuracy. We would be giving the jury an inaccurate statement to say  
2 they may not award punitive damages for the purpose of deterring  
3 Defendant's conduct toward non-parties. So that -- you know, that's my  
4 reply.

5 THE COURT: Okay. So the Plaintiffs' trial brief with regard  
6 Defendants' proposed Instruction D4 will be considered as a motion for  
7 reconsideration will be granted. I'll make the two changes to D4  
8 requested by the Plaintiff, which are highlighted on page 2 of the brief,  
9 so we will delete, "if any or deterring," from D4.

10 MS. ROBINSON: Thank you, Your Honor.

11 THE COURT: Now, I also have another supplemental phase  
12 two jury instruction that was just handed to me by the law clerk this  
13 morning. You may not award punitive damage to --

14 MS. ROBINSON: I'm sorry. That was just a -- that was in  
15 writing the one that we addressed yesterday.

16 THE COURT: That's correct?

17 MR. PORTNOI: Yes, Your Honor.

18 THE COURT: Good enough. All right. Do we have anything  
19 else to take up before we bring in the jury?

20 MR. ZAVITSANOS: Your Honor, just apparently the  
21 BlueJeans audio is off. That's not -- doesn't need to be on the record,  
22 just for whatever --

23 THE COURT: Our audio is off for them?

24 THE COURT RECORDER: Everything's unmuted on my end.  
25 I'm probably going to have to restart it.

1 THE COURT: Oh. Go ahead and restart. Take a couple  
2 minutes, guys. It'll take her five minutes, and I don't want to put her on  
3 the spot, so --

4 MR. SMITH: Are we on the record still?

5 MS. LUNDVALL: Yes.

6 MR. SMITH: Okay. Could I make one comment with respect  
7 to the instruction that was --

8 THE COURT: Of course.

9 MR. SMITH: -- submitted last night, but was --

10 THE COURT: Certainly.

11 MR. SMITH: -- memorialized yesterday. I didn't realize as --  
12 you know, this language was workshopped yesterday. The sentence that  
13 says, "However, you may continue to presume that relevant evidence  
14 that was not produced is adverse to the Defendants." Your Honor, I  
15 would say that's even worse than the initial instruction that was given in  
16 the first phase, because that at least had the nuance of you know,  
17 when -- you know, when the presumption is rebuttable and the evidence  
18 could come in to rebut it.

19 Here it just says you presume, and you continue to presume,  
20 as if the jury made a finding that the presumption was not rebutted. We  
21 have no idea. I mean, there was not a specific interrogatory as to that  
22 question, whether the jury believed that the presumption had been  
23 rebutted. So to say that we continue to presume.

24 THE COURT: All right.

25 MR. SMITH: Yeah.

1 THE COURT: I see your point and what I'm going to do is  
2 purpose some language and then we'll give her five minutes and you  
3 guys can talk about it.

4 MR. SMITH: Very good. And then when Your Honor would  
5 like to take up the last instruction that we deferred regarding  
6 consideration for Plaintiffs' [indiscernible].

7 THE COURT: At the close of the evidence.

8 MR. SMITH: Okay. Very good. Thank you.

9 [Recess taken from 9:51 a.m. to 9:55 a.m.]

10 [Outside the presence of the jury]

11 THE COURT: Please remain seated. Ms. Robinson?

12 MS. ROBINSON: So thank you, Your Honor. Speaking for  
13 the Plaintiffs, this -- the Court's edit is acceptable to us. Thank you.

14 MR. SMITH: And Your Honor, I think we'll just rest on our  
15 previous objection that this amounts to essentially regiving the  
16 instruction we think should not be applicable [indiscernible].

17 THE COURT: Thank you. All right.

18 MS. ROBINSON: And Your Honor, how would you like us to  
19 handle this? Would you like --

20 THE COURT: You're going to have to revise it.

21 MS. ROBINSON: I mean, I just didn't know if you wanted this  
22 back and then make a copy or if you want me to just go ahead and --

23 THE COURT: Yeah, actually I will. I'll take it a Court's Exhibit.  
24 Thank you.

25 MS. ROBINSON: Thank you, Your Honor.

1 THE COURT: Okay.

2 MS. ROBINSON: I'm sorry, Your Honor. May I just snap a  
3 quick picture and so I can put it into the instructions?

4 THE COURT: You may.

5 MS. ROBINSON: Thank you.

6 THE COURT: And then -- but when you're done, make sure  
7 you run it back up for Nicole. And with that, we'll be -- will we be ready  
8 then to bring the jury back?

9 MR. ZAVITSANOS: Yes, Your Honor.

10 MR. LEYENDECKER: Yes, Your Honor.

11 MR. BLALACK: We're ready. Your Honor, I'll just preview  
12 while we're waiting. This is -- Mr. Bristow, I believe, is being called next?

13 MR. LEYENDECKER: Yes.

14 MR. BLALACK: And this is the issue that I think may raise the  
15 evidentiary questions we discussed yesterday, so I may be up quick and  
16 asking to approach, but we'll address that as we go.

17 UNIDENTIFIED SPEAKER: He's going to be quick.

18 THE COURT: And anyone wants to see, we have the call --  
19 the card for Mr. Reese, who had a death in his family. If any of you want  
20 to see this before it goes. I got the permission to do it.

21 MR. BLALACK: I'll look at it, but it's very nice.

22 THE COURT: Being from the south.

23 MR. BLALACK: Exactly. Love the cardinal.

24 THE COURT: That was my sister-in-law, who died of cancer.  
25 My -- the artist is my sister-in-law.

1 MR. BLALACK: Oh, I'm sorry.

2 THE COURT: Yeah. Thank you.

3 MR. BLALACK: Thank you, Judge.

4 [Pause]

5 THE COURT: Jury's not quite ready. As soon as they are --  
6 as soon he takes that out to the mailbox, he'll check on them.

7 [Pause]

8 THE MARSHAL: Your Honor, you ready now?

9 THE COURT: We are.

10 THE MARSHAL: All rise for the jury.

11 [Jury in at 9:59 a.m.]

12 THE COURT: Thank you. Please be seated. Thanks  
13 everyone for understanding that we had to take a longer break. Plaintiff,  
14 please call your next witness.

15 MR. LEYENDECKER: Thank you, Your Honor. The Plaintiffs  
16 call Mr. Kent Bristow.

17 [Pause]

18 THE COURT: Okay. Mr. Bristow, you're under the same oath  
19 you previously swore. There's no reason to re-swear you.

20 KENT BRISTOW, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

21 THE WITNESS: Okay. Thank you.

22 THE COURT: Go ahead, please.

23 MR. LEYENDECKER: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. LEYENDECKER:

1 Q Good morning, Mr. Bristow. Would you remind us where  
2 you work and what role you play?

3 A Yes. I work for TeamHealth, and my primary role is to  
4 oversee all aspects of monitoring insurance collections.

5 Q Let me take you back to something that Mr. Blalack told the  
6 jury at the very beginning of the case in opening. He made a comment  
7 along the lines, and I think had a slide that said something like  
8 TeamHealth operates in 47 states, has about 15 or 16,000 associated  
9 healthcare providers and some number in millions of patients annually.  
10 And so my question to you is do these United Defendants operate in  
11 those same states that the TeamHealth groups operate in?

12 MR. BLALACK: Objection. Relevance.

13 THE WITNESS: Yes.

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

15 THE WITNESS: I apologize.

16 BY MR. LEYENDECKER:

17 Q Okay. I asked you about the [indiscernible] there, because  
18 the second thing I want to touch on with you is the testimony from Ms.  
19 Leslie Hare. She was -- I don't recall her exact position, but she had a  
20 pretty up there job with Health Plan of Nevada and Sierra, two Nevada  
21 entities. She was asked by Ms. Lundvall at page 190. I forget the date.

22 The question was, "And so, in any of the information that you  
23 have, are able to confirm that Nevada's rate of reimbursement to  
24 emergency room providers, out-of-network emergency room providers  
25 is actually the lowest across our country?" And there was an objection



1 to the relevance, which Your Honor overruled. And then Hare answered,  
2 "No, I don't have anything that would be used in any sort of  
3 comparisons." And so my question to you, Mr. Bristow is --

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

5 THE COURT: You may?

6 [Sidebar at 10:03 a.m., ending at 10:07 a.m., not recorded]

7 THE COURT: Thanks everyone for your professional  
8 courtesy. Go ahead, please.

9 MR. LEYENDECKER: Thank you, Your Honor.

10 BY MR. LEYENDECKER:

11 Q Okay. Mr. Bristow, so the landscape I'm interested in is out-  
12 of-network reimbursements during the relevant time period. And what I  
13 mean by that is the time period in which the jury has looked at the  
14 payments in this case, July of '17 through January of '20, out-of-network  
15 rates. Okay.

16 A Okay.

17 Q And so my question -- that essentially was the subject -- was  
18 the question of Mrs. Hare, out-of-network rates. I'm further limiting it to  
19 the time period in question. And so my question is do you have  
20 information about how the Defendants allowed amounts of payments,  
21 however you want to characterize them, compare out-of-network time  
22 period in question in Nevada versus the other state's out-of-network?

23 A Yes, I do.

24 Q And can you tell us about that information?

25 A Yes. We get reports that will break down that type of

1 information by state and ultimately even by the group, and even down to  
2 a level at the site of the service. It will reflect on there what the number  
3 of patients that were treated and that were ultimately paid, and what the  
4 allowed amounts were, as well as what the insurance payment amounts  
5 were for those claims.

6 Q Okay. And so the jury's heard a lot about the average out-of-  
7 network payments during the period in question. In fact, they may have  
8 seen a [indiscernible] of 246. I'm curious, how do those allowed  
9 amounts relate to the allowed amounts by the United Defendants for  
10 out-of-network claims in the other states we were operating during that  
11 period in question?

12 MR. BLALACK: Objection, Your Honor. Hearsay. We don't  
13 have this data.

14 THE COURT: Overruled. But you do need to lay a  
15 foundation.

16 BY MR. LEYENDECKER:

17 Q Okay. Mr. Bristow, a minute ago you were -- you gave us a  
18 little background about the kinds of reports that you get. And I think the  
19 first thing you told us was that you oversee matters related to collection,  
20 something along those lines?

21 A Yes. Matters related to the collection of insurance payments.

22 Q Okay. So give us a little bit of background on the scope and  
23 really I'm focused on out-of-network claims, the scope of things you  
24 oversee in terms of collections for emergency room doctor services in  
25 the country.

1           A     Yeah, so it would be for all of our ER services around the  
2 country in all the states that we operate in, and it would involve all  
3 commercial insurance plan activity.

4           Q     Okay. Am I right that for the period in question, July '17  
5 through January of '20, we were operating on an out-of-network basis in  
6 about 20 to 25 states with these United Defendants?

7           A     Correct. It was about 20 states.

8           Q     Okay. And so as part of your job, are you monitoring those  
9 out-of-network allowed amounts during that period in question?

10          A     Yes. We do again, periodic reviews looking back and seeing  
11 that historical activity and how it's -- how it is shaping up.

12          Q     And so does that work that you're doing, when you said  
13 periodic reviews, does that give you an ability to give this jury  
14 information about how the out-of-network allowed amounts in Nevada  
15 compared to those other out-of-network allowed amounts in the other  
16 states?

17          A     Yes, I believe it does, yes.

18          Q     Okay. So now we have that in mind, can you tell the jury  
19 how the Defendants' out-of-network allowed amounts in the period in  
20 question in Nevada, relate to those other states?

21               MR. BLALACK: Your Honor, object on hearsay grounds.  
22 He's about to speak to data we do not have and that they refused to  
23 provide us. Object.

24               THE COURT: Overruled.

25               THE WITNESS: May I answer the question?

1 THE COURT: You may.

2 BY MR. LEYENDECKER:

3 Q Yes, sir.

4 A So yes, it would rank last out of all the states. It's the very  
5 lowest of any of the other states where we monitor that activity.

6 Q Does your job allow you to have an understanding of what  
7 those out-of-network allowed amounts are in the two states that are  
8 adjacent to Nevada, California and Arizona, during the period in  
9 question?

10 A Yes, we have looked at that in comparison to those  
11 contiguous states, and they are also much substantially lower than those  
12 states of Arizona and California.

13 Q Do you have any sense of an order of magnitude of how  
14 much lower the United average allowed amounts are out-of-network in  
15 Nevada, versus Arizona and California during that same period?

16 A Yes. In comparison to Arizona, it's about 60 percent lower.  
17 And in comparison to California, it's nearly 100 percent lower.

18 Q Now just for context, what would be the next lowest state?  
19 The one above Nevada, in terms of average out-of-network payments  
20 during the period in question? Do you have information that could give  
21 some context there?

22 A Yes.

23 MR. BLALACK: I want to renew my prior objections on this  
24 line of questioning.

25 THE COURT: Certainly. Overruled.

1 THE WITNESS: Yes. I recall that the next lowest state was  
2 the state of Maine.

3 BY MR. LEYENDECKER:

4 Q Okay. And order of magnitude, where do you think average  
5 out-of-network period in question reimbursed by these Defendants was  
6 in Maine, or our ER doctors?

7 A In Maine it was about \$380 a patient.

8 Q Okay. A couple more questions. Are you familiar with what  
9 the overall average allowed, out-of-network, was during the period in  
10 question for these other states that we were out-of-network in?

11 A Yes. For the other states, the average allowed amount was  
12 about \$640.

13 Q So here in Nevada during the period in question for the  
14 disputed claims, 246 an average and about 648 in all the other states out-  
15 of-network during that same period; is that right?

16 A That's correct.

17 MR. LEYENDECKER: Those are all the questions I have for  
18 you at this time, Mr. Bristow.

19 THE COURT: Cross-examination, please.

20 MR. BLALACK: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. BLALACK:

23 Q Mr. Bristow, were you involved in the collection of  
24 documents and data for production in this lawsuit?

25 A I was asked to provide certain documents, yes.

1 Q Were you aware that the Defendants in this case asked for  
2 data from TeamHealth for reimbursement rates that were used in other  
3 markets beyond Nevada?

4 A I do not recall that specific element.

5 Q Were you involved in formulating objections to the requests  
6 we made for that data in this case?

7 A Again, I cannot remember that specific element.

8 Q Do you know that the data on which you're relying was not  
9 produced to us in this case?

10 A I do not know the answer to that question.

11 Q That would be news to you?

12 A I'm unaware of what all was produced.

13 Q Okay. Now sir, when I questioned you in your deposition  
14 earlier I think in this location, you told me that you understood the  
15 reasonable value and believed the reasonable value of disputed claims  
16 was the full bill charges, correct?

17 A Yes, I did.

18 Q Have you reviewed the jury's verdict from last week?

19 A Yes. I'm aware of their outcome, yes.

20 Q And are you aware that the jury concluded that my clients  
21 underpaid the disputed claims, but did not award full charge?

22 A Yes, I'm aware of that.

23 Q Do you disagree with the jury's finding in that regard?

24 A I would say I'm disappointed in the dollars relative to what  
25 we asked for. I was very satisfied that they also agreed with us that

1 there was a clear recognition of underpayment. But I respect the jury,  
2 and their deliberations, and the ultimate decision they reached.

3 Q Okay. So you were disappointed, and you still believe that  
4 full bill charges are the reasonable value for the service?

5 A I believe our charges for the prices that our clinicians provide  
6 are a reasonable price in the market, yes.

7 Q So this is a situation where you have your personal view.  
8 You understood the jury disagreed with it. You respect their -- they have  
9 to final say, correct?

10 A Yes, they do.

11 Q Okay. Your Honor, may we approach before I convene?

12 THE COURT: You may.

13 [Sidebar at 10:15 a.m., ending at 10:16 a.m., not transcribed]

14 THE COURT: All right. Ladies and gentlemen, we have to  
15 take up a matter up outside of your presence.

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

21 Don't conduct any research on your own related to the case.  
22 Don't consult dictionaries, use the internet, or use reference materials.  
23 Don't post on social media about the trial. Don't talk, text, tweet, Google  
24 issues, or conduct any other type of research with regard to any issue,  
25 party, witness or attorney involved in the case. Most importantly do not

1 form or express any opinion on any subject connected with the trial until  
2 your deliberations are complete.

3 Thank you again for understanding. I'm going to say I expect  
4 we will be 0:35. Please be ready at 10:35.

5 THE MARSHAL: All rise for the jury.

6 [Jury out at 10:17 a.m.]

7 [Outside the presence of the jury]

8 THE COURT: The room is clear. I had asked Mr. Bristow to  
9 step out, but if he's a 30(b)(6), he may stay.

10 MR. BLALACK: Yeah, I think he's here as a witness.

11 THE COURT: Is he here as a --

12 MR. ZAVITSANOS: He's here as our representative.

13 THE COURT: Then you don't need to step out. You can step  
14 down during the recess.

15 THE WITNESS: Okay.

16 THE COURT: You don't have to leave the room.

17 All right. So Mr. Blalack, let's get this on the record, rather  
18 than doing it sidebar.

19 MR. BLALACK: Thank you, Your Honor. In light of the  
20 testimony that is elicited and as I hear the Plaintiffs have introduced a  
21 bevy of evidence that was not before the jury in Phase 1 that formed the  
22 basis for the jury's determination of entitlement, and that evidence that  
23 they've offered is focused on United's alleged conduct in other states,  
24 which is a compounding error, in the sense of the examination of the  
25 evidence for the jury on the computation of the amount of punitives.



1                   As a result, Your Honor, over our objections, that testimony  
2 is now in. As I advised the Court yesterday, and I advised Plaintiffs  
3 yesterday and again last night, I'd like to now offer evidence that we  
4 believe is responsive to prove our state of mind on the question of  
5 reprehensibility both on a number of topics.

6                   Topic one, which I will cover with Mr. Bristow and then we  
7 may have some additional evidence to offer in our case. Topic one is the  
8 contractual relationship between the parties that was in place until  
9 Plaintiffs terminated their agreements with my clients. Those  
10 reimbursement rates formed the basis of my client's good faith  
11 understanding of what a reasonable rate for these services for the  
12 Plaintiffs were. Then a discussion of the reasons why those rates --  
13 those contracts were terminated, which Mr. Bristow was a party to as a  
14 witness. And then the rates that the Plaintiffs offered to accept. This is  
15 during the period of dispute, I might add, Your Honor. The rates they  
16 offered to accept as fair and reasonable value during the period in  
17 dispute. That's topic one.

18                  Topic two, we want to cover, how it relates to Mr. Bristow's  
19 understanding regarding the reimbursement rates that TeamHealth  
20 accepts in Nevada and in other states from my client's biggest  
21 competitor, which is Blue Cross Blue Shield. And the relationship  
22 between those rates and my client's rates, and the relationship between  
23 the Blue's rates in other states and their rates in this state, to rebut the  
24 notion that somehow my client is targeting unfavorably Nevada, when in  
25 fact Nevada is just a market that historically, across the market, it's not

1 specific to our client, has reimbursed at lower out-of-network rates than  
2 other markets.

3 So I'd like to get into that now. And I didn't just jump into it  
4 because I wanted to obviously raise it with the Court in light of the prior  
5 ruling so that we can establish some contours of the examination.

6 MR. ZAVITSANOS: So Your Honor, brief response. First, we  
7 state the obvious. Mr. Leyendecker was extremely careful to limit the  
8 inquiry to the relevant time period out-of-network.

9 Second, we did not elicit testimony about unfavorable  
10 conduct in other states and to try to use that to impose punitive damages  
11 on the Defendant. It was the opposite. It was -- it was conduct in  
12 Nevada, using a measuring stick of the other states, which is more  
13 favorable, not unfavorable. That is typically the concern is you don't  
14 want to assess punitive damages against the Defendant for unfavorable  
15 conduct in another state. That was not the way the evidence came out.  
16 It was actually the opposite.

17 Third, this case, from the get-go has been about out-of-  
18 network rates. What the in-network rates are, which are the result of  
19 vigorous negotiation is not relevant to the issue that we just talked  
20 about. Now if the question had been put about tell me about all rates,  
21 or tell me about from 2010 to now, okay, I still don't think that gets Mr.  
22 Blalack there, but it's closer. But that was not the area of inquiry. It is  
23 only about this time period, out-of-network.

24 Finally, they were on full notice that this was an issue  
25 because this came up during the testimony of the senior person for

1 Sierra and for the Health Plan of Nevada. The Court overruled the  
2 objection. They were on notice that this was an issue in the case.  
3 Surprisingly, the United witnesses seemed to have amnesia every time  
4 we asked them about something outside of their little cubicle. She could  
5 not answer the question of where they were relative to other places.

6 And so Your Honor, I don't believe this has opened the door,  
7 and I don't think we have done anything different than what we have  
8 done from day one of this trial, which is to limit the inquiry to strictly out-  
9 of-network.

10 THE COURT: And a reply, please.

11 MR. BLALACK: Yes, Your Honor. A couple of things. You  
12 can't create relevant evidence by asking a witness who doesn't know the  
13 information about the information and all of a sudden establish a  
14 predicate to offer it in the second phase of the trial. I mean none of it  
15 came in in the first phase of trial.

16 The point is that the jury has already determined an  
17 entitlement to punitive damages. The evidence on which they made that  
18 decision is in the record, it's locked. The question now is reprehensibility  
19 of the conduct of what they already decided established entitlement.  
20 You can't create a new record on reprehensibility divorced from the  
21 record that formed the basis for establishing entitlement in the first  
22 place. That's what was wrong about reaching the record that formed the  
23 basis for the punitive damages award, which is why we objected to  
24 getting into any of that sort of evidence. Point one.

25 Point two, in this case, it is exactly the evidence. It's not

1 like -- the question is my client's state of mind in their motivations and  
2 whether they acted with the requisite to borrow Mr. Zavitsanos' phrase,  
3 evil intent. Okay. None of my clients can fairly speak to their state of  
4 mind when sharing what they knew about what reasonable  
5 reimbursement was in their dealings. And of course, the dealings with  
6 these exact parties and with respect to what their competitors, their  
7 biggest competitor was reimbursing and having accepted by this group  
8 of plans.

9           So the notion that we can kind of part out of my client's  
10 knowledge base this body of information and only let the jury see this  
11 one little slice about how the network is unfair and unreasonable, and  
12 particularly once they go that final step and start talking about our  
13 comparative reimbursement rates in other markets, when they've  
14 offered no evidence of what that market is.

15           I want to explore what were they accepting from the Blues in  
16 those other states, in California, in Arizona. And was it higher or lower  
17 than my client's. Was it higher or lower than Nevada? We'll see what  
18 Mr. Bristow has to say. But the jury is entitled to hear and see that  
19 evidence.

20           And then my final word is, Your Honor, he just spoke about a  
21 bunch of data and documents and for the truth of the matter asserted,  
22 without it being -- it's not in the record. There's no data in the record  
23 showing that information. There's no record, no documents, no  
24 summaries, no nothing. This witness just came in there and talked about  
25 a bunch of information he supposedly has somewhere, which I don't

1 have.

2 MR. ZAVITSANOS: Well --

3 THE COURT: You can reply briefly, but it's your objection.  
4 You get the last word.

5 MR. ZAVITSANOS: Let me think about that last point. We're  
6 talking about their data. We're talking about United data that not only do  
7 they have, but they're well aware of that was presented during the  
8 opening statement before this jury. This is United data, not industry  
9 data.

10 Second, he keeps talking about United's state of mind,  
11 irrelevant. The two factors, Your Honor, which I believe the Court is  
12 going to instruct is on the reprehensibility of the conduct of the  
13 Defendant, not state of mind. This is not a criminal case. It's not a fraud  
14 case. It's not a case where the state of mind is relevant. It's on the  
15 conduct. And all Mr. Bristow did was offer testimony on objective  
16 numbers. He didn't -- he didn't characterize it in terms of what's in their  
17 mind or what kind of personality they have, or character evidence, or  
18 anything to that effect. It's strictly the conduct.

19 Mr. Leyendecker, did I --

20 MR. LEYENDECKER: No, you covered it. It was the part  
21 about the opening slide, Your Honor. I mean this concept came in at the  
22 very beginning, and there was debate about it.

23 THE COURT: And it actually wasn't your objection, it was  
24 going to be their objection. As a matter of courtesy you raised it ahead  
25 of time. But the final word, please.

1 MR. BLALACK: Your Honor, I'll just say the data he is  
2 describing does not come from my client. It's in their systems, their  
3 records. We've already seen what their data looks like and how it  
4 changes about every two months from the [indiscernible]. So I don't  
5 think it's much solace to my client to tell me that the things he's  
6 describing are data from their systems that must match ours.

7 THE COURT: All right. So I'm going to restrict you from  
8 these lines of inquiry, but I need to explain why. You know, I left out  
9 what I would call -- you know, granting motions in limine to what I would  
10 call outlier information, which was the Plaintiffs' negotiations and  
11 termination, because I didn't think that they could get a fair trial with  
12 that. I had left out from the Defendant the Ingenix lawsuit, because I  
13 didn't think you could get a fair trial.

14 Now when we approached with regard to the scope of Mr.  
15 Leyendecker's direct examination of Mr. Bristow, I gave them some  
16 ground rules that, you know, if you open the door, I'm going to blow it  
17 wide open, and I used my hand gestures. And I got the impression he  
18 very carefully tailored his questions to not open the door. And I find that  
19 he didn't. And this why. By talking about the lower reimbursement rate  
20 in Arizona and California, he did it in percentages. In Maine they did it  
21 by percentages. And then when they did the U.S. average, it was at that  
22 regard to which state or what the highs and lows were.

23 So it was very carefully tailored not to open the door either  
24 to the contract relative to the parties or why it was terminated and what  
25 negotiations occurred. And I don't find that he opened the door to the

1 reimbursement rates that the Plaintiff accepts in Nevada or other states  
2 by other insurance companies. So if you have anything more for the  
3 record, I'll be happy --

4 MR. BLALACK: I think our record is clear, Your Honor.

5 THE COURT: Good enough. All right, guys. They'll be back  
6 in five minutes.

7 MR. LEYENDECKER: Thank you, Your Honor.

8 THE COURT: See you at 10:35.

9 [Recess taken from 10:29 a.m. to 10:35 a.m.]

10 [Outside the presence of the jury]

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

12 MR. BLALACK: I believe so, Your Honor.

13 MR. ROBERTS: Your Honor?

14 THE COURT: Yes.

15 MR. ROBERTS: May I just put one thing on the record?

16 THE COURT: You can.

17 MR. ROBERTS: I understand you've made your decision.

18 THE COURT: Certainly.

19 MR. ROBERTS: But I did some quick research over the break.  
20 Just before the break, Mr. Zavitsanos said that the defendant's state of  
21 mind was not relevant. It was only our conduct.

22 In *Countrywide v. Thitchener*, 124 Nev. 725, our Supreme  
23 Court said "in defining what conduct would amount to conscious  
24 disregard, we look no further than the statute's language since it's  
25 language. Since its language plainly requires evidence that a defendant

1 acted with a culpable state of mind, we conclude that . . . 42.001 denotes  
2 conduct that at a minimum, must exceed mere recklessness or gross  
3 negligence."

4 So we understand the Court found that our in-network  
5 reimbursement rates and our prior contract rates were not relevant to  
6 the value of out-of-network reimbursement. But that phase is over. This  
7 phase is only about the reprehensibility of our conduct. And that  
8 necessarily goes to our state of mind and why we thought the amount  
9 we paid was reasonable.

10 Our witness was just put up there, Ms. Paradise, like a  
11 sacrificial lamb, to ask if she agreed with the verdict, if she thought our  
12 conduct was reprehensible. But she was not allowed to explain what she  
13 knew, that she didn't think it was reprehensible because she knew what  
14 their cost was. She didn't think it was reprehensible because she knew  
15 what they had previously agreed to accept in an arm's length  
16 transaction.

17 And therefore we are being prevented from explaining our  
18 state of mind which is why we're preserving this objection.

19 THE COURT: Certainly.

20 MR. ROBERTS: Thank you, Your Honor.

21 THE COURT: All right. Let's bring in the jury.

22 THE MARSHAL: All rise for the jury.

23 [Jury in at 10:40 a.m.]

24 THE COURT: Thank you. Please be seated. Mr. Blalack?

25 MR. BLALACK: Thank you, Your Honor.



1 CROSS-EXAMINATION CONTINUED

2 BY MR. BLALACK:

3 Q Mr. Bristow, we're almost done. Let me ask you this, is there  
4 since it sounds like you've done some -- been working on some data  
5 analysis, reviewing data to prepare to testify today. Is that right?

6 A Yes. I did some refreshing of some of the analysis last week.

7 Q Okay. Since the verdict, have you and your team at  
8 TeamHealth evaluated what the combination of the prior allowed  
9 amount for my clients, plus the jury's additional finding of  
10 underpayment equals in terms of your percent of charges for the  
11 disputed claim?

12 A I have not performed that calculation yet, no.

13 Q And you're aware, sir, from your prior testimony, that my  
14 clients allowed payment of about \$2.84 million on the 11,563 disputed  
15 claims?

16 A That sounds right, yes.

17 Q And you're aware that the jury found that there was an  
18 underpayment of an additional 2.65 million, give or take?

19 A That's correct.

20 Q So if my math is correct, that adds up to about \$5.4 million  
21 against your total charges. Is that right?

22 A That sounds right, yes.

23 Q And sir, does that sound, based on your understanding of  
24 your charges which TeamHealth sets, that that means that the regional  
25 value of the services was about 41 percent of TeamHealth's charges?

1           A     Again, I haven't a calculator but roughly that sounds about  
2 right, yes.

3           Q     Okay. And sir, I'll -- I know you're aware that at TeamHealth,  
4 you all sometimes do analysis to benchmark what your payment rates  
5 are, and your recoveries are, against the Medicare fee schedule?

6           A     We do benchmark against that somewhat, yes.

7           Q     And sir, are you aware that the -- when you have that \$5.4  
8 million of payment that the jury found was the reasonable value, that  
9 equates to about 319 percent of the Medicare fee schedule?

10          A     Again, I haven't done that math yet.

11          Q     You haven't done that analysis in the time you've had in the  
12 last week to look at your data?

13          A     I have not performed that analysis yet.

14          Q     Now, you testified earlier that you respect the jury's verdict  
15 even if you might have a different view about what reasonable value is.  
16 Is that right?

17          A     Correct.

18          Q     In light of the jury's verdict at a minimum, here in Nevada,  
19 does TeamHealth intend and will it commit to the jury to reduce the  
20 charges it has for these ER services to the roughly 41 percent of charges  
21 that the jury found was a reasonable value?

22                 MR. LEYENDECKER: Objection, Your Honor. Relevance.

23                 MR. BLALACK: This is the same question that was asked --

24                 THE COURT: Objection's overruled.

25                 THE WITNESS: I can personally say that I'm, you know,

1 prepared and committed to recommend that we look at reducing our  
2 prices based upon the jury's deliberations. But I have not had the chance  
3 to do that yet but will be putting forth a recommendation that we should  
4 as a result of this outcome, look at reducing our prices in the market.

5 BY MR. BLALACK:

6 Q So if TeamHealth adopts your proposed recommendation,  
7 then the charge masters would be reduced for the services down to the  
8 levels that would equate to the \$5.4 million the jury found was  
9 reasonable or roughly 319 percent of Medicare?

10 A I'm not prepared to say to what level it will be. I won't be  
11 recommending to reduce the charges. I think we'll have to take a few  
12 things into account such as what -- you know, we get paid by other  
13 health plans. I think we'll have to take into account United's payment  
14 practices going forward and making that determination, whether they  
15 adjust their payment practices.

16 And then there's some other factors that we'll need to consider,  
17 you know, such as you know, annual price increases and inflation that  
18 we'd have to take into account. But again, I would reiterate the  
19 commitment that we would be willing to look at putting forth a  
20 recommendation to lower the prices.

21 Q Understood. So I think I understand what you're saying. In  
22 other words, you're not prepared to commit to the jury today on a  
23 specific outcome, but you are prepared to commit to looking at and  
24 evaluating that question.

25 A Not only just evaluating but putting forth a recommendation

1 to reduce the prices.

2 Q But you can't say to what, correct?

3 A I don't have that final recommendation put together yet.

4 Q And since the verdict came out a week ago, that's not  
5 something you finalized your [indiscernible], correct?

6 A That's correct.

7 MR. BLALACK: Thank you for your time, sir.

8 THE COURT: Redirect?

9 MR. LEYENDECKER: Nothing further, Your Honor.

10 THE COURT: Does the -- I didn't ask the jury if you had  
11 questions for the first witness. But if you have any questions for  
12 Mr. Bristow, please reduce them to writing now.

13 All right. Plaintiff, may we excuse Mr. Bristow?

14 MR. LEYENDECKER: Yes, Your Honor.

15 THE COURT: All right. Plaintiff, call your next witness.

16 MR. LEYENDECKER: We rest, Your Honor.

17 PLAINTIFFS REST

18 THE COURT: Thank you. Defendant, please call your first  
19 witness.

20 MR. BLALACK: Your Honor, may we approach sidebar?

21 THE COURT: You may.

22 [Sidebar at 10:45 a.m., ending at 10:47 a.m., not transcribed]

23 THE COURT: So let's just clear up the record here.

24 Defendant, please call your first witness.

25 MR. BLALACK: Your Honor, subject to our discussion and

1 certain objections, we will rest at this time.

2 DEFENDANTS REST

3 THE COURT: All right. And I assume there's no rebuttal  
4 case?

5 MR. ZAVITSANOS: Correct, Your Honor. We rest.

6 THE COURT: All right. Good enough.

7 I'm going to send you guys out for a little bit of a longer  
8 break, and we'll come back. Lunch will be provided for you, for your  
9 deliberation. But let me -- we have some matters to take up outside your  
10 presence.

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

17 Don't conduct any research on your own relating to the case,  
18 especially now that we're in the final phase. And don't talk, text, tweet,  
19 Google issues, or conduct any other type of book or computer research  
20 with regard to any issue, party, witness, or attorney involved in this case.

21 Do not post on any social media until after the jury returns a  
22 verdict and most importantly, don't form or express any opinion on any  
23 subject connected with the trial until the matter is submitted for your  
24 deliberation.

25 It's 10:48. I'm going to say 11:15. And if we need more time,

1 we will let you know.

2 THE MARSHAL: All rise for the jury.

3 [Jury out at 10:49 a.m.]

4 [Outside the presence of the jury]

5 THE COURT: Okay. So I believe we agreed to take up D9 and  
6 UHG, a curative instruction; is that correct?

7 MS. ROBINSON: We still need a copy of those curative  
8 instructions.

9 MR. SMITH: We can go ahead and address --

10 THE COURT: And I need to pull that up so give me just a  
11 second here. The Chief Judge says that it's very messy up here. All  
12 right. So I'm ready to talk about D9.

13 MS. ROBINSON: Do you want to hear from the Defendants  
14 first?

15 THE COURT: Yes.

16 MS. ROBINSON: The Court's instruction?

17 MR. SMITH: Thank you, Your Honor. So this is a  
18 modification of the 2011 pattern instruction. It accounts for some of the  
19 statements in *State Farm v. BMW* and *Bongiovi v. Sullivan* to make clear  
20 to the jury that it should not base its award simply on the basis of the  
21 size or the [indiscernible].

22 MS. ROBINSON: Thank you, Your Honor. And I apologize. I  
23 was a bit distracted as we just received the proposed curative  
24 instruction.

25 We don't really just have any argument with the first

1 sentence of this instruction. We understand that the wealth of the  
2 Defendant does not diminish its entitlement to protection of the law.

3 Our concern is with instructing the jury contrary to the  
4 second part of the two-part punitive damages' instruction. And that is  
5 that an award, a monetary award in a certain amount will mean one  
6 thing to a defendant of small means and mean another thing to a  
7 defendant of larger means to the extent of deterrence because if -- it's in  
8 the instruction, Your Honor. The amount of punitive damages, which  
9 will serve the purposes of punishment and deterrence, taking into  
10 account the defendant's financial condition.

11 So this previous instruction from 2011 has been modified.  
12 The Court has accepted the 2018 standard instruction. And we just don't  
13 want to confuse the jury regarding how those -- how the second part of  
14 the two-part instruction would interplay with this proposed instruction.  
15 But again, we don't have any issue with the idea that a wealthy  
16 defendant is entitled to all the protections of the law.

17 THE COURT: Thank you. And in reply, please?

18 MR. SMITH: So, Your Honor, the 2018 instruction doesn't  
19 say anything about the wealth of the defendant. And I think that's  
20 because, you know, it's not in every case that that evidence will come in  
21 for the reasons that Mr. Blalack discussed earlier. Now that we're in a  
22 situation where that evidence has come in, it's imperative that the jury  
23 be instructed -- we already are in agreement, I think, as to the first  
24 sentence. But that's correct.

25 And then the second two sentences are necessary to

1 describe the issue is not as Ms. Robinson was saying, that you know,  
2 you can't -- the jury's award will have a different effect on defendants of  
3 different sizes. Our point is that you can't use that as the sole basis for  
4 the decision. So in other words, if you have a large defendant, the jury  
5 can't decide, oh, well, they can pay it. I'm going to award more punitive  
6 damages for that reason.

7 MS. ROBINSON: So, and I apologize, Your Honor. I'm  
8 obviously -- didn't expect a reply. But I would just say that if we were to  
9 give this last sentence or last two sentences, I think we would have to  
10 clarify for the jury, however, you may consider the defendant's size or  
11 wealth or financial condition, when considering the purposes of  
12 deterrence. Otherwise, I think they'll be confused.

13 MR. SMITH: Well, what if we just put some kind of qualifier,  
14 like you cannot -- the defendants' financial resources alone do not justify.

15 MS. ROBINSON: Okay.

16 THE COURT: Okay. So it sounds like you're going to reach  
17 agreement on that. I am going to sustain the plaintiff's objection for the  
18 language after the first sentence unless the parties can agree. Where  
19 you continue to modify the 2011 pattern instructions, I find that  
20 confusing to the jury.

21 MR. ZAVITSANOS: Your Honor, I think the first sentence is  
22 sufficient. I'm not going to agree to that.

23 THE COURT: Well, if there is agreement on the language,  
24 great. If not, I'm sustaining the plaintiffs' objection to the balance.

25 MR. SMITH: So it's everything but the first sentence?



1 THE COURT: That's correct. Now let's talk about -- let's see.  
2 This is the supplement that my law clerk has just emailed me.

3 MR. SMITH: Yeah, the first one, you can disregard. That's  
4 the [indiscernible] instruction we discussed yesterday. We're just  
5 proposing that for the record. But you've already rejected that.

6 The second one, on Page 5, approaching D11, we actually  
7 envisioned this as being part of the instruction we were just talking  
8 about. But for clarity, we proposed it as a separate instruction.

9 THE COURT: And has the plaintiff seen this yet?

10 MR. ZAVITSANOS: Yes, Your Honor.

11 THE COURT: All right. And you're ready to talk about it?

12 MR. ZAVITSANOS: Yes, Your Honor.

13 THE COURT: All right. Is there -- there's an objection, I  
14 assume?

15 MR. ZAVITSANOS: Yes, Your Honor.

16 THE COURT: Yeah. So let's hear the objection and then --

17 MR. ZAVITSANOS: Your Honor, let me just set forth -- I don't  
18 want to step out of my lane here. I'm going to let Ms. Robinson cover  
19 the law.

20 Let me just address the factual problems with this. So well,  
21 there's three problems with it as I see it. Number one, this would  
22 essentially have the Court putting its thumb on the scale pretty  
23 substantially for a document that is the consolidated financial statements  
24 that contains information beyond net worth, like for example, the stock  
25 buybacks.

1                   Second or third, rather, and maybe most important of all,  
2 United Healthcare Services makes up 90 percent of the net worth that is  
3 reflected in that document. Now, it's very easy for the defendant, and I  
4 expect that they would do so, just like they did during questioning, to  
5 say, that the parties that are the defendants here, are subsidiaries, and  
6 that they should look at the other financial statements. I mean, this goes  
7 to weight, not to an instruction like this. Because the information is not  
8 irrelevant. It is very relevant, and the Court overruled the objection, and  
9 so we'd be having almost inconsistent instructions from the Court  
10 because the Court found it relevant for purposes of the trial but  
11 irrelevant for purposes of what the jury's going to decide. That is  
12 confusing.

13                   THE COURT: Thank you. And in response, please.

14                   MR. SMITH: Your Honor, I don't believe you've made a  
15 ruling that the actual number that the network of a non-party parent  
16 company is relevant to the jury's information on the amount of punitive  
17 damages. As I understood it, Your Honor was saying that if the  
18 information is contained within a document, if the information regarding  
19 the defendants in this case, is contained within a document that also has  
20 the irrelevant parent network information, that you were nonetheless,  
21 over our objection, going to let that in.

22                   I think it's imperative in that circumstance where the jury is  
23 seeing both sets of numbers, right? They're seeing an overall set of  
24 numbers that is -- includes United Health Group, the parent company  
25 and it includes the data for defendants that are not before the Court. I

1 think it's important that the jury be instructed that that information is not  
2 relevant to its determination.

3 THE COURT: And I'm going to sustain the Plaintiffs'  
4 objection simply because you have the right to argue but you didn't  
5 cross-examine Ms. Paradise on the issue of the relationship of the parent  
6 to the subsidiaries. So you chose not to do that. So I don't believe it's  
7 appropriate here to give that instruction.

8 Now, does that give you a chance to finalize the instructions  
9 and the verdict form?

10 MR. SMITH: Yes.

11 MS. ROBINSON: Yes, Your Honor.

12 THE COURT: And so, they'll be back at 11:15. If you need  
13 more time, let me know so the marshal can tell them.

14 [Recess taken from 10:58 a.m. to 11:15 a.m.]

15 MR. PORTNOI: Your Honor, we may have been premature.  
16 We probably just --

17 THE COURT: No problem.

18 MR. PORTNOI: I'm just getting a copy of the special verdict  
19 form. We've reach agreement on the jury instructions.

20 THE COURT: Good.

21 MR. PORTNOI: We just need to [indiscernible] to make sure  
22 there are no --

23 THE COURT: Good enough. Take a minute.

24 MS. ROBINSON: Oxfords?

25 MR. PORTNOI: Yes, no oxfords.

1 MS. ROBINSON: No oxfords. Got it.

2 THE COURT: Marshal Allen, will you let the jury know that  
3 they will only just be a few minutes. Just a few minutes.

4 [Pause]

5 MR. BLALACK: Your Honor, for planning purposes, my --is  
6 the assumption that Plaintiffs will go, then we'll go, and then we'll break  
7 for lunch.

8 THE COURT: Yeah. Although you guys tell me. Without  
9 holding you to it, how long do you think you need to argue?

10 MR. ZAVITSANOS: I really don't know, Your Honor. I -- 30 to  
11 40 minutes maybe, if that.

12 MR. BLALACK: And we're about 20 to 30 tops. More like 20.

13 THE COURT: Okay. Let's see. Let's see how it goes. I  
14 assume you want -- you don't want to break before you argue or --

15 MR. BLALACK: I would like to get them the case as soon as  
16 possible. If it's possible to get it done and then break, I will  
17 [indiscernible]. Whatever is best for the Court.

18 THE COURT: Let's see what we can do.

19 MR. LEYENDECKER: Your Honor, with the Court's  
20 indulgence, we were contemplating a very short rebuttal like maybe 5,  
21 10 minutes tops.

22 THE COURT: Well, that could be 80 minutes. So let's see  
23 how it goes. I don't think it will take long to read the instructions.

24 MS. ROBINSON: And once we're ready with the instructions  
25 and the verdict form, how many copies would you like of them?

1 THE COURT: Just one of each.

2 MS. ROBINSON: Okay.

3 [Pause]

4 MS. ROBINSON: So, Your Honor, I'll approach with the  
5 amended instructions.

6 THE COURT: Will someone from the other side approach as  
7 well, so that it's not unilateral?

8 MS. ROBINSON: Yes. 100 percent.

9 THE COURT: And on the record, both of you agree these are  
10 correct?

11 MS. ROBINSON: I think we all -- both feel a little -- you know,  
12 after last time. So it's on the record.

13 MR. PORTNOI: Yeah.

14 MS. ROBINSON: Yes, Your Honor. It's correct. Thank you,  
15 Your Honor.

16 THE COURT: Thank you.

17 [Pause]

18 THE MARSHAL: All rise for the jury.

19 [Jury in at 11:18 a.m.]

20 THE COURT: Thank you. Please be seated. Ladies and  
21 gentlemen -- gentleman of the jury, I will now instruct you on the law as  
22 it applies in this case. You will have a copy of these instructions, so that  
23 you may follow along or take instructions -- you can take that to the jury  
24 room with you for your deliberations. Additionally, a copy of the  
25 verdict form will be attached and sent back to you for your deliberations.

1 So jury instructions phase two.

2 Jury instruction 44. The law provides no fixed standards as  
3 to the amount of punitive damages but leaves the amount to the jury's  
4 sound discretion, exercised without passion or prejudice. In arriving at  
5 any award of punitive damages, you are to consider the following:

6 1) the reprehensibility of the conduct of the Defendant;

7 2) the amount of punitive damages which will serve the  
8 purposes of punishment and deterrence, taking into account the  
9 Defendant's financial condition.

10 44. Any individuals other than the Plaintiff who might claim  
11 to have been harmed by the Defendant have the right to bring their own  
12 lawsuit, seeking compensatory and punitive damages for the wrong, if  
13 any, done to them. Therefore, in determining the amount of punitive  
14 damages that is necessary for punishment -- counsel, please approach.

15 [Sidebar at 11:20 a.m., ending at 11:21 a.m., not transcribed]

16 THE COURT: Let me start again with number 44, and thank  
17 you for your courtesy. Any individuals other than the Plaintiff who might  
18 claim to have been harmed by the Defendant have the right to bring their  
19 own lawsuit seeking compensatory and punitive damages for the wrong,  
20 if any, done to them. Therefore, in determining the amount of punitive  
21 damages that is necessary for punishment and deterrence, you may  
22 consider only the wrong done to the Plaintiffs in this case. You may not  
23 award any punitive damages for the purpose of punishing Defendant's  
24 conduct toward anyone else or any conduct outside the state of Nevada.

25 45. The wealth of a Defendant does not diminish its

1 entitlement to all the protections of the law on which you have been  
2 instructed.

3 46. You may not award punitive damages to punish  
4 Defendant's conduct in litigation. The previous instruction regarding  
5 presuming that relevant evidence that was not produced is adverse to  
6 the Defendants is still in effect.

7 47. Now you will listen to the arguments of counsel, who  
8 will endeavor to aid you to reach a proper verdict by refreshing in your  
9 minds the evidence and by showing the application thereof to the law.  
10 But whatever counsel may say, you will bear in mind that it is your duty  
11 to be governed in your deliberations by the evidence as you understand  
12 it and remember it to be and by the law given you in these instructions,  
13 and return a verdict which, according to your reason and candid  
14 judgment, is just and proper. Dated this 7th day of December 2021.

15 Is the Plaintiff ready to argue?

16 MR. ZAVITSANOS: Yes, Your Honor.

17 PLAINTIFFS' CLOSING ARGUMENT

18 May it please the Court, counsel. Okay. So in October, when  
19 we began jury selection, Her Honor told the whole panel -- of course, you  
20 all were there -- that this is the greatest system of justice the world has  
21 ever known. And that's true. It is the greatest system of justice the  
22 world has ever known. And the thing is growing up, when you grow up  
23 in this country, we kind of take it for granted that we have a jury system.  
24 We take it for granted that everybody is held accountable to the same  
25 standards. Right. And that's kind of the prevailing view in most civilized

1 countries today, but it wasn't always like that. Right.

2           Now what you probably know by now, in Greek, right? So if  
3 you saw My Big Fat Greek Wedding, everything has a Greek origin.  
4 Okay. So I'm going to talk about this word right here. Okay. Ostracism.  
5 That means to exclude somebody from a group. Right. And the most  
6 common form of ostracism today is on social media, like you defriend  
7 somebody or something like that.

8           But there was a time 2500 years ago, the world was a  
9 completely different place. There was no democracy. There was no free  
10 will. And people were ruled by kings, despots, dictators, and even  
11 people who considered themselves God. That's who ruled the world.  
12 Okay. And so, this idea bubbled up in Athens about having democracy  
13 and having citizens. And this was a radical idea. It did not exist  
14 anywhere else, anywhere else in the world. And the way that those  
15 Athenians came up with the way that they were going to protect that  
16 system is by coming up with a jury system. Right. A common citizen  
17 could take redress against the most powerful person in that city-state.

18           And the thing was Athens was kind of an oasis, because  
19 everybody around them had kings and despots, and this idea of having a  
20 common person to be on the same level as a king, it was completely  
21 radical. And it was a threat to all those around them.

22           And so, the Athenians knew they had to come up with a way  
23 to protect that system. And it was this. The original juries consisted of  
24 ordinary citizens. And what would happen is they would gather -- and it  
25 was hundreds of people on the jury. They couldn't -- there was no



1 paper. Paper came from Egypt. They had these things called ostraca.  
2 And ostraca was a piece of pottery, because that was very prevalent.  
3 And that's how they would vote. And the vote was whether or not the  
4 person on trial threatened the goodwill of the community, whether or  
5 not the person on trial threatened the democracy and the rights of  
6 ordinary citizens.

7 Now Athens was a power for quite a long time. And what  
8 happened is if you were convicted, right, they would count the ostraca,  
9 and then you would be ostracized. You would be banished from the city  
10 for 10 years before being allowed to return. That was the original  
11 punitive damages. That was the original way that the community  
12 safeguarded its principles, and its morals was by ostracizing those that  
13 threaten. Now here's the thing. The entire time that Athens was a city-  
14 state, only 11 or 12 times was somebody ostracized. It was very, very  
15 rare. It did not happen often. Right.

16 So now let's fast-forward. Let's fast-forward to today. And  
17 you all walk by this every day. Right. And scribed on that wall out there  
18 is that government and governing is a matter of the consensus of the  
19 people. That's a Navajo Nation ancient principle. So you're here as  
20 ordinary citizens, safeguarding the morals of the community and the  
21 standards of the community. And we are here to determine whether  
22 these Defendants, these companies, should be punished. And there are  
23 only two standards, only two standards that you are to consider.

24 And Her Honor just read these. It's the reprehensibility of the  
25 conduct of the Defendant, and that's each Defendant. Right. And in

1 coming up with the amount which will serve the purpose, and there's  
2 two purposes, punishment and deterrence, and you could take into  
3 account the Defendant's financial condition. Those are the two things  
4 that you're going to consider, because you've already answered the  
5 predicate question on whether or not punitive damages are allowed  
6 here. And what you did was very rare. I've been doing this a long time,  
7 and it's less than 10 times that we've had juries rule the way that you do.

8 It really is like the --

9 MR. BLALACK: Objection, Your Honor. Argument.

10 THE COURT: Objection sustained.

11 MR. ZAVITSANOS: Okay. Now let's talk about what you  
12 should not consider. Who gets the money. There's not going to be any  
13 instruction in what you get when you go back about who gets the  
14 money. How the lawyers got paid, nothing in there about that. Whether  
15 the Court might adjust you come up with, nothing in there about that.  
16 What happens in other matters, nothing in there about that.

17 Comparing the amount you're going to give to the actual  
18 damages that you came up with, nothing in there about that. Who  
19 ultimately pays this, nothing in there about that. Whether you like or  
20 dislike lawyers -- I hope you don't hold this one. Okay. Nothing in there  
21 about that. And where the money ultimately goes, nothing in there  
22 about that. It's just two factors. Okay.

23 Now let's talk about the first factor, the reprehensibility of the  
24 Defendants' conduct. That's a -- you know, that's a big word.  
25 Reprehensible is a strong word. Okay. But you all already answered

1 that. And we know that Ms. Paradise, who, by the way, didn't answer  
2 one question today, not one. She did not answer one question. She  
3 gave her talking points to every single question that Mr. Ahmad asked  
4 her.

5 We know that -- and we talked about this during the first  
6 phase. They were going to drive all the claims to a more aggressive  
7 pricing. Now the subtext there is whether the plan allows it or not, they  
8 were going to do it. Why? Because they make more money. And how  
9 do we know that this means whether the plan allows it or not? It's  
10 simple. They didn't produce the plans. And in the first trial -- in the first  
11 phase, you were required to assume that those plans would be harmful  
12 to them, which still remains in effect.

13 Here's another document. I've got the, I've got the exhibits,  
14 by the way, down here again. This is 239. Okay. This is where they're  
15 headed. Eighty percent of the par levels. That's their goal. Right. And it  
16 is with urgency and acceleration. And then -- and here's the thing, right?  
17 If you are immersed in chatter about healthcare prices this and  
18 healthcare prices that, and you hear it all the time, the lie becomes the  
19 truth, and the truth becomes the lie. And they have spent an enormous  
20 amount of resources in brainwashing not only the people of this state,  
21 but everyone. Working behind the scenes, planting stories in the media.  
22 And you all saw this in the exhibit where they were literally talking about  
23 seeding stories in the local media. Because again, they knew this day  
24 was coming. They knew this day was coming.

25 And there it is. These are -- I mean, we talked about this last