

CASE NO. 85525; *Combined with* CASE NO. 85656

IN THE SUPREME COURT OF NEVADA

UNITED HEALTHCARE INSURANCE COMPANY; UNITED HEALTHCARE
SERVICES, INC. D/B/A UNITEDHEALTHCARE; UMR, INC. D/B/A UNITED
MEDICAL RESOURCES; SIERRA HEALTH AND LIFE INSURANCE
COMPANY, INC.; AND HEALTH PLAN OF NEVADA, INC.,

Appellants/Petitioners,

vs.

FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.; TEAM
PHYSICIANS OF NEVADA-MANDAVIA, P.C.; AND CRUM STEFANKO
AND JONES, LTD., D/B/A RUBY CREST EMERGENCY MEDICINE.

Respondents/Real Parties in Interest.

Appeal from the Eighth Judicial District Court, Clark County
District Court Case No. A-19-792978
Hon. Nancy L. Allf, District Judge

APPENDIX OF EXHIBITS TO RESPONDENTS' ANSWERING BRIEF

VOLUME 2 OF 13

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APPENDIX OF EXHIBITS TO RESPONDENTS' ANSWERING BRIEF

VOLUME 2 OF 13

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 28th day of August, 2023, service of the foregoing **Appendix of Exhibits to Respondents' Answering Brief – Volume 2 of 13** was made by electronic service through Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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EXHIBIT 11

EXHIBIT 11

**FILED UNDER
SEAL PURSUANT
TO PENDING
MOTION TO SEAL
FILED
CONCURRENTLY
HEREWITH**

EXHIBIT 12

EXHIBIT 12



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CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES
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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,

Defendants

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

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION IN LIMINE TO
EXCLUDE EVIDENCE SUBJECT
TO THE COURT'S DISCOVERY
ORDERS**

Please take notice than an Order Granting In Part And Denying In Part Plaintiffs' Motion In
Limine To Exclude Evidence Subject To The Court's Discovery Orders was entered on November

RA000268

12, 2021, a copy of which is attached hereto.

DATED this 12th day of November, 2021.

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RA000269

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 12th day of November, 2021, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EVIDENCE SUBJECT TO THE COURT'S DISCOVERY ORDERS** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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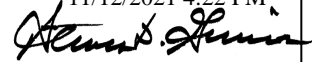
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professional corporation; CRUM,
STEFANKO AND JONES, LTD. dba RUBY
CREST EMERGENCY MEDICINE, a
Nevada professional corporation,

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,

Defendants.

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

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION IN LIMINE TO EXCLUDE
EVIDENCE SUBJECT TO THE
COURT'S DISCOVERY ORDERS**

Hearing Date: October 19–20, 2021

RA000271

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1 This matter came before the Court on October 19–20, 2021 on plaintiffs Fremont
2 Emergency Services (Mandavia), Ltd. (“Fremont”); Team Physicians of Nevada-Mandavia,
3 P.C. (“Team Physicians”); Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency
4 Medicine’s (“Ruby Crest” and collectively the “Health Care Providers”) Motion in Limine to
5 Exclude Evidence Subject to the Court’s Discovery Orders (the “Motion”). Pat Lundvall,
6 Kristen T. Gallagher and Amanda M. Perach, McDonald Carano LLP; and John Zavitsanos,
7 Joe Ahmad, Kevin Leyendecker, Jane Robinson, and Jason McManis, Ahmad, Zavitsanos,
8 Anaipakos, Alavi & Mensing, P.C., appeared on behalf of the Health Care Providers. D. Lee
9 Roberts and Colby Balkenbush, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC; Lee Blalack
10 and Dmitri Portnoi, O’Melveny & Myers LLP; and Dan Polsenberg, Lewis Roca Rothgerber
11 Christie LLP appeared on behalf of UnitedHealthcare Insurance Company; United HealthCare
12 Services, Inc.; UMR, Inc.; Sierra Health and Life Insurance Co., Inc.; and Health Plan of
13 Nevada, Inc.’s (collectively, “United”).

14 The Court, having considered the Motion and United’s opposition and the argument of
15 counsel at the hearing on this matter, and good cause appearing, finds and orders as follows:

16 **Clinical Records & Proper Coding**

17 IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of
18 clinical records and proper coding, for the reasons stated on the record. If Defendants believe
19 evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they
20 shall make an offer of proof outside the presence of the jury.

21 **Medicare or Non-Commercial Reimbursement Rates**

22 IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of
23 Medicare rates. Any evidence, argument, or testimony that Medicare or non-commercial
24 reimbursement rates are the reasonable rate, that providers accept it most of the time, or
25 arguing reasonableness based on a percentage of Medicare or non-commercial reimbursement
26 rates is hereby EXCLUDED in limine. If Defendants believe evidence, argument, or testimony
27 subject to this ruling is relevant and should be admitted, they shall make an offer of proof
28 outside the presence of the jury.

The Health Care Providers' In-Network Rates

IT IS HEREBY ORDERED that the Motion is DEFERRED to trial with respect to the issue of the Health Care Providers' in-network rates for the reasons stated on the record. If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury.

The Health Care Providers' In-Network Negotiations/Prior Contracts with United

IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of the Health Care Providers' In-Network Negotiations/Prior Contracts with United for the reasons stated on the record. If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury

The Health Care Providers' Out-Of-Network Reimbursement Rates & Data

The Health Care Providers' Motion with respect to the issue of the Health Care Providers' out-of-network reimbursement rates and data was withdrawn on the record at the hearing on October 20, 2021.

The Health Care Providers' Costs of Service

IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of the Health Care Providers' costs of service for the reasons stated on the record. If Defendants believe evidence, argument, or testimony subject to this ruling is relevant and should be admitted, they shall make an offer of proof outside the presence of the jury.

How the Health Care Providers Charges Are Set

IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of how the Health Care Providers' charges are set. Any evidence, argument, or testimony relating to how the Health Care Providers' charges are set is hereby EXCLUDED in limine. This shall not preclude the introduction of evidence regarding FAIR Health or percentiles of FAIR Health, nor shall it preclude the introduction of evidence regarding increase in prices set by the Health Care Providers. If Defendants believe evidence, argument, or testimony subject to this

1 ruling is relevant and should be admitted, they shall make an offer of proof outside the
2 presence of the jury.

3 **The Health Care Providers' Hospital Contracts/Credentials**

4 IT IS HEREBY ORDERED that the Motion is GRANTED with respect to the issue of
5 the Health Care Providers' hospital contracts and credentials for the reasons stated on the
6 record. If Defendants believe evidence, argument, or testimony subject to this ruling is
7 relevant and should be admitted, they shall make an offer of proof outside the presence of the
8 jury.

9 **Corporate Ownership, Acquisition and Due Diligence, Corporate Structure**

10 IT IS HEREBY ORDERED that the Motion is GRANTED IN PART and DENIED IN
11 PART with respect to the issue of the corporate ownership, acquisition and due diligence, and
12 corporate structure. The Court finds that the flow of funds within the Plaintiffs' or
13 TeamHealth's corporate structure is irrelevant and inadmissible.

14 The Motion is DENIED with respect to evidence, argument, or testimony regarding the
15 relationship between (1) Plaintiffs and TeamHealth, Inc.; and (2) the basic relationship
16 between TeamHealth, Inc. and Blackstone Inc. (formerly known as The Blackstone Group,
17 Inc.).

18 If the Defendants believe evidence, argument, or testimony subject to the ruling on this
19 Motion is relevant and should be admitted, they shall make an offer of proof outside the
20 presence of the jury.

21 **Sub-TIN**

22 IT IS HEREBY ORDERED that the Motion is DENIED with respect to the sub-TIN
23 issue, for the reasons stated on the record.

24 **Collections and CollectRX**

25 IT IS HEREBY ORDERED that the Motion is DEFERRED until trial for the reasons
26 stated on the record. If Defendants believe evidence, argument, or testimony subject to this
27 ruling is relevant and should be admitted, they shall make an offer of proof outside the
28 presence of the jury.

November 12, 2021

Dated this 12th day of November, 2021

Nancy L. Alf

TW

Respectfully submitted by:

C9A 4A3 F9E9 D54D
Nancy Alf
District Court Judge

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI
& MENSING, P.C

/s/ Jason S. McManis

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RA000275

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Fremont Emergency Services
7 (Mandavia) Ltd, Plaintiff(s)

CASE NO: A-19-792978-B

8 vs.

DEPT. NO. Department 27

9 United Healthcare Insurance
10 Company, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

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6 known addresses on 11/15/2021

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EXHIBIT 13

EXHIBIT 13



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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,

Defendants.

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

**JOINT SUBMISSION OF DEPOSITION
CLIPS FOR TRIAL RECORD AS
PLAYED ON NOVEMBER 12, 2021**

RA000280

Plaintiffs Fremont Emergency Services (Mandavia), Ltd.; Team Physicians of Nevada-Mandavia, P.C.; Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine (collectively the “Health Care Providers”) and defendants UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Sierra Health and Life Insurance Co., Inc.; and Health Plan of Nevada, Inc. (collectively, “Defendants”) jointly submit the attached deposition clips for Mr. Daniel Rosenthal, as played to the jury on November 12, 2021 and referenced on page 203, line 21 of the November 12, 2021 (Day 11) Transcript. The Health Care Providers’ portion of Mr. Rosenthal’s testimony is attached hereto as Exhibit A. Defendants’ portion of Mr. Rosenthal’s testimony is attached hereto as Exhibit B.

The parties jointly request that Exhibit A and Exhibit B be made a part of the trial record in this matter.

Submitted by:

/s/ Jeffre E. Gordon

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 24th day of November, 2021, I caused a true and correct copy of the foregoing **JOINT SUBMISSION OF DEPOSITION CLIPS FOR TRIAL RECORD** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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/s/ Jason McManis

Jason McManis

RA000283

Case Clip(s) Detailed Report

Copy of Dan Rosenthal Clips

Friday, November 12, 2021, 1:11:35 PM

RA000284

RA000284

Copy of Dan Rosenthal Clips

 **Rosenthal, Daniel (Vol. 01) - 03/23/2021**

1 CLIP (RUNNING 00:39:43.600)

 DISTRICT COURT ...

DR 75 SEGMENTS (RUNNING 00:39:43.600)



1. PAGE 9:21 TO 10:06 (RUNNING 00:00:25.237)

21 Q. Mr. Rosenthal, would you please state your
22 name for the record.
23 A. Sure. Daniel Rosenthal.
24 Q. Mr. Rosenthal, are you currently employed?
25 A. Yes, I am.
00010:01 Q. Who is your employer?
02 A. UnitedHealth Group.
03 Q. What is your position with UnitedHealth
04 Group?
05 A. I'm the CEO of our commercial business for
06 the West Region.

2. PAGE 21:02 TO 21:04 (RUNNING 00:00:13.293)

02 Q. Prior to your position as the CEO of the
03 West Region for United, were you employed at United?
04 A. Yes, I was.

3. PAGE 21:11 TO 22:10 (RUNNING 00:01:44.779)

11 Q. What was your -- what was your position
12 with United prior to you acting as the CEO over the
13 West Region?
14 A. I was the president of UnitedHealth
15 Networks.
16 Q. And what is UnitedHealth Networks?
17 A. UnitedHealth Networks is a portion of the
18 company. It sits inside of UnitedHealthcare and it
19 is responsible for the network of doctors,
20 hospitals, ancillary providers, pharmacy that it --
21 in connection with the different arrangements
22 that -- that UnitedHealthcare offers to the market,
23 whether it's in the commercial business, or the E&I
24 business, or whether it's in the Medicare business,
25 also known as Medicare & Retirement, or whether it's
00022:01 in the Medicaid business which is also known as
02 Community & State.
03 Q. Is E&I, is that different than commercial?
04 A. No, it's the same thing.
05 Q. Okay. And how long did you have that role
06 as the president of UnitedHealth Networks?
07 A. I think a little more than -- I think a
08 little more than five years. I don't know exactly
09 the number -- the -- the duration. I want -- so
10 five-plus years.

4. PAGE 39:18 TO 40:01 (RUNNING 00:00:21.242)

18 Q. So you have been in healthcare for over 30
19 years. Fair?
20 A. Yes.
21 Q. And you have an understanding, both as a
22 negotiator for a provider and a negotiator for an
23 insurance company, as to what a provider's
24 expectation is if there is no contract and the
25 provider provides services to the insured's member.

Copy of Dan Rosenthal Clips

00040:01 You understand that, right?

5. PAGE 40:05 TO 40:05 (RUNNING 00:00:01.601)

05 THE WITNESS: I think I understand that.

6. PAGE 40:08 TO 40:12 (RUNNING 00:00:11.905)

08 And your understanding is that in the
09 absence of a contract, when the provider provides
10 services to a member of an insurance company, that
11 provider expects to get paid full billed charges,
12 correct?

7. PAGE 40:15 TO 40:15 (RUNNING 00:00:01.523)

15 THE WITNESS: Not -- not in all cases.

8. PAGE 41:24 TO 42:08 (RUNNING 00:00:36.352)

24 Q. Can you give me an example when a provider
25 has the opinion that, absent a contract with the
00042:01 insurance company, when the provider provides
02 services to the insured -- the member of the
03 insurance company, that the provider expects to get
04 paid full billed charges?
05 A. I mean, I -- I can just tell you that in my
06 experience that I have seen providers -- some
07 providers have an expectation that they would get
08 paid billed charges and others don't.

9. PAGE 53:08 TO 53:09 (RUNNING 00:00:04.610)

08 When you were the president of UnitedHealth
09 Networks, how did United generate income?

10. PAGE 53:11 TO 54:14 (RUNNING 00:02:09.847)

11 THE WITNESS: United generates -- generates
12 income based off of selling products to -- the
13 products that we described before. If you want to
14 limit the conversation to the E&I business; is that
15 fair, you want to limit my -- should I try to limit
16 my answer to the commercial business or are you
17 asking a more broad question?
18 BY MR. FINEBERG:
19 Q. Why don't you tell me about the commercial
20 business specifically, and then I will ask, if I
21 have any follow-ups questions with any other lines
22 of business. So thank you for that.
23 A. Okay. So, you know, we sell insured and
24 ASO products to the market, and we are able to
25 charge a fee or a premium, a "premium" meaning, you
00054:01 know, a charge to the market, not -- not a -- not a
02 premium in the meaning of something above something,
03 if that's helpful. Right? So we are able -- we
04 charge the market for those products that people or
05 employers buy those products from us, and then it
06 costs a certain amount to operate those products, it
07 costs a certain amount to pay the -- pay the claims
08 where people generate utilization in a healthcare
09 system and, you know, other costs that we might
10 incur in order to run the business. And generally
11 speaking, at a very superficial level, the
12 difference between the amount that we are able to
13 charge and the amount that it costs us to provide
14 the service is what the income would be.

Copy of Dan Rosenthal Clips

11. PAGE 55:05 TO 55:11 (RUNNING 00:00:17.763)

05 Q. Okay. Now you mentioned that there were
06 fees charged for the administrative services,
07 correct?
08 A. Yes.
09 Q. Now, what are the fees that United charges
10 for the ASO services that generates income to
11 United?

12. PAGE 55:20 TO 56:03 (RUNNING 00:00:43.117)

20 THE WITNESS: One -- one example would be
21 the fees to process the claims, the fees to operate
22 the call centers. You know, there's a variety of
23 fees associated with the administration of -- of the
24 business, and there's -- those self-funded customers
25 decide what -- what programs they are interested in
00056:01 buying, and then we create a -- we package those
02 programs together and -- and there is a fee
03 associated with that.

13. PAGE 56:16 TO 57:04 (RUNNING 00:01:08.257)

16 Q. What's your understanding of a "shared
17 savings fee"?
18 A. My understanding of a shared savings is an
19 arrangement where -- that the -- the difference
20 between the billed charges and the amount -- for
21 non-par services, the amount -- the difference
22 between billed charges and the amount that providers
23 accept as payment. That -- that is referred to as
24 the savings. And then there is a sharing of those
25 savings between the -- the plan sponsor and United.
00057:01 Q. So just to break that down, this concept of
02 shared savings is a -- it's a fee that United
03 generates for an out-of-network program, correct?
04 A. Yes.

14. PAGE 57:12 TO 57:17 (RUNNING 00:00:17.200)

12 Q. It's calculated as -- billed charges is the
13 top line number, an allowed amount as a bottom line
14 number. And you subtract the two, that gets you to
15 the number that you said was the, quote-unquote,
16 savings, correct?
17 A. That's my general understanding of it.

15. PAGE 59:20 TO 60:10 (RUNNING 00:00:59.011)

20 Q. And so for purposes of creating your
21 budgets, you are familiar with financial statements
22 that show projected income and then projected
23 expenses, correct?
24 A. Yes.
25 Q. And these fees for the Shared Savings
00060:01 Program, that revenue that's generated by United for
02 these out-of-network programs, are they recorded on
03 these budgeted financial statements that you are
04 familiar with?
05 A. I believe that they're recorded on the
06 financial statements that I'm familiar with, but
07 they are -- I believe -- I believe that they are --
08 they are -- show up in the national accounts
09 business financial statements, which I don't review
10 the national account financial statements.

Copy of Dan Rosenthal Clips

16. PAGE 60:15 TO 60:22 (RUNNING 00:00:26.311)

15 Q. But part of what you would receive in your
16 role as president of UnitedHealthcare Networks were
17 budgets for the national business that included
18 revenue for -- from these shared savings fees; is
19 that correct?

20 A. Yeah, it was part of -- it was part of --
21 it was those -- the shared savings arrangements were
22 inside of the overall financial statements.

17. PAGE 63:01 TO 63:08 (RUNNING 00:00:23.282)

00063:01 Q. Do you understand that the issues in this
02 dispute involve services provided in emergency
03 departments?

04 A. Yes.

05 Q. And do you understand that the plaintiffs,
06 these healthcare providers, are the men and women
07 who are the clinicians and professionals in those
08 emergency departments providing services?

18. PAGE 63:10 TO 63:13 (RUNNING 00:00:13.565)

10 THE WITNESS: Yes, generally I
11 understand -- I agree with what you are saying, that
12 those -- that those plaintiffs are providers of
13 emergency services generally.

19. PAGE 76:16 TO 76:19 (RUNNING 00:00:19.255)

16 Q. What is your understanding of what
17 TeamHealth is?

18 A. It's a national provider of emergency
19 services and other -- other healthcare services.

20. PAGE 77:12 TO 77:25 (RUNNING 00:01:02.010)

12 Q. Have you communicated with the press about
13 TeamHealth?

14 A. I don't recall.

15 Q. Are you familiar with a study that was
16 published in New England Journal of Medicine with --
17 one of the authors was a Zachary Cooper?

18 A. I have some familiarity with that.

19 Q. And what familiarity do you have with that
20 article?

21 A. I don't remember the specifics of it, but I
22 believe it was a study that was done analyzing
23 patterns in the emergency services across the --
24 across the United States.

25 Q. Where did Mr. Cooper get his data?

21. PAGE 78:02 TO 78:14 (RUNNING 00:00:41.725)

02 THE WITNESS: I know that some of the data
03 that he got was from UnitedHealthcare -- or
04 UnitedHealth -- I'm not sure what part of
05 UnitedHealth Group, but from United. They might
06 have received data from other sources as well.

07 BY MR. FINEBERG:

08 Q. But you were aware, at the time, that
09 Mr. Cooper was getting data from UnitedHealthcare,
10 right?

11 A. Yes.

12 Q. And in fact, UnitedHealthcare received
13 early drafts of the article, didn't it?

14 A. I believe so.

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22. PAGE 78:21 TO 78:25 (RUNNING 00:00:20.446)

21 Q. And one of the issues that came up in the
22 discussions about the information that United was
23 giving to Mr. Cooper was whether or not United
24 should disclose TeamHealth and Envision, right?
25 A. Yes.

23. PAGE 79:03 TO 80:05 (RUNNING 00:02:04.078)

03 MR. FINEBERG: Mr. Stafford, if you could
04 put up Exhibit 26, please, which is document that's
05 Bates-stamped 102978 through 8 -- 82.
06 (Exhibit 26 marked.)
07 BY MR. FINEBERG:
08 Q. Do you see here at the top of this email
09 chain, Mr. Rosenthal, is an email from a Daryl
10 Richard to you, copying Megan Abbate? And I
11 apologize if I mispronounced her name.
12 A. She pronounces it Abbate. And yes, I see
13 the email.
14 Q. And who is Daryl Richard?
15 A. Daryl was -- worked in a corporate
16 communications area at -- at United.
17 Q. And Ms. Abbate was your -- your
18 administrative assistant?
19 A. Yes.
20 Q. And Mr. Richard writes to you asking
21 whether you have 15 minutes in the next couple of
22 days to chat about the Yale/HCCI study on
23 out-of-network billing at in-network hospitals. Do
24 you see that?
25 A. Yes.
00080:01 Q. And if you scroll down in this document to
02 the email below -- right there -- in this email,
03 Brenda Perez and -- writing to Tyler Mason, copying
04 Mr. Richard -- do you know who they are?
05 A. I know who Tyler Mason is.

24. PAGE 80:10 TO 80:12 (RUNNING 00:00:05.197)

10 Q. And who is Tyler Mason?
11 A. He works in corporate communications at
12 United.

25. PAGE 80:19 TO 80:23 (RUNNING 00:00:11.892)

19 Q. Right above the first bullet, Ms. Perez
20 writes, "In addition to giving us a heads up on the
21 Times/New England Journal of Medicine piece."
22 Do you see that?
23 A. Yes.

26. PAGE 81:09 TO 81:21 (RUNNING 00:00:31.413)

09 Q. And so the bullet says -- below that, what
10 we just read, says, "Shared the attached overview
11 which, according to Cheryl, Ted Prospect had also
12 sent to several network parties, including Dan
13 Rosenthal."
14 Do you see that?
15 A. Yes.
16 Q. And who is Ted Prospect?
17 A. Ted worked in the government affairs area
18 at United.
19 Q. And so this confirms --
20 A. I believe that -- just a second, I'm sorry.
21 I just -- I think that's where Ted worked.

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27. PAGE 81:25 TO 82:10 (RUNNING 00:00:32.187)

25 Q. And this is what -- consistent with what
00082:01 you were talking about a few minutes ago, that you
02 had reviewed a early draft of the overview for
03 Mr. Cooper, right?
04 A. Yes.
05 Q. And then if you go to the bullet below
06 that, it says, "Noted that we have been providing
07 data to Yale since March through the first part of
08 May and that Yale has started their analysis."
09 Do you see that?
10 A. I see it.

28. PAGE 83:17 TO 84:04 (RUNNING 00:00:42.567)

17 So let me ask you about a bullet, fourth
18 bullet down, that starts with, "Submitted that,
19 unless how our data is portrayed in the study
20 findings merits revision, the company will be
21 referred to in the piece simply as," quote, "a large
22 carrier."
23 Do you see that?
24 A. Yes.
25 Q. Then it goes on to say, "As was the case
00084:01 with the HCCI piece, our support of Zack is expected
02 to remain quote, behind the scenes," quote.
03 Do you see that?
04 A. Yes.

29. PAGE 85:17 TO 86:06 (RUNNING 00:00:48.762)

17 Did I have a personal concern, is that your
18 question, about whether our data -- our name was
19 tied to the data?
20 BY MR. FINEBERG:
21 Q. Yeah.
22 A. Like I said, I had questions about -- about
23 it. I wouldn't express it as a concern. You know,
24 it was I had questions about whether or not, you
25 know, it should be, what was the practice, you know,
00086:01 and just trying to -- the way that I think generally
02 about almost anything is I try to understand
03 multiple points of view and then -- you know, in
04 this case, you know, I was relying on those in the
05 company that were more regularly involved with this
06 kind of work.

30. PAGE 86:16 TO 87:05 (RUNNING 00:00:49.806)

16 Q. And then if you go on to the next sentence
17 it says that, "Since findings will bring up what's
18 been happening in the clinical" -- or -- "in the
19 clinician world under a less-than-positive light,
20 we'll have to look into the possibility of further
21 distancing ourselves from the piece and messaging in
22 anticipation of media inquiries."
23 Do you see that?
24 A. Yes.
25 Q. Did you discuss with anybody this
00087:01 sentiment, that United would have to further
02 distance itself from the articles?
03 A. I'm sure I did have a discussion, if that's
04 what was written in the email. I don't -- I don't
05 recall it, as we are sitting here.

31. PAGE 88:13 TO 89:13 (RUNNING 00:01:37.765)

13 Q. And as we were discussing about providing

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14 a -- redline revisions, the Cooper article, I would
15 like to show you what we will mark as Exhibit 25,
16 which is a document that's Bates-stamped DEF101824
17 through 827.
18 (Exhibit 25 marked.)
19 MR. FINEBERG: If you could put that up on
20 the screen, Mr. Stafford.
21 BY MR. FINEBERG:
22 Q. Do you see on your screen, Mr. Rosenthal,
23 an email from Dewayne Ullsperger?
24 A. Yeah, Dewayne, Dewayne Ullsperger, I see
25 the email. I see the top of the email.
00089:01 Q. And do you see that you are one of the
02 recipients of this email?
03 A. Yes. Looks like a meeting invitation.
04 Q. And do you see that there is a little icon,
05 a Word icon at the bottom of what's on your screen?
06 A. Yes.
07 Q. And then if you look at the attachment, if
08 you go to the next page, you see that these are
09 redline revisions to the Zack Cooper article?
10 A. Okay. I see -- I see that.
11 Q. And this is consistent with what you were
12 talking about earlier, that you and United provided
13 redline revisions to the Cooper article, right?

32. PAGE 89:16 TO 89:24 (RUNNING 00:00:18.472)

16 THE WITNESS: I don't think I said I
17 provided redline revisions to it, but it looks like
18 there are redline revisions to this document.
19 BY MR. FINEBERG:
20 Q. You are not disputing that United provided
21 feedback and revisions to the document, are you?
22 A. No, I don't -- no, I'm not disputing that.
23 I just don't think I -- I have said that since we
24 have been talking today.

33. PAGE 90:08 TO 90:18 (RUNNING 00:00:35.620)

08 Q. -- that there was question that was posed
09 to you about whether to name EmCare and TeamHealth
10 specifically in the articles. Do you recall that?
11 A. Yes.
12 Q. And do you recall -- what do you recall
13 about that?
14 A. Just that, that there was as question as to
15 whether we should name them or not name them,
16 whether we -- whether they should be named in the
17 article or in the work or not.
18 Q. And what was your decision?

34. PAGE 90:21 TO 91:07 (RUNNING 00:00:36.530)

21 THE WITNESS: Similar to, you know, the
22 questions that you asked me before about the data,
23 you know, I -- I relied on the -- on the people who
24 were more involved with doing this on a regular
25 basis, and it was their recommendation and their
00091:01 decision to -- to go ahead and name them and -- and
02 so I said okay.
03 BY MR. FINEBERG:
04 Q. Are you saying that it wasn't your
05 decision?
06 A. I was involved in the decision-making
07 process but it wasn't my sole decision.

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35. PAGE 91:19 TO 91:23 (RUNNING 00:00:20.055)

19 Your opinion was solicited, correct?
20 A. That's correct.
21 MR. FINEBERG: So let's put up exhibit --
22 what I will mark as Exhibit 27, which is document
23 Bates-stamped DEF108739 through 747.

36. PAGE 92:02 TO 92:04 (RUNNING 00:00:08.630)

02 Q. And I -- it's a several-page email, and,
03 really, I want to ask you about what's on this first
04 page, if you scroll down to the bottom email.

37. PAGE 92:14 TO 92:15 (RUNNING 00:00:04.142)

14 Q. This is the bottom email that -- that's the
15 bottom of the email that I wanted to ask you about,

38. PAGE 92:20 TO 93:02 (RUNNING 00:00:32.201)

20 Q. Okay. And who is Ms. Boado?
21 A. A lawyer that works at United.
22 Q. So Ms. Boado was asking you your position
23 on whether or not United should name or identify
24 TeamHealth and EmCare as -- as firms one and firms
25 two, right?
00093:01 A. That's what it appears to be, yeah, that
02 Andrea was asking me what I thought about it.

39. PAGE 93:15 TO 93:19 (RUNNING 00:00:08.435)

15 Q. And then you respond and say, "I don't
16 think they need to be named. Feels like a less is
17 more situation."
18 That was your email?
19 A. Right.

40. PAGE 94:06 TO 94:14 (RUNNING 00:00:36.485)

06 Q. And you changed your mind, though?
07 A. I changed my mind after discussing it with
08 the -- with the broader group, which was generally
09 the group that was listed on some of the other
10 emails that you just showed me. And, you know, it
11 was -- it was their opinion that the -- that we
12 should go ahead and name them, and I said okay. As
13 I said, it was a group process, not somebody that,
14 you know, had a specific decision right.

41. PAGE 94:18 TO 95:19 (RUNNING 00:01:30.592)

18 Let's put up Exhibit 28, which is a
19 document that's Bates-stamped 101727 to 101729.
20 (Exhibit 28 marked.)
21 MR. FINEBERG: I would like to start at the
22 bottom of the email on this chain, at the bottom of
23 101728. Right there.
24 BY MR. FINEBERG:
25 Q. Do you see the first email on this chain,
00095:01 Mr. Rosenthal, is an email from Zack Cooper to
02 Ted -- Theodore Prospect, copying Mr. Robert Oneil?
03 A. Yes, I see that.
04 Q. And it says the subject is "Manuscript."
05 Do you see that?
06 A. Yes.
07 Q. And Mr. Cooper writes, "Hi Ted, attached is
08 a draft of our paper."
09 Do you see that?
10 A. Yes.

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11 Q. So this is in April now, of 2017,
12 Mr. Cooper sharing a paper with United, right?
13 A. Yep.
14 Q. And sharing a draft of the paper, right?
15 A. It looks like it.
16 Q. And then if you scroll up in the email
17 chain, in the next email here Mr. Prospect forwards
18 the email to you, among others, right?
19 A. Yes.

42. PAGE 96:09 TO 97:03 (RUNNING 00:00:57.100)

09 Q. And who is Tom Beauregard?
10 A. I believe that Tom worked in the government
11 affairs area. He might have been Ted Prospect's
12 boss. I don't know exactly, but he and -- he and
13 Ted worked together.
14 Q. So in this email from Mr. Prospect to you
15 and the others we just looked at, he writes,
16 "Following our last discussion we shared or
17 collective feedback with Zack which was primarily to
18 ensure the OON billing issue would be viewed as
19 broad as possible in both the manuscript and any
20 associated media reporting (most notably The
21 NY Times)."
22 Do you see that?
23 A. I see that.
24 Q. He says, "To accomplish this we were okay
25 naming EmCare and TeamHealth as two of the leading
00097:01 physician outsourcing firms in the ED space."
02 Do you see that?
03 A. Yes.

43. PAGE 97:09 TO 98:01 (RUNNING 00:00:59.228)

09 Q. And then the email goes on, and you can
10 read it where -- and I'll really focus on the next
11 paragraph down, not the one -- skip the paragraph
12 and scroll down -- but you can read it.
13 And we get to the last paragraph, and it
14 says, "Given this feedback and their approach (which
15 is now different than what we had discussed
16 previously), is everyone okay with the release of
17 specific named firm by firm results for EmCare and
18 TeamHealth."
19 Do you see that?
20 A. Yes.
21 Q. And then if you scroll up to the next page,
22 Mr. Beauregard writes to the same group, "Glad to
23 see strong interest from the Times on the study.
24 This is exactly what we want."
25 Do you see that?
00098:01 A. Yes.

44. PAGE 99:04 TO 99:24 (RUNNING 00:00:57.713)

04 Q. Then he writes to you specifically, "Dan,
05 you had concerns on naming names. Are you all right
06 moving forward with this context and no mention of
07 UHG as a data source," right?
08 A. Yes.
09 Q. So he is asking you about your concerns
10 about naming names but not naming UnitedHealth
11 Group, right?
12 A. That's what it -- it looks like that's what
13 he is asking me.
14 Q. And then you responded to him, right?
15 A. I think I did. I think I responded "I'm

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16 okay."
17 Q. Yeah. If you go to the email up above,
18 that's your email to the group.
19 A. Right.
20 Q. And you write, "Agree. I'm good."
21 A. That's what I wrote.
22 Q. And that was your position on April 13,
23 2017, right?
24 A. Right.

45. PAGE 100:02 TO 100:09 (RUNNING 00:00:30.284)

02 We talked earlier about out-of-network
03 revenue that's generated by United and you
04 referenced shared savings programs. Do you remember
05 that?
06 A. Yes.
07 Q. Did you or anybody at United ever tell
08 Mr. Cooper how much revenue United made from its
09 out-of-network programs?

46. PAGE 100:13 TO 100:15 (RUNNING 00:00:07.564)

13 THE WITNESS: I don't -- I don't think I
14 ever had a conversation with Zack Cooper about that,
15 and I have no idea if anyone else ever did.

47. PAGE 101:12 TO 101:14 (RUNNING 00:00:12.944)

12 Are you aware of whether United provided
13 Mr. Cooper with an analysis of the fee revenue
14 generated by United for its out-of-network programs?

48. PAGE 101:17 TO 101:17 (RUNNING 00:00:00.584)

17 THE WITNESS: No.

49. PAGE 103:15 TO 103:18 (RUNNING 00:00:13.861)

15 Q. And did -- did -- are you aware of anybody
16 at United telling Mr. Cooper about any analysis that
17 United performed on revenue generated from its
18 out-of-network programs?

50. PAGE 103:24 TO 103:24 (RUNNING 00:00:01.191)

24 THE WITNESS: I'm not aware.

51. PAGE 104:01 TO 104:03 (RUNNING 00:00:10.411)

00104:01 Q. Did you ever authorize anybody to release
02 information of United's analysis of the fee revenue
03 generated by the out-of-network programs?

52. PAGE 104:07 TO 104:08 (RUNNING 00:00:02.261)

07 THE WITNESS: I don't remember. I don't
08 recall that.

53. PAGE 105:11 TO 105:14 (RUNNING 00:00:12.289)

11 Did anybody at United ever provide
12 Mr. Cooper with United's analysis of its internal
13 operating income that it generated from its
14 out-of-network programs?

54. PAGE 105:18 TO 105:19 (RUNNING 00:00:04.409)

18 THE WITNESS: I don't -- I don't remember.
19 I don't -- I don't recall if anyone ever did that.

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55. PAGE 106:09 TO 106:15 (RUNNING 00:00:18.610)

09 Q. How about to The New York Times, are you
10 aware of anybody at United that released its
11 internal operating income analysis of the revenue
12 generated from its out-of-network programs to The
13 New York Times?
14 A. I don't -- I don't recall whether or not
15 anyone at United did that.

56. PAGE 176:15 TO 176:24 (RUNNING 00:00:33.746)

15 down, Mr. Stafford, and let me ask you to put up
16 Exhibit 4. Exhibit 4 is an email and an attachment
17 that's Bates-stamped 97928.
18 (Exhibit 4 marked.)
19 BY MR. FINEBERG:
20 Q. Mr. Rosenthal, do you see on the screen, I
21 have asked to be put up Exhibit 4 which is an email
22 from John Haben, who we have talked about, to a
23 number of people with a CC to you. Do you see that?
24 A. Yes.

57. PAGE 190:02 TO 190:13 (RUNNING 00:00:43.610)

02 Q. And do you understand that the reference to
03 "reasonable and customary" at United is to Fair
04 Health?
05 A. I -- I believe it is.
06 Q. And claims that are -- you are familiar
07 with Fair Health, right?
08 A. Yes, I have heard of Fair Health.
09 Q. And you know the genesis of why Fair Health
10 was established?
11 A. I don't know all the details of it, but I
12 know that we began to use Fair Health, you know, in
13 connection with this process.

58. PAGE 195:12 TO 195:13 (RUNNING 00:00:06.017)

12 Q. Let's look at -- "approaching the market in
13 this way" meaning paying the lowest amount, right?

59. PAGE 195:15 TO 195:16 (RUNNING 00:00:04.588)

15 THE WITNESS: How we approached the market
16 within the context of using benchmark pricing.

60. PAGE 196:05 TO 197:15 (RUNNING 00:02:14.302)

05 Q. Let's look at the next steps on this
06 PowerPoint. Okay?
07 I want to look at the third bullet,
08 "Address current concerns such as ASO fee revenue."
09 Do you see that?
10 A. Yes.
11 Q. Do you recall discussions about concerns
12 about ASO fee revenue?
13 A. Yes.
14 Q. What are the concerns that you recall
15 discussing about ASO fee revenue?
16 A. Part of the concerns were that as we moved
17 from the shared savings into other programs, that
18 there was a revenue stream associated with shared
19 savings that we wanted to be mindful of as we
20 migrated the programs.
21 Q. Oh, so this -- the concern was a United
22 concern that United preserve the shared savings fee
23 revenue; is that correct?

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24 A. Well, I don't think it was limited to
25 United, but, you know, because our customers also,
00197:01 you know, had value from that program, this is
02 just -- so I don't think it's limited to United's
03 concerns, but just understanding the impact. You
04 know, there is a lot of -- as I said earlier, in a
05 different context, there is a lot of moving pieces
06 to most of this, and you try to understand those
07 moving pieces as best you can as you are deciding
08 how to proceed.
09 Q. But suffice it to say one of the concerns
10 that United had was preserving that shared savings
11 fee revenue, right?
12 A. Yeah. I would -- I would say preserving --
13 I don't know if "preserving" is exactly the word
14 that I would use, but there were concerns about the
15 impact on it.

61. PAGE 197:19 TO 197:23 (RUNNING 00:00:15.048)

19 The concerns that United had was that there
20 would be reductions to the ASO fee revenue that
21 United was generating from its shared savings
22 programs, right?
23 A. I think that's correct.

62. PAGE 199:01 TO 199:16 (RUNNING 00:00:46.173)

00199:01 MR. FINEBERG: Take that down,
02 Mr. Stafford, please. I would like to call up
03 Exhibit 42.
04 (Exhibit 42 marked.)
05 BY MR. FINEBERG:
06 Q. Exhibit 42 is a document that's
07 Bates-stamped 103755 through 769. And the first
08 page has been published on the screen,
09 Mr. Rosenthal.
10 MR. FINEBERG: It's -- just make it -- you
11 need to make it a little bigger, Mr. Stafford, if
12 you would. Thank you.
13 BY MR. FINEBERG:
14 Q. Do you see here that this is a
15 UnitedHealthcare Executive Council document?
16 A. Yes.

63. PAGE 202:07 TO 202:14 (RUNNING 00:00:25.339)

07 Q. The bullets there says "well established,"
08 right? It says there was 3.3B. You understand that
09 to be 3.3 billion, right?
10 A. Yes.
11 Q. So there was 3.3 billion ASO client savings
12 in 2016 using the legacy Shared Savings Program,
13 right?
14 A. That's what that says.

64. PAGE 202:16 TO 203:01 (RUNNING 00:00:34.137)

16 And then the next bullet says that provides
17 significant revenue. Do you see that?
18 A. Yes.
19 Q. And it's provided 1 billion -- with a B --
20 dollars, to United in 2016, right?
21 A. Yes.
22 Q. So when you talked about the concern, on
23 the exhibit we just looked at, for ASO revenue, we
24 are not talking about hundreds of dollars or
25 thousands of dollars, we're talking about a billion
00203:01 dollars of revenue to United in 2016, right?

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65. PAGE 203:03 TO 203:04 (RUNNING 00:00:02.451)

03 THE WITNESS: It looks that way based on
04 what's written here.

66. PAGE 203:20 TO 203:25 (RUNNING 00:00:22.621)

20 Q. And as we talked about before, that -- that
21 fee revenue is generated as the difference between
22 the provider's billed charges and the allowed amount
23 on the claim; that is the savings, right?
24 A. Generally speaking, that's an estimate of
25 how the savings get calculated.

67. PAGE 206:14 TO 206:17 (RUNNING 00:00:12.407)

14 Q. And the only way that United generates
15 shared savings revenue is for the provider to be
16 out-of-network, true?
17 A. I think that's true.

68. PAGE 209:20 TO 209:24 (RUNNING 00:00:14.855)

20 Q. So you have described the fully-insured
21 business as United is collecting all of the premiums
22 and then United bears all of the risk or the expense
23 of covering the healthcare for its members, right?
24 A. Yes.

69. PAGE 211:03 TO 211:08 (RUNNING 00:00:16.299)

03 Q. All I'm asking you is that if you collect
04 more in premiums and you pay less out in claims,
05 that is more money in United's bank account from the
06 start, right?
07 Do you agree with that math?
08 A. I think I agree with that.

70. PAGE 211:21 TO 212:02 (RUNNING 00:00:25.805)

21 Q. Okay. So if United implements an outlier
22 cost management program for its fully-insured
23 business and it pays less in claims, there will be
24 more money left in United's bank account, right?
25 A. Yes, as long as we didn't take that money
00212:01 and do something different with it to -- like in the
02 examples that I have been giving here.

71. PAGE 212:05 TO 213:07 (RUNNING 00:01:26.307)

05 Now let's look at how United benefits by
06 paying less in claims on the administrative services
07 side, right, because you are saying that the --
08 the -- the -- the cost of the care is going to be
09 paid by the employer group instead of from United's
10 bank account, right?
11 A. Yes.
12 Q. Okay. What United is going to do is United
13 is going to charge a shared savings fee for those
14 claims that were adjudicated out of network,
15 correct?
16 A. Correct.
17 Q. And United is going to calculate that fee
18 as the difference between the billed charge and the
19 lower allowable amount, according to this new
20 Outlier Cost Management Program, right?
21 A. Yes.
22 Q. So the fee United is going to generate when
23 it's administering these benefits is going to be
24 higher, resulting in more fee revenue to United,

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25 right?
00213:01 A. Yes.
02 Q. And here it actually says that the fee
03 revenue is generated at a 1:3 return, right?
04 A. Yeah, I see that.
05 Q. That means that 33 percent of the savings
06 goes to United in its -- for its shared savings fee,
07 correct?

72. PAGE 213:10 TO 213:14 (RUNNING 00:00:18.075)

10 THE WITNESS: I think as a general
11 statement, but I understand that the -- the point
12 you are making, the 1.3 is -- so as long as it's not
13 subject to a cap or any other complexity that's not
14 listed in this phrase, then I would agree with you.

73. PAGE 248:06 TO 248:19 (RUNNING 00:00:39.969)

06 Q. And then the next bullet says that there is
07 a "constant evaluation of non-par provider spend
08 versus the risk of balance billing to determine
09 changes to the programs," yes?
10 A. Yes.
11 Q. Then the next one says, "Opportunity to
12 improve results by incenting ASO adoption of
13 programs with high reductions and retain revenue
14 stream using OCM."
15 Do you see that?
16 A. Yes.
17 Q. So one of the reasons why United wanted to
18 adopt or have the ASO clients adopt OCM was so that
19 United could retain its revenue stream, right?

74. PAGE 248:22 TO 248:23 (RUNNING 00:00:02.053)

22 THE WITNESS: It looks like that was a
23 consideration.

75. PAGE 249:14 TO 249:17 (RUNNING 00:00:14.189)

14 Q. It's a -- it's a \$1.3 billion revenue
15 consideration for United, right?
16 A. Yes, it's a -- it's a -- yes, it's a big
17 consideration for United.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:39:43.600)

Case Clip(s) Detailed Report

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Friday, November 12, 2021, 1:21:22 PM

RA000299

RA000299

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 **Rosenthal, Daniel (Vol. 01) - 03/23/2021**

1 CLIP (RUNNING 00:03:20.062)

 DISTRICT COURT ...

DR DEF

4 SEGMENTS (RUNNING 00:03:20.062)



1. PAGE 40:16 TO 41:07 (RUNNING 00:00:48.551)

16 BY MR. FINEBERG:
17 Q. And so when you say not in all cases, can
18 you please clarify what you mean by that, sir? In
19 what cases would the provider expect to get paid
20 full billed charges in the absence of a provider
21 agreement?
22 A. Well, sometimes the provider would be
23 willing to accept less than billed charges because
24 it's -- it's a government payer or for -- for a
25 variety of reasons, they could -- they could be
00041:01 willing to accept something less than billed
02 charges.
03 Q. Let's -- let's set the government payers
04 aside. Let's talk about commercial. Do you
05 understand that this dispute is only about
06 commercial claims, right?
07 A. I think so.

2. PAGE 41:14 TO 41:23 (RUNNING 00:00:31.257)

14 When -- on a commercial claim, when a
15 provider provides services to the member of an
16 insurance company and there is no agreement with the
17 insurance company, it's your understanding, based on
18 your 30 years of experience in the industry, that
19 the provider expects to get paid its full billed
20 charges, correct?
21 A. There -- sometimes the provider has that
22 opinion and sometimes they don't, and sometimes a
23 payer has a different opinion.

3. PAGE 84:18 TO 85:06 (RUNNING 00:01:09.136)

18 Did you have a concern -- when you were
19 reviewing the overview from Mr. Cooper and United
20 was sending Mr. Cooper data, did you have a concern
21 that United would be identified as the source of the
22 data?
23 A. I think what I could say is that, you know,
24 it was my understanding that, you know, United
25 offers its data, you know, in a wide range of
00085:01 studies, and sometimes United's name is connected
02 and sometimes it's not. And so it's not -- it's not
03 something that I had a lot of experience in. So I
04 probably had questions about it, but it was more
05 just understanding what the practice was than, you
06 know, a specific concern.

4. PAGE 93:20 TO 94:05 (RUNNING 00:00:51.118)

20 Q. Why was that your position as of March 21,
21 2017?
22 A. I have to remember exactly why that was my
23 position. I would say, generally, you know, I
24 didn't -- I didn't -- I guess I was questioning
25 whether or not the findings would be -- whether the

Copy of Dan Rosenthal Clips

00094:01 findings in the research would be different if they
02 were named or not named. And if the findings
03 weren't going to be different, then -- then why name
04 them. So there is probably that kind of a thought
05 process.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:03:20.062)

EXHIBIT 14

EXHIBIT 14



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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.

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

**DEFENDANTS' STATUS REPORT
AND SUMMARY OF REVISED
REDACTIONS TO TRIAL EXHIBITS**

Hearing Date: February 10, 2022
Hearing Time: 1:00 p.m.

RA000302



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
6 MEDICAL RESOURCES, a Delaware
7 corporation; SIERRA HEALTH AND LIFE
8 INSURANCE COMPANY, INC., a Nevada
9 corporation; HEALTH PLAN OF NEVADA,
10 INC., a Nevada corporation,

11 Defendants.

12 Defendants UnitedHealthcare Insurance Company (“UHIC”), United HealthCare
13 Services, Inc. (“UHS”), UMR, Inc. (“UMR”), Sierra Health and Life Insurance Co., Inc.
14 (“SHL”), and Health Plan of Nevada, Inc. (“HPN”) (collectively “Defendants”), by and through
15 their attorneys, hereby submit the following supplemental status report and summary of revised
16 redactions to trial exhibits in advance of the February 10, 2022 status conference set in this
17 matter.

18 **I. INTRODUCTION**

19 Following the jury trial in this matter, Defendants filed a Motion to Seal Certain
20 Confidential Trial Exhibits to redact their most confidential and commercially sensitive business
21 plans, financial projections, and marketing strategies from the public record on grounds that the
22 irreparable harm that an unfettered disclosure would cause outweighs the public’s right to access
23 such a wide range of business documents when only a small fraction of pages and information
24 on those documents were actually published to the jury at trial. This status report details
25 progress the parties have made toward the implementation of targeted redactions since the Court
26 issued its initial rulings from the bench at a January 12, 2022 hearing. Much progress has been
27 made.

28 Over the course of the past week, and following the proceedings detailed below,
Defendants have significantly reduced the number of redactions they propose based on
interpretations of the Court’s oral ruling, without waiver of appeal. The parties have also
engaged in ongoing conferrals and have reached a number of agreements on the redactions to be
applied across the trial exhibits at issue. This status report conveys the topics on which the

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1 parties agree that the Court has already ruled, and summarizes the issues, topic areas, and
2 redactions for which Defendants seek the Court's clarification. Despite the significant progress,
3 many redactions remain for the Court's consideration.

4 Defendants have filed a separate motion for an evidentiary hearing so that the Court can
5 hear directly from a witness on the topics of these redactions—a process that Defendants believe
6 will be more efficient and helpful than if Defendants' counsel walk through the redactions
7 themselves. If the Court denies Defendants' request for an evidentiary hearing, Defendants plan
8 to present each redaction on the documents summarized in Sections III.A and III.B, so that it
9 may receive an individualized ruling on each redaction—a process that could require multiple
10 hearings but that the Defendants believe is the only way for the Court to exercise its discretion
11 and resolve the remaining redactions.

12 **A. SUMMARY OF PROCEEDINGS**

13 The Court held a hearing on Defendants' Motion to Seal Certain Confidential Trial
14 Exhibits on January 12, 2022. Defendants' intent at the hearing was to highlight categorical
15 themes for the redactions applied to confidential documents, and Defendants requested that the
16 Court engage in a separate review of the individually applied redactions in conjunction with
17 Defendants' rationale and legal analysis. *See* January 12, 2022 Transcript of Proceedings ("Jan.
18 12 Trans.") at 14:14–15:3; 69:14–22. Following the Defendants' presentation of exemplar
19 redaction proposals, the Court offered a general rationale for its findings:

20 I'm going to say that the insurance industry is highly regulated. It is very
21 competitive. The business models are all almost identical. And the defendant is a
22 publicly-traded company.

23 The strategies here for any business is to provide value for its customers and
24 success for its shareholders. It was all clear to me during the trial that insurance
25 companies know a lot more about each other. They learn those metrics. They
26 provide -- their business model is identical; their metrics are identical.

27 *See* Jan. 12 Trans. at 91:17–92:1.¹

28 ¹ Defendants' respectfully disagree with the Court's conclusions about the health insurance industry and
the impact that each competitors' metrics, business models, financials, and strategic plans would have on



1 The Court then acknowledged that it can seal or redact “for personal information, medical
2 records, trade secrets, or when it’s justified -- which gives [the Court] some discretion,” and
3 made rulings on specific redactions, including:

4 The motion will be granted with regard to the M and A targets, because I believe
5 that was proprietary. It will -- with regard to the Atlanta analysis, it will be
6 granted. It will be granted with regard to individual medical data.

7 But it’s going to be denied with regard to reimbursement rates; allowed amounts;
8 the summit for the Western Region; Exhibits 329, 378, 380; the chart of summary
9 of claims in dispute; Plaintiff’s 175, 236. It will be denied with regard to anything
10 that was publicly disclosed, which includes anything used in opening or closing or
11 used at trial; 256; defendant’s 5507, 218. It will be denied with regard to claim
12 files, except for personal information. It’s denied with regard to amounts of billed
13 or reimbursement. And it’ll be denied with regard to Exhibit 473.

14 *Id.* at 92:5–6, 92:9–93:1.

15 The Court noted that its rulings would provide “some direction,” but acknowledged that
16 there would be “question marks.” To reduce the number of issues requiring the Court’s
17 intervention, it directed the parties to meet and confer, to apply those rulings to the remaining
18 documents not specifically ruled upon, and if issues remained, to schedule a future hearing to
19 address any uncertainties in her order. *See id.* at 91–94.

20 Following the hearing, Defendants’ internal business representatives and outside counsel
21 immediately began reviewing and revising redactions based on Defendants’ understanding of the
22 Court’s oral rulings. One week after the January 12, 2022 hearing, the Court heard arguments
23 regarding Multiplan’s separately filed Motion to Seal Certain Confidential Trial Exhibits,
24 including on some documents common to Defendants. At the January 20, 2022 hearing, the
25 Court set a “10-minute status check” on January 27, 2022 to discuss the progress of the parties’
26 efforts to redact trial exhibits. *See* January 20, 2022 Transcript of Proceedings (“Jan. 20 Trans.”)
27 at 48–49. The parties exchanged communications regarding the status of Defendants’ efforts
28 over the course of the following week.

the sector, if disclosed. Health insurance companies compete for clients, enrollees, and talented
employees—the details of those efforts are highly confidential.

RA000305



1 Though the Court did not set any deadlines for the exchange of information, Plaintiffs
2 filed a “Notice of Non-Compliance” in advance of the January 27, 2022 status check, claiming
3 there had been delays in completing the revised redactions, and requesting that the Defendants
4 complete their revisions in two (2) business days. Defendants submitted a separate filing,
5 highlighting the monumental task of interpreting and applying the Court’s rulings to some of
6 Defendants’ most sensitive business documents, and requesting additional time to complete the
7 revisions. On January 27, 2022, the parties appeared for the status check, at which time the
8 Court adopted the Plaintiffs’ proposed schedule for the exchange and conferral regarding revised
9 redactions.

10 Pursuant to the Court’s scheduling order, Defendants transmitted their revised redactions
11 on January 31, 2022. The parties thereafter met and conferred on February 2, and agreed to a
12 supplemental session on February 4. These discussions have been productive, and to allow time
13 to further reduce the number of redactions to present to the Court, the parties agreed to continue
14 discussions and postpone the submission of the revised set of redactions to Monday, February 6,
15 2022. Defendants have worked to apply the Court’s explicit rulings from the January 12, 2022
16 hearing, and have also worked to apply redactions based on categorical assumptions from the
17 Court’s general rulings. Without waiver of appellate rights, Defendants have—for the purposes
18 of this hearing—withdrawn certain redactions based on its interpretation of the Court’s January
19 12, 2022 ruling, including redactions of confidential reimbursement rates, allowed amounts, out-
20 of-network programs applicable to this case, shared savings programs, and items specifically
21 shown to and discussed with the jury. A detailed compendium of exhibits, preserved for
22 appellate review but not before the Court for consideration is attached hereto as **Appendix “A.”**²

23
24
25 _____
26 ² As of the filing of this status report, Defendants are continuing to propose reductions in their redactions
27 to attempt to reach agreement with TeamHealth Plaintiffs. Defendants have also highlighted a handful of
28 instances where trial exhibits that are not before the Court contain redactions that TeamHealth Plaintiffs
have indicated a willingness to consider. The parties can update the Court about these discussions at the
upcoming hearing.



1 **B. THE PARTIES HAVE AGREED TO CERTAIN INTERPRETATIONS OF THE COURT’S**
2 **JANUARY 12, 2022 ORDER.**

3 The parties share a common interpretation of the Court’s January 12, 2022 order on the
4 following topics:

5 The Court **denied** redactions to:

- 6 • Out-of-network programs applicable to this case, Nevada-related emergency care,
7 and any other themes presented at trial;
- 8 • Amounts billed, reimbursement rates, and allowed amounts related to emergency
9 care;
- 10 • Demonstratives, and any portions therein shown to the jury, including anything
11 used in opening or closing;
- 12 • The summary of claims in dispute, and claim files, except for personal
13 information; and
- 14 • Specific enumerated exhibits.

15 The Court **granted** redactions to:

- 16 • Forward-looking business planning unrelated to themes presented at trial,
17 including mergers and acquisitions and sensitive data relating to markets
18 unrelated to Nevada (e.g., Colorado or the Northeast Region);
- 19 • Programs not applicable to emergency medicine providers, such as facilities and
20 labs;
- 21 • Specific par and MNRP rates for non-emergency services;
- 22 • The “Atlanta analysis” and similar regional discussions outside of Nevada; and
- 23 • Personal Health Information, and presumably any other individual medical data.

24 Based on these understandings, the parties were able to reduce the number of specific
25 redactions that require the Court’s ruling on the documents listed in Sections III.A and III.B
26
27
28



below.³ In each document's description, Defendants have identified the redactions upon which Plaintiffs agree.

C. IN ADDITION TO THE SPECIFIC REDACTIONS THAT REMAIN IN DISPUTE, DEFENDANTS SEEK CLARIFICATION OF THE COURT'S RULING ON SEVERAL KEY ISSUES.

In addition to rulings on each of the redactions on documents detailed below at III.A and III.B, Defendants' seek clarification of the Court's January 12, 2022 ruling on the following broad topics:

(1) Whether all redactions on pages shown to the jury are summarily denied, no matter how sensitive and off-topic the content (which includes unreported revenue and margins of the entire Employee & Individual segment, not limited to emergency services);

(2) Whether detailed, unreported financial projections of entire company divisions, no matter how they are related to the case are denied, and if so, whether the Court has adopted Plaintiffs' argument that they are "stale";

(3) Whether redactions to Western Regional business plans, including planning and strategy unrelated to the topics in this case or presented at trial, are summarily denied because Nevada is included in that region; and

(4) Whether redactions of customer names and their sensitive information are summarily denied;

(5) Whether consideration may be given to the number of pages from a trial exhibit actually shown to the jury if, for example, only one page from a 200-page business plan was shown.

Defendants also seek reconsideration or clarification on several trial exhibits that the Court denied in its preliminary ruling, but where the Court was not presented with the key pages that Defendants have left redacted after interpreting the balance of the January 12, 2022 Order. Those exhibits are identified in the summaries in Sections III(A) and (B) below.

³ TeamHealth Plaintiffs also agreed to certain redactions on the documents Defendants have withdrawn for purposes of this hearing, listed in Appendix A.



II. LEGAL STANDARD

“Although public access is favored, it is not unfettered.” *Howard v. State*, 128 Nev. 736, 740, 291 P.3d 137, 140 (2012). The presumption in favor of public access “may be abridged” where it “is outweighed by a significant competing interest.” *Id.* at 744, 291 P.3d at 142; *see also Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (“access to judicial records is not absolute”); *In re Elec. Arts, Inc.*, 298 F. App’x 568, 570 (9th Cir. 2008) (applying the *Kamakana* analysis to trial exhibits); *Bhagat v. Diamond Info. Sys., LLC*, 84 Va. Cir. 233, 2012 WL 7827846 (Va. Cir. 2012) (sealing trial exhibits on the basis that “public disclosure of this proposal could also reasonably be said to benefit Diamond’s competitors at its expense... [f]or these reasons, this court agrees that the following [trial] exhibits should continue to be afforded the maximum protection possible against public disclosure”).

When the presumption of access to judicial records is opposed by competing interests, courts must weigh the relevant factors to determine if disclosure is warranted. *See San Jose Mercury News, Inc. v. U.S. Dist. Ct.--N. Dist. (San Jose)*, 187 F.3d 1096, 1102 (9th Cir. 1999). Although Nevada favors public court proceedings, courts also routinely seal or redact trial exhibits in circumstances in which the litigant’s right to privacy outweighs the public’s interest in reviewing the private information. *Howard*, 128 Nev. at 740, 291 P.3d at 140. In *Valley Broadcasting*, for example, the Ninth Circuit addressed whether trial exhibits should be disclosed to a television station. *Valley Broad. Co. v. U.S. Dist. Ct. for Dist. of Nevada*, 798 F.2d 1289 (9th Cir. 1986). The Court listed several factors “[c]ounseling against” public disclosure, noting in particular “the likelihood of improper use, ‘including the publication of scandalous, libelous, pornographic, or trade secret materials; infringement of fair trial rights of the defendants or third persons; and residual privacy rights.’” *Id.* at 1294 (citing *United States v. Criden*, 648 F.2d 814, 830 (3d Cir. 1981)); *see also Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (“The factors relevant to a determination of whether the strong presumption of access is overcome include the ‘public interest in understanding the judicial process and whether disclosure of the material could result in improper use of the material for scandalous or libelous purposes or



1 infringement upon trade secrets.’’) (citing *EEOC v. Erection Co., Inc.*, 900 F.2d 168, 170 (9th
2 Cir. 1990)).

3 Courts across the country routinely recognize the protection of commercially sensitive
4 information such as trade secrets is itself in the public interest. *See e.g. Uncle B’s Bakery, Inc. v.*
5 *O’Rourke*, 920 F. Supp. 1405, 1438 (N.D. Iowa 1996) (“the court finds that the public interest in
6 protection of trade secrets weighs in favor of an injunction to accomplish that end”), *JetSmarter*
7 *Inc. v. Benson*, 2018 WL 2709864, at *8 (S.D. Fla. Apr. 6, 2018), report and recommendation
8 adopted, 2018 WL 2688774 (S.D. Fla. Apr. 26, 2018) (“Florida law, however, makes plain that
9 protecting trade secrets does not disserve, but rather promotes the public interest”), *Zenith Radio*
10 *Corp. v. Matsushita Elec. Indus. Co.*, 529 F. Supp. 866, 905 (E.D. Pa. 1981), disapproved of by
11 *In re Coordinated Pretrial Proc. in Petroleum Prod. Antitrust Litig.*, 101 F.R.D. 34 (C.D. Cal.
12 1984) (“there can be no doubt that society in general is interested in the protection of trade
13 secrets and other valuable commercial information. That interest is recognized, for example, in
14 Rule 26(c)(7), in our copyright, trademark, and patent statutes, and in the common law of
15 business torts. These policies recognize a coincidence of public and private interests”).

16 Applying these factors, courts facing analogous situations to those presented here have
17 found that preventing disclosure of similar types of business records was appropriate. For
18 example, in *Goodman v. J.P. Morgan Inv. Mgmt., Inc.*, the court ruled in favor of J.P. Morgan
19 when it moved to seal 47 documents and redact 28 others that plaintiffs had attached to a
20 dispositive motion. *Goodman v. J.P. Morgan Inv. Mgmt., Inc.*, 301 F. Supp. 3d 759, 783-84
21 (S.D. Ohio 2018), *aff’d on other grounds*, 954 F.3d 852 (6th Cir. 2020). As with Defendants’
22 proposed redactions, the J.P. Morgan documents fell into several categories of business
23 confidentiality, including (1) “confidential profitability information, (2) confidential information
24 regarding subadvisory business relationships, (3) confidential compliance information, (4)
25 confidential business strategy information provided to the Board of Trustees/Directors of the J.P.
26 Morgan Funds (the ‘Board’), (5) confidential information provided by JPMCB to the Board, (6)
27 confidential proprietary information of the Board, and (7) confidential personal and
28 miscellaneous information.” *Id.* The court found that J.P. Morgan satisfied its burden and

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1 proved that “those documents contain the nonpublic, confidential information of JPMIM” that, if
2 disclosed, “would result in competitive harm” such as allowing a competitor to gain an unfair
3 advantage. *Id.*

4 The Nevada Rules for Sealing and Redacting Court Records (“SRCR”) are consistent
5 with these principles. SRCR 3(4). They give specific circumstances where sealing is appropriate.
6 Specifically, where:

7 The public interest in privacy or safety interests that outweigh the public interest
8 in open court records include findings that:

9 (a) The sealing or redaction is permitted or required by federal or state law;
10 (b) The sealing or redaction furthers an order entered under NRCP 12(f) or
JCRCP 12(f) or a protective order entered under NRCP 26(c) or JCRCP 26(c);

11 *****

12 (g) The sealing or redaction is necessary to protect intellectual proprietary or
property interests such as trade secrets as defined in NRS 600A.030(5);

13 *****

14 (h) The sealing or redaction is justified or required by another identified
compelling circumstance.

15 SRCR 3(4). These rules make no distinction between pre-trial and trial judicial records. *See id.*
16 The Rule further provides that while a motion to seal or redact is pending, “the information to be
17 sealed or redacted remains confidential for a reasonable period of time until the court rules on the
18 motion.” SRCR 3(2).

19 In conjunction with the Rules for Sealing and Redacting Court Records, NRS
20 600A.030(5) defines a trade secret as “information...that derives independent economic value,
21 actual or potential, from not being generally known to, and not being readily ascertainable by
22 proper means by the public or any other persons who can obtain commercial or economic value
23 from its disclosure or use; and...is the subject of efforts that are reasonable under the
24 circumstances to maintain its secrecy.” The Strategic Business Plans and the portions of the other
25 Highly Confidential Exhibits addressed in this Motion contain trade secrets within that definition
26 and thus sealing is appropriate on this independent ground. *Valley Broad. Co. v. U.S. Dist. Ct. for*
27 *Dist. of Nevada*, 798 F.2d 1289 (9th Cir. 1986).



1 **III. The Remaining, Narrowly-Applied Redactions Aim To Protect Highly Confidential**
2 **And Proprietary Trade Secret Information, While Upholding The Right To Public**
3 **Access**

4 TeamHealth Plaintiffs have agreed that the Court's January 12, 2022 order entitles
5 Defendants to make certain redactions to the documents listed below. These redactions no
6 longer remain in dispute, subject to the reservation of appeal rights. The following pages in this
7 Section describe the redactions that Plaintiffs have agreed to, as well as the redactions that remain
8 for the Court to resolve, either because the parties do not agree the Court's January 12, 2022
9 order permitted them, or because—in Defendants' view—they require the Court's further
10 clarification. Each document, along with a description of the content and the status of each
11 redaction, are detailed below.⁴

12 **A. STRATEGIC BUSINESS PLANS**

13 As the Court is aware, the first category of at-issue exhibits contains the company's most
14 sensitive strategic plans and financial data ("Strategic Business Plans"). The Strategic Business
15 Plans contain information that derives economic value from not being readily ascertainable by
16 Defendants' competitors, clients, and medical providers, including the details of recent and
17 future business strategy. In other words, these documents would be valuable to Defendants
18 competitors precisely because they are highly specific and tailored for Defendants; they are not
19 cookie-cutter plans dictated by regulations that govern the health care industry. These
20 documents were not discussed in any finite detail with jurors, and the public disclosure of this
21 information is substantially likely to harm any competitive advantage that Defendants have
22 acquired.

23 At the January 12, 2022 hearing, the Court denied redactions on several of these exhibits,
24 including several lengthy business plans of which only a small number of pages were shown to
25 the jury. In context, it appears that this Court was concerned about information on pages
26 displayed to the jury that was specifically called to the jury's attention: "what I meant was

27 ⁴ As previously noted, Defendants believe that an evidentiary hearing with live testimony is necessary to
28 complete the record and assist the Court with a detailed evaluation of the competitively sensitive nature of
these documents.



demonstratives, things used in openings and closings.” (Hr’g Tr. 1/12/22, at 93:11-12.) A few of these pages, however, include a great deal of highly confidential information that was specifically called to the jury’s attention. Regardless, Defendants note that the rules governing sealing and redacting of court records do not exempt, as a category, documents that are shown to the jury, if the documents otherwise merit protection. Defendants request that this Court reconsider and not impose that categorical rule either.

To comply with the Court’s rulings from the bench in the January 12, 2022 hearing, Defendants have gone through each business plan and *removed* redactions that the Court denied, including information pertaining to reimbursement rates, allowed amounts, out-of-network programs, shared savings plans, anything on pages shown to the jury, tables of contents, and other varied information based on Defendants’ interpretation of the ruling. A summary of the narrow redactions that Defendants propose follows here.

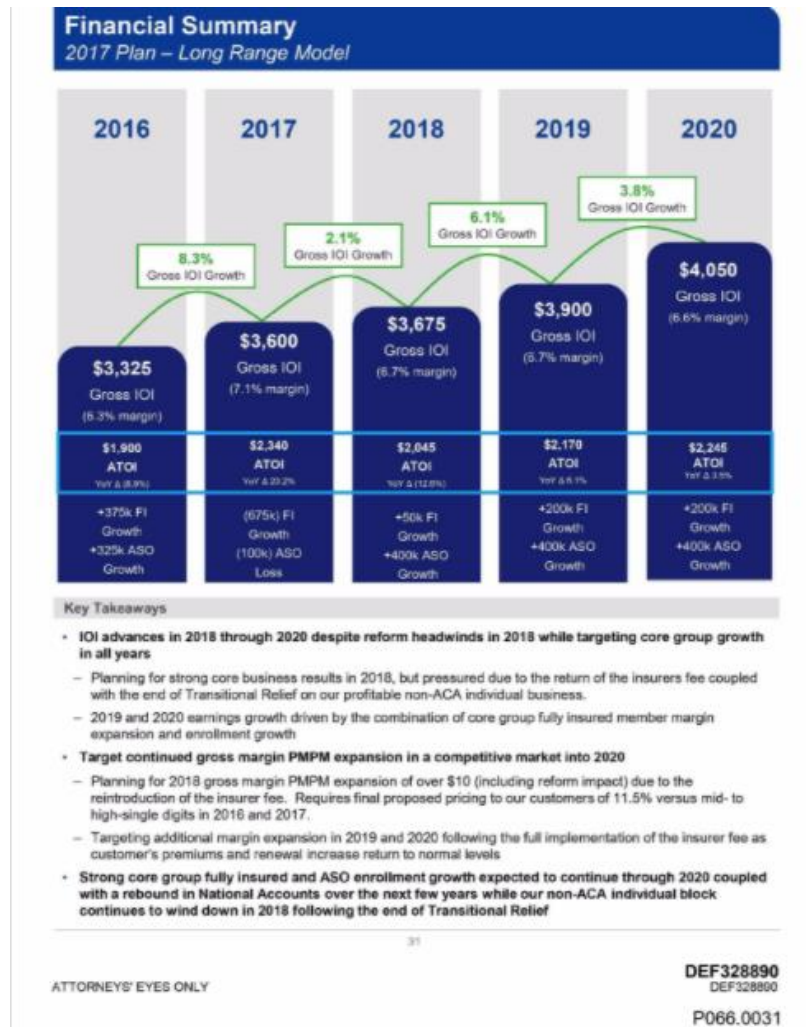
1. PX 66 “Commercial Group 2017 Business Plan Strategic Summary.”

PX 66 is a 32-page strategic business plan titled “Commercial Group 2017 Business Plan Strategic Summary.” This document reveals the Employer & Individual (“E&I”) business segment’s business plan, including markets in states other than Nevada to target for growth and projected growth metrics, competitive analyses, future business initiatives and product plans, overall previously unreleased internal operating income (“IOI”) metrics for the E&I Business, and unreleased Per Member Per Month revenue breakdowns over time. This document is largely irrelevant to an out-of-network “rate of payment” case in Nevada. Consistent with the Court’s ruling, Defendants have removed proposed redactions to page P66.0002, the only page shown to the jury. Additionally, Defendants have removed proposed redactions to page P66.0003. Subsequent to meeting and conferring with Plaintiffs on PX 66, Defendants have in good faith reduced proposed redactions throughout PX 66 including on the following pages: P66.0008- P66.0009, P66.0013, P66.0015, P66.0018, P66.0021. Plaintiffs have agreed to accept Defendants’ proposed redactions to P66.0007, P66.0010- P66.0012, P66.0017, P66.0019- P66.020. The remaining irrelevant and commercially sensitive pages should remain redacted because they contain highly competitively sensitive information. For example, long range model

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financial goals, even from past years, can be used to predict future target metrics and gain competitive advantage:



2. PX 89 “United Health Networks West Region Review”

PX 89 is a 2017 strategic business plan titled “United Health Networks West Region Review.” This document contains highly sensitive competitive information, including analysis of business strategies, pricing information, and internal financial data not publicly available to investors. That non-public information, which includes product strategy, network designs, and plans for future joint ventures, could be leveraged by Defendants’ competitors to gain a competitive advantage in the marketplace and could impact Defendants’ market standing. Only

RA000314



1 page P089.0058 was published to the jury. Consistent with the Court’s denials, Defendants have
2 removed their proposed redactions to page P089.0058.

3 In addition, to in the spirit of complying with the Court’s direction to limit redactions as
4 much as feasible, Defendants have narrowed or eliminated numerous redactions from PX 89 at
5 this stage, while reserving all rights to appeal the Court’s January 12, 2022 rulings on these
6 topics. Defendants have applied these changes to the following pages: P089.0020 through
7 P089.0025, P089.0028 through P089.0032, P089.0034 through P089.0040, P089.0042 through
8 P089.0044, P089.0046 through P089.0049, P089.0051 through P089.0054, P089.0056,
9 P089.0059, P089.0062 through P089.0064, P089.0067 through P089.0068, P089.0070 through
10 P089.0072, P089.0074 through P089.0075, P089.0077 through P089.0081, P089.0085 through
11 P089.0086, P089.0088, P089.0091, P089.0093 through P089.0097, P089.0104 through
12 P089.0106, P089.0108 through P089.0109, P089.0111 through P089.0112, P089.0114,
13 P089.0117 through P089.0120, P089.0123 through P089.0124, P089.0128, P089.0130 through
14 P089.0131, P089.0133, P089.0136, P089.0139 through P089.0140, P089.0142. In addition,
15 Defendants have removed all redactions previously applied to title pages, transition pages, and
16 tables of contents. The redactions that Defendants have retained and for which they now seek
17 the Court’s guidance have each been applied to non-public financial information information—
18 which includes product strategy, network designs, and plans for future joint ventures that be
19 leveraged by Defendants’ competitors to gain a competitive advantage in the marketplace and
20 could impact Defendants’ market standing—and financial and strategic analysis relating to
21 specific markets other than Nevada, including as relates to provider relationships and market
22 strategies. That highly confidential information should be protected.

23 3. PX 236 “Enterprise Value: TCOC”

24 PX 236 is a 2018 strategic business plan titled “Enterprise Value: TCOC.” This
25 document contains trade secret, proprietary, and commercially sensitive information regarding
26 the company’s total cost of care (“TCOC”)/value-based contracting strategy and initiatives.
27 Among other things, this strategy document provides insights into the company’s strategies and
28 timelines regarding high performing provider networks, value-based care contracting, and

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accountable care organizations. This is not relevant to an out-of-network “rate of payment” case. It also presents sensitive internal analysis regarding 2019 TCOC performance metrics and future annual targets for E&I for 2020 and 2021 and performance metric progress assessments for states other than Nevada. This document presents sensitive internal analysis of United’s market competitiveness, as well as financial performance targets for various company initiatives unrelated to this case, such as pharmacy, radiology, and genomics initiatives. Further, this document contains information about United’s agreements with vendors and community partners, including the terms of such agreements. United has removed all proposed redactions to pages P236.0002 and P236.0011, which were shown to the jury at trial. United is also not proposing redactions to pages P236.0001-3 or P236.0024. United significantly reduced its redactions to pages P236.0005-10, P236.0012-14, P236.0018-20, P236.0022, P236.0025, P236.0028, and P236.0030-34 to include only very sensitive financial information.

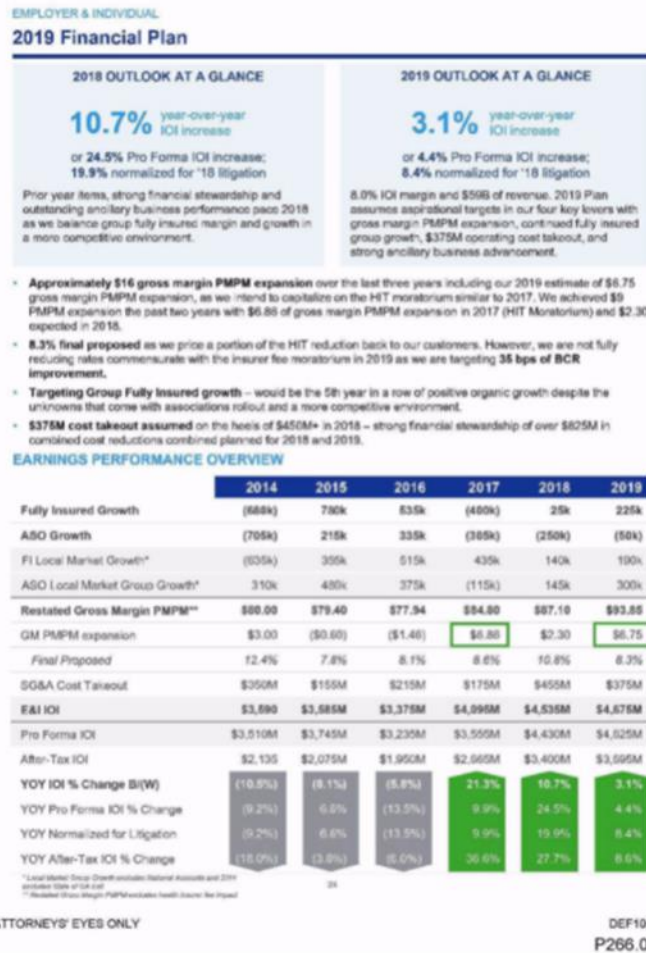
4. PX 266 “Employer & Individual 2019 Business Plan”

This is a 37-page strategic business plan titled “Employer & Individual 2019 Business Plan.” This document contains trade secret, proprietary, and commercially sensitive information regarding the E&I business segment’s business plan. For example, this document contains information regarding new state markets to target for increased membership growth, competitive analyses, companies to target for winning self-funded plan (ASO) administration business, potential merger and acquisition targets, and roadmaps for releases of new programs into 2022+. This document is largely irrelevant to an out-of-network “rate of payment” case. The following pages were published to the jury: P266.0002, P266.0004, P266.0005, P266.0006, P266.0008, P266.0011, P266.0032. Consistent with the Court’s ruling, Defendants have removed proposed redactions to pages P266.0002, P266.0004, 266.0005, P266.0008, P266.0011, P266.0032. No redactions were ever proposed to page 266.0006. Subsequent to meeting and conferring with Plaintiffs on PX 266, Defendants have in good faith reduced proposed redactions throughout PX 266 including on the following pages: P266.0010, P266.0012, P266.0017. Plaintiffs have agreed to accept Defendants’ proposed redactions to P266.0007, P266.0009, P266.0013-P266.0016, P266.0018- P266.0023, P266.0036. The remaining pages of this document, which

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contain highly competitive target markets and clients to target for future growth should remain sealed. For example, PX 266 contains very detailed financial metrics for the E&I business, which are not released publicly at this level of detail:



5. PX 258 “2019 EHCV Executive Summary”

PX 268 is a 7-page strategic business plan titled “2019 EHCV Executive Summary.” This document contains trade secret, proprietary, and commercially sensitive information regarding the company’s healthcare value programs. For example, this document contains information regarding network redesigns, technology initiatives, site of service programs, and forward-looking savings analysis and budgets for non-emergency programs. This document is largely irrelevant to an out-of-network “rate of payment” case. Only two pages were published to the jury: P268.0001 and P268.0002. Consistent with the Court’s ruling in *Defendants* have



removed proposed redactions to pages P268.0001 and P268.0002. Plaintiffs have agreed to accept Defendants proposed redactions to P268.0003, P268.0004, and P268.006. Defendants proposed reduced redactions on P268.005. Additionally, Defendants have removed their proposed redactions to page P268.007, which pertains to out-of-network programs.

6. PX 273 “Re-Defining the E&I Strategy and Enabling Operating Model”

This document is a 198-page strategic business plan that covers a wide range of confidential topics that were not presented at trial and are largely irrelevant to an out-of-network “rate of payment” case. The document contains trade secret, proprietary, and commercially sensitive information containing the E&I business segment’s long-range strategy and operational model including long range financial targets extending into 2025:



PX 273 includes a commissioned McKinsey Consulting report on market trends and projections, internal market forecasting, and projected business initiatives. This document also reveals competitive analyses and analyses on key customers and customer segments, including Defendants’ methodology in evaluating competitive risks and opportunities, and could easily be extrapolated to expose its contemporary market practices. And courts have recognized that methods of evaluating competitive risks and opportunities far outlast the date those methods

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were memorialized in a business record. *Bradburn Parent/Tchr. Store, Inc. v. 3M*, 2004 WL 1146665, at *2 (E.D. Pa. May 19, 2004) (“Information related to 3M’s internal strategies and responses to competitive pressure in the marketplace at the time these documents were made could in turn be used to anticipate 3M’s responses to competition in today’s marketplace.”).

Only pages P273.0003, P273.0008, and P273.0056 were published to the jury. Consistent with the Court’s ruling, Defendants have removed proposed redactions to page 273.0003. Defendants proposed no redactions to the other pages shown to the jury. Additionally, Defendants have removed their proposed redactions to pages P273.0030, P273.0034, P273.0040, P273.0048, P273.0061, P273.0088, P273.0097, P273.0106, P273.0108, P273.0112- P273.0113, P273.0118, P273.0130, P273.0135, P273.0145, P273.0151, P273.0161, P273.0170, P273.0178, P273.0184, P273.0192. Plaintiffs have agreed to accept Defendants’ redactions on the following pages: P273.0004- P273.0007, P273.0018- P273.0021, P273.0025, P273.0028- P273.0029, P273.0041- P273.0045, P273.0047, P273.0051- P273.0053, P273.0062- P273.0087, P273.0089- P273.0096, P273.0102- P273.0105, P273.0109- P273.0111, P273.0224- P273.0117, P273.0122, P273.0125- P273.0128, P273.0131; P273.0133- P273.0134, P273.0140- P273.0144, P273.0146- P273.0149, P273.0152- P273.0160, P273.0165, P273.0167- P273.0169, P273.0171- P273.0177, P273.0179, P273.0181, P273.0183, P273.0185. The pages that remain in dispute are: P273.0009–0017; P273.0033–0024; P273.0026–0027; P273.0031–0033; P273.0035–0039; P273.0046; P273.0049–0050; P273.0054–0060; P273.0098–0101; P273.0107; P273.0119–0121; P273.0123–0124; P273.0129; P273.0132; P273.0136–0139; P273.0150; P273.0162; P273.0163–0164; P273.0166; P273.0180; P273.0182; P273.0186–199; P273.0193–198.

7. PX 288 “Value Creation: Project Status and Summaries of January 31, 2019”

PX 288 contains trade secret, proprietary, and commercially sensitive information concerning the value creation projects led by the company’s network management and clinical organizations. Among other things, this document contains status updates on a multitude of network and clinical projects, including many not related to emergency services. It also addresses projects that are not yet public. This document contains future expected cost savings

RA000319



and total value projections from unimplemented projects. This document is largely irrelevant to an out-of-network “rate of payment” case. For example, this document contains substantial updates to lab services and musculoskeletal program initiatives, which are not relevant to emergency physician reimbursement:

Pain Management Redesign Phase 1 E&I Benefit Enhancement
Value Creation Project Status Report

UnitedHealthcare

Cost Category: Musculoskeletal CASH ID: 29699

LOB	Phase	Status	Deploy Date	In Year \$	Next Year \$	Total Value
EI FI	On Track	■	7/1/2019	Savings captured in CASH #28037	~\$20M in 3 years	
EI ASO	On Track	■	7/1/2019		~\$79M in 3 years	
MR	Pipeline					
CS	Pipeline					

Project Owners

Project Manager Julie Billing

Champion Dr. Sandy Cohen

HCE / VC Analyst Eli Greenburg

Project Description

Problem:
So that we can ensure that members have access to evidenced-based medicine to treat acute low back pain, we are working to provide 3 physical therapy or chiropractic visits per plan year to members who are experiencing acute low back pain.

This project is going through the U-Accelerate process. Product PM is Inna Ryzhik. Product Director is Pam Kraft.

Intervention:
Provide 3 physical therapy or chiropractic visits per plan year to members who are experiencing acute low back pain.

Risks / Barriers

- Pilot implementation date is at RISK:
- TOPS is not able to manage some benefit accumulators for non-standard plans, which is approx. 10% of key account business.
- TOPS can only choose claims based on diagnosis in any position. We need the diagnosis to be identified in the first position only.
- TOPS has issues processing claims for plans with off-cycle renewals.

Accomplishments (Key Accomplishment past 30 days)

- Received estimate from benefit operations regarding a manual solution for TOPS limitations: \$462k + Staffing, with work beginning in Q3 2019.
- Received initial swag from IT for automated solution: \$1.2M with estimate of project beginning in 2020.

Upcoming Activities (Planned activities for next 30 days)

- Obtain staffing estimate for benefit ops manual solution
- Develop strategy for addressing claims adjudication limitations
- Determine whether capital requests can be integrated with an EHCV work stream as IT solution will have national impact on therapy accumulator issue
- Determine if implementation date should be pushed back

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1/31/2019

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P288.0042

Only pages 288.0070 and 288.0176 were published to the jury. Consistent with the Court’s ruling, Defendants have removed proposed redactions to pages 288.0070 and 288.0176. Defendants also propose removing redactions to pages pertaining to out-of-network programs including pages P288.0169 and P288.0170. To comply with the Court’s orders Defendants have also removed redactions to allowed amounts, billed amounts, and reimbursement rates on pages P288.0055- P288.0057, P288.0059, P288.0062, P288.0068, P288.0134, P288.0172- P288.0173. Subsequent to meeting and conferring with Plaintiffs on PX 288, Defendants have in good faith drastically reduced proposed redactions throughout PX 288 on nearly every single page of the exhibit Defendants had not already removed redactions from. Plaintiffs have agreed to accept Defendants’ proposed reduced redactions on the following pages: P288.0050-288.0007-



1 P288.0012, P288.0014- P288.0017, P288.0020- P288.0054, P288.0056, P288.0058- P288.0059,
2 P288.0063-P288.0066, P288.0071- P288.0103, P288.0105- P288.0131, P288.0133, P288.0135-
3 P288.0152, P288.0154- P288.0165, P288.0167- P288.0168, P288.0171- P288.0175, P288.0177-
4 P288.0207. The Court should grant Defendants’ limited remaining redactions since P288
5 contains initiatives deployed to control medical expenses across the business, largely unrelated to
6 out-of-network emergency services. Disclosure of these irrelevant initiatives could jeopardize
7 Defendants’ competitive position.

8 **8. PX 294 “EHCV: Executive Summary”**

9 PX 294 is a 2019 strategic business plan titled “EHCV: Executive Summary.” This
10 strategy document presents sensitive internal analysis regarding long-term goals, timelines, and
11 funding for certain out-of-network programs through 2023 and value creation projections
12 through 2023. Only pages P294.0001 and P294.0003 were published to the jury. United does
13 not propose any redactions to these pages. Only the remaining page, P294.0002, should be
14 sealed and/or redacted. Plaintiffs have accepted the complete redaction of page P294.0002,
15 which contains sensitive funding and timeline information related to ongoing projects.

16 **9. PX 329 “2019 E&I Performance”**

17 This document is a 47-page strategic business plan summarizing the business
18 performance of plans spanning multiple years, strategies that are not yet fully implemented,
19 internal assessments of the competitiveness of United’s market position, and how United
20 assesses best in class positioning. TeamHealth Plaintiffs only moved page 44 into evidence,
21 which the Court acknowledged at the time. 11/15/2021 Tr. 31:6-10. Yet at the January 12, 2022
22 hearing, the Court denied Defendants’ request to redact all pages other than the page admitted
23 into evidence—a decision that Defendants respectfully request the Court reconsider, or at least
24 clarify the reasons why pages not admitted into evidence could be unsealed. In a good faith
25 effort to comply with the remainder of the Court’s rulings on redactions, Defendants have
26 removed the targeted redactions to page 44, and have unredacted title pages and transition slides
27 that one might argue contain no substantive information. Plaintiffs have agreed to consider
28 targeted redactions to cover non-emergency topics on pages 3-7 and redacting the numbers found

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on pages 11-13. Defendants have made those revisions and proosed them to TeamHealth Plaintiffs. Otherwise, Defendants request this Court to rule that all other pages remain redacted.

10. PX 361 – Internal Email Chain

PX361 is an internal United email chain from 2019 regarding United’s revenues and budgets. This document contains trade secrets, and proprietary and commercially sensitive financial information regarding United’s Shared Savings performance, including nationally, regionally, and by individual submarkets that are defined by United. Nevada falls into only one region and two submarkets out of the 100+ regions and submarkets listed. Additionally, this document contains a monthly market-by-market breakdown of financial information determined by Generally Accepted Accounting Principles (“GAAP”) and labeled with that principle. Only the first two pages of this email chain were published to the jury (P361.0001 and P361.0002), which are not redacted consistent with the Court’s ruling. Defendants are only proposing to redact the market-by-market financial information and monthly GAAP figures.

11. PX 378 “UHN Employer & Individual: Market Competitiveness.”

This document is a strategic business plan titled “UHN Employer & Individual: Market Competitiveness.” No portion of this document was published to the jury. See 11/9 Tr. 178:13-16 (ZAVITSANOS "I just needed to admit it. We’re not going to look through it."). This document contains trade secret, proprietary, and commercially sensitive financial information regarding the E&I business segment’s network competitiveness, including by region and market. A substantial portion of this document relates to in-network (not out-of-network) competitiveness and initiatives. It also provides sensitive internal analysis regarding United’s future efforts to compete based on its internal market data that forecasts performance in markets outside of Nevada. Based on the Court’s prior orders, these portions are not relevant to an out-of-network “rate of payment” case.

While the Court previously ruled that this exhibit should be unredacted in total, Defendants request the Court to reconsider. It compliance with the January 12, 2022 order, Defendants are proposing to redact information related to mergers and acquisitions or other business deals critical to United’s market competitiveness; United’s detailing of its current

RA000322



1 network competitiveness, including what it believes is the external benchmark to measure
2 competition; the market-by-market breakdown of United's network competitiveness (P378.0005-
3 0006, .0009); United's detailing of its future network competitiveness including its plans and
4 opportunities (P378.0010-0014, .0016-0017); United's network competitive plans and
5 opportunities (P378.0011-0014); and a blended target rate that encompasses in-network
6 providers (P378.0002).

7 **12. PX423 "Non Par_Out of Network"**

8 PX423 is a 2020 business strategy document that is part of the "Enterprise Health Care
9 Value West Region QB Kick-off Summit." Only P423.0002 was shown to the jury. Consistent
10 with the Court's ruling, Defendants have removed their proposed redactions to pages P423.0002
11 and P423.0006 through P423.0008 of this exhibit. The only pages in which Defendants now
12 propose redactions are on pages P423.0003 through P423.0005, which concern a "case study"
13 expressly limited to the state of Arizona (see image).

14 Defendants propose redacting information that is trade secret, proprietary, and
15 commercially sensitive financial information regarding United's forward-looking strategies,
16 customer-specific identification and in-network information, and commercially competitive data
17 specifically relating to this non-Nevada market. Consistent with the Court's ruling, Defendants
18 have removed any proposed redactions relating to information relevant to the instant matter
19 including out-of-network rates and allowed amounts.

20 **13. PX 426 "Western Region Quarterback Kick-off Summit."**

21 This 119-page "state of the union" presentation reports on the current status of the
22 company's western region and its strategic plans for the future. It addresses overall healthcare
23 savings strategies for non-emergency business and areas for future growth, forward looking
24 target revenues for 2021 including for states beyond Nevada, and analysis for areas of potential
25 revenue expansion. Only the following pages were published to the jury: P426.0002, P426.0005,
26 P426.0008, P426.0009, and P426.0012. Consistent with the Court's ruling, Defendants have
27 removed their proposed redactions to page P426.0012, the only page shown to the jury with any
28 proposed redactions. Additionally, Defendants have removed proposed redactions on pages

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1 P426.0003- P426.0004, P426.0006- P426.0007, P426.0009- P426.0011, P426.0014- P426.0015,
2 P426.0024, P426.0039- P426.0041, P426.0046, P426.0051, P426.0053, P426.0063, P426.0080-
3 P426.0081, P426.0094, P426.0097, P426.0103- P426.0104, P426.0112.

4 To comply with the Court's orders Defendants have also removed redactions to allowed
5 amounts, billed amounts, and reimbursement rates on pages P426.0020, P426.0028- P426.0032,
6 P426.0034, and P426.0115. Defendants also propose removing redactions to pages pertaining to
7 out-of-network programs including pages P426.0089- P426.0090, P426.0113- P426.0114,
8 P426.0117- P426.0118. Subsequent to meeting and conferring with Plaintiffs on PX 426,
9 Defendants have in good faith reduced proposed redactions throughout PX 426 including on the
10 following pages: P426.0013, P426.0020, P426.0026, P426.0028- P426.0030, P426.0035-
11 P426.0036, P426.0044- P426.0045, P426.0052, P426.0055, P426.0060, P426.0061- P426.0062,
12 P426.0064- P426.0065, P426.0067- P426.0070, P426.0082- P426.0088, P426.0092- P426.0093,
13 P426.0095- P426.0096, P426.0098- P426.0100, P426.0108, P426.0110. Plaintiffs have not
14 agreed to any redactions to this exhibit. While the Court ruled that this exhibit should be
15 unredacted in total, Defendants seek clarification given the importance of the document and the
16 fact that the Court did not address the particular redactions made to it. Now Defendants are only
17 proposing to redact information related to sensitive financial figures, case studies, and strategic
18 initiatives completely unrelated to the Nevada market or out-of-network programs. For example,
19 National Blue Chip targets could be used by Defendants' competitors to gain a competitive
20 advantage:



National Blue Chips

Local Market Impact & National Collaboration

Next Steps

- Build-out key Opportunities (i.e., Cancer/Chemo & Cardiology)
- CMO Training (Nov)
- West Region Clinical Deep Dive for 2020 Action Planning (Tracey- Nov TBD)

11 Blue Chips, \$2.38 Incremental Savings on a Base of \$3.5B
 Substantially reducing cost while improving health outcomes and quality

These 11 Blue Chips will target \$2.3 Billion (\$5.7 Billion including ACO) in incremental clinical savings for UnitedHealthcare in 2020, while improving health and driving satisfaction.

Blue Chip	2019 Savings (\$MM)	2020 Savings (\$MM)	2021 Savings (\$MM)
Blue Chip 1: Specialty Care - High-Volume Specialty Care	\$100	\$100	\$100
Blue Chip 2: Specialty Care - High-Volume Specialty Care	\$100	\$100	\$100
Blue Chip 3: Specialty Care - High-Volume Specialty Care	\$100	\$100	\$100
Blue Chip 4: Specialty Care - High-Volume Specialty Care	\$100	\$100	\$100
Blue Chip 5: Specialty Care - High-Volume Specialty Care	\$100	\$100	\$100
Blue Chip 6: Specialty Care - High-Volume Specialty Care	\$100	\$100	\$100
Blue Chip 7: Specialty Care - High-Volume Specialty Care	\$100	\$100	\$100
Blue Chip 8: Specialty Care - High-Volume Specialty Care	\$100	\$100	\$100
Blue Chip 9: Specialty Care - High-Volume Specialty Care	\$100	\$100	\$100
Blue Chip 10: Specialty Care - High-Volume Specialty Care	\$100	\$100	\$100
Blue Chip 11: Specialty Care - High-Volume Specialty Care	\$100	\$100	\$100

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 P426.0099

14. PX 447 “Employer & Individual: 2020 Business Plan”

PX447 is a strategic business plan, containing trade secret, proprietary, and commercially sensitive financial information that details the E&I business segment’s future plans to compete in the commercial market. The business plan explains what programs and initiatives United wants to implement in the future, including by specifying what markets it will be focusing on, its financials based on its internal numbers, and provides mergers and acquisition activity:



REINVENT | Medical Cost Transformation

Engage with United Clinical Services (UCS) and OptumHealth to reinvent our **Clinical capabilities** by redirecting members to the appropriate care setting, mitigating outpatient surge, providing support to our most frequent utilizers of the healthcare system, and improving the Behavioral Health experience.

PLANNED PROCEDURES

- **Site selection:** ensure care is delivered in an optimal setting, driving quality and lowering costs – a \$2B opportunity over the next three years. In March 2019, site of service expanded to include medical necessity radiology site reviews for Fully Insured. A broader range of categories, including 1,600 surgical codes and 1,300 lab codes, representing \$2.4B in allowed spend, are scheduled to deploy starting Q4 2019. The current program uses Prior Authorization requests as an opportunity to engage physician and member, and re-direct to lower cost site of care when appropriate. Initial phase focused on soft steerage to preferred sites; as program scales it will rely on hard denials for sub-optimal sites of care.
- **Upstream in the care pathway:** in the future, influence member's choice of care in advance of pre-authorization by leveraging existing technology to identify members researching on web specific conditions; present targeted ads to influence members' actions to seek care (e.g., Center of Excellence for knee therapy or replacement).

\$500M
Planned
Procedures
Savings

OUTPATIENT MANAGEMENT

- Pre-authorization programs have successfully transferred inpatient procedures to outpatient when clinically appropriate. Trend review in certain categories is however showing an increase in outpatient utilization at a higher rate than the decrease in inpatient (e.g., inpatient knee replacement surgeries decreased by 11% between 2017 and 2018 while outpatient more than doubled in the same timeframe). Focus on Outpatient setting to drive incremental savings by ensuring **appropriateness of care** and a targeted approach to reducing wasteful procedures (e.g., bariatric surgeries approval rate of 75%, spinal fusions approval rate of 93%).
- Action plans for the critical few services (e.g., joint surgery, spinal fusion) will be in place by end of Q3 2019 in partnership with Clinical and Network teams. Operating metrics are being added to track progress.

PERSISTENT SUPER UTILIZERS (PSU)

- Members in the top 5% of spend for two plus years (~26% of medical spend for fully insured population) will be assigned a "Local Health Ally" to be their first point of contact for any health-related need, and refer them to appropriate care. The objective is to form a long-term relationship with persistent super utilizers, maintain a holistic view of their individual health goals, social determinants and acuity levels, and support their clinical and social needs through in-person interactions with the goal of improving their health outcomes. **Target 10% medical cost reduction (\$600M annual run rate potential)** through avoidable inpatient and outpatient visits, and medications reconciliation.
- Pilot approach is in three markets starting with Houston in Q4 2019, Phoenix and Orlando / Tampa in Q1 2020.

BEHAVIORAL HEALTH (BH)

Create the most compassionate experience for all members to achieve and sustain recovery, and reduce medical costs (e.g., emergency visit avoidance).

- A "no wrong door" approach ensures members can interact with the BH program in the manner that is the most comfortable and convenient for them (e.g., texting, emailing, etc.).
- Regardless of entry point, member is directed to a **highly trained triage expert** who not only **appropriately matches** the intervention to the member's needs, but also schedules the appointment for the member.

ONCOLOGY

- Partner with Optum to expand programs designed to reduce costs significantly (e.g., expand Cancer Support Program), bring together a full spectrum of treatment options, and go deeper with network capabilities to create market-leading group of providers.

BRIDGE2HEALTH

Connecting Specialty Benefits
with Overall Health

Deliberately integrating UHC Medical and Specialty yields actionable data to close gaps in care and reduce costs.

In 2020, we will:

- Expand program to all fully insured members with Vision and/or Dental (4.6M members by the end of 2021).
- Add proof points that demonstrates improved care coordination, health outcomes and savings.

Key findings of correlation in the UHC's Center for Advanced Analytics 2019 study showed:



Up to 4%
reduction in
allowed medical
expenses



Up to 15%
more effective in
identifying members
with diabetes

DIVERSIFY | M&A / Strategic Relationships

	M&A ACTIVITIES	STRATEGIC RELATIONSHIPS
MEDICAL MEMBERSHIP	Targeting opportunities to address:	
	<ul style="list-style-type: none"> • Membership in geographies slow to grow organically. • Capabilities (TPA / other) not currently done in-house today. • Workers Comp capabilities – highly dependent on network, Optum conflicts. 	
	 Acquired Feb 2017  Acquired Mar 2019	
	 TPA, \$13M EBITDA 185k members  TPA, \$44M EBITDA 250k members	
	 Global TPA	 TPA, 180k members

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2020 Financial Plan 1 Group Fully Insured – Volume**+50k FI Local Markets Growth | +290k YEAR-OVER-YEAR IMPROVEMENT**

Despite an increasingly competitive environment in a declining Fully Insured marketplace we are aiming to flip our growth trajectory from (240k) of local markets losses in 2019 to +50k of growth in 2020

Growth in 000s	FI Growth					
	2014	2015	2016	2017	2018	2019
SB 2-50	(356)	(2)	199	283	200	(65)
SB 51-99	(18)	139	80	58	(38)	(58)
Key Accounts	(195)	183	198	63	(67)	(60)
Public	(73)	33	30	31	25	(39)
Local Markets	(641)	353	516	434	120	(241)
Net'l Accounts	146	21	(142)	29	(60)	(9)
Group	(405)	374	374	464	60	(250)
Individual	(185)	408	159	(864)	16	100
Total	(680)	782	633	(400)	76	(150)

WHY IS MEMBER VOLUME PRESSURED?

2019 & 2020 competitive environment is much different than the 2015 – 2017 environment

- Since 2014 we've increased our Group Fully Insured market share, by 260 bps to 14.0%, despite a decrease in the total marketplace. 2020 market share is expected to increase by 20 bps as the market continues to decline.
- Exacerbating competitive headwinds in 2020 is the return of the health insurer fee, which results in elevated final proposed to remain BCR neutral. Higher renewal increases leads to more shopping of other carriers where we've historically lost.
- Competitors are refocused after significant M&A activity and replenished capital levels as IEX losses have turned to significant gains. Aware of our market share gains over the last few years competitors are aggressively coming after our Fully Insured block across all group sizes.

SEGMENT SHARE COMPARISON – GROUP FULLY INSURED**GROWTH AND FINAL PROPOSED**

	2014	2015	2016	2017	2018	2019	2020
Local Mkts Growth	(640k)	355k	516k	435k	120k	(240k)	50k
Key Accts Growth	(195k)	183k	198k	63k	(67k)	(60k)	40k
Local Mkts Persistency	76.9%	84.1%	84.8%	84.7%	82.5%	82.6%	83.5%
Key Accts Persistency	78.2%	82.7%	83.0%	82.3%	80.3%	81.2%	82.4%
Final Proposed	12.4%	7.8%	8.1%	8.6%	10.9%	8.0%	10.9%
Key Accts Final Prop.	12.2%	7.8%	8.1%	9.3%	11.3%	8.5%	12.1%
1/1 Final Proposed	12.4%	7.8%	8.1%	8.6%	11.3%	7.8%	11.0%
1/1 Key Accts Final Prop.	13.4%	8.6%	8.6%	8.6%	12.5%	8.0%	11.8%

- All lines of business are expected to rebound significantly in 2020.

21

This document is largely irrelevant to an out-of-network “rate of payment” case. Indeed, Plaintiffs have conceded that the overwhelming majority of this exhibit is irrelevant to this case. (See 11/3 Tr. 93:1-4). Only pages P447.0003 and P447.0006 were published to the jury. Consistent with the Court’s ruling, Defendants have removed their proposed redactions from pages P447.0003 and P447.0006, as well as the Shared Savings portion of P447.0024. They have also removed the redactions to P447.0011 regarding its ASO strategy in the increasingly commoditized ASO market. Defendants are proposing to redact their financial plan overview and assessments (P447.0004, .0018-0026); strategic priorities and actions to be competitive in

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the market, including merger and acquisition strategies, product development (P447.0005, .0011-0015, .0027); plans for clinical services and infrastructure (P447.0007-0009); consumer and client intel (P447.0010); and long-term outlooks (P447.0017).

15. PX 462 “West Region 2020 Business Planning”

PX 462 is a 2020 strategic business plan titled “West Region 2020 Business Planning.” This document contains trade secret, proprietary, and commercially sensitive financial information related to the E&I business segment’s West Region. It contains sensitive internal analysis regarding strategic initiatives for 2020 through 2022, such as membership growth and merger and acquisition expansion initiatives, as well as 2018 and 2019 income information and IOI financial projections for 2021 and 2022. This document is largely irrelevant to an out-of-network “rate of payment” case. Only pages P462.0023 and P462.0026 were published to the jury. United does not propose any redactions to these pages, nor to pages P462.0002 or P462.0025. The remaining pages should be sealed and/or redacted. Plaintiffs have accepted the complete redaction of pages P462.0006-10, which contain specific deliverables for ongoing projects unrelated to out-of-network programs, such as member experience, provider partnerships, M&A, and public sector initiatives; specific ongoing M&A strategy and particular projects in NM, UT, GA, and the northwestern market; and membership growth goals. None of the information that was not presented to the jury is relevant to an out-of-network “rate of payment” case.

16. PX 471 “Commercial Competitor Financial Review”

PX 471 is a 2020 business strategy document that contains highly confidential United membership information and margins that could allow United’s competitors to see how United compares in various regions outside of Nevada. Only page P471.0003 was shown to the jury, and Plaintiffs have agreed that Defendants’ motion was granted as to page P471.0011. Consistent with the Court’s ruling, Defendants have withdrawn their proposed redactions to P471.0002, P471.0005, P471.0009 and P471.0010. Defendants have additionally limited their proposed redactions to P471.0004, P471.0007, and P471.0008. The only information that Defendants seek to redact would reveal comparisons of United’s confidential internal data

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regarding its membership changes and margins, pricing model considerations, its profitability figures, and other internal commercially sensitive data to that of United's competitors. Here is an example of the information that would be released to the public:

Membership changes



With CA DMHC

	2017	2018	# Delta	% Delta
Individual	13,942,944	12,787,064	(1,155,880)	-8.3%
FEHBP	6,263,290	6,171,486	(91,804)	-1.5%
Small Group	13,387,595	13,020,117	(367,478)	-2.7%
Large Group	35,986,680	35,940,527	(58,153)	-0.2%
ASO	96,278,438	97,683,725	1,405,287	1.5%
Total	165,870,947	165,602,919	(268,028)	-0.2%
Fully Insured Total	69,592,509	67,919,194	(1,673,315)	-2.4%
Employer Total	151,928,003	152,815,855	887,852	0.6%
Fully Insured Employer	55,649,565	55,132,130	(517,435)	-0.9%
Group Total (no FEHBP)	145,664,713	146,644,369	979,656	0.7%
SG+LG Fully Insured	49,386,275	48,960,644	(425,631)	-0.9%

Without CA DMHC

	2017	2018	# Delta	% Delta
Individual	11,911,740	10,913,660	-998,080	-8.38%
FEHBP	6,263,290	6,171,486	-91,804	-1.47%
Small Group	11,310,687	10,904,897	-405,790	-3.59%
Large Group	27,096,773	26,736,711	-362,062	-1.34%
ASO	96,278,438	97,683,725	1,405,287	1.46%
Total	165,870,947	165,602,919	-268,028	-0.16%
Fully Insured Total	56,584,490	54,726,754	-1,857,736	-3.28%
Employer Total	140,951,188	141,496,819	545,631	0.39%
Fully Insured Employer	44,672,750	43,813,094	-859,656	-1.92%
Group Total (no FEHBP)	134,687,898	135,325,333	637,435	0.47%
SG+LG Fully Insured	38,409,460	37,641,608	-767,852	-2.00%

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Confidential Property of UHC. Do not forward

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P471.0011

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17. PX 476 “Parking Lot”

PX 476 is a 2019 business strategy document titled “Parking Lot.” This document contains trade secret, proprietary, and commercially sensitive information regarding various out-of-network initiatives. Among other things, this strategy document presents sensitive internal analysis regarding revenue model evolution projections through 2023 and beyond, as well as detailed program initiatives for 2020 through 2023. Only pages P476.0001, P476.0002, and P476.0006 were published to the jury. United does not propose any redactions to these pages, nor to pages P476.0004 or P476.0007. Plaintiffs have accepted the complete redaction of pages P476.0016-17, which contain lists of key national and public sector accounts. United also significantly reduced redactions to pages P476.0005, P476.0008-11, P476.0015, and P476.0018-21 to redact only the most sensitive business information, such as internal analysis of United’s market competitiveness, project initiatives from 2020 through 2023, client information, financial targets and opportunity analytics, and vendor fees.

18. PX 509 “UnitedHealthcare – Contract Negotiations – Communication Plan Executive Summary”

This “communication plan” and summary document contains trade secret, proprietary, and commercially sensitive information pertaining to the company’s network contracting strategies with a third-party provider. It also includes information regarding communications strategies and negotiation tactics. Only pages P509.0003 and P509.0006 were published to the jury. Consistent with the Court’s ruling, Defendants have removed proposed redactions to P509.0003, the only page shown to the jury with proposed redactions. Additionally, Defendants have removed proposed redactions on page P509.0009. Plaintiffs have not agreed to allow any of Defendants’ limited proposed redactions.

19. PX 1001 – Audited Financial Statements

PX 1001 is the audited financial statements for United HealthCare Services, Inc. and subsidiaries for the year ended December 31, 2020. This highly confidential/attorneys’ eyes only audited financial report is not available to the public and is not required to be included in Defendants’ SEC filings or disclosures to investors. It contains highly sensitive financial figures and information detailing every financial metric of United HealthCare Services, Inc. including

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assets and liabilities, income, revenue, and other detail describing the financial health of the entity and its subsidiaries. If disclosed, this financial detail would significantly harm Defendants. It deserves the utmost protection from Defendants' competitors and public disclosure. Plaintiffs only published page 1001.000005 of this document to the jury In light of the Court's denials, defendants have removed their proposed redactions to page 1001.000005. The remainder of the document should be sealed.

B. HIGHLY CONFIDENTIAL EXHIBITS

The second category of trial exhibits contains line items of highly confidential, proprietary, and commercially sensitive financial figures and strategic information, as well as protected health and personal information ("Highly Confidential Exhibits"). The Highly Confidential Documents contain sensitive strategic analyses and cost and pricing information that, if disclosed, would irreparably damage Defendants' bargaining position in the marketplace.

The products that Defendants offer, and the pricing of those products, depend on the rates that Defendants negotiate with providers and Defendants' out-of-network reimbursement strategies. The details of the offerings, pricing, and strategies—if disclosed—would disadvantage Defendants, specifically with regard to future business opportunities. Providers would be able to use Defendants' internal strategic discussions regarding contract terms and out-of-network reimbursement programs to increase their bargaining position and demand concessions from Defendants. In an effort to minimize these harms, Defendants seek to redact only the discrete line items that include this highly sensitive information.

1. PX 003, PX 008, and PX 231

PX 003, PX 008, and PX 231 are respectively, 2010, 2013, and 2018 Network Access Agreement between UHIC and MultiPlan. These documents contain commercially sensitive terms, such as network manager insurance requirements, claim percentage guarantee requirements, performance requirements, and non-disclosed service pricing fee arrangements.

Defendants have only proposed limited redactions to these documents to protect these narrow commercially sensitive areas. For PX 003, Plaintiffs have accepted all of Defendants' limited proposed redactions except for on the following pages: P003.0030 (Plaintiffs do not

RA000531



1 accept Defendants' proposed redaction to the savings percentage at the bottom of the page),
2 P003.0043- P003.0045, P003.0047. For PX 008, Plaintiffs have accepted all of Defendants'
3 limited proposed redactions except for on the following pages: P008.0012- P008.0013,
4 P008.0015- P008.0020, P008.0023- P008.0024, P008.0047- P008.0048, P008.0050, P008.0080,
5 P008.0093- 0095, P008.0130- P008.0131. Plaintiffs have denied all of Defendants' limited
6 proposed redactions to PX 231. Defendants' limited proposed redactions should be granted for
7 these documents to protect both United and MultiPlan's competitive advantage.

8 **2. PX 071, PX 075, PX 127, PX 148, and PX 149**

9 PX 071, PX075, PX 127 are 2017 Financial Renewal Agreements with Defendants'
10 customers. PX 148 and PX 149 are 2018 Financial Renewal Agreements with Defendants'
11 customers. These documents contain commercially sensitive terms, such as confidential
12 administrative fees, customer credits, service fees, performance benchmarks, and earn back
13 savings calculations. These highly confidential figures, if disclosed, would impact United's
14 ability to negotiate future contracts. Defendants have only proposed limited redactions to these
15 documents to protect these narrow commercially sensitive areas. For PX 071, Plaintiffs have
16 accepted all of Defendants' limited proposed redactions except for figures related to the Shared
17 Savings Program on P071.0006. For PX 075, Plaintiffs have accepted all of Defendants' limited
18 proposed redactions except for figures related to the Shared Savings Program on P075.0003. For
19 PX 127, Plaintiffs have accepted all of Defendants' limited proposed redactions except for
20 figures related to the Shared Savings Program on P127.0006. For PX 148, Plaintiffs have
21 accepted all of Defendants' limited proposed redactions except for figures related to the Shared
22 Savings Program on P148.0006. For PX 149, Plaintiffs have accepted all of Defendants' limited
23 proposed redactions except for figures related to the Shared Savings Program on P149.0003.
24 Defendants' limited proposed redactions should be granted for these documents to protect
25 United's competitive position while negotiating contracts.

26 **3. PX 092**

27 PX092 is a May 2017 presentation titled Emergency Department Transformation
28 Initiative (EDTI). The presentation contains competitively sensitive cost and savings data and
RA000532



target savings data, including for par claims and facility claims; member impact data and projections; PMPM trends, ER visit trends, and urgent care utilization trends; and specific customer names. United proposed narrow redactions to pages P092.0003-P092.0004, P092.0009-P092.0010, P092.0018, and P092.0024. Plaintiffs deny all redactions to this document. United is seeking the court's further guidance on its proposed redactions since the court did not explicitly rule on this document.

4. PX 147, PX 319, and DX 5499

DX 5499, PX 147, and PX 319 are respectively, 2017, 2018, and 2019 Administrative Services Agreements with Defendants' customers. These documents contain commercially sensitive terms, such as service fee agreements, performance operation benchmarks, and confidential customer fee arrangements, which include discount guarantees and in-network service discounts. These highly confidential figures, if disclosed, would impact United's ability to negotiate future contracts. Defendants have only proposed limited redactions to these documents to protect these narrow commercially sensitive areas. For PX 147, Plaintiffs have accepted all of Defendants' limited proposed redactions except for figures related to the Shared Savings Program on P147.0024. For PX 319, Plaintiffs have accepted all of Defendants' limited proposed redactions except for figures related to the Shared Savings Program on P319.0004. For DX 5499, Plaintiffs have accepted all of Defendants' limited proposed redactions except for the following pages: D5499.0024, D5499.0028, D5499.0054- D5499.0089, D5499.0091, D5499.0098, D5499.0101, D5499.0104, D5499.0107, D5499.0110, D5499.0113, D5499.0116, D5499.0119, D5499.0122, D5499.0125, D5499.0128, D5499.0131, D5499.0134, and D5499.0137. Defendants' limited proposed redactions should be granted for these documents to protect United's competitive position while negotiating contracts.

5. PX 159

PX 159 is a 2018 Master Professional Services Agreement that contains commercially sensitive terms, service fees paid during the span of the agreement, claim charges, and performance related penalties that would harm United competitive advantage in negotiating future contracts with other parties. Further it contains confidential customer fee arrangements

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1 and performance benchmarks that, if disclosed, would impact Defendants' ability to negotiate
2 future contracts. Defendants have redacted only highly confidential information relating to
3 service fees, including fees paid during the agreement, claim charges, and performance related
4 penalties, resulting in narrowly tailored redactions.

5 **6. PX 244**

6 PX 244 is an internal United email chain discussing current UMR out-of-network
7 program offerings. This internal email chain contains highly confidential customer fee
8 arrangements that if disclosed would impact United's ability to negotiate future contracts.
9 Further, this internal email thread contains client names that is highly confidential. In addition,
10 the rates charged by United to participating providers are listed on P244.0010, which is sensitive
11 and would hamper's Defendants' ability to fairly compete in the marketplace if this information
12 is known to competitors.

13 **7. PX 246**

14 PX 246 is an October 2018 meeting presentation titled "Non-Par Opportunities UHC Ops
15 Meeting." The presentation contains sensitive competitive information such as vendor fees, lab
16 reimbursement rates and savings, reimbursement rates for non-ER services, ASO client savings
17 data, vendor relations plans through 2023, allowed amounts, and client fees for ASO business.
18 Further, the client names are included on P246.0010 are highly confidential. Further, the rates
19 charged by Defendants to participating providers are listed on P246.0004. All of this
20 information is sensitive and would hamper Defendants' ability to fairly compete in the
21 marketplace if this information was generally known. Plaintiffs contend that Defendants'
22 proposed redactions are overbroad, but Defendants' proposed redactions are narrowly tailored.

23 **8. PX 265**

24 PX 265 is a presentation 2018 entitled "Region 5 Review." This presentation contains
25 confidential expenditure and vendor fee data, revenue figures, and competitively sensitive
26 contract savings analysis. Defendants have redacted sensitive calculations related to cost and
27 revenue, financial projections, and revenue data, which are all narrowly tailored. This internal
28 financial data is not required to be shared with the SEC, is not known to Defendants' competitors

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or clients, and is not even widely shared within Defendants' organizations. Access to these figures would potentially allow competitors to negotiate more favorable terms from Defendants and create market volatility, which would negatively affect Defendants.

9. PX 320

PX 320 is an internal United email discussing changes to out-of-network programs, including non-emergency programs. This internal email contains competitively sensitive data regarding reimbursement rates for non-emergency programs and customer fee arrangements. Plaintiffs' position is that certain claims percentages should not be redacted. But these figures should be redacted because this data is very sensitive its disclosure would hinder United's ability competitively compete in the marketplace.

10. PX 354

PX 354 is an email attaching the Project Airstream MVP Overview presentation. This internal email contains sensitive competitive information such as vendor fees; provider names; business initiative rollout strategy from 2019 to 2023, revenue, operating expense, and impact projections through 2024, and ASO membership trends. This internal email thread also contains financial and identity information related to specific egregious providers, financial projections, costs, and information related to strategic projects. All of this information is very sensitive and its disclosure would hinder United's ability competitively compete in the marketplace.

11. PX 359

PX 359 is an internal United email chain discussing concerns from a client benefit manager contact. The email contains sensitive internal reimbursement figures that could jeopardize future contract negotiations with providers as well as specific plan language. That limited highly confidential information should be redacted. United proposed narrow redactions to pages P359.0001 and P359.0003-P359.0007. Plaintiffs deny all redactions to this document. United is seeking further guidance from the court as to the redaction of customer name and customer email addresses.



1 **12. PX 367**

2 PX 367 is a presentation titled Out-of-Network Cost Management Programs. The
3 presentation contains sensitive competitive information in the form of MNRP reimbursement
4 rates and savings figures. The MNRP program does not price ER physician claims and is
5 irrelevant to an out-of-network emergency provider “rate of payment” case. That limited highly
6 confidential information should be redacted. United proposed narrow redactions to pages
7 P367.0008 and P367.0011. Plaintiffs deny all redactions to this document. United is seeking
8 further guidance from the court as to the redaction of MNRP rates.
9

10 **13. PX 368**

11 PX 368 is a talking points document titled Out-of-Network Cost Management Programs.
12 The document contains sensitive competitive information such as MNRP reimbursement rates
13 and PEPM rates for new ASO customers. The MNRP program does not price ER physician
14 claims and is irrelevant to an out-of-network emergency provider “rate of payment” case. That
15 limited highly confidential information should be redacted. United proposed narrow redactions
16 to pages P368.0006, P368.0008, and P368.0011. Plaintiffs have accepted United’s redaction of
17 PEPM fees on P368.0008. United is seeking further guidance from the court as to the redaction
18 of MNRP figures.

19 **14. PX 400**

20 PX 400 is a September 2016 MultiPlan PowerPoint Presentation to UnitedHealthcare
21 regarding projected revenue from suggested new programs for consideration. The presentation
22 contains competitively sensitive cost and revenue data and projected revenue and savings data
23 for future programs, including irrelevant information that applies to government and dental lines
24 of business, as well as par facility claims. That limited highly confidential information should be
25 redacted. United proposed narrow redactions to pages P400.0003 and P400.0009-P400.0012.
26 Plaintiffs deny all redactions to this document. United is seeking the court’s further guidance as
27 to the redaction of revenue and savings figures for non-emergency business on pages P400.0003
28 and P400.0009-P400.0012.

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1 **15. PX 440**

2 PX 440 is an internal United email chain from November 2019 discussing OCM program
3 and talking points. The email chain contains competitively sensitive program adoption rates in
4 key target markets outside of Nevada and competitively sensitive cost and revenue data, as well
5 as internal analysis of business opportunity in states outside of Nevada and for specific
6 customers outside of Nevada. That limited highly confidential information should be redacted.
7 United proposed narrow redactions to pages P440.0001, P440.0003, and P440.0004. Plaintiffs
8 deny all redactions to this document. United is seeking further guidance from the court as to the
9 redaction of customer names.

10 **16. PX 464**

11 PX 464 is a United document describing Naviguard in comparison to the OCM program.
12 The document contains Naviguard and MNRP rates; internal calculations of cost, savings, and
13 revenue; and program fees and caps, including for non-emergency related programs. The MNRP
14 program does not price ER physician claims and is irrelevant to an out-of-network emergency
15 provider “rate of payment” case. That limited highly confidential information should be
16 redacted. United proposed narrow redactions to P464.0001-P464.0003, P464.0005-P464.0006,
17 and P464.0010. Plaintiffs deny all redactions to this document. United is seeking the court’s
18 further guidance on its proposed redactions, as the court has not yet explicitly ruled on this
19 document.

20 **17. P 472**

21 PX 472 is a United document outlining customer membership and program selection for
22 out-of-network services. The document contains competitively sensitive data regarding
23 customer program elections, membership populations, and internal calculations of cost, and
24 identifies specific customers. That limited highly confidential information should be redacted.
25 United proposed narrow redactions to page P472.0001. Plaintiffs deny all redactions to this
26 document. United is seeking further guidance from the court as to the redaction of customer
27 names.

28 **RA000337**

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C&S Chemotherapy Prior Authorization Expansion Value Creation Project Status Report



LOB	Phase	Status	Deploy Date	In Year \$	Next Year \$	Total Value	Cost Category: Oncology	CASH: INT0027690
BI FI	N/A						Project Owners Project Manager Lori Walker Champion Jen Malin HCE / VC Analyst Mark Toman	
BI ASO	N/A							
MR	N/A							
CS	On Track		11/1/2018	\$1.1M		\$1.3M		

Project Description

Problem:

Currently, not all states have the chemotherapy prior authorization program in place. There are four states that have committed to deploying the program in 2018, which will improve quality of cancer care, while also reducing medical cost trends.

Intervention:

Expand the Outpatient injectable chemotherapy prior authorization program (which includes related cancer therapies such as growth factors and denosumab) to C&S states: 1A NE LA RI.

Risks / Barriers

- Removed C&S NM from scope due to UHC contract status change
- Removed C&S CA from scope due to membership shift and low volumes.
- Removed C&S IA from scope due to 4 injectable chemo drugs absence from state fee schedule
- Removed C&S LA from scope due to state regulatory agency denial of medical policy/program

Accomplishments (Key Accomplishment just 30 days)

- Reporting:** Provided second month of reporting to C&S NE and RI; denial rate is low, in alignment with previous expansions.
- Expansion:** C&S LA will deploy 2/1/2019; C&S IA and CA will deploy 4/2019. Gary McGrath is tracking via separate 4 blocker

Upcoming Activities (Planned activities for next 30 days)

- UAT:** Monitor status and issues post deployment

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Very few initiatives covered in DX 5505 relate to programs discussed at trial. While Defendants had initially applied limited redactions for financial projections related to strategic projects including revenue and budget projections, in order to maintain consistency between exhibits, Defendants have revised DX 5505 to have redactions consistent with the Defendants' reduced proposed redactions to PX 288. Plaintiffs have agreed to accept Defendants' proposed redactions on the following pages: 5505.000004, 5505.000006- 5505.000029, 5505.000031- 5505.000032, 5505.000034- 5505.000054, 5505.000057- 5505.000081, 5505.000083- 5505.000084, 5505.000086, 5505.000088- 5505.000089, 5505.000091- 5505.000093, 5505.000095- 5505.000100, 5505.000103, 5505.000105- 5505.000107, 5505.000111- 5505.000113, 5505.000115- 5505.000120, 5505.000123- 5505.000124, 5505.000127- 5505.000129, 5505.000131- 5505.000132, 5505.000134- 5505.000136, 5505.000138, 5505.000142, 5505.000144- 5505.000145, 5505.000147- 5505.000148, 5505.000150- 5505.000163, 5505.000165, 5505.000167- 5505.000185, 5505.000187- 5505.000190, 5505.000193- 5505.000197, 5505.000199- 5505.000222, 5505.000224- 5505.000235, 5505.000237- 5505.000244. The Court should grant Defendants' limited consistent redactions to DX 5505, because DX 5505 contains initiatives deployed to control medical expenses across the

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business, largely unrelated to out-of-network emergency services. Disclosure of these irrelevant initiatives could jeopardize Defendants' competitive position.

IV. CONCLUSION

The limited and targeted redactions proposed by Defendants reflect the least restrictive measures to protect highly sensitive and confidential business information. For the foregoing reasons, and as previously detailed in Defendants' Motion to Seal Certain Confidential Trial Exhibits and related briefing, the Court should allow for the application of Defendants' narrowly-tailored redactions, and seal the highly confidential information at issue.

Dated this 7th day of February, 2022.

/s/ Brittany M. Llewellyn

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of February, 2022 a true and correct copy of the foregoing **DEFENDANTS' STATUS REPORT AND SUMMARY OF REVISED REDACTIONS TO TRIAL EXHIBITS** 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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8 /s/ Brittany M. Llewellyn
9 An employee of WEINBERG, WHEELER, HUDGINS
10 GUNN & DIAL, LLC
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APPENDIX A

The following exhibits are withdrawn for purposes of the February 10, 2022 hearing, without waiver for purposes of appeal.

Plaintiffs' Exhibits:

- PX 016
- PX 022
- PX 023
- PX 026
- PX 034
- PX 053
- PX 067
- PX 073
- PX 076
- PX 096
- PX 132
- PX 144
- PX 170A
- PX 174
- PX 175
- PX 178
- PX 193
- PX 212
- PX 218
- PX 243
- PX 256
- PX 279-A
- PX 297S
- PX 307
- PX 314
- PX 324
- PX 342
- PX 348
- PX 370
- PX 375
- PX 403
- PX 413
- PX 418
- PX 444
- PX 450
- PX 455
- PX 473
- PX 512

Defense Exhibits:

- DX 4002
- DX 4003
- DX 4005
- DX 4006
- DX 4048
- DX 4166

RA000343

1	• DX 4168
	• DX 4455
	• DX 4457
2	• DX 4569
	• DX 4774
3	• DX 5322
	• DX 5506
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	• DX 5530
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EXHIBIT 15

EXHIBIT 15

SR

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

FREMONT EMERGENCY SERVICES
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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,
Defendants.

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

**PLAINTIFFS' STATUS REPORT AND
RESPONSE TO UNITED'S AND
MULTIPLAN'S SUBMISSIONS FOR
FEBRUARY 10, 2022 HEARING**

**Hearing Date: February 10, 2022
Hearing Time: 1:00 p.m.**

RA000345

INTRODUCTION

In a diligent effort to apply the Court's oral rulings on January 12 and January 20, 2022, Plaintiffs have treated hundreds (if not thousands) of discrete redactions by both MultiPlan and United as granted. Despite that, both United and MultiPlan seek more—to expand the Court's ruling to protect information that is not deserving of protection under Nevada law. As to that information, Plaintiffs maintain that both motions should be denied.

At the January 27 status conference, Plaintiffs expressed their primary concern, which is that this process would be used by United and MultiPlan to “try to provide additional evidence or argument at the end of the day; and just take a second bite at the apple[.]” 1/27/22 Hr'g Tr. at 7:8–12. That concern has proven to be well-founded. United's “Status Report” is a 38-page argumentative brief—nearly 20 pages longer than their motion seeking to seal these exhibits in the first place. MultiPlan's filing includes revised exhibits describing alleged confidentiality concerns in greater detail than their original motion. And, apparently recognizing the weakness of its position, United now seeks an evidentiary hearing to add yet more evidence to the record.

The time for all that has passed. If this information mattered, United and MultiPlan should have included it in the original sealing motions. They should not, now that the Court has already taken hours of time to hear both sides' arguments, be permitted to make another run at it. The Court has reviewed the evidence, heard arguments, and issued a ruling. All that should remain are issues on the margins.

To facilitate that, Plaintiffs are preparing a Supplemental Exhibit 1 to this Status Report, which will identify the specific remaining disputes, by exhibit and page number. Plaintiffs will file that Supplemental Exhibit as soon as practicable and provide a courtesy copy to the Court and to all parties. Further, within this Status Report, Plaintiffs have identified the specific exhibits on which the parties have agreed on the application of the Court's prior ruling.

Finally, rather than provide a detailed response to these inappropriate and untimely arguments that should have been included in the Sealing Motions, Plaintiffs provide this high-level response to MultiPlan's and United's respective Status Reports in the hope of easing the Court's burden at the upcoming hearing.

RESOLVED ISSUES

As of the filing of this status report, and pursuant to the Court’s oral rulings on January 12 and January 20, 2022, Plaintiffs’ records indicate United and Plaintiffs have agreed that United’s motion to seal has been *denied* with respect to the following exhibits:

D4048	D5507	P076	P212	P342
D4166	D5530	P096 ¹	P218	P348
D4168	P022	P132	P243	P370
D4455	P023	P144	P256	P403
D4457	P026	P170A ¹	P297A	P418
D4569	P034 ¹	P174	P297S	P450
D4774	P053 ¹	P175	P314	P455
D5322	P067	P178 ¹	P324	P512
D5506	P073	P193		

United and Plaintiffs have agreed that United’s motion has been *granted-in-part*, as to PHI only, and otherwise *denied* with respect to the following exhibits:

D4002	D4006	P413
D4003	P307	P444
D4005	P375	P473

United and Plaintiffs have agreed that United’s motion has been granted-in-part and denied-in-part, as to the redactions sought by United, with respect to the following exhibits:

D4478	P094	P229	P394
P001	P150	P262	P395
P005	P154	P267	P421
P010	P220	P360	P483

All told, Plaintiffs’ records reflect that the parties have been able to successfully apply the Court’s prior rulings to 68 exhibits of the previously contested exhibits.

¹ MultiPlan represented to the Court, on more than one occasion, that it would accept United’s proposal with respect to these five identified exhibits: P034; P053; P096; P170A; and P178. *See, e.g.* 1/20/22 Hr’g Tr. at 9:2–4 (MultiPlan’s counsel, referring to these exhibits, representing that “we have indicated in our papers that we are willing to accept the redactions that were proposed by United with respect to those documents”). MultiPlan made this representation to Plaintiffs again after the Court’s rulings on January 20, stating in its Court-ordered January 31 disclosure (signed by counsel) that it “continues to accept and adopt the redactions proposed by United,” not just in United’s original motion to seal, but also in United’s January 31, “Log of Redactions, Discussion Draft for Meet and Confer,” and referred Plaintiffs to that document. It is in that document where United accepted the Court had denied its redactions on those exhibits. MultiPlan now reverses course and seeks to withdraw its representations to the Court and Plaintiffs. Plaintiffs’ position is that the Sealing Motions have already been denied on these exhibits.

REMAINING ISSUES TO BE DECIDED

Based on the exchanges between the parties and the filings submitted by MultiPlan (“MultiPlan’s Proposed Redactions”) and United (“United’s Status Report”) on February 7, Plaintiff understands the following exhibits to be in dispute:²

D4529 ²	P066	P236	P319	P423
D4531 ²	P071	P239	P320	P426
D4573 ²	P075	P244	P329	P440
D4627 ²	P089	P246	P344	P447
D5499	P092	P254	P354	P462
D5504	P127	P265	P359	P464
D5505	P147	P266	P361	P471
P003 ²	P148	P268	P367	P472
P008 ²	P149	P270	P368	P476
P016 ³	P159	P273	P378	P477
P025	P230	P288	P380	P509
P038 ²	P231 ²	P294	P400 ²	P1001

Although MultiPlan may argue that P034, P053, P096, P170A, and P178 must also be ruled on, Plaintiffs’ position is MultiPlan has already conceded its motion is denied with respect to those documents, following in line with United’s position.

RESPONSE TO MULTIPLAN’S PROPOSED REDACTIONS

MultiPlan’s Proposed Redactions attempt to create the impression that Plaintiffs mostly rejected MultiPlan’s revised proposals. MultiPlan’s Proposed Redactions at 3. This is untrue. Plaintiffs actually accepted nearly 50 pages containing a variety of redactions in the exhibits subject to. MultiPlan’s motion. Plaintiffs have opposed only some of MultiPlan’s requested *additional redactions*, beyond those that matched up with United’s. The reasons for Plaintiffs’ continued opposition are that MultiPlan’s proposed redactions fail to adhere to the guideposts of

² Plaintiffs do not agree with United’s categorical recitations of what Plaintiffs believe has been granted by the Court’s prior ruling. United’s Status Report at 6. For example, the Court did not speak to par or MNRP rates, or specific regions, etc. Nevertheless, Plaintiffs endeavored to work with United to reduce the dispute before the Court and applied similar principles to the redaction requested by United, though perhaps not quite as forcefully as set forth by United.

³ Indicates that these exhibits are subject to MultiPlan’s redaction requests.

the Court's oral ruling—MultiPlan seeks to seal high level information that was presented to the jury, information that is stale and has no relation to MultiPlan's current business, and information that MultiPlan allowed into the public domain without objection.

1) MultiPlan is walking back the representations it made to Plaintiffs and the Court.

Since MultiPlan filed its first motion to seal, MultiPlan has taken the position with respect to documents on its Exhibit C (P034; P053; P096; P170A; P178; P400/D4573; and D4529), it would "accept the redactions that were proposed by United." 1/20/22 Hr'g Tr. 9:3–4. MultiPlan followed that up by representing to Plaintiffs that it would accept the redactions as proposed by United in United's Court-ordered redaction log exchange on January 31:

In addition, as to those documents which were listed on Exhibit "C," MultiPlan continues to accept and adopt the redactions which were proposed by United in its Motion to Seal and are being documented in Defendants' Log of Redactions, Discussion Draft for Meet and Confer, and refers Plaintiffs' counsel to same. Accordingly, MultiPlan has not separately included duplicates of those

United's submission contained no redactions for P034, P053, P096, P170A, P178, and D4529.⁴

Now, however, MultiPlan seeks to walk that back, arguing that even though United has withdrawn its request, MultiPlan continues to assert redactions, citing in part "the impact on its client relationship with United." MultiPlan's Proposed Redactions at 3. United, however, has determined that whatever impact there may be, the Court has already decided these issues. MultiPlan has three times—including once after the Court's oral ruling—committed to follow United's lead on these documents. The Court should not allow MultiPlan to retreat from that now.

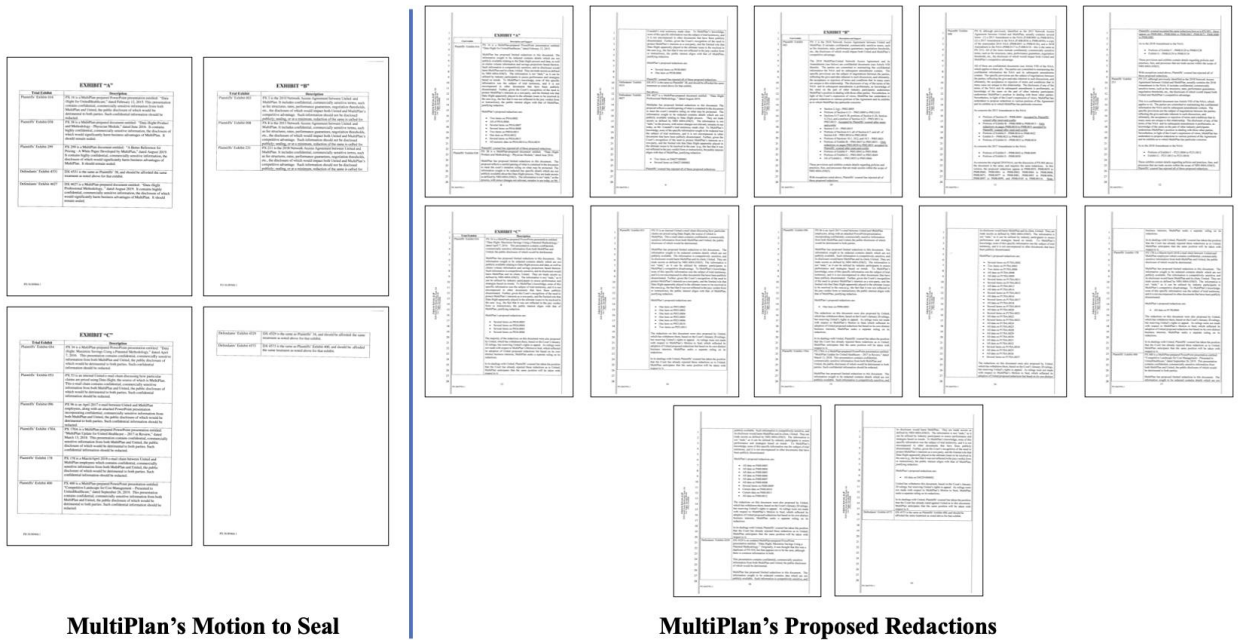
2) MultiPlan's additional exhibit detail is untimely and inappropriate.

In support of their original motion, MultiPlan submitted threadbare exhibits containing a "Description" column in which it described its bases for confidentiality⁵—in total, MultiPlan's

⁴ Despite having filed its motion to seal nearly two months ago, MultiPlan claims to have just now discovered that D4529 is not a duplicate of P034, "although there is common information in both." Ex. C to MultiPlan's Proposed Redactions.

⁵ MultiPlan also submitted declarations which, as previously argued, were conclusory and failed, among other things, to tie old information to present-day confidentiality concerns.

exhibits barely made it over 3 pages. Now, MultiPlan seeks to rectify that evidentiary failure, submitting nearly *four times as many pages* of justification for its sealing requests:



There is nothing that prevented MultiPlan from making a more fulsome explanation, if that's what it believed was necessary, in its original motion. The Court should reject this belated attempt to grab a second bite at the apple.

3) The redactions MultiPlan continues to seek are inappropriate.

As Plaintiffs can demonstrate at the hearing, MultiPlan's proposed redactions do not represent the least restrictive means necessary to protect MultiPlan's confidentiality interest. SRCR 3(5)–(6).

For example, in P038 (identical to D4531), a June 2016 document, MultiPlan asks the Court to redact a hypothetical example—down to the CPT code—despite acknowledging in the unsealed portion of the exhibit that the only alleged sensitive portion of the example (the conversion factor) is “updated at least semiannually.” In other words, this purported sensitive conversion factor, for which no formula to calculate is described in any of MultiPlan's proposed redactions, has changed *a dozen times* since MultiPlan originally drafted P038. The stale, outdated figure surely cannot cause a present-day harm to MultiPlan.

1 In P016, MultiPlan seeks to redact information regarding proposals they made to various
2 state legislatures—all of which is subject to freedom of information requests. In D4627, MultiPlan
3 asks the Court to redact public information related to Medicare. In P003, P008, and P231,
4 MultiPlan asks to redact the information related to its negotiation services, the fees United pays
5 to MultiPlan for Data iSight, and the use of billed charges as a basis for calculating certain fees—
6 all of which was discussed at length during trial. In P034, MultiPlan asks to redact an “Example”
7 of how it drastically reduces the allowed amount on the billed charge for a professional claim (the
8 core issue at trial). In P053⁶ and P096—exhibits United acknowledges were denied by the Court’s
9 ruling—MultiPlan seeks to redact internal United communications about United reimbursement
10 programs and United financials, which have nothing to do with MultiPlan.

11 The list goes on, but the bottom line is that MultiPlan’s additional redactions are improper.

12 **RESPONSE TO UNITED’S STATUS REPORT AND REVISED REDACTIONS**

13 United’s game continues to be delay. On February 7, United asked Plaintiffs to continue
14 this hearing. Now (despite having already presented its evidence and argument on January 12),
15 United requests the hearing be pushed off and converted to an evidentiary hearing. United also
16 warns the Court that, if it does not acquiesce to United’s demand, United may “require multiple
17 hearings” to seek individualized rulings on each redaction. United’s Status Report at 3.

18 United’s approach has been if given an inch, it will seek the whole mile⁷—even in the
19 Status Report, United admits that it has “highlighted a handful of instances” where it previously
20 told Plaintiffs those exhibits are withdrawn but is now adding redactions based on Plaintiffs’
21 efforts to work out issues on exhibits that are still at issue. In other words, no good deed goes
22 unpunished.

23 _____
24 ⁶ Redactions on P053.0010 and P053.0011 are for PHI, and Plaintiffs do not oppose.

25 ⁷ For instance, United takes the Court’s ruling that when an exhibit was used at trial, it “will not
26 be redacted in any way,” and omits both the question from United’s counsel and the end of the
27 Court’s answer to twist the ruling: “In context, it appears that this Court was concerned about
28 information on pages displayed to the jury that was specifically called to the jury’s attention.”
Compare 1/12/22 Hr’g Tr. at 93:9–13 *with* United’s Status Report at 11–12. *See also* 1/12/22 Hr’g
Tr. at 92:19–21 (“It will be denied with regard to anything that was publicly disclosed, which
includes anything used in opening or closing **or used at trial.**”) (Emphasis added).

United also downplays the proceedings thus far, referring to its own lengthy argument as only a “highlight” of “categorical themes” and seeking reconsideration of documents on which the Court already explicitly ruled. United had a full and fair opportunity, when it argued its motion to the Court in an hours-long hearing, to present any individualized redactions for review. In fact, United insisted upon a sealed courtroom so that it could do that in as much detail as it believed was necessary. Ultimately, the decision to present certain specific redactions to the Court or rely on categorical arguments was a tactical one, but not one that merits starting over. Like MultiPlan, United had its chance, lost, and all that remains is finalizing the contours of the Court’s ruling. This is not a window for United to reargue the already ruled on motion.

1) United’s “status report” is incredibly misleading.

United’s Status Report is filled with excerpts from the numerous documents it seeks to hide from public view, arguing that those documents should be redacted because the information it directs the Court to is not relevant to this case. *See, e.g.*, p. 19 (P288); p. 25 (P447); p. 28 (P471); p. 37 (D5505). But United has framed its entire argument in a misleading manner that suggests Plaintiffs have taken the position that the pages excerpted into United’s Status Report should be left unredacted. For each of those excerpts (P288.0042; P447.0010 & P447.0015; P471.0011; D5505.000178), however, Plaintiffs already confirmed to United (well before United filed its status report) that Plaintiffs considered the Court’s order to have *granted* those redactions. In other words, United attempts to paint Plaintiffs as overreaching where they are not, and asks the Court to grant additional, unspecified redactions by directing the Court to pages that are resolved.⁸

Elsewhere, United misrepresents Plaintiffs’ position. For example, with respect to P294, United states that “Plaintiffs have accepted the complete redaction of page P294.0002.” United’s Status Report at 20. This is untrue—Plaintiffs have never agreed to the complete redaction of that page (which contains virtually no information of any detail whatsoever). In other instances, United

⁸ United cannot credibly argue that it is using these as exemplars to compare to pages Plaintiffs have not agreed to. These are the *only pages* for these exhibits that United cites in its motion.

misses in the opposite direction. Plaintiffs have previously indicated they would accept all, and not just a portion, of United's redactions to P003.0030. United's Status Report at 30–31.

2) United asks the Court to apply its ruling inconsistently.

In numerous instances, United acknowledges the Court's ruling that anything shown to the jury shall not be redacted. *See, e.g., id.* at p. 14 (removing redaction to be "consistent with the Court's denials," because P089.0005 "was published to the jury"); p. 15 ("United has removed all proposed redactions to pages P236.0002 and P236.0011, which were shown to the jury at trial."); p. 15 (removing all redactions to pages of P266 that were shown to jury); p. 16–17 (same for P268); p. 18 (same for P273); *etc.* On other exhibits, however, United has overlooked that ruling.

For example, United asks the Court to make redactions to D5504. United's Status Report at 37. But D5504 is a single page document, that not only was shown to the jury but was introduced **by United over Plaintiffs' objection** and kept on the screen while it was discussed with Mr. Haben for five pages worth of testimony. *See* Jury Trial – Day 11 (11/12/21) Tr. at 195–199. This single page exhibit was thoroughly discussed with the jury and United has no basis to argue that it should be excepted from the Court's clear ruling.

3) United's improper request for reconsideration should be denied

The Court ruled explicitly on a number of exhibits at the hearing on January 12:

15	But it's going to be denied with regard to
16	reimbursement rates; allowed amounts; the summit for the
17	Western Region; Exhibits 329, 378, 380; the chart of summary
18	of claims in dispute; Plaintiff's 175, 236.

1/12/22 Hr'g Tr. at 92:15–18. United explicitly seeks reconsideration of the Court's ruling on P236, P329, P378, and P426 (the Western Region Summit),⁹ but makes no attempt to meet the higher standard for reconsideration. As the Court knows, for United to justify reconsideration, United must show this Court was "clearly erroneous" or that there is "substantially different

⁹ United told Plaintiffs it would be seeking reconsideration of the Court's ruling on P380, but P380 is not mentioned anywhere in United's Status Report, so Plaintiffs presume the Court's prior ruling on that exhibit stands unchallenged.

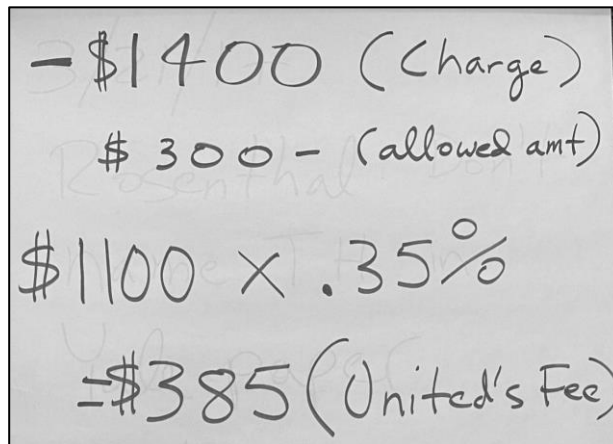
evidence” to introduce. *Masonry & Tile Contractors Ass’n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 O.2d 486, 489 (1997). United can do neither.

United points to no new evidence and does not point out any aspect of the Court’s ruling that was “clearly erroneous.” The Court has already ruled on these documents and United has provided no basis for reconsidering that ruling.

4) United’s requested redactions continue to be improper.

While it is not necessary to walk the Court through each and every example of United’s continued over-redaction, a few illustrative examples demonstrate the problems with the redactions Plaintiffs believe should be denied.

For example, in P066, United proposes redacting third-party research that compares the largest insurance companies to one another based on decades-old data. In P071, P075, P127, P147, P148, P149, P159, & P319, Plaintiffs have allowed that the Court granted nearly all the requested redactions, with the sole exception being the portion of the agreement that relates to United’s fees for its Shared Savings Program—a key issue discussed throughout trial, including on public demonstratives:


$$\begin{array}{l} -\$1400 \text{ (Charge)} \\ \$300 - \text{ (allowed amt)} \\ \$1100 \times .35\% \\ =\$385 \text{ (United's Fee)} \end{array}$$

See also, e.g., Jury Trial – Day 6 (11/2/21) Tr. at 142:22–146:7 (United witness testifying that United makes over a billion dollars a year from shared savings, typically 35% of the difference between billed charges and allowed amount); Jury Trial – Day 12 (11/15/21) Tr. at 110:16–22 (United witness testifying that shared savings fees are “typically in the 30 to 35 percent range”); *id.* at 188:13–189:15; 196:16–197:12 (UMR witness testifying that the greater the savings, the more money in fees UMR makes, and that UMR’s percentage may vary from 22 percent to 30

1 percent or higher). Despite this, United continues to ask the Court to hide Shared Savings
2 information from the public.

3 In P244, United seeks to redact customer names (which were openly discussed at trial) and
4 other figures about how United structures its out-of-network claim flow to generate revenue
5 (another key issue at trial). In P092, United seeks to redact a document from 2017 titled
6 “Emergency Department Transformation Initiative,” notwithstanding the fact that this was a case
7 about emergency room services. In P368, United asks to redact a “talking points” document from
8 2019 about out-of-network cost management programs—in other words, a document that provides
9 United employees with a script for what to tell customers and others about the specific programs
10 presented to the jury at trial. How can information designed to be shared also be confidential?

11 In P440, United asks to redact from a 2019 email chain the fact that two of its customers
12 in the West Region are the states of Arizona and Colorado, information that isn’t confidential
13 because it could be obtained from those state governments directly, using freedom of information
14 requests (if it is not already required to be publicly reported, like many states’ programs). In P464,
15 United asks to redact a comparison of Naviguard to OCM, a topic that was the subject of extensive
16 testimony with Mr. Haben, Ms. Paradise, and MultiPlan’s witness, Mr. Crandell. And in D4573,
17 a 2019 MultiPlan presentation, United asks to redact five-year-old estimates of what certain
18 MultiPlan implementations *might* do for United, in years that have already come and gone.

19 These are just examples, and they could be made for every document identified in United’s
20 Status Report. Plaintiffs have agreed the Court’s order granted hundreds of pages of redactions in
21 these documents already. None of these additional redactions are deserving of protection.

22 **5) It is not the Court’s job to find United’s least restrictive means.**

23 Finally, there are a number of exhibits where United does not even identify for the Court
24 what redactions it continues to seek (either by a list or submission of the proposed redaction itself).
25 For example, with respect to P426, United identifies only pages for which Plaintiffs have already
26 agreed their motion was granted by the Court’s prior ruling. In P320, United identifies no
27 redactions on any page at all in its most recent delivery of proposed redactions to Plaintiffs.
28

It is not the Court's burden to review United's exhibits page-by-page to identify information for redaction—this was United's burden in its original motion. If United failed to meet that burden (and Plaintiffs believe that it did), then the motion should be denied.

CONCLUSION

Plaintiffs have worked diligently to review United's proposals and make a good faith effort at acknowledging areas where the Court's ruling would allow redactions. This has resulted in hundreds of pages of redactions and likely thousands of individual redactions that will be granted under the Court's ruling. But at some point, enough is enough. United presented its case before this Court in a public trial and all these documents were admitted in that public trial. The public deserves access to the public's documents. United's and MultiPlan's requests for further redactions should be denied.

DATED this 9th day of February, 2022.

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CERTIFICATE OF SERVICE

I certify that on this 9th day of February, 2022, I caused a true and correct copy of the foregoing to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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RA000357

EXHIBIT 16

EXHIBIT 16

**NOTES FOR HEALTH CARE PROVIDERS' CORPORATE
REPRESENTATIVE DEPOSITION**

SUBJECT MATTER NO. 1, 10, 16, 17: The Allegations of the Amended Complaint

Without limitation, the factual allegations include:

- This is a rate-of-payment dispute;
- There is no express, written agreement between the Health Care Providers and Defendants;
- The Health Care Providers have an implied agreement with Defendants:
 - Defendants are aware that the Health Care Providers have provided and will provide emergency services to Members;
 - Defendants are aware that the Health Care Providers expected payment for the emergency services rendered;
 - The Health Care Providers submitted claims to Defendants for payment:
 - Defendants received the Health Care Providers' claims;
 - Defendants accepted the Health Care Providers' claims;
 - Defendants adjudicated/processed the Health Care Providers claims as submitted;
 - Defendants paid the Health Care Providers' claims, but at below acceptable and market rates for the out-of-network emergency services rendered.
 - Defendants's failure/refusal to pay market rates caused the Health Care Providers damages or otherwise unfairly enriched Defendants
 - The market rate for out-of-network emergency services in the relevant market:
 - There is a common industry understanding in managed care that absent an express contract, which includes the exchange of consideration, a health care provider expects to be paid its billed charges;
 - The Health Care Providers' historical experience with Defendants is consistent with this expectation, as Defendants have paid the Health Care Providers their full billed charges in the absence of an agreed-upon rates. Most often, Defendants have accessed rental networks, at 90% of charges, as an agreed-upon rate.
 - Defendants understand that absent negotiated consideration in exchange for a discount, an out-of-network provider expects to get paid billed charges, as long as the billed charges are reasonable. This is consistent with Defendants' stated position, and course of dealing with the Health Care Providers.
 - Defendants' stated positions and express policies, including on published websites, acknowledge that Defendants generally



adjudicate out-of-network emergency claims at the providers' usual and customary charge:

- Defendants identify terms such as “reasonable and customary amount”, “the usual, customary and reasonable amount”, and the “prevailing rate” as being defined by reference to available resources. For professional claims, like the disputed claims, Defendants identify that the resource used for payment of professional services is based on what other health care professionals in the relevant geographic areas or regions charge for their services;
 - Defendants specifically reference FairHealth when determining the “reasonable and customary” amount;
 - FairHealth database was created as result of a settlement entered by UnitedHealthcare resulting from an investigation of the manipulation of out-of-network reimbursement rates;
 - FairHealth was established to provide a neutral/objective database;
 - Defendants reference the 80th percentile of provider charges as the relevant metric for determining usual and customary charges.
 - FairHealth is recognized by other similar insurance companies as the appropriate reference for defining usual and customary charges.
- The Health Care Providers set and reference their billed charges to be in line with FairHealth standards.
 - Defendants' “shared savings” programs specifically refer to out-of-network providers and calculate savings as the difference between billed charges and allowable amounts.
 - The Health Care Providers' own employee claim experience with Defendants as their claims administrator confirms the expectation that out-of-network claims will be adjudicated at billed charges.
- The Health Care Providers sent Defendants correspondence demanding billed charges.
 - While billed charges are the expected amounts when out-of-network, the Health Care Providers may be willing to accept discounts from billed charges in exchange for consideration, even in out-of-network settings, including:
 - Rental networks.
 - Negotiated out-of-network rate agreements.
 - Single case agreements.

NOTES FOR HEALTH CARE PROVIDERS' CORPORATE REPRESENTATIVE DEPOSITION

- The consideration exchanged for a discount for out-of-network claims, includes, for example:
 - Prompt payment.
 - Rate certainty.
 - Avoid transactional cost of negotiating settlements.
 - Avoidance of dispute/expense of litigation.
 - Hospital/client satisfaction.
 - Member satisfaction.
- The Health Care Providers do not accept unilaterally low paying out-of-network claims:
 - The Health Care Providers are constantly evaluating:
 - Claims volume;
 - Claims payments; and
 - Potential disputes, and the costs/benefits thereof.
- Specific payment experience for the Health Care Providers:
 - Team Physicians of Nevada (Mandavia) – in Fallon NV
 - Only hospital within 50 miles of next hospital
 - Historically, TPN was contracted with commercial insurance plans that covered 67% of the non-Defendants claims.
 - Contracted rates:
 - Blue Cross/Anthem
 - Cigna, on a national level
 - Hometown Health (small healthsystem/healthplan contract)
 - 8 rental network agreements, 7 of which are at 90% of billed charges, and 1 of which is at 75% of billed charges.
 - United Defendants' payments
 - Pre-dispute period (1/1/15-6/30/17)
 - 97% of claims for United pay at 90-100% of billed charges
 - 938 UHC claims
 - 99% of claims paid between 90-100%
 - 62 claims at 100% of billed charges
 - 12 below 90% of billed charges
 - 15 UMR claims
 - All between 90-100% of billed charges
 - 2 claims at 100% of billed charges
 - Generally, TPN experienced favorable reimbursement for out of network
 - Rental network rates at 75-90% of billed charges

NOTES FOR HEALTH CARE PROVIDERS' CORPORATE REPRESENTATIVE DEPOSITION

- Overall OON (rental/OON) – 66% of billed charges
- TPN's claims experience with Defendants in the Dispute Period:
 - 2018:
 - 71% of claims paid between 75-100% of billed charges
 - 29% of claims paid below 75% of billed charges
 - 2019:
 - 33% of claims paid between 75-100% of billed charges
 - 67% of claims paid below 75% of billed charges
 - 2020:
 - 9% of claims paid between 75-100% of billed charges
 - 91% of claims paid below 75% of billed charges
- Ruby Crest – in Elko, NV
 - Only hospital within 50 miles of next hospital
 - Historically, RC was contracted with commercial insurance plans that covered 75% of the non-Defendants claims.
 - Contracted rates:
 - Blue Cross/Anthem: 92% of billed charges
 - Cigna – 102% of billed charges
 - Hometown Health (small healthsystem/healthplan contract)
 - 8 rental network agreements, 7 of which are at 90% of billed charges, and 1 of which is at 75% of billed charges.
 - Lower billed charges historically, which have not increased materially over time
 - United Defendants' payments
 - Pre-dispute period (1/1/15-6/30/17)
 - 99% of claims for United pay at 90-100% of billed charges
 - 1,160 UHC claims
 - 99% of claims paid between 90-100%
 - 58 claims at 100% of billed charges
 - 20 below 90% billed charges

- 70 UMR claims
 - All between 90-100% of billed charges
 - several claims at 100% of billed charges
- Generally see favorable reimbursement for OON
 - 8 rental network agreements, 7 of which are at 90% of billed charges, and 1 of which is at 75% of billed charges.
 - Overall OON (rental/OON) – 84% of billed charges
- RC's claims experience with Defendants in the dispute period:
 - 2018:
 - 88% of claims paid between 75-100% of billed charges
 - 12% of claims paid less than 75% of billed charges
 - 2019:
 - 45% of claims paid between 75-100% of billed charges
 - 55% of claims paid less than 75% of billed charges
 - 2020
 - 34% of claims paid between 75-100% of billed charges
 - 66% of claims paid less than 75% of billed charges

- Racketeering allegations:
 - Defendants conspired with MultiPlan to commit crimes and created an enterprise to commit crimes
 - Defendants conspired to artificially reduce out of network payments and take advantage of the Health Care Providers legal obligations under EMTALA and state law to provide emergency services.
 - Defendants and MultiPlan collectively share in “savings” and fees generated.
 - These “shared savings” programs have historically been based upon an agreed upon rate with the provider. Defendants have undermined the purpose of the shared savings program by attempting to generate a “savings” in the absence of any such agreement.
 - Savings are calculated as the difference between billed charges and the artificially determined allowed amount
 - Defendants charge their clients a fee as a percentage of the “savings, and share in those savings
 - The scheme profits when the difference between billed charges and the allowed amounts are greater
 - The lower the allowable amount, the lower the payment to the Health Care Providers; yet, the higher the “savings”, the higher the fees paid to United and MultiPlan
 - Available information indicates that the Defendants charge their clients a “shared savings fee” of between 30-35% of “savings”
 - The scheme sets the allowable amounts at artificially manufactured levels through a “tool” called Data iSight.
 - Defendants, in conspiracy with MultiPlan, set “benchmarks” which cannot be exceeded.
 - We understand that Defendants initially set the benchmark at 350% of Medicare Allowable.
 - Defendants later told us the program was so successful, that Defendants reduced the benchmark to 250% of Medicare Allowable.
 - Defendants implemented this reduced “benchmark” against the Health Care Providers and all affiliated emergency health care providers nationally.
 - How can what is advertised as an objective database render clearly subjective and arbitrary outcomes?
 - These artificially low outcomes can generate more fees to Defendants than actual payments to the Health Care Providers, who provided emergency care to the members.
 - Neither Defendants nor MultiPlan could provide a credible explanation for how DIS could generate such results.
 - DIS would not identify their database, even though DIS claims to be transparent.

NOTES FOR HEALTH CARE PROVIDERS' CORPORATE REPRESENTATIVE DEPOSITION

- DIS would not disclose their methodology
 - DIS said that DIS produced a fair and reasonable pricing outcome, but did not claim that it produced a usual and customary result
- DIS claims pay at different levels for same service, same location, same date range
 - DIS did not provide any explanation for the inconsistency
 - DIS did advise that Defendants may select multiple of Medicare for payment
- We attempted to inquire about the DIS methodology
 - When we challenged the methodology – DIS provided no response
 - When we challenged the rates – DIS negotiated the rates
 - For some period, DIS agreed to pay 80-90% of billed charges, when challenged.
- Ultimately, DIS told us that Defendants directed MultiPlan to cease negotiations with the Health Care Providers and its affiliated emergency health care providers
- For TPN, we are aware of at least 330 instances where Defendants utilized DIS to artificially and unilaterally select an allowed amount.
- Our attorneys are still reviewing the documents from Defendants to further describe the enterprise, many of which are marked as attorneys' eyes only.

SUBJECT MATTER NO. 2: Discovery Responses

FES Objections & Answers to First Set of Interrogatories
FES Response to First Set of Request for Admissions
Ruby Crest's Answers to Defendants' First Set of Interrogatories
Team Physicians' Answers to Defendants' First Set of Interrogatories
Plaintiffs' Answers to Defendants' Second Set of Interrogatories

SUBJECT MATTER NO. 3, 4, 5, 11: The Health Care Providers' Charges

The Health Care Providers have established chargemasters, which are a price list for the medical services provided. The Health Care Providers render bills to all patients at the price set forth in the chargemasters.

The Health Care Providers initially set their charges many years ago. The Health Care Providers generally set their billed charges by reference to the FairHealth database. The Health Care Providers review their billed charges in comparison to providers other affiliated groups of similar services in the geographic area where the Health Care Providers provide emergency services. As a check against the data in the Fair Health database, the Health Care Providers may also reference the Medicare fee schedule for the medical service, particularly for low volume, non-evaluation and management codes. And, to the extent available, the Health Care Providers may reference the billed charges of unaffiliated providers of similar medical services.

The Health Care Providers review their charges periodically. In general, the Health Care Providers will adjust the charges once annually to account for inflation. These adjustments have historically resulted in increases of approximately 5% per year.

The Health Care Providers's billed charges are the "usual and customary" charges, and represent fair value, as explained in response to Subject Matter. The Health Care Providers' billed charges are actually lower than "usual and customary" charges, when compared to the 80th percentile of the Fair Health database, for similar services in the same geographic area, which is the industry adopted standard, including by Defendants.

SUBJECT MATTER NO. 8, 9 and 12: Relationships with other payers/rental networks

Both TPN and RC have rental network agreements. With one exception, the rental network agreements have a reimbursement rate of 90% of billed charges. The one exception has a reimbursement rate of 75% of billed charges.

SUBJECT MATTER NO. 13: Data Produced

FESM 00004: Attachment to FESM 00001

FESM 00008: Attachment to FESM 00005

FESM 00009-11: Allowed in Full, Wrap, and Disputed Claims, as updated on 7/23/2019

FESM 000342-44: Allowed in Full, Wrap and Disputed Claims, as updated 5/22/2020

FESM 0003525-27: Allowed in Full, Wrap and Disputed Claims, as updated 02/03/2021

FESM 00020909-11: Allowed in Full, Wrap, and Disputed Claims, as updated 04/30/2021

SUBJECT MATTER NO. 14: Participation Agreement with United

TPN: None

Ruby Crest: None

SUBJECT MATTER NO. 15: Negotiations with United

No local negotiations in dispute period.

SUBJECT MATTER NO. 22: Health Plans Offered and "rates" for emergency services

For the Health Care Providers, the health plan was administered by Defendants through December 31, 2019. For emergency services, the expectation was that the emergency provider would be paid an agreed upon rate, and if no agreement was reached and/or the emergency provider was out of network, then the rate of payment would be the emergency provider's billed charges.

For dates on or after January 1, 2020, the expectation was that the emergency provider would be paid an agreed upon rate based on a wrap/rental network agreement, and in the absence of a wrap/rental network agreement, would pay at the 80th percentile of Fair Health.

SUBJECT MATTER NO. 23:

Your relationship with CollectRx and HCFS Health Financial Services, LLC during the Relevant Period, including, but not limited to, Your Agreements with them and any services they provided to You.

CollectRX is an outside vendor, retained to assist with pre-payment negotiations for out-of-network claims. The relationship later expanded to include post-payment appeal activities for out-of-network claims.

HCFS has a billing and collections agreement for each of the Health Care Providers.

NOTES FOR HEALTH CARE PROVIDERS' CORPORATE REPRESENTATIVE DEPOSITION

SUBJECT MATTER NO. 29/30: Internal communications/individuals and departments involved in discussing reimbursement rates applicable to the At-Issue Claims.

Individuals would include:

Kent Bristow;

Vice President for managed care contracting for the NV region (Mark Kline and David Greenberg) and their team members;

Revenue analytics (Jason Heuberger)

SUBJECT MATTER NO. 31: Communications between You, on the one hand, and National Care Network and/or Data iSight, on the other hand, relating to any of the At-Issue Claims.

There are multiple communications between the Health Care Providers and NCN and/or Data iSight relating to the At-Issue Claims. These range from correspondence and or portal reimbursement reports from NCN and/or Data iSight, to communications by third parties, such as CollectRX to Data iSight, to phone calls by Kent Bristow, David Greenberg and Lisa Zima to Data iSight to attempt to understand, question and challenge the Data iSight methodology. Some of the communications are documented in the Amended Complaint.

SUBJECT MATTER NO. 32:

Prior instances in the Relevant Period where You accepted less than what You believed was the "usual and customary" charge or "reasonable" charge from Defendants as compensation for medical services provided to Defendants' Plan Members.

TPN: From 1/1/16 through 6/30/17:

Out of 695 claims, 32 claims were paid at rates below 75-100% of billed charges

RC: From 1/1/16 through 6/30/17:

Out of 849 claims, 42 claims were paid at rates below 75-100% of billed charges

SUBJECT MATTER NO. 33:

Any and all documents that support the factual basis for the allegations set forth in paragraphs 136-141 of the Complaint.

Paragraph 136: FESM001391; FESM001489

Paragraph 138: FESM001485; FESM001455.

SUBJECT MATTER NO. 34:

NOTES FOR HEALTH CARE PROVIDERS' CORPORATE REPRESENTATIVE DEPOSITION

The identities (including a first and last name), employers and contact information for the individuals referenced in paragraphs 136-141 of the Complaint who are characterized as being representatives of Plaintiffs or representatives of Emergency Group of Arizona Professional Corporation.

David S. Greenberg: discussion of claims in ¶¶136-138.

Kent Bristow: discussion of claims in ¶¶139-141

NOTES FOR HEALTH CARE PROVIDERS' CORPORATE REPRESENTATIVE DEPOSITION

SUBJECT MATTER NO. 35:

The Health Care Providers undertook the following steps to preserve and locate responsive documents:

Litigation hold letters were sent to the following individuals:

Kent Bristow
Eddie Ocasio
David Greenberg
Joe Carman
Paula Dearolf
Rena Harris
Jennifer Shrader
Kristopher Smith

Custodian surveys were sent to the following people:

Kent Bristow
Paula Dearolf
Heather Kibler
Jennifer Shrader
Eddie Ocasio
Joe Carman
Kristopher Smith
Tracy Datt
Taylana Mincy
Marty Ambos
Brent Davis
Leif Murphy

Outlook documents were searched for the following custodians:

Kent Bristow
Paula Dearolf
Heather Kibler
Jennifer Schrader
Eddie Ocasio
Joe Carman
Kristopher Smith
Taylana Mincy
Rena Harris
Mark Kline

NOTES FOR HEALTH CARE PROVIDERS' CORPORATE REPRESENTATIVE DEPOSITION

David Greenberg
Leif Murphy
John Henner
Miles Snowden
Kevin Klauer

Custodians who indicated there were responsive documents outside of emails were asked to identify the additional files and additional ESI searches were run:

Kent Bristow.

Heather Kibler.

Eddie Ocasio.

Taylana Mincy.

Leif Murphy.

Below is the search string used on the majority of Outlook email boxes listed above:

(((To Contains @uhc Or From Contains @uhc Or CC Contains @uhc And FullText Contains (Nevada Or NV Or Fremont Or FES Or Sierra Or Oxford Or "Health Plan of Nevada" Or HPN Or SHP)) Or (FullText Con (Nevada Or NV Or "national rate") And FullText Con (United Or UHC Or Sierra Or HPN Or SHP Or Oxford Or "Health Plan of Nevada")) Or (FullText Con ("participating provider" Or "Nevada negotiations") And FullText Con (Fremont Or FES Or Oxford Or "Health Plan of Nevada" Or Sierra Or HPN Or SHP)) Or (FullText Con (chargemaster And (Nevada Or NV Or Fremont Or "Ruby Crest" Or "Team Physicians"))) Or (FullText Con (CollectRX And (Nevada Or NV Or Fremont Or "Ruby Crest" Or "Team Physicians"))) Or (FullText Con (underpayment Or underpaid) And FullText Con (Nevada Or NV Or Fremont Or FES Or Sierra Or Oxford Or "Health Plan of Nevada" Or HPN Or SHP) And FullText Con (United Or UHC Or Sierra Or HPN Or SHP Or Oxford Or "Health Plan of Nevada")) Or (FullText Con ("amount paid" Or reimbursement Or "market data") And FullText Con (Nevada Or NV Or Fremont Or FES Or Sierra Or Oxford Or "Health Plan of Nevada" Or HPN Or SHP) And FullText Con (United Or UHC Or Sierra Or HPN Or SHP Or Oxford Or "Health Plan of Nevada"))) And (SentDate GreaterThanEqualTo 7/1/2017 And SentDate LessThanEqualTo 11/1/2020)

NOTES FOR HEALTH CARE PROVIDERS' CORPORATE REPRESENTATIVE DEPOSITION

The above search string was slightly expanded for the searches on the Outlook for Leif Murphy, John Henner, Miles Snowden and Taylana Murphy after noticing that there may be additional acronyms used internally that were not previously captured:

(((To Contains @uhc Or From Contains @uhc Or CC Contains @uhc And FullText Contains (Nevada Or NV Or Fremont Or FES Or Sierra Or Oxford Or "Health Plan of Nevada" Or HPN Or SHP Or RCEM Or TPNVM Or "Ruby Crest" Or "Team Physicians")) Or (FullText Con (Nevada Or NV Or "national rate") And FullText Con (United Or UHC Or UHG Or Sierra Or HPN Or SHP Or Oxford Or "Health Plan of Nevada")) Or (FullText Con ("participating provider" Or "Nevada negotiations") And FullText Con (Fremont Or FES Or Oxford Or "Health Plan of Nevada" Or Sierra Or HPN Or SHP Or RCEM Or TPNVM Or "Ruby Crest" Or "Team Physicians")) Or (FullText Con (chargemaster And (Nevada Or NV Or Fremont Or "Ruby Crest" Or "Team Physicians" Or RCEM Or TPNVM))) Or (FullText Con (CollectRX And (Nevada Or NV Or Fremont Or "Ruby Crest" Or "Team Physicians" Or RCEM Or TPNVM))) Or (FullText Con (underpayment Or underpaid) And FullText Con (Nevada Or NV Or Fremont Or FES Or RCEM Or TPNVM Or "Ruby Crest" Or "Team Physicians" Or Sierra Or Oxford Or "Health Plan of Nevada" Or HPN Or SHP) And FullText Con (United Or UHC Or UHG Or Sierra Or HPN Or SHP Or Oxford Or "Health Plan of Nevada")) Or (FullText Con ("amount paid" Or reimbursement Or "market data") And FullText Con (Nevada Or NV Or Fremont Or FES Or RCEM Or TPNVM Or "Ruby Crest" Or "Team Physicians" Or Sierra Or Oxford Or "Health Plan of Nevada" Or HPN Or SHP) And FullText Con (United Or UHC Or UHG Or Sierra Or HPN Or SHP Or Oxford Or "Health Plan of Nevada"))) And (SentDate GreaterThanEqualTo 7/1/2017 And SentDate LessThanEqualTo 11/1/2020)

Finally, the following search string was run on JJ Shrader, Kent Bristow and Leif Murphy's inbox:

FullText Con (John*Haben@ Or Dan*Rosenthal@ Or Greg*Dosedel@ Or Ang*Nierman@ Or Dan*Schumacher@ Or Chris*Parrillo@) And (SentDate GreaterThanEqualTo 7/1/2017 And SentDate LessThanEqualTo 11/1/2020)

cherylwhite@omm.com

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5177 - 000016