TESTIMONY OF RANDALL BILLINGS
Received September 26-27, 2013
In the United States Federal District Court for the District of Idaho
Saint Alphonsus Medical Center-Nampa, Inc., et al. v. St. Luke's Health System Ltd., et al.
Case No. 1:12-cv-00560-BLW

Page Range: 8:5-8:10

8: 5 So, in any event, could you state your full name
8: 6 for the record, please.
8: 7 A. Randall Martel Billings.
8: 8 Q. And Mr. Billings, what's your occupation?
8: 9 A. I am the vice president of payor and provider
8:10 relations for St. Luke's Health System.

Page Range: 8:16-8:17

8:16 Q. And how long have you held that position?
8:17 A. Since January 24th of 2011.

Page Range: 9:4-10:7

9: 4 Q. Thanks. Could you briefly run through your
9: 5 educational and occupational history, just positions,
9: 6 years, roughly?
9: 7 A. Master's degree -- MBA Master's degree, finance
9: 8 emphasis at University of Illinois, Chicago. In the
9: 9 healthcare industry since 1992 in Chicago, MacNeal Health
9:10 Providers, an IPA. Did claims processing for them.
9:11 '94, '95, University of Chicago hospital health
9:12 system, marketing and planning for a year. And then the
9:13 remainder of my time in Chicago through 2011, when I came
9:14 here, was with Advocate Healthcare as a payor contracting
9:15 area. I was vice president of payor contracting there.
9:16 Q. Did you have different positions over time at
9:17 Advocate?
9:18 A. Yeah, I was an analyst. I started off as an
9:19 analyst. Director of contracting, director of a physician
9:20 hospital organizations, a few of their physician hospital
9:21 organizations, Ravenswood Hospital, Good Samaritan
9:22 Hospital.
9:23 And then vice president -- director and vice
9:24 president of managed care contracting for Advocate.
9:25 Q. Okay. Who do you report to at St. Luke's?
10: Page 10
10: 1 A. Jeff Taylor, CFO.

10: 2 Q. And who reports to you?
10: 3 A. Currently, Steve Drake, who is the director of
10: 4 contracting. Linda House, who's the director of employee
10: 5 relations. And Janice Fulkerson, who is the director of
10: 6 the PHO, Select physician hospital organization. Select
10: 7 Medical Network I guess is the official name.

Page Range: 11:3-11:22

11: 6 Q. I've handed you what's been marked as
11: 7 Exhibit 271, which is a document dated January 24, 2011 to
11: 8 St. Luke's Health System Leadership and Management from
11: 9 Jeff Taylor, Bates Numbered 1157694.
11:10 And why don't you take a look at that and see if
11:11 you can identify that. And then maybe that will shed some
11:12 light on 270. Maybe not.
11:13 A. So, this one, 271, looks like the memo that
11:14 Jeff Taylor sent out on January 24th announcing my
11:15 arrival. This must be my current kind of description of
11:16 my duties that we send to folks that -- if I'm going to a
11:17 conference. It looks like that's what 270 is.
11:18 Q. Okay. So, did you draft 270, do you believe?
11:19 A. I think my secretary drafted this with my input,
11:20 yes.
11:21 Q. And did you review it before it was used?
11:22 A. Sure.

Page Range: 13:3-14:21

13: 3 Q. Okay. Let's go to the next paragraph, the third
13: 4 paragraph, which describes your roles at Advocate Health;
13: 5 is that right?
13: 6 A. Yes.
13: 7 Q. The second sentence says, among other things,
13: 8 that you "served a critical role interfacing with the
13: 9 3,800 physicians," and I'm skipping a few words, with
13:10 Advocate Physician Partners."
13:11 Do you see that?
13:12 A. Yes.
13:13 Q. What is Advocate Physician Partners?
13:14 A. Advocate Physician Partners is an organization
13:15 made up of physicians in the Chicago market and hospitals
13:16 of Advocate Healthcare.
13:17 Q. So, is it a physician hospital organization?
13:18 A. It's a -- yes, it's a super PHO is what I would
13:19 call it, super physician hospital organization. It's made

13:20 up of, at that time, nine PHOs. It might have 10 or 11
13:21 now. There's a physician hospital organization with each
13:22 of its hospitals.
13:23 Q. Okay.
13:24 A. All those comprise Advocate Physician Partners.
13:25 Q. Okay. And did Advocate Physician Partners
14: Page 14
14: 1 contract with healthcare plans?
14: 2 A. Yes.
14: 3 Q. The reference to 3,800 physicians, can you tell
14: 4 me roughly how many of those were independent versus the
14: 5 number who were either employed or under a PSA with an
14: 6 Advocate hospital?
14: 7 A. Roughly, a quarter of those were employed.
14: 8 Q. Okay. The rest were independent?
14: 9 A. Correct.
14:10 Q. Okay. The next sentence refers to "Advocate's
14:11 innovative Clinical Integration contracting structure."
14:12 Do you see that?
14:13 A. Yes.
14:14 Q. What was -- could you describe generally what
14:15 Advocate's innovative Clinical Integration contracting
14:16 structure was?
14:17 A. Advocate negotiated contracts for each of those
14:18 -- or including each of those 3,800 physicians on the
14:19 basis of their clinical integration program.
14:20 Q. Okay. And were those contracts risk based?
14:21 A. Yes, some of them.

Page Range: 15:4-16:1

15: 4 Number one: Was Advocate successful in
15: 5 negotiating risk-based contracts on behalf of those 3,800
15: 6 physicians?
15: 7 A. Yes.
15: 8 Q. And number two: Was Advocate successful in
15: 9 negotiating clinically integrated contracts on behalf of
15:10 those 3,800 physicians?
15:11 A. Yes.
15:12 Q. And what was innovative about the structure of
15:13 what Advocate did?
15:14 That's your word here, innovative.
15:15 A. What was innovative?
15:16 I'm not sure what you mean.
15:17 Q. Well, you see you used the word innovative in
15:18 that document?
15:19 A. Yeah.

15:20 Q. I'm just asking you what you meant by that word.
15:21 A. Advocate had a clinical structure that included
15:22 clinical integration metrics that were measured across all
15:23 physicians, independent or -- and/or employed.
15:24 It included measurements for hospitals. It tied
15:25 all those together and coordinated the care across the
16: Page 16
16: 1 contracts that they negotiated.

Page Range: 16:2-16:13

16: 2 Q. Okay. Give me an example of one of those
16: 3 clinical integration metrics.
16: 4 A. Do you have an email address?
16: 5 Q. Okay. Can you give me an example of one that
16: 6 relates to medical care a little more specifically?
16: 7 A. The email address actually did relate to medical
16: 8 care.
16: 9 Q. Well, I'm sure they all did in some degree.
16:10 But the one that addresses clinical practices.
16:11 Put it that way.
16:12 A. We communicated our clinical practices to the
16:13 physicians via email.

Page Range: 17:3-17:18

17: 3 Q. Okay. And were doctors -- did doctors have,
17: 4 including independent doctors, have financial incentives
17: 5 to meet or exceed certain clinical integration metrics?
17: 6 A. Yes.
17: 7 Q. Well, could you describe generally the nature of
17: 8 those financial incentives that the independent doctors
17: 9 had?
17:10 A. There was a scorecard that scored each physician
17:11 based on clinical innovation metrics. And then there were
17:12 incentives that were paid out based upon their score
17:13 compared to their peers.
17:14 Q. Okay.
17:15 A. And external peers as well.
17:16 Q. And those payouts were to both independent and
17:17 employed physicians?
17:18 A. Yes.

Page Range: 18:1-18:9

18: 1 Q. In your judgment as -- in your role as vice
18: 2 president at Advocate, is it the case that those metrics
18: 3 worked to encourage physicians to improve their clinical
18: 4 performance in connection with those metrics?
18: 5 A. They helped. I don't know what you mean by
18: 6 worked.
18: 7 Q. Okay. They helped in the sense that the doctors
18: 8 got better, performed better?
18: 9 A. I'm not sure of the actual outcomes.

Page Range: 18:10-18:11

18:10 But any time you incentivize a physician to do
18:11 something, it will probably help them pay attention to it.

Page Range: 24:20-25:2

24:21 Q. Mr. Billings, you've been shown what's been
24:22 marked as Exhibit 274, which appears to be a piece you
24:23 wrote for Dr. Pate's blog on the St. Luke's website.
24:24 Is that what it is?
24:25 A. Yes.
25: Page 25
25: 1 Q. And let me ask you about a few comments in your

Page Range: 25:8-26:3

25: 8 A. There's comments attached here that isn't part of
25: 9 my -- what I posted.
25:10 Q. Right. So, what you posted ends about a third of
25:11 the way down the second page; is that right?
25:12 A. Yeah. Where it ends "Triple Aim can be based."
25:13 That sentence a third of the way down.
25:14 Q. Yeah. Okay. So, let me ask you about a couple
25:15 of your comments, if you're ready.
25:16 Going back to the first page, I'm going to ask
25:17 you about the last three paragraphs. The third paragraph
25:18 from the end there says, among other things, "St. Luke's
25:19 has defined clinical integration as 'healthcare providers
25:20 in separate legal entities working together in an
25:21 interdependent and mutually accountable fashion.'" It
25:22 goes on to provide some details.
25:23 Is that, in fact, a definition that St. Luke's

25:24 has adopted?
25:25 A. Yeah. I'm pretty sure that's the definition that
26: Page 26
26: 1 was approved at a physician leadership group.
26: 2 Q. Okay.
26: 3 A. By the physician leadership group.

Page Range: 28:2-28:7

28: 2 Q. Why don't you go to the second page. And the
28: 3 first sentence there says "Clinical integration with
28: 4 independent providers is clearly the essential building
28: 5 block of accountable care."
28: 6 Do you still believe that today?
28: 7 A. It is essential -- it is an essential part of it.

Page Range: 28:9-28:16

28:9 (Whereupon, Exhibit Number 1213 was marked for
28:10 identification.)
28:11 BY MR. ETTINGER:
28:12 Q. Showing you what's been marked as Exhibit 275,
28:13 which is a document entitled St. Luke's Health System
28:14 Network Scope & Key Priorities Select PHO Board
28:15 Presentation May 11, 2011. And I can represent to you
28:16 this was in your file.

Page Range: 29:11-29:21

29:11 Q. Okay. Is this a document that you wrote?
29:12 A. It looks like it was one that I put together with
29:13 Geoff Swanson, I'm guessing. But...
29:14 Q. And for what purpose?
29:15 A. For a Select PHO board presentation.
29:16 Q. Okay. What is your role with regard --
29:17 A. I'm not sure if this is a final version, by the
29:18 way. I don't -- it doesn't -- the pages after 27, I'm not
29:19 sure if they're -- I'm not sure if this is the actual one
29:20 that was -- the pages look a little bare, some of them.
29:21 So, I'm not sure.

Page Range: 30:5-33:19

30: 5 Q. What is your role with regard to Select PHO?

30: 6 In terms of your job, how do you interact with
30: 7 them as part of your duties?
30: 8 A. The PHO director, Janice Fulkerson, reports to
30: 9 me.
30:10 Q. Okay. And do you regularly attend PHO -- Select
30:11 PHO meetings?
30:12 A. I attend the finance committee meetings and the
30:13 PHO board meetings, the Select PHO board meetings.
30:14 Q. Okay.
30:15 A. I guess not finance committee. It's called the
30:16 contracting committee to be specific.
30:17 Q. Okay. Why don't you turn to Slide 14. Slide 14
30:18 talks about Joint Contracting.
30:19 Do you see that?
30:20 A. Yes.
30:21 Q. What is Joint Contracting in this context?
30:22 A. Contracting for independent and employed
30:23 physicians for all the providers in the Select Medical
30:24 Network.
30:25 Q. Okay. The second paragraph under the heading or
31: Page 31
31: 1 under the bullet says "Joint Contracting is Fundamental to
31: 2 Aligning the Essential Requirements of Clinically
31: 3 Integrated Care.
31: 4 Do you see that?
31: 5 A. Yes.
31: 6 Q. Do you believe that to be true?
31: 7 A. Yes.
31: 8 Q. Does joint contracting provide common financial
31: 9 incentives for the independent and employed providers?
31:10 A. Say that again.
31:11 Q. Does joint contracting act to provide common
31:12 financial incentives for independent and employed
31:13 providers?
31:14 A. It can.
31:15 Q. Yeah. Is that one of the purposes of joint
31:16 contracting?
31:17 A. It aligns the incentives.
31:18 Q. Okay.
31:19 A. Financial and clinical.
31:20 Q. Okay. Why don't you go to Slide 16.
31:21 A. Excuse me, 16?
31:22 Q. Yeah. And you see 16 refers to
31:23 Performance-Based Reimbursement; do you see that?
31:24 A. Yes.
31:25 Q. And then underneath that, there's what appears to
32: Page 32
32: 1 be maybe a terse definition of

32: 2 performance-based reimbursement. It says
32: 3 "incentives/penalties for outcomes & processes, pooled
32: 4 resources, & even risk."
32: 5 Is that intended to define
32: 6 performance-based reimbursement or give examples of it or
32: 7 what is that sentence intended to do?
32: 8 I'm a little bit unclear.
32: 9 A. Yeah. It was to give some examples of
32:10 performance-based reimbursement.
32:11 Q. Okay. And this would be
32:12 performance-based reimbursement for independent as well as
32:13 employed or PSA physicians?
32:14 A. Yes.
32:15 Q. Okay. And by "outcomes & processes," can you
32:16 give me an example of what you mean?
32:17 A. Clinical integration metrics and how the
32:18 providers are performing against those.
32:19 Q. Okay. And since we're outside of Advocate, let
32:20 me ask you a similar question to what I asked you there.
32:21 So, with your St. Luke's hat on, can you give me
32:22 an example of a clinical integration metric that one might
32:23 apply in the context of performance-based reimbursement?
32:24 A. Did you perform a hemoglobin A1C on a diabetic
32:25 patient?
33: Page 33
33: 1 Q. Okay. And so, physicians might be financially
33: 2 incentivized to meet that metric, is that right; is that
33: 3 how this might work?
33: 4 A. They might be scored based upon their performance
33: 5 to that and other metrics.
33: 6 Q. Yeah. And receive some kind of financial reward
33: 7 or penalty, depending upon their score?
33: 8 A. They could.
33: 9 Q. Yeah. And that would be true of independent as
33:10 well as employed or PSA physicians?
33:11 A. Sure.
33:12 Q. Okay. The second paragraph there says
33:13 "Incentives Could Include Financial Carrots or Sticks,
33:14 Affect Membership Status, Require Provider Communication,
33:15 and Promote Peer Influence at Both Individual and Group
33:16 Levels."
33:17 Is that a true statement do you believe as the
33:18 kinds of things that incentives could do?
33:19 A. Sure. Incentives could include all those.

Page Range: 39:1-39:19

39: 1 Q. Mr. Billings, you've been handed what's been
39: 2 marked as Exhibit 279, which is some emails. The top
39: 3 email is from you to Hank Clark, attaching some other
39: 4 emails in which you're involved.
39: 5 Why don't you take a look at these and I'll ask
39: 6 you about them.
39: 7 A. Okay.
39: 8 Q. So, is Exhibit 279, in fact, some emails
39: 9 exchanged between you and Mr. Clark attaching another
39:10 email that he sent to others?
39:11 A. Yes.
39:12 Q. Who is Hank Clark?
39:13 A. Hank Clark is an analyst in our finance
39:14 department.
39:15 Q. And what are his responsibilities generally?
39:16 A. I'm not sure what all of them are. He handles
39:17 the price increases the hospital charges.
39:18 Q. Okay.
39:19 A. Does a lot of analytical work for finance.

Page Range: 39:23-40:5

39:23 Q. Okay. So, starting with the email at the bottom
39:24 of the page, which was not addressed to you but then
39:25 became part of the chain that made its way to you,
40: Page 40
40: 1 Mr. Clark says, among other things quote -- on the first
40: 2 page, "I have outlined the projected price increases based
40: 3 on increases this year (inpatient 35-50 %."
40: 4 Do you see that?
40: 5 A. Yes.

Page Range: 40:6-40:7

40: 6 Q. So, did inpatient charges increase 35 to
40: 7 50 percent at the St. Luke's hospitals?

Page Range: 40:9

40: 9 THE WITNESS: I'm not sure.

Page Range: 74:20-76:10

74:20 Q. So, Mr. Billings, why don't you take a look at
74:21 284 and 285 and I will ask you about them as soon as
74:22 you're ready.
74:23 A. Okay.
74:24 Q. So, these appear to be emails from Dr. Swanson to
74:25 you, the same document sent about two weeks apart.
75: Page 75
75: 1 Am I describing them correctly?
75: 2 A. Yes.
75: 3 Q. Do you recall receiving this document from
75: 4 Dr. Swanson?
75: 5 A. I don't.
75: 6 Q. Did you prepare the attached document or not?
75: 7 A. No.
75: 8 Q. Do you recall any discussion with Dr. Swanson
75: 9 about the attached document?
75:10 A. No.
75:11 Q. Do you recall any discussion with Dr. Swanson
75:12 about an end game for St. Luke's?
75:13 A. No.
75:14 Q. Looking at Item 3 in the attachment, do you
75:15 recall any discussion with him about a monopoly model?
75:16 A. No.
75:17 Q. Do you recall any discussion with anybody about a
75:18 monopoly model?
75:19 A. No.
75:20 Q. So, you just have no idea -- you see that he
75:21 apparently sent this to you at least twice; right?
75:22 A. Yeah.
75:23 Q. And he sent it to you in March and April of 2011;
75:24 correct?
75:25 A. Yeah.
76: Page 76
76: 1 Q. And you have absolutely no recollection of this
76: 2 document or the subject of monopoly model or his emails;
76: 3 correct?
76: 4 A. Correct.
76: 5 Q. Okay. Do you see monopoly models under
76: 6 Scenario Planning?
76: 7 A. Yes.
76: 8 Q. Was there ever any discussion of any possible
76: 9 plans or scenarios that involved a monopoly at St. Luke's?
76:10 A. No, not that I know of.

Page Range: 79:7-80:01

79: 7 Q. Handing you what's been marked as Exhibit 287,
79: 8 it's a document the first page of which says
79: 9 St. Luke's Key Community Services. It's
79:10 Bates Numbered 804539 through 551.
79:11 Take a look at it and tell me when you're ready.
79:12 A. Okay.
79:13 Q. Do you know what Exhibit 287 is?
79:14 A. It appears to be the presentation that St. Luke's
79:15 made to Blue Cross in our -- to begin our negotiations for
79:16 the 2013 contract year back --
79:17 Q. Did you prepare that presentation?
79:18 A. Yes.
79:19 Q. Okay. I just want to ask you about one item.
79:20 If you go to the third page of the document,
79:21 which is numbered 3 --
79:22 A. Uh-huh.
79:23 Q. -- you see at the bottom left there is --
79:24 actually, on the right side, there's a chart that says
79:25 Respective Business Mix?
80: Page 80
80: 1 A. Yes.

Page Range: 80:18-80:23

80:18 Q. So, does this indicate for 2012 that the
80:19 percentage of St. Luke's revenue that comes from
80:20 Blue Cross is 23 percent and the percentage of
80:21 Blue Cross's healthcare expenses that come from St. Luke's
80:22 is 35 percent?
80:23 A. Yes.

Page Range: 80:24-81:2

80:24 Q. Okay. And does that indicate that St. Luke's is
80:25 more important to Blue Cross than Blue Cross is to
81: Page 81
81: 1 St. Luke's?
81: 2 A. No.

Page Range: 81:12-81:23

81:12 Q. Okay. Now, to the extent that Blue Cross
81:13 represents a large portion of St. Luke's revenues, that

81:14 makes Blue Cross important to St. Luke's; correct?
81:15 A. Correct.
81:16 Q. And to the extent St. Luke's represents a large
81:17 percentage of the services that Blue Cross patients
81:18 demand, that means St. Luke's is important to Blue Cross;
81:19 correct?
81:20 A. Correct.
81:21 Q. And the comparison here indicates that St. Luke's
81:22 is a larger -- is a significantly larger portion of
81:23 Blue Cross than Blue Cross is of St. Luke's; correct?

Page Range: 82:1-82:11

82: 1 Q. Just by arithmetic?
82: 2 A. Based on the percentage.
82: 3 Q. Yeah.
82: 4 A. This is percentages, not dollars.
82: 5 Q. Right. And that's part of what you were trying
82: 6 to convey to Blue Cross; correct?
82: 7 A. No. I'm just conveying that this is our -- this
82: 8 is what our current business is.
82: 9 Q. And you weren't trying to send any message
82:10 whatsoever with this chart; is that right?
82:11 A. Correct.

Page Range: 88:21-88:25

88:21 Q. In the negotiations that led up to the most
88:22 recent Blue Cross contract, did Blue Cross end up agreeing
88:23 to increase physician rates to St. Luke's and therefore to
88:24 increase its statewide physician fee schedule?
88:25 A. No, it didn't happen that way.

Page Range: 89:1-89:18

89: 1 Q. Which way did it happen?
89: 2 A. They were going to increase their statewide fee
89: 3 schedule. So, they said: You'll get that same increase.
89: 4 Q. It's your belief that they did exactly what they
89: 5 would have done without regard to your demands?
89: 6 A. We put in the contract exactly what they were
89: 7 going to do. That's what Jeff Crouch and I determined to
89: 8 do.
89: 9 Jeff Crouch said: We'll put in what we're going
89:10 to do and no more. That's what he said.

89:11 Q. Okay. You'd asked him for an increase?
89:12 A. We did.
89:13 Q. It's your view that your request for an increase
89:14 had no influence on his decision?
89:15 A. Correct.
89:16 Q. Okay.
89:17 A. In fact, he said: We're not negotiating
89:18 physician rates in this deal.

Page Range: 89:19-90:1

89:19 Q. Okay. Now, did you take the position with
89:20 Mr. Crouch in these negotiations that there would be no
89:21 deal unless you could reach agreement on payments to
89:22 hospitals as well as payments to physicians?
89:23 A. We were negotiating them together, yes.
89:24 Q. Yeah. Okay. And that included all of St. Luke's
89:25 hospitals?
90: Page 90
90: 1 A. Correct.

Page Range: 91:23-92:13

91:23 Q. And are you limiting those increases to
91:24 ten percent?
91:25 A. We don't have to limit the increase to
92: Page 92
92: 1 ten percent. We had to limit the impact on Blue Cross to
92: 2 ten percent.
92: 3 Q. When you say "limit the impact on Blue Cross to
92: 4 ten percent," can you explain the arithmetic that you've
92: 5 got in mind with that statement?
92: 6 A. Well, it's not what I have in mind. It's what is
92: 7 actually in the contract, which says if Blue Cross is
92: 8 impact -- if including an additional facility in the terms
92: 9 of this contract could be reasonably expected to increase
92:10 or decrease the anticipated annual reimbursement
92:11 Blue Cross would have paid to that specific facility by
92:12 more than ten percent, then the additional facility may
92:13 only be added to this contract through written amendment.

Page Range: 93:12-94:13

93:12 (Whereupon, Exhibit Number 290 was marked for
93:13 identification.)

93:14 THE WITNESS: Okay.
93:15 BY MR. ETTINGER:
93:16 Q. Do you recall receiving this letter from
93:17 Todd York that's Exhibit 290?
93:18 A. Yes.
93:19 Q. And in his last paragraph of his letter, he says
93:20 "Until an equitable resolution is reached to address this
93:21 change of ownership, BCI expects no change in billing
93:22 patterns for ancillary services provided by Saltzer. I
93:23 would like to add this topic as an agenda item to be
93:24 discussed in our upcoming meeting."
93:25 Was there a discussion of this topic in an
94: Page 94
94: 1 upcoming meeting with Blue Cross?
94: 2 A. Probably.
94: 3 Q. Do you recall anything about such a discussion?
94: 4 A. I recall talking to them about Saltzer, sure.
94: 5 Q. And what do you remember about that discussion?
94: 6 A. We acknowledged that there's this clause in the
94: 7 contract.
94: 8 Q. Did you respond to their expectation that there
94: 9 be no change in billing patterns for ancillary services?
94:10 A. The clause doesn't say that there will be no
94:11 change in billing patterns. The contract says that it
94:12 wouldn't exceed ten percent. So, we didn't have to
94:13 address that.

Page Range: 95:4-95:6

95: 4 Q. Have you heard anything more from Blue Cross on
95: 5 this issue?
95: 6 A. No.

Page Range: 95:7-96:2

95: 7 Q. Okay. Do you know what percentage of the
95: 8 billings of a practice like Saltzer could be represented
95: 9 by ancillary services?
95:10 A. Huh-uh, no idea.
95:11 Q. So, something less than 100 percent, certainly;
95:12 right?
95:13 A. Certainly.
95:14 Q. Yeah. And the ten percent figure as you're
95:15 interpreting it applies to overall reimbursement to
95:16 Saltzer; correct?
95:17 A. Ten percent what?

95:18 Say that again.
95:19 Q. The ten percent figure in the Blue Cross contract
95:20 that we've been discussing is a ten percent of total
95:21 reimbursement to Blue Cross regarding Saltzer, not just
95:22 ancillary services; correct?
95:23 A. Correct.
95:24 Q. So, it's possible that you could have a 20, 30,
95:25 40 percent increase in ancillary services and still not
96: Page 96
96: 1 trigger that ten percent clause; correct?
96: 2 A. That's possible.

Page Range: 96:4-96:9

96: 4 THE WITNESS: Correct. That's possible.
96: 5 BY MR. ETTINGER:
96: 6 Q. Okay. To your knowledge, was there any
96: 7 calculation of the percentage increase in ancillary
96: 8 services that occurred?
96: 9 A. Not that I know of.

Page Range: 96:16-97:11

96:16 Q. So, is 291 a series of emails involving you,
96:17 Bill Savage, David Orchard, Steve Drake?
96:18 A. Yes.
96:19 Q. And the subject is "ACN - Saltzer participation"?
96:20 A. Correct.
96:21 Q. And Mr. Savage says in the first email
96:22 chronologically: We are hearing rumors that Saltzer is no
96:23 longer in the ACN network; correct?
96:24 A. Correct.
96:25 Q. And you said in response quote -- among other
97: Page 97
97: 1 things, "I doubt that Saint Al's would cripple their own
97: 2 network like that"?
97: 3 A. Correct.
97: 4 Q. And why did you think that if Saint Al's kicked
97: 5 out Saltzer from ACN that it would "cripple their own
97: 6 network"?
97: 7 A. Because Saint Al's employees are seeing Saltzer
97: 8 docs. And so, if they kick Saltzer out of their network,
97: 9 they're going to have a revolt on their hands from
97:10 employees saying we -- That's our doc. Why can't we see
97:11 them anymore?

Page Range: 97:16-100:2

97:16 Q. We've handed you what's been marked as
97:17 Exhibit 292, which is an email from you to, I believe,
97:18 Dr. Pate and a response from Chris Roth.
97:19 So, take a look at that.
97:20 A. Okay.
97:21 Q. Did I describe 292 accurately?
97:22 A. Yes.
97:23 (Whereupon, Mr. Withroe rejoined the
97:24 proceedings.)
97:25 BY MR. ETTINGER:
98: Page 98
98: 1 Q. I want to ask you about your email to Dr. Pate.
98: 2 This is October 25 of 2012; is that right?
98: 3 A. Yes.
98: 4 Q. The paragraph -- I want to ask you about the
98: 5 bottom paragraph on the first page.
98: 6 You're talking here about an entity called
98: 7 First Choice Health; is that right?
98: 8 A. First Choice Health, yes.
98: 9 Q. What is First Choice Health?
98:10 A. They are a provider network.
98:11 Q. Okay. And the discussion is what to do about
98:12 First Choice Health's contract with Saltzer; is that
98:13 right?
98:14 A. In that paragraph, correct.
98:15 Q. Yeah. Do you know what happened to First Choice
98:16 Health's contract with Saltzer?
98:17 A. I believe it was just assigned over, yes, to
98:18 St. Luke's.
98:19 Q. And you say, in that third paragraph at the end,
98:20 "I wouldn't recommend that an FCH relationship should
98:21 expand."
98:22 What was the expansion that was being considered?
98:23 A. Well, First Choice was asking, in the first
98:24 paragraph, if they could have a discussion with all of the
98:25 St. Luke's Health System --
99: Page 99
99: 1 Q. Okay.
99: 2 A. -- which didn't have a contract with them at the
99: 3 time.
99: 4 Q. And what response was given to First Choice
99: 5 Health to that request?
99: 6 A. That we weren't interested in expanding the
99: 7 relationship.
99: 8 Q. You were not interested?

99: 9 A. Right.
99:10 Q. Okay. So, let's go back to the third paragraph.
99:11 You say: "While we do recognize FCH's current contracts
99:12 with Saltzer providers and will most likely respect those
99:13 within the larger Saltzer transaction, even those
99:14 relationships' clients/volumes should be reviewed and put
99:15 into the exit queue just like we are contemplating with
99:16 Wise, ACN and even IPN eventually."
99:17 Did I read that correctly?
99:18 A. Yes.
99:19 Q. And what do you mean by "the exit queue"?
99:20 Do you mean that those were in line to be ended
99:21 at some point in the future?
99:22 A. Yes. We had discussions to end those
99:23 relationships, yes.
99:24 Q. Okay. And Wise is the Wise Network that Imagine
99:25 has put together for Micron?
100: Page 100
100: 1 A. Correct. St. Luke's did not have a relationship
100: 2 with Wise.

Page Range: 102:5-102:8

102: 5 Q. You've been handed what's been marked
102: 6 Exhibit 293, I think, some emails involving a number of
102: 7 people, including Jeff Taylor, Gary Fletcher and yourself
102: 8 from April of 2011.

Page Range: 102:12-103:2

102:12 Q. Okay. So, is this, in fact, a series of emails
102:13 including one from you to Jeff Taylor, Steve Drake, cc:
102:14 Greg Fletcher, on April 20, 2011?
102:15 A. Yes.
102:16 Q. And your email discusses, in part, your
102:17 understanding of what happened with Micron before you came
102:18 to St. Luke's; correct?
102:19 A. Correct.
102:20 Q. And you then said "So Saint Al's brought the
102:21 business with a lower reimbursement, which we should
102:22 definitely avoid if we're again thinking about talking
102:23 with Micron."
102:24 Do you see that?
102:25 A. Yes.
103: Page 103
103: 1 Q. And did anybody at St. Luke's disagree with that

103: 2 view of yours?

Page Range: 103:4

103: 4 THE WITNESS: I don't know.

Page Range: 103:6-103:8

103: 6 Q. Did anybody communicate disagreement with it to
103: 7 you?
103: 8 A. No.

Page Range: 103:9-103:19

103: 9 Q. Okay. Is that still your view today in terms of
103:10 dealings with Micron?
103:11 A. What do you mean dealings with Micron?
103:12 Q. Is it still -- you've been talking to Micron off
103:13 and on?
103:14 A. Yes.
103:15 Q. Between 2011 and 2013; have you not?
103:16 A. Correct.
103:17 Q. Indeed, you mentioned earlier you've had a
103:18 discussion with Mr. Otte this year?
103:19 A. Pat and I have regular discussions, yes.

Page Range: 104:3-104:17

104: 3 Q. Sure. You see you say "So St. Al's bought the
104: 4 business with a lower reimbursement, which we should
104: 5 definitely avoid."
104: 6 Do you see that?
104: 7 A. Yes.
104: 8 Q. Has that consistently been your view through
104: 9 today?
104:10 A. It's my assumption of what happened in 2010, yes.
104:11 Q. And your view as to what you should be doing --
104:12 and in 2011, you said that was your view as to what you
104:13 should not be doing.
104:14 And is that still today your view today about
104:15 what you should not be doing?
104:16 A. Yes. We should not get into a bidding war the
104:17 Saint Al's, yes.

Page Range: 104:18-105: 1

104:18 Q. Okay. Has anyone at St. Luke's communicated a
104:19 different opinion to you on this subject at any time
104:20 through today?
104:21 A. I'm not sure everyone -- I'm not sure everyone
104:22 else feels we shouldn't go as low as I think we should go.
104:23 So, I think there are other opinions as to how -- what our
104:24 discount level needs to be or what's the lowest level of
104:25 offer that we would give to Micron. I think there are
105: Page 105
105: 1 differing levels of opinion there.

Page Range: 105:9-106:16

105: 9
105:10
105:11 **REDACTED**
105:12
105:13
105:14
105:15 Q. Okay. When did you make that offer?
105:16 A. Probably Fall of last year.
105:17 Q. Okay. And what --
105:18 A. Spring or Fall.
105:19 Q. And what response did you get from Micron?
105:20 A. They said "No thanks."
105:21 Q. Okay. Have you ever made a specific risk
105:22 proposal to Micron?
105:23 And by specific, I mean, you know, the kind of
105:24 proposal you -- well, let me start that over.
105:25 Have you ever made a specific risk proposal to
106: Page 106
106: 1 Micron that involves numbers?
106: 2 A. What do you mean by numbers?
106: 3 Q. I mean, a proposal based on reimbursement based
106: 4 on per member per month costs or some other quantitative
106: 5 proposal that involves risk.
106: 6 A. We've talked about that. But we've never talked
106: 7 about specific numbers, what those numbers would be.
106: 8 Q. Okay. What's the most specific thing you've said
106: 9 to Micron in terms of a risk proposal?
106:10 A. That St. Luke's would consider offering a
106:11 guaranteed per member per month, investigating what that
106:12 might look like.
106:13 Q. Okay. You said that without saying anything

106:14 about what that guaranteed number would be; correct?
106:15 A. Yeah. We don't have any data that would say
106:16 exactly what that is. So, we haven't said any number, no.

Page Range: 111:15-111:21

111:15 Q. Okay. Other than Micron, are you aware of any
111:16 employers in the Treasure Valley who have indicated that
111:17 they want to set up an arrangement involving bidding with
111:18 deep discounts in exchange for steering patients, even if
111:19 that meant excluding St. Luke's providers from their
111:20 network?
111:21 A. I'm not aware of anything like that.

Page Range: 111:23-112:19

111:23 (Whereupon, Exhibit Number 296 was marked for
111:24 Identification.)
111:25 BY MR. ETTINGER:
Page 112
112: 1 Q. You've been shown 296, an email from you to
112: 2 Dr. Pate, February 15, 2012, cc: Jeff Taylor, subject:
112: 3 Micron possibilities.
112: 4 Take a look at that and I'll ask you about it.
112: 5 A. Okay.
112: 6 Q. Is this indeed an email you sent to Dr. Pate
112: 7 about your meeting with Pat Otte of Micron?
112: 8 A. Yes.
112: 9 Q. In the second paragraph, you say, among other
112:10 things, "not that we want to go back into that game of
112:11 discount wars with Saint Al's in any form or fashion."
112:12 Do you see that?
112:13 A. Yes.
112:14 Q. Did either Dr. Pate or Mr. Taylor express any
112:15 disagreement with that view of yours?
112:16 A. I don't know.
112:17 Q. Did they communicate any such disagreement to
112:18 you?
112:19 A. Not that I remember, no.

Page Range: 114:9-114:18

114: 9 Q. So, starting over on that, you've now been shown
114:10 what's been remarked as 297, I hope, Mr. Billings, which a
114:11 series of emails Bates Numbered 93447 through -- 4477
114:12 through 4479.

114:13 Is that what you've got?
114:14 A. Yes.
114:15 Q. And is this, in fact, a series of emails in the
114:16 -- covering a period actually from February to June of
114:17 2012 regarding Micron?
114:18 A. Yes.

Page Range: 117:9-118:6

117: 9 Q. Okay. So, is this, again, a series of emails
117:10 from 2012 on Micron, Exhibit 298?
117:11 A. Yes.
117:12 Q. And the top email is from you to Dr. Pate and
117:13 Gary Fletcher, cc: Jeff Taylor, John Kee, Dr. Swanson?
117:14 A. Yes.
117:15 Q. Subject: Micron possibilities?
117:16 A. Yes.
117:17 Q. You say "we clearly communicated that our
117:18 discount proposal is only for Micron, not any other
117:19 potential clients of whatever network they might use
117:20 (Wise/Imagine or otherwise), and for St. Luke's parity
117:21 within their network participation."
117:22 So, is this -- are you referring to a meeting you
117:23 had with someone at Micron?
117:24 A. Yes.
117:25 Q. And who did you meet with in which you made these
118: Page 118
118: 1 communications?
118: 2 A. I'm -- it was probably Margo.
118: 3 Q. Okay.
118: 4 A. And maybe Pat as well.
118: 5 Q. Margo Nicholson?
118: 6 A. Yes.

Page Range: 118:7-118:20

118: 7 Q. And what's her position?
118: 8 A. I don't know specifically.
118: 9 Q. Okay. So, why was your view that you didn't want
118:10 to offer -- that whatever discount you were willing to
118:11 offer to Micron would not be available to other clients of
118:12 the network that Micron participated in?
118:13 A. Because our discussions weren't with the network.
118:14 They were with Micron.
118:15 Q. Did you have concerns about encouraging a broader
118:16 network to form?

118:17 A. No.
118:18 Q. Okay.
118:19 A. Our discussions were with Micron only, that's
118:20 why.

Page Range: 119:4-119:9

119: 4 Q. Okay. And you never had a meeting with anyone
119: 5 from Imagine or the Wise Network; did you?
119: 6 A. Never.
119: 7 Q. And you indicated you did not want to meet with
119: 8 them or communicate with them; correct?
119: 9 A. Correct.

Page Range: 119:22-119:24

119:22 Q. Okay. Have any of your offers been conditioned
119:23 on preference towards St. Luke's against Saint Alphonsus?
119:24 A. No.

Page Range: 119:25-120:12

119:25 Q. Okay. So, your proposals were all in the context
120: Page 120
120: 1 of no steering; correct?
120: 2 A. Equal steering.
120: 3 Q. Well, equal steering is no steering; isn't it?
120: 4 A. Equal steering.
120: 5 Q. So, was there -- steering to somebody implies
120: 6 steering away from somebody.
120: 7 So, if it's equal steering, who were the members
120: 8 being steered away from?
120: 9 A. We are -- we would be presented to their network
120:10 on an equal footing with Saint Al's, that's all.
120:11 Q. Okay.
120:12 A. No preferential treatment.

Page Range: 120:14-121:23

120:14 (Whereupon, Exhibit Number 299 was marked for
120:15 identification.)
120:16 BY MR. ETTINGER:
120:17 Q. You've been shown Exhibit 299, Mr. Billings,
120:18 which is a series of emails with various people from

120:19 Micron.
120:20 And this is a Micron document. But since every
120:21 email has you on it, I am showing it to you, I think
120:22 appropriately, under the Protective Order. And it's
120:23 Bates Numbered MT001298 through 1301.
120:24 So, take a look at that. I've really just got --
120:25 I'm just going to ask you about your email of May 25 at
121: Page 121
121: 1 12:47 p.m. But feel free to look at whatever you like, of
121: 2 course.
121: 3 A. Okay.
121: 4 Q. Okay. So, is 299 a series of emails between you
121: 5 and Margo Nicholson and Pat Otte with certain other
121: 6 people --
121: 7 A. Yes.
121: 8 Q. -- from St. Luke's involved?
121: 9 That's a Yes?
121:10 A. Yes.
121:11 Q. And this is in the May and June 2012 period?
121:12 A. Yes.
121:13 Q. So, that May 25 at 12:47 p.m. email, you say,
121:14 among other things, "I was informed that Select Medical
121:15 Network specifically denied a Wise/Imagine contract
121:16 previously."
121:17 Do you see that?
121:18 A. Yes.
121:19 Q. Who informed you of that?
121:20 A. I don't -- probably Steve Drake.
121:21 Q. Okay. And that was --
121:22 A. Maybe Linda House. I don't know. One of those
121:23 two.

Page Range: 122:3-122:6

122: 3 Q. The contract in question was one that would have
122: 4 applied to Micron, the one that was denied; correct?
122: 5 A. Among other clients of Wise/Imagine, probably,
122: 6 yes.

Page Range: 128:16-128:22

128:16 Q. And there's a sentence there where you write "And
128:17 I doubt that Saint Al's would cripple their own network
128:18 like that right after the beginning of their plan year
128:19 (January 1st?), which would be a significant impact on
128:20 their employees."

128:21 I'd like you to explain what you meant in
128:22 particular by the phrase "cripple their own network."

Page Range: 129:2-129:17

129: 2 THE WITNESS: Well, I was talking about the
129: 3 Saint Al's employee benefit plan and -- which I understood
129: 4 was effective January 1st of this 2013 calendar year. And
129: 5 their employees had just selected physicians based on a
129: 6 network that Saint Al's communicated to them.
129: 7 And so, why would they turn around three weeks
129: 8 later or four weeks later, four weeks into that new
129: 9 benefit plan year and tell their members that Saint Al's
129:10 or -- yeah, Saint Al's had fewer physicians than they had
129:11 to represent it, whether it's Saltzer or anyone. They
129:12 wouldn't say: We've given you this panel of physicians up
129:13 until December and now they're out.
129:14 BY MR. KEITH:
129:15 Q. What is your understanding, if any, of the effect
129:16 of Saltzer's leaving the ACN network on the attractiveness
129:17 of that network to employers and individuals in Nampa?

Page Range: 129:19-129:25

129:19 THE WITNESS: I don't know. I don't know the
129:20 impact of that.
129:21 BY MR. KEITH:
129:22 Q. Have you ever analyzed how many Saint Al's
129:23 employees use Saltzer physicians as their physician of
129:24 choice?
129:25 A. No.

Page Range: 131:4-133:13

131: 4 You know, I'd like you to describe for us the
131: 5 state of Advocate Health Partner's creation of an
131: 6 accountable care provider model at the time you joined in
131: 7 1995.
131: 8 A. So, Advocate Health Partners -- Advocate was
131: 9 formed in '94. So, Advocate itself was formed a year
131:10 before -- less than a year before I got there.
131:11 Prior to '95 and formation of Advocate, there
131:12 were separate PHOs for each of the hospitals that made up
131:13 -- that ultimately joined to form Advocate in the former
131:14 Lutheran General and Evangelical system. And they each

131:15 had physician hospital organizations, they each had risk
131:16 contracts, they had partial as well as full risk contracts
131:17 that date back to, I don't know, probably in the '80s,
131:18 probably the late '80s.
131:19 Q. What was your role while you were at Advocate in
131:20 creating the clinical protocols and procedures that
131:21 Advocate used to implement its accountable care strategy?
131:22 A. Zero. In clinical piece, zero. I didn't
131:23 participate.
131:24 Q. What was your role, if any, in creating or
131:25 implementing the financial terms of the relationship that
132: Page 132
132: 1 Advocate had with its independent providers to incentivize
132: 2 those providers to reach the goals of the accountable care
132: 3 model that Advocate was developing?
132: 4 A. So, I wasn't involved in that either. I was
132: 5 upstream negotiating. That's what I consider a downstream
132: 6 process, you know, how you handle the providers
132: 7 downstream.
132: 8 I negotiated with the upstream payers to sell the
132: 9 product that was put together based on those clinical and
132:10 financial pieces.
132:11 Q. I believe that Mr. Ettinger asked you a question
132:12 about the percentage of employed versus independent
132:13 physicians who participated in the Advocate Health
132:14 Partners contracts.
132:15 Do you remember that discussion?
132:16 A. Yeah, about a quarter.
132:17 Q. About a quarter. What is your understanding of
132:18 the geographic distribution of employed and independent
132:19 physicians across the region that Advocate Health Partners
132:20 served?
132:21 A. Well, each of those predecessor organizations had
132:22 a PHO, which had varying levels, you know, in the various
132:23 communities of Chicagoland. So, in one community around
132:24 one hospital, you'd have a PHO. Around another, you'd
132:25 have another. And they had varying levels of -- I mean,
133: Page 133
133: 1 they weren't all equal in terms of they weren't all
133: 2 quartered if that's what you're asking.
133: 3 But they were -- they had varying levels of
133: 4 employed versus independent providers, depending on the --
133: 5 so, I guess you'd call them subregions of Chicagoland.
133: 6 Probably even dependent on how much Medicare managed care
133: 7 was in an area. I mean, you have certain areas of Chicago
133: 8 where there's a lot of Medicaid.
133: 9 And Medicaid managed care is prevalent. So,
133:10 you'd have -- it depends on what physicians have joined

133:11 and participate in Medicaid managed care and Medicare and
133:12 so forth. So, it varied based on that and other factors,
133:13 I guess.

Page Range: 133:25-135:8

133:25 Q. I wanted to ask you why that -- why it is your
134: Page 134
134: 1 strategy not to get into bidding wars with Saint Al's for
134: 2 the Micron business?
134: 3 A. Well, our overall strategy, at least since I've
134: 4 gotten here, is to introduce new innovative
134: 5 risk-based contracting strategies.
134: 6 And so, my preference has always been, in the two
134: 7 years I've been here, to push the payers to -- you know,
134: 8 to be more open to risk sharing, surplus sharing, even
134: 9 deficit sharing, even full risk versus remaining in that
134:10 same old, you know, decade-long parodyne of negotiating
134:11 fee for service, unit cost price.
134:12 And you know, when you just negotiate price,
134:13 that's -- the ultimate cost is based on the volumes that
134:14 run through those prices versus the overall level of care.
134:15 So, it's -- the risk base is preferred, you know.
134:16 Obviously, there are many negotiations where we
134:17 negotiate fee-for-service rates still. And you have to do
134:18 that and we to that. But...
134:19 Q. What is your strategy in terms of negotiating
134:20 risk-based contracts with payers in the event that
134:21 Saint Al's also offered a risk-based proposal to the
134:22 payor?
134:23 A. Well, I guess it could be Saint Al's or anybody
134:24 that offers a risk base. It could be any provider that
134:25 offers a risk-based contract. It could be the same as
135: Page 135
135: 1 what St. Luke's would offer.
135: 2 And generally, in negotiations, your first offer
135: 3 is never what you're willing to settle on. So, you
135: 4 usually arrive at some other number that -- through
135: 5 negotiations that get you a contract that's still above
135: 6 what is your threshold for what you think even this
135: 7 risk-based contract would still be reasonable and not, you
135: 8 know, upside down either financially or outcomes wise.

Page Range: 135:14-135:25

135:14 Q. Mr. Billings, why don't you pull out Exhibit 270,

135:15 the first exhibit, your resume.
135:16 A. The very first exhibit?
135:17 Q. Yeah.
135:18 A. Okay.
135:19 Q. So, in the third paragraph, and I think we went
135:20 through this before, you said that at Advocate you "served
135:21 a critical role interfacing with the 3,800 physicians."
135:22 Do you see that?
135:23 A. Yep.
135:24 Q. Is that a true statement?
135:25 A. Yeah.

Page Range: 137:6-137:14

137: 6 Q. Okay. Advocate contracts, by the way, that you
137: 7 negotiated, were across this whole system; isn't that
137: 8 right?
137: 9 A. Yes.
137:10 Q. And so they included places where the employed
137:11 physicians were more than 25 percent and they included
137:12 places where the employed physicians were less than
137:13 25 percent; correct?
137:14 A. Correct, as a group.

Page Range: 138:1-138:9

138: 1 Q. Okay. Now, you -- on the subject of Saltzer and
138: 2 Saint Al's crippling its network, you never believed that
138: 3 the relationship between Saint Al's employees and Saltzer
138: 4 was new as of January 2013; did you?
138: 5 A. No.
138: 6 Q. And you never believed that the relationship
138: 7 between ACN and Saltzer was new as of January 2013; did
138: 8 you?
138: 9 A. No.

Page Range: 138:10-139:8

138:10 Q. Okay. I have one question on the issue of
138:11 bidding wars.
138:12 Is it your view that you would rather give up the
138:13 Micron business than engage in a bidding war with
138:14 Saint Al's?
138:15 A. No. There's a level at which -- there's a level
138:16 at which you would not, you know, get down to and still

138:17 take the business, because it wouldn't make it worth
138:18 while; right?
138:19 Q. Yeah. But to date, you have not gotten the
138:20 Micron business; correct?
138:21 A. We don't have the Micron business, correct.
138:22 Q. And you've not engaged in a bidding war with
138:23 Saint Al's; correct?
138:24 A. We've -- I don't know what your definition of
138:25 bidding war is, but --
139: Page 139
139: 1 Q. This is your phrase in email after email; isn't
139: 2 it?
139: 3 By your definition, you've not engaged in a
139: 4 bidding war with Saint Al's; correct?
139: 5 A. We gave them a proposal, which I guess could be
139: 6 the beginning of a bidding war.
139: 7 Q. Are you now saying that --
139: 8 A. They gave a proposal, we gave a proposal.

Page Range: 140:5-140:16

140: 5 Q. Okay. That works. Isn't it true that you took
140: 6 the position from the beginning and still take the
140: 7 position that you don't want to engage in a bidding war
140: 8 with Saint Al's and that nobody from St. Luke's has
140: 9 communicated a disagreement with that to you?
140:10 A. We do not want to get into a bidding war, that's
140:11 correct.
140:12 Q. Yeah. And you think that's the right decision
140:13 even though you don't have the Micron business as of
140:14 today; correct?
140:15 A. I don't want to get into a
140:16 fee-for-service bidding war, that's correct.