UNITED STATES DISTRICT COURT

IN THE DISTRICT OF IDAHO

SAINT ALPHONSUS MEDICAL CENTER - NAMPA, INC., TREASURE VALLEY HOSPITAL LIMITED PARTNERSHIP, SAINT ALPHONSUS HEALTH SYSTEM, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC., Plaintiffs, vs. ST. LUKE'S HEALTH SYSTEM, LTD., and ST. LUKE'S REGIONAL MEDICAL CENTER, LTD., Defendants.	Case No. 1:12-cv-00560-BLW Bench Trial **Witnesses:** **Jackie Butterbaugh (Video)** **Patrick T. Otte** **Linda House (Video)** **Steven W. Drake (Video)** **Randall Billings (Video)**
FEDERAL TRADE COMMISSION; STATE OF IDAHO, Plaintiffs, vs. ST. LUKE'S HEALTH SYSTEM, LTD.; SALTZER MEDICAL GROUP, P.A., Defendants.	Case No. 1:13-cv-00116-BLW

*** * * SEALED * * ***

REPORTER'S TRANSCRIPT OF PROCEEDINGS

before B. Lynn Winmill, Chief District Judge

Held on September 26, 2013

Volume 4, Pages 526 to 631

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PROCEEDINGS
September 26, 2013
******COURTROOM OPEN TO THE PUBLIC******
THE CLERK: The Court will now hear Civil Case 12-560-S-BLW, Saint Alphonsus Medical Center Nampa, Inc., versus St. Luke's Health System for Day 4 of a bench trial.
THE COURT: Good morning, Counsel. I believe we are ready to begin. We were going to publish depositions, Ms. Duke.
MS. DUKE: Yes, Your Honor. We have the deposition of Linda Duer and Jeff Crouch being published. They were used in cross-examination yesterday.
THE COURT: Yes.
MS. DUKE: Just so the record is clear.
And then we have the deposition of Scott Clement, Max Reiboldt, Randell Page, Michael Djernes, William Savage --
THE COURT: I'm sorry, what was that? Back up. We have Duer and Crouch were used only for impeachment; correct?
MS. DUKE: Correct.
THE COURT: And then we have?
MS. DUKE: Scott Clement, Max Reiboldt, Randell Page, Michael Djernes, William Savage, John Kaiser, and Jackie Butterbaugh, who we were in the middle of.
THE COURT: I will direct that those depositions,

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that would be Duer, Crouch, Clement, Reiboldt, Drs. Page, Djernes, and Kaiser be published. Then I believe Butterbaugh is the last.
MS. DUKE: And then we have the depositions that we will later publish right before we play them.
THE COURT: I think that would be the best way to do it.
And then provide those to Ms. Gearhart in advance.
(Depositions of Linda Duer, Jeff Crouch, Scott Clement, Max Reiboldt, Randell Page, Michael Djernes, William Savage, John Kaiser, and Jackie Butterbaugh published.)
MS. DUKE: I will.
THE COURT: Very good.
MS. DUKE: As a matter of housekeeping, Your Honor, St. Luke's has withdrawn their untimely objection to Exhibit 1996 and 1997. So we move for their admission.
THE COURT: Is that correct?
MR. SINCLAIR: It is.
THE COURT: 1996 and 1997 will be admitted.
(Plaintiffs' Exhibit Nos. 1996 and 1997 admitted.)
MS. DUKE: One final housekeeping matter. As we understood it, and I know St. Luke's has already done this, we are filing unobjected-to exhibits, we will be filing our unobjected-to exhibits as admitted exhibits this morning. I

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guess St. Luke's did that a couple days ago, so we will do the same thing.
THE COURT: You did that by file document? You are filing it on CM/ECF.
MS. DUKE: Yes. That's how St. Luke's handled it, so --
THE COURT: No. I think that is what I suggested to avoid having to state it for the record. Apparently they filed with CM/ECF?
MS. DUKE: Sure. And we're just going to do the same thing.
THE COURT: As soon as that's done, I think, Mr. Metcalf, we'll probably need to just enter an order admitting those exhibits and then give that to Ms. Gearhart so the record is clear, and she can incorporate that into the minutes of the trial so it is clear as to what exhibits were admitted.
I think we're ready to proceed.
MS. DUKE: Yes. And I was just going to pick up where we left off.
THE COURT: Yes.
MS. DUKE: If I can just advance forward real quick.
THE COURT: You might start, give me a minute or two before the point where we left off yesterday just to

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give me a context.
MS. DUKE: Can I just read part of that, Your Honor? Only because it's a really long clip that was prior to this clip that we left off on. So it would be about five minutes that you would be rehearing.
THE COURT: That's fine. You prefer to read the clip, you say?
MS. DUKE: I was going to-- I guess I can play it, it is just it's a fairly long clip, but I can play it.
THE COURT: Let's just start where you were. I will have the written transcript to consult if I need to, so let's be efficient, let's just go ahead.
(Testimony of Jackie Butterbaugh via video deposition resumed.)
THE COURT: Excuse me.
(Video deposition paused.)
THE COURT: There is a minor matter I need to take care of. If we can take just a five-minute recess, let me make one quick phone call, an emergency, and we will be able to resume.
We will be in recess for just five minutes.
(Recess.)
******COURTROOM OPEN TO THE PUBLIC******
THE COURT: Thank you. Please be seated.
My apologies. What I thought was an emergency, it was

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not. And I advised someone that they inconvenienced a lot of attorneys.

But in any event, we are ready to go back and proceed. Could you back up just 30 seconds or so.

MS. DUKE: Yes, Your Honor. Got it.

MR. STEIN: Your Honor, we have a binder of the exhibits. I apologize we did not give this to you before, but it is the exhibits that are associated with this testimony.

THE COURT: That is fine. I think someone is bringing them up on the screen, on a split screen. If you have them, I will look at them in that fashion as well.

MS. DUKE: I guess since we're addressing it, Your Honor, do you prefer to have a binder with every witness or pulling it up on the screen?

THE COURT: I think on the screen is sufficient. I think we are doing a reasonably good job of standing it enough where I can read. Fortunately, I did bring my reading glasses up, so I can get in a little closer. If you have them prepared, fine. I will be able to function adequately, I think, looking at them on the screen.

The only thing I might suggest, if you have the ability to kind of crop the transcript. I don't typically need to see the page and line number. It is more helpful to me if I can see almost all of the text that is being played out as

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well.

MS. DUKE: Sure. We can work on that. I agree.

THE COURT: Let's go ahead and proceed.

(Video deposition of Jackie Butterbaugh resumed.)

(Video deposition of Jackie Butterbaugh concluded.)

MS. DUKE: That concludes Jackie Butterbaugh's testimony, Your Honor.

So with that, we would move the admission of Exhibits 1000 through 1006. It is my understanding 1000 through 1005 have not been objected to and will be admitted. 1006 has been objected to.

THE COURT: I will assume that's correct. I'll admit Exhibits 1001 through 1005.

MS. DUKE: And I think Mr. Stein just indicated they withdraw --

THE COURT: Did it include Exhibit 1000?

MS. DUKE: Correct, 1000.

THE COURT: 1000 through 1005 will be admitted.

(Plaintiffs' Exhibit Nos. 1000 through 1005 admitted.)

THE COURT: As to Exhibit 1006 --

MR. STEIN: We will withdraw the objection, Your Honor.

THE COURT: 1006 will also be admitted.

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(Plaintiffs' Exhibit No. 1006 admitted.)

MS. DUKE: Thank you, Your Honor.

THE COURT: Now, there was also defense exhibits referenced.

MR. STEIN: Yes, Your Honor.

THE COURT: Mr. Stein.

MR. STEIN: I can go through the list. The first was Exhibit 2000, to which there was no objection.

THE COURT: 2000 will be admitted.

(Defendants' Exhibit No. 2000 admitted.)

MR. STEIN: The second was Exhibit 2001, as to which there was some objection as to the handwriting on the front of the document.

THE COURT: Ms. Duke.

MS. DUKE: It is fine, Your Honor. We will withdraw that objection.

THE COURT: 2001 will be admitted.

(Defendants' Exhibit No. 2001 admitted.)

MR. STEIN: Exhibit 2003 there was no objection.

THE COURT: That exhibit will be admitted.

(Defendants' Exhibit No. 2003 admitted.)

MR. STEIN: Exhibit 2006 there is an objection under Rule 106.

MS. DUKE: Your Honor, I just want to consult on that one just to make sure. So let me do that and then get

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back to Mr. Stein on that.

THE COURT: I'll reserve ruling on that.

MR. STEIN: Exhibits 2007, 2008, 2009, and there were no objections to those exhibits.

THE COURT: Those exhibits will be admitted.

(Defendants' Exhibit Nos. 2007, 2008, and 2009 admitted.)

THE COURT: Ready to proceed with the next?

MS. DUKE: Yes, Your Honor.

THE COURT: We'll probably take another break in about 20 minutes.

MR. HERRICK: Your Honor, Peter Herrick on behalf of FTC.

THE COURT: Mr. Herrick.

MR. HERRICK: A quick housekeeping matter, Your Honor, with respect to our next witness, Mr. Otte of Micron. We plan to keep the courtroom open during the initial portion of his testimony, but there will be a point at which we start getting into more competitive sensitive materials. Micron is essentially similarly positioned to the payors that we've had testify previously. So at that point we would ask that the court close the courtroom.

THE COURT: We will do that. You will just need to notify when that is necessary.

Would you pull the microphone down. The lectern also

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will go up or down. Just put it wherever it makes it comfortable.

What was the name of the witness again?

MR. HERRICK: Pat Otte of Micron.

MR. STEIN: Your Honor, if we're going to do a partial closing of the courtroom for Mr. Otte's testimony, I'd just like to have the option to consider, depending on what the testimony is, doing a cross-exam on the part that is sealed so that we could then open the court for the remainder. Obviously I don't know exactly what the testimony is going to be or what is going to be sealed.

THE COURT: Well, when we take a break in about 20 minutes, why don't you visit and try and sort that out. What you are suggesting is that you be allowed to cross-examine at the close of the open portion?

MR. STEIN: Yes, Your Honor, that way the public could hear the part of the cross-examination that would not be sealed.

THE COURT: Mr. Herrick, would there be any objection to that?

MR. HERRICK: I don't think so. I want to confer with my colleagues, if that's okay.

THE COURT: Yes.

MR. HERRICK: My guess is that the timing of the closing of the courtroom would hopefully coincide with the

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planned break, so that might work out.

THE COURT: Let's see, where is our witness?

MR. HERRICK: Plaintiffs call Pat Otte to the stand.

THE COURT: Sir, would you please step before the clerk and be sworn.

PATRICK T. OTTE,

having been first duly sworn to tell the truth, was examined and testified as follows:

THE CLERK: Please state your complete name and spell your name for the record.

THE WITNESS: My name is Patrick Thomas Otte, P-A-T-R-I-C-K T-H-O-M-A-S O-T-T-E.

THE COURT: Mr. Herrick, you may inquire.

DIRECT EXAMINATION

BY MR. HERRICK:

Q. Good morning, Mr. Otte. Can you briefly describe your educational background since high school.

A. I went to college at St. Paul Bible College in Minneapolis and received a bachelor of art in religious education, four-year degree. And since, I have taken some business classes at Boise State.

Q. And how long have you been with Micron?

A. Twenty-six years.

Q. Where were you employed before Micron, if

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anywhere?

A. Just prior to Micron I worked as an assistant pastor at Alliance Church here in town.

Q. And what is your title currently at Micron?

A. Vice president of human resources.

Q. To whom do you report?

A. To the CEO, Mark Durcan.

Q. In your role as vice president of human resources, what are your primary responsibilities?

A. All the transactional operations of HR; benefits, payroll, records, recruiting. And then all the strategic elements of HR; total rewards, talent management, talent development strategy, workforce information.

Q. Do your responsibilities include employee benefits?

A. Yes, they do.

Q. That includes health benefits for Micron employees?

A. That's correct.

Q. Do you have a role in strategic decisions at Micron?

A. I do.

Q. And what is that role?

A. I'm the one who helps to design and study the plans that we think are strategic for positioning, attract,

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and retain for our employees. And I am a recommender of those to, essentially to the CEO.

Q. How do you stay apprised of what is going on in the areas of your responsibility?

A. Through extensive benchmarking. We use outside firms; Towers Watson is one example. Benchmarking with my peers; peers in the industry, peers across the U.S., and peers locally.

Q. How many people does Micron employ in the Treasure Valley?

A. Just under 6,000.

Q. Do you know how that compares with other employers in the area?

A. It is always stated that we are the second largest employer in the state.

Q. And where is Micron headquartered?

A. In Boise, Idaho, on Federal Way.

Q. At a high level can you describe the headquarters campus on Federal Way.

A. It is multiple buildings, roughly 40 large -- 40 buildings of different kinds, doing different functions. It is a pretty large campus and the majority of the people are at that campus here in the Treasure Valley.

Q. Of the 6,000 that you mentioned in the Treasure Valley, do you have an understanding of roughly how many

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work at the Boise headquarters facilities?
A. Right around 5,200.
Q. Is Micron unionized?
A. Locally or across the world?
Q. Locally.
A. Locally Micron itself is not unionized, no.
Q. You mentioned "across the world." Where else does Micron have employees?
A. We have about 30,000 employees worldwide. We have a large presence in Singapore, Malaysia, China, Japan, Israel, and Italy are the largest.
Q. Does Micron have employees elsewhere in the United States outside of Idaho?
A. We do. So, we have a good-sized presence in Virginia, roughly 2,000 people; we have a joint venture in Utah, roughly the same amount of people; and then we have two design teams, one in Texas of a little over 100, and in Minneapolis, a little over 100 as well; and then Colorado, we have about 250 people.
Q. Does Micron consider its global workforce when it is making decisions about its healthcare benefits plan?
A. Yes.
Q. How so?
A. Well, we are compelled as a company to be competitive, to be as competitive as we could possibly be,

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and we realize decisions made in any one location affects employees in all locations in some way.
Q. At a high level, what does Micron do?
A. So, we make memory, memory products that are in all the different devices that I actually see sitting here. So, we make dynamic random access memory, DRAM. Typically it's things that go into PCs. We make NAND flash memory, nonvolatile memory, storage memory. And that goes typically into things like iPods, MP3 players. And we make NOR flash memory, that is just a little bit more expensive version of NAND. It typically goes into your mobile phones or automotive, industrial, and medical instrumentation.
Q. Who are Micron's primary competitors?
A. Samsung, Hynix, and Toshiba.
Q. And where are they located?
A. The first two, Samsung and Hynix, are located in Korea, and Toshiba's a joint venture -- it's a partnership actually -- with SanDisk, and Toshiba is in Japan.
Q. Mr. Otte, I'm going to shift gears a little bit and I'm going to ask you to go back in time. Let's talk about what was happening with Micron back in 2008. Can you just generally describe Micron's financial condition in the 2008 time frame.
A. Yes. It is important to kind of understand the competitive landscape by which we live and work. I don't

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mean to go off on a long story, but I started 26 years ago, and when I started on just DRAM alone, people making DRAM alone, there was almost 50 people who were making DRAM alone. In time there was more different kinds of memory came into play, NAND, NOR, et cetera.
By the time we got into the middle '90s there was about 25 players still left. The others had been consumed by somebody else, went out of business. We're a very high capital-spending business and they couldn't make it. By 2008 you were down to 13 players in the world. And, today there's four.
So, it tells you, this migration over that period of time, about how competitive it is. We, at that time, of the 13, were essentially, I would say, in almost last place in every meaningful financial category and in terms of total shareholder return.
Q. When you say "last place," did you do any studies to confirm that assessment?
A. We did extensive benchmarking in basically all the meaningful categories for total shareholder return or value creation framework. In all those key indices or metrics we were lagging -- or we were definitely bottom third in most of them.
Q. Do you even know why that is?
A. Uhm, you know, we had had an acquisition strategy.

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We had acquired Texas Instruments' fabs in 1998. I don't know that we did a perfect job of integration; we left a lot of overhead in place. And we moved -- had left a lot of things on the table that were really eroding our own margins by not taking care of the business that we probably should have taken care of.
Q. Are you familiar with the term OPEX?
A. Yes.
Q. What is OPEX?
A. OPEX is a combination of your R & D spend as a percentage of revenue and your SG&A, sales and general administration, spend.
Q. Do you have an understanding of how Micron's OPEX back in 2008 compared with its competitors?
A. Yes. A very good example is industry standard for our industry, benchmark would be somewhere around 12 to 15 percent OPEX, and we were running about 30.
Q. What impact did that disparity have on Micron?
A. We felt like we were just spotting a lead to our competitor all the time. And it was in areas that were not necessarily areas that were going to create differentiation. So R & D, of course, creates differentiation. Sales and general administration may not create differentiation in terms of your overall business portfolio. We were actually spotting a lead for things that were differentiating us.

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MR. HERRICK: Your Honor, we have a document we would like to show Mr. Otte. May we bring a binder up to Mr. Metcalf?

THE COURT: Yes.

MR. HERRICK: We also have an extra copy for the court, if that would be preferable.

BY MR. HERRICK:

Q. Mr. Otte, can you turn to the first page of the document that has just been handed to you.

A. Yes.

Q. This document, just for the record, has been marked Trial Exhibit 1970.

MR. HERRICK: Clinton, can you bring that up on the screen, please.

Your Honor, the screen, the big screen is blank.

THE COURT: I'm sorry?

MR. HERRICK: This is not AEO.

BY MR. HERRICK:

Q. Mr. Otte, can you turn to the third page, the one that is actually marked 1 at the bottom.

A. Okay.

Q. I would just like to direct your attention to the second paragraph under "Overview." Do you see that? It is the last paragraph on that page.

A. Actual page 3?

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Q. No, it is numbered page 1, but page 3 of the document, if you will. The third --

A. Yes.

Q. And again, just directing your attention to the second paragraph under "Overview," last paragraph on that page. Do you see that?

A. Yes.

Q. Looking at the second paragraph in that -- or excuse me, second sentence in that paragraph, it begins "Average selling prices." Do you see that?

A. Yes.

Q. Excuse me. Just for the record, can you identify this document. I think I skipped that step.

A. Yes, 10-K document. It's the filing of your annual earnings, your annual financials.

Q. Thank you.

If you could turn back to the paragraph we were just discussing. The sentence beginning "Average selling prices," do you see that?

A. Yes.

Q. I'll just read it: "Average selling prices per gigabyte for the company's DRAM products and NAND flash products in 2008 were down approximately 50 percent and 65 percent respectively as compared to 2007 and down approximately 65 percent and 85 percent respectively as

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compared to 2006." Is that consistent with your recollection?

A. Very much so.

Q. And what kind of impact did these price drops have on Micron?

A. So again, to understand kind of what the competitive landscape is, you know, every year we spend somewhere between -- as low as 3 billion in capital spending, CAPEX spending, up to as much as 6, and we have to proliferate a new technology essentially every 18 months or you fall -- you basically become irrelevant in the marketplace. So you're destined to spend to continue to compete, but at the same time your prices are dropping by 60, 65 percent, and in this case over several years or several in a row they were dropping at that rate.

So you can see a collision of money out versus money in.

Q. Actually, if you could turn to the fourth sentence in that same paragraph, the one that begins "In 2008." Do you see that?

A. Yes.

Q. I will read that: "In 2008 the company reported a net loss of $1.6 billion and many of its competitors reported negative cash flows from operations." Was that consistent with your recollection?

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A. Yes, it was.

Q. And the loss of $1.6 billion in one year, what kind of effect does that have on a company like Micron?

A. This stops us from reinvesting. This has an effect on us in terms of total employment, the ability to continue to grow, the continuous sustained operations, ability to continue to reward employees. It feels an effect on literally everything. And we would have to look through the report, but my recollection is at that time we had just barely over a billion in cash and roughly half a billion was actually untenable, it was non-fundable, it was tied up in some sort of way. So, our ability to operate at that level was definitely under pressure.

Q. During this time period did Micron close any facilities in the Boise area?

A. So we had subscale assets. The market was moving towards 300-millimeter wafers, which is a larger diameter wafer size with more physical die candidates on it. And Micron still had 200-millimeter fabs, which, of course, is a smaller wafer, less die candidates, therefore a higher cost.

And in Boise specifically we had a very large presence; it was about half the population here at the time. This was about 3,000 at the time, were tied to a facility called Fab 1, it was a combination of multiple fabs. And it was 200-millimeter subscale. So we announced that we would

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be closing that fab. And we knew that that was happening, I knew that that was the job I was coming into when I came back to Boise. And we, in fact, did. And then over about a year-and-a-half period we drew it down until it finally closed in 2009.

Q. Was that the only area of cost cutting that was going on within Micron at that time?

A. No. So, we went all in. As an executive team, we just came in proposing everything that we could possibly put on the table, because for us, again, that's only 13 players even left in the industry and we could see that there were some that were going to go out. So we put everything on the table and we said, you know, there is no idea that we wouldn't be considering. And we did, we froze salaries. We did a number of different things at that period of time, in addition to drawdown of total employment.

Q. And were these cost-cutting initiatives companywide?

A. They were, globally.

Q. So given all of that, how would you describe Micron's status in 2008?

A. I would say that we were -- we were definitely under pressure. I would say we were definitely vulnerable at that point.

Q. Vulnerable in what sense?

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A. Vulnerable to -- you know, we had good technology, but if you did not have a good position, you were probably more vulnerable to a takeover than anything. You could have been definitely part of somebody's acquisition strategy.

Q. Did Micron communicate with its employees regarding these competitive and financial issues we have been discussing?

A. Regularly, yes. In team member meetings, in overall emails to the population, to the leaders, talking about these things.

Q. And in your role within Micron's management, were you aware of any concerns within Micron as to whether further layoffs beyond what we just discussed might be necessary?

A. I think everything was on the table that had the possibility of being there, whether you would sell off certain portions of business or whether you would eliminate certain types of technology and people would be associated with that. Everything was on the table.

MR. HERRICK: Your Honor, I believe we are getting into more competitively sensitive issues now, which may tread into AEO topics. So we respectfully request the courtroom be closed at this time.

THE COURT: This might be a good time to take the morning break and then we can start off with that.

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Mr. Stein, I don't think we have gotten into anything that falls into dealing with the value of conducting any cross at this point.

Let's take a 15-minute recess. We will try to hold it to 15 minutes since we had a short break earlier. We will be in recess for 15 minutes.

(Recess.)

******COURTROOM CLOSED TO THE PUBLIC******

THE COURT: For the record, I will note that the witness has retaken the witness stand. Mr. Otte, I'll remind you, you are still under oath.

Mr. Herrick, you may resume your examination of the witness. Mr. Herrick, keep your voice up as best you can to help out the court reporter.

MR. HERRICK: I will do that, Your Honor.

THE COURT: That is much better right there.

BY MR. HERRICK:

Q. Mr. Otte, in 2008, did Micron launch a new health plan network?

A. Yes, it did.

Q. What is that network called?

A. MHPN, Micron Health Partner Network.

Q. Are you familiar with the Wise Network?

A. I am. So the Wise Network included the MHPN. Today, the Wise Network is administered by Imagine Health.

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They changed names partway through, but the original name was called the Wise Partners Network.

Q. Why did Micron choose to do this?

A. When we were going through all the different things that we thought could help make us more competitive, we considered the rising cost of healthcare. And from my background, I was not a HR person. I had just come into HR. The first 20 years, I was a manufacturing person. And in no case would we ever accept a vendor raising costs, you know, 8, 10, or 12 percent per year, year over year, and not do something about that. And we felt like that was true for any vendor that we would deal or that we would go and we would, you know, try to put it on the most competitive landscape that we could find.

So when healthcare was rising at that rate, we put it on the table and said this would be one more thing that we would begin to address.

Q. Just very briefly, can you describe the structure of Micron's health plan network?

A. Yes. So, if you think of it in terms of concentric circles, the smallest and the lowest cost to the employee would be as if they went to the Micron clinic on-site. Then, the second concentric circle, next lowest cost, would be the MHPN, the Micron Health Partner Network. The next rate would be the PPO, a middle. And then there

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would be out of network. So, four concentric circles with different cost share within each.

Q. You mentioned MHPN. Which tier is Saint Al's in in the Micron network?

A. They are in the MHPN.

Q. And which tier is Saltzer in?

A. Saltzer is in the middle tier. Well, there is -- separate of the clinic, there is three tiers. They are in the middle tier PPO.

Q. How about St. Luke's?

A. St. Luke's is out of network.

Q. You mentioned the on-site clinic. Can you just briefly describe the on-site clinic.

A. So, in 2008, we contracted Take Care Health to administer our clinic as part of a -- as part of our overall Wise Partner Network Plan. And what we have is we have a setup that the employees at that time could come in, for any service that they would receive, it was just a straight $10 flat-fee charge.

In 2008, what happened was -- or 2011, rather, we decided to make the possibility to be the medical home and add your dependents, family dependents, in for the same thing. So any family member also seen was a $10 flat cost as well for any service on-site.

Q. Just so I am clear, the on-site clinic charge is

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$10 regardless of the actual cost to Micron for the service; is that correct?

A. That is correct.

Q. How widely used is the on-site clinic by Micron employees?

REDACTED

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MR. STEIN: Leading and foundation.

THE COURT: I'm not going to sustain the objection on leading, but in terms of foundation, I suppose it is relevant what Micron perceives whether or not they have done any studies to verify that or not. I think I will overrule the objection. You can probably cover that on cross-examination as far as the basis for the conclusion that apparently Micron has reached. The objection is overruled.

Go ahead and proceed, Mr. Herrick.

BY MR. HERRICK:

REDACTED

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Q. At a high level, from the perspective of the Micron member, how do costs, out-of-pocket costs, compare among these various tiers you were just talking about?

A. So, in the MHPN level, tier one, it is 90/10, cost

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share to the employee at 10 percent. When you get to the middle tier or the PPO, it is at roughly 15 to 18 percent. And then when you go out of network, it is a 60/40 rate, 40 percent to the employee.

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REDACTED

THE COURT: Did you use the word Ingenix?

THE WITNESS: Ingenix. Ingenix is a medical survey that uses a scoring of quality for providers. So then quality. And then partnerships, I do not want to belabor this too long, this one is near and dear to my heart.

So, I had been the fab manager in Italy for about four years, 2002 to roughly 2005-6. And Italy, on the competitive landscape, was falling heavily behind the rest of the world, different labor reasons, different cost reasons, et cetera. And it was starting to show up in the paper that they were falling behind places in Africa in terms of overall competitiveness. That sent large signals to that country, you know, as to what are we doing about our own competitiveness. We as a company -- I was fab manager.

REDACTED

I think this is a bad spend for Micron to do because we had all kinds of labor disruption and things that were going on, it seemed like we were risking a lot for the sake of the rest of the Micron enterprise.

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When we started to pull together as a leadership team, we said: How are we going to build a story for Italy that allows everyone to participate in it? What are we going to do to be competitive? The union, you have the things that you want to do. We have things that we need to do. Where can we find common ground? And that common ground was going to be: What does it mean to be competitive and how are we going to get there?

So we went off on that whole thing, and when we finally got to the place where we could sign an agreement that we felt was a competitive and responsible thing, we put the budget back in and did, you know, the spending in Italy, it ended up being our CMOS imager business. It was a pretty big deal at Micron.

Then, went on to Washington, D.C., or just outside Washington, D.C. It was our first 300-millimeter fab, joint venture with Intel, as well, 2006, and I was the site manager. And as the general manager, we had the same thing in terms of what does it mean to be competitive in the United States. Where is manufacturing going in the United States? How many engineers are we producing? How can we -- you know, immigration was an issue. All the things you still see today are very germane to us and of importance to us.

So we looked at how will we help the state of Virginia,

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how will we help the U.S. to become a competitive environment. That is, of course, what we testified to in all of our actions.

I come back to Idaho and my own personal dealings. I had been on an economic development council in Virginia. Prince William County was one of the three fastest growing counties in the U.S. We had as many as 150 projects going at any one time. I came back to Idaho, and I had seen housing prices just raise through the roof and all the stuff happening, and I knew that we were going to drop 6,000 people off of here. And I am saying to myself: How competitive is Idaho? Not at all. And is this going to be a sustainable future for people who want their kids here and all those things? Will that be available?

As a company, we felt responsible that we could only help the environment by making it the most competitive environment. And I will say this a thousand times to our people, our most competitive sites sit in the most competitive environments. And that is a very, very important thing. We can't do it ourself. We have to have a competitive environment through partnerships with people.

So we partnered in Italy, we partnered in Virginia, U.S., and we partnered here locally. We needed people to do that. We would be a tangible stage they play on, but to be competitive, we couldn't do it ourselves. So partnerships,

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quality, and cost: It hasn't changed for us one bit.

Q. With all that in mind, when Micron was developing this network, did it seek bids from local hospital systems?

A. **We did.**

. REDACTED

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REDACTED

Q. Did St. Luke's end up participating in the Micron network?

A. On the eve of us going live, which was I think July 1st, 2008, they pulled back and said that they would not participate.

Q. Before the network was launched or before this event occurred, did Micron have an expectation that St. Luke's would participate in the network?

A. We had reason to believe yes, they would.

REDACTED

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REDACTED

Q. How did Micron learn that St. Luke's was not going to participate in the PPO tier?

A. So, on the eve of or late day on the day before July 1st, we received a letter that said that SelectHealth was no longer going to be available to Micron.

Q. Was it SelectHealth that notified Micron?

A. My recollection, you know, it is in my head, not with 100 percent surety, but I could have sworn that it was a letterhead that had both St. Luke's and SelectHealth on it. And we were notified that they would not be participating.

Q. Are you familiar with First Health?

A. Oh, I'm sorry, correction. First Health, not SelectHealth.

Q. So what happened when St. Luke's and First Health withdrew the bid to participate in Micron's network?

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Q. Around that time, did you have any discussions with St. Luke's executives as to why St. Luke's withdrew its bid?

A. I don't remember if it was -- I think it was just right after, you know, we had met with them. And I met with Ed Dahlberg and Chuck Pomeroy, and the person who was helping to architect this at the time was a woman named

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Vicki Shelly. She helped architect the healthcare strategy. We met with them and, again, reaffirmed our position and asked them for a reconsideration, as well.

Q. Who is Chuck Pomeroy?

A. Chuck was -- I'm not sure if he was the outgoing CFO at the time. He was CFO.

Q. What about Ed Dahlberg; do you know what his role was at St. Luke's?

A. Edward was CEO. I don't know if that was just locally or the entire St. Luke's system.

Q. Do you recall whether this would have been an in-person meeting or over the phone?

A. In-person meeting, downtown at their offices.

Q. So did Mr. Pomeroy and Mr. Dahlberg give you any reasons why St. Luke's decided not to participate in Micron's network?

A. Yeah. Actually, I am recollecting. It was actually right before we launched. They said: Hey, listen, we don't play second fiddle, and we will not be called tier two to anybody.

Q. And tier two, did you understand that to have some meaning with respect to the PPO network?

A. It was in respect to Saint Al's, which would have by default been the PPO network.

Q. What was the reaction when Mr. Pomeroy and

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Mr. Dahlberg told you that?

A. We were disappointed. We respected that if that was their position, that would be their choice. And we talked about understanding that roughly 75 percent of our people were St. Luke's adherents. And that, again, was a large book of business. Their choice.

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MR. STEIN: Your Honor, I've let this go, but I think we're starting now to get punitive. But leading.

THE COURT: I think we are.

MR. HERRICK: I will move on, Your Honor.

THE COURT: Thank you.

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BY MR. HERRICK:

Q. Have you discussed Micron's healthcare plans with any other firms in the Treasure Valley?

A. We have. We also went out, and, again, this goes to the partnerships, is in our opinion we want to make this one of the most competitive places because then when we have to attract to retain, it is about creating an infrastructure where people want to come, where it is a factor to them, and where we could be competitive. We have gone out on educational campaign talking to private businesses, large businesses, to explain what we have done, what we have gone through. And to date, Walmart is one who is leasing the network from us.

Q. Other than Walmart, has Micron been able to lease the network to anyone else?

A. No.

Q. As you currently sit here, do you have an understanding as to how successful Walmart has been in transitioning to the Micron network?

MR. STEIN: Objection. Lack of foundation and potentially hearsay.

THE COURT: The question is, "Do you know?" Just do you know? Yes or no?

THE WITNESS: I don't know. It is too recent, too short term to tell yet.

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BY MR. HERRICK:

Q. So in your view, why has Micron had so little success in leasing the network?

A. I, of course, interact with my counterparts, and we keep close to things. So, in part, I don't know that anybody has the same kind of competitive landscape extremes that we live in. My counterparts have told me, first of all --

MR. STEIN: Objection. Hearsay.

THE COURT: Sustained.

Without relating what someone has told you, you can continue to answer the question.

THE WITNESS: Okay. People have said that --

(Laughter.)

MR. STEIN: I think I might have to have a continuing objection if he is going to keep testifying.

THE COURT: Let's find out who you are referring to as far as the information acquired, and then we will maybe take it from there. There may still be an objection. What is the source of the information you are referring to?

THE WITNESS: Other vice presidents in other companies in Boise.

MR. HERRICK: Your Honor, if I may, I can try and lay a foundation.

THE COURT: All right.

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BY MR. HERRICK:

Q. You mentioned, Mr. Otte, that Micron has attempted to lease its network to other employers. Can you elaborate on what that involves.

A. You definitely have to have a changed management strategy for your people. And you have to really want to be able to do that because it can be a big shift for the people. And you definitely then have to be willing to go through with the full partnership, so it takes a lot of time and attention.

Q. And thus far, other than Walmart, has Micron had any success in that process?

A. That is correct, no.

Q. Based on your experience in the market and your role as vice president of HR at Micron, why do you think the network has not attracted other employers?

A. I think they've seen -- of course, the other employers have neighbors or people who have worked at Micron, and they hear their stories, and they know what kind of undertaking it would really do. I think it is also an unwillingness to take on an institution. And, to a certain extent, that is how it is stated, is that St. Luke's is an institution. You have to be willing to take that on. Is that really worth the energy?

Q. Where do Micron's plans for the network currently

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stand?

A. We continue to operate on the same three principles. And we -- it has been of great interest to us as to what is happening here. So we have, in fact, pulled back our time for setting annual enrollment this year to see what the outcome of this, this trial is, and then decide what is the path forward that we need to take that we think is best for us as a company and its employees.

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MR. HERRICK: Your Honor, I have no further questions at this time.

THE COURT: Cross, Mr. Stein.

CROSS-EXAMINATION

QUESTIONS BY MR. STEIN:

Q. Mr. Otte, at the time the Micron plan was launched

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in 2008, roughly a quarter of your employees' health services were being provided in Canyon County; is that right?

A. Provided or where the employees lived?

Q. 20 to 25 percent of the healthcare services to Micron employees were being provided in Canyon County?

A. I can just say where the employees lived. I'm not sure where they were taking provisions, per se.

Q. Mr. Otte, do you remember you gave a deposition in this case a few months ago?

(Clip of video deposition played.)

BY MR. STEIN:

Q. Do you recall that I asked you that question and you gave that answer?

A. I do.

Q. And you don't know what volume of services to Micron employees in Nampa were being provided by Saltzer physicians prior to the implementation of the MHPN; right?

A. I don't know. I don't recollect.

Q. You were not personally involved in discussions with Saltzer about participating in the MHPN; right?

A. I was not.

Q. You do know, however, that Saltzer was actually never invited to be in the high performance network; right?

A. Which year, Scott?

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Q. In 2008.
A. **There was two issues there. That's correct; they were not, in part because some failed to meet the quality score. So overall, the group was eliminated from consideration.**
Q. So when the Micron plan launched in 2008, Saltzer ended up being out of network; is that right?
A. **Correct.**
Q. They remained out of network until 2011 when they joined the Saint Alphonsus Advantage Care Network?
A. **That's correct.**
Q. And since then they've been in the PPO tier?
A. **Correct.**
Q. Now, before Micron started this new plan, the MHPN plan, Micron utilized the Blue Cross of Idaho Network?
A. **Yes.**
Q. And when you were talking in your direct testimony about vendors increasing costs 6, 8, 10 percent a year, that vendor you were talking about there was Blue Cross?
A. **Combination of all providers. The providers themselves, the hospitals, the TPA, in aggregate, roughly, 6, 8, 10, 12 percent, depending.**
Q. Blue Cross Network included both Saint Al's and St. Luke's; is that right?
A. **Previous to 2008?**

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Q. Yes.
A. **Yes.**
Q. And, so, prior to implementing its new plan, employees had access to both Saint Al's and St. Luke's as in-network providers; is that right?
A. **Yes.**
Q. And there were no financial incentives under the Blue Cross plan to choose certain in-network providers over other in-network providers; correct?
A. **Correct.**
Q. One of the key differences for Micron's new plan versus the old plan was the use of financial incentives and different tiers to incentivize employees to use certain in-network providers over other ones?
A. **Correct.**
Q. Can we pull up Exhibit 2001. Mr. Otte, do you recognize that gentleman on the first page there?
A. **I do.**
Q. Who would that would be?
A. **That's me.**
Q. This is a mailing Micron sent out to all Micron employees in 2008 that explained the new plan?
A. **Yes.**
Q. And you mentioned earlier concentric circles. It just so happens, if you turn to page 3 of this document, I

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think there is a pretty good representation of that. This is the description of the network you were talking about?
A. **Yes.**
Q. And as I understood it, the most generous benefits for Micron's employees are for that center circle, the Family Health Center; is that correct?
A. **That is correct.**
Q. How long has the Family Health Center existed?
A. **Since about the mid-'90s. But it was Saint Al's from roughly 2000 up to 2008, and then became Take Care in 2008, and then became a Family Medical Center in 2011.**
Q. But the clinic existed as healthcare option for Micron employees prior to the implementation of the MHPN plan?
A. **That is correct.**
Q. And the next tier you've got there is the Micron Health Partners Network. That's slightly less generous benefits involving the Family Health Center; is that right?
A. **Correct.**
Q. Do I understand your testimony correctly that from the beginning of the launch of the new plan, it was Micron's intention to have only one hospital be the exclusive provider in that Micron Health Partners tier?
A. **In the first tier, in the MHPN?**
Q. Yes.

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A. **That is correct.**
Q. When the hospital contract was put out for bid, the hospitals were told that only one hospital would be chosen in each of Ada and Canyon County; is that right?
A. **That's correct.**
Q. And the idea in Ada County was that Saint Al's and St. Luke's would bid against each other in order to get that position in the most-favored tier?
A. **Yes.**
Q. That is in fact what happened; right?
A. **Yes.**
Q. At the time when Micron was putting together its new plan, you said, I think, that St. Luke's had a large -- 70 percent share of the services of Micron employees?
A. **That's right.**
Q. And so the third tier there is the PPO tier. And am I correct that those providers would still be considered in network, but benefits would be slightly less generous for the employees?
A. **That is correct.**
Q. And then the fourth tier is the non-network tier?
A. **Correct.**
Q. Let's turn to page 5 of this document. And are you familiar with this page?
A. **It's familiar.**

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Q. This describes for employees the different benefits that they will experience if they use different providers; is that right?

A. That's correct.

Q. And so what we have done here is we've called out the line for professional services. And that would be the expense that they would bear if they saw a physician; is that right?

A. Correct.

Q. And am I correct that what this shows is you've got next to "Professional Services," you've got "Office Visit" and "Specialist Office Visit." Am I correct that office visit would be, like, a primary care physician as distinct from a specialist?

A. Correct.

Q. So, if a Micron employee goes to a primary care doctor at the Micron Family Health Center, they will have to pay a fixed $10 co-pay?

A. Correct.

Q. And if they go to a primary care provider in the high performance network, they would pay a $15 fixed co-pay; is that right?

A. It is not correct currently.

Q. But it was correct in 2008?

A. I cannot verify that that was correct in 2008

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because we've only talked about it in terms of overall percentages. We converted it to percentages, not fixed pay. Other than the $10 for the clinic, on-site clinic, we converted to a very simple scheme of 90/10, we will call it 82/18, and then 60/40 out of network. So, we moved away from this co-pay other than this was the Family Health Clinic. I don't remember exactly when it became the updated schema or when, but that is the current way we have done it. It is now at least four years at the percentage rate.

Q. I'm sorry. Is it now your testimony today this benefits book that was sent out to all Micron employees did not accurately describe the terms of the plan when it was launched?

A. I don't know when this particular -- I don't know if this was part of the actual launch or not. I cannot verify based on the date here.

Q. So is it your testimony today that this has never been an accurate description of the Micron health plan?

A. It may have been the -- it may have been how it was originally positioned when we were going through setting it up, but I do not believe that that is the way it launched. I believe it launched in percentage.

Q. What do you base that belief on?

A. In how we have administered claims and how we have talked about the percentages for what we are paying for

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gaps. For all the things we have only talked in terms of the percentage because when we got into plan design every year -- and at this time you had the Accountable Care Act come in. And we had to discuss whether or not we wanted to change our co-share. And the co-share was never not once discussed in regards to co-pay flat dollar. It was always in terms of percentage because there was -- to retain your grandfather rights there was a five percentage, five percent change that you couldn't toggle. So, we only talked in percentages, which was 90/10, 82/18, and 60/40. I literally myself do not remember ever talking in these terms.

Q. Is this something you would have reviewed before it went out to all Micron employees describing this significant new health plan?

MR. HERRICK: Objection, Your Honor. Foundation. He didn't establish that this went out.

THE COURT: I am going to overrule the objection. Why don't you rephrase the question, Mr. Stein.

BY MR. STEIN:

Q. Is this a document that you would have reviewed, the one with your picture on the cover, to make sure it was accurate before it was sent out to all Micron employees describing this new plan?

A. At some point, I would have been involved in the review, yes.

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Q. Who would be the person at Micron most knowledgeable about the actual details and events of the structure of the plan?

A. Today or then?

Q. Then?

A. Vicki Shelly.

Q. Now, if we go to -- strike that.

Now, you said when you launched the new plan you were concerned about the fact that employees were being switched going from Blue Cross, a plan in which they had access to virtually all providers at the same level, to a more narrow network with a limited set of providers; is that right?

A. That is correct.

REDACTED

602

REDACTED

Q. Put up Exhibit 2241.

THE COURT: Counsel, I'm sure everyone in the courtroom understands this. But when you refer to the high-performance network in this context, it's the MHPN network?

MR. STEIN: That is fair enough, Your Honor. Let me clarify.

BY MR. STEIN:

Q. Mr. Otte, you discovered the financial incentives that were implemented succeeded in shifting patients from providers who were in the PPO or maybe out-of-network tiers to providers in that high performance tier; is that right?

A. **That's correct.**

REDACTED

603

REDACTED

604

REDACTED

MR. HERRICK: Your Honor, I want to make sure this color version is the same as the black-and-white version that is on the trial exhibit list?

MR. STEIN: It is my understanding that it is.

MR. HERRICK: We have no objection.

THE COURT: You have no objection?

MR. HERRICK: We have no objection.

THE COURT: 2241 was also referenced. Is there going to be any objection to that? It indicates not. Do you wish to have that admitted?

MR. STEIN: I do, Your Honor.

MR. HERRICK: No objection, Your Honor.

THE COURT: 2241 and 2536 will both be admitted.

(Defendants' Exhibit Nos. 2241 and 2536 admitted.)

BY MR. STEIN:

REDACTED

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REDACTED

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REDACTED

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REDACTED

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REDACTED

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REDACTED

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REDACTED

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REDACTED

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REDACTED

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REDACTED

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REDACTED

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REDACTED

MR. STEIN: Objection. Asked and answered. It was covered in his direct testimony.

THE COURT: I will give you some leeway. Redirect is not a time to replow the same ground. Proceed.

MR. HERRICK: This is just clarifying directly in response to Mr. Stein's use of the dollar figures.

BY MR. HERRICK:

Q. Mr. Otte, can you describe the size of the various financial incentives in percentage terms, the differences, please?

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A. Yes. If you go in clinic on-site, it is a $10 flat-fee charge, per person, per dependent, for whatever. If you go MHPN, 90/10, 10 co-pay for the employee. If you go PPO, it is 15 to 18 percent. If you go out of network, it is 60/40, 40 to the employee.

Q. In terms of out-of-pocket cost to the employee, the difference between the various tiers, is that greater or less than ten percent?

A. It is greater.

REDACTED

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REDACTED

MR. HERRICK: Your Honor, just a moment to confer with my colleagues.

Your Honor, I have no further questions.

THE COURT: Recross very briefly.

RECROSS-EXAMINATION

QUESTIONS BY MR. STEIN:

Q. Mr. Otte, do you know what the average cost of a physician visit for a Saltzer primary care doctor is?

A. I don't.

Q. Do you know what the average cost of a primary care visit to any other primary care provider in the high-performance network is?

A. I don't.

Q. In other words, if we are trying to answer the question how much a visit to a primary care doctor costs at the level where you say they have to pay ten percent, do you have a sense for how much that is out of pocket?

A. Of course, it depends on the specialty of what they are seeing them for and what the episode is. But the

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discounted rate is between 30 and 35 percent for an MHPN provider.

Q. I guess my question is: Do you know, do you have a sense for if an employee goes to a provider in the high-performance network, just for a well checkup to a primary care provider, how much are they going to pay out of pocket for that?

A. It would be mathematical starting place, but if they had a couple hundred dollars, if that was the bill, then it's reduced 35 percent to begin with, and then they have 10 percent of the remaining 65 percent.

MR. STEIN: No further questions.

THE COURT: Anything else, Counsel?

MR. HERRICK: No, Your Honor.

THE COURT: Thank you. You may step down. Thank you very much, Mr. Otte.

Counsel, we are just a few minutes early from taking the second break. What is going to be up next? A video deposition?

MS. DUKE: Linda House by video.

THE COURT: Let's go ahead and play it and then we will take our second break. Is this open to the public?

MS. DUKE: It is for the most part. There are some attorneys eyes only that I think we have designated. And what we propose, Your Honor, if we can keep the public

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in for the great majority of her testimony, that I am going to mute it, and I will let you know when we are getting to an AEO portion so you can turn the screen off, I will mute it, and then you can read it on the screen.

THE COURT: Very good. Thank you. I think that's a very good approach. I assume it has been agreed upon?

MR. STEIN: It has been agreed upon.

MS. DUKE: So it is public for now.

******COURTROOM OPEN TO THE PUBLIC******

(Testimony of Linda House via video deposition.)

(Video deposition paused.)

MS. DUKE: I had indicated, Your Honor, if we could click over now to black out the monitor.

(Video deposition of Linda House resumed and redacted for the public.)

(Video deposition paused.)

MS. DUKE: That is the end of the AEO portion, Your Honor.

(Video deposition of Linda House resumed.)

(Video deposition paused.)

MS. DUKE: Your Honor, I'm going to put that exhibit up, and it is AEO, so if we could just blank out the screen. Thank you. The sound is okay. Just not the showing of the exhibit, just so you know.

(Video deposition of Linda House resumed and

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redacted for the public.)

(Video deposition paused.)

MS. DUKE: Good spot for a break, Your Honor.

THE COURT: Let's be in recess for 15 minutes. I have another hearing this afternoon, so we will need to stop fairly close to 2:30. We may go a little bit longer.

Mr. Herrick?

MR. HERRICK: Your Honor, I apologize. I have one quick housekeeping matter. I would like to move Exhibit 1970 of Mr. Otte into evidence.

THE COURT: Is there any objection?

MR. SINCLAIR: We have an 802 objection along with an untimely objection.

MR. HERRICK: Your Honor, it is a business record. It's a 10-K.

THE COURT: I need to see it. I don't recall what it was.

MR. HERRICK: The 2008 Micron 10-K I showed to Mr. Otte.

MR. SINCLAIR: As I understand, it was never produced in discovery.

THE COURT: Well, be prepared to respond to that at some point in the proceedings.

MR. SINCLAIR: There is a lot in the 10-K, way beyond anything that was testified to. It has all kinds of

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information in there.

THE COURT: I'm assuming it's a fairly narrow part of the 10-K, and we can just redact all that is not relevant.

MR. HERRICK: That would be fine with us, Your Honor.

THE COURT: Counsel, try and work it out. And if not, submit it so I can review it and then state specifically the objections which I understand to be timeliness and --

MR. SINCLAIR: 802.

THE COURT: 802. All right. Sounds a lot like an 803(6), but we will take that up.

MR. HERRICK: Thank you, Your Honor.

THE COURT: We'll be in recess.

(Recess.)

******COURTROOM OPEN TO THE PUBLIC******

THE COURT: Please resume. If you can, back up just a minute or so.

MS. DUKE: Sure. And, Your Honor, if we can go off of the blue screen and back to the public, and I will let you know when it is AEO again.

THE COURT: All right.

(Video deposition of Linda House resumed.)

(Video deposition paused.)

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MS. DUKE: Your Honor, this is AEO.
******COURTROOM CLOSED TO THE PUBLIC******
(Video deposition of Linda House resumed.)
(Video deposition paused.)
MS. DUKE: The screen can come back on, Your Honor.
******COURTROOM OPEN TO THE PUBLIC******
(Video deposition of Linda House resumed.)
(Video deposition of Linda House concluded.)
MS. DUKE: Thank you. That is the end of Linda House's deposition.
THE COURT: And the exhibits we have --
MS. DUKE: 1162.
THE COURT: I'm going to note that if it indicates on the exhibit list that there's no objection, I'm just going to go ahead and admit the exhibit. 1162 will be admitted.
(Plaintiffs' Exhibit No. 1162 admitted.)
MS. DUKE: 1974, the only objection to that was untimeliness. The contract meeting minutes that were exchanged in discovery; they just were later added to the exhibit list.
MR. SINCLAIR: We'll withdraw the objection.
THE COURT: That was 1974?
MS. DUKE: Yes.

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THE COURT: 1974 will be admitted.
(Plaintiffs' Exhibit No. 1974 admitted.)
MS. DUKE: 1164. And those have objections.
THE COURT: Objections?
MR. SINCLAIR: Yeah. We have a 402, 403, and 802, although I will withdraw the 802.
THE COURT: I will overrule the objection. Exhibits 1164 will be admitted.
(Plaintiffs' Exhibit No. 1164 admitted.)
MR. SINCLAIR: We had objected as untimely on the last exhibit on the witness before lunch. We will withdraw that.
MS. DUKE: Okay. So that was Exhibit No. 1504 or something like that. I will find that number and provide that to Your Honor.
THE COURT: And then --
MS. DUKE: Next one is 1165, no objection.
THE COURT: That will be admitted.
(Plaintiffs' Exhibit No. 1165 admitted.)
MS. DUKE: 1166, no objection.
THE COURT: Also admitted.
(Plaintiffs' Exhibit No. 1166 admitted.)
MS. DUKE: 1169, no objection.
THE COURT: It will be admitted.
(Plaintiffs' Exhibit No. 1169 admitted.)

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MS. DUKE: 1174, no objection.
THE COURT: 1174?
MS. DUKE: Correct.
THE COURT: Admitted.
(Plaintiffs' Exhibit No. 1174 admitted.)
MS. DUKE: And then 1176 and 1177 both without objection.
THE COURT: 1176 and -77 will be admitted.
(Plaintiffs' Exhibit Nos. 1176 and 1177 admitted.)
THE COURT: Call your next witness.
MS. DUKE: Thank you, Your Honor. We are calling by video Steven Drake.
THE COURT: Will that be AEO?
MS. DUKE: Some. But I think we will continue how we are doing it -- I think it is working well -- as long as Your Honor is okay with it.
THE COURT: Absolutely.
(Testimony of Steven Drake via video deposition.)
(Video deposition paused.)
MS. DUKE: And, Your Honor, the document, itself, is AEO. The testimony related to it has not been designated, so I will keep the sound on.
THE COURT: What is the exhibit number?
MS. DUKE: 1181.
(Video deposition of Steven Drake resumed.)

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MS. DUKE: It can go back on the screen.
(Video deposition paused.)
MR. KEITH: I'm not sure why. On our part, these are pretty clearly AEO materials. They discuss 2013 contracting strategies and nonpublic information about the contracts St. Luke's had with different payors.
So I would just ask that we blank the screen, as we have done now, and turn off the volume until we have a chance to redact what needs to be redacted.
THE COURT: Any objection?
MS. DUKE: No, not at all. And if there is an updated list from what we were provided -- I have no AEO-designated testimony in this transcript at all, only the exhibits. So if there is an updated list.
MR. KEITH: And then they will be --
MS. DUKE: I apologize for that. We will take care of it.
THE COURT: So we will continue with the volume off?
MS. DUKE: Correct.
(Video deposition of Steven Drake resumed with no audio.)
(Video deposition paused.)
MS. DUKE: I am going to pause for a moment. The next little bit can be played.

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MR. KEITH: We have provided the designations now. I apologize, Your Honor.
THE COURT: All right. Then we will go ahead and turn on the projector now and turn the volume up.
(Video deposition of Steven Drake resumed with audio.)
(Video deposition paused.)
MS. DUKE: I will take off the sound.
(Video deposition of Steven Drake resumed with no audio.)
MS. DUKE: Now it can come back on.
(Video deposition of Steven Drake resumed with audio.)
(Video deposition paused.)
THE COURT: When we do an blowup, can we keep the margins as narrow as possible so it is larger print? On this last one, it's very -- if you can just try and keep the margin at the left and right, it is much easier to read. Thank you.
(Video deposition of Steven Drake resumed.)
(Video deposition paused.)
MS. DUKE: This is AEO again, Your Honor.
MR. WILSON: Your Honor, I've been marking the AEO portions that the defendant just provided us, and I think I can safely say that the remainder of the transcript, the majority of it, is covered in green highlighter. So we would respectfully request that the best way of doing it

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from this point forward is closing the courtroom. I think that would be much more efficient.
THE COURT: Let's do that. Otherwise, it's going to be very awkward. So we'll close the courtroom to anyone that hasn't been advised that they can remain. I will leave it up to counsel to monitor that.
******COURTROOM CLOSED TO THE PUBLIC******
THE COURT: Let's go ahead and proceed with the sound and the monitor on.
(Video deposition of Steven Drake resumed.)
(Video deposition of Steven Drake concluded.)
MS. DUKE: That's the conclusion of Steve Drake's deposition.
THE COURT: Your next witness. We will have to recess in about 15 or 20 minutes, so let's go ahead and use the time.
MS. DUKE: Sure. Do you want me to do the exhibits or --
THE COURT: Yes.
MS. DUKE: -- do that at a different time?
First of all, the exhibit that St. Luke's withdrew the objection from related to Mr. Otte's testimony was Exhibit 1970, so we would move for that admission.
THE COURT: There is no objection?
MR. SINCLAIR: No, Judge.

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THE COURT: Exhibit 1970 will be admitted.
MS. DUKE: Then we have Exhibit 1165.
THE COURT: That has already been admitted.
MS. DUKE: 1181.
THE COURT: I assume there is no objection. I will admit 1181 and -82.
MS. DUKE: Yes, and -83 -- well, -83.
MR. SINCLAIR: That is the untimely?
MS. DUKE: Untimely.
MR. SINCLAIR: We will withdraw that.
THE COURT: 1183, as well?
MS. DUKE: Yes, Your Honor.
1192.
THE COURT: Admitted.
MS. DUKE: 1196 and 1197.
THE COURT: Those can be admitted.
MS. DUKE: 1200.
THE COURT: It will be admitted.
MS. DUKE: 1202.
THE COURT: 1202 will be admitted.
MS. DUKE: 1198.
THE COURT: 1198?
MS. DUKE: Yes.
THE COURT: It will be admitted.
MS. DUKE: 1204.

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THE COURT: 1204 will be admitted.
MS. DUKE: 1205.
THE COURT: 1205 will be admitted.
MS. DUKE: 1207.
THE COURT: 1207 will be admitted.
MS. DUKE: 1208.
THE COURT: 1208 will be admitted.
MS. DUKE: And 1975.
THE COURT: As to 1975, I don't have a notation on that. Is there an objection?
MR. SINCLAIR: We had an untimely. I will withdraw it.
THE COURT: All right. 1975 will be admitted.
(Plaintiffs' Exhibit Nos. 1181, 1182, 1183, 1192, 1196, 1197, 1198, 1200, 1202, 1204, 1205, 1207, 1208, 1970, 1975 admitted.)
THE COURT: Call your next witness.
MS. DUKE: Thank you, Your Honor. This will be Randy Billings. And the first probably five to ten minutes should be open to the public, and then we'll need to close the courtroom after that.
THE COURT: Maybe we will just play that much and then pick up tomorrow morning.
So if we can open the doors.
******COURTROOM OPEN TO THE PUBLIC******

MS. DUKE: May I start, Your Honor?
THE COURT: Yes.
(Testimony of Randall Billings via video deposition.)
(Video deposition paused.)
MS. DUKE: That is a good breaking spot, Your Honor.
THE COURT: We will take a recess, then, until 8:30 tomorrow morning.
Counsel, are there any other items we need to take up?
MS. DUKE: Publishing the depositions of Linda House, Steven Drake, and Randy Billings. And I also provided those to Madam Clerk.
THE COURT: Those will be published by Ms. Gearhart.
(Depositions of Linda House, Steven Drake, and Randy Billings published.)
THE COURT: Counsel, we will be -- Mr. Sinclair.
MR. SINCLAIR: There was an indication --
THE REPORTER: I can't hear you.
MR. SINCLAIR: There was an indication we were going 9:00 to 5:00 with a two-hour break at 11:30.
THE COURT: Correct. I have a meeting from 11:30 to 1:30. So we're going to go from 9:00 to 11:30 and then 1:30 to 5:00, which should give us roughly the same amount of hours in court. So thank you for correcting that. And

that is great. I'll have an extra 30 minutes to finish my workout tomorrow morning.
We'll be in recess, then, until 9:00 tomorrow morning.
(Evening recess taken at 2:35 p.m.)

REPORTER'S CERTIFICATE

I, Lisa K. Yant, Official Court Reporter, County of Ada, State of Idaho, hereby certify:
That I am the reporter who transcribed the proceedings had in the above-entitled action in machine shorthand and thereafter the same was reduced into typewriting under my direct supervision; and
That the foregoing transcript contains a full, true, and accurate record of the proceedings had in the above and foregoing cause, which was heard at Boise, Idaho.
IN WITNESS WHEREOF, I have hereunto set my hand October 31, 2013.

-s-
Lisa K. Yant
Official Court Reporter
CSR No. 279