# TESTIMONY OF DR. RANDELL PAGE

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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: 7:9-7:14**

7:9 EXAMINATION
7:10 BY MR. PERRY:
7:11 Q. Good morning, Dr. Page.
7:12 A. Morning.
7:13 Q. Have you ever been deposed before?
7:14 A. A very long time ago.

**Page Range: 8:16-9:15**

8:16 Q. Please briefly describe your
8:17 educational and professional background.
8:18 A. I went to college at Princeton
8:19 University, graduated in 1971. Medical school at
8:20 Philadelphia College of Osteopathic Medicine,
8:21 graduated in 1977. Internal medicine residency at
8:22 Emanuel Hospital, now Legacy Health Systems in
8:23 Portland, Oregon. Graduated from the residency
8:24 program in 1980. Board certified in 1980 in
8:25 American Board of Internal Medicine.
9: Page 9
9: 1 Q. And you're currently a partner of
9: 2 Saltzer Medical Group, one of the defendants in
9: 3 this case?
9: 4 A. That's correct.
9: 5 Q. How -- how long have you been with
9: 6 Saltzer?
9: 7 A. I came to Saltzer in 1989.
9: 8 Q. And you've been with Saltzer that
9: 9 entire time?
9:10 A. The entire time.
9:11 Q. Can you describe what your practice
9:12 encompasses?
9:13 A. I'm an internist. For the last
9:14 approximately ten years, my practice has been
9:15 limited to gastrointestinal problems.

**Page Range: 9:16:9-19**

9:16 Q. When you say "limited to
9:17 gastrointestinal problems," you only treat
9:18 gastrointestinal problems; is that right?
9:19 A. That's right.

**Page Range: 11:8-11:17**

11: 8 Q. And prior to affiliating with
11: 9 St. Luke's, Saltzer was the largest independent
11:10 multispecialty practice in Idaho; is that right?
11:11 A. I believe we were.
11:12 Q. You had a -- and Saltzer had a strong
11:13 reputation in the community in which you practice?
11:14 A. I believe we do.
11:15 Q. And Saltzer has a strong reputation for
11:16 providing high-quality medical care?
11:17 A. I believe we do.

**Page Range: 17:18-19:8**

17:18 Q. At -- at Saltzer, you served for a
17:19 number of years as chairman of the Contracts
17:20 Committee, right?
17:21 A. Correct.
17:22 Q. Can you describe what the Contracts
17:23 Committee is?
17:24 A. We review most contracts that Saltzer
17:25 has of just about any nature. Primarily, it was
18: Page 18
18: 1 designed to deal with contracts with insurance
18: 2 companies.
18: 3 Q. Health plans?
18: 4 A. Health plans.
18: 5 Q. And what was your role as chair of the
18: 6 Contracts Committee, specifically as it relates to
18: 7 negotiations with health plans?
18: 8 A. My role as chairman, I would review the
18: 9 contract in detail. And partly that had to do
18:10 with just contract language, requirements of
18:11 contracts of the physicians aside from issues
18:12 relating to fee schedules and things like that.
18:13 And then I would be part of deciding how we would
18:14 deal with the fee schedules.
18:15 Q. Were you responsible for the

18:16 negotiations of those managed care contracts?
18:17 A. Most of the negotiations were done by
18:18 our -- our CFO.
18:19 Q. Your CFO, Saltzer's CFO. You're
18:20 referring to Nancy Powell?
18:21 A. Nancy Powell.
18:22 Q. So Ms. Powell would be the person most
18:23 knowledgeable about Saltzer's managed care
18:24 contract negotiations?
18:25 A. She would be the person who did most of
19: Page 19
19: 1 the detail, in terms of looking at the numbers,
19: 2 running the spreadsheets, et cetera. She had --
19: 3 well, especially over -- things kind of evolved
19: 4 over years that Ms. Powell was there.
19: 5 And over time, she probably took on
19: 6 more of that responsibility than I did. You know,
19: 7 took on more of the communication responsibility,
19: 8 whereas I did more of that initially.

**Page Range: 21:18-22:19**

21:18 Q. You may have already answered this
21:19 question, but I just want to make sure I
21:20 understand it. What -- your role within the
21:21 managed care contracting area was to review
21:22 contracts; is that right?
21:23 Describe your role more generally in
21:24 terms of managed care contracting.
21:25 A. We would review the contracts, again,
22: Page 22
22: 1 for detail related to language. And Nancy would
22: 2 run the -- Ms. Powell would run the spreadsheets.
22: 3 And we would look at the fee schedules and how
22: 4 they affected us, how they affected the various
22: 5 specialties, et cetera.
22: 6 And then as a committee, we would make
22: 7 recommendations as to whether we would proceed to
22: 8 recommend the -- the contract to the Executive
22: 9 Committee or -- or not.
22:10 Q. The contract negotiations that you're
22:11 describing, those include both price and nonprice
22:12 terms; is that right?
22:13 A. Correct.
22:14 Q. And the rates or the reimbursement
22:15 that Saltzer received included both physician fees
22:16 and other services, such as ancillary services,

22:17 lab, imaging, those types of services; is that
22:18 right?
22:19 A. Correct.

**Page Range: 26:20-27:1**

26:20 Q. BY MR. PERRY: If you -- when you were
26:21 able to -- when Saltzer was able to have some
26:22 success with its negotiation with health plans,
26:23 whenever that was, with whomever it may have been,
26:24 why do you think that was?
26:25 A. It would be because they felt they
27: Page 27
27: 1 needed to have Saltzer participate.

**Page Range: 27:12-28:1**

27:12 Q. You -- let me rephrase it. You stated
27:13 that -- that when Saltzer had negotiating leverage
27:14 with health plans, it was because the health plans
27:15 felt that they needed to have Saltzer participate;
27:16 is that right?
27:17 A. That was my assumption.
27:18 Q. I'm not asking whether it's your
27:19 assumption. I'm asking is that -- did you
27:20 accurately explain the situations in which
27:21 Saltzer had negotiating leverage?
27:22 A. They never said to me we'll pay you
27:23 this amount because we must have Saltzer in the
27:24 network. It was an assumption that we made that
27:25 they would do that because they needed us in their
28: Page 28
28: 1 network.

**Page Range: 28:2-28:9**

28: 2 Q. Your understanding in terms of -- when
28: 3 you say that a health plan needed Saltzer in the
28: 4 network, what do you mean by that?
28: 5 A. They needed a certain number of
28: 6 providers so they could offer a network to their
28: 7 enrollees. And Saltzer, as a provider of 40 or
28: 8 50, whatever the number was at the time, was an
28: 9 attractive source of providers.

**Page Range: 51:24-52:22**

51:24 Q. BY MR. PERRY: Plaintiffs' Exhibit 476
51:25 is an E-mail from Randell Page to Nancy Powell,
52: Page 52
52: 1 Mark Rasmus and Michael Djernes, copying
52: 2 John Kaiser, dated April 22nd, 2011, subject
52: 3 "Blue Cross Consultations." It bears Bates
52: 4 numbers SMG000315458 through 315459.
52: 5 Exhibit -- take your time to review
52: 6 Exhibit 476.
52: 7 THE WITNESS: Okay.
52: 8 Q. BY MR. PERRY: Plaintiffs' Exhibit 476
52: 9 is an E-mail exchange discussing Blue Cross's
52:10 decision to no longer accept the consult codes, as
52:11 we had just discussed; is that right?
52:12 A. Yes.
52:13 Q. And in the first E-mail, in the
52:14 exchange from Stephanie Herman, Ms. Herman reports
52:15 that there's been a change in how they're billing
52:16 consult codes for Blue Cross patients. "As of
52:17 April 1st, Blue Cross is no longer going to accept
52:18 consult codes"; is that right?
52:19 A. That's what it says.
52:20 Q. Does this refresh your recollection as
52:21 to when this took place?
52:22 A. I can see the dates here.

**Page Range: 52:23-53:3**

52:23 Q. Does it refresh your recollection about
52:24 when Blue Cross's change took place?
52:25 A. I don't recall that. I didn't have a
53: Page 53
53: 1 recollection of when it took place. I said I
53: 2 don't know the exact date. Yes, it gives me the
53: 3 date.

**Page Range: 55:11-55:14**

55:11 Q. The details, such as the specific
55:12 financial impact of managed care contracts, is
55:13 that something that Ms. Powell would know about?
55:14 A. Yes.

**Page Range: 57:7-57:18**

57: 7 Q. The last sentence in your E-mail in
57: 8 Exhibit 476 states, "If our negotiations with
57: 9 Luke's go to fruition, this will be something we
57:10 could try to get back, i.e. consult codes, as
57:11 there would be the clout of the entire network."
57:12 Do you see that?
57:13 A. Um-hum. Yes.
57:14 Q. By "negotiations with Luke's go to
57:15 fruition," you mean the pending negotiations
57:16 regarding a potential PSA agreement with
57:17 St. Luke's?
57:18 A. I would assume that's what I meant.

**Page Range: 58:1-58-7**

58: 1 Q. When you say that "if Saltzer's
58: 2 negotiations with Luke's go to fruition" -- and by
58: 3 that you mean enter into a PSA agreement --
58: 4 "Saltzer would then have the clout of the entire
58: 5 network"; is that right?
58: 6 A. I think this whole sentence on my part
58: 7 was purely speculation.

**Page Range: 58:8-58:12**

58: 8 Q. Your hope was that once Saltzer was
58: 9 affiliated with St. Luke's, you would have greater
58:10 clout vis-a-vis your negotiations with Blue Cross?
58:11 A. A hope, yeah. Not a hope that had --
58:12 had a lot behind it, but yes.

**Page Range: 58:13-58:16**

58:13 Q. And the hope would -- that -- your hope
58:14 was that once you affiliated with St. Luke's, you
58:15 would have the clout of both Saltzer's network and
58:16 St. Luke's network; is that right?

**Page Range: 58:18-59:3**

58:18 THE WITNESS: That's what this says. Again,

58:19 it is entirely speculation.
58:20 And I -- I should also point out that
58:21 this -- this whole issue is not something where
58:22 Saltzer or, as I was speculating, Saltzer and
58:23 St. Luke's, or Saltzer and anybody else for that
58:24 matter, would be able to increase reimbursement
58:25 from Blue Cross.
59: Page 59
59: 1 This was an assumption about possibly
59: 2 preventing a reduction in reimbursement from
59: 3 Blue Cross.

**Page Range: 63:11-63:21**

63:11 Q. BY MR. PERRY: Okay. Plaintiffs'
63:12 Exhibit 477 is an E-mail from Randell Page to
63:13 John Kaiser, dated May 4, 2011. Subject, "Andy's
63:14 SCA guy." It bears the Bates numbers SMG000306637
63:15 through 638. Feel free to review as much as
63:16 Exhibit 477 as you want, Dr. Page. I'll only be
63:17 asking you about your E-mail from 4:12 p.m. Let
63:18 me know when you're ready.
63:19 Have you had a chance to review
63:20 Exhibit 477?
63:21 A. Yes.

**Page Range: 64:9-64:21**

64: 9 Q. Your E-mail that you just mentioned
64:10 from Exhibit 477 is discussing an idea that
64:11 Dr. Hessing raised about Saltzer partnering with
64:12 Treasure Valley Hospital and Primary Health
64:13 Medical Group; is that right?
64:14 A. Well, yeah, partly, in the context of
64:15 this meeting that they were trying to put together
64:16 where this gentleman from SCA would come out and
64:17 address the group.
64:18 Q. SCA is the company that manages
64:19 Treasure Valley Hospital?
64:20 A. I don't know what the relationship is.
64:21 I thought they were part owners, actually.

**Page Range: 68:20-68:22**

68:20 Q. Is Saltzer a preferred provider by the

68:21 community?
68:22 A. I believe we are.

**Page Range: 62:2-69:16**

69: 2 Q. When you mention contracting in -- in
69: 3 Exhibit 477, you're referring to managed care
69: 4 contracting; is that right?
69: 5 A. Presumably.
69: 6 Q. And you felt that St. Luke's would be a
69: 7 stronger partner for Saltzer in terms of managed
69: 8 care contracting?
69: 9 A. I -- I didn't say that here, but I
69:10 certainly believe that.
69:11 Q. Why do you believe that St. Luke's
69:12 would be a stronger partner in terms of managed
69:13 care contracting?
69:14 A. For lots of reasons. I believe that
69:15 St. Luke's is the preeminent provider in this
69:16 community.

**Page Range: 69:17-70:12**

69:17 Q. And their status, in your view, as the
69:18 preeminent provider in this community makes them a
69:19 strong partner in terms of managed care
69:20 contracting?
69:21 A. In terms of -- yes, I do. And I also
69:22 believe that they are the right partner to have in
69:23 terms of contracting because of where they are
69:24 trying to go, where they are trying to take the
69:25 provision of health care in this community.
70: Page 70
70: 1 Q. Would -- I mean, would St. Luke's also
70: 2 be a what you've described as a "preferred
70: 3 provider" in the community?
70: 4 A. I believe they are.
70: 5 Q. And by "preferred provider in the
70: 6 community," you're referring to they are providers
70: 7 that patients in the community are most interested
70: 8 in -- in seeing?
70: 9 A. I believe that St. Luke's has an
70:10 excellent reputation in this community and that a
70:11 large number of patients would see them as their
70:12 preeminent provider.

**Page Range: 72:16-73:12**

72:16 Q. BY MR. PERRY: Plaintiffs' Exhibit 478
72:17 is an E-mail from Randell Page to a number of
72:18 recipients, dated March 7, 2011. Subject, "PSAs."
72:19 It bears the Bates number SMG000278243. Take a
72:20 minute to review Exhibit 478.
72:21 Do you recognize Exhibit 478?
72:22 A. I recognize it in that it says it is
72:23 from me. I don't recall it otherwise. Can I
72:24 finish reading it?
72:25 Q. Sure.
73: Page 73
73: 1 A. Okay.
73: 2 Q. Do you recall the subject matter of
73: 3 Exhibit 478?
73: 4 A. Yes.
73: 5 Q. And what -- what are you discussing in
73: 6 Exhibit 478?
73: 7 A. I think the -- the -- underlying --
73: 8 underlying it is the form of the PSA.
73: 9 Q. You're referring to the form of the PSA
73:10 agreement that was being negotiated at this point
73:11 between St. Luke's and Saltzer?
73:12 A. Correct.

**Page Range: 73:23-74:7**

73:23 Q. What was discussed with St. Luke's in
73:24 terms of recruiting and building the provider
73:25 network in western Ada and Canyon County?
74: Page 74
74: 1 A. It wasn't specifics. It was
74: 2 generalities that we would work together to build
74: 3 the provider network in western Ada and Canyon
74: 4 County, so that St. Luke's would help us recruit.
74: 5 We would have input into the kind of providers
74: 6 that were recruited, the specialties, for example,
74: 7 that were recruited.

**Page Range: 77:23-79:24**

77:23 Q. Turning back to Exhibit 478.
77:24 Further down in the first paragraph of your
77:25 E-mail, you state, "We need to try to bring the

78: Page 78
78: 1 Mercy Physician Group family docs into Saltzer if
78: 2 possible. That would be huge for maintaining/
78: 3 improving the referral base in Canyon County as
78: 4 Al's begins more recruiting of pcps and other
78: 5 specialists to be in direct competition."
78: 6 Do you see that?
78: 7 A. I do.
78: 8 Q. The Mercy Physician Group family docs
78: 9 that you refer to in Exhibit 478, is that the
78:10 group of physicians that we discussed earlier that
78:11 is now part of St. Luke's?
78:12 A. In general. I couldn't say if Doctor
78:13 by Doctor if it is exactly the same, but in
78:14 general, yes.
78:15 Q. That's the group you're referring to
78:16 when you mentioned, I think it is called --
78:17 correct me if I'm wrong -- "Saint Al's Family
78:18 Practice Nampa"?
78:19 A. Yes.
78:20 MR. ETTINGER: You said "Saint Al's Family
78:21 Practice."
78:22 Q. BY MR. PERRY: I'm sorry. St. Luke's
78:23 Family Practice, Nampa.
78:24 A. Yes. Excuse me.
78:25 MR. PERRY: Thanks for the correction.
79: Page 79
79: 1 Q. BY MR. PERRY: Why was it so important
79: 2 to bring this group of family practice physicians
79: 3 into Saltzer if possible?
79: 4 A. Well, they were respected
79: 5 practitioners. They already had existing
79: 6 practices, so they wouldn't be providers that you
79: 7 would be bringing in trying to build a practice.
79: 8 So you wouldn't have that impediment.
79: 9 Plus, a multispecialty group needs to
79:10 have healthy primary care physician practices to
79:11 support referrals to the specialists within that
79:12 practice.
79:13 Q. Let's unpack that just a little bit to
79:14 make sure I understand it. When you say that they
79:15 are an existing provider group, they don't have
79:16 the impediment of having to build a practice,
79:17 you're referring again to the difficulty in terms
79:18 of recruiting; is that right?
79:19 A. I'm referring to that if these would be
79:20 physicians who would bring a practice to the
79:21 group, a lot of their patients would follow them,

79:22 presumably, as opposed to a new provider coming in
79:23 who wouldn't have any patients and would have to
79:24 build a practice from scratch.

**Page Range: 97:17-97:23**

97:17 Q. BY MR. PERRY: Plaintiffs' Exhibit 481
97:18 is a three-page document beginning with Bates No.
97:19 SMG000033688. It appears to be a -- a letter by
97:20 Dr. Page, signed by a number of other physicians
97:21 at Saltzer.
97:22 Do you recognize Exhibit 481?
97:23 A. I do.

**Page Range: 98:5-98:7**

98: 5 Q. And you wrote -- you wrote the letter
98: 6 that is included in Exhibit 481?
98: 7 A. I did.

**Page Range: 98:21-99:8**

98:21 Q. Let's turn to the second and third
98:22 pages of Exhibit 481, 33689 and 33690. There
98:23 appear to be signature blocks for a large number
98:24 of Saltzer physicians. Do you see that?
98:25 A. Yes.
99: Page 99
99: 1 Q. And there are signatures on, by my
99: 2 count, 25 of these lines. Do you see that?
99: 3 A. I haven't counted it, but I see the
99: 4 signatures.
99: 5 Q. You see all the signatures that are
99: 6 listed here that -- are these physicians who
99: 7 reviewed this letter and then signed it because
99: 8 they agreed with you?

**Page Range: 99:10-99:13**

99:10 THE WITNESS: I see that they signed it,
99:11 and I would assume that they signed it because
99:12 they agreed. And I would assume that they
99:13 wouldn't sign and agree if they hadn't read it.

**Page Range: 100:2-101:4**

100: 2 Q. Turning back to the first page. After
100: 3 your initial E-mail -- or the initial letter that
100: 4 we discussed earlier, you then, the letter then
100: 5 states, "My thoughts are as follows," and within
100: 6 that section you state, "For me personally, and I
100: 7 believe for Saltzer, Saint Al's is the wrong
100: 8 partner. Reasons -- " and you have a series of
100: 9 bullet points.
100:10 I want to turn your attention to the
100:11 fifth around sixth bullet points, the last two
100:12 bullet points on this page. You state, "We have
100:13 to be concerned with aligning if appropriate with
100:14 the strongest partner. No one would disagree that
100:15 Saint Al's is not the dominant provider in the
100:16 valley."
100:17 Next bullet, "We are already linked
100:18 in many ways to St. Luke's because we all know
100:19 they are and will likely remain the dominant
100:20 provider."
100:21 It is your position that St. Luke's is
100:22 the dominant provider in the Treasure Valley?
100:23 A. I would -- I think that we should
100:24 consider that there are -- there are synonyms,
100:25 let's say, to the word "dominant." And what I was
101: Page 101
101: 1 trying to imply was not that they dominate the
101: 2 market, but that they are the preferred or the
101: 3 preeminent provider in the market and the best
101: 4 partner for us.

**Page Range: 101:5-101:15**

101: 5 Q. The word you chose, though, was
101: 6 "dominant," right, not "preferred" or
101: 7 "preeminent"?
101: 8 A. When I chose that word, I didn't choose
101: 9 the word anticipating that two years later I would
101:10 be sitting in this room being questioned about why
101:11 I chose the word "dominant" versus "preeminent" or
101:12 "preferred." So that's the word I chose. That's
101:13 not what I meant. I meant "preferred" or
101:14 "preeminent," not that they dominate the
101:15 marketplace.

**Page Range: 103:1-103:14**

103: 1 Q. So you shared the letter that we've
103: 2 discussed as part of Exhibit 481 with Bill Savage
103: 3 and John Kaiser before you sent it more broadly to
103: 4 other physicians at Saltzer; is that right?
103: 5 A. Yes.
103: 6 Q. And you, yourself, had reviewed the
103: 7 letter before you -- you sent it on first to
103: 8 Bill Savage and John Kaiser and then to all the
103: 9 other physicians at Saltzer; is that right?
103:10 A. Yes.
103:11 Q. And did you -- when you reviewed
103:12 Exhibit 481, did you think anything in it was
103:13 inaccurate?
103:14 A. No.

**Page Range: 105:22-106:7**

105:22 Q. BY MR. PERRY: Let me turn to the
105:23 second page of Exhibit 481, 33689. About halfway
105:24 through the second full paragraph after the
105:25 bullets, you note, "Compensation for primary care
106: Page 106
106: 1 and nonprocedural specialties is based on the
106: 2 hospital system maintaining access to patients.
106: 3 Via these providers they control the input to
106: 4 outpatient services, diagnostics, and referral to
106: 5 proceduralists who then use the hospital."
106: 6 Do you see that?
106: 7 A. I do.

**Page Range: 106:15-107:1**

106:15 Q. In Exhibit 481, you're -- you're
106:16 stating that the rationale for the compensation
106:17 that's paid to primary care providers is based on
106:18 the hospital system being able to obtain
106:19 downstream revenue through the outpatient
106:20 services, diagnostics, and other referrals that
106:21 those primary care providers generate; is that
106:22 right?
106:23 A. The compensation is based on the work
106:24 that the primary care providers do. It is not
106:25 based on where they send people for services, lab

107: Page 107
107: 1 work, et cetera.

**Page Range: 109:24-110:9**

109:24 Q. BY MR. PERRY: In Exhibit 481, though,
109:25 you're explaining the logic, in your words, behind
110: Page 110
110: 1 the compensation that is being offered for primary
110: 2 care and nonprocedural specialties, correct?
110: 3 A. Yes.
110: 4 Q. And the logic of that compensation is
110: 5 based on the hospital system maintaining access to
110: 6 patients because they control the input to
110: 7 outpatient services, diagnostics, and referral
110: 8 to proceduralists who then use the hospital,
110: 9 right?

**Page Range: 110:11-110:17**

110:11 THE WITNESS: They -- "they" refers to the
110:12 primary care physician, not to the hospital.
110:13 Q. BY MR. PERRY: Right. And the primary
110:14 care physician controls the input to outpatient
110:15 services, diagnostic, and referral to
110:16 proceduralists who then use the hospital, right?
110:17 A. Correct.

**Page Range: 110:18-111:8**

110:18 Q. And that's the logic behind St. Luke's
110:19 proposed compensation for primary care and
110:20 nonprocedural specialties, correct?
110:21 MR. KEITH: Objection; form, foundation.
110:22 THE WITNESS: I don't know that I did a very
110:23 good job in this paragraph of trying to state the
110:24 issue. The issue that I was trying to point out
110:25 was that what we're trying to do is have access to
111: Page 111
111: 1 the patients and then the patients have a
111: 2 choice -- we have a choice where we send them for
111: 3 what we want done.
111: 4 The surgeons wanted their compensation
111: 5 from St. Luke's. In addition to that, they wanted
111: 6 to maintain the compensation that they were

111: 7 getting from Treasure Valley Hospital, and that
111: 8 was an issue.

**Page Range: 130:22-131:1**

130:22 Q. BY MR. PERRY: You also mentioned
130:23 that you thought it was important that additional
130:24 services be brought into Canyon County, and you
130:25 specifically mentioned a hospital; is that right?
131: Page 131
131: 1 A. Yes.

**Page Range: 131:2-131:12**

131: 2 Q. Is there any reason that additional
131: 3 services couldn't be brought into Canyon County
131: 4 through a looser affiliation with St. Luke's?
131: 5 A. I guess I have to respond to that in
131: 6 the same way that I've been responding. I think
131: 7 if you're going to ask a hospital to invest the
131: 8 time, the people, the money, the risk of putting
131: 9 up an outpatient surgery center, a medical office,
131:10 a hospital, they are more likely going to want to
131:11 do that and be more inclusive if you're more
131:12 tightly aligned than if you're not.

**Page Range: 159:12-160:6**

159:12 Q. Okay. Why don't we -- why don't you
159:13 pull out Exhibit 476. Mr. Perry asked you some
159:14 questions about that.
159:15 So do you recall questions about that
159:16 last sentence in your top E-mail about the if
159:17 negotiations with St. Luke's go to fruition there
159:18 would be the clout of the entire network.
159:19 Do you remember Mr. Perry asked you
159:20 about that?
159:21 A. Yes.
159:22 Q. I believe you said that that was a
159:23 naive view; is that right?
159:24 A. Yes.
159:25 Q. So when you wrote this in 2011, you had
160: Page 160
160: 1 been the chair of the Contracting Committee for
160: 2 something like 18 years or so; is that right?

160: 3 A. That would be a reasonable estimate.
160: 4 Q. Yeah. And were you -- after 18 years,
160: 5 were you naive about managed care relationships
160: 6 generally?

**Page Range: 160:9-160:14**

160: 9 A. I still -- I said it was a naive
160:10 statement.
160:11 Q. My -- my question is a different one.
160:12 I said after 18 years on the Contracting
160:13 Committee, were you naive about managed care
160:14 relationships generally?

**Page Range: 160:16-160:17**

160:16 THE WITNESS: No, I don't think I'm naive
160:17 about managed care relationships generally.

**Page Range: 161:12-161:16**

161:12 Q. Okay. So what happened in the last few
161:13 years that made you less naive today that didn't
161:14 happen in the first 18?
161:15 A. I can't tell you in detail what --
161:16 what's happened.

**Page Range: 161:17-161:23**

161:17 Q. Okay. In March of 2013, two months
161:18 ago, were you naive about managed care
161:19 relationships and about clout and managed care?
161:20 A. I don't think it is fair to
161:21 characterize whether I was naive in general versus
161:22 whether I might have made a judgment that was
161:23 incorrect or naive about a specific issue.

**Page Range: 168:17-169:22**

168:17 Let me go back to Exhibit 481, which
168:18 Mr. Perry showed you. I want to ask you about a
168:19 different sentence than he showed you.
168:20 If you go to the second page, you see

168:21 that paragraph starts out, "I'm pretty convinced
168:22 that St. Luke's is the right partner"?
168:23 A. Yes.
168:24 Q. It is in the same paragraph, but it's a
168:25 different sentence. You see the fifth sentence in
169: Page 169
169: 1 that paragraph says, "They are offering a
169: 2 wonderful opportunity to control and codevelop
169: 3 services in Canyon County."
169: 4 Do you see that sentence?
169: 5 A. Yes.
169: 6 Q. And by "they," you meant St. Luke's,
169: 7 correct?
169: 8 A. Yes.
169: 9 Q. So what was the wonderful opportunity
169:10 to control services in Canyon County?
169:11 A. Again, probably not the best choice of
169:12 words. Because it has never been about control.
169:13 It's been about the opportunity to participate in
169:14 the development of services, to have a say, to
169:15 have Saltzer's goals and Saltzer's wishes
169:16 represented.
169:17 Q. But when you wrote this, this letter to
169:18 your colleagues, did you try to be as accurate as
169:19 possible?
169:20 A. Of course.
169:21 Q. Did you try to choose the best words?
169:22 A. Yes.

**Page Range: 169:23-170:4**

169:23 Q. Were you worrying about whether the
169:24 words would have significance in a court case when
169:25 you wrote this?
170: Page 170
170: 1 A. Of course not.
170: 2 Q. Okay. Now today, you are in a
170: 3 situation where these words have potential
170: 4 significance in a court case, correct?

**Page Range: 170:6-170-22**

170: 6 THE WITNESS: It is unfortunate that they
170: 7 would because that's not what was meant. But I'm
170: 8 sure somebody will try to make it look like that's
170: 9 what was meant.

170:10 Q. BY MR. ETTINGER: So -- well, what word
170:11 did you mean when you wrote "control services in
170:12 Canyon County," Doctor? What -- tell me the right
170:13 word should have been instead of "control."
170:14 A. The opportunity was, as I said, was to
170:15 participate.
170:16 Q. So you -- you said "control" when you
170:17 meant to say "participate"; is that correct?
170:18 A. I -- it would have been better had I
170:19 used the word "participate."
170:20 Q. Did you say "control" when you meant to
170:21 say "participate," Doctor?
170:22 A. Yes.

**Page Range: 187:24-188:14**

187:24 Q. Okay. Now, Blue Shield, Regence Blue
187:25 Shield agreed to provide -- to allow Saltzer to
188: Page 188
188: 1 participate in its PPO at its traditional rates;
188: 2 isn't that right?
188: 3 A. They did.
188: 4 Q. And that amounted to about an 8 or 10
188: 5 percent price advantage to -- to Saltzer; isn't
188: 6 that right?
188: 7 A. I'm not sure I would describe it that
188: 8 way. It -- what it prevented, Saltzer from taking
188: 9 an 8 to 10 percent decrease, and that was years
188:10 ago.
188:11 Q. Yeah. And that was in effect through
188:12 part of 2012, was it not?
188:13 A. I don't remember the date when that
188:14 ended.

**Page Range: 220:9-221:4**

220: 9 Q. And your outpatient cases at Saint Al's
220:10 are down to less than half they were before the
220:11 St. Luke's acquisition; isn't that right?
220:12 A. And -- and that's because -- that's not
220:13 by choice. My practice style, my -- where I do
220:14 things has not changed. What's changed is, and
220:15 not by my intent, when I came off the endoscopy
220:16 call schedule, I've had less in-hospital work to
220:17 do that was call related, and that's why that
220:18 volume is down.

220:19 The number of patients that I need to
220:20 do over there has not changed. The way I practice
220:21 with those patients has not changed.
220:22 Q. So I just want to be clear on the facts
220:23 on the record because in part you gave me the
220:24 explanation without answering the question. So
220:25 let's just get some facts straight.
221: Page 221
221: 1 You chose to go off the endoscopy call
221: 2 schedule, and as a result, you were doing less
221: 3 cases at Saint Al's Nampa, correct?
221: 4 A. Correct. Not by design.

**Page Range: 221:5-221:13**

221: 5 Q. I understand that's your position.
221: 6 A. Well --
221: 7 Q. I'm not trying to argue with you,
221: 8 Doctor. I'm saying I understand --
221: 9 A. No, what you're trying to -- with all
221:10 due respect, what you're trying to imply is that I
221:11 changed the nature of my practice because of the
221:12 St. Luke's deal, and that is not the case. That
221:13 has not happened.

**Page Range: 232:12-233:4**

232:13 Q. BY MR. ETTINGER: Doctor, you've been
232:14 handed Exhibit 489, which is a series of E-mails
232:15 beginning with the same Dr. McKinnon E-mail
232:16 following an E-mail from Dr. Kunz, and then
232:17 another one from Dr. McKinnon, Bates-numbered
232:18 47702 to 3. Why don't you take a look at this and
232:19 I'll ask you about it.
232:20 A. Okay.
232:21 Q. Okay. You see that Dr. Kunz said, "We
232:22 have discussed contingency plans in Finance
232:23 Committee"?
232:24 A. I do.
232:25 Q. Does that refresh your recollection
233: Page 233
233: 1 that you heard about contingency plans?
233: 2 A. It does not -- that's the extent of
233: 3 what I know is that there have been some
233: 4 discussions about it. And that's all I know.

**Page Range: 233:23-234:12**

233:23 Q. Yeah. Were you curious as to what had
233:24 been discussed about contingency plans in the
233:25 Finance Committee?
234: Page 234
234: 1 A. Apparently not very much so, because I
234: 2 didn't inquire about it.
234: 3 Q. Okay. All right. Are you curious
234: 4 today as to whether Saltzer has any contingency
234: 5 plans to deal with this eventuality of the
234: 6 surgeons not being present if the judge unwound
234: 7 the group?
234: 8 A. Yes.
234: 9 Q. Is there a reason why you never asked
234:10 Dr. Kunz or anyone on the Finance Committee about
234:11 what contingency plans they've discussed?
234:12 A. Not that I can give you, no.