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BOARD OF ARBITRATION

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THE BROTHERHOOD OF MAINTENANCE WAY :

EMPLOYEES DIVISION/IBT AND INTERNATIONAL :

ASSOCIATION OF SHEET METAL; AIR, RAIL AND :

TRANSPORTATION WORKERS, :

Unions, :

v. :

NATIONAL CARRIERS' CONFERENCE COMMITTEE, :

Carrier. :

----- :

HEARING

DATE: Tuesday, May 8, 2018

TIME: 8:58 a.m.

BEFORE: Gill Vernon, Chair; Thomas R. Roth;  
Kenneth Gradia

LOCATION: DoubleTree by Hilton Crystal City  
300 Army Navy Drive  
Arlington, VA 22202

REPORTED BY: Samuel Honig, Notary Public

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E X H I B I T S

EXHIBIT	DESCRIPTION	MARKED	ADMITTED
Exhibit 49	Roth Written Statement	56	72
Exhibit 50	9/16/11 UTU agreement and 4/25/12 BMWED agreement	72	72

1 P R O C E E D I N G S

2 MR. EDELMAN: So we are going to have several  
3 rebuttal witnesses. Our first witness is Molly  
4 Loftus.

5 THE REPORTER: The mike.

6 MR. EDELMAN: Is it not on?

7 THE REPORTER: Just turn it up a little.

8 MR. EDELMAN: Okay.

9 MR. VERNON: She is going to need that  
10 anyway.

11 MR. EDELMAN: That is what happens when you  
12 work outside of the scope, right?

13 MR. VERNON: She is going to need that mike  
14 anyway.

15 MR. EDELMAN: Okay. That would have made  
16 things simpler.

17 WHEREUPON,

18 MOLLY LOFTUS

19 called as a rebuttal witness, was examined and  
20 testified as follows:

21 MR. VERNON: Molly, just for the record,  
22 would you state your name?

1 THE WITNESS: Yes. Good morning, everyone.  
2 My name is Molly Loftus, and I am a senior vice  
3 president -- is it on?

4 THE REPORTER: Just pull it closer.

5 THE WITNESS: Is that better? No.

6 MR. EDELMAN: A little closer.

7 THE WITNESS: Okay. Is that okay? Yes.  
8 Good morning, everyone. My name is Molly Loftus, and  
9 I am a senior vice president in charge of actuarial  
10 and analytics at Consortium Health Plans. I am also a  
11 fellow of the Society of Actuaries, with 30 years  
12 healthcare experience.

13 DIRECT EXAMINATION

14 BY MR. EDELMAN:

15 Q Ms. Loftus, did you provide a statement in  
16 this proceeding; that is, exhibit 42 for the unions?  
17 It is a statement signed by you and Lindsey Martin.

18 A Yes, I have provided such a statement.

19 Q Okay. And could you briefly summarize what  
20 your statement says?

21 A Sure. I was asked to provide an opinion on  
22 the subject of discount convergence. So statements

1 have been made that across the industry, we have seen  
2 the discount gap between the best in market and the  
3 worst in market continuously close. And, in fact,  
4 that has been a function of a lot of provider  
5 consolidation activities, so mergers and acquisitions  
6 giving providers more power within the marketplace.

7 We received data from Willis Towers Watson  
8 along with other consulting firms every six months.  
9 And that benchmarking data gives us insights into at a  
10 market level how our cost position compares to each of  
11 the other health plans within that market.

12 We went back, and we looked at that discount  
13 data going all the way back to midyear of 2013 through  
14 midyear of 2016. So that was six separate  
15 benchmarking reports. And what we saw in reviewing  
16 those benchmarking reports was that the discount  
17 advantage enjoyed by Blue Cross/Blue Shield has  
18 actually grown over this three-year period, instead of  
19 compressing and converging.

20 What we found was that nationally in 2013, on  
21 average, Blue Cross/Blue Shield had a held 8.6 percent  
22 advantage in over 50 percent of the markets. And by

1 midyear 2016, that advantage had grown to 3 percent.  
2 So we went from .6 percent to a 3 percent discount  
3 advantage, and we were now ranked number 1 in nearly  
4 80 percent of the markets. We, similarly, looked at  
5 the markets that had the highest concentration of  
6 railroad employees, and the findings were very  
7 similar. Within those markets, we increased for an  
8 average advantage of .8 percent in 2013 to an  
9 advantage of 3.2 percent in 2016. And a number of  
10 markets where we were ranked number 1 on discounts  
11 increased from 46 percent of the markets to nearly 76  
12 percent of the markets.

13 So, again, significant merger and acquisition  
14 activity taking place during that time period. And,  
15 yet, discount advantage increased, instead of shrank.

16 MR. EDELMAN: Okay. That is it for us.  
17 Thank you very much.

18 MR. VERNON: Thank you very much. We have  
19 read your report. Thank you very much.

20 (Witness excused.)

21 MR. EDELMAN: Next we would like to call  
22 Tricia Grey.



1 WHEREUPON,

2 TRICIA GREY

3 called as a rebuttal witness, was examined and  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. EDELMAN:

7 Q Ms. Grey, would you please identify yourself?

8 A Sure. Good morning. I am Tricia Grey, vice  
9 president of sales operations at Highmark Blue  
10 Cross/Blue Shield.

11 Q And you prepared a statement that was  
12 submitted in this proceeding that was viewed as  
13 exhibit 43 under the heading "Highmark"?

14 A Yes, that is correct.

15 Q All right. And we have had some testimony  
16 here about the time it would take to implement a  
17 change in health insurance benefits. So question, if  
18 Highmark received a brand new client with 26,000  
19 lives, how long do you believe it would take to  
20 implement a plan like that?

21 A We could typically do it within a period of  
22 30 to 45 days.

1           Q    Now, if you were working for a general plan  
2 administrator for an existing plan that had  
3 administered the plan for many years and you were  
4 provided a crosswalk for changes in vendor to which a  
5 participant would be assigned, that showed by ZIP Code  
6 to which vendor participants are currently assigned  
7 and to which vendor they would be reassigned, how long  
8 would it take to implement that in your understanding?

9           A    With the crosswalk and the existing file in  
10 place, we could do that with inside of 30 days.

11           MR. EDELMAN:   That is the extent of our  
12 questions, Ms. Grey.

13           MR. VERNON:   Any questions?

14           MALE SPEAKER:   None from me.

15           MR. VERNON:   Thank you very much.

16           MR. EDELMAN:   Thank you.

17           (Witness excused.)

18           MR. EDELMAN:   Our next presenters will be Ms.  
19 Mallett and Ms. Gravot.

20           WHEREUPON,

21                           KAREN MALLETT and GAELLE GRAVOT

22           called as rebuttal witnesses, were jointly examined

1 and testified as follows:

2 WITNESS MALLETT: Just trying to put the  
3 PowerPoint up. Give me one sec. Let me get started  
4 here.

5 MR. VERNON: Would you prefer the table or  
6 the podium?

7 WITNESS MALLETT: I am going to go through  
8 the table.

9 MR. VERNON: All right.

10 WITNESS MALLETT: To begin with, I have to  
11 reread this statement. So, Gaelle, can you just  
12 quickly go to to that statement so I can read it while  
13 you finish being set up? Sorry.

14 "The PowerPoint presentation was prepared  
15 solely for the purpose of arbitration among certain  
16 carriers represented by the National Carriers'  
17 Conference Committee, the NCCC, and their employees  
18 represented by The Brotherhood of Maintenance of Way  
19 Employees Division and The National Brotherhood of  
20 Teamsters and the International Association of Sheet  
21 Metal, Air, Rail and Transportation Workers Mechanical  
22 Division, collectively the parties.

1           "Under the supervision of the Board of  
2 Arbitration, the Board, appointed pursuant to the  
3 arbitration agreement, information is highly  
4 confidential, proprietary, and subject to the various  
5 nondisclosure agreements. Therefore, the information  
6 is intended for the use of the parties and the board  
7 solely for the purpose of the arbitration. No portion  
8 of this report may be disclosed or disseminated  
9 publicly.

10           "The report may not be replicated, in whole  
11 or in part, unless specifically accepted by Cheiron.  
12 All copies of this PowerPoint must be returned to  
13 Cheiron or destroyed upon conclusion of the  
14 arbitration." Thank you for listening.

15           So today -- why isn't that turning? Can you  
16 just go sit over there? Today we have -- okay.  
17 Sorry.

18           So a lot of information was provided  
19 yesterday by the NCCC and their expert witnesses.  
20 Today we have to talk to you about -- first of all, we  
21 want to begin with the reconciliation of Willis Towers  
22 Watson and Cheiron's numbers, and then we want to talk

1 about three key topics: first, the implementation,  
2 and that was a key issue; secondly, the financial  
3 impact, the differences between Cheiron and Willis  
4 Towers Watson. And, third, there were a lot of  
5 extraneous issues that they talked about, and we are  
6 going to give you our perspective on the items that  
7 were discussed, beginning with the implementation, the  
8 reconciliation.

9           The next page. Looking at the NCCC savings,  
10 Cheiron and Willis Towers Watson estimates varied on  
11 the measure of the NCCC's plan savings. So if you  
12 look at the numbers, you can see Willis Towers Watson  
13 had \$73.24, \$87.03. And the aggregate numbers were  
14 \$13 million, \$27 million, for a total of \$40 million.

15           Our estimates were slightly less. They were  
16 both supposedly based on the spreadsheet that  
17 UnitedHealthcare did. We believe the only difference  
18 is a trend assumption, but we do not know that because  
19 Willis Towers Watson didn't tell us how they projected  
20 forward the savings between 2017, 2018, and 2019.  
21 UnitedHealthcare provided the saving calculations for  
22 2017.

1           Assuming that they used higher trends -- and  
2 we show you what trends we believe they used, but we  
3 don't know -- we can match their numbers. And we are  
4 fine with matching their numbers. We are fine with  
5 saying it is a \$40 million savings. We don't have an  
6 issue there. We don't want to argue about those  
7 points.

8           Now, going forward to the reconciliation of  
9 the 357 Plan phase, using higher trend rates, our  
10 savings were going to go up from the 98.88 to 102.32  
11 and from the 102.14 to the 112.42 or the savings would  
12 be a total of \$51 million.

13           Now, using their numbers that they had for  
14 2019 and trending them back with the assumptions that  
15 we are backing into, we are assuming \$8 million for  
16 2018. Now, if you look back at the report, they show  
17 \$9 million for 2019 for half a year. If we doubled  
18 that, we get \$18 million. So we are saying that  
19 assuming there is no implementation timing difference  
20 -- and we are going to talk in great detail about that  
21 -- but assuming there is no implementation timing  
22 difference, the difference in our savings numbers

1 would be the \$26 million versus the \$51 million or \$25  
2 million difference.

3 On the next page, we sum up the 2  
4 comparisons, the NCCC proposal \$40 million on both of  
5 them. And then we show the 357 proposal, \$26 million  
6 savings, \$51 million. Willis Towers Watson is saying  
7 there is a \$14 million difference in fact that the 357  
8 Plan is \$14 million short. Cheiron is saying that the  
9 357 Plan saves 11 million more dollars. So it is  
10 about \$2 and a half million more a month is what our  
11 savings is coming up with.

12 The total difference is \$25 million. Now, we  
13 are going to spend a lot of time explaining why we  
14 believe strongly that our projections are accurate,  
15 but before we can even begin with that, the next key  
16 component is the implementation. And there are two  
17 key points that they hit. One is the timing of the  
18 357 Plan versus the NCCC's proposal, and the other one  
19 is the design of the 357 Plan.

20 WITNESS GRAVOT: So when we get to the  
21 implementation, if we are looking at the vendors that  
22 we have today for the current plan versus the 357

1 Plan, there is no change in vendors. You still have  
2 the same business partners, the same insurance  
3 companies. And today these three companies are  
4 exchanging eligibility, getting eligibility updates.  
5 Aetna and Highmark, we are doing this on a weekly  
6 basis. Both Aetna and Highmark send new cards weekly.  
7 Highmark and Aetna also stated that impacted members  
8 would receive their new ID cards within one to two  
9 weeks after they receive the eligibility file from  
10 UHC.

11 This is kind of business as usual. Remember  
12 that you are dealing with the top three insurers in  
13 the country. This is their business. That is what  
14 they do for a living. When we get to the deductible,  
15 the out of pocket, the co-pays, all of these  
16 accumulators, the information is currently exchanged  
17 between the three partners. Aetna receives  
18 accumulators two times a day. Highmark received  
19 behavioral health accumulators from UHC daily and some  
20 other accumulators on a quarterly basis. All three  
21 have handled continuity of care routinely. That is  
22 also part of their business.



1           The only benefit that would need to be coded  
2 would be for Aetna, the CHCB plan. And Aetna said  
3 they would need up to 60 days if anyone would end up  
4 in the CHCB plan. There are less than 600 people that  
5 we are looking at that may end up in CHCB. We are not  
6 even sure it will be up to 600. Worst-case scenario,  
7 if Aetna has to delay the implementation for the CHCB  
8 plan, we are looking at a 10-cent per QEPM, so per  
9 qualified employee per month, impact on the savings.

10           Dawn Fairhurst, account director at Aetna,  
11 stated or commented on the implementation of taking  
12 over a UHC railroad. The Amtrak implementation went  
13 very well. And member feedback regarding the  
14 transition was very positive. It doesn't seem like  
15 disruption was a big issue there.

16           So for this plan, these insurers have been  
17 transferring files to each other for the last 10 years  
18 at least. Having to handle a crosswalk and a new  
19 eligibility file should not be that big of an issue.

20           So Willis Towers Watson estimated that the  
21 time it will take to implement the 357 Plan is  
22 nonsensical. We have a hard time reconciling how it

1 would take only 1 day to switch the eligibility to  
2 reflect the CBG deal but it would take 9 to 12 months  
3 to implement a change in the eligibility file only.

4 A new plan would take less than two months to  
5 be implemented by UHC. Let me take the example of  
6 Cheiron. We have our health insurance. Actually, we  
7 don't have anything against of the vendors. We don't  
8 have anything against UHC. And we moved our insurance  
9 to UHC effective 1/1/18. That implementation was done  
10 in less than 30 days.

11 Willis Towers Watson has no signed statement  
12 from UHC. It is just hearsay. We have Aetna  
13 testimony. We have Highmark testimony. We did not  
14 contact UHC because when we contacted UHC in the past,  
15 they made it clear back in February, then if we ask  
16 them anything and when we asked them about the PMPM  
17 information, they will not provide any information  
18 without the NRLC's approval. And UHC would be basing  
19 their estimate on the NLRC's implementation  
20 description, which is not what the BMWED/SMART-  
21 Mechanical proposal is about.

22 Looking historically at implementation of

1 Highmark back in 2007, July 2007, BMWED agreed to add  
2 Highmark as an option. August 2007, Highmark option  
3 is actually implemented. And members came, joined the  
4 Highmark plan. That didn't take nine months.

5 So Willis Towers has some consonant concerns  
6 about the 357 Plan designs. After two years, the NCCC  
7 finally has a suggestion on how to implement the 357  
8 Plan design. First, they want projected versus  
9 executive contract. Second, they want the discount  
10 differential to be greater than two percent. Third,  
11 they want members in one SMA or region to have a  
12 choice of network, but all the members that could be  
13 living in the network right next door may have to be  
14 assigned to one network and not have the option of  
15 choosing another one.

16 The NCCC appears to be fine giving extra  
17 money to the three large insurance companies they are  
18 using as vendors. They show 16 areas where there have  
19 been improvements. They show six markets where they  
20 want to encourage competition. We will address these  
21 points in the next few slides.

22 So the first issue, the projected versus

1 executive contract, back in 2016-17, when we did the  
2 RFI round 2, the 2017 RFI, Willis Towers requested  
3 executive contract. They wanted executive contract  
4 because they wanted to make sure the vendors were not  
5 going to play games with projected contracts.

6 So our estimate using the executive contracts  
7 give us a savings of \$98.88 for 2018 on the per  
8 qualified employee per month. Had we used the  
9 projected contracts like Willis Towers wanted us to do  
10 today, that estimate would have gone up by 3 percent.  
11 Had we used the 2018 guaranteed discounts that were  
12 included in the submission from the vendors, that  
13 estimate would have gone up by 15 percent. So,  
14 actually, \$98.88 is a conservative estimate.

15 We used the discount that produced the lowest  
16 savings. As actuarial consultant, we would recommend  
17 to use either the executive or the guaranteed  
18 contract, not the projected contract. The NCCC wants  
19 to use the projected contract for the Association of  
20 the -- we can very well provide you with a new  
21 crosswalk within a day.

22 BMWED and the SMART-Mechanical do not favor

1 any vendors specifically. We all believe they are  
2 doing an excellent job.

3 Second concern from Willis Towers, they want  
4 a discount differential to be greater than 2 percent.  
5 Does that mean that the NCCC is ready to give up up to  
6 2 percent of their savings, potential savings, to the  
7 network providers? Wouldn't this be equivalent to  
8 basically increasing the actual value by or letting  
9 the actual value be higher by up to 2 percent?

10 On the right, we show you the differential of  
11 the 357 MSAs. The first two columns are by default  
12 providers, and the second two columns are by actual  
13 enrollment. We see that 31 percent of the enrollees  
14 are living in areas where there will be no difference  
15 between the current and the new discount MSAs, but you  
16 get 11 percent where basically, the bottom of the  
17 table, you have 11 percent of that enrollment where  
18 there could be like savings in -- where there is  
19 discount differential in excess of 10 percent.

20 Willis Towers Watson has concern, and they  
21 want members in some areas to have the choice of  
22 network. And they show actually six markets where

1 they want to encourage competition. It seems that  
2 Willis Towers Watson forgets what their expert is  
3 saying, Dr. Gaynor. Discounts are based on the  
4 network's book of business, not the railroad-specific  
5 membership.

6 As for the sixth market, four have less than  
7 1,000 employees. There is no detail for us to look  
8 into these examples and see how realistically they  
9 could be impacted in the discounts, in the savings.

10 We do think that this concept demonstrates  
11 that some of the MSA would have a choice. Sorry. We  
12 think that using the concept that some MSA would have  
13 a choice between vendors and some other MSAs would not  
14 would be extremely difficult to understand for the  
15 members and also difficult to administer and increase  
16 the cost of administration of the plan. Again, we  
17 question the NCCC in what they would want and whether  
18 or not they would want to capture their savings.

19 Willis Towers Watson has concern with regard  
20 to 16 areas where UHC network remediation have made  
21 improvements in the last few years. We agree looking  
22 at the data between 2015 and 2018, Highmark versus

1 UHC, that the average difference in the data that were  
2 received actually shrank from Highmark having a better  
3 discount of about 7.4 percent on average to 6.9  
4 percent. So does NCCC still want to pay 6.9 percent  
5 more than they need to?

6 WITNESS MALLET: Our conclusion is that on  
7 implementation, a brand new plan can be implemented in  
8 less than two months. The savings from the 357 Plan  
9 is \$2 and a half million a month. So even if we are  
10 off by a month or 2 months, that is \$5 million, and we  
11 have a surplus of \$11 million.

12 Our conclusion on their concerns about the  
13 plan design, if they want to use the projected  
14 discounts or the guaranteed discounts, we can do it.  
15 And we can tell you right now how many MSAs will  
16 switch between the vendors because to us, disruption  
17 is not about who your ID card is from. Whether it is  
18 from UnitedHealthcare or Aetna or Highmark, disruption  
19 is about who your doctor is. And we believe based on  
20 the analysis that we did for the railroad data, that  
21 the disruption will be very little, less than 2 to 4  
22 percent. And the switching will actually improve the

1 out-of-network to more in-network providers.

2 So we are actually going to have a positive  
3 disruption with this 357 Plan. We believe it will be  
4 fairly positively received. And, unfortunately, the  
5 other unions have not been able to educate their  
6 membership like the BMWED and SMART-Mechanical have  
7 been able to about what disruption really means and  
8 about how doctors work.

9 So we believe implementation is doable and  
10 can be done expediently. That leaves us with a  
11 financial impact. For the financial impact, they  
12 questioned four different things: the business  
13 partner's fees, the marketplace consolidation and  
14 discount convergence, the medical management or what  
15 they call as everything else besides the discounts,  
16 and specific assumptions and methodology differences.

17 So, starting with the business partner fees,  
18 they claim it is going to cost \$3 to \$4 million extra  
19 a year. 2.4 million is for the general/administrative  
20 fee increase. Now, they came up with the 2.4 million  
21 assuming the full 100,000 qualified employees or  
22 90,000 qualified employees, but we will show in 2



1 slides down that it doesn't drop like if you did all  
2 -- they want us to use just the BMWED. So they want  
3 us to use just 29 percent of the population. If we do  
4 that, then the number of covered members goes from  
5 59,000 to 46,000. And so the fees are not going to go  
6 up by 2.4 million for the general and administration  
7 for the entire population.

8 Next, they claim \$600,000 due to the claims  
9 administration and network access fees increase.

10 Aetna and Highmark fees are both lower than UHC.

11 Based on the 2016 RFI responses, Highmark would lower  
12 their fees even more. There is not going to be a  
13 \$600,000 increase in network access fees. We are  
14 going to show you in a minute that for the 46,000,  
15 United is not going to go up enough to offset the  
16 savings from having lower Aetna and Highmark fees.

17 Five hundred thousand dollars due to the plan  
18 being separate from the national plan, there is no  
19 separation. They trace -- on our side, I already  
20 explained. There is no trust. There is no  
21 differential. It is just an assignment. It is just a  
22 ZIP Code assignment. Already they are currently

1 assigned a ZIP Code. Now we are changing the  
2 methodology to assign the ZIP Codes. We are not doing  
3 anything differently than that.

4 They also claim a \$500,000 one-time  
5 implementation fee. I want to sign up for that  
6 because it didn't cost us \$500,000 in the last night  
7 to figure out the difference in which MSAs go from 1  
8 plan to the other or that we use the projected or  
9 executed contracts.

10 This is not a realistic situation. They have  
11 already implemented on their website that BMWED and  
12 SMART-Mechanical has a different plan. If you go on  
13 the website, they have already put it on. They had to  
14 do that back in January of this year because they  
15 implemented the first group, the CBG group. So they  
16 don't really need to do anything much there except for  
17 point out that you don't have a selection anymore. If  
18 you click on "BMWED-SMART," you can't select what  
19 network plan you are. They turn that switch off.  
20 That is done.

21 BMWED and SMART-Mechanical have said they  
22 will take care of the member communication. They

1 don't need to send out any papers. All they need to  
2 do is generate an eligibility file they do every week  
3 but change the methodology one time based on the ZIP  
4 Codes that we have provided.

5 Now, showing the real numbers on the next  
6 page, we look at table 1. And this shows for the  
7 entire plan the current amounts. It is based on the  
8 fees that we were provided by Dave Marcus back in  
9 2016. Those are the most recent fees we have. We  
10 also updated and input some projected fees that Peter  
11 Kennedy gave us through 2018. We come up with a total  
12 cost of \$50.58 per member, per qualified member, per  
13 month.

14 Now, it is important to point out right now  
15 that the claims admin fees, they total all up. They  
16 are \$48 million. When I get to some guarantees that  
17 are going to be provided, we are going to need to know  
18 that \$48 million figure. So the total is \$55 million.

19 Now, under the proposed fee, Aetna has the  
20 same membership. Their fee shouldn't be changing.  
21 Highmark's membership, it goes down. So their fees go  
22 down based on a table that they provided to us and we

1 provided in our rebuttal material on Friday evening.

2 The general/administration -- UHC's fees  
3 would go up slightly based on what they told us, but  
4 we increased it even further just to be conservative  
5 to get our \$1.29 that was in our number. And then the  
6 general and administration because this is the entire  
7 plan would go up from the \$5.24 to \$7. Summing it all  
8 up, that is where we get the \$1.29 savings.

9 Now, they want us to use just the \$3.56, the  
10 BMWED plan. So we did a chart, table 3. And we show  
11 Aetna is still the same fee. Highmark remember was  
12 \$36.23. And now it is \$40.51 based on the new  
13 schedule.

14 UHC's fee we kept the same because based on  
15 the table they provided. The general and  
16 administration fee we also kept the same based on the  
17 table that was provided.

18 All in all, the savings, instead of being  
19 \$1.29, would be 94 cents, or 35 cents, less. Now, if  
20 you cross-multiply this 35 cents, you have to do it  
21 for all 90,000 people. You can't just do it for the  
22 20,000 because that is what this fee is based on.

1 This is the total. We are summing up the total, the  
2 amount.

3 So that is going to give you -- let me  
4 calculate it -- \$1 million?

5 WITNESS GRAVOT: No. It is like about --

6 WITNESS MALLET: Oh, 600. It is less than  
7 \$600,000. Yes. It is about \$570,000 for the 18  
8 months.

9 So, again, remember we have that \$11 million  
10 extra savings, which we are going to proving. And so  
11 if you get rid of \$600,000 based on what they want of  
12 our savings and you get rid of the 2 months delay that  
13 could possibly exist, which we don't -- that would be  
14 an outside amount, based on the testimony you heard  
15 today, from a typical plan for even new  
16 implementation, then you are still at \$6 million over  
17 the NCCC proposal.

18 That takes care of the fees. Now for the  
19 marketplace consolidation and discount convergence. I  
20 want to remind you that Dr. Gaynor never said that  
21 medical provider mergers or insurance company mergers  
22 would result in insurance companies giving the same

1 discounts. He never claims in his statement discount  
2 convergence. He talks about marketplace  
3 consolidation. He talks about mergers, both for  
4 insurers and for providers. But he never says that  
5 the discounts are going to get closer.

6 On page 8 of his PowerPoint, he shows that  
7 Blue Cross/Blue Shield dominates the marketplace. And  
8 he talks about how having a larger market share yields  
9 a greater discount. Dawn Fairhurst asked her team,  
10 the contracts to providers, what they thought of the  
11 statement of discount convergence. And she explains  
12 Aetna does not agree with the provider merger or will  
13 result in complete convergence of insurer discounts by  
14 the end of 2019.

15 We agree that some convergence will take  
16 place over the next five years for broad network  
17 products, but complete convergence often means revenue  
18 loss to consolidating hospitals as they give more  
19 favorable discounts to insurers. And this is unlikely  
20 to be an acceptable outcome of a merger.

21 In addition to this market dynamic, we are  
22 seeing partnerships between insurers and providers in

1 markets to build high-performance networks, ACOs.  
2 These partnerships could actually drive divergence as  
3 the partnership seeks differentiation in the local  
4 market context. So Aetna, the people who actually  
5 contract with the providers, they think it could  
6 possibly diverge. They see no convergence.

7 Molly Loftus and Lindsey Martin provided a  
8 written statement. Molly testified there is no  
9 evidence of this convergence. There is actually  
10 evidence of it going the opposite way. So the only  
11 one that is saying that there is going to be discount  
12 convergence is Willis Towers Watson. And they say it  
13 is based on their analysis. They say looking at the  
14 data that was provided to both Cheiron and Willis  
15 Towers Watson it was 2.2 to 1.6. It went from 2.2 to  
16 versus 1.6. And we show you what is a very highly  
17 confidential chart of the comparison of discounts  
18 between these vendors and the best in class from 2015  
19 to 2018 using the executed contracts. It is important  
20 to use executed contracts because those are real.  
21 Those represent more real discounts, as opposed to  
22 projected.

1           They talked about how we were misinterpreting  
2 UHC's file. And I don't know what file UHC provided  
3 to Willis Towers Watson, but last night myself,  
4 Gaelle, and a couple of other people from Cheiron  
5 looked back and the file that we got from  
6 UnitedHealthcare. It was in the exact format that  
7 Willis Towers Watson had requested. They asked for  
8 executed contracts, projected contracts, and discount  
9 guarantees. The column to the far left, or the  
10 discount guarantees, was in every single one of the  
11 vendors' contracts. We did the comparison of the  
12 three different methodologies last night. And we  
13 showed, and Gaelle showed, you earlier if we use the  
14 other two methodologies, we actually get a larger  
15 savings. We are actually getting a better deal for  
16 the carriers.

17           In the graph here, using the executed  
18 contracts, we show that the difference between  
19 Highmark and UHC over the 4 years is between 3.1 and  
20 3.3. We can't match their numbers. And we also show  
21 very importantly that Highmark is very consistent  
22 within 1 percent of the best discounts. So the black



1 line that we are producing right there, that is what  
2 the 357 Plan results in. It results in the best in  
3 class discounts. And it is important to understand  
4 that. So that is the extra savings that would be  
5 given to the plan.

6 I am trying to see if there is anything on  
7 this slide that I haven't already said. I guess the  
8 one important thing I want to point out is they say  
9 provider discount improvements are achievable through  
10 plan administration on page 57 of their Power  
11 presentation yesterday. There is no reason, no  
12 logical reason, why plan administration where a plan  
13 can go to a medical provider and say, "Lower national  
14 panel, lower discounts," that they would provide it  
15 unless the railroad employees national panel was  
16 willing to do an exclusive deal with them and shift  
17 members directly to them. That was one of the options  
18 that we presented yesterday we decided was too  
19 difficult to do at this time, but we are not talking  
20 about that. So there is no logic that plan  
21 administration can approve discounts in this plan. It  
22 is illogical.

1 I think I said the other two bullets -- I  
2 don't need to repeat those -- on the prior slide.

3 Going on, on the Highmark's comments, Molly  
4 already said these. So I don't think we really need  
5 to repeat these. This is the same, the same basic  
6 information that was presented by Molly.

7 The 357 Plan. So we are showing they  
8 submitted between 47 -- I am going to skip this slide  
9 for now and go on to medical management analysis.

10 So what did we decide so far? Just  
11 repeating, we have said, "Okay. On the discount, on  
12 the fee, business partner fees, we might be off by  
13 \$600,000." On the convergence, we have no evidence  
14 from any source except Willis Towers Watson's  
15 interpretation of data, which we believe is incorrect.

16 So now for the other item that they list,  
17 medical management is one component or any other  
18 items. This is a very complex topic. And we have  
19 created a timeline here to show that we tried to get  
20 at this topic.

21 Back in March of 2016, we recommended that  
22 medical management, all of their components of savings

1 and discounts be incorporated. Willis Towers Watson  
2 in September 2016 when they wanted to redo the RFI for  
3 the uniform data standards, we asked them to include  
4 the medical management parts. They said no. They  
5 said it was not valid. In February of 2017, we  
6 presented our new information based on the RFI, and we  
7 again asked for that information. They said it was  
8 not needed. Now, we found it extremely interesting  
9 that we have found out in the last two weeks from  
10 Aetna that they were given a copy of Willis Towers  
11 Watson's railroad medical analysis in February of  
12 2017.

13 So they gathered the information. They had  
14 the information. They just didn't want Cheiron to  
15 have it. They just didn't want the union to have it.

16 Again, in September of 2017, we asked, but  
17 Willis Towers Watson declined, saying it is not  
18 needed.

19 In January of 2018 was the first time that we  
20 heard from the NCCC, not from Willis Towers Watson,  
21 that something other than discounts were going to be  
22 considered in reviewing the 357 Plan. That is the top

1 part of this tidal mine. On the bottom, we show that  
2 -- remember we told you all the large consulting firms  
3 could get the UDS data on a regular basis? So we  
4 tried to get it. We hired someone that was an expert  
5 in handling UDS data. They were from Aon. And we  
6 thought that that would help us become part of the  
7 consulting firms that get it.

8 We have 60 credentialed actuaries. We are in  
9 the top 10 of consulting firms, actuarial consulting  
10 firms with credentialed actuaries. So we asked for  
11 the data in June of 2017. And what happened was that  
12 by October of 2017, Aetna had said that they would  
13 give it to us on a project-by-project basis. Also by  
14 October, Cigna had said they would give it to us on a  
15 project-by-project basis.

16 From November 2017 to February 2018, we asked  
17 UHC. UHC we thought had agreed to provide us the  
18 information on a project-by-project basis, but by  
19 February 2018, when we had the account executive for  
20 the railroad on the call, they very clearly -- and  
21 Aetna had already provided the data to us, they very  
22 clearly said they would not provide it for our

1 analysis.

2 Highmark and Blue Cross/Blue Shield, they  
3 began providing us the data. We started working with  
4 them in January. They never said that they wouldn't  
5 provide us the whole dataset, but when it became clear  
6 that none of the other major vendors were going to  
7 provide it to us, it made no sense for them to provide  
8 it. But they did provide it on a this-project basis.

9 So we got information, what Willis Towers  
10 Watson refers to as PMPM information. We also had  
11 plan-specific information. So we did two analyses:  
12 one, the PMPM analysis, which Willis Towers Watson did  
13 back in February of 2017 and Molly talked about how it  
14 is inconsistent with the other three major insurance  
15 companies and we did it just using Aetna and Highmark.

16 Now, I have a lot of detailed charts, way  
17 back in here -- and we can go through them if you want  
18 -- about our analysis. And these charts we shared  
19 with Aetna and Highmark because we are required to for  
20 their approval for us to do it. But I am going to go  
21 back to this slide that has just the conclusion  
22 because we have a very tight timeframe.

1           For the data that we had, we only had 50  
2 percent of the railroad Metropolitan Standard Areas.  
3 It represented 50 percent of the membership. It was  
4 actually less than 50 percent of the MSAs. We only  
5 had 118 credible MSAs. And we used a credibility of  
6 1,000 lives. And for that, we came in with that  
7 Highmark would be less than Aetna by \$3.28 per QE per  
8 month.

9           Now, we had some questions that we shared  
10 with Aetna and Highmark that made us not think that  
11 this was completely valid, but we didn't have time  
12 because we were so crunched to do this analysis since  
13 we have only known since January that it was even  
14 going to be brought up.

15           But, that being said, it is a million dollars  
16 at most, a million dollars at most, between Aetna and  
17 Highmark. So now the \$11 million extra savings, 5  
18 million at most because of delayed implementation,  
19 which we do not believe is going to exist, at most  
20 \$600,000 for fees and at most a million dollars for  
21 Aetna being best in class, at most.

22           On the plan-specific data, we don't have full

1 credibility because of the way the red, white, and  
2 blue map is designed. Remember, Aetna and Highmark  
3 aren't supposed to be in the same area. So there  
4 shouldn't be any crossover between the three carriers.  
5 So what we did was we looked at Highmark versus Aetna  
6 and Highmark versus UHC.

7 Now, in the Highmark versus Aetna area, we  
8 had to go down to only 100 members. And we came up  
9 with Highmark being significantly better than Aetna.  
10 But in the Highmark versus UHC areas, we could go down  
11 to 500 members. And Highmark was twice as good as UHC  
12 as they were from Aetna. So based on risk-adjusted  
13 industry-standard actuarial analysis, we concluded  
14 that Highmark was best in class, but it is not fully  
15 credible.

16 Therefore, we believe that if medical  
17 management is actually taken into consideration, our  
18 savings are going to increase. For this analysis, we  
19 haven't included any savings for medical management,  
20 none, zero, because we don't have a full set of data  
21 and we had very little time to do the analysis. But  
22 we honestly believe based on our detailed actuarial

1 analysis, which is consistent with what we have heard  
2 from Aetna and Highmark, that savings would actually  
3 improve, not deprive.

4 Now, to the point that Mr. Glass and Mr.  
5 Scofield made that if you use the 357 Plan, that it is  
6 -- all the risk is on the carriers, first of all, if  
7 you use the carriers' plan, all the -- for their  
8 estimate, for the savings as a benefit, all the risk  
9 is on the carriers. There is no guarantees.

10 But the reality is, is for these network  
11 vendors, Aetna, Highmark, and UHC, provided discount  
12 guarantees. And they put their fees at risk. They  
13 put that \$40 million that we talked about at risk.  
14 And how much they put at risk, 25 percent for a UHC,  
15 30 percent for Highmark, 30 -- up to 35 percent for  
16 Aetna. Highmark's guarantee is actually the best  
17 guarantee.

18 So if you take 25 percent of \$40 million,  
19 you've got a \$10 million guarantee. You've got a \$10  
20 million cushion right there that the network vendors  
21 are guaranteeing.

22 The risk of the 357 Plan is not on the



1 carriers. It's on the vendors, where it should be.  
2 It's the network vendors. And, to the best of our  
3 knowledge, there has been no guarantee for the benefit  
4 savings. No one has said, "We're going to guarantee  
5 that \$73." And, yet, we have a guarantee for the \$98.

6 Questions on Willis Towers Watson's number.  
7 So Arbitrator Roth asked Mr. Scofield to quantify his  
8 calculations for the 357 Plan on page 40, the  
9 convergence on discounts, the adjustment for cost  
10 differences other than discounts and the discount  
11 basis reflected. He wanted to know what portion of  
12 savings went to each one, which ones were negative and  
13 which ones were positive. And Mr. Scofield said it  
14 would take him more than a day to do that, and it  
15 would require NCCC approval. Nowhere in Willis Towers  
16 Watson's report is there a list of data that they  
17 relied on, assumptions they made, or the methodology  
18 they used. And it would take Mr. Scofield more than a  
19 day to figure out how he put together his  
20 calculations.

21 Expert credibility. Evaluating the financial  
22 impact above discounts and medical management is best

1 done by qualified actuaries. Actuarial standards of  
2 practice, number 41 -- and Mr. Roth obviously has  
3 heard this before in his arbitration -- requires an  
4 actuary to list the sources of data, assumptions,  
5 methods, and scope of services, not just in a pension  
6 report but in all actuarial reports. For ASOC 41,  
7 actuarial communications, we list in detail here the  
8 wording from it.

9           But, again, Willis Towers Watson's reports  
10 have numerous deficiencies with respect to disclosure  
11 for the actual standards of practice. They all fail  
12 to disclose and identify their principal. Who was the  
13 report done for, the scope of the engagement, the  
14 assumptions and methods used? Identify the  
15 responsibility -- that responsible actuary, the  
16 actuary who is responsible for each assumption, and  
17 acknowledgement of qualification, qualification  
18 standards. They do not provide a credible actuarial  
19 report.

20           So in deciding between Cheiron versus Willis  
21 Towers Watson numbers, you have from Cheiron fully  
22 certified actuarial reports signed by three fellows of

1 the Society of Actuaries. You have BMWED and SMART-  
2 Mechanical providing two FSA expert witnesses with  
3 signed statements and testifying that they have  
4 consistent results with Cheiron's report that Blue  
5 Cross/Blue Shield has superior discounts in 75 percent  
6 to 80 percent of the railroad marketplaces. You have  
7 in testifying that Willis Towers Watson's analysis of  
8 the other services are inconsistent by three other  
9 actuarial consulting firms and by our own analysis  
10 that we showed you done two different ways versus what  
11 do you have from Willis Towers Watson?

12 Now, I want to say that my friend Mr.  
13 Scofield, I truly respect him. And I truly believe  
14 that had the NCCC allowed Willis Towers Watson and  
15 Cheiron in any of the requests that were done multiple  
16 times to try to reconcile the numbers, we wouldn't be  
17 having a "He said," "She said" conversation right now.  
18 We would have an agreement or if we didn't have an  
19 agreement, we would have a specific reason why they  
20 weren't in agreement. But we don't have that.

21 What we have from Willis Towers Watson is an  
22 unsigned, uncertified report that does not meet

1 actuarial standards of practice. And we have NCCC  
2 providing by one associate of the Society of Actuaries  
3 their expert witness. So, for your knowledge, the  
4 difference between an FSA and an ASA is an FSA is a  
5 fully credentialed -- they have reached the highest  
6 level of being an actuary. An associate actuary is  
7 about half that level, so just trying to let you know  
8 what the initial stamp or -- I'm not saying -- Mr.  
9 Scofield is a very smart person. And, again, I  
10 honestly believe we could reconcile these numbers.

11 But, that being said, the preponderance of  
12 the weight is in favor of Cheiron's numbers. We've  
13 got five fully credentialed, signed actuaries saying  
14 our numbers are reasonable.

15 With that being said, I'm going to hand it  
16 over to Gaelle.

17 WITNESS GRAVOT: In this section, we will  
18 touch on the other items that was brought up by Willis  
19 Towers Watson: consumerism, actual value, antitrust,  
20 member and provider disruption, and additional  
21 significant concerns.

22 The Rand health insurance experiment, that

1 study is over three decades old. Back in 2006, they  
2 actually did a follow-up study, and Rand reminded us  
3 of 2 important takeaways. First, cost sharing reduced  
4 the use of both highly effective and less effective  
5 services in roughly equal proportion. So that low-  
6 value services that was brought up by the NCCC's  
7 witnesses yesterday, you are also like actually having  
8 an effect on the highly effective, so the high-value  
9 services when increasing your deductible and  
10 co-insurance. Subsequent Rand work on appropriateness  
11 of care found that economic incentives by themselves  
12 do not improve appropriateness of care or lead to  
13 clinical sensible reduction in service use. In  
14 addition, cost sharing may not address the principal  
15 cause of cost growth.

16 So some basic concept about consumerism.  
17 Value-based contracting drives utilization down, not  
18 increasing your deductible or your co-insurance.  
19 Medicare was able to reduce utilization. And they did  
20 this through value-based contracting. If you look  
21 back at historical Medicare deductible, they have not  
22 increased that substantially.

1           Medical necessity, criteria for determining  
2           medical necessity also have an impact on consumerism.

3           In the last round of bargaining, we agreed on  
4           the scope reduction, the generic co-pay was actually  
5           back in -- what year was it, 2005, the \$10 going down  
6           to \$5?

7           WITNESS MALLET: That happened in the last  
8           round.

9           WITNESS GRAVOT: The last round.

10          WITNESS MALLET: Two thousand twelve.

11          WITNESS GRAVOT: So for 2010, the deductible  
12          --

13          WITNESS MALLET: '12.

14          WITNESS GRAVOT: '12. Sorry. The deductible  
15          went -- on generic went from \$10 down to \$5. That  
16          actually increased your generic utilization by 5  
17          percentage points. As a result of that increase in  
18          utilization, because more cost-effective drugs were  
19          used, the plan saved money.

20          The NCCC proposal for the Rx benefit, this  
21          round of bargaining is actually reversing their  
22          position from last time and increasing that generic

1 co-pay back to \$10.

2 We show you three links to articles on this  
3 slide that actually shows you -- show you that when  
4 you increase people's deductible, co-insurance, or  
5 co-pay, they don't necessarily know where to go to  
6 find the right care. So increasing their cost did not  
7 actually let the people know where to go and how to  
8 shop. They are missing that part of the education.

9 The BMWED/SMART-Mechanical proposal was  
10 including also vital smart shoppers. That program was  
11 incentivizing members to actually shop around for  
12 identifying more cost-effective and maybe higher  
13 quality providers. The NCCC rejected the vital smart  
14 shoppers program.

15 WITNESS MALLETT: Going back to consumerism,  
16 our point is that we are trying to make here -- and  
17 this is a really important point -- is they are trying  
18 to get the members to be smarter consumers. And in  
19 their proposal of their \$73, they say \$9 of it is  
20 driven by consumerism. I want to take a second here  
21 to think about it. We used the wrong extended numbers  
22 for having better consumers with a plan for using

1 network providers, so the plan being a better consumer  
2 and assigning people correctly to the networks. They  
3 give \$56, \$56. That's six times more consumerism.

4 I also want to point out that every single  
5 business partner, Aetna, UnitedHealthcare, and  
6 Highmark, agreed. The CHCB plan, which does not  
7 promote consumerism, does not promote in-network use  
8 of providers, could almost be completely eliminated.  
9 But, yet, they want to continue to stick with that  
10 mapping that was done 27 years ago. The plan had an  
11 opportunity here to show and be a good consumer, but  
12 they chose not to do that. And they are still  
13 choosing to fight against consumerism for the plan.

14 WITNESS GRAVOT: Actuarial value of benefit.  
15 So we never really like defined what actuarial value  
16 of benefit means. There are actually so many  
17 different definitions. Do you include in-network  
18 benefit only? Do you include out-of-network and in-  
19 network? Is it on medical benefit only? Is it on  
20 medical and Rx? Are rebates included? Does that mean  
21 -- is it -- is the calculation of the actuarial value  
22 adjusted for administration fees or part of the



1 administration fees? Are HRA or ASA included in the  
2 definition of the actuarial value or in the  
3 calculation of the actuarial value?

4 The actuarial value at the individual level  
5 varies. If you think about somebody who is healthy,  
6 they have no claim at all. In that case, the  
7 actuarial value is close to zero or about zero while  
8 unhealthy people would hit their out-of-pocket  
9 maximum. And, as a result, their actuarial value  
10 would actually converge towards 100 percent.

11 The graph on the top of this slide show you  
12 -- shows you the comparison of what we call the  
13 benefit ratio. So it's based on the definition, a  
14 consistent definition, of actual value that we used.  
15 The comparison of the BMWED, it is smart current  
16 benefit versus the NCCC 2018 proposed benefit, the  
17 NCCC 2019 proposed benefit, and 10 other railroad  
18 system.

19 We find that the average of all the other  
20 transit union benefit ratio is about 91.4 percent  
21 compared to the 92 percent benefit ratio for the  
22 current and MCP brand for the BMWED/SMART-Mechanical.

1 That benefit ratio of 92 percent is not an outlier for  
2 that industry.

3 The NCCC witnesses brought up issues with the  
4 Blue Cross/Blue Shield Association antitrust lawsuit.  
5 We have some statements from Darren Gold from  
6 Highmark, "On April 16, 2018, the defendant filed a  
7 request that the court grant an interlocutory appeal  
8 of its per se ruling to the 11th" -- sorry -- "Circuit  
9 Courts of Appeals. If the request is not granted, the  
10 parties will proceed to the class certification of the  
11 case which the defendant, Blue Cross/Blue Shield  
12 Association, will vigorously defend. If the court  
13 grants class certification, it is likely that the  
14 initial bellwether trial against the Alabama Blue Plan  
15 will begin in 2019."

16 We have additional statement from Lori  
17 Schoonmaker, also at Highmark, "The April" -- and I  
18 will let you just that --

19 WITNESS MALLETT: You can read this if you  
20 want. The important part is this is not a 357 Plan  
21 issue. It is an issue for the current plan, the  
22 UnitedHealthcare, everyone issue, but it is not unique

1 to the 357. It would impact the NCCC proposal as  
2 well.

3 Let's go on to the next thing. I just want  
4 to give a -- the member and time -- the member and  
5 provider disruption, we already told you the  
6 percentages in the differentials. And we have also  
7 told you that the members have been educated, provider  
8 disruption, the professional people.

9 Going on to the next slide, conclusion.  
10 Rich, what is our time check? Do we have time to  
11 conclude or not?

12 MR. EDELMAN: I don't --

13 WITNESS MALLET: No. Okay. So, with that,  
14 we will -- we made all of our key points. Thank you  
15 for your time. Any questions?

16 (No response.)

17 (Witnesses excused.)

18 (Pause.)

19 MR. EDELMAN: This is the written statement  
20 that Mr. Roth is going to summarize, not going to read  
21 the whole thing. We do have an extra copy.

22 MR. VERNON: Of this?

1 MR. EDELMAN: Yes.

2 MR. VERNON: I just have one.

3 MR. EDELMAN: I know. So you are going to  
4 sit down, put Fred.

5 MR. VERNON: Okay. Got it. I think this is  
6 on, Freddie.

7 WHEREUPON,

8 FREDDIE N. SIMPSON

9 called as a rebuttal witness, was examined and  
10 testified as follows:

11 THE WITNESS: Good morning. I am Freddie  
12 Simpson. I will identify myself again, president of  
13 BMWED.

14 Just one --

15 MR. EDELMAN: Pull that mike closer to you,  
16 please.

17 THE WITNESS: Can you hear me now? Hello?  
18 All right. Okay.

19 Just one point of rebuttal. As I said as I  
20 closed yesterday, I felt the BMWED and SMART had done  
21 all they could do to try to get to a deal with the  
22 National Carriers' Conferences. But in Mr. Glass'

1 testimony, he said the solution was to race in the  
2 door and get the first deal and get out and you could  
3 get yourself a contract.

4 Well, just for the record, BMW/SMART tried  
5 that. We started early, well before, years before we  
6 could serve notice developing a healthcare committee  
7 to try to get to the bargaining table. We assumed or  
8 thought healthcare would be very important in this  
9 round of arguing. So we tried to get ahead of the  
10 game.

11 In 2015-2016, we first presented the 357 Plan  
12 to the National Carriers' Conference. The National  
13 Carriers' Conference didn't respond until September of  
14 2016.

15 In 2017, February, we coordinated with the  
16 Transportation -- or TCU Coalition Group, which --  
17 with regard to our notices. And in February,  
18 BMW/SMART and TCU pushed an identical proposal across  
19 the table on wages and healthcare to the National  
20 Carriers' Conference. We also retained -- we also  
21 made some modest changes to the benefits. And we also  
22 retained the 357 Plan.



1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. EDELMAN:

4 Q Will you identify yourself, please, Ms.  
5 Martin?

6 A Yeah. My name is Lindsey Martin. I am an  
7 actuary with Consortium Health Plans.

8 Q And did you coauthor that paper with Molly  
9 Loftus that is in exhibit 42?

10 A I did.

11 Q Now, Willis Towers Watson has made a claim  
12 that UnitedHealthcare has a cost advantage of 3  
13 percent excluding provider discounts. And this is at  
14 Scofield exhibit 25, page 21. What is your view of  
15 this claim by Willis Towers Watson?

16 A My view of that is we have seen results of  
17 these similar models from other firms. And while many  
18 of them are consistent, Towers is an outlier. We did  
19 not see the same result from other firms.

20 MR. EDELMAN: Thank you. That is it,  
21 questions.

22 MR. ROTH: Could you just describe for the

1 Board exactly what the consortium is and what you do?

2 THE WITNESS: Yes. Apologies.

3 MR. ROTH: Yes.

4 THE WITNESS: The consortium is an entity  
5 that does behalf -- does work on behalf of a number of  
6 Blues plans. As you know, some of the Blues have  
7 rules with each other, competing rules, that they  
8 can't see each other's data. We do a lot of data work  
9 on behalf of virtually all of the Blues plans.

10 MR. ROTH: I see. Okay. Thank you.

11 THE WITNESS: Yes.

12 MR. EDELMAN: Okay. Thank you.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 WHEREUPON,

16 THOMAS R. ROTH

17 called as a rebuttal witness, was examined and  
18 testified as follows:

19 MR. EDELMAN: Mr. Roth has a written  
20 statement that we have marked as unions exhibit 49.

21 (Unions Exhibit No. 49 was marked for  
22 identification.)



DIRECT EXAMINATION

1  
2 BY MR. EDELMAN:

3 Q Mr. Roth, can you briefly summarize what --

4 A Right. Well, I know how anxious the chairman  
5 was to have some more information on pattern  
6 bargaining. So I prepared this last night. But,  
7 actually, I wanted to round out the record with  
8 respect to those cases that are among the national  
9 rounds of bargaining that occurred since 1955, when  
10 the health and welfare plan was created.

11 As you recall from my earlier statement, I  
12 mentioned that there were some 19 non-op rounds of  
13 bargaining over that period of time. And I had  
14 accounted for about 9 or 10 of those in my earlier  
15 statement regarding the application of the pattern  
16 principle. And so I wanted to add to that in order to  
17 round out the record a couple of more of those wage  
18 and rules movements and what occurred during them with  
19 respect to the pattern application.

20 They were -- a couple of them were mentioned  
21 by counsel in their -- counsel for the NCCC in his  
22 opening argument, PEB-229, for example, and I think

1 211. And I was curious as to why, but I thought you  
2 should have some analysis of exactly what happened  
3 during those rounds.

4 So, without reading this at you, I am just  
5 going to identify for you the 1970 round, which  
6 involved the PEB-178. That was one where -- the  
7 chairman there was Lou Gill -- they rejected the  
8 application of the existence of a kind of controlling  
9 or a motivating pattern totally. As you can see, it  
10 was made clear in their analysis. There were four  
11 organizations that had settled prior to the PEB-178,  
12 which involved the BMWED and the UTU, the hotel  
13 restaurant employees, and the clerks, BRAC union at  
14 the time.

15 The pattern alleged by the NCCC at the time  
16 was a shop craft deal that called for approximately  
17 13.8 percent over a 3-year period. The ultimate  
18 recommendations to the BMWED and the other  
19 organizations was for 37.3 percent over 3 years. That  
20 is the consequence of kind o rejecting outright the  
21 application of the pattern and during that round.

22 The 1984 round is also instructive. This is

1 PEB-211. And, again, the short story here is this is  
2 rather complicated, but the short story is that during  
3 this round, the carriers had settled with the  
4 operating crafts. And that was followed by a BRAC  
5 deal that translated some of the concessions that the  
6 operating crafts made into concessions of their own  
7 with respect to wage restructuring of certain lower-  
8 level classifications.

9           The question then was, what do we do in 211  
10 with the subsequent unions that came? And they  
11 involved some shop crafts plus the BRS, the BMWED, and  
12 -- let me see -- I think one of the outlying shop  
13 craft unions as well.

14           In any case, I represented the BRS and the  
15 BMWED and a few others in that round of bargaining.  
16 And essentially, I record for you on page 5 the  
17 consequences of the recommendations, that on the  
18 surface, you would think if you read the report was  
19 for following the BRAC pattern, but, in fact, the  
20 results, the recommendations, the specific  
21 recommendations, for the BRS, the shop crafts, and the  
22 BMWED were wholly different in the wage change and the

1 restructuring that was proposed.

2           The point is that this is an illustration of  
3 where while the Board wrote language with respect to  
4 the existence and the importance of the pattern, it  
5 made recommendations which were wholly different and  
6 unequal, if you will, for the participating  
7 organizations.

8           So this is a case where it is not only  
9 different but unequal. My earlier statement was kind  
10 of recording for you those rounds of bargaining where  
11 we had explicit different terms where the boards and  
12 the parties subsequently had attempted to with some  
13 precision provide equal arrangements among the  
14 organizations.

15           The next one here in this list is the 219.  
16 That is not a pattern case per se, but there was the  
17 oft-quoted phrase that the Board had in its report  
18 that I quote on the top of page 6 of my summary here  
19 that says, "The Board had concluded that wage  
20 proposals of all organizations, both those  
21 representing the operating crafts and those  
22 representing the non-operating crafts, should be

1 treated uniformly." So, having said that, they went  
2 on to make recommendations on wages which were wholly  
3 different among the organizations. And I analyze that  
4 for you in the bullet points that follow on page 6.

5 The 1995 round resulted in the establishment  
6 of 3 PEBs. Two twenty-eight was with the clerks. And  
7 Rolf Valtin was the chair of that. And I think you  
8 served on that panel as well, Mr. Vernon.

9 MR. VERNON: Along with Jake Seinberg?

10 THE WITNESS: Yes, right. In 229, that was  
11 with the BMWED. And the chairman of that, as I  
12 recall, was Dave Twomey.

13 And 230 was a shop craft group. And was Dick  
14 Mittenthal's group.

15 The boards were all appointed within the same  
16 month. They issued reports that were dated, they are  
17 all dated, the same day. And while there were -- you  
18 know, of course, the NCCC took the position that --  
19 and I am quoting here from the carrier exhibit number  
20 4, which outlined their position -- that there was a  
21 pattern in effect that should guide these 3 panels in  
22 making their recommendations. And then I go on to

1 analyze for you exactly what happened. And you may or  
2 may not recall, but it was pattern plus. So this was  
3 a round of bargaining where while there were patterns  
4 established and while these boards recognized that  
5 there was a pattern, they, nevertheless, made  
6 recommendations which gave extra wage increases to the  
7 organizations before it. And that was true with 228,  
8 229, and 230.

9           The form of those extra wage increases  
10 varied. In your case, as you remember, you eliminated  
11 the 11 percent wage cut that would otherwise be  
12 applicable to the TCU clerks under their national  
13 salary plan that was incorporated as part of PEB-219  
14 recommendations.

15           And then let me see. Okay. In any case, I  
16 just wanted to add that, add the necessary information  
17 on those rounds of bargaining. I want to say, though,  
18 in -- to point out my conclusions here, on page 13,  
19 because I listened to the carrier in this case.

20           And I have a quote here from the carriers'  
21 position, which I found in their opening submission to  
22 you. And it raises two points with respect to the

1 application of the pattern principle. They say that  
2 the terms must be -- if you are going to apply the  
3 pattern principle, the terms, the exact terms, of the  
4 pattern must be applied. That is their position in  
5 this case. They say there are two exceptions,  
6 however: unusual -- and I am quoting -- unusual cases  
7 where work rules or compensation elements are craft-  
8 specific or, and/or, the second exception is where the  
9 parties agree otherwise.

10 This gets us to the testimony of Mr. Glass,  
11 who said, yes, the -- you know, what is wrong with the  
12 unions' presentation and the unions' view of the  
13 pattern application in this case is that they focus  
14 exclusively on situations where the parties had agreed  
15 to either monetize certain elements of compensation  
16 across the crafts or to, you know, convert these terms  
17 into value equivalent to what the pattern maker had  
18 received. And so somehow, they should be discounted  
19 by you.

20 Well, I say a couple of things here in  
21 closing. With respect to the first exception, you  
22 know, the NCCC is ignoring the history. If you think

1 that the concept of different but equal has applied  
2 exclusively or regularly to elements of compensation  
3 that are craft-specific, you are just wrong. You are  
4 just not understanding what happened. It is not  
5 enough to read the PEB recommendations themselves,  
6 read the report. That is not enough. Analyze what  
7 happened. Analyze what actually happened to those  
8 elements of compensation. So they are completely  
9 wrong and have a very shallow reading of the  
10 bargaining history if you think that the doctrine of  
11 different but equal applies only to craft-specific-  
12 type rules; for example, like cert pay. That is not  
13 the case.

14           Secondly -- and this is really an objection  
15 that I think several of the carriers' witnesses made  
16 to my presentation, in particular, is that my examples  
17 focused on those situations that involved agreements  
18 between the parties, as opposed to agreements which  
19 were imposed by an arbitrator.

20           The notion that the Board should discount a  
21 voluntary agreement as to the proper application of a  
22 recognized pattern is just patently ridiculous. The



1 proper function of an interest arbitration board is to  
2 ascertain to the best of its ability those terms that  
3 would best replicate what the parties themselves would  
4 have agreed to had the negotiations been successful.  
5 Now, how better to do that but to analyze what the  
6 parties have voluntarily agreed to in the past? So  
7 the precedential value of prior PEBs and prior  
8 agreements seems to me to be higher among those  
9 agreements and those contracts that have been  
10 voluntarily reached, as opposed to those imposed by an  
11 arbitrator.

12           Moreover, if you look at all of the wage and  
13 rules movements between 1955 and today on the freight  
14 side, you won't find any interest arbitrations that  
15 involved the BMWED. So where would you go if you are  
16 going to discount the voluntary agreements in trying  
17 to determine what is acceptable to the parties and how  
18 they view the proper application of a pattern? Then  
19 you will have no precedence, which seems to be very  
20 silly.

21           So my suggestion is that in trying to figure  
22 out how best to apply a pattern where there is some

1 mutual recognition where the pattern exists, you had  
2 best look to what the parties have done in their  
3 voluntary decisions over the past several decades.

4 And, finally, just to close, I want to  
5 comment about one other topic here. We have a wide-  
6 ranging set of opinions from Member Gradia and Mr.  
7 Scofield and others regarding the effect on employee  
8 morale or kind of labor relations generally under  
9 circumstances where you have two separate plan  
10 designs.

11 I think, you know, the examples that Mr.  
12 Scofield was giving involved two employees working  
13 side by side, one having a big deductible and one  
14 having a lower deductible and somehow that the one  
15 with the higher deductible is upset and morale is --  
16 labor relations has just stabilized. Okay? Let me  
17 say a couple of things about that.

18 We have had generations, we have had decades  
19 in this industry where the contribution rates toward  
20 health and welfare had varied among the organizations.  
21 This is particularly true with the BMWED.

22 Now, different contributions among the

1 employees is something that is highly visible. In  
2 other words, you can look at -- you can compare  
3 paychecks and figure out exactly who has the better  
4 deal or the lower contribution. It is easier to  
5 figure out than who has the bigger deductible because  
6 you are not comparing your insurance bills. So if  
7 that is not destabilizing and has not been and nobody  
8 is alleging that it was, then why would a different  
9 plan design be?

10           Secondly, we have, even within the BMWED and  
11 the SMART-Mechanical coalition, a substantial  
12 difference in their health and welfare coverage. The  
13 eligibility requirements for the sheet metal workers  
14 involves having performed one compensable day in a  
15 month. In other words, if you have one compensable  
16 day in a month, you are covered by the plan. The  
17 BMWED's rule is seven days.

18           Now, what is more fundamental to coverage, to  
19 health and welfare design than determination of  
20 eligibility? That varies, and that is not causing any  
21 problems that we know of. So why would a different  
22 design change?

1           And one other comment on -- again, you have  
2 wide-ranging opinions on this matter. I just want to  
3 offer my own two cents. And this is really in  
4 response to Mr. Glass' testimony where he invokes, you  
5 know, the airline industry, where he had spent a lot  
6 of time.

7           While he was spending a lot of time on  
8 USAirways, by the way, I was engaged in restructuring  
9 on TWA, United Air Lines, Alaska Airlines, American  
10 Airlines, Hawaiian Airlines, and Northwest Airlines.  
11 And I have done more of those cases than -- probably  
12 10 times as many restructuring cases as Mr. Glass has.  
13 I have got a little bit of experience there as well.

14           There is no model in the airline industry  
15 with respect to design common and uniform design  
16 changes across the crafts. If you go to United Air  
17 Lines, for example, there are almost 50 plans across  
18 the country, different plans with different  
19 contribution rates. It is not causing a problem  
20 there. Nobody proposes to eliminate it.

21           The same is true in Alaska Airlines, where  
22 the health insurance plans vary between the pilots and

1 the flight attendants and the ground service  
2 employees. So there is no labor relations model when  
3 it comes outside the railroad industry that makes it a  
4 religion that we have uniform benefits across the  
5 board. And there are a whole lot of other examples  
6 that I know you are even aware of but I would like to  
7 mention.

8           Take the building trades, for example. Stick  
9 your head out the window here, and go to one of these  
10 construction sites. And you will see that working  
11 side by side, you have electricians and plumbers and  
12 carpenters, each of them participating in different  
13 Taft-Hartley-defined -- I'm sorry -- health and  
14 welfare programs, each of them with different plan  
15 designs. That doesn't cause them to riot over their  
16 circumstances and cause destabilization in the  
17 building trades.

18           So, too, of the Metro workers here in town.  
19 I have been managing their collective bargaining  
20 activities for over 45 years. There are five  
21 collective bargaining units. Each of them have their  
22 own plan. Each of them have their own plan design.

1 In fact, the bus operators, most of them represented  
2 by the Amalgamated Transit Union but some of them at  
3 one garage represented by the teamsters, they have  
4 totally different plans, completely different health  
5 and welfare plans with totally different health and  
6 welfare designs. That has not caused any  
7 destabilization.

8 And it is interesting to note that this has  
9 always been the case here at WMATA, the Washington  
10 Metropolitan Area Transit Authority. And, yet, no one  
11 has ever proposed to change that.

12 So this whole notion about "Oh, we can't. We  
13 have got to have uniform benefits because it is going  
14 to be destabilizing" is a fantasy that those in the  
15 cocoon over at the NCCC's offices imagine, but if they  
16 got out in the field, they should listen to President  
17 Simpson.

18 And what really hurts morale is when you have  
19 somebody else's deal shoved down your throat. That is  
20 the problem. It is not the problem that the benefits  
21 are different.

22 And that is all I have to say about that.

1 BY MR. EDELMAN:

2 Q I have one question. Mr. Roth, you were  
3 involved in the round bargaining that ended up with  
4 the UTU agreement in 2011 as a BMWED agreement about  
5 the PEB in 2012?

6 A I was.

7 Q Yes. And there were health and welfare  
8 changes in both of those agreements, right?

9 A There were.

10 Q And did those health and welfare changes  
11 happen at the same time?

12 A No, they didn't.

13 Q And was there a true-up, any kind of form of  
14 adjustment for timing of implementation between the  
15 UTU agreement?

16 A There -- not to my recollection, there was  
17 not, no.

18 MR. EDELMAN: I am going to just provide to  
19 substantiate the different dates of implementation,  
20 meaning exhibit 50, which is the agreement of the UTU,  
21 entered 16th day of September 2011; the BMWED  
22 agreement, April 25th, 2012, showing the different

1 implementation.

2 (Unions Exhibit No. 50 was marked for  
3 identification.)

4 MR. EDELMAN: There has been testimony there  
5 was no true-up.

6 MR. MUNRO: Mr. Chairman, for the record, the  
7 NCCC objects to the entry of these exhibits. Under  
8 paragraph 12, the arbitration agreement clearly states  
9 the Board shall only consider evidence made known to  
10 the opposing party prior to the hearing before the  
11 Board.

12 MR. VERNON: We will note that object for the  
13 record, take it into consideration. We will receive  
14 the exhibits.

15 (Unions Exhibits Number 59 and 50 were  
16 admitted into evidence.)

17 MR. VERNON: The Board will decide in its  
18 deliberations as to what is properly colored within  
19 the lines and what isn't.

20 MR. EDELMAN: Thank you.

21 THE WITNESS: Anything else for me, Rich?

22 MR. EDELMAN: No, Tom. Thank you.



1 (Witness excused.)

2 MR. VERNON: The two exhibits and one number,  
3 do you want to mark 50A and 51 or 50A and 50B?

4 MALE SPEAKER: These are marked.

5 MR. VERNON: Oh, they are already marked.

6 Sorry. I was looking at the top. Sorry.

7 MR. EDELMAN: Just a moment, please.

8 (Pause.)

9 MR. EDELMAN: Okay. We don't intend to call  
10 anybody else. I will note that Marc Rifkind, who gave  
11 a statement saying that there is no need for a new  
12 trust or anything of that nature, is in the room if  
13 the Board has any questions for Mr. Rifkind.

14 MR. VERNON: No, I don't have any. Ken?

15 MR. GRADIA: Do not.

16 MR. VERNON: Nor does Mr. Roth. For those of  
17 you who are not familiar with it, it was a fairly  
18 straightforward statement with respect to the  
19 requirement as to whether or the question as to  
20 whether it requires a separate trust. It, like I  
21 said, is straightforward. And we understand what he  
22 said.

1 MR. EDELMAN: I haven't seen him in like 25  
2 years.

3 (Laughter.)

4 MR. EDELMAN: That is the close of our --

5 MR. VERNON: All right. Let's take 15  
6 minutes. We will be back at 5 to 11:00.

7 (Off the record.)

8 (On the record.)

9 MR. VERNON: We are back on the record. Will  
10 the carrier begin its rebuttal case, please?

11 MR. MUNRO: Thank you, Mr. Chairman. For our  
12 first rebuttal witness, I would like to call Dr.  
13 Gaynor back to the witness table.

14 WHEREUPON,

15 MARTIN GAYNOR

16 called as a rebuttal witness, was examined and  
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MUNRO:

20 Q Dr. Gaynor, if you could just reintroduce  
21 yourself to the Panel?

22 A Board members and Chair, I am Martin Gaynor.

1 MR. VERNON: There is a switch at the top.

2 THE WITNESS: Got it. All right. Let me try  
3 again.

4 Board members, Mr. Chairman, my name is  
5 Martin Gaynor.

6 BY MR. MUNRO:

7 Q Dr. Gaynor, you heard the testimony from the  
8 unions' witnesses this morning regarding discounts, a  
9 discount divergence or convergence. Is that right?

10 A Yes, I did.

11 Q And do you recall that the testimony was that  
12 from 2013 through 2016, there is evidence that  
13 discounts have diverged? Do you recall that?

14 A Yes.

15 Q And they further stated that during the same  
16 period, there was market consolidation. Do you recall  
17 that?

18 A Yes.

19 Q What is your reaction to that testimony?

20 A Well, though -- I don't have any knowledge of  
21 the study. So I can't comment on the results of  
22 divergence.

1           But looking at what happens nationally to  
2 discounts or prices and consolidation isn't meaningful  
3 because markets for hospital, doctor, all kinds of  
4 healthcare services are local, not national. So there  
5 are really no meaningful association between  
6 consolidation at the national level and price and  
7 their discounts.

8           Q    And is there a distinction between prices and  
9 discounts in this context?

10          A    Oh, absolutely. Prices are what matter.  
11 Prices are actually what providers get paid, and that  
12 is what things cost. Discounts are discounts off  
13 charges or perhaps off something else. And you could  
14 have a large discount but not necessarily a low price.  
15 For example, compare a situation where there was a  
16 list price of \$1,000 with a 20 percent discount. So  
17 the transaction price is \$800 and a list price of \$500  
18 with smaller discount, say 10 percent. So the  
19 transaction price is \$550. I think we would all  
20 prefer to pay \$550, rather than \$800, even though the  
21 discount is smaller.

22          Q    One last question, Dr. Gaynor. Is it your

1 testimony that discounts are converging and will  
2 converge completely by 2019 or just that there is  
3 substantial uncertainty over the direction of discount  
4 trends?

5 A I did not say anything about convergence or  
6 divergence. I did say there's a lot of disruption in  
7 the market that creates a lot of uncertainty in  
8 general.

9 MR. MUNRO: Thank you.

10 THE WITNESS: Thank you.

11 MR. VERNON: Thank you very much.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 MR. MUNRO: Mr. Chairman, for our next  
15 witness, I would like to recall Dr. Goldman.

16 WHEREUPON,

17 DANA GOLDMAN

18 called as a rebuttal witness, was examined and  
19 testified as follows:

20 THE WITNESS: Hi. Dana Goldman from the  
21 University of Southern California.

22 DIRECT EXAMINATION

1 BY MR. MUNRO:

2 Q Dr. Goldman, you heard the testimony this  
3 morning regarding Cheiron's views on behavioral  
4 change?

5 A Yes, I did.

6 Q And could you offer your thoughts in  
7 response?

8 A Yes. I feel Cheiron's analysis really fails  
9 to appreciate that we can control health spending in  
10 two ways. We can reduce price or we can reduce  
11 quantity. Their analysis focuses on discounts. And,  
12 as Dr. Gaynor just pointed out, that is not the right  
13 way to even think about reducing prices. And it is  
14 subject to market forces that are well beyond the  
15 control of the parties here.

16 On the other hand, controlling quantity; that  
17 is, utilization, is actually much better understood.  
18 Yes, the Rand study is three decades old, but, really,  
19 that is a study about basic human behavior. And in  
20 that sense, what I mean by that is it says when  
21 healthcare goes on sale, like any other good, people  
22 use more of it. And so the converse of that is that

1 modest increases in cost sharing can actually control  
2 use.

3           And it is precisely because this study was so  
4 old that I undertook the analysis of the PEB 243 cost  
5 sharing on the railroad population specifically. And  
6 the results of that analysis were very clear. Cost  
7 sharing reduces utilization, and it does so without  
8 any measurable effects on health. And this makes the  
9 proposed changes a reasonable strategy for controlling  
10 spending.

11           MR. MUNRO: Thank you.

12           MR. VERNON: Any questions?

13           MR. ROTH: Excuse me. Just one. In your  
14 study of the last round of bargaining here between the  
15 parties and the effect that the design changes had,  
16 did your analysis distinguish between and among the  
17 various changes that were made; for example, ER  
18 co-pays versus, let's say, adding a deductible?

19           THE WITNESS: We focused on the changes in  
20 cost sharing measured by the coinsurance rate and the  
21 deductible because research has shown that the  
22 immediacy of those are really the ones that have

1 affected people's behavior.

2 MR. ROTH: Okay. Thank you. That is all I  
3 have.

4 MR. VERNON: Thank you.

5 (Witness excused.)

6 MR. MUNRO: And, finally, Mr. Chairman, I  
7 would like to recall David Scofield.

8 WHEREUPON,

9 DAVID SCOFIELD

10 called as a rebuttal witness, was examined and  
11 testified as follows:

12 THE WITNESS: Chairman, Board members, I am  
13 Dave Scofield from Willis Towers Watson, still glad to  
14 be here.

15 (Laughter.)

16 THE WITNESS: So, just to open, I just want  
17 to say that the document that I submitted on behalf of  
18 the carriers and the analysis that was done there was  
19 done in a manner that was fully compliant with  
20 actuarial standards. The work was done with  
21 competence. It was fully reviewed, involved the  
22 senior actuaries of my company. So I think anyone in



1 the audience or here who knows me would expect nothing  
2 less than that.

3 My table of contents here looks I think a lot  
4 like Cheiron's. We're going to address the  
5 reconciliation of the savings and in my view discuss  
6 the lack of equivalence between the 357 Plan and the  
7 pattern, go over some key assumptions that drive those  
8 differences, and then get to some other remarks that  
9 have been made recently or in the recent past. And  
10 then beyond this, there will be some other comments  
11 that I will make after this prepared stuff.

12 So when I said yesterday that it would take  
13 more than a day to come up with this reconciliation, I  
14 underestimated myself. We worked on this. Me and our  
15 group worked on this last night and put this together.  
16 Obviously, we had all of the analysis together wanting  
17 to get approval from the NCCC to be able to discuss it  
18 in this way.

19 But what this page shows is, first, I am  
20 showing the numbers at the top that come from the  
21 Cheiron report. And I will talk about those in a  
22 minute. At the bottom, I show the Willis Towers

1 Watson valuation of the pattern plan design and then  
2 in between show various aspects of the Willis Towers  
3 Watson valuation of the 357 Plan.

4           So what we wanted to do was try to make an  
5 effort to reconcile with the numbers that we are  
6 coming up with, which I think if you look on this  
7 chart, you will see there is a row that says, "Willis  
8 Towers Watson Valuation of the 357 Plan." And the  
9 first number to the right of that is you see \$54.78.  
10 That's what I have per employee per month in 2019.  
11 And that reflects selecting the best lowest -- highest  
12 discount vendor by market and doing that in all the  
13 markets across the country. That compares with the  
14 Cheiron number of \$102.14. Cheiron did adjust that  
15 number that they described to increase the savings  
16 within, you know the past few days. And I'll come  
17 back to that in a few minutes because I am reconciling  
18 to this \$102 number for 2019.

19           So I thought that I made the rationale for my  
20 assumptions pretty clear yesterday, but I will go back  
21 over those again here and throughout the presentation.  
22 So, first, on the convergence, you know, what this is

1 shorthand for is convergence of network discounts. My  
2 rationale for coming up with that assumption is  
3 looking at the discount data that was supplied to us  
4 by Blue Cross and UnitedHealthcare and focusing  
5 primarily on Blue Cross and UnitedHealthcare since  
6 that was the shift, the primary shift, in the  
7 enrollment. We looked at the 2015 discounts for both  
8 Aetna -- excuse me -- 2015 discounts for both  
9 UnitedHealthcare and Highmark and also looked at the  
10 2018 discounts.

11 We, very importantly, feel like we reflected  
12 the UnitedHealthcare network remediation data in order  
13 to come up with this analysis in the assumption here.  
14 So we do believe that the network discounts are  
15 converging between 2015 and 2018. So that is one  
16 source of difference, just the convergence of  
17 discounts in general, as well as reflecting the 2018  
18 remediation data that UnitedHealthcare supplied to us.  
19 So that is the second row.

20 The third row, 1 percent cost difference  
21 other than discounts, that relied on the per-member  
22 per-month cost data that I referred to yesterday where

1 we found that there was a 3 percent difference in the  
2 per-member per-month cost associated with Blue  
3 Cross/Blue Shield versus UnitedHealthcare, 3 percent  
4 closer than the discounts alone would imply. We  
5 understand that care management is being carved out  
6 and being awarded to UnitedHealthcare across the  
7 board. So care management, which is maybe a  
8 significant piece of that cost difference, is not a  
9 difference that is on the table for this analysis, for  
10 this plan.

11 So what we chose to do was to say -- we could  
12 either have said, does the full 3 percent go away  
13 because of that consolidation of care management or do  
14 we still have something else that drives cost  
15 difference? What we chose to do was to say we still  
16 have something else that drives some cost difference  
17 and we left with a 1 percent assumption.

18 And then administrative fees, we have  
19 discussed that. I spoke about it yesterday quite a  
20 bit. Cheiron spoke about it today quite a bit. I've  
21 got another page in here that we'll elaborate on why  
22 we get the figure that we get.

1           And then, beyond that, we have now, as we  
2 have had from the very first time we looked at it,  
3 some unknown amount of difference. And I think that  
4 Cheiron would acknowledge, although I don't know, way  
5 back at the start of this project, we did discuss  
6 this. We, at least for some time, made some effort to  
7 try to identify what the differences were. We were  
8 not able to do that and subsequently did not have  
9 conversations on that. So it remains a question to me  
10 and I think to them as well. But that adds up to the  
11 total difference on this page. So from our  
12 calculations, the valuation of the per-employee per-  
13 month figures are pretty roughly half.

14           Now, what we did there going to the right is  
15 to convert first that these per-member per-month costs  
16 into a 2019 full-year number, so what this would look  
17 like on a 12-month basis. And a number that I -- you  
18 know, maybe people will remember, one of the numbers  
19 in the Cheiron deck just before was \$32 million of  
20 savings in 2019 for the full year. And you can see  
21 that at the top of the page, 32, 31.9 million.

22           So we, of course, as we have said and as

1 Cheiron objected to, you know, we don't think that the  
2 January 1st, 2019 date is feasible. We have said that  
3 April 1st is more likely. So what we have done in the  
4 column to the right is to reflect that April 1st  
5 implementation date. So, rather than getting 12  
6 months of savings in that 2019 year, you get 9 months.  
7 So the 32 million would go down to 24 million. I am  
8 not saying that is what Cheiron says. I am saying  
9 that is what I say if we apply the April 1st  
10 implementation to their numbers, but then, really  
11 importantly, what you get, what I get for my numbers  
12 if you look down at the Willis Towers Watson valuation  
13 of the 357 Plan, 17 million if it was for the full  
14 year, we don't think that is achievable, but for the 9  
15 months that's left, about 13 million.

16 We also recognize, though, that the parties  
17 have agreed to certain programs with ESI that in the  
18 information that was part of what was submitted with  
19 the exhibits in the carrier submission, we included  
20 the savings associated with the ESI programs. So if  
21 someone is trying to reconcile to a savings number  
22 from that exhibit, the per-employee per-month savings

1 number that you would find is \$61.28. That includes  
2 the combination of the impact of the 357 Plan and the  
3 ESI programs. So you can see the per-employee per-  
4 month and the 12-month and the 9-month figures here.

5 So, then, lastly, at the bottom, the Willis  
6 Towers Watson valuation of the pattern plan design,  
7 \$87.03 per employee per month and then \$27 million for  
8 2019.

9 And I will say that this is really not just  
10 my calculation, Willis Towers Watson's calculation.  
11 This was a calculation that was done with the combined  
12 effort of UnitedHealthcare, Express Scripts, me from  
13 Willis Towers Watson, and the consultant from the CBG  
14 all to put together a modeling spreadsheet that would  
15 be used by the bargainers to evaluate a variety of  
16 different plan design changes. That program was in my  
17 opinion quite well-done. And it was used by  
18 UnitedHealthcare in their effort to come up with the  
19 renewal estimates that the carriers would use for  
20 their updated contribution to the plan for 2018.

21 And I understand from Cheiron's comments that  
22 that spreadsheet, the model was supplied to them and

1 they used that. And they -- if you may recall, they  
2 came up with different numbers than what me and  
3 UnitedHealthcare and others came up with. And they  
4 then, therefore, said that they have to increase the  
5 trend in order to match the numbers and then,  
6 therefore, had that increased trend to inflate their  
7 357 Plan numbers.

8 But I was involved in the development of the  
9 spreadsheet. I talked extensively with  
10 UnitedHealthcare about the application of that  
11 spreadsheet to the 2018 cost estimates because my  
12 client, the NLRC/NCCC, they really want to know how  
13 much they'll save and how much to reflect in the  
14 upcoming rate. So I can tell you that that  
15 spreadsheet generates the numbers that are consistent  
16 with what Willis Towers Watson came up with. There's  
17 no need to adjust for trend. There's no need to do  
18 anything like that. So the numbers that get produced  
19 are find the way they are. Cheiron -- you know, I  
20 don't know -- didn't get the same thing, didn't maybe  
21 quite understand the spreadsheet and felt like they  
22 had to -- in order to get the same number as we got,



1 had to adjust the trend. I can't really say what that  
2 was, but in my opinion, this spreadsheet was fine the  
3 way it was. It reflected the trends that  
4 UnitedHealthcare was already using. So there's no  
5 need to change the trend.

6 So we don't accept the Cheiron suggestion  
7 that the 357 Plan should save even more because of  
8 that higher-than-usual trend.

9 We can come back to this, but if anyone has  
10 any questions on this, I went through a lot. There's  
11 a lot of numbers here. This may be an important point  
12 for clarifying what is going on. If there is any  
13 assumption that I have described in adequately, I do  
14 have some slides that address some of the assumptions  
15 further, but I can spend more time on this if anyone  
16 wants.

17 Okay. Implementation timing. This is very  
18 significant assumption that needs to be identified.  
19 Since we are looking at carrier savings over the last  
20 one-plus partial year of this bargain round, it really  
21 makes a big difference whether something goes in June  
22 1st; July 1st, 2019; or April 1st, 2019.

1           Most of the words here have already been  
2 said, but I will reiterate UnitedHealthcare is a  
3 central administrator and has been for 60 years. It  
4 is my view that Cheiron acknowledged that they  
5 discussed the implementation timing with Highmark and  
6 Aetna but not UHC. And I understand that Highmark and  
7 Aetna think it would take -- what I can decipher is  
8 that they would say that it takes 30 to 60 days for  
9 them to implement this plan once they have the  
10 eligibility file transferred to them.

11           So my timeline doesn't take into account  
12 anything about additional time that Highmark or Aetna  
13 would need. I assumed that that would just get  
14 absorbed and that they can accomplish that between now  
15 and whenever UnitedHealthcare has been able to  
16 effectively put the systems together that are  
17 necessary to administer this plan. So I will make a  
18 few more points and get into some details.

19           I had several conversations with  
20 UnitedHealthcare, Tom Butera, Dave Trombley, Frances  
21 Hart, Ken Krampitz. You know, anyone who knows them,  
22 you know that they take every one of these questions

1 seriously. They don't go out on a limb with anything.  
2 They take their time. They're very thoughtful. You  
3 know, they said a 30- to 60-day implementation is  
4 absolutely impossible. They said that unless they had  
5 a full ZIP Code assignment of the new vendors by April  
6 1st, they couldn't guarantee that they would be able  
7 to hit a 1/1/19 implementation date.

8 Now, UnitedHealthcare has been doing this for  
9 60 years. The central admin role, I've described some  
10 of the things that they would have to do. But, again,  
11 just to reiterate, just in general -- this has to do  
12 with whether it's BMWED, UTU, any of the other crafts  
13 -- they take work history data that's supplied to them  
14 by the railroads, and they convert that to a work  
15 history, which then feeds their eligibility systems.  
16 So UnitedHealthcare is figuring out who is eligible  
17 for this plan based on data that the carriers sent to  
18 them.

19 And then, in addition to that,  
20 UnitedHealthcare has to maintain a ZIP Code database  
21 that will identify which vendors and which plan  
22 options are available across the country. That system

1 is built for the current red, white, and blue map.

2 That system is not built for the BMWED plan.

3 UnitedHealthcare provides this service to the  
4 plan, and they have done it very well. And they have  
5 got a dedicated staff from 60 to 65, but this is not  
6 part of the thing that they do in the normal course of  
7 business. And what they have to do is duplicate that  
8 system in order to be able to tell. And they have to  
9 do this, you know, not just once, but they have to be  
10 able to every month send a file. Maybe it is more  
11 than once a month but at least monthly send a file to  
12 each of the vendors under the plan, saying who is  
13 eligible for what. And they have to know which vendor  
14 each employee is eligible for. And, you know, maybe  
15 the high-level description of that sounds easier than  
16 it is, but there are things like members who go from  
17 one craft to another, members who move throughout the  
18 course of the year, people who are offered COBRA, all  
19 of these things that sound like they don't amount to  
20 much, but it makes these people at UnitedHealthcare  
21 stay up at night. Every time you bring up anything,  
22 they get frantic about "What are we going to do about

1 this? What are we going to do about that?" because  
2 they have to program their system to do it properly  
3 for a plan in total that covers 400,000 people across  
4 almost every ZIP Code in the country.

5           So our assumption here, you know, our  
6 assumptions that we laid out, assuming that we have to  
7 redo the vendor discount analysis -- and I'll talk  
8 more about -- or say again why I think that is  
9 crucial. It would have us -- you know, if we said 12  
10 months from about now, that would say that June 1st,  
11 2019 would be the earliest you could possibly  
12 implement. What we reflected in our material  
13 yesterday was, you know, implementation dates that  
14 straddle that. April 1st we used and July 1st.

15           One anecdotal note. But anyone who has been  
16 working here may remember way back around 2000 or a  
17 little bit before, the UTU plan, which prior to that  
18 didn't really exist. The UTU plan was created. And  
19 Blue Cross/Blue Shield came on the scene. Before  
20 that, it was just Aetna and United. It was a very big  
21 deal in negotiations.

22           The unions brought in Blue Cross/Blue Shield

1 of Michigan, the big, big bad Blues of Michigan. They  
2 came in, and they said, "We're going to -- you know,  
3 we're going to be -- offer them to the UTU plan. And  
4 we'll be the central administrator for the UTU plan."

5 And, you know, the carriers and, you know,  
6 their attorneys and consultant, me, you know, we  
7 conferred with, you know, us, UnitedHealthcare, and,  
8 you know, understand the capabilities that an  
9 organization like Blues of Michigan have, which is  
10 extensive, but we concluded that, you know, the Blues'  
11 discounts were great, but we said, "Guys, you can't do  
12 this. We just know you can't do it."

13 And Blues of Michigan said, "Oh, yes, we can.  
14 We can." And so we said about -- I don't know how  
15 many months it was, 3 or 4 months, where we went to  
16 the Blues of Michigan, 30 of us, you know, me, people  
17 from the NLRC, their attorneys, groups of people at  
18 UnitedHealthcare, to try to explain to the Blues of  
19 Michigan what was involved. And so we had three or  
20 four meetings over two or three months, four months.

21 And recognize the Blues stood to gain a lot,  
22 millions of dollars in administrative fees for

1 breaking into the railroads. They so desperately  
2 wanted to get into the railroads. So when the head of  
3 operations at the Blues of Michigan had to come into  
4 this room of 30 people and tell us, "You were right.  
5 We can't do this," it really was a shock.

6 And the Blues of Michigan wound up never  
7 being offered under the plan. The plan had to move to  
8 a different Blues plan. It was Regents Blue  
9 Cross/Blue Shield that later gave way to Highmark. I  
10 just make that comment to -- even though it is, of  
11 course, not the exact situation, it was a -- just  
12 another situation where the central administrator role  
13 was completely underestimated and the time that things  
14 are involved and how difficult it is.

15 So the last point here, the comparison to the  
16 Amtrak implementation is in my view totally misplaced  
17 because it doesn't really align very well. There is  
18 no 357 Plan structure. This is a -- in the entire  
19 population of a single organization with one medical  
20 vendor, it just doesn't matter that Aetna was able to  
21 implement that cleanly and effectively in a short  
22 amount of time. That has no bearing whatsoever on the

1 ability to implement the 357 Plan.

2 Administrative fees in any normal setting  
3 should be a relatively straightforward calculation.  
4 At least compared to the provider discount analysis,  
5 it should be. I think both of us, Cheiron and me,  
6 would say it is simply a matter of multiplying the  
7 per-employee per-month rate times the headcount and  
8 adding it up, you know, the headcount being determined  
9 based on, you know, the assumption of which employees  
10 would go to which vendors in the national plan.

11 So Cheiron described their calculation of  
12 fees based on the full implementation of the entire  
13 national plan and what that results in. And, you  
14 know, the numbers I don't remember exactly, but it was  
15 something like 70,000 employees went to Highmark Blue  
16 Cross/Blue Shield, which is -- you know, that's the  
17 result that they got for the plan-wide. What that  
18 does is that it drives the fee that you find on the  
19 Highmark schedule really low when what is happening --  
20 you know, rather than the 70 percent of the full  
21 national plan, what is going to happen in reality is  
22 that Highmark is going to get an additional maybe 70



1 percent of the BMWED population. So the Highmark fee  
2 will not go down nearly as much as that, not anywhere  
3 close. And so that's kind of the one point.

4           So there's a significant savings on the --  
5 just the regular claim administration fee that gets  
6 built in as the result of Cheiron's approach. The  
7 other side is the central admin fee. Cheiron put up  
8 on the board that my calculation of a \$2.4 million  
9 increase associated with central admin was based on an  
10 assumption of the full national plan being included in  
11 the 357 Plan, and that's just not correct. My 2.4  
12 million was based on the membership lost at the  
13 UnitedHealthcare -- that UnitedHealthcare would have  
14 for the proportion of the BMWED population that they  
15 would lose.

16           This is another case where it is not always  
17 clear what the vendors mean when they submit  
18 spreadsheets to you and you have got to look at stuff  
19 and try to figure it out. And the increase in admin  
20 fees for central administration that Cheiron  
21 presented, which, you know, goes from a current fee of  
22 something like \$5 per employee per month up to a fee

1 of \$7 per employee per month, that is what the  
2 UnitedHealthcare admin fee increase would be. And it  
3 would apply to the entire national plan, even though  
4 it's only the BMWED members that UnitedHealthcare  
5 would be losing.

6 So the \$3 to \$4 million fee increase that I  
7 come up with is a combination of Highmark getting a  
8 modest increase in enrollment, UnitedHealthcare losing  
9 a modest portion of their enrollment and applying the  
10 fee schedule, as was submitted by the vendors and as  
11 was clarified through conversations with  
12 UnitedHealthcare.

13 Discount data and discount convergence. I  
14 don't, still don't, know for certain, but I do believe  
15 that Cheiron is not using the same provider discount  
16 data for the UnitedHealthcare for its plan savings  
17 calculation as I am using. I've got a couple of  
18 things to say here, but, first, in late 2016, we went  
19 about working with Cheiron.

20 So Peter Kennedy, Dave Marcus, me, and  
21 Cheiron, put together a request to send to the vendors  
22 to say we wanted discount data in a certain format,

1 and we wanted everyone to give us the same format.  
2 And it was to give us provider discounts with a pretty  
3 significant degree of detail for each MSA.

4 And we wanted them to do that on a couple of  
5 different bases. One was to do it based on executed  
6 contracts. One was projected contracts. And the  
7 reason that in this case, it is very important to  
8 consider projected, rather than executed, it's that at  
9 the time, which was back in 2016, we knew that nothing  
10 was going to be implemented, if it ever would, until  
11 2018-2019.

12 So from my clients' point of view, when you  
13 are looking at -- you know, you are sitting around in  
14 2016 and they ask me, "What kind of discounts can --  
15 you know, what kind of discounts can we get?" it just  
16 doesn't help you to restrict yourself to deals that  
17 are currently in place. There could be things that  
18 are going on that you will want to reflect because,  
19 you know, as the group has noted here many times, this  
20 is the first time in 27 years that we are making this  
21 change. You sure don't want to make it and then have,  
22 you know, many, many more years go by and you've made

1 a mistake because you didn't have the most updated  
2 projected data. So the reason we are going through  
3 this effort was to get the projected data in the first  
4 place.

5 UnitedHealthcare submission was not clear.  
6 They had some discounts put out that they put out for  
7 2018. And they had a guaranteed discount for 2018  
8 that simply when you look at the two of them together,  
9 they did not make sense. And, you know, try as I  
10 could, in conversation after conversation, I finally  
11 convinced UnitedHealthcare that the numbers in one  
12 column on the spreadsheet didn't make sense with the  
13 discount guarantee. And what turned out was that they  
14 realized that they did not include the impact of the  
15 network -- the provider discount remediation in the  
16 discounts that they had submitted. It was only in the  
17 guaranteed discount column.

18 I know that's a lot of technical blabbering,  
19 but what it needed to have happen in order to reflect  
20 Blue Cross -- in order to reflect the United properly  
21 was to get additional information from United where  
22 they actually had to give in a way that you could see

1 what the difference is the impact of their remediation  
2 efforts.

3           And, you know, we know that they are going  
4 through efforts because UnitedHealthcare as a business  
5 has lost business to Blue Cross/Blue Shield because  
6 their discounts are inferior. That's been going on  
7 for years. UnitedHealthcare recognizes it. They know  
8 they're at risk in a number of railroad markets. And  
9 they've been working at this very hard. They're  
10 trying to capitalize on other deals they have in the  
11 marketplace for other very large clients, and they are  
12 doing this in many locations.

13           And so to not make use of the discounts that  
14 you get from this, whether it's on purpose or by  
15 mistake, just undermines the analysis. And I think if  
16 there was no conversation with UnitedHealthcare on  
17 this, there's no way that Cheiron would have been able  
18 to figure out what this remediation effort was because  
19 I certainly couldn't. It took me like five  
20 conversations.

21           So with respect to discount convergence, I  
22 know that, you know, there's a -- we'll have a couple

1 of comments later on about Aetna and Highmark making  
2 some reference to "Well, there's no discount  
3 convergence," but my finding of discount convergence  
4 is based on the data that the Blue Cross and United  
5 submitted to us with 2015 discounts and 2018  
6 discounts.

7 If you look at the 2018 discounts, including  
8 the remediation effort by UnitedHealthcare, there is a  
9 convergence. There's no doubt that, on average,  
10 across the board, Blue Cross/Blue Shield is superior.  
11 Just on this -- and I'll get -- I'll say this again  
12 later, but no one on our side, me or anyone else, said  
13 that there would be complete convergence of discounts  
14 by 2019. I think the word we used was "gradual" or  
15 something like that. So over time, discounts would  
16 converge.

17 Okay. The impact of medical management --  
18 and, again, I'll talk more about this in a later  
19 slide, but I thought in the submission and in my  
20 comments that, you know, it was clear in our view that  
21 medical management and the differences in cost due to  
22 medical management were off the table to the extent

1 that the parties had agreed to carve out care  
2 management and give it to UnitedHealthcare, whether  
3 the member's in United, Highmark, or Aetna. So that  
4 effectively takes away the care management difference  
5 between the plans.

6 What -- the point that I tried to make and  
7 that was missed somehow is that, even though care  
8 management is an important piece of the difference  
9 that drives the cost, cost differentials other than  
10 discounts, it is not the only thing.

11 You heard Dr. Gaynor just not give a very  
12 simplistic but instructive example where one  
13 organization has a very high discount matched with a  
14 very high submitted charge. And you compare that to  
15 an organization that has a lower discount percentage  
16 but a lower submitted charge that that discount is  
17 applied to. And, lo and behold, the one with the  
18 lower discount has a lower cost also. So you'd make  
19 the wrong choice if you picked the organization with  
20 the higher discount in that case.

21 So not trying to make more of a big deal of  
22 this than it is, but simply what I did was just assume

1 that Highmark Blue Cross/Blue Shield has a 1 percent  
2 higher cost for things other than discounts. It is  
3 not a phenomenally important assumption. It's  
4 supported by the data that my firm gets signed off on  
5 by the Blues consortium and Highmark. So I'm pretty  
6 comfortable using that data.

7 And, just in the rebuttal, pages and pages of  
8 the Cheiron rebuttal go to this issue. And I just  
9 think it inflates the importance, completely over-  
10 blows the importance of this.

11 And, just the last note, Cheiron's position  
12 on the impact of medical management has evolved over  
13 time. And I'll describe what I mean there in a few  
14 minutes or now, actually.

15 So now I am moving into some comments at  
16 various points in time that Cheiron made. And, you  
17 know, I don't mean to be unfair because they have  
18 every reason to have had the view that they had at the  
19 time, but still this is the way I see it. The March  
20 29th, 2016 meeting where Cheiron presented their  
21 initial results for the potential for the 357 Plan,  
22 they gave a tremendous amount of detail in a lot of



1 different combinations. They did full replacement.  
2 They did, you know, full replacement with the Blues,  
3 full replacement with United, picking the best vendor  
4 by MSA. They did a whole bunch of different  
5 combinations. It was a huge document.

6           They presented that to the NCCC. And  
7 yesterday they made reference to they claimed that  
8 there was a \$100 million that the plan could save.  
9 Then they further went on to say, "Okay. So that's  
10 \$100 million without recognizing the impact of care  
11 management." When they recognized the impact of care  
12 management, their assumption in that meeting that they  
13 presented to us was that UnitedHealthcare would have  
14 superior care management that would shrink that \$100  
15 million savings by \$55 million. So, you know, this is  
16 a couple of years ago, but that is a big number, \$55  
17 million. We never disputed that, never agreed with  
18 it, but, you know, of course, we noted it.

19           Then about a year later -- and this was, I  
20 think, in a mediated session, maybe not. Maybe it was  
21 -- I can't remember if it was mediated or not, but  
22 Cheiron presented their analysis of the updated

1 discounts because we -- between 2016 and 2017 updated  
2 the discounts as I described a couple of moments ago  
3 and Cheiron presented their new results. And they  
4 still were coming up with something along the lines of  
5 \$100 million savings on discounts with, you know, the  
6 357 Plan or with the Blues, but they now no longer  
7 were convinced that UnitedHealthcare's medical  
8 management is superior. So they took out all  
9 reference to the medical management and just simply  
10 went with the impact of the discount so as to say that  
11 medical management has no bearing.

12           And then now in their most recent material --  
13 and I don't think this was even in the submission. It  
14 wasn't until the rebuttal material. Their view seems  
15 to have changed. Well, it has changed again. And I  
16 know it's based on this detailed analysis that they've  
17 gone through. But now they think that there's -- you  
18 know, I think that they might have used the word  
19 "significant" but the significant medical management  
20 savings possibility for the 357 Plan. And I don't  
21 know what that's in reference to because, like I said,  
22 care management is being carved out of each of the

1 vendors and is being consolidated with  
2 UnitedHealthcare. So, you know, it would only happen  
3 if, you know, the vendors maintained their respective  
4 separate care management approaches, which isn't going  
5 to happen. But, anyway, you know, this runs down  
6 their evolving view on care management and its impact  
7 on the numbers.

8           Cheiron's changing numbers with respect to  
9 the pattern. It wasn't very long ago, back in  
10 December 2017, in a presentation they made to the NCCC  
11 and to the mediators they presented some numbers on  
12 what the pattern would save. And they said that this  
13 was equivalent to the 357 Plan. So they got numbers  
14 like \$92 per month in 2018, \$114 per month in 2019.

15           And we -- you know, we took this in our side.  
16 And my guys are like looking at me like "How do you  
17 come up with \$73 in 2018 and \$87 in 2019 when Cheiron  
18 projects a higher number?"

19           And I'm like "I don't know. I mean, I get  
20 numbers working with the sophisticated spreadsheet  
21 that I used with UnitedHealthcare that labor signed  
22 off on. I'm comfortable with my numbers. I don't

1 know where they got their numbers. And they're  
2 certainly higher."

3           Sometime between that point and the  
4 submission, it appears that Cheiron got information  
5 from UnitedHealthcare, this modeling spreadsheet, and  
6 they revised their numbers. And, again, like I said  
7 before, I think that if they would have used the  
8 spreadsheet right, they would have exactly gotten the  
9 numbers that I am using. They got something a little  
10 bit different.

11           So, then, now with their rebuttal, they have  
12 revised to match, you know, the numbers that I get,  
13 but they say, "Well, that's associated with a --  
14 you've got to assume a higher trend in order to get  
15 that," which is not true. Those numbers are based on  
16 with UnitedHealthcare's work the trends that they have  
17 used.

18           So, I mean, you can see that, you know,  
19 pretty big swings in these numbers over a very short  
20 amount of time when -- I mean, the plan design changes  
21 are well-known. And it's pretty -- well, I say this,  
22 pretty easy to calculate the impact of a deductible

1 change, pretty easy to calculate the impact of a  
2 co-insurance change. That's pretty standard  
3 underwriting techniques.

4 So, you know, if something like this can have  
5 such a swing with regard to, you know, the estimate,  
6 you know, it really is -- could have huge swings when  
7 you're looking at something as complex as the provider  
8 discount analysis, which is much more cumbersome. So  
9 the variability in that kind of a calculation could be  
10 much, much larger.

11 So the savings associated with the 357 Plan,  
12 Cheiron's views on this have changed, not as much as  
13 with the pattern benefits, but back in December,  
14 Cheiron told us or, I mean, the BMWED told us that  
15 there was an estimate of savings of about 47 million.  
16 That 47 million continued as their estimate for  
17 savings for 2018 and '19, up through their submission.

18 And then they very recently changed to gain  
19 \$4 million of savings, you know, almost 10 percent,  
20 based on in my view, which is this mistaken need to  
21 have a higher-than-market trend be applied to the  
22 calculation of the pattern savings. They went ahead

1 and just applied that to the 357 Plan, which I don't  
2 think makes any sense. And it's just -- you know, of  
3 course, you can get the numbers by just multiplying  
4 them, but I don't think that's the way you're supposed  
5 to do it.

6 So now on factual clarifications -- and,  
7 again, these are the facts in my view. Someone else  
8 might have a different view, I suppose, but it was  
9 said here "January 2018, the NCCC for the first time  
10 makes a statement to discount analysis is impacted by  
11 medical management." I don't know how anyone could  
12 make this claim because, you know, we had so many  
13 conversations with Ken Gradia and he reported our view  
14 about the discount analysis.

15 And we would always, always caveat it that,  
16 first, what we're trying to do is just put out a  
17 number that is first aligned exactly with how the  
18 Cheiron analysis went. You know, they didn't -- at  
19 some points didn't assume impacts of medical  
20 management. Then they did. Then they took it out.  
21 But, first of all, you know, we tried to get some  
22 common basis before you look at medical management.

1           We mentioned it every time as a caveat that  
2 we think it, you know, has bearing here, very  
3 difficult to quantify. So I don't see how anyone  
4 could say that we brought it up for the first time.  
5 And, in fact, right after January 2018 is when we  
6 stopped bringing it up because we knew that the  
7 consolidated care management was going into effect.  
8 So that really negates the need to even reflect any  
9 differences of care management.

10           The many references to Willis Towers Watson's  
11 statement of medical management analysis is not  
12 needed, that is true, but it is in the context of  
13 this. When we were preparing to request the updated  
14 provider discount information, we also were faced with  
15 whether we should ask for information with regard to  
16 medical management. And I consider the data that you  
17 get when you look at this kind of PMPM stuff and the  
18 adjustments that you have to make on it much less  
19 credible in small quantities than the discounts would  
20 be.

21           So I think that this kind of analysis looks  
22 fine if you're looking at a population across the

1 entire country, but the way Cheiron wanted to do it  
2 was to collect data on this by MSA, which in my view  
3 would have been just an exercise, of course, in like a  
4 spreadsheet mathematic exercise and you would get  
5 results and you would have differences in medical  
6 management that you would calculate, but there would  
7 be completely not reflective of what is going on  
8 because the data volume is just too small. So Dave  
9 Marcus and I decided that we should just say we don't  
10 think we should do this because we don't think it's  
11 important. And the thing that wasn't important was  
12 not the medical management analysis at all but to do  
13 it on a market-by-market basis we thought would just  
14 be phenomenally time-consuming with no value added.

15           There is a comment in the rebuttal material  
16 that was supplied to us. It wasn't directly said  
17 today, but it said in the written rebuttal that Blue  
18 Cross/Blue Shield has not approved Willis Towers  
19 Watson's use of this -- of the PMPM data. And that is  
20 just not true. It's completely untrue. I have  
21 written approval to use it. There's approval from  
22 correspondence between Highmark, the consortium. It



1 goes back to March 2017. The railroads were part of a  
2 pilot. It was highly scrutinized by all of the senior  
3 actuaries at my company, signed off on by the senior  
4 actuaries at Highmark and the consortium. So there's  
5 no doubt that I was able to use this.

6 And I don't understand why someone would  
7 suggest that I didn't have approval for this when,  
8 first, you don't know it and you're just -- it just  
9 speaks to what you think of my use of this kind of  
10 data. Why would I use something that I wasn't  
11 approved to use?

12 This is a minor point, but we feel like it's  
13 interesting to mention. So the provider disruption,  
14 it's described as being manageable. And it's  
15 presented as if the 2 to 3 percent of members that are  
16 disrupted by, you know, losing their doctor from the  
17 network, that it's offset by the 4 to 8 percent of  
18 out-of-network doctors that move into the network.  
19 So, I mean, of course, 4 to 8 percent numbers-wise  
20 does -- you know, they are bigger than 2 to 3 percent.  
21 But those 2 to 3 percent of people who lose their  
22 doctor aren't going to feel like it's offset by the

1 other people who gained their doctors in the network.  
2 Those 2 to 3 percent still will be disrupted.

3 I admit 2 to 3 percent is not a big number,  
4 but the offset comment is just a slightly misleading  
5 approach here.

6 So further clarifications on other statements  
7 that were made and comments that were made in the  
8 rebuttal: first, the folks from Highmark. So since  
9 2017, there has not been nor will there be significant  
10 convergence in discounts in the marketplace. You  
11 know, so since 2017 -- you know, we are in May 2018.  
12 What is it that they would have seen in the 4 months  
13 since 2017 ended that would give them the ability to  
14 say anything about this? What do they know about  
15 UnitedHealthcare discounts? What do they know about  
16 even their own discounts through the first 4 months of  
17 2018? I don't understand how someone can make such a  
18 statement and try to rely on that as justification for  
19 that there is no convergence of provider discounts.

20 The comment was made that in June 2013, Blue  
21 Cross showed a discount of .8 percent advantage and by  
22 June 2016, that had increased to 2.3. I mean, that's

1 fine. I don't dispute that. It shows that the  
2 discount advantage can change from one time period to  
3 another. It says nothing about whether the discounts  
4 between June 2016 and 2018, 2019, which is when my  
5 client is concerned with what the discounts would be  
6 -- it says nothing about that. You could certainly  
7 have Blue Cross/Blue Shield's discount advantage  
8 expand and then contract. It's not the craziest thing  
9 in the world.

10 And then we believe that there will be a  
11 convergence -- let's see. We believe that if there  
12 would be a convergence impact, it would have been --  
13 it would have displayed itself by now. Therefore, we  
14 do not agree that network discounts between insurers  
15 will converge by end of 2019.

16 So, again, first of all, no one ever said and  
17 I don't think that discounts will converge by 2019.  
18 It will be a gradual convergence over time. And just  
19 because you haven't seen any evidence of it up until  
20 now, I mean, things can't change a year, a month, two  
21 years from now? Of course, they can. So just because  
22 you haven't seen any evidence up until now tells you

1 really nothing about the future. So relying on these  
2 statements, you know, I just don't see how much weight  
3 you can give them.

4           So the statement by the attorney, you know,  
5 the carriers contend that adopting the 357 Plan would  
6 require the establishment of a separate health plan  
7 and trust, I know that wasn't necessarily said that  
8 way today. That was in the written submission. The  
9 carriers' comment was that a trust could be required  
10 but not that it would be. So there are circumstances  
11 that would still have to be explored.

12           And this attorney says, "In my opinion, ERISA  
13 does not require the establishment of a separate trust  
14 to implement this plan." We agree with that, of  
15 course, but our view, my view, the carriers' view is  
16 that, for administrative reasons, maybe someone among  
17 the parties attached to this plan might want the BMWED  
18 in a separate plan. Maybe it's the BMWED. Maybe it's  
19 the carriers. Maybe it's the other crafts. The other  
20 crafts would have the BMWED in their plan, and they  
21 would have a higher benefit level, maybe leading to  
22 higher costs. You could see CBG and TCU organizations

1 wanting the BMWED in a separate plan. So it could  
2 happen. We're not saying that it has to happen, but  
3 it could.

4 A quote of Dawn Fairhurst, "Aetna does not  
5 agree the provider merger will result in a complete  
6 convergence of insurer discounts by the end of 2019."  
7 Again, we never said this.

8 Oops. Let me see if I have any other  
9 comments to make and, Don, if you have any questions.  
10 So just a couple of things on the provider discount  
11 analysis.

12 Willis Towers Watson is part of I guess the  
13 four consulting firms that get this information from  
14 the insurance companies twice a year. And, you know,  
15 we have been doing that for 10 years. And it was  
16 presented I felt like this morning that Cheiron  
17 somehow blames me or my firm for them not getting it,  
18 and we've got nothing to do with that. Whether they  
19 get it or not is their relationship with the insurers.

20 Cheiron asked me to give them the per-member  
21 per-month data that I have. You know, they make a big  
22 deal about the NDAs that they have, you know,

1 nondisclosure agreements, so they can't turn over data  
2 that they've got just under an NDA. Well, we have the  
3 same things. You know, my firm gets this data from  
4 Aetna. And I can't give it to a non-client for their  
5 use. Just, you know, I don't see how they would  
6 expect me to be able to do such a thing. So it's not  
7 me, it's not my firm preventing them from getting it.

8           If we go back to the start of this project,  
9 which was -- you know, I think was back in early 2016,  
10 Cheiron requested discount data of the vendors. And  
11 it was a very detailed request similar to how --  
12 similar but not identical to the data that Willis  
13 Towers Watson gets through our twice-a-year data  
14 submission.

15           And, you know, a lot was commented on how we  
16 delayed and how we didn't -- you know, didn't engage  
17 with them, but what they don't know is that we have  
18 that -- you know, similar discount data that was  
19 submitted to us under a universal data standard  
20 specification. The data that they had from their  
21 request was not submitted under the same  
22 specification. So the vendors gave data that was a

1 little bit sloppily put together. And, in particular,  
2 you know, it's very important to put the buckets  
3 properly. There's inpatient discounts. There's  
4 outpatient discounts. And there's professional  
5 discounts. And you weight them together for this  
6 analysis, and you get an overall composite discount.

7           Everyone has to put the different service  
8 areas together in the same buckets. Otherwise, when  
9 you weight them together, you get an apples-to-apples  
10 result and one that's just not valid. We knew that  
11 looking at the UDS data that we had, that Aetna was  
12 doing something different with the data they had  
13 submitted to Cheiron. We didn't want to tell them  
14 that. We had no reason to tell them that. But that's  
15 what led us to want to re-request the data under the  
16 universal data standard format that we subsequently  
17 did.

18           So what was portrayed as dragging our feet or  
19 not wanting to engage, it was not so much that as it  
20 was -- you know, we knew there was something messed up  
21 somewhat with the data, like what the impact is, you  
22 know, we really didn't know. And it really didn't

1 matter because we felt strongly that we needed to  
2 request new data that was projected to a time that was  
3 closer to when this might one day be implemented. And  
4 that's what we eventually did.

5 Just another point on the admin fees. So,  
6 you know, Cheiron showed where, you know, I claimed  
7 that there's a total \$3-\$4 million increase associated  
8 with their 357 Plan. 2.4 million was due to central  
9 administration, which I still stand by. Six hundred  
10 thousand is due to just the reshuffling of the  
11 headcounts across the claim administration for the  
12 three different vendors.

13 And then I added. And someone might accuse  
14 me of arbitrarily adding it, but I added \$500,000 for  
15 implementation, and I added \$500,000 as an estimate  
16 for what would be I thought an increase in fees to  
17 administer the 357 Plan, which is more -- well, it's  
18 more complicated and it's different than the current  
19 red, white, and blue map. I admit that maybe it's  
20 arbitrary, but when you ask insurance companies,  
21 UnitedHealthcare in particular, to do things, they  
22 always charge you for it. And, you know, how much it



1 is I don't know. When I first talked with United  
2 about this, which wasn't that long ago, I said, you  
3 know, "I need you guys to tell me, you know, an  
4 estimate of what it would take for you to administer  
5 this."

6 And they said, "Okay. Well, we can get you  
7 that estimate in three months."

8 And I go "I don't have three months." And so  
9 I said, "Would your fees be higher?"

10 They said, "Yes, they'd be higher."

11 And then I had to basically suggest to them,  
12 you know, "How much higher?" And they wouldn't tell  
13 me. So I had to pick a number myself. And I don't --  
14 I just in all of this didn't want it to be lost that  
15 these fees will go up because what the -- what they  
16 had quoted on was not their 357 Plan. It was just  
17 reshuffling of the current red, white, and blue.

18 The discount guarantees that were mentioned  
19 earlier today, you know, they're fine, but those  
20 discount guarantees were quoted on a basis of the 357  
21 Plan applying to the full national plan, that the  
22 vendors would get less enrollment. If it's only the

1 BMWED population, that means that those guarantees  
2 would just really not apply any longer. Maybe they --  
3 maybe the vendors would uphold those guarantees for  
4 the subset, but I doubt it because what -- their  
5 guarantees are based on where the individual members  
6 live. And since we don't know, no one knows, Cheiron  
7 doesn't know, BMW doesn't know, NCCC doesn't know  
8 where the BMWED members reside relative to the  
9 national plan, I think that those guarantees are just  
10 invalidated.

11 Thank you. That's all I have. I can have  
12 questions now if you'd like.

13 MR. ROTH: Dave, I need some help reconciling  
14 the costing differences. If you could go to slide 1  
15 for me? I think it was slide 1. That one there.  
16 Thank you.

17 The \$6.50 number on the bottom there, that is  
18 the addition of the ESI program.

19 THE WITNESS: Yes.

20 MR. ROTH: As I recall in the presentation of  
21 Cheiron, that number on the agreed-upon items was much  
22 larger. Can you tell me what items you had priced in

1 that line item, which of the agreed-upon items are  
2 included in --

3 THE WITNESS: Yeah. So I will just -- I can  
4 talk about that just briefly. So -- and this applies  
5 in both 2018 and 2019. There are a number of agreed-  
6 upon items that the parties will do. And the numbers  
7 that I have reflected here are the ESI programs. And  
8 that's medical channel management; screen Rx; fraud,  
9 waste, and abuse. And what those programs will do  
10 will affect the claim costs somewhat and will affect  
11 the rebates somewhat. And this figure was an estimate  
12 that I had from developing the estimate of what the  
13 pattern would say. These are identical programs under  
14 the pattern. So it is very easy to translate.

15 I know that Cheiron included some other  
16 things in their number that I acknowledge they impact  
17 cost, but they're not reflected in my \$6,000.50. You  
18 know, one of those items is the pharmacy, the bit of  
19 the pharmacy management program. And I think that's  
20 probably the biggest piece of the difference between  
21 what I have here and what Cheiron had.

22 MR. ROTH: Yes. They had \$6.68.

1 THE WITNESS: Yeah. And so that program by  
2 agreement is to be -- you know, the project is going  
3 on now to select the -- you know, a new, possible new,  
4 plan administrator and achieve better discounts. And  
5 that would be implemented January 1st, 2019.

6 It's notable that Cheiron counts savings for  
7 that PBM RFI bid in both 2018 and 2019, even though it  
8 wouldn't be effective until 2019. So if you'll see  
9 the 2018 number for Cheiron being much larger than the  
10 650, it's I think a misplaced savings associated with  
11 that pharmacy rebid, which wouldn't happen until  
12 1/1/2019.

13 MR. ROTH: Okay. So there may be additional  
14 savings associated with some of the agreed-upon items?

15 THE WITNESS: Definitely, yep.

16 MR. ROTH: But we should understand your  
17 \$6.50 as being as matching what you embedded in the  
18 8703 for the pattern design change?

19 THE WITNESS: Yes.

20 MR. ROTH: Okay. So --

21 THE WITNESS: Yes, that is correct. Yeah,  
22 that -- exactly.

1 MR. ROTH: Understand that I'm --

2 THE WITNESS: Yes.

3 MR. ROTH: -- looking at the apples and --

4 THE WITNESS: Yeah. The 8703 would be lower  
5 if I wasn't counting the ESI programs. So just -- so  
6 --

7 MR. ROTH: Go ahead.

8 THE WITNESS: Oh, I'm sorry.

9 MR. ROTH: No. Go ahead.

10 THE WITNESS: Yeah. So the 87, it includes  
11 the estimated impact of changing the deductible, co-  
12 pays, co-insurance. It includes the ESI programs.  
13 And it assumes behavior change.

14 MR. ROTH: Okay.

15 THE WITNESS: So all of those, those three  
16 pieces, comprise the 8703.

17 MR. ROTH: Okay. Can you elaborate? Maybe I  
18 missed some of this, but the biggest single difference  
19 on the page is the 2234 for the unknown. How should I  
20 understand that? If it is unknown to you, it is  
21 unknown to us.

22 THE WITNESS: Well, it is. So to go back to

1 2016, Cheiron did the analysis and presented it to the  
2 carriers. And they came up with, you know, \$100  
3 million savings or something like that. And they, you  
4 know, waited some time for us to do our analysis. And  
5 we came back. And there were a number of references  
6 to 70 percent, 75 percent. The savings that I came up  
7 with, which I was trying to be on an apples-to-apples  
8 basis. So if you don't count the convergence of  
9 discounts, UHC remediation, the 1 percent difference  
10 because of things other than discounts, administrative  
11 fee impact, if I don't count those assumptions that  
12 I've made, I'm about 80 percent of the Cheiron number.  
13 So it's not that different from the 70 to 75 percent  
14 that we talked about at the very beginning of this  
15 process.

16 We went through not a very lengthy  
17 discussion, but there was a time when Don Griffin, Ken  
18 Gradia, you know, Karen, Peter, me, Dave Marcus, we  
19 sat in a room, and we tried to figure out a couple of  
20 things that came to mind. And we looked at, well, you  
21 know, is it a mix of provider services? And we  
22 couldn't get that. And was it, you know, a couple of

1 other things, headcount? We couldn't identify what  
2 the -- what was driving the differences, although, you  
3 know, we acknowledge that it was there. And each side  
4 understood that we didn't know why there was a  
5 difference. And we never revisited it.

6 So I don't have an answer other than to  
7 describe that as the background.

8 MR. ROTH: All right. But I should  
9 understand that that difference emerged by your kind  
10 of independent analysis of the 357 Plan?

11 THE WITNESS: My independent analysis  
12 compared to Cheiron's independent analysis, yes.

13 MR. ROTH: Okay. Could you go to I think it  
14 is slide 7 or page 7 in the presentation? I think it  
15 is maybe the next one. Thank you. Right. This is  
16 the pattern settlement. I mean, my recollection is --  
17 and may be incorrect, but at some point in bargaining  
18 earlier on when the pattern design changes first  
19 emerged, that Cheiron was not in a position to price  
20 all of them and that some of the pricing came about  
21 later in the process. So could part of this  
22 explanation on the changing or the evolving costing

1 from Cheiron be explained by the components that it  
2 was being asked to price out? Do you know?

3 THE WITNESS: Well, by December 2017, the  
4 pattern plan design was available for everyone to  
5 know. So the actual provisions of the pattern were  
6 known.

7 What Cheiron had in order to come up with  
8 their estimates, I don't know. I think I recall that  
9 the numbers that are -- that you see there from  
10 December 2017 were based on, you know, their estimate  
11 using whatever software or techniques that they have  
12 back in their office. You know, whether it includes  
13 stuff like the ESI programs and -- I don't know, but I  
14 do think that subsequent to that December 17th -- the  
15 December 2017 meeting, they received, you know, the  
16 detailed modeling spreadsheet that we worked on with  
17 UnitedHealthcare. And, you know, then they used it to  
18 get, you know, much closer to our number, but, you  
19 know, again, it's my opinion if they use it exactly  
20 the way it was intended, you come up with the numbers  
21 that I have because that's exactly how I did it. I  
22 took UnitedHealthcare's spreadsheet, took out the



1 things that, you know, we needed for the purposes of  
2 developing overall funding, but the -- you know,  
3 weren't relevant for this purpose and you get the  
4 numbers that are on the page there.

5           You know, it sounds to me like, you know,  
6 Cheiron did that, got slightly different numbers, and  
7 assumed that that difference was somehow attributable  
8 to the need to apply a higher trend. And that's just  
9 not the case.

10           I mean, I know that comparing two numbers,  
11 you get a percentage difference. And then if you  
12 apply that to another number, you know, all the  
13 numbers go up, but that's just not the way that it  
14 should work.

15           MR. ROTH: Okay. What was the date where --  
16 the spreadsheet from UHC that we all used at the  
17 bargaining table at some point, when was that  
18 published or when was that available for the unions to  
19 use? Do you recall?

20           THE WITNESS: Well, yeah. So this  
21 spreadsheet was developed in large part by Ken  
22 Krampitz. He didn't have all of the access to the

1 pharmacy data, but -- you know, Ken at  
2 UnitedHealthcare. You know, I think he's viewed as a  
3 pretty impartial guy. I think he gives answers to  
4 labor and management, kind of in equally annoying  
5 doses to either side. And, you know -- and he's very  
6 smart and competent. So we got him to do most of the  
7 heavy lifting on developing this spreadsheet.

8 I probably worked the closest with him in  
9 reviewing it and making sure that it worked the way  
10 that I thought it would be done. The consultant for  
11 the CBG to a lesser extent was involved, but what  
12 happened was over the course of the spring and early  
13 summer 2017, this modeling spreadsheet was developed.  
14 And for the CBG, we had many meetings where we had a  
15 number of different plan designs that we were looking  
16 at, some that are -- you know, were wildly different  
17 than the plan design that we now wound up with, but we  
18 used that spreadsheet to model all of these different  
19 plan designs. It wasn't until -- so the spreadsheet  
20 was developed in the summer. The actual pattern  
21 design itself wasn't nailed down until, you know,  
22 sometime before the October 6th date, when the CBG and

1 the carriers came to agreement. So it was sometime  
2 just before that that the pattern design was put into  
3 this spreadsheet. So it was -- so it's -- you know,  
4 so I would say sometime fall, fall 2017, when this  
5 spreadsheet was done.

6 MR. ROTH: Okay. And that would have been  
7 available to the BMWED group as well at that point?

8 THE WITNESS: I don't know.

9 MR. ROTH: Okay.

10 THE WITNESS: I suppose it would have been  
11 available if they knew to ask. I don't know that they  
12 would have any --

13 MR. ROTH: Yes.

14 THE WITNESS: -- knowledge of its existence.

15 MR. ROTH: Okay. All right. That is all I  
16 have for now. Thank you.

17 MR. VERNON: You are excused. Thanks.

18 THE WITNESS: Thank you. Don, leave this on  
19 or turn it off?

20 MR. VERNON: Leave it on.

21 THE WITNESS: Okay.

22 (Witness excused.)

1 MR. MUNRO: Mr. Chairman, that concludes the  
2 carriers' rebuttal presentation.

3 MR. VERNON: Off the record.

4 (Off the record.)

5 (On the record.)

6 MR. VERNON: Step up.

7 MR. EDELMAN: Okay. And I will make sure  
8 that -- let's see. Which is on? Okay. Hello? Okay.

9 First of all, we appreciate the Board members  
10 paying attention to this, considering it is a complex  
11 issue. All of the complicated information has been  
12 put before you. We appreciate your attention to it  
13 because it involves matters that are very important to  
14 these unions and to their members.

15 For the last two days, we have shown a number  
16 of things. In this case, we do not dispute the  
17 primacy of the pattern principle but assert that the  
18 unions' proposal produces an agreement consistent with  
19 the pattern because the savings in the 357 Plan are  
20 equivalent to those of the deal the NCCC negotiated  
21 with the CBG unions. For that reason, again, we do  
22 not have a burden of making a compelling argument to

1 deviate from the pattern because we not trying to  
2 deviate from the pattern. We have also shown that  
3 pattern does not mean the same terms. It means  
4 equivalent value.

5           Now, the NCCC's main response to this is to  
6 say the examples we cited are relevant because it is  
7 supposedly different when the equivalent deal is  
8 arrived at by agreement instead of by award. This  
9 makes no sense. If it is routinely accepted in  
10 multiple negotiations that an equivalent value deal  
11 matches a previously negotiated or arbitrated pattern,  
12 then that is demonstration of an industry norm and law  
13 of the shop, the pattern has value, not terms. As Tom  
14 pointed out, if agreements constitute the highest form  
15 of mutual acceptance of an understanding, then a  
16 history or recognition in negotiations, the pattern  
17 means value is persuasive on that question. And while  
18 whether particular combinations of terms are  
19 equivalent is going to be a case-by-case question, the  
20 concept that pattern is equivalent value, not the same  
21 terms, is a matter for general principle and not one  
22 for case-by-case determination.

1           It is also contradictory to argue that  
2 agreements reached by some carriers and some unions  
3 constitute a pattern but agreements -- so that is a  
4 pattern, right? Union/carriers negotiate agreement,  
5 and agreement creates pattern. But agreements aren't  
6 persuasive as to what pattern means.

7           And it is commonly said that the goal of an  
8 interest arbitration is to arrive at the deal the  
9 parties would have reached voluntarily if they could  
10 given that there is no basis to say that agreements  
11 have no weight with respect to what pattern means,  
12 only interest arbitrations do. In any event, I do  
13 note that the BLET suit case that was decided by Mr.  
14 Eichen and is relied on by the NCCC was an arbitrated  
15 award. And it specifically said that pattern is  
16 equivalent value. And I quoted this in my opening  
17 yesterday and the Metro submission in the case with  
18 the signalman, where it said that there were three  
19 agreements that had different elements of compensation  
20 but lower GWIs but had the same value was consistent  
21 with the overall pattern.

22           Now, the NCCC has argued that pattern has to

1 be same terms because if it doesn't, then first  
2 settlement has no meaning. It won't resolve anything.  
3 There will still be efforts for one-upmanship.

4 Well, we don't get it. If an agreement sets  
5 the total value for the pattern, it establishes the  
6 parameters for bargaining. The pattern controls the  
7 sum total for the other deals. The elements may vary,  
8 but there is a known total value. So the assertion  
9 that the first settlement has no meaning if pattern  
10 doesn't require exact same terms is wrong.

11 Beyond that, as President Simpson said, BMWED  
12 and SMART-Mechanical tried to settle early. They even  
13 proposed an additional healthcare benefits concession,  
14 but the NCCC wasn't interested.

15 The NCCC has said that our position is that  
16 one side can dictate the equivalence determination;  
17 whereas, the carriers say it is open to debate. That  
18 is another illogical point. If pattern is value and  
19 value is calculated, then it is not subjective or a  
20 matter of opinion. If the numbers add up the same,  
21 then the value is the same.

22 Another odd argument from the NCCC is that

1 they say we seek to pick and choose from the pattern;  
2 in particular, that we accepted certain health  
3 benefits changes that are in the CBG dale, but we  
4 don't want their increases in co-pays and deductibles.  
5 So we took those other terms. But the NCCC and BMWED  
6 and SMART-Mechanical agreed to those other health  
7 benefit terms. They are in appendix B. The NCCC  
8 could have taken the position that no healthcare  
9 benefit terms are agreed and nothing would be in the  
10 agreement without the co-pays and deductibles and the  
11 whole thing, all healthcare, has to be arbitrated, but  
12 they didn't. They can't say they agreed to include  
13 those terms as part of the agreement and to arbitrate  
14 only the co-pays and deductibles versus the 357 Plan  
15 and then complain that the other health benefit terms  
16 being agreed are in the plan, are in the agreement.

17 Now, we have also demonstrated there is no  
18 special requirement for uniformity among agreements  
19 with regard to healthcare benefits, as opposed to some  
20 other terms of collective bargaining. And the  
21 carriers haven't refuted our showing on that point,  
22 and the evidence and precedence on that are compelling



1 or that are contrary to the positions the carriers are  
2 taking.

3 We have also shown that the NCCC's position  
4 denies the role of the unions as collective bargaining  
5 representatives of their crafts. We represent the  
6 members. And the bargain is to reflect their  
7 priorities. And, again, I cited the ARASA versus Soo  
8 and UTU versus Grand Trunk decisions. Both held  
9 carriers and unions have a right under 2/3 to refuse  
10 national handling. And those decisions showed the  
11 carrier's position -- it has to be the exact same  
12 terms -- would negate a statutory right, and they have  
13 no viable answer to that.

14 The NCCC also argues that the union's  
15 proposal should be rejected as destabilizing to labor  
16 relations. Now, putting aside the many examples of  
17 different but equivalent that we have cited, the  
18 specific contention of the NCCC is internally  
19 inconsistent. The NCCC told this Board that the CBG  
20 unions found the 357 Plan absolutely unacceptable.  
21 Mr. Gradia put a slide up on the PowerPoint to show  
22 the CBG saying just that, but the NCCC is also saying,

1 "Well, the Board can't adopt the 357 Plan because the  
2 other unions will be angry and resentful at such an  
3 outcome."

4 Does the NCCC posit that they will suddenly  
5 change their minds on this? It can't simultaneously  
6 be that the 357 Plan is unacceptable to the other  
7 unions but they will be mad if BMWED and SMART-  
8 Mechanical succeed in their arguments for it.

9 As for the assertions that the differences  
10 will be upsetting to other rail workers, well, their  
11 unions rejected this proposal. So why would they be  
12 upset? And since Mr. Scofield said that the CBG deals  
13 were ratified with high percentage votes, even after  
14 BMWED publicly expressed its objections to its members  
15 and since Mr. Gradia said the CBG unions wrote to  
16 their members telling them not to be persuaded by what  
17 they heard from their coworkers in the BMWED, we can  
18 presume that the members of the CBG unions voted to  
19 ratify those agreements with the knowledge that the  
20 BMWED and SMART-Mechanical proposal was what it was  
21 and they chose the CBG deal. So why would they now be  
22 made that maintenance of way employees and sheet metal

1 workers got the 357 deal?

2 With regard to Mr. Glass' assertion that  
3 difference is only acceptable if there is an  
4 explicable reason, well, we don't agree, but,  
5 nonetheless, there is one. BMWED and SMART-Mechanical  
6 were willing to accept the risk of disruption, and the  
7 CBG unions and their members were not. The agreements  
8 will be different because BMWED and SMART-Mechanical  
9 sought something the other unions rejected. So we  
10 submit we have shown that pattern does indeed mean  
11 equal value.

12 Speaking of disruption, Mr. Scofield said  
13 there would be massive disruption under the 357 Plan,  
14 "Just look how many employees would be moving from UHC  
15 to Highmark." But that is not disruption. Disruption  
16 is a change in providers. If an employee walks into a  
17 doctor's office and there is a placard there on the  
18 desk that says they take Blue Cross/Blue Shield and  
19 UHC, then there is no disruption if the employee has  
20 been moved from UHC to Highmark or the other way  
21 around.

22 Employees don't have loyalty to these

1 insurance companies. Nobody grows up with insurance  
2 company pennants on their walls.

3           Regarding behavioral change and employee skin  
4 in the game, again, we are engaged in a collective  
5 bargaining exercise. Again, basically a division of  
6 earnings between the carriers and their employees over  
7 the term of an agreement while the carriers have an  
8 interest in the share of the cost, if the 357 Plan  
9 delivers equivalent cost savings, then that is the end  
10 of it. Making employees better healthcare consumers  
11 is not a cognizable interest here if we deliver the  
12 cost savings. The question here is, does the unions'  
13 proposal hit the target?

14           Likewise, the mainstream argument is,  
15 similarly, irrelevant. If the 357 Plan provides the  
16 same value as the pattern, the comparison to other  
17 industries is simply beside the point. And the  
18 carriers, again, are in no position to argue for  
19 comparison with other industries while they are  
20 arguing in courts challenging state laws in various  
21 states that laws that apply to employees generally  
22 cannot apply to railroad workers because compensation

1 and benefits are idiosyncratic in the railroad  
2 industry.

3 We have also demonstrated that the 357 Plan  
4 does indeed provide value equivalent to the CBG deal.  
5 And Cheiron has shown that the 357 Plan is projected  
6 to achieve savings similar to what is projected. And  
7 I want to say that again because they only have  
8 projections, too. And, in actuality, the savings will  
9 be greater.

10 Now, the NCCC says, "Well, and that's just  
11 projections again. It's just projections based on  
12 assumptions and experience." Well, so is their  
13 proposal.

14 The testimony of Cheiron, Karen and Gaelle  
15 and Molly Loftus and Lindsey Martin from the  
16 consortium, showed that there is no force to the claim  
17 by the NCCC and its experts that the value of any  
18 savings while the 357 Plan will be eroded by the  
19 alleged network discount convergence. The reality has  
20 been that there has been no convergence and, actually,  
21 the Highmark difference has increased.

22 Mr. Scofield said there is no reason to trend

1 forward with what the consortium representative said.  
2 Well, why not? Everybody here is trending forward.  
3 That is what you do when you are beginning negotiating  
4 an agreement going forward.

5 And even Dr. Gaynor's statement shows that  
6 the Blue Cross/Blue Shield market has steadily --  
7 share of the market has increased over the years. And  
8 since the NCCC witnesses recognize that discounts are  
9 driven by market share, the increased market share  
10 contradicts the assertion of discount convergence.

11 Now, Mr. Scofield has referred to the  
12 mysterious UHC network remediation, that you can't  
13 make sense of discounts from the documents provided by  
14 UHC. You have to work it out with UHC and go back and  
15 forth multiple times and read between the lines. And  
16 that is what the NCCC relies on. But this Board can't  
17 rely on Willis Towers Watson's forwarding inscrutable  
18 information from UnitedHealthcare.

19 Now, speaking of Dr. Gaynor, I repeat that  
20 speculating on the outcome of a lawsuit is just that.  
21 It is speculation. And when you are not actually a  
22 party, it is a fool's errand. And that is

1 particularly so here when the only source cited in Dr.  
2 Gaynor's paper about the supposed danger to Blue  
3 Cross/Blue Shield is in an article, a modern  
4 healthcare blog or something, or an article in there  
5 and it says -- and you can see this in the footnote.  
6 It is at page 11 and 16. That is the source for the  
7 danger to Blue Cross/Blue Shield. He didn't even say  
8 he read he briefs or the court decisions. His  
9 arguments on this litigation should be given no  
10 weight.

11 And, by the way, if what he speculates about  
12 does occur, there will be repercussions for the  
13 railroad industry plans regardless since Highmark is  
14 already a major component of the plan.

15 These criticisms are also true of the Willis  
16 Towers Watson claim of secret data that they have that  
17 nobody else has. Well, that is not a basis for a  
18 decision by the Board.

19 Mr. Scofield has said he gets three sets of  
20 discounts: executed, guaranteed, and projected. He  
21 said executed and guaranteed data he had were correct  
22 and the ones that Cheiron used there, but he prefers

1 projected, which, by the way, has to be manipulated.  
2 But executed is the most accurate and most  
3 conservative method. It doesn't have to be  
4 manipulated.

5 And we have shown that among the analysts,  
6 Willis Towers Watson is an outlier on the issue of  
7 discount convergence. He can say all he wants with  
8 all the certainty of everybody else in his firm he  
9 talks to, but that is just their firm.

10 I want to address the question of Cheiron's  
11 numbers changing over time. Now, the numbers changed  
12 as new data became available. Much of it was based on  
13 correspondence with UHC, and it needs to be recognized  
14 that data was trickled out to them and they got bits  
15 and pieces of this and that and had to ask for more  
16 over time. And the NCCC and Willis Towers Watson kept  
17 constantly saying, "Well, we disagree with you. So,  
18 you know, we don't get your explanation. So we had to  
19 go revisit that and redo it." It was like a moving  
20 target. The NCCC kept asking for recalculation on new  
21 data as the years went by. Remember, this went on  
22 for, what, two and a half years or so.



1           On the question of the guarantees and whether  
2 that is meaningful, we assert the 357 Plan is  
3 guaranteed by vendors by their putting 30 percent of  
4 their fees at risk. Now, there is no reason that the  
5 plans can't get discount guarantees based on the whole  
6 plan. And that won't be affected by whether BMWED and  
7 SMART-Mechanical members are being assigned to  
8 different insurance providers in different MSAs. The  
9 point is that discount guarantees are based on the  
10 book of business by MSA and not on the number of  
11 participants there.

12           And, frankly, a lot of this reflects the  
13 failure over the years to negotiate with the vendors  
14 for guarantees over that period of time. In essence,  
15 frankly, the NCCC seems rather -- you know, they would  
16 rather not negotiate with the vendors and providers to  
17 pay less. And, instead, they want to make the  
18 employees pay more.

19           Back to a comment by Dr. Gaynor for a moment.  
20 He and Mr. Scofield assert that the total cost, not  
21 discount, matters. This is addressed on page B-1 of  
22 Cheiron's presentation from Friday and page 51 of

1 today's PowerPoint, which show that the Uniform Data  
2 Standard Group does not think that is a significant  
3 issue.

4 Now, today Mr. Gaynor said, "Well, we haven't  
5 proved greater divergence because he questions the use  
6 of national data," but one thing is clear. We don't  
7 need to prove that the divergence is getting greater.  
8 They have to prove the convergence, which is not  
9 happening.

10 It is also not a problem that the  
11 BMWED/SMART-Mechanical groups are a subset of the  
12 whole national plan. The same is true for the NCCC  
13 proposal. We don't know what cost-saving measures  
14 will be the same for the BMWED and SMART-Mechanical as  
15 for the CBG unions, but, in any event, that is  
16 controlled by our use of the PQEPM measure.

17 Now, this takes us to the NCCC's assertion of  
18 factors supposedly undercutting savings from the 357  
19 Plan based on implementation issues. I repeat that  
20 all of those assertions that are set forth in Mr.  
21 Scofield's statements, both his written statement, his  
22 PowerPoint yesterday, and his PowerPoint today, are

1 all secondhand from UnitedHealthcare. There is no  
2 witness here with firsthand knowledge to back it up.  
3 There isn't even a written statement to support it.

4 Mr. Scofield rattled off a bunch of names of  
5 people who he spoke to and says they are really great  
6 guys and smart and whatever, blah blah blah. None of  
7 them provided a statement under their own name to  
8 explain this or justify their self-serving assertions.  
9 No one is here today. No one them provided a  
10 statement. And Mr. Scofield merely reported what he  
11 says he was told by UnitedHealthcare. He didn't even  
12 opine that it was reasonable.

13 In this regard, I want to note the  
14 significance of the admission -- and Mr. Scofield's  
15 papers were not signed. It didn't have an actuarial  
16 certification. Mr. Scofield dismissed this as a  
17 concern, saying he is an actuary, so what is the  
18 difference. But signing a report like that with the  
19 necessary certification has significance. It bolsters  
20 credibility. It means it is an actual expert report  
21 to be given credence, not a mere witness opinion. And  
22 it is not just a matter of sitting there saying, "Oh,

1 I adopt my statement as an actuary" because for a  
2 certification to be meaningful, certain requirements  
3 have to be met, like the work shown, the backup  
4 provided. The explanation with data is provided in  
5 such a way that another actuary can validate the  
6 conclusion.

7 This is not the type of report that has been  
8 provided to you. For example, in a true actuary's  
9 report, he couldn't just throw in numbers given to him  
10 by UHC and rely on them for a conclusion.

11 In any event, there is no merit to the  
12 musings on these points. We have shown by the  
13 testimony from Cheiron and Tricia Grey that with an  
14 existing plan like this one, all of the known  
15 information and implementation can be done in 30 days.  
16 It is absurd to assert that it will take nine months  
17 to implement the unions' proposal. And there is no  
18 one here from UHC to explain why that time is actually  
19 required. What would cause it to be so long?

20 Willis Towers Watson says, "Well, they are  
21 built in. Six months of that nine is for a refresh of  
22 data." But why? What is the basis for saying that is

1 necessary?

2           Cheiron and Ms. Grey have shown that the  
3 claim of the implementation time is without basis in  
4 fact. And there is nothing you have been given on the  
5 other side to support that on which you can rely.

6           There is no need to set up a separate trust.  
7 Mr. Rifkind explained it is not necessary. Now, Mr.  
8 Scofield today said, "Well, we didn't say you have to  
9 have one. We said it could be required."

10           Well, you know, there is a sizeable law firm  
11 over here. If one were required, they could figure it  
12 out, not saying, "Well, maybe you might have to do  
13 it."

14           I said in our opening the other asserted  
15 administrative cost claims are arbitrary and  
16 unsupported. No substantiation for those numbers has  
17 been provided to you. Again, no one from UHC produced  
18 to explain it. And Cheiron readily debunked all of  
19 those numbers. And today they went through them fully  
20 and explained them. And, again, Mr. Scofield said,  
21 "Well, those are based on conversations with UHC,  
22 which aren't documented." And, by the way, if UHC is

1 unclear on what they are doing and why, you can't rely  
2 on Mr. Scofield's conversation translating that to the  
3 Board.

4 And, again, there is no need to take time to  
5 sort the vendors into MSAs since Cheiron already did  
6 the sorting. And acceptance of our proposal will mean  
7 the sorting is done.

8 The NCCC objects that Cheiron's analysis is  
9 based on old data, but it is actually based on the  
10 contracts in effect through 2018. This data is more  
11 current than what the NCCC relied on for the changes  
12 in negotiating the CBG deal, which appears to be 2016  
13 data trended forward.

14 We have also shown you today that the  
15 analysis could be done a different way, using  
16 guarantees. And the result is actually more in our  
17 favor, but Cheiron used the more conservative approach  
18 and more accurate approach.

19 Regarding the general differences between  
20 Cheiron and Willis Towers Watson, Willis Towers  
21 Watson, the basis for this is, first, really provided  
22 in the recent statements from Mr. Scofield. And he

1 said, "I really can't account for this." And he has  
2 got that big unknown number, which is, you know, the  
3 largest bulk of it. We have just never been able to  
4 sort that out.

5 Now, at the time we were negotiating the  
6 arbitration agreement for this proceeding, Mr.  
7 Arbitrator, we, the unions, proposed a meeting between  
8 Cheiron and Willis Towers Watson to reconcile their  
9 numbers. And the NCCC said, "No, that's not  
10 necessary. Nothing will be gained there." That is  
11 what they said. We made that a specific proposal to  
12 be part of that reconciliation, what happened before  
13 submissions were put in.

14 And this is the same answer we were given  
15 multiple times when we made -- said, "Let's get  
16 together and reconcile the information." One can say  
17 those are unknown, but there was no effort for them to  
18 be known.

19 And this characterizes all of the dealings on  
20 this. Rather than make an effort to engage, to come  
21 to a common understanding on the data, the NCCC has  
22 resisted, laid in the weeds, popped up, and made vague

1 challenges to the data, and then dismissed the entire  
2 effort.

3 By the way, with regard to the point of the  
4 wanted model, Willis Towers Watson model done with UHC  
5 and Mr. Scofield noted it was done with the healthcare  
6 consultant for the CBG unions. It should be noted  
7 that the consultant for the CBG unions is also from  
8 Mr. Scofield's firm, Willis Towers Watson.

9 We also submit there is no need for a true-up  
10 here because the value of the unions' proposal is  
11 equivalent to the NCCC proposal. And they have no  
12 authority that actually supports their position. And  
13 their position is belied by the last round.

14 PEB-243, where the UTU signed a deal in  
15 September of 2011 and the health plan changes were  
16 implemented for them on January 1, 2012, but the post-  
17 PEB agreements based on the PEB-243's reports, an  
18 acceptance of the UTU healthcare terms were  
19 implemented on a rolling basis, with the first changes  
20 implemented on July 1, 2012, 6 months later than the  
21 UTU deal. And it wasn't even fully implemented until  
22 sometime later. And there was no true-up provided for



1 in the PEB report or the agreements.

2 I also want to point out that the unions made  
3 an offer in December of 2017 to take the GWIs and the  
4 CBG deal but our 357 Plan. It is the same position we  
5 have here now. If that had been accepted by the NCCC  
6 then, we could be on our way to implementation. We  
7 could have started months ago with the process.

8 Now the carriers say, "Well, we will lose the  
9 gains by the loss of time in implementation based on  
10 the UHC timeline," but the cause is on them. They  
11 can't say they are prejudiced by delay when it is  
12 their delay. We could have had this deal in December  
13 and be on.

14 I repeat that there is no basis for a penalty  
15 here. The Board simply lacks jurisdiction to do that.  
16 The NCCC tried to claim that this is somehow complicit  
17 in question number 2 in the agreement. That is  
18 plainly a timing true-up question. And a penalty  
19 would be so extraordinary it would have to have been  
20 stated as an issue if it was part of the agreement as  
21 to the scope of the arbitration, not something  
22 unstated but inferred. The NCCC has cited nothing, no

1 prior case, no precedent, nothing to support their  
2 claim, just their frustration with the unions doing  
3 their job. Again, this is an interest arbitration  
4 board, not an adjudicator of bargaining conduct.

5 I won't repeat the other reasons why the NCCC  
6 has no basis for seeking the penalty, but the carriers  
7 are wrong in the characterization of BMWED's conduct  
8 in recent rounds, and they certainly lack clean hands  
9 in seeking a penalty based on their own conduct and  
10 the conduct of the corporations involved, I would add.

11 So, in conclusion, we submit that we have  
12 shown that on this small part of the overall  
13 agreement, this particular aspect of healthcare  
14 benefits, the unions' proposed cost savings for  
15 healthcare benefits are similar to those projected for  
16 the NCCC proposal. Since the value is similar, the  
17 Board should adopt the unions' proposal.

18 Thank you.

19 MR. VERNON: Thank you.

20 MR. MUNRO: Good afternoon, Mr. Chairman,  
21 members of the Board. To sum up our case, I am going  
22 to come back to the issues that I identified at the

1     outset of my opening statement. And it is perhaps  
2     ironic that this may be the only thing on which Rich  
3     and I agree, that the issues that this Board needs to  
4     decide or that it should consider are, what does  
5     pattern mean, are the proposals equal, and what about  
6     this true-up or penalty?

7             Nothing in the parties' presentations has  
8     changed the contours of those core issues, but in the  
9     interest of not just repeating my opening statement to  
10    you, I am going to vary the order of discussion.

11            So the first thing I am going to cover is the  
12    questions about equal value. I would like to  
13    summarize the problems with the 357 Plan and explain  
14    again, summarize all of the evidence you have heard as  
15    to why we believe it is not equal to the pattern.

16            Second, I am going to show you that the Board  
17    doesn't even need to decide that issue. It can simply  
18    conclude that pattern in the context of this case  
19    means the same terms.

20            And, finally, like Rich, I will address the  
21    true-up and penalty.

22            All right. So starting with equal value,

1 there is no debate that the pattern includes  
2 significant savings. What the carriers are proposing  
3 includes a large amount of money that is saved. But  
4 it is notable that we don't even agree on what exactly  
5 that number would be. Willis Towers Watson estimates  
6 it at \$48 million with an implementation date of  
7 February 1st. Cheiron can't even match that number  
8 without manipulating the trend, which, as Mr. Scofield  
9 explains, is inappropriate and not how he calculated  
10 that number. So this points up the complexity and  
11 variability in the parties' approaches. We can't even  
12 agree on what the pattern is.

13           The bigger issue, however, is the value of  
14 the 357 Plan. And the simple answer here is that  
15 there is no way to say with any certainty what, if  
16 any, value the 357 Plan will provide. Why? Because  
17 at the end of the day, it is founded on assumptions,  
18 speculation, and guesswork. Hope, Mr. Chairman, is  
19 not a strategy. And that is what they have got  
20 because their whole case depends on their hope about  
21 what will happen.

22           As Willis Towers Watson explains, there is a

1 whole lot of things that have to go right for there to  
2 be any savings and that there is a very high  
3 likelihood there will be no savings at all. Let me  
4 stress this. We don't agree that the 357 Plan  
5 necessarily represents any value at all. Think about  
6 all of the moving parts that have to fall into place.

7 First, there actually have to be discounts  
8 out there for us to capture. Now, they are using 2015  
9 data. It is three years later. Now, they say that it  
10 is the same, but we disagree. We think the markets  
11 have moved. And Dr. Gaynor explained this. He said  
12 there is massive uncertainty out there about where  
13 discounts are going. And it is speculation, pure  
14 speculation, to say that the discounts are the same  
15 today. That is the point of the Blue Cross/Blue  
16 Shield litigation. It is just an example of the kinds  
17 of things that are going out there in the marketplace  
18 that undermine their assumption.

19 Even their own witnesses admit this. Dawn  
20 Fairhurst's statement is that there will be "some  
21 convergence over the next five years." It is at page  
22 20 of the Cheiron rebuttal. Their witnesses testified

1 discounts are constantly changing. Well, that is  
2 true, and that is the problem.

3 Second, the discount differential has to be  
4 meaningful. As Mr. Scofield explained, if the  
5 discounts are just within 1 or 2 percent of one  
6 another, we are within the margin of error and there  
7 is reason to doubt that there is any benefit to doing  
8 this at all. That is true for many of the MSAs.

9 Third, you have this debate about these other  
10 costs. I think we agree that there are other cost  
11 drivers beyond discounts. I mean, that is obvious.  
12 So just because there is a greater discount does not  
13 mean that there is a guarantee of savings. That was  
14 Dr. Gaynor's point about the difference between price  
15 and discount.

16 All right. Then we come to implementation.  
17 And this is a big one. Their argument, as I  
18 understand it, is, "It is easy. There is no problem  
19 here. We will get it done in 30 days. No worries."  
20 Cheiron said, "We are pretty sure they can do it in 30  
21 days."

22 Well, when has any insurance company ever

1 done anything in 30 days? My insurer can't even deny  
2 my claim in 30 days. And they have gone lots of  
3 practice. To expect them to do something on this  
4 scale and to actually get it right is foolish.

5 Moreover, they are ignoring the biggest piece  
6 of the puzzle: UHC. Now, to quote Casablanca, we are  
7 shocked, shocked, that Highmark says that they can  
8 take on lots of new business and make lots of new  
9 money within 30 days. But it doesn't matter. That is  
10 not the issue.

11 The issue is, before that happens, we have to  
12 extract the information from UHC. And the only  
13 evidence before this Board is that that is not going  
14 to happen. It is not going to happen on the timeframe  
15 that they suggest. They criticize our evidence as  
16 hearsay. Well, they have nothing, nothing on the  
17 other side.

18 The bottom line is this. The 357 Plan is  
19 this Rube Goldberg device. It has lots of moving  
20 parts. It has lots of complicated details. And if  
21 any piece of it goes wrong, it doesn't work.

22 And, just to put a point on this, the unions

1 couldn't even describe the 357 Plan accurately the  
2 first time around. Their initial statement only had  
3 213 MSAs in it, not 357. And I am not saying this to  
4 highlight the fact that they made a mistake but to  
5 point up that there are lots of things that can go  
6 wrong when you are talking about something of this  
7 complexity. There is lots of details. There is a lot  
8 we disagree about. But, more importantly, there is a  
9 vast amount of uncertainty and speculation behind  
10 their proposal.

11           And what happens if things do go wrong? What  
12 happens if the discounts aren't there or they fade  
13 over time or the fee estimates turn out to be wrong?  
14 Well, I will tell you what happens. We get screwed,  
15 to use the technical legal term. In other words, the  
16 carriers bear all of the risk. They want us to pay 94  
17 percent of plan costs and just hope that these vendor  
18 discounts actually come through.

19           Cheiron sure isn't guaranteeing anything.  
20 They don't have anything on the line here. If they  
21 are wrong, so what? Tough luck. They say, "Well,  
22 these discounts are guaranteed. No worries. The



1 vendors have all of the risk." Well, that misses the  
2 point because that assumes that the discounts are in  
3 place, that the 357 Plan has been implemented. And,  
4 as you have heard from Mr. Scofield and our other  
5 witnesses, there is a whole lot that has to happen  
6 before that occurs.

7           So how big is the risk? Do you want to take  
8 my word for it? Do you want to take Rich's word for  
9 it? You know, we disagree. Well, the biggest  
10 objective indicator out there of how much risk is  
11 associated with this is the fact that no one else is  
12 buying this gimmick. Cheiron said yesterday, "We are  
13 baffled as to why the carriers won't do this. We are  
14 baffled as to why none of the other unions would come  
15 along." Is it because we hate saving money? Is it  
16 because we hate our employees and just want to make  
17 them pay more? No. It is because no one believes it  
18 will work.

19           These are sophisticated parties, Mr.  
20 Chairman. The CBG unions, they are not dummies. They  
21 don't tend to shy away from saving money for their  
22 members when it is available. But this, there are

1 just not sufficient guarantees it is going to work.  
2 No one believes them. The only people who believe in  
3 the 357 Plan are sitting on this side of the room in  
4 the entire railroad industry.

5 The other aspect where these proposals are  
6 not equal is the impact on utilization. As I said  
7 yesterday, it is undisputed that the plan produces  
8 change in utilization and the 357 Plan does not.

9 Now, Mr. Roth asked yesterday -- and I don't  
10 know that he ever got a clear answer -- "What is the  
11 dollar value of behavioral change?" The Willis Towers  
12 Watson expert report addresses that. This is exhibit  
13 25, page 14. Mr. Scofield explains that the dollar  
14 value of behavioral change is about 15 percent of the  
15 value of cost shifting. He says the standard that  
16 they used based on his experience and what they have  
17 actually seen is 30 percent, but to be conservative,  
18 they are using 15. And that works out to the \$9 per  
19 employee per month.

20 Now, they don't debate that. They don't deny  
21 it. They don't have contrary data. They don't have  
22 their own study. They have no response to Dr.

1 Goldman. They haven't done their own analysis of what  
2 happened after 243. They don't deny that utilization  
3 can have a dollar value beyond cost shifting. Their  
4 only argument on rebuttal this morning was, "Well,  
5 Medicare doesn't do it that way."

6 And, by the way, people don't know how to get  
7 their own care. They can't figure this out.

8 Well, Mr. Chairman, as you may recall, they  
9 made those arguments before PEB-243. They made the  
10 pitch that utilization doesn't justify shifting costs.  
11 And PEB-243 rejected that argument, thoroughly  
12 rejected it. And this Board should as well.

13 They also say, "Well, we have a philosophical  
14 difference about this." Well, even if you feel  
15 strongly that you are right, that is not a basis for  
16 departing from the pattern. Strong feelings and  
17 philosophical differences are not a basis for a  
18 decision.

19 Another point about equal value, they  
20 overlook the fact that we already have methods to  
21 capture discounts. You heard the testimony from the  
22 carriers' witnesses that we already seek discounts.

1 There is a complex ongoing negotiation. This is not  
2 27 years of doing nothing. So they want to take  
3 something that we already have and sell it back to us.  
4 I'm sorry, but that is not equal value. And it  
5 doesn't matter how you define the concept.

6 If they want to implement the pattern and  
7 then come and have a mutual discussion about how we  
8 could work together to improve discounts, we are happy  
9 to have that conversation with them. But to say that  
10 that should be the sum and substance of healthcare  
11 change in this round is simply not going to work.

12 One minor point on this idea of disruption.  
13 My counterpart made the argument that there is no  
14 loyalty to insurers. And, actually, I think I agree  
15 with that, but I think it is notable, as Mr. Scofield  
16 explained, that you have this huge population that can  
17 already elect Highmark, but the vast majority of them  
18 do not. It is less than 25 percent of our employees  
19 voluntarily choose the organization that they want to  
20 force everybody to accept. That is odd at least.

21 Now, finally, I think it is a measure of the  
22 lack of force to their case that they resort to an

1 attack on the credibility of Mr. Scofield. They have  
2 made a big deal about the fact that his report is  
3 unsigned.

4 Look, the Board can weigh credibility. That  
5 is what boards of arbitration do. But let me just say  
6 that, aside from however you may feel about Mr.  
7 Scofield and whether he is honest and credible in his  
8 statements, I can't make heads or tails of what  
9 Cheiron is saying. They have got the fancy statement  
10 at the end of their report. Well, where do they get  
11 their data? Where are the spreadsheets that they rely  
12 on? I can't find them. What is the exact source of  
13 the \$25 million difference they claim? They needed to  
14 look to their own report before they throw rocks at  
15 Dave Scofield.

16 One other thing that Cheiron does is make an  
17 unbelievably weak response to the benchmarking case.  
18 They actually compared us to transit systems. Now,  
19 that is just silly. Transit systems are not  
20 railroads. It is not the same industry at all. Those  
21 are government or quasi-governmental entities. They  
22 are subject to their own statutory bargaining regimes.

1 And Mr. Roth and I just spent weeks doing this for  
2 WMATA. Nobody argued in the Metro case that railroads  
3 are the appropriate comparison. In fact, Mr. Roth  
4 argued vigorously that transits are their own industry  
5 and can't be compared to anybody else.

6 Now, I don't agree with Mr. Edelman's  
7 comments that you can't benchmark to any other  
8 industry. I do think that, given the pattern in this  
9 case, this is just a sideshow. But, in any event,  
10 Cheiron's effort in this regard is unpersuasive, to  
11 say the least.

12 All right. So does the Board actually need  
13 to decide all of this? Do you need to weigh all of  
14 these factors and decide whether the proposals are  
15 equal or not? No. No. You do not. The Board could  
16 and should decide that the pattern here is the same  
17 plan design because the parties have not agreed on an  
18 alternative. In other words, the rule, the rule to be  
19 applied, is in the absence of an agreement to vary  
20 terms, pattern should be the same terms agreed to by  
21 the settling unions, which, by the way, is the same  
22 value. By definition, the same terms have the same

1 value. Why is that the rule? Well, again, it is  
2 inherent in the pattern principle itself.

3 Look, there is endless room to debate moving  
4 value around. Unless you have a default, what is  
5 going to happen if we can't agree to move the  
6 furniture? Then the pattern principle is worthless.

7 Now, Rich said, "We don't get it. We don't  
8 get it. If you don't use the same terms, so what  
9 because there is not going to be any impact at all?"  
10 But this a recipe for endless disputes, as this  
11 proceeding itself shows. Why wouldn't every union  
12 hold out for its preferred rearrangement of value?

13 So to reinforce the pattern, the Board should  
14 hold that the pattern plan design should be applied so  
15 long as the parties can agree on what equivalent terms  
16 are and there is no need to translate value across  
17 craft lines.

18 The unions had two responses to my argument  
19 on this point. It is a little unclear whether they  
20 are accepting the pattern concept or not. I think I  
21 heard Rich say they accept the primacy of pattern, but  
22 at the same time, he is citing you these 6th and 8th

1 Circuit cases for the proposition that pattern  
2 undermines their ability to bargain. The 6th and 8th  
3 Circuit cases have nothing to do with this. Those  
4 cases involve the question of whether an entity can be  
5 forced to join a coalition and bargain with others.  
6 Can a railroad be forced to join other railroads? Can  
7 a union be forced to join other unions? And the court  
8 said, "No. That has nothing to do with this case."

9 Their other response was Mr. Roth's  
10 supplemental statement in which he says, "Well, you  
11 are just discounting voluntary agreements, and that is  
12 silly. Why would you possibly do that?" Well, they  
13 are setting up a straw man here. We are not arguing  
14 that you discount voluntary agreements. He is  
15 conflating two entirely different concepts. Voluntary  
16 agreements can set a pattern. Of course, they do.  
17 They set a pattern in this case. The CBG deal is a  
18 voluntary deal. That is not the question. The  
19 question is, in the absence of a voluntary agreement  
20 with the non-settling unions, what does an interest  
21 arbitration panel do? Does it accept one side's view  
22 of equivalence or does it take the pattern terms which



1 are unequivocally equal and use those?

2           They don't cite one example, not one, of an  
3 interest arbitration panel imposing different but  
4 equal in a situation where the parties haven't agreed  
5 to it. Now, why is this important? Well, in part,  
6 because, as Mr. Glass explained, it is not just the  
7 carriers' perspective that matters. It is also the  
8 settling employees' perspective, the people who aren't  
9 in this room.

10           I made this same point to PEB-243 about the  
11 UTU when these same unions were making a similar  
12 argument about how the Board should depart from  
13 pattern. I said then, and I will say it again, put  
14 yourself in the shoes of a trainman or a conductor who  
15 settled back in January. Do you think that individual  
16 thinks that the 357 Plan is the pattern?

17           Mr. Edelman says, "Who cares? They didn't  
18 want it." But the track repairman that President  
19 Simpson talked about has a deductible now under their  
20 approach that is \$150 less than the trainman. So, of  
21 course, they care.

22           Moreover, how do you think this will play out

1 in the next round of bargaining? The 357 Plan is  
2 imposed, and their benefits are different. They are  
3 paying less for healthcare.

4 What are the other unions going to say when  
5 we come around to the 2020 round? Is it possible that  
6 they will say, "We want to go back to the old plan  
7 design"? I think it is fairly likely that they will  
8 say that.

9 And I think the unions' response would be  
10 "Well, fine. You can just get more discounts." Are  
11 those discounts going to be available then? This is  
12 so speculative and introduces so much uncertainty that  
13 unless the parties are agreeable to it, it can't be  
14 adopted.

15 Now, they have no response to the employee-  
16 perspective argument except for this one argument that  
17 Mr. Roth where he said, "Not to worry. We have had a  
18 history of differing contributions. Happens all of  
19 the time. People pay different amounts for  
20 healthcare." Well, not anymore. Not anymore. Those  
21 contributions have been equalized through collective  
22 bargaining. What does that tell you? It tells you

1 the parties clearly did view those differences as  
2 problematic. And otherwise they wouldn't have changed  
3 them.

4 Well, that brings me to the final question,  
5 the true-up and the penalty. Now, you know, at some  
6 point here, we are just chasing our tails because of  
7 the different definitions of what the pattern is and  
8 equivalent value, but if you don't accept the notion  
9 that the 357 Plan is equivalent value or you accept  
10 the proposition that a pattern means the same terms,  
11 then a true-up has to be part of the package because  
12 the true-up is the pattern. The implementation date  
13 itself is part of the pattern. That is true when you  
14 have retro pay, and it is just equally true when you  
15 have plan savings.

16 Would these unions be okay if our position  
17 was that retro pay should be delayed pending  
18 arbitration? I don't think so. Well, the same is  
19 true here.

20 So we heard, "Well, there is no support for  
21 this because you haven't had a true-up every other  
22 time that there has been some delay. Look at the 2011

1 round. Look at what happened about PEB-243."

2 Well, this just brings me back to one of my  
3 basic themes. Of course, the parties can agree to  
4 forego a true-up. That happens all of the time.  
5 There are tradeoffs in collective bargaining.

6 Maybe the carriers forewent a true-up after  
7 243 because they had other goals, other things that  
8 they wanted. But in the absence of an agreement in  
9 the situation that we have here today, where the  
10 pattern is imposed, it is certainly appropriate to  
11 incorporate the implementation date as part of the  
12 answer. And that is certainly true when the unions  
13 can evade cost savings by simply dragging this out.

14 And to this point, I have to contest the  
15 characterization that we heard yesterday and this  
16 afternoon that the timing of all of this is the  
17 carriers' fault. As the Board may recall, we  
18 advocated for a much earlier hearing date. We were  
19 told no. But, in any event, we are the ones who are  
20 losing money every day unless the Board awards a  
21 true-up.

22 As for the penalty, how else do we prevent

1 this from happening? I am open to suggestions. The  
2 IBB, which reached a voluntary agreement, took a  
3 true-up back to January 1st. Well, if that is so, why  
4 should these unions, which held out, do any better?

5 Ken suggested that the appropriate penalty is  
6 the CBG implementation date. That is an adjustment  
7 for delay. That is within the Board's jurisdiction.  
8 That is part of question 2. And it is eminently  
9 appropriate.

10 Finally, let me take a step back and just  
11 review the issues here from a 30,000-foot level.  
12 Ultimately, there is a choice here between two  
13 different approaches. One is a plan design approach  
14 that we have used in the past and has proven to work.  
15 They say, "Well, your plan design element is  
16 speculative." No, it is not. It worked after 243,  
17 and it is working right now. As we speak, there are  
18 savings derived from the current plan design that  
19 applies to the CBG and TCU unions.

20 The other option is the 357 Plan, which is an  
21 unproven, risky gambit, which does nothing to improve  
22 utilization. So even if there were no pattern at all,

1 even if there were no other considerations, the  
2 carriers' proposal is the common-sense option. Now,  
3 common sense is perhaps underrated in this day and  
4 age, but I think it is still a good basis for  
5 decision.

6 In conclusion, Mr. Chairman, I would like to  
7 thank opposing counsel for his usual professionalism  
8 and courtesy. I do enjoy our time together, Rich. I  
9 will refrain from telling the story about how Rich,  
10 Bill Bonn, and I ended up at a bar called Woody's in  
11 Laguna Beach.

12 (Laughter.)

13 MR. MUNRO: Maybe in the bar later.

14 And I would also like to extend my  
15 appreciation to Don Griffin on his retirement. He has  
16 also been a pleasure to work with.

17 And, finally but certainly not last, I would  
18 like to acknowledge, just as Rich did in his opening  
19 remarks, my dear friend and mentor, who is also  
20 stepping down at the end of this proceeding, the  
21 general counsel of the NRLC, Joanna Moorhead, whom I  
22 love dearly. And I wish her well in her retirement.

1           MR. VERNON: Well, thank you. And may I say  
2 a couple of things? Best of luck to everyone who is  
3 pulling the pin.

4           (Laughter.)

5           MR. VERNON: I wish I had the fortitude to do  
6 it, but I am plugging away. And for those of you who  
7 don't know me, I came out of this industry. My  
8 seniority date as a crew dispatcher or a crew caller  
9 was February 13th, 1973. And so I have been in this  
10 industry since then.

11           I am proud to have come from it, and I have  
12 had the good fortune to work with you and work with  
13 many parties throughout this country. And perhaps it  
14 is a matter of family pride being a railroader, but I  
15 don't know if you realize how good you are. You are  
16 in the middle of a dispute. And marriages, they say,  
17 aren't measured by how good you are when you are good.  
18 They are measured by how good you are when you are  
19 bad. And that is a way of saying I appreciate very  
20 much you agreeing to disagree agreeably. Not  
21 everybody is fortunate enough to have the  
22 professionals from top to bottom, from Ken Gradia to

1 the track worker, who are professional and part of a  
2 family and can duke it out, shake hands, and walk away  
3 for the better good. So thank you, everyone.

4 And that concludes our hearing.

5 (Whereupon, at 3:00 p.m., the proceeding was  
6 concluded.)

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CERTIFICATE OF NOTARY PUBLIC

I, SAMUEL HONIG, the officer before whom the foregoing proceeding was taken, do hereby certify that the proceedings were recorded by me and thereafter reduced to typewriting under my direction; that said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

SAMUEL HONIG  
Notary Public in and for the  
Commonwealth of Virginia

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CERTIFICATE OF TRANSCRIBER

I, SARAH VEACH, do hereby certify that this transcript was prepared from audio to the best of my ability.

I am neither counsel for, related to, nor employed by any of the parties to this action, nor financially or otherwise interested in the outcome of this action.

May 10, 2018

DATE

SARAH VEACH

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