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A P P E A R A N C E S

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**PLAINTIFFS'**

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**DEFENDANTS'**

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2145	Blue Cross of Idaho Business Plan and Budget ... for Years 2012-2014, for Finance Committee Review (Def. Dep. Exh. 194; BCI372350-419)	<b>454</b>
2148	Email from L. Rowell to S. Proctor re SLHS ..... Acquisitions, attaching Updated St_Lukes_Acquisitions as of Mar 27 2012.xlsx (Def. Dep. Exh. 197; BCI216968-69)	<b>455</b>
2235	SAHS Idaho Statesman Questions (Def. Dep. Exh. . 358; ALPH00016033-35)	<b>455</b>
2583	St. Luke's Health System 2010 Contract ..... Negotiation History (BCI365155-56)	<b>455</b>
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2589	8/30/12 Memo from Zelda Geyer-Sylvia to ..... Independent Public Directors Committee re Select Health/St. Luke's Health System Issue (BCI222252-53)	<b>456</b>
2632	2/3/10 Risk Universe Definitions (BCI372420-47).	<b>456</b>
2634	Summary of Proposals for 2013 Contract ..... (BCI368088)	<b>456</b>

\* \* \* \* \*

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1 PROCEEDINGS  
 2 September 25, 2013  
 3 \*\*\*\*\*COURTROOM OPEN TO THE PUBLIC\*\*\*\*\*  
 4 THE CLERK: The court will now hear Civil Case  
 5 12-560-S-BLW, Saint Alphonsus Medical Center, Nampa, Inc.,  
 6 versus St. Luke's Health System for Day 3 of a bench trial.  
 7 THE COURT: Good morning, Counsel.  
 8 MR. GREENE: Good morning, Your Honor.  
 9 THE COURT: As a housekeeping matter, when we play  
 10 the deposition, we need to publish that as part of the  
 11 record.  
 12 So at this time, I'm assuming, Ms. Duke, you would  
 13 request to publish Mr. Clement's deposition?  
 14 MS. DUKE: Yes, Your Honor.  
 15 THE COURT: I will direct Ms. Gearhart to do so  
 16 since we are playing it through a video. You'll provide the  
 17 original, however, the original deposition to Ms. Gearhart?  
 18 MS. DUKE: Correct. We'll have the original, and  
 19 then we'll also have a transcript that has all the excerpts  
 20 so that you can directly go to those, as well.  
 21 THE COURT: All right. Including the objections?  
 22 MS. DUKE: Correct.  
 23 THE COURT: All right.  
 24 MS. DUKE: That are written in. And then the AEO  
 25 designations, as well.

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1 MR. GREENE: A moment, Your Honor.  
 2 No objection, Your Honor.  
 3 THE COURT: 2148 will be admitted.  
 4 (Defendants' Exhibit No. 2148 admitted.)  
 5 MR. STEIN: 2235.  
 6 MR. GREENE: No objection, Your Honor.  
 7 THE COURT: 2235 will be admitted.  
 8 (Defendants' Exhibit No. 2235 admitted.)  
 9 MR. STEIN: 2583.  
 10 MR. GREENE: No objection, Your Honor.  
 11 THE COURT: Was it -"83"?  
 12 MR. STEIN: Yes, Your Honor.  
 13 THE COURT: I must have missed that in my notes,  
 14 but I do recall it being discussed, so 2583 will be  
 15 admitted.  
 16 (Defendants' Exhibit No. 2583 admitted.)  
 17 MR. STEIN: 2584.  
 18 THE COURT: And -85?  
 19 MR. STEIN: Yes.  
 20 THE COURT: Any objection to either?  
 21 MR. GREENE: No objection.  
 22 THE COURT: 2584 and -85 will be admitted.  
 23 (Defendants' Exhibit Nos. 2584 and 2585 admitted.)  
 24 MR. STEIN: And then 2587, -88, and -89.  
 25 THE COURT: Any objection?

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1 THE COURT: Very good. All right. I think, then,  
 2 we'll go ahead, and as soon as you provide that, the  
 3 original, I'll direct Ms. Gearhart to publish the deposition  
 4 for the record.  
 5 MS. DUKE: Thank you, Your Honor.  
 6 THE COURT: I think we'll just go ahead and  
 7 proceed with the playing. As I understand, this is open to  
 8 the public; however, there may be portions of depositions  
 9 played today where we will need to turn off the sound and  
 10 the projector; correct?  
 11 MS. DUKE: Correct.  
 12 MR. STEIN: Your Honor, as our one other  
 13 housekeeping matter, we would like to move into evidence the  
 14 exhibits from Mr. Crouch's testimony yesterday. I  
 15 apologize.  
 16 THE COURT: Thank you. Give me one moment to get  
 17 to that. All right. Could you indicate the numbers?  
 18 MR. STEIN: 2145.  
 19 THE COURT: Okay. Appears to be no objection?  
 20 MR. GREENE: No objections, Your Honor.  
 21 THE COURT: That will be admitted.  
 22 (Defendants' Exhibit No. 2145 admitted.)  
 23 THE COURT: Likewise 2148.  
 24 MR. STEIN: Correct.  
 25 THE COURT: Any objection, Mr. Greene?

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1 MR. GREENE: No objection, Your Honor.  
 2 THE COURT: All right. 2587, -88, and -89 will be  
 3 admitted.  
 4 (Defendants' Exhibit Nos. 2587, 2588, and 2589  
 5 admitted.)  
 6 MR. STEIN: 2632.  
 7 THE COURT: Any objection?  
 8 Mr. Stein, could you remind me what that was? That was  
 9 not on the exhibit list.  
 10 MR. STEIN: This was a -- this was a document on a  
 11 risk-universe definitions.  
 12 THE COURT: All right.  
 13 Any objection?  
 14 MR. GREENE: No objection, Your Honor.  
 15 THE COURT: 2632 will be admitted.  
 16 (Defendants' Exhibit No. 2632 admitted.)  
 17 MR. STEIN: And 2634 is the last exhibit.  
 18 THE COURT: Any objection?  
 19 MR. GREENE: No objection, Your Honor.  
 20 THE COURT: Those exhibits all will be admitted.  
 21 (Defendants' Exhibit No. 2634 admitted.)  
 22 THE COURT: Now I think we're ready to resume.  
 23 MS. DUKE: Do you want me to start one click back  
 24 or just start right where we left off?  
 25 THE COURT: Why don't you back up a couple of

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1 minutes, if you would, just so I can put that back into  
 2 context.  
 3 (Testimony of Scott Clement via video deposition  
 4 resumed.)  
 5 THE COURT: Counsel, just a moment. We had agreed  
 6 before we are going to waive the reporting; correct?  
 7 MS. DUKE: Correct.  
 8 (Video deposition of Scott Clement resumed.)  
 9 MS. DUKE: Your Honor, this is an AEO document, so  
 10 maybe we can just flip to your screen.  
 11 THE COURT: The problem, though, is I can't see  
 12 the entire text with the screen.  
 13 MS. DUKE: Correct.  
 14 THE COURT: Is there a way we could -- if what you  
 15 want me to do is just read, or are we going to be able to  
 16 play it? Because I don't know how much the AEO --  
 17 MS. DUKE: The transcript has not been designated  
 18 AEO, just the document itself.  
 19 THE COURT: Is that Exhibit 1997?  
 20 MS. DUKE: 1997.  
 21 (Video deposition of Scott Clement resumed.)  
 22 MS. DUKE: Your Honor, we can flip back on to the  
 23 main screen now.  
 24 THE COURT: I'm sorry?  
 25 MS. DUKE: We can flip back on to the main screen.

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1 directions from there.  
 2 LINDA LEE DUER,  
 3 having been first duly sworn to tell the whole truth,  
 4 testified as follows:  
 5 THE CLERK: Please state your complete name and  
 6 spell your name for the record.  
 7 THE WITNESS: My name is Linda Lee Duer, L-I-N-D-A  
 8 L-E-E D-U-E-R.  
 9 THE COURT: You may inquire.  
 10 MR. WILSON: Thank you, Your Honor.  
 11 DIRECT EXAMINATION  
 12 BY MR. WILSON:  
 13 Q. Good morning, Ms. Duer. What do you do for a  
 14 living?  
 15 A. I'm the executive director of Idaho Physicians  
 16 Network.  
 17 Q. And is Idaho Physicians Network commonly referred  
 18 to as "IPN"?  
 19 A. It is.  
 20 Q. You said -- you mentioned you're the executive  
 21 director at IPN?  
 22 A. Correct.  
 23 Q. How long have you been doing that?  
 24 A. Since April of 2000, about 13 years.  
 25 Q. Generally speaking, what is IPN?

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1 (Video deposition of Scott Clement resumed.)  
 2 MS. DUKE: That's the conclusion, Your Honor.  
 3 THE COURT: All right. The next witness will also be  
 4 by video?  
 5 MR. WILSON: No, Your Honor. Good morning.  
 6 Eric Wilson on behalf of the State of Idaho. I don't think  
 7 I've ever formally introduced myself to you.  
 8 THE COURT: Yes. Thank you.  
 9 MR. WILSON: At this point the plaintiffs call  
 10 Linda Duer, who is a live witness.  
 11 THE COURT: Ms. Duer, if you'll summon her.  
 12 MR. WILSON: Your Honor, Ms. Duer represents a  
 13 payor, IPN, and she is in exactly the same situation as  
 14 Mr. Crouch was, and so we would respectfully request that  
 15 this portion of the trial be handled the exact same way as  
 16 Mr. Crouch's testimony was.  
 17 THE COURT: I assume counsel is all in agreement?  
 18 MR. JULIAN: No objection.  
 19 THE COURT: All right. Then I will have to clear  
 20 the courtroom. We will direct anyone who has not been  
 21 identified that they are allowed to stay in the courtroom,  
 22 but will need to leave during Ms. Duer's testimony.  
 23 \*\*\*\*\*COURTROOM CLOSED TO THE PUBLIC\*\*\*\*\*  
 24 THE COURT: Ms. Duer, please step before the  
 25 clerk, be sworn as a witness, and then follow Ms. Gearhart's

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1 **A. IPN was originally started as an independent**  
 2 **practice association made up of physicians in the Treasure**  
 3 **Valley. They have since formed what is called a "network"**  
 4 **because we have grown to be statewide, and they now lease**  
 5 **their statewide network to payors.**  
 6 **Q.** So how is IPN the same and how is it different  
 7 from a company, say, like Blue Cross of Idaho?  
 8 **A. IPN brings different payors together with**  
 9 **physicians, hospitals, and ancillary providers. Blue Cross**  
 10 **of Idaho is an insurance company and contracts directly with**  
 11 **hospitals or physicians or ancillary providers for their own**  
 12 **network, where I lease -- I am just the opposite. I lease**  
 13 **my network, what I have developed, to all kinds of different**  
 14 **payors.**  
 15 **Q.** How big is that network of providers that you have  
 16 in Idaho?  
 17 **A. Provider-wise, I have about 13,000.**  
 18 **Q.** What sorts of payors does IPN serve?  
 19 **A. We serve national payors, such as Aetna, Cigna,**  
 20 **United. We serve regional payors, such as PacificSource**  
 21 **Health Plans. We serve third-party administrators, such as**  
 22 **AmeriBen, CBSA, Meritain. And then we also lease our**  
 23 **network to self-funded employers, and we let them choose**  
 24 **between having a PPO product, having an HMO product, or**  
 25 **having a point-of-service product.**

1 Q. When you pool all of those together, approximately  
2 how many members are served by those various plans would you  
3 say?

4 A. We have approximately 236,000 lives.

5 Q. In terms of number of covered lives, how does that  
6 compare to other third-party payors in the state of Idaho?

7 A. Could you do a clarification on "third party."

8 Q. Sure. I'm just trying to get a sense of how big  
9 IPN's service is compared to, say, Blue Cross of Idaho or  
10 other payors here in the state.

11 A. The data that we have done in our analysis is we  
12 are second in the market. The first would be Blue Cross of  
13 Idaho.

14 Q. And you mentioned that you also serve self-funded  
15 employers; is that correct?

16 A. Correct.

17 Q. When these employers come to IPN, how is it that  
18 they let you know what they want in a network?

19 A. An employer will sometimes contact us through a  
20 broker or directly, and they will often submit what's called  
21 a "request for information" or a "request for proposal."

22 Q. An RFP?

23 A. Correct.

24 Q. You say "often." Just ballpark, how many of these  
25 do you get in a given month from an employer?

1 A. On an average we can get anywhere from three to  
2 five, maybe six.

3 Q. In these RFPs, how important is the composition of  
4 a provider network to the employer?

5 A. In Idaho, that is probably the first question they  
6 want to know, is: Is my provider in the network? If I  
7 don't have the provider, especially key providers, then I  
8 usually do not -- I'm not chosen as the network.

9 Q. What about location? Is that one of the factors  
10 that employers are considering when they are choosing a  
11 network, location of providers?

12 A. Yes.

13 Q. Why is that the case?

14 A. Because the employer wants to make their employee  
15 happy, and they want -- the employees want to have their  
16 care close to either where they live, for the most part, or  
17 sometimes where they work. But they want to have either,  
18 especially primary care or urgent care, close to them. So  
19 an example would be like Paul's Markets. They would like to  
20 do narrower networks, but because they have people in -- all  
21 over Idaho, basically, that they have to -- they want as  
22 large a network as possible.

23 Q. You said that the location of the providers is  
24 especially important for primary care physicians. Why is  
25 that?

1 A. Because people don't want to drive forever to go  
2 to a doctor when they're sick. They want to be able to get  
3 to a doctor fairly quickly.

4 Q. Wouldn't the same be true of a specialist?

5 A. Well, they don't see specialists, normally, on a  
6 regular basis as they would -- so if they took their  
7 children -- you know, so the school calls, says your kid is  
8 sick, mom wants to take them -- pick them up at the school  
9 and get them to the physician or an urgent care.

10 Q. How is it that IPN transmits information to the  
11 employer regarding locations of the providers in your  
12 network?

13 A. Could you repeat that?

14 Q. Sure. How is it that when employers, in their  
15 RFPs, say to IPN, "Please let me know what providers are in  
16 your network and where they are," how is it that IPN will  
17 give that information to the employer?

18 A. We usually get it through what's -- they asked us  
19 to do what's called a "GeoAccess match." And under the  
20 GeoAccess match, they will give us all of the providers whom  
21 the members have seen over a period of time, and then we do  
22 a match based on geographic location and who that member has  
23 seen.

24 Q. Let's focus on one geographic area in particular,  
25 which is Nampa. In your capacity as executive director of

1 IPN, have you marketed networks of physicians to self-funded  
2 employers in Nampa?

3 A. Yes.

4 Q. And did those networks include primary care  
5 physicians in Nampa?

6 A. Absolutely.

7 Q. Is Saltzer Medical Group currently part of the IPN  
8 network?

9 A. Saltzer Medical Group is part of the IPN network  
10 under the St. Luke's Health System.

11 Q. Since the acquisition?

12 A. Correct.

13 Q. How long, approximately, have the Saltzer doctors  
14 been a part of the IPN network?

15 A. For as long as I can remember. Over ten years.

16 Q. Could you successfully market a network to  
17 self-funded employers in Nampa that did not include Nampa  
18 primary care physicians?

19 A. No.

20 Q. Why not?

21 A. Because employers, again, want to have primary  
22 care physicians where their employees go, and even though  
23 they may drive to Boise for, say, a surgeon, to have a  
24 surgery, they do not want to leave Nampa. They want to stay  
25 where their home is and where a lot of them work, like the

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1 school district; people want to be close.  
 2 Q. Could you successfully market a network to  
 3 self-funded employers in Nampa that did not include Saltzer  
 4 primary care physicians?  
 5 A. No.  
 6 Q. Why is that?  
 7 A. Because Saltzer is the -- well, it was the largest  
 8 independent, multispecialty clinic in the state of Idaho.  
 9 They are not only the largest, but they're a very  
 10 prestigious group, going -- the history of Saltzer goes way  
 11 back to Dr. Saltzer, and it's just a clinic that everybody  
 12 goes to. It is very convenient. It has pharmacy. It has  
 13 lab. It has X-ray. It has some specialties, and it's very  
 14 close to the hospital.  
 15 Q. Are you familiar with a provider named Terry  
 16 Reilly Health Services?  
 17 A. I am.  
 18 Q. What are they?  
 19 A. Terry Reilly is a federally qualified health  
 20 clinic who serves mostly indigent population.  
 21 Q. If you could not offer Saltzer primary care  
 22 physicians in your network, would Terry Reilly primary care  
 23 doctors be a viable substitute?  
 24 A. No.  
 25 Q. Why is that?

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1 even knows who they are. They're --  
 2 MR. STEIN: Objection, Your Honor. Move to  
 3 strike. Speculative.  
 4 THE COURT: Well, the witness --  
 5 MR. WILSON: May I respond, Your Honor?  
 6 THE COURT: Yes. I was going to allow the witness  
 7 to testify as to her perception, in terms of her marketing  
 8 her network. I am going to assume she has not actually done  
 9 any studies with regard to product familiarity in the area,  
 10 which is really kind of what she is alluding to.  
 11 I think what I'll do, I'll strike the last comment.  
 12 You can rephrase the question though and probably get at it  
 13 in a somewhat different way.  
 14 MR. WILSON: And, of course, the foundation is her  
 15 having offered networks in the Nampa area for the last 13  
 16 years and her general perceptions of the preferences.  
 17 THE COURT: I think she can testify generally, but  
 18 in terms of no one knowing who they are, I think that  
 19 requires something more than just her marketing. She can  
 20 certainly offer a comment that, in her perception, people  
 21 are generally not familiar with it. That's probably as far  
 22 as she can go.  
 23 BY MR. WILSON:  
 24 Q. Well, what about other providers? Does Primary  
 25 Health, to your knowledge, have any primary care physicians

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1 A. Again, they are a federally qualified health  
 2 clinic. They do serve the indigent. Most people in the  
 3 mainstream and commercial choose not to go to those types of  
 4 clinics.  
 5 Q. Saint Al's Medical Group has some primary care  
 6 physicians in Nampa; correct?  
 7 A. Correct.  
 8 Q. What about the Saint Al's Medical Group primary  
 9 care physicians, would those doctors be a viable Saltzer  
 10 substitute for a self-funded employer in Nampa?  
 11 A. No.  
 12 Q. Why not?  
 13 MR. STEIN: Object to foundation.  
 14 THE WITNESS: Because --  
 15 THE COURT: Just a moment. Overruled.  
 16 You may answer.  
 17 BY MR. WILSON:  
 18 Q. Why is it that the SAMG doctors wouldn't be a good  
 19 substitute for Saltzer in Nampa, for Nampa employers?  
 20 A. Because there is very few of them, to start with,  
 21 and then also the convenience of Saltzer, again pharmacy,  
 22 labs, specialties, a huge primary care base.  
 23 Q. How does their reputation compare to that of the  
 24 Saltzer doctors?  
 25 A. There is no comparison. They -- hardly anybody

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1 in Nampa?  
 2 A. They do. They are very small. There is -- if you  
 3 were to look at -- so if you had a large employer, say, the  
 4 Nampa School District, that wouldn't -- there is not  
 5 enough -- they don't have enough providers in the clinic  
 6 full-time to cover a large employer in Nampa.  
 7 Q. So would the Primary Health doctor or doctors be a  
 8 substitute for Saltzer, Saltzer primary care physicians?  
 9 A. No.  
 10 Q. And the West Valley Medical Group, do they have  
 11 primary care physicians in Nampa?  
 12 A. I think they have one or two.  
 13 Q. Would that doctor or those two doctors be a  
 14 substitute for Saltzer primary care physicians to a  
 15 self-funded employer in Nampa?  
 16 A. No.  
 17 Q. As you've built networks over the course of your  
 18 career as the executive director of IPN, have you had  
 19 personal experience negotiating contracts and contract  
 20 amendments with providers?  
 21 A. Yes.  
 22 Q. Has one of those providers been St. Luke's?  
 23 A. Yes.  
 24 Q. Over your tenure as the executive director of IPN,  
 25 about how many times would you say that you've negotiated

1 against St. Luke's?  
 2 **A. More times than I can count.**  
 3 **Q.** Generally speaking, Ms. Duer, how would you  
 4 characterize the tenor of those negotiations?  
 5 **A. Nonresponsive on the part of St. Luke's.**  
 6 **Q.** Can you give the court some idea of what you mean  
 7 by that?  
 8 **A. They make it very difficult to try and do business**  
 9 **with them.**  
 10 **Q.** What do you mean?  
 11 **A. Do you want an example?**  
 12 **Q.** Just like you to explain what you mean by it being  
 13 very difficult to do business with St. Luke's.  
 14 **A. So I'll give you a recent experience.**  
 15 **UnitedHealthcare received the TRICARE business under United**  
 16 **Military and Veterans Services. They contracted with IPN to**  
 17 **be the network for Idaho. They paid us to hire somebody to**  
 18 **do that, and they also paid us an access fee to**  
 19 **operationally take care of every piece of making sure that**  
 20 **there was a 95 percent match to the old network, which was**  
 21 **TriWest.**  
 22 **And we had to have that done in 90 days, and so I**  
 23 **went to all of the hospitals that were in TRICARE, and**  
 24 **everyone signed, with the exception of Luke's. Luke's**  
 25 **refused to sign with IPN. They went around IPN, went to**

1 **the military services.**  
 2 **Q.** Lately, who have been the folks at St. Luke's who  
 3 you've been dealing with?  
 4 **A. Steve Drake, Toni Newman, Randy Billings.**  
 5 **Q.** Focusing specifically on Mr. Drake, has he ever  
 6 told you anything about St. Luke's plans with respect to PPO  
 7 networks?  
 8 **A. He has.**  
 9 **Q.** Approximately when has he told you about those  
 10 plans?  
 11 **A. It was after Randy Billings was employed,**  
 12 **probably -- and I'm not sure on this -- probably two years**  
 13 **ago.**  
 14 **Q.** Did Mr. Drake communicate that to you in person or  
 15 over the phone?  
 16 **A. In person.**  
 17 **Q.** What did Mr. Drake tell you about St. Luke's plans  
 18 with respect to PPO networks?  
 19 **A. He said St. Luke's plan was to look at each**  
 20 **individual insurer and, based on the number of lives and the**  
 21 **value that they brought to St. Luke's, they would determine**  
 22 **on whether they were going to continue that relationship,**  
 23 **and that their goal was to get rid of all PPO networks and**  
 24 **have no contracts with them.**  
 25 **Q.** Switching gears over to Saltzer, have you ever

1 **UnitedHealthcare and said they wanted to do a direct**  
 2 **contract with them. United told them that they would not do**  
 3 **that because they had leased IPN, and they were paying IPN**  
 4 **to do exactly that. They later said that they would not**  
 5 **participate and that -- if they had to work with IPN -- and**  
 6 **so United caved and went ahead and did the contract. United**  
 7 **said it was the -- United just had said that it was very**  
 8 **hard to --**  
 9 **MR. STEIN: Objection, Your Honor. Hearsay.**  
 10 **THE COURT: Just a moment. Just a moment.**  
 11 **Sustained.**  
 12 **BY MR. WILSON:**  
 13 **Q.** When you said "they" refused to participate, who  
 14 was the "they" you were talking about?  
 15 **A. St. Luke's.**  
 16 **Q.** Okay. And ultimately, who were the people that  
 17 United was trying to get a contract for here? Who were  
 18 the -- who were the covered lives?  
 19 **A. The covered lives were the Mountain Home Air Force**  
 20 **division members and their dependents, the retirees, and the**  
 21 **southern Idaho part of the Guard and the retirees and all of**  
 22 **their dependents.**  
 23 **Q.** So members of the military and their --  
 24 **A. Members of the military; correct. It was**  
 25 **St. Luke's saying that they would not contract with IPN for**

1 negotiated with Saltzer Medical Group?  
 2 **A. I have.**  
 3 **Q.** Have you ever -- so you have negotiated charges,  
 4 rates with Saltzer?  
 5 **A. I have negotiated fee schedules with them.**  
 6 **Q.** On behalf of what payors?  
 7 **A. All of my payors.**  
 8 **Q.** And how did the fee schedule you negotiated on  
 9 behalf of your payors for the Saltzer Medical Group compare  
 10 to other providers?  
 11 **A. It was higher than other providers.**  
 12 **Q.** Why is that?  
 13 **A. Because Saltzer had the clout in Nampa, and**  
 14 **if -- I pretty much had to do what they wanted me to do.**  
 15 **Q.** Ms. Duer, as the executive director of IPN, does  
 16 the St. Luke's Saltzer deal concern you?  
 17 **A. Yes.**  
 18 **Q.** Why?  
 19 **A. Because I have been dealing with St. Luke's in**  
 20 **Twin Falls over pricing, over networks, over employers, and**  
 21 **it has been difficult, at best, to deal with them. I had to**  
 22 **renegotiate a fee schedule that was lower. I had to bring**  
 23 **them up to a higher fee schedule, so I was reimbursing their**  
 24 **physicians, the physicians in their system, at a higher rate**  
 25 **than what they were previously on. And my fear is if it**

1 happens in Twin and nothing got done with it in Twin, it's  
2 going to happen again in Nampa. It's just a matter of time.

3 Q. Well, the next time you're negotiating with  
4 St. Luke's, could you just walk away from the negotiating  
5 table? Could IPN survive if it didn't have St. Luke's in  
6 its network?

7 A. IPN could not survive, in its state, the way it  
8 is, with 236,000 lives and be a viable alternative to Blue  
9 Cross or Regence if I did not have St. Luke's.

10 Q. You mentioned that Saltzer has been part of the  
11 network for quite some time; is that right?

12 A. Right.

13 Q. The IPN network?

14 A. Yes.

15 Q. Has anyone else from Saltzer ever occupied any  
16 sort of leadership role within IPN?

17 A. Yes.

18 Q. What is that?

19 A. We have a board member that's represented from  
20 Saltzer.

21 Q. How long has Saltzer had a representative on IPN's  
22 board?

23 A. Probably eight to ten years.

24 Q. Does Saltzer still have a board position?

25 A. They do.

1 Q. Who is that Saltzer representative currently on  
2 IPN's board?

3 A. Dr. Randell Page.

4 Q. About how long has Dr. Page been the board  
5 representative from Saltzer?

6 A. As long as Saltzer has been on the board.

7 Q. So eight to ten years?

8 A. Mm-hmm; correct.

9 Q. Do you have a board position, Ms. Duer?

10 A. I do.

11 Q. How long have you been on the IPN board?

12 A. A little over 12 years.

13 Q. So for the entire time that Dr. Page has been on  
14 the Saltzer board you have been on the board as well?

15 A. Yes.

16 Q. About how many board meetings does IPN, typically,  
17 have in a year?

18 A. Currently, we hold board meetings every other  
19 month.

20 Q. So you and Dr. Page know each other fairly well;  
21 is that fair to say?

22 A. On a business basis, absolutely.

23 Q. Have you spoken to Dr. Page about the St. Luke's  
24 Saltzer transaction?

25 A. I have.

1 Q. Do you recall any one conversation in particular?

2 A. I do.

3 Q. Approximately when did that conversation occur?

4 A. It was -- it was two -- around two years ago when  
5 they -- when Saltzer was in negotiations around the  
6 specialists and Treasure Valley Hospital and whether or not  
7 they were going to stay together as a group and go with  
8 Treasure Valley Hospital or whether they were going to split  
9 up.

10 Q. So that was the time period when Saltzer was  
11 contemplating a transaction with St. Luke's? Is that  
12 accurate?

13 A. Yes.

14 Q. Okay. And where did this conversation occur that  
15 you had with Dr. Page?

16 A. In the lobby of PacificSource Health Plans.

17 Q. In what context? Why were you there?

18 A. We had an evening board meeting, and we had taken  
19 a break, and I met Randy out in the lobby. And he had given  
20 a report in the board on the status of Saltzer, and he was  
21 saying that there was probably a chance that they would not  
22 go stay independent, that they would probably look at going  
23 with St. Luke's.

24 Q. So you had a conversation out in the hall after  
25 that with him?

1 A. Yes, I did.

2 Q. Was that a private conversation?

3 A. That was a private conversation.

4 Q. During that conversation, what did you say to each  
5 other?

6 A. I basically asked him, "What the hell are you  
7 doing, Randy?" And we had some discussion on that.

8 And he said, "Linda, I'm damned if I do, I'm  
9 damned if I don't. If I do it, everyone will be mad,  
10 everyone will be upset. If I don't, St. Luke's will build a  
11 clinic wherever I go. They have more money, they have more  
12 resources" --

13 MR. STEIN: Objection, Your Honor. Hearsay.

14 MR. WILSON: He's a party opponent, Your Honor.

15 MR. STEIN: Foundation as to what St. Luke's will  
16 do.

17 THE COURT: Well, is the objection as to hearsay  
18 or is it --

19 MR. STEIN: Well, I'm sorry, Your Honor. Fair  
20 enough. It's foundation as to what St. Luke's will do.

21 THE COURT: All right. The objection is  
22 overruled. The witness can testify as to what the witness  
23 was told about the Saltzer representative's understanding,  
24 but it obviously is limited only to his understanding, as  
25 part of the negotiations. The objection will be overruled.

1 You may go ahead and answer.  
 2 THE WITNESS: Thank you.  
 3 Randy continued to say, "They have -- they are already  
 4 building the specialist clinic out by Costco. There is no  
 5 way that I can compete with that."  
 6 BY MR. WILSON:  
 7 **Q.** During this conversation where Dr. Page explained  
 8 to you why Saltzer was joining St. Luke's, did he say that  
 9 it had anything to do with Saltzer's sharing St. Luke's  
 10 vision --  
 11 MR. STEIN: Objection. Leading.  
 12 BY MR. WILSON:  
 13 **Q.** -- about the triple aim of healthcare?  
 14 MR. STEIN: Objection. Leading.  
 15 THE COURT: Sustained.  
 16 BY MR. WILSON:  
 17 **Q.** Did he mention anything else to you during this  
 18 conversation about why Saltzer was joining St. Luke's other  
 19 than he feared St. Luke's and its competitive effect on  
 20 Saltzer?  
 21 **A.** No.  
 22 MR. WILSON: May I have a moment, Your Honor?  
 23 THE COURT: Yes.  
 24 MR. WILSON: Nothing further, Your Honor.  
 25 THE COURT: All right. Cross. Mr. Stein.

1 employed by Blue Cross of Idaho; right?  
 2 **A.** Before I worked for IPN, I was employed by  
 3 AmeriBen.  
 4 **Q.** Before you were employed by AmeriBen, you were  
 5 employed by Blue Cross of Idaho?  
 6 **A.** Correct.  
 7 **Q.** Blue Cross of Idaho is the 800-pound gorilla in  
 8 this market, aren't they?  
 9 **A.** Yes.  
 10 **Q.** Now, another one of the board members for IPN is  
 11 Dr. Jeffrey Hessing; right?  
 12 **A.** Correct.  
 13 **Q.** Dr. Jeffrey Hessing is the medical director of  
 14 Plaintiff Treasure Valley Hospital?  
 15 **A.** Okay.  
 16 **Q.** Is that right?  
 17 **A.** I don't know if he is or not. If you say he is --  
 18 **Q.** Do you know if Dr. Hessing is the medical director  
 19 of Treasure Valley Hospital?  
 20 **A.** I do not know that.  
 21 **Q.** Do you know if he is affiliated with Treasure  
 22 Valley Hospital?  
 23 **A.** Yes, I know that.  
 24 **Q.** And he is affiliated with Treasure Valley  
 25 Hospital; right?

1 MR. STEIN: Your Honor, I have a couple of topics  
 2 in my outline that I think could fall in the direct  
 3 category. I don't think, again, it will be, I think,  
 4 overall very time-consuming, but Your Honor's protocol  
 5 called for us to raise that, so --  
 6 THE COURT: Well, my -- what I expressed is to  
 7 avoid having to call a witness back on multiple occasions, I  
 8 will allow you to engage in a very limited direct  
 9 examination as part of your cross, but, of course, you will  
 10 not then re-call her. So as long -- Mr. Wilson, is there  
 11 any concern?  
 12 MR. WILSON: This falls into the "you know it when  
 13 you see it category," Your Honor.  
 14 THE COURT: That's why I'm hedging my bets, as  
 15 well.  
 16 Could you -- well, let's see how it goes. And if it  
 17 starts to get, you know -- Mr. Wilson, set your clock, and  
 18 if you sense that it's getting a little disproportionate to  
 19 the extent of your direct, then I'll -- unfortunately, I'll  
 20 have to call Ms. Duer back and have her testify later in the  
 21 proceeding, as well.  
 22 Go ahead and proceed, Mr. Stein.  
 23 CROSS-EXAMINATION  
 24 BY MR. STEIN:  
 25 **Q.** Ms. Duer, before you worked for IPN you were

1 **A.** Correct.  
 2 **Q.** Now, IPN is also owned 60 percent by  
 3 PacificSource; is that right?  
 4 **A.** Correct.  
 5 **Q.** PacificSource is an insurance company?  
 6 **A.** Correct.  
 7 **Q.** They compete against SelectHealth; is that right?  
 8 **A.** I would not know that. That -- I'm not  
 9 PacificSource.  
 10 **Q.** Does SelectHealth compete against IPN?  
 11 **A.** SelectHealth? Correct. SelectHealth are you  
 12 saying?  
 13 **Q.** Yes.  
 14 **A.** No. They're an insurance company.  
 15 (Clip of video deposition played.)  
 16 BY MR. STEIN:  
 17 **Q.** You were asked those questions, and you gave those  
 18 answers at your deposition in this case, Ms. Duer?  
 19 **A.** Yes.  
 20 **Q.** Correct?  
 21 **A.** Yes.  
 22 **Q.** And SelectHealth is aligned with St. Luke's;  
 23 right?  
 24 **A.** Yes.  
 25 **Q.** And IPN, itself, competes for business like the

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1 UnitedHealthcare business against other networks in Idaho;  
 2 is that right?  
 3 **A. Would you define "other networks"?**  
 4 **Q.** Well, are there any other networks of providers  
 5 like IPN in the state of Idaho?  
 6 **A. There is a smaller one, First Choice, there is**  
 7 **First Health, that are networks.**  
 8 **Q.** Did you forget about BrightPath?  
 9 **A. BrightPath, the alliance.**  
 10 **Q.** BrightPath is a competitor of IPN; right?  
 11 **A. Correct.**  
 12 **Q.** BrightPath happens to be affiliated with  
 13 St. Luke's; is that right?  
 14 **A. Correct.**  
 15 **Q.** And St. Luke's is out there in the market  
 16 encouraging employers to switch from IPN to BrightPath;  
 17 right?  
 18 **A. Yes.**  
 19 **Q.** They're competing against you; correct?  
 20 **A. Yes.**  
 21 **Q.** Now, on the testimony Mr. -- I'm sorry -- in the  
 22 UnitedHealthcare contract you were talking about -- let me  
 23 make sure I understand this. IPN has a contract with United  
 24 for TRICARE; is that right?  
 25 **A. Correct.**

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1 BY MR. STEIN:  
 2 **Q.** You were asked that question, and you gave that  
 3 answer at your deposition?  
 4 **A. Yes.**  
 5 **Q.** Now, in addition to the competitive threats that  
 6 IPN faces from St. Luke's and other networks, IPN is facing  
 7 competitive pressures in the market arising out of the  
 8 changes brought about by the Affordable Care Act; isn't that  
 9 right?  
 10 **A. No, not currently. There are some changes coming,**  
 11 **but, pretty much, you can see by the membership of 237,000**  
 12 **that it is still a very, very strong option in Idaho.**  
 13 **Q.** But you have concerns about whether networks like  
 14 IPN can survive under healthcare reform?  
 15 **A. Correct.**  
 16 **Q.** One reason you feel that way is that healthcare is  
 17 moving from a traditional fee-for-service environment to  
 18 more accountable care; right?  
 19 **A. Correct.**  
 20 **Q.** The problem is IPN doesn't engage in any clinical  
 21 quality improvement activities; is that right?  
 22 **A. Correct.**  
 23 **Q.** IPN is not a clinically integrated network?  
 24 **A. No.**  
 25 **Q.** And IPN doesn't have any plans to become a

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1 **Q.** And St. Luke's didn't want to deal with IPN to get  
 2 to United, St. Luke's wanted to deal with United directly;  
 3 is that right?  
 4 **A. Correct.**  
 5 **Q.** And so they went around IPN and said, We,  
 6 St. Luke's, would like to contract with you, United, for  
 7 this TRICARE contract without going through IPN; right?  
 8 **A. Yes.**  
 9 **Q.** You don't have very good relationships with the  
 10 people at St. Luke's you negotiate with, do you?  
 11 **A. I think I have very good relationships with them.**  
 12 **Q.** With Steve Drake?  
 13 **A. I consider him a friend.**  
 14 **Q.** Haven't you described your relationship with him  
 15 as passive-aggressive?  
 16 **A. On which side?**  
 17 **Q.** On your side.  
 18 **A. On my side? Absolutely not.**  
 19 **Q.** On his side?  
 20 **A. Yes.**  
 21 **Q.** And, in fact, you've gone from having a tenuous  
 22 relationship to Mr. Drake -- with Mr. Drake to no  
 23 relationship; isn't that right?  
 24 **A. No.**  
 25 **(Clip of video deposition played.)**

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1 clinically integrated network; right?  
 2 **A. Correct.**  
 3 **Q.** And the reason for that is because it's hard to be  
 4 a clinically integrated network without owning hospitals or  
 5 physician practices; right?  
 6 **A. Without having the direct relationship, correct.**  
 7 **Q.** Right. Because you have to have that direct  
 8 relationship with the providers in order to be able to  
 9 manage the care?  
 10 **A. It has to be a direct relationship. It doesn't**  
 11 **necessarily have to be an ownership position.**  
 12 **Q.** But you need a closer relationship than what IPN  
 13 has with its network in order to be able to manage the care?  
 14 **A. You have to bring the payor, who is assuming risk,**  
 15 **with the physician or the hospital, who is also assuming**  
 16 **risk.**  
 17 **Q.** Now, there are networks in Idaho that don't have  
 18 St. Luke's in the network; right?  
 19 **A. Yes.**  
 20 **Q.** So Saint Al's doesn't have St. Luke's in the  
 21 network?  
 22 **A. Correct.**  
 23 **Q.** First Choice doesn't have St. Al's -- I'm  
 24 sorry -- First Choice doesn't have St. Luke's in the  
 25 network?

1 **A. Correct.**  
 2 **Q.** Micron doesn't have St. Luke's in the network?  
 3 **A. Correct.**  
 4 **Q.** And you have been having discussions with brokers  
 5 about tiered products, where Saint Al's would be at a  
 6 preferred tier and IPN would be at a secondary tier; is that  
 7 right?  
 8 **A. Correct.**  
 9 **Q.** And you mentioned Paul's Market. Paul's Markets  
 10 is an example of one employer where you've got this tiered  
 11 relationship; is that right?  
 12 **A. Yes.**  
 13 **Q.** And when we are talking about a tiered  
 14 relationship, what that means is if a Paul's Market employee  
 15 goes to a Saint Al's facility, there is a better benefit for  
 16 them than if they go to a St. Luke's facility; is that  
 17 right?  
 18 **A. Yes.**  
 19 **Q.** There is financial incentives to steer employees  
 20 from St. Luke's to Saint Al's; is that right?  
 21 **A. Yes.**  
 22 **Q.** Paul's Market has employees in Nampa; is that  
 23 right?  
 24 **A. Yes.**  
 25 MR. WILSON: Your Honor, may I interpose here? I

1 would suggest that if there is any part of Mr. Stein's  
 2 examination that is direct and beyond the scope, that he  
 3 conduct it like direct examination without leading  
 4 questions.  
 5 THE COURT: It must. Counsel, unless you want to  
 6 suggest that the witness is hostile in some fashion, which I  
 7 don't think has been established at this point, so you will  
 8 need to proceed by nonleading questions.  
 9 MR. STEIN: I'm moving back to the cross,  
 10 Your Honor, but I will, of course, heed the court's  
 11 admonition.  
 12 THE COURT: Thank you.  
 13 BY MR. STEIN:  
 14 **Q.** Ms. Duer, you've not had any IPN customers tell  
 15 you that they will not contract with IPN if Saltzer is not  
 16 included in IPN's network; correct?  
 17 **A. Well, yes, because we have them in the network.**  
 18 **Q.** I'm sorry. When you say "yes" you mean "yes, you  
 19 have had no such conversations"; right?  
 20 **A. Yes.**  
 21 **Q.** And you have not talked to any employers or payors  
 22 about whether they would be willing to contract with IPN if  
 23 IPN had only Saint Al's primary care providers and  
 24 independent primary care providers in Nampa; correct?  
 25 **A. Would you repeat that, please?**

1 **Q.** You have not talked to any employers or payors  
 2 about whether they would be willing to contract with IPN if  
 3 IPN in Nampa had only Saint Al's primary care providers and  
 4 independent primary care providers?  
 5 **A. No.**  
 6 **Q.** I'm correct, you've not had such conversations?  
 7 **A. Yes. Sorry. Yes.**  
 8 **Q.** You don't know what portion of Nampa residents  
 9 that are covered by IPN's customers see Saltzer physicians;  
 10 correct?  
 11 **A. Correct.**  
 12 **Q.** You don't know how many primary care physicians  
 13 your customers have determined they need in Nampa for their  
 14 networks to be considered adequate?  
 15 **A. Yes.**  
 16 **Q.** You have not studied the capacity of SAMG or  
 17 independent primary care providers in Nampa to be able to  
 18 accept patients from Saltzer if patients had to switch  
 19 providers; correct?  
 20 **A. We have done a study since my deposition.**  
 21 **Q.** At the time of your deposition you hadn't -- you'd  
 22 done no --  
 23 **A. No.**  
 24 **Q.** -- such study; correct?  
 25 **A. Correct.**

1 **Q.** When the Imagine Health Network was putting  
 2 together a plan for Micron, back in the 2007-2008 time  
 3 period, did you approach St. Luke's about how they intended  
 4 to proceed with regard to that network?  
 5 **A. I did.**  
 6 **Q.** Who did you talk to?  
 7 **A. Steve Drake.**  
 8 **Q.** What did he tell you?  
 9 MR. WILSON: Objection. Hearsay.  
 10 THE COURT: Sustained.  
 11 BY MR. STEIN:  
 12 **Q.** Did IPN bid to participate in the Micron network?  
 13 **A. Imagine approached us and asked what it would take  
 14 to lease our network.**  
 15 **Q.** What did you tell them?  
 16 **A. I told them they could lease the network. They  
 17 chose not to.**  
 18 **Q.** Did you submit a bid?  
 19 **A. There was not a request for a proposal given to  
 20 IPN.**  
 21 **Q.** So Imagine did not seek IPN's participation? Is  
 22 that what you're saying?  
 23 **A. Imagine called us, and we had several  
 24 conversations.**  
 25 **Q.** But they never, ultimately, asked you to bid to

1 participate in the network?  
 2 **A.** It isn't a bid. It was negotiations. We weren't  
 3 bidding on anything. We were asked to see if we could do a  
 4 match based on their reimbursement, what they wanted to  
 5 offer, and then there were several other hoops that the  
 6 physicians would have to jump through in order to  
 7 participate in the Imagine network.  
 8 **Q.** And you told Imagine you were not interested in  
 9 participating in the network?  
 10 **A.** After several rounds of negotiations, yes.  
 11 **Q.** Are United and Aetna customers of IPN?  
 12 **A.** Yes.  
 13 **Q.** Part of your job at IPN involves negotiating with  
 14 hospitals like Saint Al's and St. Luke's on behalf of payor  
 15 customers?  
 16 **A.** Yes.  
 17 **Q.** And that negotiation includes reimbursement rates  
 18 that you'll pay to the hospitals?  
 19 **A.** Yes.  
 20 **Q.** And the -- what's the primary methodology that IPN  
 21 uses to pay hospitals?  
 22 **A.** It's what we're allowed to negotiate. Currently,  
 23 with the exception of one payor, we are on a discount off of  
 24 charges, off of billed charges.  
 25 **Q.** And so, just for background, a hospital will

1 typically have a chargemaster that's got a -- bill charges  
 2 or list prices for all of its services?  
 3 **A.** Correct.  
 4 **Q.** And then IPN will negotiate a discount off of  
 5 those charges?  
 6 **A.** Yes.  
 7 **Q.** So let's say hospital X you would negotiate an  
 8 agreement of, let's say, 12 percent off their charges, and  
 9 that would be the price that IPN's customers would pay for  
 10 hospital services?  
 11 **A.** That would be the base of what they would pay  
 12 less -- then they would take a deductible and coinsurance,  
 13 and such, after that.  
 14 **Q.** So if hospital A and hospital B have the same  
 15 exact charges, but hospital A gives you a higher discount,  
 16 then IPN members are going to pay less for services at  
 17 hospital A than they would at hospital B, holding everything  
 18 else equal; is that right?  
 19 **A.** Would you repeat that?  
 20 **Q.** Sure. If hospital A and hospital B have the same  
 21 charges, they actually charge the same thing, but hospital A  
 22 gives IPN a higher discount, then holding copayments,  
 23 deductibles, all that other stuff equal, IPN customers who  
 24 go to hospital A are going to pay less for services than  
 25 they would if they went to hospital B?

1 **A.** That is not black and white. You could probably  
 2 do that off of a room-and-board charge, you could compare  
 3 that, but there are -- there so many other things that go  
 4 into coding and grouping and bundling charges that it would  
 5 be very hard to just say, based on this charge, and you have  
 6 a better discount at one hospital than the other, that it's  
 7 a better deal for the member.  
 8 **Q.** Now, you negotiate hospital reimbursement on  
 9 behalf of Aetna; is that right? Strike that. Let me back  
 10 up for a second.  
 11 Aetna is a customer of IPN; is that right?  
 12 **A.** For certain products, they are.  
 13 **Q.** And you negotiate with hospitals like Saint Al's  
 14 and St. Luke's on Aetna's behalf?  
 15 **A.** Yes.  
 16 **Q.** And has Aetna talked to you about the prices  
 17 charged by Saint Al's?  
 18 **A.** Yes.  
 19 **Q.** And what have they told you?  
 20 **A.** What period of time?  
 21 **Q.** Well, were there ever any complaints about Saint  
 22 Al's charges?  
 23 **A.** There were not complaints specific to Saint Al's.  
 24 The complaints were on the hospitals. Aetna felt they had  
 25 done a study that was published, and they shared that

1 document with me and said they had dropped from being second  
 2 or third in the market to being fourth, and they were  
 3 looking at it as hospital charges. And so they were very  
 4 concerned about the hospital charges, so they asked me if I  
 5 would be willing to do a directed product with the hospitals  
 6 that they felt were more in line with what they saw  
 7 nationally.  
 8 **Q.** Didn't they tell you that Saint Al's charges were  
 9 higher than St. Luke's?  
 10 **A.** Correct.  
 11 **Q.** And that's -- and you took that information and as  
 12 part of your negotiations, you conveyed that to Saint Al's;  
 13 isn't that right?  
 14 **A.** I did.  
 15 **Q.** And with regard to the amount of discount that you  
 16 received, you get a better discount off of charges from  
 17 St. Luke's than you do from Saint Al's; isn't that right?  
 18 **A.** If you are looking at just straight discounts,  
 19 yes, the discount at Luke's is more than the discount at  
 20 Al's.  
 21 **Q.** Right. So Saint Al's has higher charges and lower  
 22 discounts -- strike that.  
 23 Saint Al's has higher charges and less of a discount  
 24 than St. Luke's for IPN; correct?  
 25 **A.** In the past, that would be correct. Currently --

1 **Q.** That was -- that was correct as of last year,  
 2 2012, when you had these conversations?  
 3 **A.** The conversations I had were in '11 and part of  
 4 '12. And you would have to look at charge by charge to make  
 5 that determination. What might be cheaper at Al's, say, an  
 6 orthopedic procedure, might be higher at St. Luke's, but  
 7 then a neurology procedure done at Al's may be more  
 8 expensive than what is done at Luke's.  
 9 **Q.** Right. But the analysis that you -- that Aetna  
 10 provided you and that you discussed with Saint Al's showed  
 11 that, overall, Saint Al's was more expensive for Aetna in  
 12 terms of its charges and discounts than St. Luke's?  
 13 **A.** Based on 2010 and 2011 data, yes.  
 14 **Q.** Well, that was the most recent data you had;  
 15 right?  
 16 **A.** At the time of the deposition, yes.  
 17 **Q.** You talked a little bit about Twin Falls, and I  
 18 found interesting your characterization of the fee schedule  
 19 issue. Let's unpack that a little bit.  
 20 IPN has a fee schedule that applies called the  
 21 "Southwest Idaho Fee Schedule"; is that right?  
 22 **A.** That applies to?  
 23 **Q.** That applies to a region of Idaho that IPN  
 24 characterizes as "Southwest Idaho? Is that right?  
 25 **A.** It is a fee schedule that we have developed not so

1 **much for the region. We called it that because when we**  
 2 **first negotiated that fee schedule, most of the physicians**  
 3 **were in Southwest Idaho.**  
 4 **Q.** But that's a fee schedule that's uniform for all  
 5 the providers that are on it; right? That's the standard  
 6 fee schedule in that part of Idaho for IPN?  
 7 **A.** It's the standard fee schedule for physicians that  
 8 are on that fee schedule, yes.  
 9 **Q.** Right. And so when you were testifying that you  
 10 had to raise the amounts you were paying to the Twin  
 11 physicians, what that means is you raised the amounts from  
 12 amounts below the standardized fee schedule, and now they're  
 13 getting the same statewide fee schedule or the SWID fee  
 14 schedule as everyone else; right?  
 15 **A.** No. SWID is a fee schedule that was negotiated  
 16 for certain specialties. It has grown, and there are many  
 17 physicians on that, but we have multiple fee schedules  
 18 around the state, EI103, EI105, rural -- oh, let's see, we  
 19 have another one.  
 20 **Q.** Ms. Duer?  
 21 **A.** Yes.  
 22 **Q.** The amount of the money that you are paying, the  
 23 fee schedule for the Twin Falls physician, is an amount that  
 24 you brought them up to the standardized fee schedule that's  
 25 used by IPN for other physicians in Idaho; correct?

1 **A.** It is not a standardized fee schedule, but, yes,  
 2 we brought them up to be the same as the SWID fee schedule.  
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 2 **REDACTED**  
 3 MR. STEIN: No further questions.  
 4 THE COURT: Redirect -- oh, yes.  
 5 MR. JULIAN: Your Honor, if I can just ask a  
 6 couple questions.  
 7 THE COURT: You may, Mr. Julian.  
 8 **CROSS-EXAMINATION**  
 9 **BY MR. JULIAN:**  
 10 **Q.** Good morning, Ms. Duer.  
 11 **A.** Good morning.  
 12 **Q.** My name is Brian Julian. I represent Saltzer. I  
 13 just want to ask you a couple questions. You mentioned a  
 14 conversation that you had with Dr. Randell Page. Do you  
 15 recall that?  
 16 **A.** Yes.  
 17 **Q.** When was that conversation?  
 18 **A.** I can't be specific. It was after a board  
 19 meeting. It was around the time when Saltzer was talking to  
 20 Treasure Valley over the specialists, and it was --  
 21 **Q.** You said maybe a couple years ago, 2010?  
 22 **A.** I don't think it was '10. I mean, I would have to  
 23 go back. I could find the board meeting minutes, and I  
 24 could tell you which one it was, but --  
 25 **Q.** Do you know if Saltzer had even taken a vote to

1 align itself with St. Luke's at the time of that  
2 conversation?

3 **A. I was privy to some conversations that said that**  
4 **they had -- they felt they had X percent of physicians that**  
5 **would put the vote over, and then there were other**  
6 **conversations I had, depending on who the physician was,**  
7 **saying, "There's no way we will block that no matter what."**

8 **Q.** And going back to my question: At the time of the  
9 conversation, do you know if Saltzer had even taken a vote  
10 then?

11 **A. No, I don't.**

12 **Q.** And did -- did Dr. Page say on behalf of Saltzer I  
13 am giving you this statement, or was it more a friendly  
14 conversation, "I'll be damned if I do and damned if I  
15 don't"?

16 **A. I think it was both.**

17 **Q.** And what did he say that represented he was  
18 speaking on behalf of Saltzer?

19 **A. Because he represents Saltzer on our board.**

20 **Q.** Okay. But is he president of Saltzer?

21 **A. He was president of Saltzer.**

22 **Q.** At the time?

23 **A. At the time of what?**

24 **Q.** The conversation.

25 **A. No, he was not.**

1 **Q.** John Kaiser was the president?

2 **A. Correct.**

3 **Q.** You interpreted that he was speaking on behalf of  
4 every shareholder at Saltzer when he said, "I'll be damned  
5 if I do and damned if I don't"?

6 **A. Whether Randy is president or not, Randy carries a**  
7 **lot of clout in Saltzer. And he has represented Saltzer and**  
8 **he represents the shares of IPN.**

9 MR. JULIAN: Thank you.

10 But for the record, Your Honor, because this is a court  
11 trial, I'm going to move to strike the testimony of Randall  
12 Page that was done as an individual shareholder. There is  
13 nothing to say that this was done on behalf of Saltzer.  
14 Saltzer is a corporation. Dr. Page is entitled to give  
15 whatever he wants, but it's classic hearsay. It does not  
16 come under Rule 801 as a statement of a party opponent.  
17 Party opponent is Saltzer.

18 MR. ETTINGER: Your Honor, Dr. Page is chair of  
19 the contracting committee of Saltzer, he's on the executive  
20 committee of Saltzer. The evidence shows he played a major  
21 role in the negotiations of St. Luke's. If that's not a  
22 party admission, I don't know what is. You don't have to  
23 speak ex cathedra for it to be a party admission.

24 THE COURT: Well, the rule also refers to an  
25 individual, I think, speaking in a representative capacity.

1 He presumably was on the board in that capacity. I'm going  
2 to overrule the objection. I understand the concern.  
3 Certainly, Dr. Page -- is Dr. Page identified as a witness?

4 MR. JULIAN: He is identified, but I believe only  
5 his deposition is scheduled to be played at this point.

6 THE COURT: All right. Well, I'm going to  
7 overrule the objection. I think the rule is a little  
8 broader than that. You don't have to be specifically  
9 designated as a spokesman. For example, I think an employee  
10 speaking within the scope of their -- of their authority or  
11 their employment also falls within the provision of Rule  
12 801(d). And I think for that reason I will overrule the  
13 objection. Given the fact that he was at the meeting,  
14 although this was an aside after the meeting, the discussion  
15 clearly had to do with a decision being made by Saltzer.  
16 And I think, therefore, the witness -- witnesses' out of  
17 court declaration will not be deemed hearsay under Rule  
18 801(d).

19 Redirect.

20 MR. WILSON: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. WILSON:

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MR. STEIN: Objection. Foundation.

THE COURT: Sustained.

MR. STEIN: I would move to strike that testimony,  
Your Honor.

THE COURT: I will strike the testimony. I'll  
leave it at that.

BY MR. WILSON:

**Q.** The work you have done since your deposition, what  
sorts of materials have you relied upon to investigate

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1 whether -- how the Saint Al's charges compare to the  
2 St. Luke's charges?

3 MR. STEIN: Your Honor, I'm going to object to  
4 this. This is their witness. If they want to rely on new  
5 things that they want to elicit since her deposition, I  
6 don't really think that's fair. This is somebody that  
7 they're --

8 THE COURT: Mr. Wilson, was there --

9 MR. STEIN: In fact, Your Honor, two weeks ago, I  
10 believe we got an email from Mr. Gourley's office providing  
11 another document that was purporting to be a study, but it  
12 was the same document I asked Ms. Duer about. So if there  
13 is some new analysis, it hasn't been provided to us. And I  
14 suspect that the email that we got from IPN's counsel was  
15 not unsolicited, but, of course, I'm not privy to those  
16 conversations.

17 THE COURT: Mr. Wilson, do we have other evidence  
18 that's going to come in on this issue? I'm very reluctant  
19 to have the witness testify during a deposition, then,  
20 perhaps, when an issue arises, conduct additional inquiry,  
21 produce a report which is never disclosed to counsel and  
22 then come in and testify about that additional information.  
23 That's one of the reasons we close discovery at some point,  
24 so that we know that we have a nonmoving target to deal  
25 with.

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1 MR. WILSON: Fair enough, Your Honor. I would  
2 just note that one of the unique aspects to this case is  
3 that it's not a fixed moment in time. These -- the harm  
4 that's resulting is ongoing, and fixing someone's knowledge  
5 as of the date of their deposition is problematic for that  
6 reason.

7 That being said, I recognize the court's concerns. And  
8 I have no further questions.

9 THE COURT: All right. Anything else, Counsel?

10 MR. STEIN: Just brief.

11 THE COURT: Very briefly.

12 RE CROSS-EXAMINATION

13 BY MR. STEIN:

14 Q. Ms. Duer, did I understand you to suggest that the  
15 reason you -- that the -- strike that.

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6 MR. STEIN: Your Honor, I would move to strike  
7 that testimony and ask the witness be directed to answer the  
8 question.

9 THE COURT: Let's -- rephrase the question one  
10 more time.

11 Ms. Duer, listen carefully to counsel's question.  
12 Mr. Wilson will -- I'm going to give him a chance to come  
13 back, and he will, perhaps, give you a chance to explain in  
14 more detail. But listen to Mr. Stein's question, answer it  
15 directly, and then we can move along a little more  
16 efficiently.

17 Mr. Stein, rephrase the question.

18 BY MR. STEIN:

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21 REDACTED  
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24 THE COURT: Mr. Wilson, I am assuming you have a  
25 little more, I guess, we'll call that "re-redirect."

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1 MR. WILSON: Thank you, Your Honor.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. WILSON:  
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9 MR. WILSON: No further questions.  
10 MR. STEIN: Nothing further, Your Honor.  
11 THE COURT: All right. You may step -- I'm sorry.  
12 Mr. Julian?  
13 MR. JULIAN: No.  
14 THE COURT: All right. You may step down.  
15 I see we're actually, I guess, where we would take the  
16 break. I kind of lost track of time. So the timing was  
17 very good.  
18 Counsel, we will take a 15-minute recess at this time.  
19 When we reconvene will it be an AEO witness?  
20 MS. DUKE: It's Max Reiboldt. And the great  
21 majority of his has been marked "AEO," so I think we need to  
22 close the courtroom for that.  
23 THE COURT: Are we going to get to a point where  
24 the court will be open? I mean, I wonder if we ought  
25 to -- well, you know, if we have people who are actually

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1 move to publish the deposition of Mr. Reiboldt?  
2 MS. DUKE: Yes, Your Honor.  
3 THE COURT: I'll grant that motion. You don't  
4 have the original currently?  
5 MS. DUKE: I don't have that, but I can have  
6 that --  
7 THE COURT: If you have that at some point,  
8 certainly no later than tomorrow, so that we can formally  
9 publish that for the record.  
10 All right. Proceed.  
11 MS. DUKE: Your Honor, just to give you an  
12 estimate, it's about 60 minutes long.  
13 THE COURT: Sixty? Six zero?  
14 MS. DUKE: Yes, six zero. Just so you have an  
15 appreciation.  
16 (Testimony of Max Reiboldt via video deposition.)  
17 (Video deposition paused.)  
18 MS. DUKE: Your Honor, would it be helpful for me  
19 to identify the corresponding trial exhibit number? We  
20 have that in the --  
21 THE COURT: It would very much so. I was just  
22 kind of left to guess in that regard.  
23 MS. DUKE: Yeah. So this is Exhibit 1143.  
24 THE COURT: Now, there was also his kind of CV  
25 or --

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1 waiting, it would be helpful -- and, perhaps, you could even  
2 share with -- I don't know who it is. We've had people ask  
3 that we call them and let them know when the courtroom is  
4 opened. But, perhaps, you could share the schedule with  
5 them in advance so they are not inconvenienced by either  
6 waiting around the courthouse or not. But I'll leave it up  
7 to counsel to work that out.  
8 All right. We'll be in recess for 15 minutes.  
9 (Recess.)  
10 \*\*\*\*\* COURTROOM REMAINS CLOSED TO THE PUBLIC \*\*\*\*\*  
11 THE COURT: Looks like our attendance is  
12 diminishing even more.  
13 I believe, Ms. Duke or Mr. Greene, someone is going to  
14 announce the next witness.  
15 MS. DUKE: Correct. It's Max Reiboldt.  
16 THE COURT: And this is a substantial amount of  
17 AEO testimony?  
18 MS. DUKE: Yes, a substantial amount is.  
19 THE COURT: Okay. All right.  
20 MR. JULIAN: Your Honor, and this deals primarily  
21 with Saltzer planning and in terms of the agreement, I have  
22 invited Bill Savage to attend, and I have also invited  
23 Christy Neuhoff of St. Luke's. We have no problem with  
24 sharing this information.  
25 THE COURT: All right. Very well. Again, you

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1 MS. DUKE: Correct. And his CV was 1142.  
2 THE COURT: Give me just a moment. All right.  
3 MS. DUKE: Thank you, Your Honor.  
4 THE COURT: And you will move their admission at  
5 the conclusion?  
6 MS. DUKE: Yes, Your Honor.  
7 THE COURT: Go ahead and proceed.  
8 (Video deposition of Max Reiboldt resumed.)  
9 MS. DUKE: That will be Exhibit 1144, Your Honor.  
10 (Video deposition paused.)  
11 MS. DUKE: Sorry about that, Your Honor.  
12 THE COURT: This is now Exhibit 1146?  
13 MS. DUKE: Yes, Your Honor.  
14 (Video deposition of Max Reiboldt resumed.)  
15 MS. DUKE: These are 1148.  
16 That would be 1149.  
17 That's 1143 again.  
18 1142.  
19 THE COURT: Sorry. 11 what?  
20 MS. DUKE: -42.  
21 1153.  
22 MS. DUKE: 1154.  
23 That is 1154.  
24 That's Exhibit 1156.  
25 That's 1144.

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1 This will be Exhibit 1157.  
 2 These are 1144 again.  
 3 1160.  
 4 That's 1150.  
 5 That's 1144 again.  
 6 (Video deposition of Max Reiboldt concluded.)  
 7 MS. DUKE: That's the end of that video,  
 8 Your Honor.  
 9 THE COURT: All right. The next witness?  
 10 MS. DUKE: Sure. But prior to that, just  
 11 housekeeping of admitting the exhibits. So we would be  
 12 moving to move for admission Exhibit 1996, 1997 --  
 13 THE COURT: Give me just one moment.  
 14 MS. DUKE: And 1996 and 1997 were from  
 15 Mr. Clement's yesterday, and they weren't objected to in the  
 16 exhibit list.  
 17 MR. SINCLAIR: I have noted that we objected as  
 18 untimely.  
 19 MS. DUKE: For 1996 and -97?  
 20 MR. SINCLAIR: Correct.  
 21 THE COURT: I don't have any notes here, so --  
 22 MS. DUKE: What's occurred by both parties is  
 23 there have been exhibits that have been exchanged -- put on  
 24 the exhibit list but have been exchanged in discovery all  
 25 the way up through this weekend for St. Luke's and this

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1 weekend for the plaintiffs. Apparently they have made an  
 2 untimely objection to the 1996 and 1997.  
 3 MR. SINCLAIR: That's my understanding.  
 4 THE COURT: Well, what is the -- what is an  
 5 untimeliness objection? They were late disclosed?  
 6 MR. SINCLAIR: Correct.  
 7 MS. DUKE: On the exhibit list. They had been  
 8 disclosed in discovery but were placed on the exhibit list  
 9 sometime last week.  
 10 MR. SINCLAIR: I would have to verify that.  
 11 Were they disclosed in discovery?  
 12 MS. TIMOSCHIEK: Yes.  
 13 MR. SINCLAIR: They were simply late on the  
 14 exhibit list?  
 15 MS. TIMOSCHIEK: Yes.  
 16 MR. SINCLAIR: That's correct. They were  
 17 disclosed in discovery, but they were just on the exhibit  
 18 list in the last few days.  
 19 THE COURT: Well, what prejudice was there? I  
 20 mean, the problem is that's a hard objection for me to  
 21 sustain just without -- it's not like any rule of evidence.  
 22 So, if there is prejudice, then --  
 23 MR. SINCLAIR: Well, this is the challenge of  
 24 addressing it the next morning. I can't tell you because I  
 25 don't remember even what the exhibits are, much less --

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1 THE COURT: Well, I'll reserve ruling on that.  
 2 Why don't you discuss among yourselves. I would strongly  
 3 suggest a goose-gander-type approach to this and perhaps  
 4 both be a bit understanding that that's going to happen. If  
 5 one side is much more guilty of that than the other, then  
 6 that may be an issue. But assuming that there have been  
 7 problems from both sides, my inclination would be to simply  
 8 let them all in except upon a showing of actual prejudice to  
 9 a party who simply could not be prepared to respond during  
 10 the examination.  
 11 So I'm going to reserve ruling on 1996, 1997, let  
 12 counsel review it and see if you can work it out.  
 13 MS. DUKE: Thank you, Your Honor.  
 14 So, then, with respect to this deposition, 1142 --  
 15 THE COURT: Okay. Just a moment. Let me -- okay.  
 16 MR. SINCLAIR: No objection.  
 17 THE COURT: I have 1142 and 1143 --  
 18 MR. SINCLAIR: No objection.  
 19 THE COURT: -- and 1149, those for which there  
 20 appears to be no objections.  
 21 MR. SINCLAIR: Right.  
 22 THE COURT: 1153, -54 -- I'm not sure if 1155 was  
 23 included, but 1157, 1156, and 1160 were all apparently  
 24 stipulated to?  
 25 MR. SINCLAIR: I don't have 1155 on here, either.

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1 I am checking. The rest that you read are correct.  
 2 MS. DUKE: Your Honor, 1155 is not on there. So  
 3 the unobjected-to Reiboldt exhibits are 1142, 1143, 1149,  
 4 1150, 1153, 1154 --  
 5 THE COURT: Just a moment. 1150 was included?  
 6 MS. DUKE: Yes, Your Honor.  
 7 MR. SINCLAIR: Correct.  
 8 THE COURT: Then 11 what?  
 9 MS. DUKE: 1153, 1154, 1156.  
 10 THE COURT: I have 1157 and 1160.  
 11 MS. DUKE: And then 1157 and 1160. Those were all  
 12 unobjected to.  
 13 THE COURT: Right. So I'm admitting all of those  
 14 exhibits.  
 15 (Plaintiffs' Exhibit Nos. 1142, 1143, 1149, 1150, 1153,  
 16 1154, 1156, 1157, 1160 admitted.)  
 17 THE COURT: Now, with regard to those for which  
 18 there were objections would include 1144 --  
 19 MS. DUKE: -44.  
 20 THE COURT: 1144, 1146, and 1152.  
 21 MR. SINCLAIR: And 1148.  
 22 THE COURT: I don't have 1148 as having been  
 23 offered.  
 24 MS. DUKE: Yes. It's also being offered.  
 25 THE COURT: All right. I did not -- my notes are

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1 a little behind. Okay. The problem is I didn't have a  
 2 chance to see this in context. There is a hearsay objection  
 3 and foundation objection, I think, as to all of these.  
 4 MR. SINCLAIR: Right.  
 5 THE COURT: How do we get around that problem?  
 6 Ms. Duke? Do you want me to go back and review where those  
 7 are referenced, and then I can make a determination?  
 8 MS. DUKE: I think you're going to have to because  
 9 you'll see throughout a lot of the clips, there was a great  
 10 deal of foundation laid with respect to Mr. Reiboldt relying  
 11 on Ms. Greeter and the notes that she would take, him  
 12 refreshing his recollection with respect to many of the  
 13 portions in the notes, some notes that were his that he took  
 14 as well.  
 15 So, I think, unfortunately, you are going to have to  
 16 look at that on a reference-by-reference basis.  
 17 THE COURT: Well, part of the problem with a  
 18 videotape deposition is that, once I rule, you don't have  
 19 any opportunity to kind of cure whatever the problem is that  
 20 I observed, but that is where we are. So, in order to save  
 21 time, rather than going back and reviewing where each of  
 22 those were referenced, I think what we will do is, since we  
 23 are going to be reviewing the depositions anyway to  
 24 determine and resolve objections, we will also resolve  
 25 objections to the exhibits at the same time.

1 Counsel, to be quite honest with you, what we may do is  
 2 write the decision, see if these exhibits or the objected-to  
 3 testimony really is even going to be considered by the  
 4 court, and if it's not, I'll probably not waste the time to  
 5 try to rule on it, since it won't bear upon the court's  
 6 decision anyway.  
 7 Unfortunately, this is going to be a rather difficult  
 8 task, although I'm sure Mr. Metcalf and I are up to it. We  
 9 will need the kind of cross-reference that you were  
 10 providing to what the trial exhibits were versus what the  
 11 deposition exhibits were so that as we go through that we  
 12 can sort out where that information is.  
 13 So what I will do, then, is reserve ruling on  
 14 exhibits -- the objections to Exhibits 1144, 1146, 1148, and  
 15 1152 with the understanding that we will resolve that in the  
 16 court's written decision.  
 17 MS. DUKE: Thank you, Your Honor.  
 18 THE COURT: Is that agreeable?  
 19 MS. DUKE: Yes.  
 20 THE COURT: Mr. Sinclair?  
 21 MR. SINCLAIR: Yes.  
 22 THE COURT: All right. Counsel, I just need to  
 23 make -- I try to keep notes, and I want to make sure I don't  
 24 forget what this note means. So give me just a moment  
 25 to --

515

516

1 Now, Ms. Duke, the plaintiffs have another witness to  
 2 call?  
 3 MR. WILSON: Your Honor, if I may?  
 4 THE COURT: Yes.  
 5 MR. WILSON: Just a point of clarification. In a  
 6 situation like that where we have moved for admission and  
 7 you have reserved ruling, how does that eight-to-ten-minute  
 8 interchange right there get counted against --  
 9 unfortunately, we're in a situation where minutes matter.  
 10 And just for planning purposes, it would be helpful to know  
 11 how the court is going to handle that.  
 12 THE COURT: Probably split the time equally.  
 13 Because there is objections which I have to resolve, and I  
 14 don't know how to address it otherwise. So I think we'll  
 15 find, at the end of the day, it's not that long because it  
 16 probably just took a couple of minutes, and so that's  
 17 probably how we will resolve it. All right?  
 18 MR. WILSON: Thank you.  
 19 THE COURT: Are plaintiffs ready to call their  
 20 next witness?  
 21 MS. DUKE: Yes. We are going to be calling  
 22 Dr. Page by video.  
 23 THE COURT: And that's AEO again?  
 24 MS. DUKE: It is.  
 25 THE COURT: Then, again, I'll direct the --

1 Ms. Messuri to publish the deposition of Dr. -- it's  
 2 Dr. Page; correct?  
 3 MS. DUKE: Randell Page.  
 4 THE COURT: Yes. And we'll do that formally once  
 5 you have provided us with the originals sometime tomorrow.  
 6 MS. DUKE: Yes.  
 7 (Testimony of Randell Page via video deposition.)  
 8 (Video deposition paused.)  
 9 MS. DUKE: That's Exhibit 1361, Your Honor.  
 10 THE COURT: I'm sorry. 13 --  
 11 MS. DUKE: -- 61.  
 12 THE COURT: Thank you.  
 13 (Video deposition of Randell Page resumed.)  
 14 MS. DUKE: This is 1362.  
 15 That's 1363.  
 16 And that's 1366.  
 17 That's 1361, Your Honor.  
 18 THE COURT: Sorry. What is it?  
 19 MS. DUKE: 1361.  
 20 (Video deposition paused.)  
 21 THE COURT: Counsel, how long -- we're about where  
 22 we would normally break, but if we only have ten minutes or  
 23 so, we could just finish it.  
 24 MS. DUKE: It's under ten minutes, Your Honor. I  
 25 think it's about -- I would say it's about five or so, would

517

1 be my estimation.

2 THE COURT: Let's go ahead and try to finish it

3 off, then, so we'll have a natural break.

4 (Video deposition of Randell Page resumed.)

5 MS. DUKE: This is 1366.

6 This is Exhibit 1374.

7 (Video deposition of Randell Page concluded.)

8 MS. DUKE: That's the end of his portion.

9 THE COURT: Counsel, I have Exhibits 1361, -63,

10 -66, and -74. Were there others that I missed?

11 MS. DUKE: 1362.

12 THE COURT: And -62. And those appear to not be

13 objected to; is that correct?

14 MR. SINCLAIR: That's correct, Your Honor.

15 THE COURT: Those exhibits, then, will be

16 admitted.

17 (Plaintiffs' Exhibit Nos. 1361, 1362, 1363, 1366, 1374

18 admitted.)

19 THE COURT: All right. Counsel, let's take a

20 15-minute recess. And we will need to recess at 2:30. I

21 have a matter at 3:00 or 3:30 on a detention hearing in a

22 criminal matter. We'll leave it at that.

23 We'll be in recess for 15 minutes.

24 (Recess.)

25 \*\*\*\*\* COURTROOM REMAINS CLOSED TO THE PUBLIC \*\*\*\*\*

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1 inadvertently dropped out.

2 I just noted that. I don't know -- it seems to me

3 that's kind of a substantive difference. Unless counsel

4 objects, I'm just going to make that notation for the

5 record.

6 MS. DUKE: No objection, Your Honor.

7 MR. SINCLAIR: No objection.

8 THE COURT: All right. Go ahead and proceed.

9 (Video deposition of Michael Djernes resumed.)

10 (Video deposition paused.)

11 THE COURT: Counsel, the transcript referred to

12 "Medicare," but I think he actually said "Medicaid," which

13 is quite a substantial difference. So I assume there is no

14 objection to the court making that notation as well?

15 MR. SINCLAIR: Correct, Your Honor.

16 MS. DUKE: No objection.

17 THE COURT: All right.

18 MS. DUKE: And I guess we'd better point out that

19 that's on page 81, lines 15 through 25, when "Medicare" is

20 referenced, it should instead be "Medicaid."

21 THE COURT: All right. Thank you.

22 (Video deposition of Dr. Michael Djernes resumed.)

23 (Video deposition of Dr. Michael Djernes concluded.)

24 MS. DUKE: So that concludes that video,

25 Your Honor. And the next video is Ed Castledine.

518

1 THE COURT: Plaintiffs may call their next witness.

2 MS. DUKE: Your Honor, we have Dr. Michael Djernes

3 via video.

4 THE COURT: And AEO?

5 MS. DUKE: AEO.

6 THE COURT: You guys are not going to be very

7 popular with the media, but that's, I guess, none of our

8 concern.

9 MS. DUKE: And one thing that may make it easier

10 for you, too, to reference, when the exhibit is up there, if

11 it's easier -- I know we are far away apart -- you will see

12 it on the bottom right there where it says "Michael

13 Djernes." When I put a document up, it will show that

14 document number, and it will be in the lower right-hand

15 corner.

16 THE COURT: That will be helpful. Thank you.

17 I'll just simply try to make note of that as it's being

18 played.

19 (Testimony of Dr. Michael Djernes via video

20 deposition.)

21 (Video deposition paused.)

22 THE COURT: Counsel, could I stop? I noted that

23 there was a -- I think maybe kind of a scrivener's error in

24 the transcript where I think the doctor actually referred to

25 "patient preference," and the word "patient" was

520

1 THE COURT: Can we deal with the exhibits?

2 MS. DUKE: Yes.

3 THE COURT: I have 1155 and also 1538. Were there

4 any others?

5 MS. DUKE: 1149.

6 THE COURT: 1149 was previously admitted.

7 MS. DUKE: Okay.

8 THE COURT: Is there any objection?

9 MR. SINCLAIR: No, sir.

10 THE COURT: 1155 and 1538 will be admitted.

11 (Plaintiffs' Exhibit Nos. 1155 and 1538 admitted.)

12 THE COURT: Counsel, I'm going to obviously

13 publish all of the depositions that are being played, but

14 we'll do it formally tomorrow morning when you bring the

15 originals.

16 MS. DUKE: Correct.

17 THE COURT: What is the name of the next --

18 MS. DUKE: Ed Castledine.

19 THE COURT: Go ahead and proceed.

20 MS. DUKE: Your Honor, I'm having an issue with

21 that one, so let's move -- I'm not sure -- it's not playing

22 the clipped videos. So we'll move to a different one and

23 come back to Mr. Castledine at a different time.

24 THE COURT: All right.

25 MS. DUKE: So we'll go to William Savage.

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1 (Testimony of William Savage via video deposition.)  
 2 MS. DUKE: All right. That's the end of that one,  
 3 Your Honor.  
 4 THE COURT: All right.  
 5 MS. DUKE: We'll be moving to admit 1409 and 1411,  
 6 which I understand there is no objection to.  
 7 THE COURT: Is that correct?  
 8 MR. SINCLAIR: Correct, Your Honor.  
 9 THE COURT: 1409 and 1411 will be admitted.  
 10 (Plaintiffs' Exhibit Nos. 1409 and 1411 admitted.)  
 11 MS. DUKE: All right. We have excerpts from the  
 12 video deposition of John Kaiser next.  
 13 THE COURT: All right.  
 14 (Testimony of John Kaiser via video deposition.)  
 15 MS. DUKE: That's the conclusion of that one,  
 16 Your Honor.  
 17 So with respect to Dr. Kaiser, we'd move to admit 1083,  
 18 1159, and 1386. And I know that 1160 has already been  
 19 admitted.  
 20 THE COURT: Is there any objection?  
 21 MR. SINCLAIR: No, sir.  
 22 THE COURT: All right. 1083, 1159 -- what was the  
 23 third?  
 24 MS. DUKE: Oh, 1386.  
 25 THE COURT: -- 1386, those three exhibits will be

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1 MS. DUKE: But I don't have any testimony that's  
 2 been noted to be AEO by Luke's, so I would think that this  
 3 could be open to the public, then.  
 4 THE COURT: Any objection?  
 5 MR. SINCLAIR: No.  
 6 THE COURT: Again, I don't know how we alert  
 7 anyone to that except perhaps to open the doors.  
 8 \*\*\*\*\* COURTROOM OPEN TO THE PUBLIC \*\*\*\*\*  
 9 MR. WILSON: There's not a town crier?  
 10 THE COURT: What's that?  
 11 MR. WILSON: I asked if there was a town crier  
 12 that could go out.  
 13 THE COURT: Great idea. Have them walk up and  
 14 down the streets of downtown Boise.  
 15 MS. DUKE: All right, Your Honor. I'll start  
 16 that. So this is Jackie Butterbaugh.  
 17 The audio is not working on this side, Your Honor,  
 18 so --  
 19 THE COURT: Do you just need to change positions,  
 20 then?  
 21 MS. DUKE: Yeah. I just need to plug this  
 22 computer into this one, and sometimes the system doesn't  
 23 like the switching.  
 24 We need to take a five-minute break. I apologize. For  
 25 some reason, the audio is not picking up.

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1 admitted.  
 2 (Plaintiffs' Exhibit Nos. 1083, 1159, 1386 admitted.)  
 3 MS. DUKE: Let me just double check, Your Honor.  
 4 I think there may be one additional, 1143.  
 5 THE COURT: 1143 was previously admitted.  
 6 MS. DUKE: Okay. Thank you.  
 7 We're now going to play the Jackie Butterbaugh,  
 8 excerpts from her deposition.  
 9 MR. SINCLAIR: Is this AEO? Is this AEO?  
 10 THE COURT: Counsel, is this AEO?  
 11 MS. DUKE: I'm looking. It's all of St. Luke's  
 12 AEO designations, so they would be in a better position --  
 13 you tell me.  
 14 MS. NEUHOFF: Jackie Butterbaugh is not a  
 15 St. Luke's --  
 16 MS. DUKE: Not you?  
 17 MR. SINCLAIR: It may be a St. Luke's designation  
 18 of AEO, but she is not a St. Luke's witness. So I'm just  
 19 wondering whether we need to exclude anyone.  
 20 MS. DUKE: I have designated by St. Luke's that  
 21 her exhibits, 1000, 1001, are AEO.  
 22 MR. SINCLAIR: But they're all St. Luke's  
 23 exhibits?  
 24 MS. DUKE: They're St. Luke's exhibits.  
 25 MR. SINCLAIR: Okay.

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1 THE COURT: We will take a very short break. We  
 2 will need to take -- to recess at 2:30 because, as I said, I  
 3 do have another hearing I think at 3:00.  
 4 In any event, we'll be in recess.  
 5 (Recess.)  
 6 \*\*\*\*\* COURTROOM REMAINS OPEN TO THE PUBLIC \*\*\*\*\*  
 7 THE COURT: Do we have the technical problems  
 8 largely resolved?  
 9 MS. DUKE: I have improvised and moved the  
 10 microphone right here, and we're good to go.  
 11 (Testimony of Jackie Butterbaugh via video  
 12 deposition.)  
 13 (Video deposition of Jackie Butterbaugh paused.)  
 14 MS. DUKE: Your Honor, is this a point you would  
 15 like to stop? I know you said 2:30.  
 16 THE COURT: Thank you for noting that. Let's go  
 17 ahead and take the recess. Counsel, I apologize. I'm  
 18 losing my voice. I'm not sure why that is. We'll reconvene  
 19 at 8:30 tomorrow morning. The first order of business will  
 20 be to publish the depositions, and then we'll proceed with  
 21 Ms. Butterbaugh's video deposition.  
 22 Her deposition is open, is that correct?  
 23 MS. DUKE: It is, with the exception of a couple  
 24 of the exhibits, which I think we can just blank out the  
 25 screen when we're showing you.

1 THE COURT: Tomorrow, generally, will it be open  
2 or are there still going to be a number of witnesses in  
3 which we will need to close the courtroom?

4 MS. DUKE: I still think, as I understand it,  
5 there is a number of witnesses that will be closed.

6 THE COURT: All right. We'll be in recess, then,  
7 until 8:30 tomorrow morning.

8 Counsel, if you could kind of clear the area and clean  
9 up after yourselves just a bit because we have got attorneys  
10 coming in very shortly here in about 25 minutes.

11 We'll be in recess.

12 (Court recessed for the evening at 2:32 p.m.)  
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1 REPORTER'S CERTIFICATE  
2  
3  
4

5 I, Tamara I. Hohenleitner, Official  
6 Court Reporter, County of Ada, State of Idaho,  
7 hereby certify:

8 That I am the reporter who transcribed  
9 the proceedings had in the above-entitled action  
10 in machine shorthand and thereafter the same was  
11 reduced into typewriting under my direct  
12 supervision; and

13 That the foregoing transcript contains a  
14 full, true, and accurate record of the proceedings  
15 had in the above and foregoing cause, which was  
16 heard at Boise, Idaho.

17 IN WITNESS WHEREOF, I have hereunto set  
18 my hand October 31, 2013.  
19  
20  
21

22 \_\_\_\_\_  
23 Tamara I. Hohenleitner  
24 Official Court Reporter  
25 CSR No. 619